2 Phil. 269

[G.R. No. 1049. May 16, 1903]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. FRED L. DORR ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

COOPER, J.:

On May 23, 1902, a complaint was filed in the Court of First Instance of the city of Manila against Fred L. Dorr and Edward F. O'Brien, charging them with the publication of a false and malicious libel against Senor Benito Legarda, one of the United States Philippine Commissioners, by placing certain headlines or caption above an article published in the "Manila Freedom," a newspaper in the city of Manila, of which the defendant Fred L. Dorr was the proprietor and the defendant Edward F. O'Brien was the editor.

The following are the headlines or caption upon which the prosecution is based:

> "Traitor, seducer and perjurer. Sensational allegations against Commissioner Legarda. Made of record and read in English. Spanish reading waived. Wife would have killed him. Legarda pale and nervous."

The article over and above which the headlines were placed was a report of certain judicial proceedings had in the Court of First Instance of the city of Manila, in the criminal case of the United States *vs*. Valdez for the offense of libel,[1] and the report was a copy taken from a document prepared by the attorney for Valdez, in which the offer was made, as a defense, to prove the truth of the material allegations contained in and Avhich were the basis of the complaint against Valdez. The facts offered to be proven were published in the "Miau," a newspaper of which Valdez was editor, and related to Senor Legarda, the prosecuting witness in the Valdez case as well as in this case.

At that time, under the libel law, the truth of the libelous matter was inadmissible as evidence. The judge of the Court of First Instance excluded the proof tendered in the document, but permitted it to be filed in the case, and the copy was taken from it by one Vogel, the city reporter of the "Manila Freedom." The report was handed by the reporter to the defendant O'Brien, the editor of the paper, and the headlines were written by O'Brien, and the report with the headlines thus prepared was published in the "Manila Freedom" of date April 16, 1902.

The report seems to have been regarded by the prosecuting attorney as privileged matter under section 7 of the Libel Act, and, as before stated, the prosecution is based upon the matter contained in the headlines.

On August 25,1902, the defendants were tried and found guilty of the offense charged in the complaint, and each was sentenced to six months' imprisonment at hard labor and a fine of $1,000, United States currency. From this judgment the defendants have appealed to this court,

A demurrer was filed to the complaint, based upon the ground that the facts charged in the complaint did not constitute a public offense. This demurrer was overruled by the trial court, and an exception to the ruling taken by the defendants.

During the course of the proceedings a motion was made by the defend ants asking that they be granted a trial by jury, as provided for in Article III, section 2, of the Constitution of the United States, and Tinder the sixth amendment to the Constitution, which.motion was denied by the court, and an exception was also taken to this ruling.

Before entering into a discussion of the case upon its merits, it will be necessary to consider the questions of a preliminary nature which have been raised in the assignment of errors and brief of counsel for the appellants.

The questions submitted may be embraced within the following propositions:

(1) That by the treaty of peace between the United States and Spain, ratified on the 11th day of April, 1899, the Philippine Islands became a part of the United States;

(2) And being a part thereof, they are subject to the provisions of section 2, Article III, of the Constitution, and to the provisions contained in the sixth amendment to the Constitution, by which in all criminal cases a trial by jury is guaranteed;

(3) That Congress can exercise no power over the person or property of a citizen beyond what the Constitution confers, nor deny any right guaranteed to them by the Constitution.

Stated in its simple form, the proposition made is that the provisions of the Constitution of the United States relating to jury trials are in force in the Philippine Islands.

The determination of this question involves the consideration of the political status of these Islands, the power of Congress under the. Constitution, and the nature of the constitutional provisions relating to jury trials.

The political status of the Philippine Islands has been defined to a large extent by the decision of the Supreme Court of the United States in the case of Downes *vs.* Bidwell (182 U.S., 244), in which case the status of Puerto Kico was directly involved.

The question in that case was whether merchandise brought into the port of New York from Puerto Rico, after the ratification of the treaty of peace with Spain and since the passage of the Foraker Act, is exempt from duty, and involved the question whether the revenue clauses of the . Constitution extend of their own force to the newly acquired territories from Spain, and whether the act is in contravention of the uniformity clause of the Constitution.

