Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. No. L-30774 January 29, 1929

PHILIPPINE EDUCATION COMPANY, INC., plaintiff-appellee,

vs.

VICENTE SOTTO and V. R. ALINDADA defendants.
V. R. ALINDADA, appellant.

Vicente Sotto for appellant.
Gibbs, and McDonough and Roman Ozaeta for appellee.

STATEMENT

Plaintiff alleges that it is a domestic corporation, with its principal office in the City of Manila, of which the defendants are also residents and of legal age; that it is the proprietor and publisher of the monthly magazine *Philippine Education Magazine*, which is published in the City of Manila and of general circulation in the Philippine Islands; that the defendant, Vicente Sotto, is the proprietor and publisher, and the defendant, V. R. Alindada, is the editor of a weekly newspaper known as *The Independent*, which is also published in the City of Manila and also of such general circulation; that in December, 1927, plaintiff contracted with Austin Craig for the preparation and publication of an original article to be written by him concerning Mrs. Jose Rizal, to be published exclusively in the *Philippine Education Magazine*, and that by virtue thereof, the said Craig prepared and wrote an original article entitled "The True Story of Mrs. Rizal," and delivered it to the plaintiff which paid him for it, and thereby became the exclusive owner of the article; that it printed and published the article in its issue of December, 1927, and that it was on the market for sale in the early part of that month; that as such owner the plaintiff has the exclusive right to print and publish the article in its magazine, and that it gave notice in that issue "that all rights thereto were reserved;" that the defendants unlawfully and without the knowledge or consent of the plaintiff appropriated, copied and reproduced and published the article in the weekly issues of *The Independent* of December 24th and December 31, 1927, without citing the source of its defendants; that upon such discovery, the plaintiff to the fact that the article in question was published "without permission or even the courtesy of an ordinary credit line," and requested that in his next issue that "you state in some prominent place that this article was taken from our magazine, and I request further that you refrain from similar thefts in the future," Also calling his attention to the fact that we have stated plainly "on the title page of our magazine that we reserve all rights, and you infringe on them at your peril." In answer to that latter, the editor protested against the use of the word "thefts," and advised the plaintiff in substance that it had not registered such right under the Copyright Law, and that "any newspaper can reprint the article of Professor Craig without permission from anybody. Will you appreciate this free lesson of law?" And the article as continued was again published in the next issue of *The Independent*. Plaintiff alleges that by reason of defendants' acts, it was damaged in the sum of P5,000; that the defendants threaten to, and will continue appropriating and reproducing the article owned by the plaintiff, in violation of its rights, unless restrained by the court, and plaintiff prays for judgment against the defendants for P5,000, and that they be perpetually enjoined from the publication of any further articles without the knowledge or consent of the plaintiff, and for such other and further relief as the court may deem just and equitable.

To this complaint, the defendants filed a general demurrer upon the ground that it did not state facts sufficient to constitute a cause of action, which was overruled. The defendants then

answered in which they made a general and specific denial of all of the material allegations of the complaint, and as a special defense allege:

> (a) That the defendant Vicente Sotto is not the owner of the magazine *The Independent*, nor has he any intervention in the publication of said magazine.
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> (b) That the plaintiff is not the owner of the article entitled "The True Story of Mrs. Rizal," because it is not registered in its name in the proper registry under Act No. 3134 and the regulation concerning the registration of intellectual property made by the Chief of the Philippine Library and Museum.
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> (c) That the defendant V. R. Alindada, as the editor of *The Independent*, published in said magazine the article entitled "The True Story of Mrs. Rizal," written by Austin Craig, in good faith and in the belief that such an interesting historical passage of the Philippines was published by the magazine *Philippine Education Magazine* for the information and propaganda of the ideas and patriotic feelings of the wife of the apostle of our country's liberties, without any intention to prejudice anybody in his property rights.

Wherefore, the defendants pray the court that the complaint be dismissed and the defendants absolved therefrom, with costs against the plaintiff.

The case was tried and submitted upon the following admitted facts:

