

ANTONIO M. BARRETTO, PLAINTIFF AND APPELLANT, VS. PHILIPPINE PUBLISHING CO., DEFENDANT AND APPELLEE.

G.R. No. 9476. March 17, 1915

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from a judgment of the Court of First Instance of Manila dismissing the complaint on the merits.

The action is for damages claimed to have been sustained by reason of the publication of an alleged libelous article in a daily newspaper published in the city of Manila, called The Manila Times, owned and published by the defendant. The article alleged to be libelous is as follows:

"BAD FAITH IS ANSWER MADE.

"A. M. BARRETTO NAMED IN DOCUMENT FILED.

" 'That the contract sued upon was entered into by Antonio M. Barretto and the Murray Commercial Company in bad faith and for the purpose of defrauding Jose Santa Marina and the heirs of Joaquin Santa Marina,' is one of the startling allegations made by Attorney Kincaid, attorney for Jose Santa Marina, owner of the La Insular Cigar Company, in answer to the complaint filed against Sr. Marina by the Commercial Company.

"In a previous paragraph the answer had alleged that the contract sued upon was not executed by Sr. Marina, nor by anyone authorized to execute it; that the contract forming the basis of the suit was not the act and deed of the defendant, nor was it in any way binding upon him, either in law or in equity.

"This suit, which involves an amount of P519,339, was brought by the Murray Commercial Company of Seattle against Jose Santa Marina for breach of contract, the charges alleging that the Commercial Company had a contract, executed by Antonio M. Barretto, manager of La Insular Cigar Company, to furnish it with not less than four million cigars annually, as well as appointing that company sole agent for the United States.

"The contract was executed in 1909, but only a few hundred thousand cigars were furnished under its terms, the company alleging that La Insular Company had made sales direct to other dealers and has ignored the exclusive agency clause of the contract. Mr. Barretto severed his connection with La Insular Company some time after the contract was made. The answer to the complaint filed this morning was sworn to by John D. McGavin who states that he is agent for Jose Santa Marina and answers for his principal, owing to Sr. Marina being absent at this time. Mr. McGavin is at present manager of the cigar company, but is shortly to take a vacation, leaving the management of the concern in the hands of Captain Enrique Carrion of the Spanish Army, aide-de-camp to the King of Spain. Captain Carrion is a son-in-law of Sr. Marina, the latter having succeeded to the management of the estate of Joaquin Santa Marina, founder of the cigar company."

This article refers to an answer filed in an action pending in the Court of First Instance of the city of Manila wherein the Murray Commercial Company was plaintiff and Jose Santa Marina defendant. The plaintiff was not a party to that action.

The only proceedings had in the case prior to the publication of the answer were the filing of the complaint, the interposition of a demurrer thereto, an order overruling the demurrer and providing that, if answer was not made within a specified time, defendant would be considered in default. The answer to which the article refers is the one filed as a result of this order.

The learned trial court, after hearing the cause, was of the opinion that, while the article was libelous per se, the publication thereof was privileged, it being a fair and true account of a judicial proceeding. An appeal was taken from that judgment and the questions presented thereby are now before us for resolution.

The attorneys for the parties have not presented to this court the questions which might arise from the manner and form of the publication, including the headlines and the comment which accompanies the report of the alleged judicial proceeding. The only question argued is whether or not an answer filed under the circumstances already detailed is a judicial proceeding to the extent that the publication of its contents was privileged under sections 7 and 8 of Act No. 277. The action, as well as the defense, is based on the provisions of the Act referred to. So far as material to the defense it reads:

"SEC. 7. No reporter, editor, or proprietor of any newspaper is liable to any prosecution for a fair and true report of any judicial, legislative, or other public official proceedings, or of any statement, speech, argument, or debate in the course of the same, except upon proof of malice in making such report, which shall not be implied from the mere fact of publication.

"SEC. 8. Libelous remarks or comments connected with matter privileged by the last section receive no privilege by reason of being so connected."

