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Libel and Slander -- The Use of Extrinsic Facts to Identify the Plaintiff

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been passed on in North Carolina; so it is possible that our statute[22] which provides that a divorcee "shall thereby lose all his or her right and estate in the real or personal estate of the other party . . . which was settled upon such party in consideration of the marriage alone" might apply.[23] The principal case seems to be the first to consider the changed status of step-children.

In arriving at the disposition made of the divorce cases, the courts have not reached an entirely satisfactory solution of the problem. It is probable that insureds' minds are, in general, centered on the idea of protection and a holding which makes the policy a gift is a violation of their intention. A second objection is that in granting divorces courts make a disposition of the pecuniary relationships between the parties. A consideration of any life insurance involved seems necessary to such a settlement. If it is not taken into account at that time, it might well be considered property not awarded to the wife.

PETER HAIRSTON.

Libel and Slander—The Use of Extrinsic Facts to Identify the Plaintiff.

A newspaper publication referring to a white man as a negro was *held* not to constitute a libel on his white parents, where it neither named nor referred to them.[1]

It is well settled that a written description of a white person as a negro is libelous.[2] But the principal case raises the question as to when the libelous publication refers to a person sufficiently to enable

[22] N. C. CODE ANN. (Michie, 1911) §2522.

[23] A general order issued pursuant to KY. CIVIL PRACTICE CODE (Carroll, 1932) §425 which provides that "Every judgment for a divorce from the bond of matrimony shall contain an order restoring any property not disposed of at the commencement of the action, which either party may have obtained, directly or indirectly, from or through the other, during marriage, in consideration or by reason thereof . . ." was held to abrogate a divorced wife's status as beneficiary of a policy of insurance on her husband's life. Shauberger v. Morel's Adm'r., 168 Ky. 368, 182 S. W. 198 (1916).

[1] Atlanta Journal Co. v. Farmer, 172 S. E. 647 (Ga. App. 1934) (Plaintiff's son was a convict. After having fallen under extreme heat he was chained to a telephone pole, where he soon died of sunstroke. The defamatory article reported the indictment of highway employees to answer for the death of the "negro convict.").

[2] Stultz v. Cousins, 242 Fed. 794 (C. C. A. 6th, 1917); Upton v. Times-Democrat Publishing Co., 104 La. 141, 28 So. 970 (1900); Flood v. News & Courier Co., 71 S. C. 112, 50 S. E. 637 (1905). When such description is made by spoken words, it is not actionable without proof of special damages. Deese v. Collins, 191 N. C. 749, 133 S. E. 92 (1926) commented upon (1927) 5 N. C. L. REV. 183.

him to maintain an action thereon. Recovery is permitted when the reference is direct, indirect, or by imputation.

As a general rule defamatory words must refer to some ascertained or ascertainable person, and that person must be the plaintiff.[3] But it is not necessary that the plaintiff be named in the article,[4] because the writing must be read and construed in the sense in which the readers to whom it is addressed would ordinarily understand it.[5] All the world need not know who the libeled person is, since it is sufficient if the publication points out to his friends and acquaintances,[6] or to at least one third person,[7] that plaintiff was the person intended. Whether the alleged libel referred to the plaintiff,[8] or was so understood to refer by its readers,[9] is a question for the jury, and witnesses may be called to show that on reading the publication, they at once concluded that it was aimed at the plaintiff.[10]

A number of courts have held it unnecessary that the person libeled be named if he is identified by the surrounding circumstances.[11] Thus a reference to one's business,[12] occupation,[13] house,[14] or vessel[15] is sufficient. Here recovery is had for personal defamation upon an indirect reference.

In many cases there is neither direct nor indirect reference to the

[3] Hays v. American Defense Society, 252 N. Y. 266, 169 N. E. 380 (1929); Express Publishing Co. v. Southwell, 295 S. W. 180 (Tex. Civ. App. 1927); Argabright v. Jones, 46 W. Va. 144, 32 S. E. 995 (1899); Helmicks v. Stevlingson, 250 N. W. 402 (Wis. 1933); NEWELL, SLANDER AND LIBEL (4th ed.) §214.

