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A CRITICAL STUDY OF THE LAW ON RELATIVE DIVORCE IN THE PHILIPPINES

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There appears to be an increasing tendency among Filipinos toward impatience with the recent decisions of our Supreme Court. There is even a disposition in some quarters to indulge in captious criticisms against our Supreme Court, and this tendency or attitude if unchecked will seriously impair the respect and confidence of the people in the Supreme Court. It has become a vice of our Supreme Court sometimes to hold the law in its black and white form paramount to the human interests affected by them. The means then became exalted above the ends they were intended to serve. They have tried to interpret the law strictly within the limited orbit prescribed in the instrument. They have failed to see that the law is intended to secure to every citizen certain rights and privileges and to see to it that those rights and privileges are preserved to the humblest and weak citizen against the influence of the strong and the powerful. Among these judicial decisions that have been the cause of discussion and dissention and is prolific of dissatisfaction in the people in their private affairs are the few decisions of our Supreme Court on the question of divorce. There is a division of opinion among our legal minds as to the wisdom of these decisions on divorce. Our Supreme Court in the case of Valdez vs. Soteraña Tuason has proscribed relative divorce in this jurisdiction after the enactment of Act 2710. It has held that the only divorce now available is the absolute divorce prescribed by Act 2710. Doubts have been entertained as to the wisdom of this decision and it is even hoped that the decision will be overruled in the future in view of the strong dissenting opinion in the Valdez case and in the dissenting decision on this point of divorce concurred in by 5 Justices in the later case of Chereau vs. Fuenbella.

At this time when so many questions on divorce had of late occupied the front page of the newspapers, it may be well and opportune to consider the possibilities of divorce problems that may arise in the near future. Among the many provisions of our law relating to divorce which might give rise to discussions is Art. 1433 of our Civil Code. It must be that some such question involving said article has heretofore been presented to our

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Supreme Court for decision. Nevertheless, strange as it may seem, a close examination of the authorities fail to reveal any case covering or touching the aforesaid article. Analogous cases may be cited offhand to apply to this article but still doubts are entertained as to the wisdom of such application. Article 1433 of the Civil Code provides: "Either the husband or the wife may sue for separation of the property, and it shall be decreed, whenever the spouse of the plaintiff shall have been condemned to a penalty which carries with it that of civil interdiction, or shall have been decared an absentee, or shall have given cause for divorce.

"In order that such separation may be decreed, it shall be sufficient to present the final judgment rendered against the guilty or absent spouse in any one of the three cases above mentioned."

As to the first two cases contemplated in the article cited, there is no possibility of any question which may arise and the provision as to them is sufficiently clear as not to warrant any further explanation. The doubt or uncertainty arises as to the third case, that is when the spouse of the plaintiff shall have given cause for divorce. The question then that may be presented is: Can you sue for separation of property when the spouse of the plaintiff shall have given cause for divorce in view of the provisions of our present divorce law, Act 2710? In other words, does the third case referred to amount to a relative divorce in view of the decisions of our Supreme Court?

Before going at length into the discussion of article 1433 of our Civil Code it would not be out of place here to review the decisions of our Supreme Court in the few cases in our jurisprudence involving the question of relative divorce. There is no question that our Supreme Court in its decision in these cases laid down the fast rule that after the passage of the present divorce law, Act 2710, on March 11, 1927, no relative divorce could be recognized and obtained in this jurisdiction. It is upon the question whether our Supreme Court has acted wisely on these cases in laying down such an absolute rule that there is much legal literature and discussion. Much has been said on both sides of the question and a careful examination of the discussions pro and con will disclose the fact that both sides are strongly supported by convincing authorities and reasons.

The leading jurisprudence on this point was decided by the Supreme Court in the case of Vicente Garcia Valdez vs. Maria Soteraña Tuazon, 40 Phil. 943. This was a petition for divorce brought by Garcia Valdez based on the ground of adultery on the part of his wife Maria Tuason. The trial court, however,

found that the charge of adultery was not sustained by the evidence presented inasmuch as the petition did not allege nor was it in fact claimed by the petitioner that the respondent had at any time been convicted of the offense of adultery. So the lower court refused to grant the divorce, which decision was affirmed by the Supreme Court. It was, however, insisted for the petitioner that supposing the fact of adultery on the part of the respondent to be proved, he was entitled to a divorce of the character recognized by the law prevailing in these Islands prior to the passage of Act 2710, that is to say, a divorce *a mensa et thoro* or decree of judicial separation, entailing as one of its consequences the dissolution of the ganancial partnership and the liquidation of the community assets. In other words it was insisted and argued that the absolute divorce as provided in act 2710 is only an additional remedy and not exclusive of the remedy of the limited divorce formerly allowed. This relief insisted by the petitioner is precisely the relief contemplated by article 1433 of the Civil Code.