The appellee contends that the answer constitutes a judicial proceeding within the meaning of these provisions and argues as follows:

"But it is of vital importance to appellee, as well as to other publishers of newspapers in the Philippine Islands, to have a judicial determination as to whether or not a newspaper may safely publish a fair and true report of the pleadings in a case before the case has come to a trial or hearing. Appellee regrets causing annoyance to appellant or any other worthy person, but believes that the convenience of individuals should yield to the interest of the community in knowing through the medium of newspapers what is transpiring in the courts. Appellee submits that it would be contrary to public policy and subversive of fundamental principles to place any restriction whatever upon the publicity of any stage of court proceedings; and in this connection it should be borne in mind that every criminal complaint, and almost every civil pleading, would be, except for the privilege which attaches to it, libelous per se. Of course the privilege may sometimes be abused; but there is a safeguard against such abuse in the provision that the privilege is forfeited by malice, and the occasional injustice to an individual is outweighed by the public good which requires prompt and public knowledge of what is going on in the courts.

"If I correctly understand appellant's theory and that of the authorities whom he cites, they do not deny that the pleadings in a civil or criminal cause constitute eventually a part of judicial proceedings, but hold that they do not become judicial proceedings, or parts thereof, until they have been brought to the attention of the judge for trial or hearing. Appellant will doubtless concede that, if in Cause 9046 a demurrer to the answer had been interposed and sustained or overruled, the Manila Times would have been justified in publishing the decision of the court on the demurrer, together with the pleadings which the decision referred to. I am unable to see any merit or reason in the distinction."

We are unable to agree with the contention of appellee. There is at least one assumption which forms the basis of its argument which we do not think is founded on fact or principle. The foundation of the right of the public to know what is going on in the courts is not the fact that the public, or a portion of it, is curious, or that what goes

on in the court is news, or would be interesting, or would furnish topics of conversation; but is simply that it has a right to know whether a public officer is properly performing his duty. In other words, the right of the public to be informed of proceedings in court is not founded in the desire or necessity of people to know about the doings of others, but in the necessity of knowing whether its servant, the judge, is properly performing his duty. Only clear provisions of law can justify a newspaper, or an individual, in spreading baseless charges of fraud or corruption made by one man against another, wherever such charges may be found. The fact that such charges are contained in a paper filed in court gives no inherent right to an individual to peddle its contents from door to door or spread them broadcast ; and a newspaper has no more privileges than an individual. Between the newspaper and the individual there is no difference of right. The real difference between them lies in the ability of the one to spread the publication more quickly, more extensively, and more thoroughly than the other. Unless, therefore, the statute plainly confers that right, the publication of such charges is actionable unless justified.

The case of *Cowley vs. Pulsifer* (137 Mass., 392) is so pertinent to the questions presented for our decision in the case at bar that we cannot refrain from quoting extensively therefrom. That was an action against the owners of the *Boston Herald* for a libel printed in that paper. The alleged libel was a report of the contents of a petition for the removal of the plaintiff, an attorney at law, from the bar. The report was fair and correct, but the petition included allegations which would be actionable unless justified. In their answer defendants relied upon privilege and the main question raised by the plaintiff's exception was whether the publication was privileged, as ruled by the court below. The petition had been presented to the clerk of the supreme judicial court for the county of Middlesex in vacation, had been marked by him, "Filed February 23, 1883," and then or subsequently had been handed back to the petitioner, but it did not appear that it had ever been presented to the court or entered on the docket.

Touching the foundation of the right of the public to be informed of what takes place in courts of justice the court in that case said:

"The privilege set up by the defendants is not that which attaches to judicial proceedings, but that which attaches to fair reports of judicial proceedings. Now, what is the reason for this latter? The accepted statement is that of Mr. Justice Lawrence in *Rex vs. Wright* (8 T. R., 293, 298) : 'Though the publication of such proceedings may be to the disadvantage of the particular individual concerned, yet it is of vast importance to the public that the proceedings of courts of justice should be universally known. The general advantage to the country in having these proceedings made public more than counterbalances the inconveniences to the private persons whose conduct may be the subject of such proceedings.' See also *Davison vs. Duncan* (7 El. & Bl.f 229, 231); *Wason vs. Walter* (L. R. 4 Q. B., 73, 88) ; *Commonwealth vs. Blanding* (3 Pick., 314).