The conclusion was reached that the act in question was not unconstitutional. In the consideration of the case an exhaustive review was made of the powers of Congress to govern the territories belonging to the United States, under the power to acquire territory by treaty and the incidental right to govern such territory, and under the clause of section 3, Article IV, of the Constitution, which vests Congress with the power to dispose of and make all needful rules and regulations respecting the territory or other property of the United States. This review was made in the light of the opinion of contemporaries, the practical construction placed upon the Constitution by Congress, and the decisions of the Supreme Court of the United States upon questions arising thereunder. Distinctions were found to exist in the application of the Constitution depending upon the relation which was borne to the National Government whether by a State or by the territories which belonged to certain States at the time of the adoption of the Constitution, and which were situated within the acknowledged limits of the United States, and such territory as might be acquired by the establishment of a disputed line; or by those which were acquired by cession from foreign powers and to which the Constitution was extended by the treaty under which they were ceded, sanctioned by Congress, or to which the Constitution was expressly extended by Congressional act; or by those territories acquired from a foreign power by treaty, which

have not been incorporated as a part of the United States nor to which has been extended the Constitution by act of Congress.

The following conclusions are deducible from the decision in that case:

1. That Puerto Rico (to which the Philippines is equally situated) did not by the act of cession from Spain to the United States become incorporated in the United States as a part of it, but became territory pertaining to and belonging to the United States.
2. That as to such territory Congress may establish a temporary government, and in so doing it is not subject to all the restrictions of the Constitution.
3. That the determination of what these restrictions are and what particular provisions of the Constitution are applicable to such territories involves an inquiry into the situation of the territory and its relation to the United States.
4. That the uniformity provided for in the revenue clause of the Constitution is not one of those restrictions upon Congress in its government of the territory of Puerto Rico.

What is the character of these restrictions and how are they to be ascertained and determined? And to what extent is the Constitution in force and effect in these Islands?

Both Mr. Justice Brown, in delivering the majority opinion, and Mr. Justice White, in delivering the concurring opinion, refer to these constitutional restrictions.

In formulating certain propositions as his conclusions, Justice White uses the following language:

> "Whilst, therefore, there is no express or implied limitation on Congress, in exercising its power to create local governments for any and all of the territories, by which that body is restrained from the widest latitude of discretion, it does not follow that there may not be inherent, although unexpressed, principles which are the basis of all free government which can not be with impunity transcended. But this does not suggest that every express limitation of the Constitution Avhich is applicable has not force, but only signifies that even in cases where there is no direct command of the Constitution which applies, there may nevertheless be restrictions of so fundamental a nature that they can not be transgressed, although not expressed in so many words in the Constitution,"[1]

He also says:

> "Undoubtedly, there are general prohibitions in the Constitution in favor of the liberty and property of the citizen which are not mere regulations as to the form and manner in which a conceded power may be exercised, but which are an absolute denial of all authority under any circumstances or conditions to do particular acts. In the nature of things, limitations of this character can not be under any circumstances transcended, because of the complete absence of power.
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> "The distinction which exists between the two characters of restrictions, those which regulate a granted power and those which withdraw all authority on a particular subject, has in effect been always conceded, even by those who most strenuously insisted on the erroneous principle that the Constitution did not apply to Congress in legislating for the territories, and was not operative in such districts of country." Mr. Justice Brown in this connection quotes the following language used by Mr. Justice Bradley in the case of the Mormon Church *vs.* United States (136 U. S., 1) :
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> "Doubtless Congress, in legislating for the Territories, would be subject to those fundamental limitations in favor of personal rights which are formulated in the Constitution and its amendments; but those limitations would exist rather by inference and the general spirit of the Constitution from which Congress derives all its powers than by any express and direct application of its provisions."[1]

Again he says:

> "There are certain principles of natural justice inherent in the Anglo-Saxon character which need no expression in constitutions or statutes to give them effect, or to secure dependencies against legislation manifestly hostile to their real interest."[2]

The case of the American Insurance Company *vs.* Canter (1 Pet., 511) is a very interesting and instructive case which well illustrates the difference in the application of constitutional provisions to territories which are a part and within the United States, and to those acquired from a foreign power by cession which have not been incorporated into the United States, nor have had by act of Congress the Constitution extended to them.

Florida was ceded by Spain to the United States, as was also the Philippines.