[4] National Refining Co. v. Benzo Gas Motor Fuel Co., 20 F. (2d) 763 (C. C. A. 8th, 1927); Shaw Cleaners & Dyers v. Des Moines Dress Club, 215 Iowa 1130, 245 N. W. 231 (1932).

[5] Peck v. Tribune Co., 214 U. S. 185, 29 Sup. Ct. 554, 53 L. ed. 960 (1909); Washington Post Co. v. Chaloner, 205 U. S. 290, 39 Sup. Ct. 448, 63 L. ed. 987 (1919).

[6] Express Publishing Co. v. Herrera, 234 S. W. 554 (Tex. Civ. App. 1921).

[7] Vedovi v. Watson & Taylor, 104 Cal. App. 80, 285 Pac. 418 (1930).

[8] Powell v. Young, 151 Va. 985, 144 S. E. 624 (1928).

[9] Byrne v. News Corp., 195 Mo. App. 265, 190 S. W. 933 (1916).

[10] Houston Printing Co. v. Moulden, 15 Tex. Civ. App. 586, 41 S. W. 381 (1897). An extreme application of this rule is found in a recent English case tried in the King's Bench where recovery was had for the publication of a rape episode in the cinema "Rasputin, the Mad Monk." Plaintiff proved that the character Natasha had been understood as referring to her. Princess Youssoupoff v. Metro-Goldwyn-Mayer Pictures, Ltd. Time, March 12, 1934, at 22.

[11] Dewing v. Blodgett, 124 Cal. App. 100, 11 P. (2d) 1105 (1932); Bonham v. Dotson, 216 Ky. 660, 288 S. W. 297 (1926).

[12] Naihaus v. Louisiana Weekly Publishing Co., 176 La. 240, 145 So. 527 (1932); Powell v. Young, *supra* note 8.

[13] State v. Pardo, 190 S. W. 264 (Mo. 1916).

[14] Hollenbeck v. Post-Intelligencer Co., 162 Wash. 14, 297 Pac. 793 (1931).

[15] Ingram v. Lawson, 6 Bing. N. C. 212, 133 Eng. Rep. 84 (1840).

plaintiff, but because of a natural or legal relationship, to publish a calumnious statement of one person imputes a libel upon another. To call a woman a bawd charges her husband with keeping a bawdy-house;[16] to call a man a cuckold is tantamount to calling his wife a whore;[17] to say that one's marriage was invalid charges his child with illegitimacy;[18] to write that a woman inherited from her mother the quality of manliness and the desire to become master of her household constitutes a libel on her mother;[19] and, to state that a postmaster's sister has been arrested for larceny of letters from the postoffice may also be a libel on him.[20]

Where the libel is direct there is not present the problem of identification which arises where the reference is indirect or by imputation. A plaintiff in cases of the last two classes must identify himself as the person libeled by facts extraneous to the written statement. Such identification is precluded by those courts which say that since the statement was not written of and concerning the plaintiff, there can be no recovery, irrespective of the injuries sustained.[21] However, it is an established rule that extrinsic facts may be employed to render statements libelous which are apparently innocent.[22]

The principal case is plainly against the weight of authority and contra to previous decisions of the Georgia Supreme Court, in which the identity of the plaintiff was held to be a question for the jury in consideration of extraneous facts.[23] Here the Court of Appeals dismissed the case on demurrer, dogmatically deciding that persons

[16] Huckle v. Reynolds, 7 C. B. (N. S.) 114, 141 Eng. Rep. 758 (1850).

[17] Vicars v. Worth, 1 Strange 471, 93 Eng. Rep. 641 (1722).

[18] Chiniquy v. Begin, [1915] Rap. Jud. Quebec, 24 K. B. 294, 24 D. L. R. 687.

[19] McDavid v. Houston Chronicle Printing Co., 146 S. W. 252 (Tex. Civ. App. 1912).