Our Supreme Court in that case through Justice Street held: "That it is quite manifest that the divorce consisting of judicial separation without the dissolution of the bonds of matrimony which was formerly granted for the adultery of either of the spouses has been abrogated and in its place has been substituted the absolute divorce *ex vinculis matrimonii,* obtainable only under the conditions stated in said Act 2710."

A close examination of the majority opinion will reveal the fact that the ruling is based and depends largely on a strict interpretation of Act 2710 and on purely technical grounds. Our Supreme Court in holding that Act 2710 has repealed and proscribed the relative divorce in this jurisdiction said that "there is a plain, unavoidable and irreconsiliable repugnancy between the two laws." And to support this repugnancy it pointed out the negative form in which the provisions are written and the use of the word "only" as found in sections 1, 2, 3, 4, 5 and 8 of Act 2710.

A very strong dissenting opinion was written by Justice Avanceña with whom concurred Justice Malcolm and which held that "Act 2710 has not repealed the law existing here prior to its enactment and establishing relative divorce and that the effect of the new law is only the separation of the person and property of the spouses and the dissolution of the community property." At the outset, it is interesting to note that there is no express repealing clause in Act 2710 and following the reasonable construction of statutes, "where there is no express repeal, the presumption is against the intention to repeal."

But does there really exist a plain, unavoidable and irreconcilable repugnancy between the two laws? The dissenting opinion answers this saying that "altho Act 2710 and the law prior to it refer, in general, to the same subject-matter, nevertheless they have different specific purposes. The former allows absolute divorce and the latter, relative divorce. They cannot be repugnant to each other when their purposes are distinct and their effects are different. It matters not that conjugal infidelity be the cause of both kinds of divorce." And what are the purposes and effects of absolute divorce on the one hand and relative divorce on the other. Absolute divorce dissolves completely the bonds of matrimony and the community property, and works a change in the status and relations of the parties as if the marriage were nullified. Its purpose is to permit, as sec. 10 of Act 2710 provides, the freedom to the spouses to marry again which privilege was not obtainable before under the old divorce law. It is another remedy to whoever may take advantage of its provisions. The legal consequences of a separation from bed and board (*a mensa et thoro*) are much less extensive than those of a divorce *a vinculo matrimonii* or a sentence of nullity. Such a separation works no change in the relation of the parties either to each other or to third persons except in authorizing them to live apart. The marriage relation subsists and remains in full force, only that the community property is partitioned. Such was the effect of relative divorce in the Philippines, the only kind of divorce recognized in this jurisdiction before the enactment of Act 2710, as can be gathered from the case of Filomena del Prado vs. Tirso de la Fuente, 28 Phil. 23, which says: The judgment granting divorce does not dissolve the matrimonial bond but only provides for the separation and suspension of the common life between man and wife and the partition of their common property;" and in the case of U. S. vs. Joanino, 27 Phil. 477: "under the laws of the Philippine Islands a divorce in no way annuls a marriage so as to permit a second marriage. It is only a separation from bed and board."

As we have seen, both divorces are simply cumulative, not contradictory remedies. That is why we have many state laws of the American Union where one and the same cause will justify an action for absolute divorce or relative divorce. Directly connected with our case, we have the laws of Wisconsin, Louisiana, Indiana and other states where adultery is a cause to obtain an absolute divorce or a relative divorce at the election of the interested party or at the discretion of the court. In the case of Pick vs. Pick, 156 N. W. 769, it was held "that where the plaintiff seeks only a limited divorce, the court has power to grant it

even in cases where it is found that all the grounds for an absolute divorce exist." And in the case of Wagner vs. Wagner, 30 N. W. 766 it was said; "We see no good reason why, in an action for an absolute divorce on the grounds of cruel and inhuman treatment, the wife might not obtain a separation from bed and board if the evidence warrant it. We apprehend that there might be cases in which a court would, in the exercise of a sound judicial discretion, grant a separation from bed and board on account of cruel and inhuman treatment of the wife when it would not grant an absolute divorce; and if the wife desires the limited in case she cannot obtain the absolute divorce. The two kinds of divorce seek for different degrees of change in the marriage relation and concern the same subject."