The status of the Philippines at the present time is very similar to that of Florida at the date of the act passed by the legislative council of Florida, the constitutionality of which was considered in the case of the American Insurance Company *vs.* Canter. The statement of the case and the decision is taken from the opinion of Justice Brown in the case of Downes *vs.* Bidwell, and is as follows:

> "This case originated in the district court of South Carolina for the possession of 356 bales of cotton, which had been wrecked on the coast of Florida, abandoned to the insurance companies, and subsequently brought to Charleston. Canter claimed the cotton as bona fide purchaser at a marshal's sale at Key West by virtue of a decree of a territorial court consisting of a notary and five jurors, proceeding under an act of the governor and legislative council of Florida. The case turned upon the question whether the sale bv that court was effectual to divest the interest of the underwriters. The district judge pronounced the proceedings a nullity, and rendered a decree from which both parties appealed to the circuit court. The circuit court reversed the decree of the district court upon the ground that the proceedings of the court at Key West were legal, and transferred the property to Canter, the alleged purchaser.
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> "The opinion of the circuit court was delivered by Mr. Justice Johnson of the Supreme Court, and is published in full in a note in Peter's Reports. It was argued that the Constitution vested the admiralty jurisdiction exclusively in the General Government; that the legislature of Florida had exercised an illegal power in organizing this court, and that its decrees were void. On the other hand, it was insisted that this was a court of separate and distinct jurisdiction from the courts of the United States, and as such its acts were not to be reviewed in a foreign tribunal, such as was the court of South Carolina; 'that the district of Florida was not part of the United States, but only an acquisition or dependency, and as such the Constitution per se had no binding effect in or over it.' 'It becomes,' said the court, 'indispensable to the solution of these difficulties, that we should conceive a just idea of the relation in which Florida stands to the United States. * * * And, first, it is obvious that there is a material distinction between the territory now under consideration and that which is acquired from the aborigines (whether by purchase or conquest) within the acknowledged limits

> of the United States, as also that which is acquired by the establishment of a disputed line. As to both these, there can be no question that the sovereignty of the State or territory Avithin which it lies, and of the United States, immediately attach, producing a complete subjection to all the laws and institutions of the two governments, local and general, unless modified by treaty. The question now to be considered relates to territories previously subject to the acknowledged jurisdiction of another sovereign, such as was Florida to the crown of Spain. And on this subject we have the most explicit proof that the understanding of our public functionaries is that the gavernment and laws of the United States do not extend to such territory by the mere act of cession. For, in the act of Congress of March 30, 1822, section 9, we have an enumeration of the acts of Congress which are to be held in force in the territory; and in the tenth section an enumeration, in the nature of a bill of rights, of privileges and immunities, which could not be denied to the inhabitants of the territory if they came under the Constitution by the mere act of cession. * * * These States, this territory, and future States to be admitted into the Union are the sole objects of the Constitution; there is no1 express provision whatever made in the Constitution for the acquisition or government of territories beyond those limits.' He further held that the right of acquiring territory was altogether incidental to the treaty-making power; that their government was left to Congress; that the territory of Florida did 'not stand in the relation of a State to the United States;' that the acts establishing a territorial government were the constitution of Florida; that while under these acts the territorial legislature could enact nothing inconsistent with what Congress had made inherent and permanent in the territorial government, it had not done so in organizing the court at Key West."[1]

Justice Brown further cites from the opinion of Chief Justice Marshall in this case, in which the latter held "that the judicial clause of the Constitution, above quoted, did not apply to Florida; that the judges of the superior courts of Florida held their office for four years; that 'these courts are not constitutional courts in which the judicial power conferred by the Constitution on the General Government can be deposited;' that 'they are legislative courts, created in virtue of the general right of sovereignty which exists in the government,' or in virtue of the territorial clause of the Constitution; that the jurisdiction with which they are invested is not a part of judicial power of the Constitution, but is conferred by Congress, in the exercise of those general powers which that body possesses over the territories of the United States; and that in legislating for them Congress exercises the combined powers of

the general and of State governments. The act of the territorial legislature, creating the court in question, was held not to be 'inconsistent with the laws and Constitution of the United States,' and the decree of the circuit court was affirmed,"[2]

Remarking upon this case, Justice Brown says:

> "As the only judicial power vested in Congress is to create courts whose judges shall hold their offices during good behavior it necessarily follows that, if Congress authorizes the creation of courts and the appointment of judges for a limited time, it must act independently of the Constitution, and upon territory which is not part of the United States within the meaning of the Constitution."[3]

The act of Congress of July 1, 1902, entitled "An Act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes," in section 5 extends to the Philippine Islands nearly all of the provisions of the Constitution known as the Bill of Rights. But there was excepted from it the provisions of the Constitution relating to jury trials contained in section 2, Article III, and in the sixth amendment.