"The chief advantage to the country which we can discern, and that which we understand to be intended by the foregoing passage, is the security which publicity gives for the proper administration of justice. It used to be said sometimes that the privilege was founded on the fact of the court being open to the public. (*Patteson, J.*, in *Stockdale vs. Hansard*, 9 A. & E., 1, 212.) This, no doubt, is too narrow, as suggested by Lord Chief Justice Cockburn in *Wason vs. Walter*, ubi supra; but the privilege and the access of the public to the courts stand in reason upon common ground. (*Lewis vs. Levy*, El. Bl. & E., 537, 558.) It is desirable that the trial of causes should take place under the public eye, not because the controversies of one citizen with another are of public concern, but because it is of the highest moment that those who administer justice should always act under the sense of public responsibility, and that every citizen should be able to satisfy himself with his own eyes as to the mode in which a public duty is performed."

From this quotation it is obvious that it was not the idea of the supreme court of Massachusetts to lay down the proposition that simply because a pleading happened to be filed in a public office it became public property to such an extent that any individual, whether interested or not, had the right to publish its contents, or that any

newspaper was privileged to scatter the allegations contained therein to the four corners of the country. The right of the public to know the contents of the paper is the basis of the privilege, which is, as we have said, the right to determine by its own senses that its servant, the judge, is performing his duties according to law. When this is kept in mind, it is clear that the privilege to publish the contents of any paper, constituting ultimately a part of judicial proceedings, naturally and logically begins at the same time and for the same reason that the rights of the public begin, namely, when the court begins to act judicially and publicly on the contents of the paper for the purpose of determining the truth or falsity of the allegations therein set forth, with an opportunity to the parties interested to be heard.

Continuing the discussion of the basis of the right of the public to know what is going on in courts of justice and reaching later a discussion of when a pleading or other paper filed in a cause may be published under privilege, the court in the case above cited said:

"If these are not the only grounds upon which fair reports of judicial proceedings are privileged, all will agree that they are not the least important ones. And it is clear that they have no application whatever to the contents of a preliminary written statement of a claim or charge. These do not constitute a proceeding in open court. Knowledge of them throws no light upon the administration of justice. Both form and contents depend wholly on the will of a Private individual, who may not be even an officer of the court. It would be carrying privilege farther than we feel Prepared to carry it, to say that, by the easy means of entitling and filing it in a cause, a sufficient foundation may be laid for scattering any libel broadcast with impunity. See *Sanford vs. Bennett* (24 N. Y., 20, 27); *Lewis vs. Levy* (ubi supra) ; *Barber vs. St. Louis Dispatch Co.* (3 Mo. App., 377).

"We waive consideration of the tendency of a publication like the present to create prejudice, and to interfere with a fair trial. (*Barrows vs. Bell*, 7 Gray, 301, 312, 316; *In re Cheltenham & Swansea Railway Carriage & Wagon Co.*, L. R. 8 Eq., 580; *Tichborne vs. Mostyn*, L. R. 7 Eq., 55 n.; *Read & Huggenson's case*, 2 Atk., 469; S. C. nom. *Roach vs. Garvan*, 2 Dick., 794.) Neither shall we discuss the question what limitations there are, if any, to the requirement that the proceeding must have been acted on and decided. (*Barrows vs. Bell*, ubi supra; *Delegal vs. Highly*, 3 Bing. N. C, 950, 963.) For, apart from the distinction between what takes place in open court and the contents of papers filed in the clerk's office, it might be said that these considerations apply with equal force to a report of proceedings in court published from day to day as they take place, and that nevertheless it has been held that reports might be so published, and that it is not necessary to wait until a trial is completed. (*Lewis vs. Levy*, ubi supra; see *Usill vs. Hales*, 3 C. P. D., 319, 325.) The practice of publishing reports in this manner is universal with us, and we may concede that it might happen that the proceedings of the first day stopped with the reading of the pleadings, or, in this case, of the petition, and that a fair report under those circumstances would be privileged, without considering whether a publication of the first day's proceedings could be made actionable by relation if the subsequent ones should be omitted.

