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

John R. Jenkins Jr.
been passed on in North Carolina; so it is possible that our statute\textsuperscript{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.\textsuperscript{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.

\textbf{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.\textsuperscript{1}

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

\textsuperscript{22}N. C. Code Ann. (Michie, 1911) § 2522.

\textsuperscript{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).

\textsuperscript{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.").

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. But it is not necessary that the plaintiff be named in the article, because the writing must be read and construed in the sense in which the readers to whom it is addressed would ordinarily understand it. 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, or to at least one third person, that plaintiff was the person intended. Whether the alleged libel referred to the plaintiff, or was so understood to refer by its readers, 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.

A number of courts have held it unnecessary that the person libeled be named if he is identified by the surrounding circumstances. Thus a reference to one's business, occupation, house, or vessel 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

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8 Powell v. Young, 151 Va. 985, 144 S. E. 624 (1928).
10 Houston Printing Co. v. Moulden, 15 Tex. Civ. App. 580, 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 Yousoupoft v. Metro-Goldwyn-Mayer Pictures, Ltd. Time, March 12, 1934, at 22.
13 State v. Pardo, 190 S. W. 264 (Mo. 1916).
NOTES AND COMMENTS

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 iden-
tification which arises where the reference is indirect or by imputa-
tion. A plaintiff in cases of the last two classes must identify him-
self 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.\(^{21}\) How-
ever, 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 dis-
missed the case on demurrer, dogmatically deciding that persons

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\(^{19}\) McDavid v. Houston Chronicle Printing Co., 146 S. W. 252 (Tex. Civ.
App. 1912).
\(^{21}\) 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. Alli-
\(^{22}\) Morrison v. Ritchie & Co., 39 Scottish Law Rep. 432 (1902) (The an-
nouncement 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 announce-
ment 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 claim-
ant, 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 mort-
gage, 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 di-
rected for the claimant on the ground that improvements and pay-
ment 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 pre-
clude possession adverse in character; and that mere occupancy, plus
improvements under bond for title, known or unknown to the mort-
gagee, 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 mort-
gagor 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].”
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, 183 S. W. 236, 238 (1916); Ma Haffy v. Parris, 144 La.