It becomes necessary for us to determine whether these provisions of the Constitution of the United States relating to trials by jury are in force in the Philippine Islands. It is difficult to determine from the general statements contained in these decisions what are "those fundamental limitations in favor of personal rights which are formulated in the Constitution and its amendments and which exist by inference."

It seems fairly deducible from all that has been said upon this subject that such provisions are negative in character rather than of a direct positive or affirmative nature, denying to Congress the power to pass laws in contravention with such principles of the Constitution.

If this is their nature and this be the true distinction, it can not be said that either Congress or the Philippine Commission have passed any laws which would come within the inhibition of the Constitution, or which tend to impair the right to trial by jury in these Islands.

All that can be said is that, in extending the various provisions of the Bill of Rights here, Congress has failed to extend those provisions guaranteeing the right to trial by jury.

We will now turn to the consideration of the question as to whether a violation of the right

to a jury trial falls within the inhibition arising from the existence of those fundamental limitations in favor of personal rights mentioned in the decisions.

There are a number of cases cited in Downes *vs.* Bidwell establishing the right to trial by jury in territories of the United States, but these decisions have all arisen in cases relating to territories which were a part of the United States and had been incorporated, as a part thereof and to which Congress had expressly extended the Constitution.

In Webster *vs.* Reid (11 How., 437) it was held that the law of the Territory of Iowa which prohibited the trial by jury of certain actions at law, founded on contract to recover payment for services, was void; but, as it is said, this case is of little value as bearing upon the question of the extension of the Constitution to that Territory, inasmuch as the organic law of the Territory of Iowa enacted by Congress by its express provision extended to Iowa the laws of the United States, including the ordinance of 1787 (which provided expressly for jury trials), so far as they were applicable; and the case was put upon this ground.

In Callem *vs.* Wilson (127 U. S., 540) the defendant had been convicted without jury trial, in the District of Columbia, but the District of Columbia was not only within and a part of the United States but had formed a part of the original States of Virginia and Maryland.

In the case of Springville *vs.* Thomas (l66 U. S., 707) it was held that a verdict returned by less than the whole number of jurors was invalid, because in contravention of the seventh amendment to the Constitution and the act of Congress of April 7, 1874, which provide that no party shall be deprived of the right of trial by jury in cases cognizable at common law. This is, as stated by Mr. Justice Brown, "obviously true with respect to Utah, since the organic act of that Territory had expressly extended to it the Constitution and laws of the United States."[1]

The other decisions cited by counsel for the appellants can all be traced to the same principle; that is, that where Congress has extended the laws and the Constitution to the territories, then Congress would be inhibited by the Constitution from enacting a law depriving persons living in such territories from the right to trial by jury.

The only case which we have been able to discover arising under an act of Congress, and which deprived a party of the right to a trial by jury at a place where the Constitution had not been extended by express provision, is the case of In re Ross (140 U. S., 453). This was a case in which the American consular tribunal in Japan, created by act of Congress under treaty with, the Government of Japan and vested with jurisdiction, to be exercised and

enforced in accordance with the laws of the United States, to try Americans, had, in the exercise of this jurisdiction, convicted the defendant of the crime of murder, and he was sentenced by that court to the penalty of death.

It was held that "the guaranties it (the Constitution) affords against accusation of capital or infamous crimes, except by indictment or presentment by a grand jury, and for an impartial trial by a jury when thus accused, apply only to citizens and others within the United States, or who are brought there for trial for alleged offenses committed elsewhere, and not to residents and temporary sojourners abroad."[1]

It seems from this decision that the powers of Congress to enact a law which would deprive a person of the right to a trial by jury is expressly recognized, and that such legislation does not come within the fundamental limitations in favor of personal rights, for this act of Congress which operated upon citizens of the United States abroad is recognized as a valid act of Congress.

The act is saved from the constitutional inhibition by reason that in such country the Constitution of the United States does not extend, and is not in force there, but the decision in this case nevertheless establishes the doctrine that there is not upon Congress an absolute and total inhibition under any and all circumstances to enact a law in which a person is deprived of the right to a trial by jury.

It may be further observed that if it should be held that the constitutional provision guaranteeing the right to trial by jury has been introduced here by the simple act of cession, there is no law in existence to give such provision effect.

Trial by jury was unknown to the law in force in these Islands prior to the date of cession, nor has the Philippine Commission passed any law which would give it effect. Such provisions of a constitution as those relating to trial by jury can hardly be regarded as self-executing. It is necessary that there should be some legislation carrying them into affect, such as laws prescribing the qualifications of persons for jury duty, for the organization of juries and provisions of a like character.

