

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CARSON TAYLOR, DEFENDANT AND APPELLANT.

G.R. No. 9726. December 08, 1914

Ponente: JOHNSON, J.

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JOHNSON, J.:

This was an action for criminal libel.

The complaint alleged:

"That on the 25th day of September, 1913, the said Carson Taylor, being then and there the acting editor and proprietor, manager, printer, and publisher in the city of Manila, Philippine Islands, of a certain daily bilingual newspaper, edited in the English and Spanish languages, and known as the 'Manila Daily Bulletin,' a paper of large circulation throughout the Philippine Islands, as well as in the United States and other countries in all of which both languages are spoken and written, and having as such the supervision and control of said newspaper, did then and there willfully, unlawfully, feloniously, maliciously, and with intent to impeach the honesty, virtue, and reputation of one Ramon Sotelo as member of the bar of the Philippine Islands and as a private individual, and to expose him to public hatred, contempt and ridicule, compose, print, edit, publish, and circulate and procure to be composed, printed, edited, published, and circulated in said newspaper's issue of the above mentioned date, September 25, 1913, a certain false and malicious defamation and libel in the English language of and concerning the said Ramon Sotelo, which reads as follows:

" 'OWNERS FIRED BUILDING TO COLLECT INSURANCE.—
CRIMINAL CHARGES FOLLOW CIVIL SUIT.

" 'Conspiracy divulged in three sworn statements made by members of the party after a family disagreement. Sensational statement sworn to. Mystery of Calle O'Donnell fire solved and papers served.

" 'Conspiracy to defraud the insurance company.

" 'The building was fired to collect the amount of insurance.

" 'The movable furniture of value was removed before the fire.

" 'The full amount of the insurance was collected, and the conspiracy was a success.

" 'The above is the gist of the sworn statements of Vicente Sotelo and Eugenio Martin in connection with the fire that destroyed house No. 2157 Calle O'Donnell on April 4.

" 'The case in question is a sensational one to say the least, and the court is being petitioned to set aside the ruling and cite the parties to show cause why they should not be cited to answer charges of conspiracy to defraud.

" 'On April 4, 1913, the house located at 2157 Calle O'Donnell was destroyed by fire. The house was insured for P5,000, the contents for an additional P5,000, with the West of Scotland Insurance Association, of which

Lutz & Co. are the local agents, with an additional P1,500 with Smith, Bell & Co.

"The full amount of the insurance on the property was paid by the agents of the insurance companies and the matter apparently dropped from the records.

"Then there was internal trouble and information began to leak out which resulted in sensational statements to the effect that the destruction of the property had been an act of incendiarism in order to collect the insurance. Then there was an investigation started and it resulted in sworn statements of the three persons above mentioned.

"Notarial returns were made yesterday by the sheriff, based on the sworn statements and the parties are cited to appear in court and show cause.

"The investigation also showed that the furniture, which was supposed to be in the house at the time of the conflagration and which was paid for by the insurance agents, sworn statements having been made that it was destroyed in the fire, was in a certain house in Montalban, where it was identified upon the sworn statements of the above mentioned. Implicated in the charges of conspiracy and fraud is the name of the attorney for the plaintiff who made affidavit as to the burning of the house and against whom criminal proceedings will be brought as well as against the original owners.

"Attorney Burke, who represents Lutz & Co. in the proceedings, was seen last night and asked for a statement as to the case. Mr. Burke refused to talk on the case and stated that when it came to trial it would be time enough to obtain the facts.

"The present action came before the court on a motion of Attorney Burke to set aside the judgment, which, in the original case, gave the owners of the property judgment for the amount of the insurance.

"Attorney Burke filed the sworn statements with the court and the notarial returns to the same were made yesterday afternoon, the sworn statements as to the burning of the house being in the hands of the sheriff.

"It was stated yesterday that a criminal action would follow the civil proceedings instituted to recover the funds in the case entitled on the court records, Maria Mortera de Eceiza and Manuel Eceiza versus the West of Scotland Association, Limited, No. 10191 on the court records.

