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Defamation-Libel of Employee-Privilege

DEFAMATION—LIBEL OF EMPLOYEE—PRIVILEGE.—Plaintiff was discharged from his position as defendant's ticket agent because of unsatisfactory service. Defendant filed claims with plaintiff's surety for alleged shortages in plaintiff's account. Plaintiff was not advised of alleged shortages until after he had left defendant's employ. Evidence was introduced tending to show that plaintiff's efforts to adjust the claims met with indifference on the part of defendant's officers and that a thorough investigation was not made prior to filing claim with the surety company. Plaintiff suffered loss of subsequent employment because the surety company refused to re-bond him. Action for

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7 "This general doctrine extends so far as to sustain the validity of marriage made without complying with forms prescribed by statute, for it is held that such marriages will be sustained unless the statute expressly declares them void". Teter v. Teter (1885), 101 Ind. 129, 135.

8 Langdon v. Langdon (1932), 204 Ind. 321, 183 N. E. 400; Compton v. Benhan (1909), 44 Ind. App. 51, 85 N. E. 365; Roche v. Washington (1862), 19 Ind. 53, 81 Am. Dec. 376; Lawrance v. Lawrance (1932), 95 Ind. App. 345, 182 N. E. 273.

9 Dunlap v. Dunlap (1935), 101 Ind. App. 43, 198 N. E. 95; Meehan v. Edward Valve and Manufacturing Co. (1917), 65 Ind. App. 342, 117 N. E. 265; Vincennes Bridge Co. v. Vardaman (1930), 91 Ind. App. 363, 171 N. E. 241.

10 Becker v. Becker (1913), 153 Wis. 226, 140 N. W. 1082 (divorce and alimony); Brinkley v. Brinkley (1872), 50 N. Y. 184, 10 Am. Rep. 460 (alimony pendente lite); Cooper v. Cooper (N. J. Juvenile and Domestic Relations Ct., Essex Co., 1933), 168 A. 153 (support); Puntka v. Puntka (1935), 174 Okla. 517, 50 P. (2d) 1092 (Divorce); Strum v. Strum (1932), 111 N. J. Eq. 579, 163 A. 5 (separate maintenance); State v. Superior Court (1909), 55 Wash. 347, 104 P. 771 (separate maintenance); White v. White (1890), 82 Cal. 427, 23 P. 276 (divorce). Cf. Jones v. Jones (1935), 119 Fla. 824, 161 So. 836.

11 The court quoted extensively language from Brinkley v. Brinkley (1872), 50 N. Y. 184, 10 Am. Rep. 460, which in substance said that in applications for temporary alimony the fact of marriage need not be so conclusively established as for purpose of permanent alimony.

12 "The American Bar Association, the Commission on Uniform State Laws, and practically all authorities in the field of social reform favor the abolition of common-law marriage". I Vernier, American Family Laws (1931), p. 108. One writer states that "common-law marriages are on their way out without question". Van Winkle, "Common-law Marriage" (1936), 59 N. J. Law Jl. 145, 153. Kentucky abolished common-law marriage in 1852. New York amended its statute in 1933 so as to contain express words of nullity. The District of Columbia and 23 states still recognize common-law marriages. I Vernier, American Family Laws (1931), p. 108.

libel. Held: for plaintiff. Affirmed. Evidence of defendant's indifference and failure to investigate claims was sufficient to support finding of malice by the jury. *Interstate Transit Lines v. Crane* (1939) 100 F. (2d) 857.

Upon publication, any written words tending to expose a person to ridicule, disgrace, contempt, or loss of reputation are libellous and actionable per se.[1] Certain publications, however, may be privileged.[2] If the privilege is only conditional, recovery may be had if actual malice is proved.[3] Moreover, the defamatory matter must be published within the limits of the privilege.[4]

Complex corporate organization demands that a corporation executive rely on information received from inferior employees. In this situation a libellous communication between agents of a common employer, acting within the scope of their authority, may be treated either as, (1) no publication,[5] or, (2) a publication conditionally privileged. In the latter case, judgment may be had against the corporation if, but only if, the agent was acting within the scope of his employment, and the privilege is abused.[6] Communications between an employer and a surety company are likewise qualifiedly privileged.[7] Here again the action must turn on proof of abuse of the privilege.

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[1] Harper, The Law of Tort (1933), § 243. The rule applies in business situations. Minter v. Bradstreet Co. (1903), 174 Me. 444, 73 S. W. 668.

[2] Communications are privileged because under certain circumstances it is necessary and desirable that information be imparted to individuals or to the public. The privilege may be absolute or conditional. See Harper, The Law of Tort, §§ 247, 249.

[3] Locke v. Bradstreet Co. (1885), 22 F. 771; Rosenberg v. Mason (1931), 157 Va. 215, 160 S. E. 190; Montgomery Ward v. Watson (1932), 55 Fed. (2d) 184; Kroger Grocery & Baking Co. v. Yount (1933), 66 F. (2d) 700, 92 A. L. R. 1166; Louisville Times v. Lyttle (1934), 257 Ky. 132, 77 S. W. (2d) 432.

[4] An adequate interest or a duty in the person making the publication, with respect to the information published is necessary to make the communication privileged. Walgreen Co. v. Cochran (1932), 61 F. (2d) 357; Odgers, A Digest of the Law of Libel and Slander (6th Ed., 1929); Harper, The Law of Tort, § 249.