> (1) That the Philippine Education Co., Inc., is the corporation that contracted with Austin Craig for the preparation of the article "The True Story of Mrs. Rizal," for its exclusive publication in said magazine.
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> (2) *That said article which was prepared by Mr. Austin Craig and published in the "Philippine Education Magazine" is not found registered in the Copyright Office*, although in the same magazine, under letter A, on the third page containing the index, there may be read a note "All Rights Reserved."
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> (3) That the Philippine Education Co., Inc., paid Mr. Austin Craig a certain sum for the preparation of said article.
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> (4) That *The Independent*, which is edited under the management of Mr. V. R. Alindada, published the said article written by Austin Craig on December 24, 1927 and December 31st of the same year, making it appear in the heading of the article the name of the author, the first publication of which is marked as Exhibit B.
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> (5) That on December 23d when *The Independent* published it, the editor of *The Philippine Education Magazine* wrote to Mr. V. R. Alindada, editor of *The Independent*, the letter marked with letter C.
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> (6) That notwithstanding the letter Exhibit C, the publication of the said article was continued in the issue of *The Independent* of December 31st, marked Exhibit E, without citing the source of the article but making it appear therein the name of the author.
>
> (7) That the purposes of the judgment that may be rendered in this case, in the event of adverse judgment, Mr. V. R. Alindada, one of the defendants, admits to be solely responsible civilly.
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> (8) That in relation to the admission just mentioned, the document, Exhibit F, is presented.
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> > Mr. SOTTO. Before presenting our evidence, I request that the defendant Vicente Sotto be excluded from the complaint.

Mr. OZAETA. Without objection.

> COURT. According to the petition of the defendant Mr. Vicente Sotto, which is concurred in by counsel for the plaintiff, the case is dismissed with respect to him, without costs.

Upon such issues the lower court rendered judgment against the defendant, V. R. Alindada, for P500, without costs, from which he appeals, contending, first, that the lower court erred in overruling the demurrer to the complaint, and second, in sentencing him to pay P500 to the plaintiff.

JOHNS, *J.:*

The question presented involves the legal construction of Act No. 3134 of the Philippine Legislature, which is entitled "An Act to protect intellectual property," and which is known as the Copyright Law of the Philippine Islands.

Section 2 of the Act defines and enumerates what may be copyrighted which, among other things, includes books, composite and cyclopedic works, manuscripts, commentaries and critical studies.

Section 4 provides:

> For the purpose of this Act articles and other writings published without the names of the authors or under pseudonyms are considered as the property of the publishers.

And section 5 says:

> Lines, passages, or paragraphs in a book or other copyrighted works may be quoted or cited or reproduced for comment, dissertation, or criticism.
>
> News items, editorial paragraphs, and articles in periodicals may also be reproduced unless they contain a notice that their publication is reserved or a notice of copyright, but the source of the reproduction or original reproduced shall be cited. In case of musical works part of little extent may also be reproduced.

Hence, the real question involved is the construction which should be placed upon the second paragraph of section 5.

It is conceded that neither Professor Craig nor the plaintiff applied for or obtained a copyright of the article in question under the terms and provisions of this Act. The defendants contends that after the article was once published without a copyright in plaintiff's magazine, it then became public property, and that he had a legal right to publish it in his magazine, without giving "the source of the reproduction."

It must be conceded that after the Copyright Law of the United States, he would have that legal right. That is the construction which has been place upon that law by numerous decisions both state and federal of that nation. Be that as it may, we have carefully read and reread the Copyright Law of the United States, and the provisions contained in the second paragraph of section 5 of the Act No. 3134 are removed to be found in the Copyright Law of the United States. Neither does it contain any similar provision, and for want thereof, the decisions of those courts are not in point on the question involved here, and, as appellant says, the legal question presented on this appeal is one of first impression in this court, and the case is submitted without the citation of the decision of any court under the same or similar statute.

Section 4 specifically provides:

> For the purpose of this Act articles and other writings published without the names of the authors or under pseudonyms are considered as the property of the publishers.

The first paragraph of section 5 says:

> Lines, passages, or paragraphs in book or other copyrighted works may be quoted or cited or reproduced for comment, dissertion, or criticism.

It is very apparent that this paragraph is confined and limited to a book or other copyrighted works, and, hence, that it does not apply to the publication of the article now in question. The second paragraph of this question is confined to news items, editorial paragraphs and articles in periodicals which may also be reproduced, "unless they contain a notice that their publication is reserved or a notice of copyright, but the source of the reproduction or original reproduce shall be cited." It is admitted that the plaintiff notified the defendant "that we reserve all rights and you infringe on them at your peril," and that after receipt of the notice, the defendant published the article in question, without giving "the source of the reproduction."

If it had been the purpose and intent of the Legislature to limit the reproduction of "news items, editorial paragraphs, and articles in periodicals," to those which have a notice or copyright only, it never would have said if "they contain a notice that their publication is reserved."