Marriage is the greatest and loftiest institution that God has created on earth. From it emanates the state and upon it depends the existence of such state. It is the be-all and end-all of the civilization of a nation and in the sacredness and preservation of which, the state is primarily concerned. And here in the Philippines where the sanctity of the family is one of the greatest prides of our race, it would seem entirely out of the rectilinear path of our customs and religion to countenance easier divorce. The canon law spirit of marriage is so engrafted in our civilization that we regard the nuptial tie so highly and with such mysterious reverence that we would not allow it to be unloosed for any cause whatsoever arising after the union is made. It is indeed consoling to note that our Supreme Court, at least a good number of its members, has not lost sight of these considerations, for one of the arguments, perhaps the best and strongest, of the dissenting opinion says: "As it is presumed that the law is just and is enacted for the public interest, considerations of justice and public convenience are always very potent in deciding whether a subsequent law repeals a previous one. In the instant case, both considerations are against the intention to repeal. Act 2710 has been enacted not to restrain but to amplify legislation on divorce. But under the present conditions in the Philippines, this act would be restrictive should it be interpreted as repealing the former law on relative divorce. It is a matter of common knowledge that according to the religious beliefs of the Catholics, conjugal tie created by marriage is indissoluble and no Catholic who is a faithful believer would ask for the dissolution of the marriage tie which unites him to his wife. When it is taken into consideration that the majority of the Filipino people at present are Catholics, it can be seen that Act 2710 is a law only for a few. If, on the other hand, said act should be interpreted as the only law in force and that it has

repealed the old law, it would furthermore be an unjust law for it deprives a great majority of the community of all legislation on divorce, when it is recognized that said legislation is necessary to remedy a great evil in society." It is also very interesting to note that in the subsequent case of Andree C. Chereau vs. Asunción Fuentebella, et al, 43 Phil. 216, 5 Justices out of the 9 composing the Supreme Court dissented on the particular point of divorce involved in the case, namely, Justices Avanceña, Malcolm, Villamor, Ostrand and Johns. The dissenting opinion says: "We agree with this decision except in so far as it declares that now, in view of Act 2710, only absolute divorce is obtainable." There is, therefore, a very strong hope of a possibility that in the near future if a case involving this debatable question of divorce is presented before the Supreme Court, said body would overrule its decision in the case of Garcia Valdez vs. Soteraña Tuazon. Such is the present uncertain state of our divorce law.

In the expectancy that a case involving this question of divorce may arise in the future and starting from the premise that our Supreme Court will overrule its decision in the Tuason case and adopt the dissenting opinion, the author submits this critical study of article 1433.

Before going at length into the discussion of said article, it is of imperative need for the clear understanding of the law to examine the general principle and have a general idea of the nature of marriage relation. Upon the termination of the marriage ceremony, a conjugal partnership is formed between the parties. To this extent the marriage partakes of the nature of an ordinary contract (Sy Joc Lieng vs. Encarnación, 16 Phil. 137). But it is sometimes more than a mere contract. It is a new relation, the rights, duties and obligations of which rest not upon the agreement of the parties but upon the general law which defines and prescribes those rights, duties and obligations (Goitia vs. Campos Rueda, 35 Phil. 252). Marriage is an institution in the maintenance of which in its purity, the public is deeply interested. It is a new relation regulated and controlled by the state or government upon principles of public policy for the benefit of society as well as the parties. So that when the object of marriage is defeated by rendering its continuance intolerable to one of the parties and productive of no possible good to the community, relief in some way or other should be obtainable. Whenever the wrongful, illegal and unbearable conduct of a spouse drives away the other spouse, the continuation of the relation between the parties is rendered impossible. The moral and juridical relation is altered and the personal and economic interest of the society perturbed. Here neither of the

spouses is impossibilitated or incapacitated in the administration or disposition of the property but the conjugal life comes to naught and with it the conjugal partnership. Impossible it is to pretend union and harmony in the conjugal life and economic interests of the matrimony and the law would mock at the spouse in the helplessness in which it has placed her were the law to allow the guilty spouse to retain in his hands and administration the property of the conjugal partnership and his or her property, thus giving the guilty spouse a weapon with which to destroy that which he is charged to preserve and to cause unnecessary prejudice to the other spouse.

