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Torts--Libel and Slander--Liability for Physical Injuries Resulting from Mental Disturbance Caused By (Bartow v. Smith, 78 N.E.2d 735 (Ohio 1948))

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of the statements would not be subjected to liability as long as he was not actuated by malice.[15] And, in construing what is purported to be fair comment the courts will allow for idiosyncrasies of style.[16]

The instant case is clearly one of "fair comment." The plaintiff was a district attorney and such activities as were related to his office were subject to criticism by his fellow citizens, so long as the comments were not actuated by malice. No evidence of malice was introduced in the case. This case, then, is fully in accord with existing New York law.

J. F. N.

TORTS — LIBEL AND SLANDER — LIABILITY FOR PHYSICAL INJURIES RESULTING FROM MENTAL DISTURBANCE CAUSED BY.—Defendant accosted plaintiff on a public street and angrily and loudly called her a "God damned son of a bitch" and "a dirty crook." As a result, plaintiff, being then seven months advanced in pregnancy, suffered a nervous shock which led to further physical injury. *Held,* these words not being slanderous per se, plaintiff's failure to allege special damages was a fatal defect to her case, in the light of the rule that there can be no recovery for physical injuries resulting from nervous or mental disturbance caused solely by mere "opprobrious epithets," however willful or malicious they be, and despite the fact that defendant knew of plaintiff's weakened condition and intended to cause her physical injury by his conduct. *Bartow v. Smith,* — Ohio —, 78 N. E. 2d 735 (1948).

The instances where recovery has been allowed for intentional physical injuries resulting from mental anguish induced by willful or malicious words, not amounting to libel or slander, have been limited in the law of torts. As was pointed out by the court in the principal case, such words will not give rise to a cause of action unless accompanied by an invasion of the seclusion of private premises, unlawful threats, or menacing gestures sufficient to constitute an assault. None of these additional elements accompanied defendant's words in the principal case.

Recovery for such injuries caused by words so uttered has been allowed where defendant ran at plaintiff in an angry and threatening manner, cursing and shaking his fist at her, and shouting, "You are fooling with the wrong person this time";[1] where defendants threatened to send plaintiff, a fifteen-year-old school girl, to a reform school if she did not confess to false charges of unchastity;[2] where defendant insurance company's agent entered plaintiff's home and there charged her with being a "deadbeat" and deceiving the company with

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[15] 81 N. Y. 116 (1880).

[16] Briarcliff Lodge Hotel, Inc. v. Citizen-Sentinel Publishers, Inc., 260 N. Y. 106, 183 N. E. 193 (1932).

[1] Whitsel v. Watts, 98 Kan. 508, 159 Pac. 401 (1916).

[2] Johnson v. Sampson *et al.,* 167 Minn. 203, 208 N. W. 814 (1926).

relation to sickness benefits;[3] where defendants wrongfully entered plaintiff's sick room and there remonstrated with him, pacing up and down the room and talking loudly and in a boisterous and obstreperous manner;[4] where defendant was trespassing on the property of plaintiff's husband and pushed his fist close to her face and "raved" at her;[5] where defendant entered plaintiff's home and solicited sexual intercourse with her;[6] where defendant entered plaintiff's home and cursed at, and verbally abused, her for a considerable length of time.[7]

In cases where threats were made by defendant for the purpose of enforcing payment of a debt, plaintiff has recovered where, in addition to stating his intention to do that which he was legally entitled to do to enforce payment, defendant exceeded the bounds of his legal rights by going further and willfully or maliciously causing unnecessary injury to plaintiff by his words, thereby stamping his threats with the character of unlawfulness. Such recoveries have been made where defendant sent plaintiff numerous letters in which he threatened to garnish plaintiff's wages and accused him of moral turpitude, in an effort to coerce payment;[8] where defendant's collection agent called plaintiff a "damned deadbeat" and threatened to summon the sheriff;[9] where defendant, knowing that plaintiff was convalescing from a serious illness, intentionally caused plaintiff's relapse by sending letters threatening legal proceedings and stating that the future credit standing of plaintiff's business depended on prompt payment of an alleged debt owed to one who had hired defendant to collect it.[10]

Exceptions to the general rule set forth in the principal case are found where recovery has been allowed because of a special relationship existing between plaintiff and defendant, such as that of passenger-carrier,[11] or guest-innkeeper,[12] which relationship bur-

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[3] National Life & Accident Ins. Co. *et al* v. Anderson, 187 Okla. 180, 102 P. 2d 141 (1940) (reversed because of inadequate instructions by trial court).