Analyzing the language used, it says, first, that such news items, editorial paragraphs, and articles in periodicals may be reproduced, unless they contain a notice that their publication is reserved, or, second, that may also be reproduced, unless they contain a notice of copyright. But in either event, the law specifically provides that "the source of the reproduction or original reproduced shall be cited," and is not confined or limited to case in which there is "a notice of copyright," and specifically says that in either event "the source of the reproduction or original reproduced shall be cited." To give this section any other construction would be to nullify, eliminate and take from the paragraph the words "they contain a notice that their publication is reserved," and to say that the Legislature never intended to say what it did say. This court must construe the language found in the act. The language is plain, clear, define and certain, and this court has no legal right to say that the Legislature did not mean what it said when it used those words, which is all the more apparent by the use of the word "or" after the word "reserved." In the instant case, the plaintiff did not give notice of its copyright, for the simple reason that it did not have a copyright, but it did notify the defendant that in the publication of the article "we reserved all rights," which was legally equivalent to a notice "that their publication is reserved." To give that paragraph any other construction would eliminate, take from it, and wipe out, the words "that their publication is reserved," and this court has no legal right to do that. It was contended that this construction would nullify the use and value of the whole Copyright Law, but it will be noted that this exception is specifically confined and limited to "news items editorial paragraphs, and articles in periodicals," and hence could not be made to apply to any other provisions of the Copyright Law. It will also be noted that in the instant case, the defendant had the legal right to publish the article in question by giving "the source of the reproduction." The plaintiff bought and paid for the article and published it with the notice that "we reserve all rights," and the defendant published the article in question without citing "the source of the reproduction," and for aught that appeared in his paper, the article was purchase and paid for by the defendant.

We are clearly of the opinion that the language in question in the Copyright Law of the Philippine Islands, which is not found in the Copyright Law of the United States, was inserted for a specific purpose, and it was intended to prohibit the doing of the very thing which the defendant did in this case; otherwise, the use of all of those words is a nullity. This construction does not least impair the Copyright Law, except as to "news items, editorial paragraphs, and articles in periodicals," and it protects an enterprising newspaper or magazine that invests its money and pays for the right to publish an original article, and that was the reason why the Legislature saw fit to use the language in question.

Above and beyond all this, it would seem that upon the undisputed facts in this case, common courtesy among newspaper men would suggest that the defendant would give "the source of the reproduction." It would have been a very simple and an easy thing to do.

All things considered, we are clearly of the opinion that the judgment of the lower court should be affirmed, with costs. So ordered.

Malcolm, Ostrand, Romualdez and Villa-Real, JJ., concur.

Separate Opinions

VILLAMOR, *J.,* concurring and dissenting:

I concur in the majority opinion as regards the matter of law, but believe the indemnity imposed by the trial court should be reduced, for lack of proof, to P200, in accordance with section 19 of Act No. 3134.

STREET, *J.,* dissenting:

The effect of this decision is to create an anomalous right, not heretofore recognized by statute or decision, in matter published without copyright protection. The decision rests, as I conceive it, upon an erroneous interpretation of the second paragraph of section 5 of the Copyright Law (Act No. 3134).

It is rudimentary in copyright law that publication without copyright constitutes a dedication to the public and leaves any and everybody free to utilize the matter, with or without giving credit. In other words, publication without copyright terminates the literary property which the author had while the material was unpublished. This rule is universal. I here quote from the monographic article on copyright and literary property in Corpus Juris:

> The owner of literary or intellectual property, like the owner of any other kind of property, may do what he will with his own; his right is absolute, and exclusive as against the word. Subject to the rule that a general publication operates as a dedication and terminates all private property rights, he is master of situation. If he chooses to keep his production unpublished and private, he may do so, and he has his remedies to prevent or to redress an unauthorized publication. He has the exclusive right to make first publication. (13 C. J., 949.)

Again, I quote from the title "Copyright" in Ruling Case Law:

> . . . In other words, the author of a manuscript, so long as he does not publish it, may keep it as a private matter which he is not obliged to give to the world; and in it he has a special interest entitling him to prevent its publication. But this exclusive right is confined to the first publication. When once published it is dedicated to the public, and the author has not, at common law, any exclusive right to multiply copies of it or to control the subsequent issues of copies by others. Therefore a work which has been published by others in any form they may see fit, so far as the copyright law is concerned. (6 R. C. L., 1103.)

An intention radically to change the foundations of copyright law on the point now under consideration is not lightly to be attributed to our Legislature, and this consideration is especially cogent in dealing with an Act of the Philippine Legislature which, in all its more important provisions, is an embodiment of the American copyright law.

And what is the provision which is relied upon by the court as a justification of the present decision? Confronting the eye again with the text, we find that the section in question reads as follows:

> SEC. 5. Lines, passages, or paragraphs in a book or other copyrighted works may be quoted or cited or reproduced for comment, dissertation, or criticism.
>
> News items, editorial paragraphs, and articles in periodicals may also be reproduced unless they contain a notice that their publication is reserved or a notice of copyright, but the source of the reproduction or original reproduced shall be cited. In case of musical works parts of little extent may also be reproduced.