"For the purposes of the present case, it is enough to mark the plain distinction between what takes place in open court, and that which is done out of court by one party alone, or more exactly, as we have already said, the contents of a paper filed by him in the clerk's office. This distinction, although not established by them, derives an indirect sanction from the cases which have turned on the question whether the proceeding—for instance, the examination of a bankrupt—took place in a public court. (*Ryalls vs. Leader*, L. R. 1 Ex., 29G; *Lewis vs. Levy*, ubi supra; see also *Fleming vs. Newton*, 1 H. L. Cas., 363, 378.)

"It is further to be noticed that the language of Chief Justice Shaw in *Barrows vs. Bell*, ubi supra, clearly implies that the privilege claimed by the defendants does not protect them. He says that a fair statement of the proceedings, 'when they have been acted upon and decided, made with an honest view of giving useful information, and where the publication will not tend to obstruct the course of justice and interfere with a fair trial, is not a libelous publication/ In the English Chancery it is held to be a contempt of court to publish a pleading of one party in a newspaper, or, it would seem, the whole proceedings, before the matter has come on to be heard. (*In re Cheltenham & Swansea Rail way Carriage & Wagon Co.*, ubi supra; *Bowden vs. Russell*, 46

L. J. [N. S.] Ch., 414, 416; *Cann vs. Cann*, 3 Hare, 333, n.; S. C. 2 Ves. Sr., 520; 2 Dick., 795.) A contempt of court cannot be privileged, and we see no reason to doubt that an action could be maintained for such a publication. (*Bowden vs. Russell*, *ubi supra*.) Nor do we see any reason for confining the liability to proceedings in equity. 'If one exhibit a scandalous bill, if the court hath jurisdiction of such matters, an action lies not; otherwise it is, if the court have not jurisdiction; or having, if the party publish his bill abroad, the said bill being false.' (*Weston vs. Dobniet*, *ubi supra*; see further *Delegal vs. Highly*, and *Barber vs. St. Louis Dispatch Co.*, *ubi supra*.)

"We have placed only a qualified reliance on the cases cited, because some of them were decided too early to be conclusive, and those on the question of contempt have been placed on grounds not perhaps convincing with regard to the present question. But they lend strong support to our decision.

"It may be objected that our reasoning tacitly assumes that papers properly filed in the clerk's office are not open to the inspection of the public. We do not admit that this is true, or that the reasons for the privilege accorded to the publication of proceedings in open court would apply to the publication of such papers, even if all the world had access to them. But we do not pause to discuss the question, because we are of opinion that such papers are not open to public inspection."

It seems clear that the basis of this decision is, that in order that the publication of a portion of what may subsequently be a part of a judicial proceeding be privileged, the proceeding must be, in reality, a judicial proceeding, that is, a proceeding in open court at which both parties have an opportunity to be present and to be heard. With reference to that portion of the decision which relates to daily reports of judicial proceedings and the ground upon which the court bases the suggestion that such daily publication might be privileged, we might add that, in our judgment, the reason for the privilege in the publication of the daily proceedings, the first day of which might consist simply in the reading of a libelous complaint or answer, is not only that it is in open court and in the presence of the parties, but that it is the beginning of a judicial proceeding in which the truth or falsity of the libelous allegations is to be determined by a court or jury and, with the beginning of such proceeding, the public suspends its judgment as to their truth or falsity until a decision or verdict has been rendered on the merits. In such case the publication of the daily proceedings is a part of the judicial proceeding which goes to make up the final judgment or verdict and which will necessarily be included and merged therein; and is not the publication of an *ex parte* statement, made entirely without responsibility, without assurance that its truth or falsity will ever be decided or even contested and without the party against whom it is made having an opportunity to meet the allegations.