[4] Pacific Mut. Life Ins. Co. of California *et al.* v. Tetirick, 185 Okla. 37, 89 P. 2d 774 (1939) (reversed because of inadequate instructions by trial court).

[5] Stockwell v. Gee, 121 Okla. 207, 249 Pac. 389 (1926).

[6] Johnson v. Hahn, 168 Iowa 147, 150 N. W. 6 (1914).

[7] Matheson v. American Tel. & Tel. Co., 137 S. C. 227, 135 S. E. 306 (1926).

[8] Lasalle Extension University v. Fogarty, 126 Neb. 457, 253 N. W. 424 (1934).

[9] Kirby v. Jules Chain Stores Corporation *et al.*, 210 N. C. 808, 188 S. E. 625 (1936).

[10] Clark v. Associated Retail Credit Men of Washington, D. C., 105 F. 2d 62 (C. C. A. D. C. 1939).

[11] St. Louis-San Francisco Ry. v. Clark, 104 Okla. 24, 229 Pac. 779 (1924); Lipman v. Atlantic Coastline R. R., 108 S. C. 151, 93 S. E. 714 (1917); Seaboard Air Line Ry. v. Mobley, 194 Ala. 211, 69 So. 614 (1915); Cave v. Seaboard Air Line Ry., 94 S. C. 282, 77 S. E. 1017 (1913).

[12] Emmke v. De Silva, 293 Fed. 17 (C. C. A. 8th 1923); De Wolf v. Ford,

dened defendant with the duty to see to it that plaintiff was not insulted by defendant or its employees.

An examination of cases of this type wherein plaintiff failed to obtain relief because special damages were not shown bears out the soundness of the distinction drawn in the principal case.[13] It would seem that the decision in the principal case was based upon the peculiar manner in which plaintiff presented her case, which resulted in a prompt judgment against her upon her amended petition and her counsel's opening statement to the jury. It appears that her failure to allege, as particularly contributing to her injuries, the fact that others heard defendant's remarks, prevented her from being allowed recovery on the authority of those cases which have awarded damages for such injuries intentionally caused by defendant's publishing of falsehoods, falling short of libel or slander, on the theory of an "action on the case." [14]

It is submitted that the decision of the Supreme Court of Ohio in the principal case is sound, in view of the prevailing policy of the law of torts, viz.: not to attempt to grant relief in *any and all* instances where one is maliciously put upon by his neighbor. That this does not correspond with the perfectionist's ideal is clear, but weighty arguments against the latter are found in the evanescence of damages and the possibility of fraud in connection with the bringing of such actions.

R. C. D.

TORTS—LIBEL AND SLANDER—REPRINTING OF LIBELOUS MATTER HELD NOT TO BE REPUBLICATION OF THE LIBEL.—This is a libel action brought by respondent based upon alleged defamatory statement appearing in a book [1] published by the appellants in November, 1941. Subsequent to this initial printing, there were seven additional printings, the last of which was distributed during a period beginning March, 1944. Sixty copies of the aforementioned book

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193 N. Y. 397, 86 N. E. 527 (1908), *reversing* 119 App. Div. 808, 104 N. Y. Supp. 876 (1st Dep't 1907).

[13] Carrigan v. Henderson, 192 Okla. 254, 135 P. 2d 330 (1943); People's Finance & Thrift Co. v. Harwell, 183 Okla. 413, 82 P. 2d 994 (1938); Maze v. Employees' Loan Soc. *et al.*, 217 Ala. 44, 114 So. 574 (1927); Republic Iron & Steel Co. v. Self, 192 Ala. 403, 68 So. 328, L. R. A. 1915F, 516 (1915); Beck v. Luers, — Iowa —, 126 N. W. 811 (1910); Braun v. Craven, 175 Ill. 401, 51 N. E. 657, 42 L. R. A. 199 (1898); Terwilliger v. Wands, 17 N. Y. 54, 72 Am. Dec. 420 (1858).

[14] Musso v Miller, 265 App. Div. 57, 38 N. Y. S. 2d 51 (3d Dep't 1942) (see citations therein).

[1] "Total Espionage," G. P. Putnam's Sons, Books, Inc. (1941).