Upon this it will be noted that the first paragraph expressly refers to copyrighted matter, the purpose being to define the extent to which copyrighted matter may be quoted or reproduced for purposes of comment, dissertation, or criticism. The second paragraph also evidently deals with copyrighted matter, although the word "copyrighted" is not inserted before the word "periodicals." Nor was it necessary to repeat the word in this paragraph, because the subject matter of said paragraph and the form of expression in which the provision is moulded otherwise show clearly that the Legislature was here dealing with rights in copyrighted matter. Of course this paragraph should be interpreted in *pari materia* with the first paragraph for it was evidently intended to nullify in certain respects the rule stated in the first paragraph.

Again, it will be observed the word "copyrighted" is not used before musical works, near the end of the second paragraph. Nevertheless, we imagine that no one would doubt that the Legislature there means *copyrighted* musical works. It is obvious that, inasmuch as the subject matter treated in section 5 was defined in first paragraph of said section as relating to copyrighted works, it was considered unnecessary to go on repeating the word "copyrighted" before "periodicals" and "musical works."

Furthermore upon comparing the two paragraphs of which section 5 is composed, it will be seen that the first paragraphs defines the right of reproduction of books and works like books, while the second deals with the right of reproduction of certain matter printed in periodicals and musical works. The two paragraphs together cover substantially the field of copyrightable matter; and the peculiarity of the second paragraph is merely that the law-making body there states a special rule with respect to the material with which this paragraph deals. Throughout the reference is clearly to copyrighted matter.

If we fix the attention still more closely upon the contents of the second paragraph, it will be noted that by this paragraph news items, editorial paragraphs, and articles in periodicals may be reproduced "unless they contain a notice that their publication is reserved or a notice of copyright." This perhaps gives a more extensive right of reproduction with respect to the matter mentioned than is conferred by the first paragraph, subject always to the proviso contained in the clause introduced by the word "unless." By this proviso the statute permits the publisher of periodicals, meaning copyrighted periodicals, absolutely to prohibit the reproduction of news items, editorial paragraphs, and articles, If he gives the notice therein required. The expression "unless they contain a notice that their publication is reserved a notice of copyright" contemplates a reservation or notice of copyright in addition to the doing of the acts required by the statute to be done in order to effect legal copyright. In other words, where the periodical is copyrighted, it requires a special notice reservation or special notice of copyright to prevent reproduction to the extent therein permitted. The part of the paragraph which has caused difficulty in this case is apparently found in the words "or a notice of copyright" in the clause commencing with "unless." Without those words it could hardly be contended that the reservation of rights therein referred to would be effective upon uncopyrighted matter. But the ill-advised insertion of these words in the statute — if such it be — does not render the statute unintelligible, nor does it justify the decision made by the court; for as we have demonstrated, the second paragraph of section 5 is concerned only with copyrighted matter.

If we may be permitted to hazard a conjecture as to the reason why these words "or a notice of copyright" were inserted, an explanation might possibly be found in the reflection that the copyright of a signed article in the periodical may be vested in the author whose name is signed thereto, while the publisher of the periodical may have copyright only in the matter published in the periodical without the names of the authors or under pseudonyms, as indicated in section 4 of the Act. In view of the possibility of conflict between these two interest, it may have been considered desirable to express the clause in the form adopted in the statute.

The interpretation which the majority opinion now place upon this paragraph is such that the clause in question now has about the same meaning that it would have had if written thus: "unless they contain a notice that their publication is reserved, *in case either of copyrighted or uncopyrighted matter*, or a notice of copyright *in case of copyrighted matter*" (Emphasis ours). In other words a limiting clause has been so construed as to extend the purview of the general clause which it limits. This is a violent process.

Again, in no place does Act No. 3134 attempt to define the right of literary property in uncopyrighted matter. Its subject matter is copyright and means of acquiring copyright. But assuming that the Legislature designed to create the anomalous right which the court has deduced from the statute, is it not strange that it did not state the duration of this right? Under section 18 of the Act a copyright acquired in accordance with the provisions of the Act endures for thirty years. Does the new right which the court has now discovered have the same duration, or will it continue after copyright has expired?

Heretofore the only way of acquiring an exclusive right to reproduce published matter was to effect copyright. But under the interpretation which the court now place upon this law, there now is another way to acquire the same exclusive right, which is simply not to take copyright but merely to reserve the right of publication. I maintain that even under our statue exclusive rights can only be acquired by effecting copyright in the manner provided by law. This is the fundamental point that underlies all legislature on the subject. The judgment should, in my opinion, be reserved.