Suppose the Constitution has been extended here by force of the cession of territory and that it should be held that there could be no legal conviction for crime in the Philippines on account of the absence of the law prescribing the qualifications of jurors or for the organization of juries, and Congress, in the exercise of its sound judgment, after a careful examination of the conditions prevailing in such territory and in the exercise of its

undoubted right to govern the territory, should reach the conclusion that an efficient territorial government could not be conducted in which convictions for crime are dependent upon the verdict of juries, by reason of the hostility of the inhabitants of such country to the constituted authorities, or the lack of the qualification of the people of the country or an extensive portion of it to perform jury service, and should refuse to enact any law for jury trials, the criminal laws in such event must remain unenforced and a state of anarchy would be the result. In such case the question assumes very much the nature of a political question, and the judicial department might well hesitate to interfere indirectly with Congress in the exercise of its judgment, and in the exercise of its broad discretion in the government of a territory so situated.

It is contended, also, by counsel for the defendants, that Congress could not lawfully authorize the Philippine Commission to enact the libel law passed by it on October 24, 1901, under which the defendants have been convicted. The objection to the law is based upon the theory of the division of the Federal Government into three branches, executive, legislative, and judicial, and that the powers of legislation vested in Congress to make laws can not be delegated by that department to the judgment, wisdom, or patriotism of any other body or authority.

While the authorities cited in support of the general proposition maintain the doctrine, there are well-known exceptions to the general rule not referred to in these decisions, for the reason that the decision of the case did not require their consideration. A well-known exception is that of municipal corporations, upon which the powers of legislation are commonly bestowed.

The case in question forms an exception to this general rule equally well established. Congress, in the exercise of its power to make rules and regulations for the government of the territories, has often delegated the power of legislation to the territorial government. The case of American Insurance Company *vs.* Canter (1 Pet, 511), before cited, originated under an act of the governor and legislative council of Florida, organizing a court and vesting in it admiralty jurisdiction, and in which the jurisdiction of the court was sustained by the Supreme Court of the United States.

Speaking of the power of Congress in creating territorial governments, it is said in the case of De Lima vs. Bidwell (182 U. S., 1) that “the power to establish territorial government has been too long exercised by Congress and acquiesced in by the Supreme Court to be deemed an unsettled question.”

We reach the conclusion in this case:

1. That while the Philippine Islands constitute territory which Has been acquired by and belongs to the United States, there is a difference between such territory and the territories which are a part of the United States with reference to the Constitution of the United States.
2. That the Constitution was not extended here by the terms of the treaty of Paris, under which the Philippine Islands were acquired from Spain. By the treaty the status of the ceded territory was to be determined by Congress.
3. That the mere act of cession of the Philippines to the United States did not extend the Constitution here, except such parts as fall within the general principles of fundamental limitations in favor of personal rights formulated in the Constitution and its amendments, and which exist rather by inference and the general spirit of the Constitution, and except those express provisions of the Constitution which prohibit Congress from passing laws in their contravention under any circumstances; that the provisions contained in the Constitution relating to jury trials do not fall within either of these exceptions, and, consequently, the right to trial by jury has not been extended hero, by the mere act of the cession of the territory.
4. That Congress has passed no law extending here the provision of the Constitution relating to jury trials, nor were any laws in existence in the Philippine Islands, at the date of their cession, for trials by jury, and consequently there is no law in the Philippine Islands entitling the defendants in this case to such trial; that the Court of First Instance committed no error in overruling their application for a trial by jury.

We also reach the conclusion that the Philippine Commission is a body expressly recognized and sanctioned by act of Congress, having the power to pass laws, and has the power to pass the libel law under which the defendants were convicted.

We will now pass to the third assignment of error, which is that the headlines or caption of the article charged to be libelons were legitimate deductions from a previous report of a public judicial proceeding and were insufficient to constitute the offense of libel.

The testimony shows that the defendant Fred L. Dorr was the proprietor, and that the defendant Edward F. O'Brien was the editor, of the "Manila Freedom;" that the article upon which the complaint is founded was published in the issue of that paper on the 16th of April, 1902; that the privileged statements or report of the judicial proceedings, the headlines of which are the basis of the prosecution, arose on the trial of the case of the United States *vs*.