The second paragraph of article 1433, Civil Code, provides the following: "In order that such a separation may be decreed, it shall be *sufficient* to present the *final judgment* rendered against the guilty or absent spouse in any of the three cases above mentioned." Apparently the second paragraph of the article would require as a condition precedent or a requisite *sine qua non* to the maintenance of an action for separation of conjugal property the final judgment or *sentencia firme* of divorce. This proceeds from the idea that the divorce is absolute as contemplated by Act 2710 and that the guilty spouse cannot be compelled to liquidate the conjugal property unless it be by virtue of a judicial decree granting the other spouse a divorce from the defendant. We cannot, however, assent to this construction in view of the considerations before discussed of the possibility of a relative divorce in this jurisdiction. The word *sufficient*, as used in the second paragraph, as we ordinarily understand it to be, means, *enough, satisfactory, adequate, competent*. So that for the purposes of an action for a separation of conjugal property, the mere presentation of a final decree of divorce would be *enough, sufficient* or *competent* to decree the separation without the necessity of proving the facts giving rise to the action for divorce. As Manresa says, commenting on this second paragraph: "nada de audiencia del conjuge culpable ni de otras personas, nada de trámites inútiles ni demás pruebas que la sentencia misma; petición justificada y resolución inmediata decretando la separación sin que a ello puedan negarse los tribunales siempre que se cumpla la prescripción legal." The word *sufficient* itself implies the idea of the possibility of establishing your case by evdence other than the final decree of divorce. In other words, the evidence is not exclusive to the evidence of the final decree of divorce and it does not preclude the proving of the facts giving cause for divorce in the very same action for separation. In this we are not unsupported by authorities for as Manresa says: "no exige ni puede exigir la ley que el

conjuge inocente sostenga dos juicios diferentes y sucesivos para conseguir la separación de matrimonios, uno primero para obtener el divorcio, por ejemplo, y otro después para que la separación por esa causa se decrete." And in the case of De la Rama vs. De la Rama, 7 Phil. 745 and decided by the United States Supreme Court, 201 U. S. 303, it was claimed by the defendant in his brief in his original appeal to the P. I. Supreme Court in support of his assignment of error, that it was not proper to settle the affairs of the conjugal partnership in the divorce proceeding and that no such settlement of a conjugal partnership could ever be made until there had been a final judgment ordering the divorce from which no appeal had been taken. It was decided by the P. I. Supreme Court to which the case was remanded from the U. S. Supreme Court that, "in our opinion, however, this assignment of error was disposed of by the decision of the Supreme Court of U. S. as was said in that decision, the jurisdiction of that court depended entirely upon that part of the judgment of the Court of First Instance which directed the payment of ₱81,000. If the Court of First Instance had no jurisdiction to make any order for the payment of money in a divorce proceeding, that part of the judgment would have to be eliminated. In taking jurisdiction of the case, the Supreme Court of the U.S. necessarily held that—liquidation of the affairs of the conjugal partnership could be had in a divorce proceeding."

It may be argued, however, that in order that a decree of separation be granted, the action must be one for divorce. At first blush, this is a tenable position. On close examination, acceptance of such dictum is found to be perversive of the very terms of art. 1433. Said article in the last part of the first paragraph provides as one of the causes for separation *"cuando hubiese dado causa al divorcio."* Now there can only be but one logical conclusion from the very context of the article; that so long as the guilty spouse *"hubiese dado causa al divorcio"* and the facts giving rise to such cause are duly proven in court, no matter whether the innocent spouse asks for divorce or not, the decree of separation will be granted. And this is the more true if we take into consideration the customs, religion and idiosyncracies of the Filipino people which are opposed to absolute divorce. The whole frame and scheme of the average Filipino family brought up under the benign influence of the Catholic religion is entirely antagonical to this idea of absolute dissolution of marriage ties as perversive of the structure of the Filipino nation. Instances may be cited offhand of Filipino wives who would prefer to suffer silently the humiliations of their

husband adulterers than go to court to ask for absolute divorce. It is because their customs and their religion engrafted in their very beings teach them that to take the chosen man of their heart and soul for the remainder of their lifetime for better or for worse is a sacrament which cannot be disturbed by any earthly cause. It must be noted that the article provides "cuando hubiese dado causa al divorcio" unlike the provisions of the other two cases of separation which require that the guilty spouse "hubiera sido condenado o declarado." If the intention of the framers of the civil code was to require as a condition *sine qua non* to the institution of an action for separation of property that the action must be one for divorce, they could have very well provided *"hubiera sido condenado en la causa por divorcio."* We find justification for this distinction in Manresa, when he says that: "La falta de vida comun y la incompatibilidad y desarmonia que entre los cónjuges se establece por la causa del divorcio, hace que en este caso sea aun mas necesario que en los otros, conceder el remedio de la separación de bienes."