"It might be stated also that Eugenio Martin was one of the plaintiffs in the recent suit brought against Ex-Governor W. Cameron Forbes for lumber supplied for his Boston home.'

"That in this article is contained the following paragraph. to wit:

"' * * *. Implicated in the charges of conspiracy and fraud is the name of the attorney for the plaintiff who made affidavit as to the burning of the house and against whom criminal proceedings will be brought as well as against the original owners,' by which the said accused meant to refer and did refer to the said Ramon Sotelo, who then and there was the attorney for the plaintiff in the case aforesaid, No. 10191 of the Court of First Instance of the city of Manila, and so was understood by the public who read the same; that the statements and allegations made in said paragraph are wholly false and untrue, thus impeaching the honesty, virtue, and reputation of the said offended party as a member of the bar of the Philippine Islands and as a private individual, and exposing him to public hatred, contempt and ridicule. Contrary to law."

Upon said complaint the defendant was arrested, arraigned, plead not guilty, was tried, found guilty of the crime charged, and sentenced by the Honorable George N. Hurd, judge, to pay a fine of P200. From that sentence the defendant appealed to this court and made the following assignments of error:

"First. The court erred in finding that the defendant was responsible for and guilty of the alleged libel.

"Second. The court erred in finding that the defendant was the proprietor and publisher of the 'Manila Daily

Bulletin.

"Third. The court erred in finding that the alleged libelous article was libelous per se.

"Fourth. The court erred in holding that the article was libelous, while finding that there was no malice.

"Fifth. The court erred in finding that the alleged libelous article referred to attorney Ramon Sotelo.

"Sixth. The court erred in finding that Ramon Sotelo was attorney for the plaintiffs in case No. 10191, when the alleged libel was published."

After a careful examination of the record and the arguments presented by the appellant, we deem it necessary to discuss only the first and second assignments of error.

In the Philippine Islands there exist no crimes such as are known in the United States and England as common law crimes. No act constitutes a crime here unless it is made so by law. Libel is made a crime here by Act No. 277 of the United States Philippine Commission. Said Act

(No. 277) not only defines the crime of libel and prescribes the particular conditions necessary to constitute it, but it also names the persons who may be guilty of such crime. In the present case the complaint alleges that the defendant was, at the time of the publication of said alleged article "the acting editor, proprietor, manager, printer, publisher, etc. etc. of a certain bilingual, newspaper, etc., known as the 'Manila Daily Bulletin, a paper of large circulation throughout the Philippine Islands, as well as in the United States and other countries."

It will be noted that the complaint charges the defendant as "the acting editor, proprietor, manager, printer, and publisher." From an examination of said Act No. 277, we find that section 6 provides that: "Every author, editor, or proprietor of any book, newspaper, or serial publication is chargeable with the publication of any words contained in any part of said book or number of each newspaper or serial as fully as if he were the author of the same."

By an examination of said article, with reference to the persons who may be liable for the publication of a libel in a newspaper, we find that it only provides for the punishment of "the author, editor, or proprietor." It would follow, therefore, that unless the proof shows that the defendant in the present case is the "author, editor, or proprietor" of the newspaper in which the libel was published, he can not be held liable.

In the present case the Solicitor-General in his brief said that—"No person is represented to be either the 'author, editor, or proprietor.'" That statement of the Solicitor-General is fully sustained by the record. There is not a word of proof in the record showing: that the defendant was either the "author, the editor, or the proprietor." The proof shows that the defendant was the "manager." He must, therefore, be acquitted of the crime charged against him, unless it is shown by the proof that he, as "manager" of the newspaper, was in some way directly responsible for the writing, editing, or publishing of the matter contained in said alleged libelous article. The prosecution presented the newspaper, the "Manila Daily Bulletin," for the purpose of showing the relation which the defendant had to it. That was the only proof presented by the prosecution to show the relation which the defendant had to the publication of the libel in question. From an examination of the editorial page of said exhibit, we find that it shows that the "Manila Daily Bulletin" is owned by the "Bulletin Publishing Company," and that the defendant was its manager. There is not a word of proof in the record which shows what relation the manager had to the publication of said newspaper. We might, by a series of presumptions and assumptions, conclude that the manager of a newspaper has some direct responsibility with its publication; We believe, however, that such presumptions and assumptions, in the absence of a single letter of proof relating thereto, would be unwarranted and unjustified. The prosecuting attorney had an opportunity to present proof upon that question. Either because he had no proof or because no such proof was obtainable, he presented none. It certainly is not a difficult matter to ascertain who