Valdez, in the Court of First Instance in the city of Manila, in which case Valdez was charged with the offense of libel, the complaining witness in that case being Seiior Legarda, who was also the complaining witness in this case; that counsel for the defendant Valdez prepared a written statement of certain facts and offered to prove the truth of these statements if permitted by the court.

A copy of this statement was made by the reporter of the "Manila Freedom"—one Vogel—which, having been presented to the defendant O'Brien, the editor, the latter prepared the headlines or caption set forth in the complaint.

The attorney for the defendants, under his assignment of errors, makes the proposition that the headlines or caption was a legitimate deduction from the privileged report of the judicial proceedings, and as such was itself a privileged publication. This proposition is succinctly made and is easily understood; no material facts are in dispute; our law of libel is contained in the few sections in which the law upon this subject is concisely and clearly stated, and renders it unnecessary to refer to text-books or decisions of the courts of other jurisdictions. Thus the labors of the court have been simplified in the determination of the case.

Section 1 of Act No. 277, Philippine Commission, gives the following definition of libel :

> "A libel is a malicious defamation, expressed either in writing, printing, or by signs or pictures, or the like, or public theatrical exhibitions, tending to blacken the memory of one who is dead, or to impeach the honesty, virtue, or reputation, or publish the alleged or natural defects of one who is alive and thereby expose him to public hatred, contempt, or ridicule."

Did the matter contained in these headlines or caption have a tendency to impeach the honesty, virtue, and reputation of the injured party? We need not stop to discuss this question.

Was it a *malicious* defamation? This appears equally. plain, for section 3 is as follows:

> "An injurious publication is presumed to have been malicious if no justifiable motive for making it is shown."

No attempt has been made by the defendants to show a justifiable motive, and the

established presumption of law that the publication was malicious must prevail. Nor has there been any attempt made to show the truth of the matter contained in the headlines.

But it is attempted to bring the headlines or caption within the exception of privileged matter.

Section 7 of the act defines this character of privileged matter as follows:

> "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."

Section 8 reads as follows:

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

It follows, therefore, that the matter is libelous; that it was a malicious publication as denned by law. The only question that remains to be considered is, Were those headlines or caption "remarks" or "comments" on the privileged matter?

The word "comment" is defined by Webster as a "remark, observation, or criticism; gossip, discourse, talk; *a note or ohservation intended to explain., illustrate or criticise the meaning of a writing*, book, etc. Explanation, annotation, exposition."

The word "remark" is denned by him as "an expression in speech or writing of something remarked or noticed. *The mention of that which in worthy of attention or notice.* A casual observation, comment, or statement."

The headlines or caption comes within the definition of "remarks" as given by Webster, in that it is "the mention of that which is worthy of attention or notice," and they also fall within the definition of the word "comment" defined as "a note or observation intended to explain."

The defendants' counsel denominates the character of the headlines or caption as a "legitimate deduction from the privileged report."

The word "deduction" is defined by Webster as "that which is deduced, or drawn from premises by a process of reason; inference; acquisition."

It seems from these definitions that the word "deduction" conveys about the same meaning as the words "comment" and " remark"; at least it would be as objectionable to make injurious deductions as to make injurious comments or remarks.

To say that the headlines or caption is not a remark or comment but an "epitome" or "index" of what is contained in the privileged article is simply a play upon words, and it is useless to follow this line of argument further.

The intention of the statute, as shown in sections 7 and 8, is that the privileged matter should be a fair and true report, and must stand alone as such. If headlines or captions are used, the matter contained in them must not be remarks or comments of a libelous nature.

If by any process additional significance is added, either by display letters or by the arrangement of catchwords, under whatever name they may be designated, it comes within the denunciation of the statute.

That the headlines were not a part of the report prepared by Vogel, the reporter who was present in the court and Avho made a copy of the report, is shown in the testimony.

The defendant O'Brien, who, so far as the testimony shows, knew nothing about the matter contained in the report except that acquired by the reading of it after it was delivered to liim, made the headlines or caption.

It is said that it is the common practice in the United States to make such headlines in display letters to render the necessary assistance to the reader in determining whether he cares to read the article.

It is immaterial what the real intention of those who write such headlines may be; if such caption and headlines are libelous, the writer must bear the consequences.

The law declares the motive of the writer, in the absence of proof of justifiable motive and the truth of the matter, to be malicious.

The decisions of some of the courts of the United States have held that an index of words contained in the privileged matter, when fairly and truly made, will partake of the nature of the article indexed; but, as we have shown, our law does not permit this. Nor is it possible to reach the conclusion that the words contained in the headlines are a fair index. No idea can be gathered from these headlines of the real nature of what is contained in the published article.