It is a general principle of construction that laws should be construed as not to work unnecessary hardship to the parties. "The spirit and purpose of the law, as determined by reason and good sense, rather than the strict letter, must be the controlling principle in interpretation." (Garcia vs. Ambler, 11 Phil. 81) In our proposition, if the guilty spouse were left in the exclusive possession and administration of the half of the conjugal partnership which rightfully belongs to the innocent spouse as fruits of their common endeavor, would it not be working unnecessary hardship to said innocent spouse? Would it not be the greatest mockery and injustice that can be committed against the helpless spouse to let the guilty spouse squander with his paramour the property that is not his by law or by right and justice to the further humiliation of the innocent spouse and their children? Undoubtedly public policy will not countenance such an unfortunate situation and the law cannot step in and yield its helping hand to the guilty spouse instead of punishing him.

If in the cases of Goitia vs. Campos Rueda, 35 Phil. 252, De Jesus vs, Alvir, 9 Phil. 576, Arroyo vs. Velazquez, 42 Phil. 5, because of the unbearable conduct and illtreatment by the husband, the wife was given separate maintenance in spite of the fact that the action was not for divorce and notwithstanding art. 146, Civil Code, and in the case of De la Viña vs. Villareal and Geopano, 41 Phil. 13, in which it was ruled that a married woman may acquire a residence or domicil separate from that of her husband during the existence of the marriage where the

husband has given cause for divorce, certainly the same reason exists and stands good on stronger grounds in the case where a spouse elects to ask under art. 1433 for a separation of conjugal property and when the acts complained of are grounds for divorce and are duly proven in court.

Such is the present state of our divorce law. Uncertainty hovers in the horizon and beclouds the lives and domestic affairs of thousands of Filipinos. The writer has endeavored to approach this question in spite of the many odds encountered in the preparation of this work. The decisions in the cases of Valdez vs. Tuason and Chereau vs. Fuentebella are squarely and directly against him. Deductive reasoning, however, has led him to the constructions and conclusions laid down in this work. It is, therefore, highly hoped by the writer that this uncertainty will soon vanish and that the Supreme Court, as the only authorized body, will wisely undo what it has unwisely done.

POSSIBLE CASES OF LIBEL FALLING UNDER THE PHRASE "OR THE LIKE" IN SECTION 1 OF ACT No. 277.

BY RODOLFO DATO[1]

It has been said over and over again that the law does not waste words. In studying a particular statute, therefore, it is absolutely necessary to examine it carefully. To overlook a phrase or even a word in it may either lead one to confusion or to a limited understanding of its provisions.

Our Libel Law, Act No. 277, in its first section defines a libel as "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." To constitute a libel, therefore, the malicious defamation must be expressed either in (1) writing, (2) printing, or by (3) signs or (4) pictures, or (5) the like, or (6) public theatrical exhibitions.

The burden of this brief thesis is to discover cases of malicious defamation which are not expressed either in writing, printing, or by signs or pictures, or public theatrical exhibitions and yet may fall under the phrase *or the like* as to constitute libel. It must be confessed at the outset that in the search for material little in the way of definite and concrete examples could be gathered from standard works and judicial pronouncements available. Reliance was had, therefore, on the imagination mostly, taking care only that it did not, in its wanderings, go beyond the confines of the real and the possible.

SLANDER AND LIBEL DISTINGUISHED

Preliminary to the discussion of the subject of this thesis it is deemed proper and even necessary to clarify the real difference that exists between slander and libel. It is considered proper in view of the fact that these two terms are so closely bound together, and necessary since any confusion between them may work against the correct understanding of this thesis.

Originally slander was the name given to all classes of defamation. This was true at the early stage of the development of the common law, when slander was the term applied to both *oral* and *written* defamation of character. (Belo & Co. v. Smith, 91 Tex. 221, 42 S. W. 850 citing Starkie, Slander and Libel p. 3). Thus slander has been defined as "the publishing of words in

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writing or by *speaking*, by reason of which the person to whom they relate becomes liable to suffer some corporal punishment or to sustain damage." (9 Bacon's Abridgment, title Slander, cited by Newell, Slander and Libel, 3rd. Edition, p. 39).

Common law, however, has now divided defamation into two classes: (1) Written Defamation—Libel, and (2) Oral Defamation—Slander. "Libel is the defamation published by means of writing, printing, pictures, images or anything that is the *object of sight*, and slander is defamation without legal excuse, published orally, by words spoken, being the *object of the sense of hearing*. Both libel and slander are but different methods of accomplishing the same wrong, differing mainly in the manner of publication." (Newell, Slander and Libel (supra) p. 32).

The main distinction, therefore, between libel and slander is that in the first case the defamation is expressed by means of an object of sight, whereas in the second case it is conveyed through the sense of hearing. In the Philippines, however, this distinction is somewhat modified in view of the inclusion of the phrase "public theatrical exhibitions" in the definition of libel by our law on the subject. Outside of this exception in no case can libel be expressed other than by an object of visible perception. This explains the reason why phonographic and other similar instruments have not been included among the possible methods of expressing libel because the defamation in these cases is conveyed to the sense of hearing and not to the sense of sight.

