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Torts--Libel and Slander--Oral Accusation of Communism Not Slander Per Se (Gurtler v. Union Parts Mfg. Co.,1 N.Y.2d 5 (1956))

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The majority answered this by citing a great deal of statute and case law, to show that classification by population is valid and well entrenched by precedent. Following the test in the *Stapleton* case, the Court did find a reasonable connection, in that the legislature was apparently segregating the smaller counties according to varying economic resources, based on population. But it was also emphasized that ". . . where the reference to population serves *only* to designate and identify the place . . . it will be deemed a local act." [29]

By inquiring into the actual *effect* of the law to hold it valid under Article III, Section 17, thus apparently abolishing the significance of the old distinction between the *terms* and the *effect*, the scope of judicial investigation was extended and the rationale of the *Stapleton* case clarified. However, although the ban against designation as opposed to classification gives some criteria, the Court's insistence that only "some *reasonable* and *possible* basis" [30] need be found, leaves a very difficult test. The fine line of distinction between the presumed possible basis and the results of a vivid imagination is, and will be, very difficult for the courts to apply.

TORTS—LIBEL AND SLANDER—ORAL ACCUSATION OF COMMUNISM NOT SLANDER PER SE.—An engineer brought an action for slander against his employer, a corporation engaged in the manufacture of implements for the United States Government. The complaint alleged that the defendant's president spoke words falsely accusing the plaintiff of being a communist. The Court of Appeals *held* that the words spoken are not slanderous per se and absent a sufficient allegation of special damages, the complaint failed to state a cause of action. *Gurtler v. Union Parts Mfg. Co.*, 1 N.Y.2d 5, 132 N.E.2d 889 (1956).

It has generally been held that a falsely written accusation of communism is libelous [1] and actionable per se.[2] Courts have reached this decision by taking judicial notice of the current climate of opinion,[3] while others have sustained the action on statutes making party membership a bar to governmental employment.[4] However, the

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[29] Farrington v. Pinckney, 1 N.Y.2d 74, 81, 133 N.E.2d 817, 822 (1956).

[30] *Id.* at 89, 133 N.E.2d at 828.

[1] Libel is actionable without proof of special damages if it tends to expose a person to hatred, contempt or aversion, or to induce an evil or unsavory opinion of him in the minds of a substantial number of the community or to disparage him in the way of his office, trade or profession. See Mencher v. Chesley, 297 N.Y. 94, 75 N.E.2d 257 (1947); Nichols v. Item Publishers, Inc., 309 N.Y. 596, 132 N.E.2d 860 (1956).

[2] See, *e.g.*, Wright v. Farm Journal, Inc., 158 F.2d 976 (2d Cir. 1947); Grant v. Reader's Digest Ass'n, Inc., 151 F.2d 733 (2d Cir. 1945).

[3] See Mencher v. Chesley, 297 N.Y. 94, 75 N.E.2d 257 (1947).

[4] Levy v. Gelber, 175 Misc. 746, 25 N.Y.S.2d 148 (Sup. Ct. 1941).

jurisdictions have not been uniform in determining whether an oral accusation of communism is actionable per se.[5] Utilizing judicial notice, the Florida Supreme Court held that the charge was necessarily injurious to the plaintiff in his social, official and business relations and was sufficient without special damages being pleaded and proved.[6] In Pennsylvania, the utterance was found to be slander per se, the court basing its decision on a statute making membership in the Communist Party a crime.[7] The court felt that calling a person a communist imputed membership in the party. The Missouri Supreme Court held the charge to be slander per se even though there was no prevailing state legislation making it a crime to be a communist.[8] It was decided that the language charged the commission of a crime under a federal statute. In *Remington v. Bentley*,[9] a government economist was orally accused of being a communist. The Federal District Court held that the statement by itself was of a character to be particularly disparaging to one engaged in such an occupation. The rationale of the court was that it was a natural presumption that an economist who was a communist would adhere to the theories of communism which are repugnant to the democratic doctrines of the United States.