The privileged report was a written statement prepared by the attorney in the Valdez case, in which an offer was made to prove the truth of certain statements regarded as material in the defense of the case and which was by the court excluded. This was the general nature of the matter contained in the report. Can anyone, by reading the headlines or caption, form any conception as to. the real nature of the document to which the headlines have been prefixed?

It is also said that the headlines in this case are not worse than the matter contained in the report. This may be admitted as true, but in the eyes of the law there is a. distinction. The injurious matter contained in the report is regarded by the law as protected by a privilege which should be extended to the report of judicial proceedings, but here the privilege ends.

It is unnecessary to inquire why this distinction should be made. It is sufficient that the law so makes it.

It is stated that there is not a word contained in the headlines or caption which is not found in the privileged report. We have attempted to show that this is immaterial. But this statement is in fact incorrect. The sentences “sensational allegations against Commissioner Legarda, made of record and read in English; Spanish reading waived; wife would have killed him; Legarda pale and nervous,” are not found in the report. Nor can the sentence “Legarda pale and nervous” even be deduced from anything contained in the report, nor does it appear from the testimony to have been in fact true. When the statement in writing was offered and read before the court, according to the testimony in the case, Senor Legarda was not at that time present in court.

We will notice briefly the character of the caption and headlines, the effect of which can well be imagined.

The copy of the “Manila Freedom” containing the article is attached to the record. An examination of it shows that the words “traitor, seducer, and perjurer” were printed in large display letters, and were of a size sufficient in the use of these words to cover a space equal

to that of three columns across the paper. They were placed at the top of the first page of the paper. The other words were in smaller type, but much larger than the ordinary type. It is hard to conceive language stronger than that contained in the three words “traitor, seducer, and perjurer.”

No more effectual means could be adopted to destroy the good name and fame of a person. More significant words can not be found in the English language to impeach the honesty, reputation, and virtue. By skillful selection the sting of the entire document has been placed in the caption and headlines in such a manner that in a literal sense “he who runs may read.”

We conclude that the publication of the caption and headlines in the “Manila Freedom,” upon which the information is based, constituted the offense of libel; that the judgment is sustained by the evidence; that the defendants, Fred L. Dorr and Edward F. O’Brien, are guilty of the offense charged in the information; that no error was committed in the trial of the case prejudicial to the rights of the defendants, and that the judgment of the Court of First Instance should be affirmed, with costs against the defendants. It is so ordered.

Arellano, C. J., Torres and *Mapa, JJ.,* concur.

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[1] Legarda *vs*. Valdez, 1 Phil. Rep., 562.

[1] 182 U.S., 290.

[1] 182 U. S., 268.

[2] 182 U.S., 280.

[1] 182 U.S., 263.

[2] 182 U.S., 266.

[3] 182 U.S., 266.

[1] 182 U.S., 270.

[1] 140 U.S., 464.

DISSENTING

WILLARD, J., with whom concurs **LADD, J.:**

The case presents two questions: (1) Were the headlines privileged, and (2) if they were, was there express malice in publishing them?

1. 1. The important part of the article in question, and the only part which contained any libelous matter, was the offer to prove contained therein. This offer was actually made a part of the record of the case on trial in the Court of First Instance. Under section 7 of the libel law, the defendants had the right to publish it if they did so without malice. The Government recognized this right when it limited the charge in the complaint to the headlines of the article, and it is not and can not be claimed that the defendants are guilty of libel for publishing the article itself.

Nothing could be worse or more libelous than the statements contained in this offer. I do not wish to give them currency by copying them here, but it is necessary to say that it was distinctly charged in this offer, in so many words, that the complaining witness in the ease "seduced" a girl living in his house. It was also distinctly charged therein that he had added to his other crimes those of treason and perjury. For the publication of these most grave and unfounded charges the defendants are not prosecuted.

They are, however, prosecuted for placing over the article certain headlines.

That headlines to a privileged article may be used can not be doubted. The public must be able to get some idea of what a newspaper article contains without reading it entirely through. And it is not claimed that the defendants had not a right to put a proper heading to this report. The question is, Was the one actually used proper?

