St. John's Law Review

Volume 23, April 1949, Number 2 Article 21

Torts--Libel and Slander--Reprinting of Libelous Matter Held Not To Be Republication of the Libel (Gregoire v. G. P. Putnam's Sons, 298 N.Y. 119 (1948))

St. John's Law Review

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

---

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).

were sold during the year immediately preceding July 2, 1946, on which date the present action was commenced. It is these copies which respondent declares subjected him to actionable libel. The trial court dismissed the complaint upon the ground that the alleged cause of action was barred by the one-year statute of limitations.[2] The Appellate Division of the Supreme Court of New York[3] reversed that decision, holding that each sale of a libelous book, as distinguished from newspapers and magazines, constitutes a new cause of action not barred by the statute of limitations, although the printing was done and most of the sales were made more than one year prior to the commencement of the action. *Held,* judgment reversed. Sales from stock by a book publisher of copies of a book containing libelous matter, which are from an impression made and released for wholesale distribution more than a year before, are not republications of the libel giving rise to new causes of action within the meaning of the statute of limitations. ..*Gregoire v. G. P. Putnam's Sons,* 298 N. Y. 119, 81 N. E. 2d 45 (1948).

At common law, in cases of this nature, the recognized rule was that each new display of libelous material constituted a separate cause of action.[4] This rule of extreme liability was adhered to in New York until the decision in the case of *Wolfson v. Syracuse Newspapers, Inc.*[5] This decision qualified the common law by setting forth what is known as the single publication rule, which holds that the publication of a libelous statement in a single issue of a magazine or newspaper, although such publication consists of thousands of copies, is one publication giving rise to one cause of action, and that the statute of limitations runs from the date of that publication. Adjudicated cases of other jurisdictions[6] demonstrate a tendency toward adoption of this single publication rule. However, this adoption has not been complete, for the record reveals that in recent decisions the courts of federal jurisdiction[7] continue to comply with the common law rule as set down in the *Duke of Brunswick* case.[8]

---

[2] N. Y. CIV. PRAC. ACT § 51, subd. 3.

[3] Gregoire v. G. P. Putnam's Sons, 272 App. Div. 591, 74 N. Y. Supp. 238 (1st Dep't 1947).

[4] Duke of Brunswick v. Harmer, 14 Q. B. 185, 117 Eng. Rep. 75 (1849), where the court held that the evidence of a sale and delivery by the defendant to the plaintiff's agent of a single copy of the newspaper containing the libel, seventeen years after the date of its issue, but within the statutory period of six years before the action was commenced, was in law a new publication against which the statute of limitations had not run.

[5] 254 App. Div. 211, 4 N. Y. S. 2d 640 (4th Dep't 1938).

[6] Winrod v. Time, Inc., 334 Ill. App. 59, 78 N. E. 2d 708 (1948); Age-Herald Pub. Co. v. Huddleston, 207 Ala. 40, 92 So. 193 (1921); Julian v. Kansas City Star Co., 209 Mo. 35, 107 S. W. 496 (1907).

[7] Holden v. American News Co., 52 F. Supp. 24 (E. D. Wash. 1943); O'Reilly v. Curtiss Pub. Co., 31 F. Supp. 364 (D. C. Mass. 1940).

[8] See note 4 *Supra.*

Hitherto, the New York courts had not extended the rule of single publication so as to apply it to books, but had restricted its application to newspapers and magazines. The decision in the present case so extends the rule and sweeps aside the reluctance shown by the courts in the past to erase the distinction which existed between magazines and newspapers on the one hand, and books on the other, in their treatment of the subject matter of libel actions. The logic underlying this former distinction is that newspapers and periodicals are generally discarded soon after their publication and are seldom read thereafter, so that the damage likely to be suffered therefrom is negligible. Books, however, are not designed to be read merely during the period immediately following their first publication. Some books retain their popularity for many years, so that one containing libelous statements would continue to damage the person so libeled as long as copies are sold. This reasoning, however persuasive, when followed seems to defeat the clear purpose of the statute of limitations, which is to outlaw stale claims and eliminate multiplicity of litigation. As a result of such reasoning, a book which had been published twenty years ago might become the basis of a libel action today, if perchance the publisher permitted a single copy to be sold to the public. On the other hand, the extended single publication rule gives to the statute of limitations the effect which the legislature seems to have intended.[9]

As a result of this decision, the present state of the law in New York is that a libel is reiterated only when an independent act, equivalent to a new publication in the trade sense, is committed. The mere continued dissemination of copies of the defamatory matter originally published is not a reiteration of the libel.

G. T. M.

TORTS—NEGLIGENCE—PROXIMATE CAUSE—WHEN IT BECOMES A QUESTION OF LAW FOR THE COURT.—Plaintiff, an elderly woman, emerged from a coffee shop through a revolving door opening upon a small vestibule. The floor of the vestibule slopes almost imperceptibly toward the sidewalk where it meets a stepdown of about six inches. After emerging from the revolving door and before stepping upon the sidewalk, the plaintiff fell and broke her hip. The floor was not slippery, nor did it contain any foreign substance which might have caused her fall. The court directed a verdict for the defendant because the plaintiff failed to show that the condition of

[9] Chase Securities Corp'n v. Donaldson, 325 U. S. 304, 89 L. ed. 1628 (1945). Here the court said that the purposes of the statute of limitation are "to spare the courts from litigation of stale claims, and the citizen from being put to his defense after memories have faded, witnesses have died or disappeared, and evidence has been lost."