[20] Merrill v. Post Publishing Co., 197 Mass. 185, 83 N. E. 419 (1908).

[21] Saucer v. Girous, 36 Cal. App. 538, 202 Pac. 887 (1921); Hanson v. Globe Newspaper Co., 159 Mass. 293, 34 N. E. 467 (1893); Maxwell v. Allison, 11 Serg. & R., 343 (Pa. 1824).

[22] Morrison v. Ritchie & Co., 39 Scottish Law Rep. 432 (1902) (The announcement of the birth of twins to a couple is libelous when it is shown that they have been married only one month.); Sydney v. McFadden Newspaper Publishing Corp., 242 N. Y. 208, 151 N. E. 209 (1926) (The publication that Doris Keane is to marry "Fatty" Arbuckle is rendered libelous by the fact that she is already married.); Cassidy v. Daily Mirror Newspapers, Ltd., [1929] 2 K. B. 331, 69 A. L. R. 720 (An apparently harmless engagement announcement becomes libelous upon proof that the man was already married, and that his wife was the plaintiff.). For a fuller treatment of the use of extrinsic facts to render words libelous see Wettach, *Recent Developments in Newspaper Libel* (1928) 7 N. C. L. REV. 3, at 5-9. See also (1929) 7 N. C. L. REV. 481.

[23] Hardy v. Williamson, 86 Ga. 551, 12 S. E. 874 (1891); Colvard v. Black, 110 Ga. 642, 36 S. E. 80 (1900).

reading the publication could not ascertain that either of the plaintiffs was referred to. Was the reason for this irreconcilable result couched in the court's statement that plaintiffs were not persons of prominence or in the public eye?

JOHN R. JENKINS, JR.

Mortgages—Adverse Possession by Mortgagor's Grantee Against the Mortgagee.

The mortgagor sold the mortgaged realty to his tenant, the claimant, who remained in possession under bond for title, paid substantial back taxes, and on payment of the purchase price took a duly recorded deed. The claimant occupied the land for more than seven years, making valuable improvements and had no notice of the mortgage, except that of registration, until execution under foreclosure, at which time he filed his claim. Although the mortgagee did not know of the improvements, and although the mortgagor had kept up payments of interest on the debt until foreclosure, verdict was directed for the claimant on the ground that improvements and payment of taxes constituted sufficient notice of adverse possession to start prescription running against the mortgagee.[1]

The court, in construing a Georgia statute, took the view that only the claimant's actual knowledge of the mortgage, or bad faith, could make his holding permissive; that record notice is effective only to prevent subsequent deeds from passing clear title, but not to preclude possession adverse in character; and that mere occupancy, plus improvements under bond for title, known or unknown to the mortgagee, is hostile.[2] A former case holding that the sale of mortgaged premises did not repudiate the mortgage is distinguished by the court on the ground that the grantee did not take possession, but the mortgagor stayed on as tenant.[3] Though distinctly representing the minority rule, the principal case does not stand entirely alone.[4]

[1] Chandler v. Douglas, 172 S. E. 54 (Ga. 1933).

[2] GA. CODE ANN. (Michie, 1926) §4164, providing that "Possession to be the foundation of a prescription must be in the right of the possessor, and not of another; must not have originated in fraud. . . . Permissive possession cannot be the foundation of a prescription until an adverse claim and actual notice to the other party." Although it cited the statute, the court said: "The absence of actual notice on the part of Mrs. Chandler cannot alter the result because Douglas was never in possession by permission of [the mortgagee]."

[3] Melson v. Leigh, 159 Ga. 683, 126 S. E. 718 (1925).

[4] Shreeve v. Harvey, 74 N. J. Eq. 336, 70 Atl. 671 (1910); Ely v. Wilson, 65 N. J. L. 544, 47 Atl. 806 (1900) (Except from this jurisdiction, there is almost no direct authority in support of the instant case); see Denbo v. Boyd, 194 Mo. App. 121, 185 S. W. 236, 238 (1916); Ma Haffy v. Farris, 144 Ia.