MEANING AND EXTENT OF THE PHRASE "OR THE LIKE"; OTHER DEFINITIONS

From the reading of the definition of libel in Sec. I of Act 277 it is evident that the phrase *or the like* bears no relation whatsoever with *public theatrical exhibitions*. It refers rather to the words preceding it, that is, to *writing, printing, signs* and *pictures*. With this in mind it is clear that the phrase covers those cases of malicious defamation expressed in some form similar to either writing, printing, signs or pictures.

Our statute's definition of libel does not mention caricatures, but in the case of U. S. v. Sotto, 36 Phil. 389, it was held that a caricature may be combined with a libelous article to serve as a basis of a complaint or information for libel. Our Supreme Court must have understood caricatures to be included in the term pictures. I believe, however, that caricatures and pictures, strictly speaking, are not the same. Thus a libel has been defined as "anything written, or printed, or expressed by signs, *caricatures*, or *pictures*, against a natural person, or artificial body as a corporation, imputing to him or it something which has a

tendency to injure his or its reputation, disgrace or degrade him or it in society, lower him or it into public hatred, contempt or ridicule—if done maliciously." (Delaware State F. & M. Ins. Co. v. Croasdale, 6 Houst. (Del.) 181, 190.) Here caricatures and pictures are mentioned separately, which shows that one is distinct from the other. My conclusion then is that caricatures fall under the phrase *or the like* in relation to pictures. For our present purpose, however, this distinction has no practical value. It is pointed out, nevertheless, for the purpose of showing how far the terms used by our statute may be extended by our courts of justice, and incidentally to clarify the exact location and meaning of the terms employed by our statute's definition of libel.

Let us now see if from available laws on libel other than our own we could gather useful material or hints for this thesis. The Kansas statute defines a libel as "a malicious defamation of a person made public by any printing, writing, sign, picture, *representation* or *effigy*, tending to provoke him to wrath or expose him to public hatred, contempt or ridicule, or to deprive him of the benefits of public confidence and social intercourse, or any malicious defamation made public as aforesaid, designed to blacken and vilify the memory of one who is dead, and tending to scandalize or provoke his surviving relatives and friends." (See Eckert v. Van Pelt, 69 Kan. 357, 360, 76 Pac. Rep. 909, 66 L. R. A. 266). The statute of Missouri defines it in exactly the same words. (See McGinnis v. George Knapp & Co., 109 Mo. 131, 138, 18 S. W. 1134). The Civil Code of California gives the following definition: "Libel is a false and unprivileged publication by writing, printing, effigy, or other *fixed representation to the eye*, which exposes any person to hatred, contempt, ridicule, or obliquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation." (Sec. 45, Civil Code of California). The Penal Code of the same state defines a libel in much the same way as our own statute does. (Sec. 248, Penal Code of California). And so does the criminal code of Illinois. (Newell, Slander and Libel, p. 33).

An examination of other statutes available shows that our own statute's definition of libel is more comprehensive. It is not therefore necessary to cite them. It may be profitable, however, to get into other sources for fresh suggestions. Libel has also been defined as "Every publication by writing, printing, or *painting* which charges or imputes to any person that which renders him liable to punishment, or which is calculated to make him infamous, odious, or ridiculous" (Cole v. Neustadter, 22 Oreg. 191, 198, 29 Pac. 550); or as "any malicious publication,

written, printed, or *painted,* which, by word or signs, tends to expose a man to ridicule, contempt, hatred or degradation of character" (Pittock v. O'Neill, 3 Am. Rep. 544, 548); or "The injurious detraction of any one by writing or *equivalent symbols,*" (Williams v. Karnes, 4 Humphr. (Tenn.) 811); or as "a malicious defamation of a person expressed otherwise than by words, as by writing, print, figures, signs, or any *other symbols.*" (Brown, L. Dict. quoted in Finch v. Vifquain, 11 Nebr. 280, 281, 9 N. W. 43). To Newell it is "defamation published by means of writing, printing, pictures, *images,* or *anything that is the object of sight.*" (Newell, Slander and Libel, 3rd. Ed. 32). Justice Sherwood, however, in penning a decision said that "the attempts... to define libel, though practically innumerable, have never been so comprehensive and accurate as to comprehend all cases that may arise." (McGinnis v. Knapp & Co. supra). But, in the opinion of a writer, "to constitute a libel, the subject-matter complained of must be a subject of visible perception" and that "provided only it be an object of visible perception, a libel does not appear to be confined to any particular form or shape." (Notes on p. 17 of Townshend, Slander and Libel).