is the real person responsible for the publication of a newspaper which is published daily and has a wide circulation in a particular community. No question was asked the defendant concerning his particular relation to the publication of the newspaper in question. We do not desire to be understood in our conclusions here as holding that the "manager" or the "printer" may not, under certain conditions and proper proof, be held to be the "author, editor, or proprietor" of a newspaper. He may denominate himself as "manager" or "printer" simply, and be at the same time the "author, editor; or proprietor" of the newspaper. He can not avoid responsibility by using some other term or word, indicating his relation to the newspaper or the publication, when, as a matter of fact, he is the "author, the editor, or the proprietor" of the same. His real relation to the said publication is a matter of proof. The Solicitor-General, in his brief, says that the defendant used the word "manager" with the hope of evading legal responsibility, as the Libel Law places the responsibility for publishing a libel, on "every author, editor, or proprietor of any book, etc." Had the prosecuting attorney in the trial of the cause believed that the defendant, even though he called himself the "manager" was, in fact, the "author, editor, or proprietor" of said publication, he should have presented some proof supporting that contention. Neither do we desire to be understood as holding that simply because a person connected with the publication of a newspaper who calls himself the "manager" or "printer" may not, in fact and at the same time, be the "author, editor, or proprietor." The "author, editor, or proprietor" can not avoid responsibility for the writing and publication of a libelous article, by simply calling himself the "manager" or the "printer" of a newspaper. That, however, is a question of proof. The burden is upon the prosecution to show that the defendant is, by whatever name he may call himself, in truth and in fact, the "author, editor, or proprietor" of a newspaper. The courts cannot assume, in the absence of proof, that one who called himself "manager" was in fact the "author, editor, or proprietor." We might assume, perhaps, that the "manager" of a newspaper plays an important part in the publication of the same by virtue of the general signification of the word "manager," Men can not, however, be sentenced upon the basis of a mere assumption. There must be some proof. The word "manage" has been defined by Webster to mean "to have under control and direction; to conduct; to guide; to administer; to treat; to handle." Webster defines "manager" to be "one who manages; a conductor or director; as, the manager of a theater." A manager, as that word is generally understood, we do not believe includes the idea of ownership. Generally speaking it means one who is representing another as an agent. That being true, his powers and duties and obligations are generally defined by contract. He may have expressed as well as implied powers, but whatever his powers and duties are they must be dependent upon the nature of the business and the terms of his contract. There is no fixed rule which indicates particularly and definitely his duties, powers and obligations. An examination into the character of the business and the contract of his employment must be made for the purpose of ascertaining definitely what his duties and obligations are. His exact relation is always a matter of proof. It is incumbent upon the prosecution in a case like the present, to show that whatever title, name or designation the defendant may bear, he was, in fact, the "author, the editor, or the proprietor" of the newspaper. If he was in fact the "author, editor, or proprietor," he can not escape responsibility by calling himself the "manager" or "printer." It is the relation which he bears to the publication and not the name or title which he has assumed, which is important in an investigation. He can not wear the toga of author or editor and hide his responsibility by giving himself some other name. While the terms "author, editor, and proprietor" of a newspaper are terms well defined, the particular words "author, editor, or proprietor" are not material or important, further that that they are words which are intended to show the relation of the responsible party to the publication. That relation may as well exist under some other name or denomination.

For the foregoing reasons, therefore, there being no proof whatever in the record showing that the defendant was the "author, the editor, or the proprietor" of the newspaper in question, the sentence of the lower court must be reversed, the complaint dismissed and the defendant discharged from the custody of the law, with costs de officio. So ordered.

Arellano, C. J., Moreland, Trent, and Araullo, JJ., concur.

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