On the subject of privilege in the publication of pleadings before trial has begun the case of *Nixon vs. Dispatch Printing Co.* (101 Minn., 309), is in point. That was an action to recover damages in the sum of \$20,000 for libel. The defendant was engaged in the publication of a newspaper known as the *St. Paul Dispatch*. On the 5th of October, 1905, it published the article complained of, which was libelous on its face, in its newspaper. The article was taken from a complaint then on file in a divorce action commenced by plaintiff's husband in the district court of the county of Ramsey. Extracts from the complaint so on file were published by the defendant, without actual or express malice or ill will toward the plaintiff. It appeared on the trial that there was a custom of many years' standing among the newspapers in the city of St. Paul to publish extracts from or comments on complaints when filed in the district court prior to the trial of such actions, and such publications had always been regarded by the newspapers as privileged publications. The plaintiff had a verdict for one dollar. The defendant appealed from an order denying a motion for a new trial and the only question presented on the appeal was whether the facts as above stated showed that the publication was privileged.

Referring to the preliminary question as to whether or not privilege could be established by custom, the court said:

"The fact that managers of newspapers have been accustomed to publish, when filed, the pleadings in civil

actions, and to consider such publications as privileged, is immaterial, for neither custom nor opinion can withdraw person, character, or property from the protection of the constitution. The law is well settled that a publication of judicial proceedings, if fair and impartial, is privileged. If the complaint which was published in this case was a judicial proceeding, within the meaning of the rule stated, it was privileged; otherwise it was not."

The court then proceeded to consider whether the allegations of a complaint filed in a public office as required by law, which allegations were libelous if not justified, was privileged as being a fair account of a judicial proceeding. Discussing that question the court said:

"It is the contention of the defendant that the complaint published by it was a part of the judicial proceedings in the action in which it was filed, and privileged by virtue of R. L. 1905, §4920, which reads as follows:

" 'No prosecution for libel shall be maintained against a reporter, editor, publisher or proprietor of a newspaper for the publication therein of a fair and true report of any judicial, legislative or other public and official proceeding, or of any statement, speech, argument or debate in the course of the same, without proving actual malice in making the report. But the foregoing shall not apply to a libel contained in the heading of the report, or in any matter added by another person concerned in the publication, or in the report of anything said or done at the time and place of the public and official proceeding, which was not a part thereof.' "

This case refers to a complaint; but we see no distinction between a complaint and an answer. As will be noted, the court said in its discussion that "a complaint, or other pleading in a civil action, which has never been presented to the court for its action, is not a judicial proceeding within the rule * * * " An answer may contain entirely new matter, which may be as libelous as any that could be incorporated in a complaint. The allegations to be placed therein are within the control of the defendant as much as those in the complaint are within the control of the plaintiff. We regard the Minnesota case as directly in point and, therefore, one to which great consideration is due, particularly in view of the fact that the Minnesota statute does not differ materially from ours. Both require that a proceeding be a judicial proceeding before privilege attaches to its publication.

In the case of *Brown vs. Globe Printing Co.* (213 Mo., Gil), the libel consisted in publishing certain statements with respect to extradition proceedings then pending in the city of Albany before the governor of New York, wherein the governor of Missouri sought to obtain the extradition from the State of New York of one William Ziegler, charged by indictment in the circuit court of Cole County, Missouri, with the crime of bribery, alleged in said indictment to have been committed by Ziegler in Cole County, Missouri. The plaintiff was the prosecuting attorney of Cole County, and the publication referring to him was libelous per se unless justified. The defense to the complaint was that the article complained of was a fair, correct, and truthful report of both the oral and printed argument of the attorneys of Ziegler made in the course of the hearing before the governor of New York; that the application for the extradition of Ziegler, with all proceedings in connection therewith, was ancillary to and a part of the criminal prosecution of said Ziegler, begun by the filing of the indictment against him in the circuit court of Cole County, and, therefore, concerned the administration of justice in Missouri; and that the defendant, as a publisher of a public journal, made the publication complained of for the purpose of giving public information in regard to the administration of justice and as a matter of news, and without malice, and that said publication was privileged in law. The defendant also alleged that the article complained of is a true report of a charge and accusation against plaintiff made by one John M. Bowers, an attorney for said William Ziegler, in the course of said extradition proceedings, and the article clearly and explicitly states that the charge and accusation was made by the said Bowers, and it was published by defendant without approval, indorsement, injurious comment, or malice, and as a matter of news. In the decision of the case the court stated the question to be:

"The main question presented for consideration upon this appeal is whether, under the evidence disclosed by the record, the publication complained of was privileged and of a privileged occasion."