To sum up what we have found in the foregoing definitions a malicious defamation may be expressed, aside from writing, printing, signs or pictures, by means of:

(1) effigies
(2) images
(3) other symbols
(4) paintings
(5) fixed representations or objects of visible perception

in any form or shape.

The terms effigies, images, and paintings are clearly covered by the word *pictures* in connection with the phrase *or the like* in our statute and symbols, by *signs* in relation to the same phrase. The fifth and last way of expressing a malicious defamation is much broader in scope. Its value lies in the fact that the meaning of the phrase *or the like* can be extended as to include other cases of malicious defamation which, though not bearing close resemblance to either writing, printing, signs or pictures, nevertheless may be libelous if they are fixed representations or objects of visible perception since no particular form or shape is required.

ILLUSTRATIVE CASES

We have seen in the beginning that the phrase or the like means anything that resembles either writing, printing, signs

or pictures, and that effigies, images, and paintings bear close resemblance to pictures, and symbols to signs. We shall now illustrate them.

I. *Similar to Writing.*

(*a*) A young girl, having been forsaken by her lover Pedro Diego who used to frequent her home, became very bitter towards him. In order to expose him to "public hatred, contempt, or ridicule" she embroidered the following words on a piece of linen: "Pedro Diego Is a Thief." She hung the cloth from the window of her house so that the passers-by may see and read the embroidered lettering upon it. Those who saw it understood that it was intended for the same young man who used to frequent the house of the young girl.

The foregoing is not in writing. Neither is it printing. But I believe that it comes within the phrase *or the like* in relation to the word writing.

(*b*) The following example may for similar reason fall under the same category: Juana Mallari had a quarrel with her only neighbor Maria Lukban. Juana, in order to get the ire of her neighbor and to ridicule her planted hedge-rows in her garden in such a manner that from the public street it read as follows: "My Neighbor Is a Leper."

II. *Similar to Printing.*

(*a*) A young man was rejected by Maria Enriquez, the girl he had been courting. In order to degrade her in the eyes of the public he carved the following words with a knife on the bark of a big tree in front of her home: "Maria Enriquez is Pregnant."

The above-mentioned defamatory words are not in writing or printing but may fall under the phrase *or the like* in connection with the word *printing*.

(*b*) Supposing that the same young man went to the beach where many people were taking a bath, including Maria Enriquez, and with a piece of stick traced the same defamatory words on the sand. Miss Enriquez and her companions and many others saw and read them.

The foregoing may also serve as an example of a libel similar to printing.

III. *Similar to Signs.*

(*a*) Pedro Bautista and Quintin Salvi were candidates for the office of municipal president. Agaton Francisco, a leader of Mr. Bautista, caused to be installed electric lights in front of his house so as to read as follows: "Down with Salvi the Crook."

The manner in which the defamatory words were expressed in this case is similar to signs and may serve as a basis for a complaint in libel as coming within the phrase *or the like*.

(*b*) A float was prepared for a Rizal Day parade with the following description: A big crocodile with jaws wide open is trying to grab a chicken. The crocodile is labelled "Jose Bautista is the President of the local labor association.

I believe that the foregoing symbolism is sufficient to warrant the filing of a complaint for libel by Jose Bautista against the author of the float.

IV. *Similar to Pictures: effigies, images, and paintings.*

(*a*) Effigy.

Let us suppose that A and B were bitter enemies. A made an effigy of B bearing the inscription, "The Traitor." On good Friday, while the people were going out of the church after the mass, A took the effigy with him to the churchyard and built a fire. Then in the presence of many people he took the effigy by the neck and held it over the fire until it was burned to the great merriment of the people who understood well that the effigy was intended to represent B.

The foregoing is a good ground for an action in libel by B against A. In support of my contention we have the case of Johnson v. Commonwealth, 10 Sad. (Pa.) 514, 14 Atl. Rep. 425. This case concerns the hanging of an effigy bearing the words, "By George, the old liar," from a tree serving as a gibbet and gallows in front of the complainant's place of business and understood by his neighbors to be intended to represent him. It was held that this was libel. And in another case it was held that those who take part in or aid or abet the hanging and burning of a person in effigy in order to bring him into contempt are liable in libel. (Lortie v. Claude, Q. O. R. 2 (S. C.) 369, cited by Newell, (supra) p. 61.

(*b*) Image.