[5] Most courts have ignored the fact that a communication between agents of a common employer may or may not be a publication. A few courts have recognized the problem and have ruled that communications between employees of a corporation acting within the scope of their authority are not publications sufficient to support an action for defamation. See: Chalkley v. Atlantic Coast Line R. Co. (1928), 150 Va. 301, 143 S. E. 631; Prins v. Holland-North America Mortgage Co. (1919), 107 Wash. 206, 181 P. 680, 5 A. L. R. 451. If the communication is made outside the scope of the agent's authority, the employer is relieved of liability. Solow v. Genl. Motors Truck Co. (1933), 64 F. (2d) 105, cert. denied, 54 S. Ct. 48, 290 U. S. 629, 78 L. ed. 547. If malice of the employer will make his actions not within his authority, a combination of these principles would eliminate many libel and slander actions against the employer by discharged employees. It is not contended that this would be desirable.

[6] Minter v. Bradstreet Co. (1903), 174 Mo. 444, 73 S. W. 668; Montgomery Ward v. Watson (1932), 55 F. (2d) 184; Kroger Groc. & Baking Co. v. Yount (1933), 66 F. (2d) 700, 92 A. L. R. 1166. An employer may be liable to his employee for defamation. Restatement, Agency (1933), § 470, Comment c.; § 487, Comment a.; Draper v. Hellman Commercial Trust & Savings Bank (1928), 203 Cal. 26, 263 P. 240.

[7] Sunley v. Metropolitan Life Ins. Co. (1906), 132 Ia. 123, 109 N. W. 463, 12 L. R. A. (N. S.) 91; McLaughlin v. Quinn (1932), 183 Minn. 568, 237 N. W. 598. Analagous conditional privileges are found in the following cases: J. Hartman & Co. v. Hyman (1926), 287 Pa. 78, 134 A. 486, 48 A. L. R. 567 (credit bureau); Miles v. Rosenthal (1928), 90 Cal. App. 390, 266 P. 320

In England a plaintiff may recover for libellous statements made on a privileged occasion only by proof of actual malice; excessive publication, unnecessary language, and unreasonableness of the charge are evidence, and evidence only, from which a jury may find the requisite bad faith.[8] In the United States the conditional privilege may be defeated by proof of the unreasonableness of the statements under the particular circumstances (excessive publication, unnecessary language, lack of reasonable grounds for belief in truth, etc.), even though the defendant acts in complete good faith—that is, without actual malice.[9] The principal case seems to adopt the English rule. The decision indicates that in an action for libel brought by an employee against an employer who has complete and exclusive control of all or a substantial portion of the facts, the court will be astute in finding evidence of malice sufficient to sustain the plaintiff's burden of proof.[10] This result seems desirable as it facilitates effective relief for an employee in cases where, if his action must depend upon proof of the unreasonableness of the defendant-employer's acts, the employee would fail because of the inaccessibility of the relevant evidence. C. B. D.

LEGISLATION.—*Indiana Workmen's Occupational Diseases Act: Silicosis:* The death of over 400 workers on the Gauley Bridge tunnel in West Virginia from silicosis focused public attention on occupational diseases legislation.[1] In an

(real estate board); Solow v. Genl. Motors Truck Co. (1933), 64 F. (2d) 105 (creditor). See also: Restatement, Agency (1933), § 470, Comment b.

[8] Clark v. Molyneux (1877), L. R. 3 Q. B. D. 237, Bohlen and Harper, Cases on Torts, p. 629 and cases cited in note 87; also, Hallen, Conditional Privilege in Defamation (1931), 25 Ill. L. R. 865, 868.

[9] Toothaker v. Conant (1898), 91 Me. 438, 40 A. 331; Russell v. Pennsylvania Mut. Life Ins. Co. (1935), 118 Pa. Super. 351, 179 A. 798; Restatement, Torts (1938), § 599 ff.; Hallen, Conditional Privilege in Defamation (1931), 25 Ill. L. Rev. 865.

[10] The result in the instant case is well supported. The malice necessary to overcome the defense of privilege may be shown by the manner and circumstances surrounding the publication, or by the publication itself. Sunley v. Metropolitan Life Ins. Co. (1906), 132 Ia. 123, 109 N. W. 463, 12 L. R. A. (N. S.) 91; Walgreen Co. v. Cochran (1932), 61 F. (2d) 357; Conrad v. Allis-Chalmers Mfg. Co. (1934), 228 Mo. App. 817, 73 S. W. (2d) 438. The inference of malice may exist in the reckless disregard of the rights of the persons defamed. Locke v. Bradstreet (1885), 22 F. 771; Conrad v. Allis-Chalmers Mfg. Co. (1934), 228 Mo. App. 817, 73 S. W. (2d) 438. The privilege is lost when the libellous statements are made without proper cause or when reasonable care is not exercised in investigating the truth of the statements before they are published. Locke v. Bradstreet (1885), 22 F. 771; J. Hartman & Co. v. Hyman (1926), 287 Pa. 78, 134 A. 486, 48 A. L. R. 567; Commonwealth v. Foley (1928), 292 Pa. 277, 141 A. 50; Rosenberg v. Mason (1931), 157 Va. 215, 160 S. E. 190. In some cases the defendant must sustain the burden of establishing reasonable grounds for making the libellous statements in order to establish the privilege. Hodgkins v. Gallagher (1922), 122 Me. 112, 119 A. 68; Russell v. Pennsylvania Mut. Life Ins. Co. (1935), 118 Pa. Super. 351, 179 A. 798. The privilege being lost, the libel becomes actionable per se.

[1] N. Y. Times, Feb. 8, 1936, p. 5. See Hearings before the Subcommittee of the Committee on Labor on H. J. Res. 449, 74h Congress, 2d Sess. (1936). 500,000 to 1,200,000 individuals in the mechanical and manufacturing industries of the United States alone are exposed to a silicosis hazard. Since the effective date of the Indiana act 12 cases of occupational diseases due to dust have appeared before the Industrial Board, 2 cases being definitely classed as