Proceeding to a statement of the claims of the defendant the court said:

"Defendant contends that not only was the hearing before Governor Odell a privileged occasion, but that, in addition, the application for the extradition of William Ziegler, with all the proceedings in connection therewith, judicial and quasi-judicial, inter partes and ex parte, formed a privileged occasion, and that a fair report thereof, in the absence of actual malice, was privileged.

"It must be conceded that the proceedings in questions were of a quasi-judicial character, and if the report published by the defendant was a full, fair and impartial report, it was privileged."

After citing various authorities on the question of what is a privileged occasion the court continued:

"It would seem from these and other authorities which might be referred to, that the occasion was of such importance to the public that a full and fair report of the proceedings was justified, even though private rights might by reason of such report be violated, and that after the return of the indictment against Ziegler into court all the proceedings with respect thereto and in connection therewith, including the proceedings for his extradition, constituted one privileged occasion, and that full or abridged reports of the same were privileged provided they were fair and impartial so far as plaintiff was concerned, and the abridged reports, if any, had the same effect upon his character as a full and verbatim report of the proceedings would have had, which latter was a question for the jury."

Proceeding then to attack directly the question which was involved in that case and which is substantially the question involved in the case at bar the court said:

"The rule is otherwise, however, with respect to the publication of partial proceedings, upon which no judicial action has been had. Thus it was held that the contents of a petition for divorce (*Barber vs. St. Louis Dispatch Co.*, supra) ; of a petition for disbarment (*Cowley vs. Pulsifier*, 137 Mass., 392) ; of a bill in chancery (*Pub. Co. vs. Gamble*, 115 Tenn., 663) ; of a petition in a bastardy charge (*Park vs. Detroit Free Press Co.*, 72 Mich., 560), could not be published before judicial action had been taken thereon. The general rule is stated in *Barber vs. St. Louis Dispatch Co.*, supra, to be as follows:

"Where a court or public magistrate is sitting publicly, a fair account of the whole proceedings, uncolored by defamatory comment or insinuation, is a privileged communication, whether the proceedings are on a trial or on a preliminary and ex parte hearing. But the very terms of the rule imply that there must be a hearing of some kind. In order that the ex parte nature of the proceeding may not destroy the privilege—to prevent such result—there must be at least so much of a public investigation as is implied in a submission to the judicial mind with a view to judicial action. This will be apparent if we regard the reason of the rule. Perhaps the earliest, certainly one of the best, expressions of the reason of the rule is that contained in the opinion of Lawrance, J., in *Rex vs. Wright* (8 Term Rep., 293), and often since quoted with approval. It is there stated, in substance, that though the publication of proceedings in courts of justice may severely reflect on individuals, yet such publications, if they contain true accounts, are not libels nor the subjects of action, because it is of great importance that the proceedings of courts of justice shall be known; that the general advantage to the country in having these proceedings made public more than counter-balances the inconvenience to the person whose conduct may be the subject of the proceedings. But the proceedings there alluded to were proceedings in open court, as is shown, not only by the judge's language, but by the case to which he makes direct reference and upon which his remarks hinge, the case of *Curry vs. Walter* (1 Esp., 456), where the publication was of a speech made in open court, in printing which in *The Times* the supposed libel consisted. So, where it is said "it is of great consequence that the public should know what takes place in court, and the proceedings are under the control of the judges" (per Lord Campbell, in *Davison vs. Duncan*, 7 El. & Bl., 231), or, "we ought to make as wide as possible the right of the public to know what takes place in any court of justice" (per Chief Baron Pollock, in *Ryalls vs. Leader*, L. R. 1 Ex., 299), it is apparent that judicial proceedings in open court are spoken of. Indeed, the English cases on which the appellant most confidently relies are all cases of proceedings in

