Louisiana Law Review

Volume 9 | Number 4
May 1949

Libel and Slander - Limitation of Actions - Single Publication Rule

Kenneth Rigby

union under federal law may lawfully engage in concerted activity in support of the demand, would be inconsistent with the federal law, and consequently invalid.

Perhaps the better way out lies in a proposal such as that sponsored by Senator Thomas of Utah.[23] He would amend Section 8(3), among others, to read, "*Provided,* That nothing in this Act, *or in any state law,* shall preclude an employer engaged in commerce or whose activities affect commerce, from making an agreement with a labor organization . . . to require as a condition of employment membership therein . . . ." (Italics supplied.) This, at least, would have the merit of freeing an employer from a dilemma that might seriously threaten his undoing.

ROBERT B. SHAW

LIBEL AND SLANDER—LIMITATION OF ACTIONS—SINGLE PUBLICATION RULE—Defendant publisher commenced distribution of the final printing of "Total Espionage," an allegedly libelous book, in March 1944, and released copies from stock in the year immediately preceding July 2, 1946, the date of suit. *Held,* that the publication of a single printing of a libelous book affords only one cause of action, which arises when the first copy is released by the publisher for sale in accord with trade practice, and that subsequent sales from stock do not give rise to new causes of action, although they may be considered in assessing damages. Hence, the action was barred by a one-year statute of limitations.[1] The court thus extended the "single publication" rule,[2] adopted for magazines and newspapers, to books. *Gregoire v. G. P. Putnam's Sons,* 298 N.Y. 119, 81 N.E.(2d) 45 (1948).

Several policy considerations have led a number of jurisdictions[3] to adopt the "single publication" rule and to abandon the common law rule which holds that each time a libel is brought to the attention of a third person a new publication occurs[4] and that each publication is a new cause of action.[5] These

23. This bill is a substitute for the original S. 249, introduced by Senator Thomas. The original bill did not have the proviso excluding state laws.

1. Thompson's Laws of New York (1939) C.P.A. § 51(3).

2. McGlue v. Weekly Publications, Inc., 63 F. Supp. 744 (D.C. Mass. 1946); Age-Herald Publishing Co. v. Huddleston, 207 Ala. 40, 92 So. 193, 37 A. L. R. 898 (1921); Winrod v. Time, Inc., 334 Ill. App. 59, 78 N.E.(2d) 708 (1948); Julian v. Kansas City Star Co., 209 Mo. 35, 107 S.W. 496 (1907); Wolfson v. Syracuse Newspapers, Inc., 4 N.Y.S. (2d) 640, 254 App. Div. 211, affirmed 279 N.Y. 716, 18 N.E.(2d) 676 (1939).

3. See note 2, supra.

4. Duke of Brunswick v. Harmer, 14 Q.B. 185, 117 Eng. Rep. 75 (1849);

considerations are (1) to avoid a multiplicity of suits,[6] (2) to encourage promptness in bringing suit,[7] and (3) to outlaw stale claims.[8]

The "single publication" rule has not encouraged promptness in bringing suit; but has, in fact, had the opposite effect. The injured party in each of the leading cases decided under this rule attempted to wait until the last day of the statutory period in order to get the full benefit of damages,[9] since he had only one cause of action[10] and was unable to get injunctive relief against future publication of the libel.[11] This has led the plaintiff, in many cases, into the trap of waiting one or two days too long, because of uncertainty as to what was the actual date of publication.[12]

The courts, in applying this rule for the purpose of outlawing stale claims, deny the injured party adequate protection against releases by the publisher of copies of the libelous matter from stock after the plaintiff has exhausted his remedy in the one suit he is allowed.[13] If a large number of copies are thus released, the claim may be far from "stale," yet the plaintiff is remediless.

The "single publication" rule is admittedly judicial legislation in an attempt to balance the conflicting interests of the publishing trade and the injured party. To give full effect to the

---

Newell, Slander and Libel (4 ed. 1924) § 175, 192; 3 Restatement of Torts, § 578, Comment *b* (1938).

5. Newell, Slander and Libel (3 ed. 1914) 299, § 256.

6. Gregoire v. G. P. Putnam's Sons, 298 N.Y. 119, 81 N.E.(2d) 45, 47 (1948).

7. This purpose is apparent in the language of the court in the principal case, stating one purpose of the "single publication" rule to be "to give effect to the statute of limitations," which has as one of its objects the encouraging of promptness in bringing suit. Missouri, K. & T. Ry. Co. v. Harriman, 227 U.S. 657, 57 L. Ed. 690, 33 S.Ct. 397, 401 (1913).

8. Wolfson v. Syracuse Newspapers, Inc., 4 N.Y.S. (2d) 640, 254 App. Div. 211, affirmed 279 N.Y. 716, 18 N.E. (2d) 676 (1939).

9. Winrod v. McFadden Publications 62 F. Supp. 249 (N.D. Ill. 1945); Backus v. Look, Inc. 39 F. Supp. 662 (S.D.N.Y. 1941); Cannon v. Time, Inc., 39 F. Supp. 660 (S.D.N.Y. 1939); Means v. McFadden Publications, 25 F. Supp. 993 (S.D.N.Y. 1939); Hartmann v. Time, Inc., 64 F. Supp. 671 (E.D. Pa. 1946).