Jose Turiano made a bust of Ramon Naldi with horns and placed it in front of the Rizal monument in the public plaza. The bust is an exact image of Ramon Naldi and the people who saw it had no doubt whatsoever as to its identity.

This, I think, is libelous and is a good ground for an action in court.

(*c*) Painting.

An artist painted a female orang-otang wearing a crown. The painting was entitled, "Naga Rizal Day Queen for 1927." It was displayed in a public place.

An action for libel by the girl elected Rizal Day queen for Naga in 1927 will lie against the painter in this case. In the case of Moley v. Barager, 77 Wis. 43, it was held that the publication of a cut or drawing, picturing a person as a jackass, and following it with a written article in which he is ridiculed as "an egotistical, overestimated, self-conceited jackass, who claims the name of James Moley," intending thereby to subject him to social desgrace, hatred, or contempt, is libelous *per se*. Although the example given is not accompanied by an article yet the mere fact that it was intended to represent the Rizal Day queen and is so labelled is sufficient to constitute a libel.

V. *Fixed Representations or Objects of Visible Perception.*

This manner of libelling is undoubtedly the widest and at the same time the most open to dispute. There is no case of libel that cannot possibly be included in this class. A statute containing this clause in its definition of libel will, I think, render obsolete the dictum of Justice Sherwood that "the attempts to define libel, though practically innumerable, have never been so comprehensive and accurate as to comprehend all cases that may arise."

Our libel law, however, does not contain this clause. We have pointed out elsewhere that for our present purpose the value of this clause lies in that we could interpret the phrase *or the like* as to include cases of libel which at first glance do not appear to have close resemblance to either writing, printing, signs or pictures, but nevertheless are fixed representations or objects of visible perception.

For an illustration let us consider the following case:

Councilors A and B exchanged hot words during a session of the Council, A calling B a Spaniard and B calling A a Chinaman. At the next session of the Council B appeared in the attire of a common Chinese peddler wearing a pigtail and with the name of Councilor A attached to his back.

The writing or printing of the name of Councilor A is not libelous *per se* but taken together with the other circumstances of the case I believe that an action for libel will lie by stretching a little farther the meaning of the word *sign* in connection with the phrase *or the like* since no particular form or shape is required in order to constitute a libel. It is enough that it be an object of visible perception and that some one was exposed to either "public hatred, contempt, or ridicule" as happened in this case to Councilor A through an act of ridicule by Councilor B.

Or take this other case:

Nazario Nicolas, in order to ridicule his personal enemy, Mariano Fuentes, dressed himself in the clothes of a convict or prisoner with a cap on which the name of Mariano Fuentes appears. In such attire he presented himself in public places for the amusement of the people at the expense of Fuentes. This case may also come within the same class as the example given above.

It is perhaps worth noticing again that the phrase *or the like* in our Libel Law precedes and does not follow the phrase *public theatrical exhibitions,* otherwise the last two cases would do as illustrations of malicious defamation expressed in a form similar to theatrical exhibitions. Whether the legislator was aware of the great difference that such an arrangement of the phrases has made is a matter for conjecture. At any rate the purpose of the legislator is to punish acts which tend to expose persons, dead or alive, to public hatred, contempt, or ridicule, and a reasonable interpretation of our statute's definition of libel would seem to cover many cases which at first glance do not appear to fall under it.

CONCLUSION

The foregoing considerations center around the meaning that we should give to the phrase *or the like* in Sec. I of our Libel Law. An attempt has been made to show that the inclusion of this phrase in our statute has had the effect of broadening its application as to include many cases of malicious defamation which apparently are not covered by our libel law. This was done by interpreting the meaning of the phrase in relation to the words preceding it and in the light of available foreign jurisprudence, adjudicated cases, and other authorities on the subject of libel.

In order to fully appreciate the value and importance of the phrase *or the like* in our Libel Law possible cases of libel falling under it have been given. It is not pretended, however, that those are the only cases that can be conceived, nor is it claimed that the views herein set forth are final and conclusive. The title of this thesis is frankly indicative of the writer's own misgivings as to the correctness and validity of his conclusions. If in the attempt, however, to develop this difficult subject the necessity for analysis and close observation of the words used by the statutes has been stressed to a point beyond that which is ordinarily done in a work of this nature, to that extent this effort could not have been in vain.

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THE BOARD OF CONTROL CASES

In this issue we are publishing in full the decision of the United States Supreme Court in what are popularly known as the "Board of Control Cases." Because of their far reaching effects on the conduct of the government of the Philippine Islands, it is believed that the decision will prove of interest to all students of Philippine political law and institutions. In the near future, a critical review of this decision, now being prepared, will appear in this Journal.