Contrary to the preceding cases, the Ohio Supreme Court agreed that the statement would subject the plaintiff to public hatred, contempt and ridicule by a majority of American citizens; however, upon analyzing the distinction between libel and slander, the court found that the allegation was inadequate without pleading and proving special damages.[10]

New York courts have followed the same trend as the Supreme Court of Ohio. One notable case found the complaint insufficient for the per se classification without an allegation concerning the plaintiff in his business.[11] The court stated that it can not be said as a matter of law whether the words did or did not concern the complainant in his business or tend to injure him therein. Another holding for a defendant was that it is better to discourage communists from using our courts for propaganda purposes and that our safety is best preserved by encouraging the exposure of communists.[12] In the instant case,

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[5] To maintain a cause of action for slander, proof of actual damages of a pecuniary nature must be alleged and proven unless the false utterance imputes to the party commission of a crime involving moral turpitude, unfitness in profession, trade or duties of employment, a contagious disease, or unchastity to a woman. See Pollard v. Lyon, 91 U.S. 225 (1875); Keefe v. O'Brien, 203 Misc. 113, 116 N.Y.S.2d 286 (Sup. Ct. 1952); Bennett v. Seimiller, 175 Kan. 764, 267 P.2d 926 (1954).

[6] Joopanenko v. Gavagan, 67 So. 2d 434 (Fla. 1953).

[7] Solosko v. Paxton, 383 Pa. 419, 119 A.2d 230 (1956) (per curiam).

[8] Lightfoot v. Jennings, 363 Mo. 878, 254 S.W.2d 596 (1953).

[9] 88 F. Supp. 166 (S.D.N.Y. 1949).

[10] Pecyk v. Semoncheck, 105 N.E.2d 61 (Ohio 1952).

[11] Krumholtz v. Raffer, 195 Misc. 788, 91 N.Y.S.2d 743 (Sup. Ct. 1949).

[12] Keefe v. O'Brien, 203 Misc. 113, 116 N.Y.S.2d 286 (Sup. Ct. 1952).

New York, by adherence to the distinction between the defamatory actions,[13] followed the consistency of its lower courts in denying the complaint without the allegation of special damages.

It has been held in New York that the statement that one is an "Anarchist" imputes a violation of the state criminal anarchy law.[14] Certainly, it would seem that the word "Communist" has today acquired a meaning as unequivocally derogatory and criminal as did "Anarchist" in its day. There has been consistent legislation, both federal and state, against the activities of communists and it would seem plausible that an oral accusation of communism would infer a violation of the Smith Act.[15] This would follow the Missouri case [16] which seems clearly correct. Nevertheless, in the principal case, the Court rejected the plaintiff's contention that an oral accusation of communism was actionable per se as a violation of the federal legislation.

The continual threat of communism and the public aversion towards its members, sympathizers, and organization in the United States has made the oral charge of communism highly offensive to a person's reputation. Yet, the inflexibility of the law of slander has curtailed relief. The expansion of the narrow categories of slander per se or the abolition of the distinction between the two defamatory actions would seem advisable.

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[13] The historical distinction between the two actions of defamation is generally that libel is written and slander spoken. It has been maintained primarily because of the permanence and sting of libel, disregarding the theory that the distinction is mainly an historical accident. See Ostrowe v. Lee, 256 N.Y. 36, 175 N.E. 505 (1931); Thorley v. Lord Kerry, 4 Taunt. 355, 128 Eng. Rep. 367 (C.P. 1812); 8 HOLDSWORTH, HISTORY OF ENGLISH LAW 361-78 (1926); Veeder, *The History and Theory of the Law of Defamation,* 4 COLUM. L. REV. 33 (1904).

[14] Von Gerichten v. Seitz, 94 App. Div. 130, 87 N.Y. Supp. 968 (4th Dep't 1904).

[15] 62 STAT. 808 (1948); 18 U.S.C.A. § 2385 (1951).

[16] Lightfoot v. Jennings, 363 Mo. 878, 254 S.W.2d 596 (1953).