10. Age-Herald Publishing Co. v. Huddleston, 207 Ala. 40, 92 So. 193, 37 A.L.R. 898 (1921).

11. Restatement of Torts, § 942 (d).

12. See note 9.

13. Desmond, J., dissenting, 81 N.E.(2d) 45, 50; Winrod v. McFadden Publications, 62 F. Supp. 249 (N.D. Ill. 1945). The courts have attempted to provide this protection through confusing and groundless distinctions between "sales from stock" and "reprints and reissues." Mack, Miller Candle Co. v. Macmilan Co., 239 App. Div. 738, 269 N.Y.Supp. 33 (4th Dept. 1934), affirmed 266 N.Y. 489, 195 N.E. 167 (1934). Also in distinguishing republications in such unsatisfactory terms as "passive" acts and those with "conscious intent." Wolfson v. Syracuse Newspapers, Inc., 4 N.Y.S.(2d) 640, 254 App. Div. 211, affirmed 279 N.Y. 716, 18 N.E. (2d) 676 (1939).

policy considerations that led to its adoption, it is suggested that the courts, while continuing to require suit to be brought within one year of the original publication, should modify the rule so as to allow a new cause of action to accrue upon the first release of a copy of the libelous matter subsequent to the rendering of judgment in the preceding suit.[14] Such subsequent copy and any that follow it would, in turn, be governed by the single publication rule, and the statute of limitations would start running with the first publication after the preceding judgment. This process might be repeated if the publications continue.

The proposed rule would encourage promptness in bringing suit. The plaintiff, primarily interested in preventing the aggravation of the injury to himself, would not be impelled to wait the full statutory period before suing because of a fear of leaving himself without future remedy if he sued promptly.

Some of the beneficial effects of an injunction accompany the proposed rule because it would discourage the continued publication of the libel by putting the publisher on notice that future releases of the libelous matter would subject him to a new lawsuit. A fundamental purpose of law is to *prevent* injury, and the limiting of the injured party's remedy to a belated suit for damages (the result of the application of the present single publication rule) not only leaves that purpose unfulfilled, but encourages the *aggravation* of injury.

This modification would continue to facilitate the outlawing of stale claims, by requiring the injured party to institute suit within one year after the cause of action accrues, but would not bar an action by him on a fresh claim arising after such suit.

On the other hand, the suggested rule would give the publisher adequate protection against a multiplicity of suits, for he has no just cause to complain if his deliberate act in releasing matter adjudged by the court to be libelous gives rise to a new cause of action.

It has been contended that the defining of what constitutes the publication of a libel and the forming of rules applicable to it are outside the scope of the court's functions and address them-

14. It is felt that damages should be assessed in each suit for the copies released during the often lengthy period from filing of suit until rendering of judgment by the trial court, to make unnecessary a new suit in order to recover for such copies. This is in harmony with the practice of courts in cases involving continuing injuries. McCormick, A Handbook of the Law of Damages (1935) 51, § 13; 4 Sedgwick, A Treatise on the Measure of Damages (9 ed 1912) 2585-6, § 1256 i.

selves to the legislature,[15] because they are highly detailed and technical problems involving weighty policy decisions. Be that as it may, it is urged that until the legislature does so act, the court should modify its single publication rule in order to achieve the purposes for which it was adopted.

KENNETH RIGBY

MINERAL RIGHTS—UNAUTHORIZED EXPLORATION—The defendant, with the consent of the state highway commissioner, conducted a geophysical exploration from the public roads traversing the lands of the complainant. The facts show that the soil in this roadbed was owned by the complainant and that the state possessed a mere right of passage. The defendant was indicted for unauthorized exploration of private land in violation of the provisions of Act 212 of 1934.[1] The defendant was found guilty, and his conviction was affirmed on appeal, Justice Hamiter dissenting. On rehearing, the supreme court reversed the decision and remanded the case, holding that the indictment and the proof were at variance. The indictment charged the unauthorized exploration of *private lands,* but the proof showed that the defendant had conducted his exploration from *public roads,* the soil of which belonged to the complainant. *Held,* defendant not guilty on the theory that the roads in question were not "private lands" within the meaning of the 1934 statute. *State v. Evans,* 38 So.(2d) 140 (La. 1948).

During the course of the trial, the defendant pleaded that the 1934 statute had been impliedly repealed by Act 77 of 1940,[2] which does not mention private lands, but which declares "public lands" to be land "belonging to the state of Louisiana, or the title to which is in the public," and specifically includes "rights of way" within this definition. The second section of this statute states that "the Commissioner of Conservation is hereby vested with sole, exclusive and full authority to grant permits to any person, firm, association, or corporation to conduct geophysical and geological surveys on public lands." From the holding of the

15. Desmond, J., dissenting, 81 N.E. (2d) 45, 50.

1. La. Act 212 of 1934, § 1 [Dart's Stats. (1939) § 4826.1]. "It shall be unlawful for any person, firm or corporation, . . . to prospect, by . . . any mechanical device, . . . for oil, gas or other minerals . . . on the public lands of the state without the consent of the register of the state land office, or on the public highways of the state without the consent of the Louisiana highway commission, or on private property without the consent of the owner; . . . ."

2. Dart's Stats. (Supp. 1947) § 4719.10.