open court, or before a public magistrate sitting as a court. *Curry vs. Walter* has been noticed above. In *Lewis vs. Levy* (El. B. & E., 537), the plea was that the proceedings took place "before a public court of justice, to wit, a justice of the peace then sitting and holding a public court;" that "the proceedings were had in the said public court," "upon the hearing of the said charge," etc. Lord Campbell, in denying the position that the privilege must be confined to the proceedings of superior courts, said: "But on such a question the dignity of the court cannot be regarded; and we must look only to the nature of the alleged judicial proceeding which is reported." The decision proceeds distinctly upon the ground of a hearing, an investigation, a judicial inquiry and action. Lord Campbell further remarked: "But although a magistrate, upon any preliminary inquiry respecting an indictable offense, may, if he thinks fit, carry on the inquiry in private, and the publication of any such proceedings before him would undoubtedly be unlawful, we conceive that, while he continues to sit *foribus apertis*, admitting into the room where he sits as many of the public as can be conveniently accommodated, and thinking that the course is calculated for the investigation of truth and the satisfactory administration of justice (as in most cases it certainly will be), we think the court in which he sits is to be considered a public court of justice. In other cases it is stated that the publication is a mere extension of the area of publicity; that, while the court-room can contain but few persons, the public press indefinitely extends the field of notoriety. An examination of the later cases—*Pinero vs. Goodlake* (15 L. T. Rep. [N. S.], 676) ; *Wason vs. Walter* (L. R. 4 Q. B., 93), where Lord Cockburn's decision is based upon the analogy between public proceedings in courts of justice and public debates in the Houses of Parliament, and the advantage to the people that it should be known what passes within their walls; *Hunter vs. Sharpe* (4 F. & F., 983)—will show that a hearing and an inquiry in public are essential to bring the publication within the rule as to privileged communications. It may be safely asserted that if a London newspaper were to publish the one-sided statements of a bill filed in the Divorce Court, merely upon the filing, and previous to its coming before that court for judicial action, the Court of Queen's Bench would not, upon the authority of *Curry vs. Walter*, or *Lewis vs. Levy*, or *Wason vs. Walter*, decide that such a publication was privileged. Those cases are authority to the contrary, not only upon their facts, but by reason of the limitations which are expressly laid down in them. He who seeks to stretch a wholesome rule beyond its legitimate application attacks the rule itself; and the able judges who decided those cases were too good logicians to impair the force of their own arguments by extending an exceptional rule to cases where the reason that creates the exception does not exist. So, too, in the case of *Ackerman vs. Jones* (5 J. & S. [N. Y. Sup. Ct.] 42), the publication expressly described a public appearance and statement of a criminal charge before a magistrate, and it appears that the affidavit was presented to the magistrate, was considered and acted upon by him, and that process issued upon it. The court, in its opinion, said: "The affidavit in question became a part of the regular judicial proceedings in a criminal suit by the people on the complaint of Burleigh." ' ' "

In the case of *American Publishing Co. vs. Gamble* (115 Tenn., 663, 679), the court said:

"It is generally agreed that the privilege, the right to publish without liability for damages, does not extend to mere pleadings filed in court, as, for example, bills in equity, upon which there has been no judicial action. (*Park vs. Deroit Free Press Co.*, 72 Mich., 560, 568; 40 N. W., 731; 1 L. R. A., 599; 16 Am. St. Rep., 544; *Cowley vs. Pulsifier*, 137 Mass., 392; 50 Am. Rep., 318; *Barber vs. St. Louis Dispatch Co.*, 3 Mo. App., 377.) The reason for this rule is thus stated in *Park vs. Detroit Free Press Co.*: 'There is no rule of law which authorizes any but the parties interested to handle the files or publish the contents of their matters in litigation. The parties, and none but the parties, control them. One of the reasons why parties are privileged from suit for accusations made in their pleadings is that the pleadings are addressed to courts where the facts can be fairly tried, and to no other readers. If pleadings and the documents can be published to the world by any one who gets access to them, no more effectual way of doing malicious mischief with impunity could be devised than filing papers containing false and scurrilous charges, and getting these printed as news. * * * A suit thus brought with scandalous accusations may be discontinued without any attempt to try it, or on trial the case may entirely fail of proof or probability. The law has never authorized any such mischief.' (72 Mich., 568, 569; 40 N. W., 734.) Of publications of pleadings containing injurious matter at the mere incipiency of the litigation it is said: They possess no privilege, and the publication must rest on either nonlibelous character, or truth, to

defend it.' (72 Mich., 568; 40 N. W., 734.)"