If the heading is a fair index, and nothing more, of the article, it is as much privileged as the article itself. If it expresses the opinion of the editor on the statements in the article, it is not privileged as to such expressions. Such expressions of opinion are called in our law comments and remarks. The rule is well illustrated in this case. The words "Spanish reading waived" is a mere statement of what the article contains. It expresses no opinion of the editor upon any part of it. On the contrary, the word " sensational" in connection with the word "allegations" is a comment or remark and is not privileged. It says that in the opinion of the editor the allegations made in the offer are sensational. It is not an index of any

statement of fact made in the article, but is an expression of opinion upon such facts.

The headline “Legarda pale and nervous” can perhaps be considered as an expression of opinion, although in this respect there is a statement of fact to this effect. But this is unimportant, for these words, even if not privileged, are not libelous. Neither is the word “sensational” libelous.

It is claimed that the words “Traitor, seducer, perjurer” are not an index of the article, but are an expression of the opinion of the editor that the complaining witness was a traitor, seducer, and perjurer. In order to determine this question it is necessary to consider the whole of the headline and to consider it with reference to the article itself. The mechanical necessities of newspaper composition generally forbid the employment of complete grammatical sentences in headlines. They must of necessity be elliptical. The reader does not expect to find the whole thought contained in the first two or three isolated words. It is necessary to look at the whole of the headlines to ascertain this.

The case at bar illustrates this proposition. The first line consisting of these three words of itself means nothing. The words are not spoken of any person. In order to find out to whom they refer it is necessary to go to the line below, in which, while it is learned that they refer to Senor Legarda, it is also seen at the same time that they were *allegations* made against him.

The necessity of reading the whole of the headlines in order to get the meaning of the isolated words is illustrated by the other half of this same page. On the first line are the words “Situation in Hongkong.” On the next line are the words “Health authorities fighting the Asiatic cholera epidemic.” The first line does not show what feature of the situation in Hongkong is treated of in the article. The second lines does not show where the health authorities are taking action. It is only by reading them together that one learns what the article is about.

Fairly construed, the headlines in question say that sensational allegations of being a traitor, seducer, and perjurer have been made against Commissioner Legarda. A person knowing nothing about the case or the parties to it, reading the whole of the headlines, could get no other idea from it. Omitting the word “sensational” which has already been considered, this statement is a fair index of the offer to prove which, as has been said before, was the principal part of the article and the only libelous part. That these crimes were plainly and distinctly, and in those very ‘words, alleged against him is shown by a

reading of the offer to prove. It is difficult to see how anyone could make a fair index of that offer without using those words. That was all there was of it.

The result upon this branch of the ease is that the headlines are nothing more than a fair index of the article and are therefore privileged with exception of the words “sensational” and “Legarda pale and nervous,” which are not libelous.

2. What has been said already leaves out of consideration the question of malice.

By the express terms of section 7, if the defendants published this judicial record with express malice, they are guilty.

The Government claims that there was express malice. It is not apparent why, with such a claim, the Government did not prosecute the defendants for publishing the article itself, for, as we have said, it is infinitely worse in its details than the headlines.

The article with the headlines being privileged, the burden of proving express malice was on the Government.

It relied upon two kinds of evidence. It claimed that the size of type and the arrangement of the headlines proved malice. There would be some force to this claim were it not for the fact that the other headlines on the same page, to which we have referred, are in the same size of type and the arrangement of the subheads is identical with the one in question. Each one takes up one-half of the page. Any presumption of malice in the use of large type for the words “Traitor, etc.,” is to my mind conclusively rebutted by the use of the same size in printing the words “Situation in Hongkong.”

An examination of other numbers of this paper, offered in evidence during the trial, shows that this size of type was in frequent use for headlines of the most indifferent character.

The only other evidence introduced consisted of articles in other numbers of the same paper relating to the same matter. These stated the gravity of the charges made; the condition of the law in regard to the presentation of the truth as a defense, and urged that an investigation be had for the purpose of showing whether the charges were true or not. There Avas no other proof of express malice.

It was proved at the trial that neither of the defendants knew Commissioner Legarda even by sight. There was no evidence that they had ever had dealings of any kind with him.

The newspaper articles do not show any express malice, and any inference of that kind which could be drawn from them is, to my mind, overcome by the proof that the defendants did not know the person whom they are charged with having maliciously libeled.

In conclusion it may be said that, while the defendants are not guilty, the person who made this offer in court is, for the reasons stated in my concurring opinion in the case of the United States vs. Lerma,[1] and if prosecuted for this libel could, as far as appears from the record in this case, have been convicted.

The judgment should be reversed and the defendants acquitted.

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[1] Page 254, supra.

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