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Masthead and Recent Cases

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"My keenest interest is excited, not by what are called great questions and great cases, but by little decisions which the common run of selectors would pass by because they did not deal with the Constitution or a telephone company, yet which have in them the germ of some wider theory, and therefore of some profound interstitial change in the very tissue of the law."—OLIVER WENDELL HOLMES, COLLECTED LEGAL PAPERS (1920) 269.

Recent Cases

LIBEL—CHARGING A CLERGYMAN WITH BEING AN HERETIC

Creekmore v. Runnels[1]

The Supreme Court of Missouri affirmed a dismissal and held that the alleged contents of a letter allegedly published to the church membership by the deacons,

1. 224 S.W.2d 1007 (Mo. 1949).

clerk and pastor of the Gallatin Baptist Church, notifying the plaintiff, a member and regularly ordained minister, to show cause why the hand of fellowship should not be withdrawn from him because of heresy, was not libelous and actionable per se in the absence of an allegation of some special loss or injury. In reaching the foregoing conclusion the court said, "The plaintiff admittedly does not allege or claim that the language was defamatory of him in his individual capacity and he does not plead any special loss or injury, and the essential issue and question for decision is whether in the circumstances alleged in the petition, the words written and spoken of the plaintiff, fairly construed, are in and of themselves defamatory and will necessarily occasion loss to the plaintiff in his capacity, character and profession of a clergyman. . . . The language must consist of an imputation impeaching his skill or knowledge, one that tends to disqualify him and render him unfit to fullfill the duties of his office as a clergyman."[2]

There has been since the time of Charles II a well established distinction between libel and slander.[3] Whether it has been caused by historical accident or is based upon the allegedly sound theory that to write or publish defamatory material is more malignant or deliberate, more diffused and more permanent, it is quite generally said that all libel is actionable per se; *i.e.* allegations of special damage was never required.[4]

In the case of slander, however, a distinction is made between words which are actionable per see and words which are actionable only on allegation and proof of special damages. The main classes of cases which have been designated slanderous per se are: words that 1) impute a crime involving moral turpitude, 2) impute certain loathesome diseases, 3) tend to injure one in his business, office, trade or profession, or 4) impute unchastity.[5]

It has been said in regard to the third category, *supra,* that in slander per se the ground of the action is that the party is disgraced or injured in his profession, or exposed to the hazard of losing his office in consequence of the slanderous words, not that his general reputation and standing in the community is affected by them.[6] The words spoken in this class of cases are not actionable themselves but become so in consequence of the special character of the party of whom they are spoken. The fact that he has that special character lies at the foundation of the action. Those reasons, however, have no application to the case of libel. The plaintiff here should not be under the necessity of relying upon his official reputation for the purpose of maintaining an action; it is not the effect upon it that the suit is predicated

2. *Id.* at 1007, 1008.

3. King v. Lake, Hardres 470, 145 Eng. Rep. 499 (Ex. 1680); Thorley v. Lord Kerry, 4 Taunt. 355 (1812); RESTATEMENT, TORTS, Sec. 568 (1938) (historical note).

4. HARPER ON TORTS 518 (1933); PROSSER ON TORTS 797 (1941); ODGERS, LIBEL AND SLANDER 377 (5th ed. 1912); RESTATEMENT, TORTS Sec. 569 (1938).

5. NEWELL ON SLANDER AND LIBEL 62 (4th ed. 1924); PROSSER ON TORTS 798 (1941).

6. Forward v. Adams, 7 Wend. 204 (N. Y. 1826); Cramer v. Riggs, 17 Wend. 209 (N. Y. 1837); NEWELL ON SLANDER AND LIBEL 162 (4th ed. 1924).

on, but rather the effect of the imputation of previous misconduct upon his private reputation at the time of the publication; *i.e.* the invoking of scorn, hatred or ridicule of the public upon him.

The universal definition of libel has been, the malicious defamation of a person made public by any printing or writing tending to hold him up to public hatred, contempt, or ridicule, or to deprive him of the benefits of public confidence and social intercourse, or to cause him to be shunned or avoided.[7] Using this test it is for the court in the first instance to determine whether the words are reasonably capable of being so understood.[8] It is then for the jury to say whether the words were in fact so understood by a substantial and respectable group of the public even though it be a minority one,[9] and if the jury should find that the words were not so understood then no amount of special damages alleged and proved will make the words libelous.

England's law of defamation has always been the law of this country except for digressions which raise a question as to whether or not there are now separate catagories known as libel per se and libel. This discrepancy seems to have arisen because of the use of similar terms and a failure to differentiate between libel and slander as at common law rather than for substantive reasons.

Some courts have treated libel and slander as identical and thus, when there is a defamatory publication in the form of a libel, if it does not fall within the classes denoted "actionable per se" as used in slander, special damages must be alleged and proved.[10] Cases reaching this result tend to cite and rely upon slander cases without observing any distinction.[11]

It is perhaps true that today the word "heresy" does not carry a defamatory meaning to the general public, and this may certainly be true of a religious group whose manual [12] indicates their understanding of the meaning of the word. But if the term is not libelous it should be found not to be so by virtue of the fact that it did not tend to bring the plaintiff into hatred, contempt or ridicule, rather than that it failed to injure him in his profession or that there was no allegation of special loss or injury.

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7. Pentuff v. Park, 194 N.C. 146, 138, S.E. 616 (1927); Nelson v. Musgrave, 10 Mo. 648 (1847); NEWELL ON SLANDER AND LIBEL 8, 9 (4th ed. 1924).

8. PROSSER ON TORTS 789, Sec. 91 (1941).

9. PROSSER ON TORTS 784, Sec. 91 (1941); RESTATEMENT OF TORTS, Sec. 559, Comment e (1938).

10. Jerald v. Houston, 124 Kan. 657, 261 Pac. 851 (1927); Wiley v. Oklahoma Press Pub. Co., 106 Okla. 52, 233 Pac. 224 (1924); Ellsworth v. Martindale-Hubbell Law Directory, 66 N. D. 578, 268 N. W. 400 (1936); Rowan v. Gazette Printing Co., 74 Mont. 326, 239 Pac. 1035 (1925); Towles v. Travelers Ins. Co., 282 Ky. 147, 137 S.W. 2d 1110 (1940).

11. PROSSER ON TORTS 798, n. 61 (1941).

12. Church Manual designed for use by Baptist Churches, By J. M. Pendleton, D.D.—published by American Baptist Publication Society.