In the case of *Park vs. Detroit Free Press Co.* (72 Mich., 560), appears the following:

"The public have no rights to any information on private suits till they come up for public hearing or action in open court; and, when any publication is made involving such matters, they possess no privilege, and the publication must rest on either nonlibelous character or truth to defend it. A suit thus brought with scandalous accusations may be discontinued without any attempt to try it, or on trial the case may entirely fail of proof or probability. The law has never authorized any such mischief. In *Scripts vs. Reilly* (35 Mich., 371; 38 Id., 10), this court found it necessary to decline accepting the doctrine of privilege in such cases. It has been uniformly held that the public press occupies no better ground than private persons publishing the same libelous matter, and, so far as actual circulation of libels is concerned, there can be no question which is more likely to spread them. It is undoubtedly true that there is a somewhat general taste and curiosity for knowledge about other people's affairs which has called into existence a class of newsgathering that is designed to gratify that taste without circulating falsehoods, and it is easy enough to see that mistakes may occur without any improper purpose, and in spite of care. But when the mistake does occur, and leads to mischief, the party injured cannot be called upon to suffer for the public amusement or entertainment.

"Any one, whether reporter or otherwise, who undertakes to give to the public the contents of a document which speaks for itself, and in which he has no personal concern, is bound, if he would reduce his liability, to use such a degree of care as is reasonably sure to prevent mistake, and to publish nothing not so obtained, which will inure to the injury of another. There can be no different standard applied to reporters than to others, and the rule laid down by the court that such care as reporters generally use is the standard, is not a correct rule."

In the case of *Cincinnati Gazette Co. vs. Timberlake* (10 Ohio State Rep., 549), the court held:

"Whilst a full, impartial, and correct account of a trial in a court of justice, unaccompanied by defamatory comments, may, in general, be published with impunity, yet this privilege does not extend to the publication of preliminary proceedings merely, which are of a purely ex parte character, such as a statement in detail of the contents or substance of an affidavit, made before a police magistrate, with a view to the arrest of a party thereby charged with crime. Such publication can be justified only by showing the truth of the charge."

We are satisfied that the great weight of authority is in accord with the principles enunciated in the cases cited, and that, under those decisions, the action in which the answer in the case at bar was filed had not attained the dignity of a judicial proceeding when the publication herein complained of was made. (*Lundin vs. Post Publishing Co.*, 217 Mass., 213; *Meeker vs. Post Publishing Co.*, 55 Colo., 355; *Parsons vs. Age-Herald* [Ala.], 61 So., 345.)

While, as we have said, "the privilege to publish the contents of any paper, constituting ultimately a part of a judicial proceeding, naturally and logically begins at the same time and for the same reason that the rights of the public begin, namely, when the court begins to act judicially and publicly on the contents of the paper for the purpose of determining the truth or falsity of the allegations therein set forth, with an opportunity to the parties interested to be heard," the principle as thus stated has not always been strictly applied, and, to be in harmony with all the decisions, the statement needs some modification and, perhaps, limitation. But the statement is sufficient for our present purpose; and we need not now inquire to what extent an answer or complaint must be acted on by the court or what must be done to it or with it in order to make it a part of a judicial proceeding. In this case the court did not act on the answer nor was anything done which in any way called it in question or made it a part of any action of the court.

From the evidence in this case we fix the damages at three hundred pesos (P300).

The judgment appealed from is reversed and judgment is hereby rendered for the sum of three hundred pesos

(P300) and costs. So ordered.

Arellano, C. J., Torres, Johnson, Carson, and Araullo, JJ., concur.

TRENT, J., dissents.

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