Louisiana Law Review

Volume 4 | Number 1
November 1941

Libel - Credit Agencies - Qualified Privileges

M. D. R.

no cases which have permitted removal for misconduct during an interregnum in office or for misconduct prior to having ever been elected.

G. R. J.

LIBEL—CREDIT AGENCIES—QUALIFIED PRIVILEGES—The nationwide growth of credit agencies has raised many difficult legal problems. Conspicuous among these are those arising in the field of defamation. There has been much conflict in the courts as to the privileges of defamation to be allowed such agencies in conducting their business. The English courts, together with those in a few American jurisdictions, have stated that the motive of profit destroys all privilege and hold such agencies to absolute liability for false communications.[1] The general American rule, however, has been to recognize the economic need for such organizations, and to accord them a privilege on certain occasions.[2] The Louisiana courts have not recently had occasion to pass on this problem. There is, however, an earlier case which may well become a landmark in our jurisprudence and which, therefore, merits consideration.

Defendant, a credit agency, made a general report to its subscribers that a suit was pending against S. Giacona and Son. The suit, in fact, was against S. Giacona and not against the plaintiff S. Giacona and Son, as erroneously reported. Plaintiff sued for damages showing that credit had been refused it because of defendant's report. *Held,* defendant was liable for compensatory damages for negligence in not checking the court record. *Giacona v. Bradstreet Company,* 48 La. Ann. 1191, 20 So. 706 (1896).

The syllabus prepared by the court states the rule prevalent in most jurisdictions that a publication of a credit agency issued to subscribers generally is not a privileged communication.[3] On

1. Pacific Packing Co. v. Bradstreet Co., 25 Idaho 696, 139 Pac. 1007 (1914); Macintosh v. Dun [1908] A.C. 390. Harper, A Treatise on the Law of Torts (1933) 539, § 249; Prosser, Law of Torts (1941) 835.

2. Cooley, A Treatise on the Law of Torts (4 ed. 1932) 558, § 159; Harper, loc. cit. supra note 1; Prosser, loc. cit. supra note 1.

3. Erber and Stickler v. R. J. Dun and Co., 12 Fed. 526 (C.C. Ark. 1882); Simons v. Petersberger, 181 Iowa 770, 165 N.W. 91 (1917); Pollasky v. Mincher, 81 Mich. 280, 46 N.W. 5 (1890); Hanschke v. Merchants Credit Bureau, 256 Mich. 272, 239 N.W. 318 (1932); Mitchell v. Bradstreet Co., 116 Mo. 226, 22 S.W. 358 (1893); King v. Patterson, 49 N.J. Law 417, 9 Atl. 705, 60 Am. Rep. 622 (1887); Sunderlin v. Bradstreet, 46 N.Y. 188, 7 Am. Rep. 322 (1871); Bradstreet Co. v. Gill, 72 Tex. 115, 9 S.W. 753, 2 L.R.A., 403 (1888).

the other hand, it is generally held that where the communication is sent on request to an interested person, it is qualifiedly privileged.[4]

In the opinion of the instant case, however, the court ignored the question of privilege mentioned in the syllabus and rested the decision on the basis of negligence. The rule stated was as follows:

> "With reference to these companies, the rule is that publishing of a tradesman that he has been sued, if true, is not actionable; but, if untrue, *and is owing to negligence,* it may give rise to an action." (Italics supplied.)

The above statement seems to require a finding of negligence. But, since the communication was sent to subscribers generally, therefore not privileged, there should have been no necessity to find negligence.[5]

In view of the conflicting language employed in the syllabus and the opinion, the present status of the Louisiana law cannot be regarded as settled.[6] It is suggested, however, that in subsequent cases Louisiana will follow the prevailing American rule as stated in the syllabus.

M. D. R.

MINERAL RIGHTS—RECITAL OF OUTSTANDING MINERAL RIGHTS IN A DEED OF SALE AS A RESERVATION—ERROR OF LAW—The vendor bank owned certain property which it sold under a deed containing a recitation to the effect that all minerals had been sold from the tract before acquisition thereof by the vendor, and that therefore they were excluded from the conveyance. However, prescription had run on the mineral servitude, and though the vendor was ignorant of the fact, the minerals had reverted to its ownership prior to the sale. Subsequently, the vendee learned of this and

4. Erber and Stickler v. R. G. Dun and Co., 12 Fed. 526 (C.C. Ark. 1882); Trussell v. Scarlett, 18 Fed. 214 (C.C. Md. 1882); Pollasky v. Mincher, 81 Mich. 280, 46 N.W. 5 (1890); Omsky v. Douglas, 37 N.Y. 477 (1868); Bradstreet Co. v. Gill, 72 Tex. 115, 9 S.W. 753, 2 L.R.A. 405 (1888).

5. See Fitzpatrick v. Daily States Publishing Co., 48 La. Ann. 1116, 1135, 20 So. 173, 180 (1896). Cooley, op. cit. supra note 2, at 519, § 149; Prosser, op. cit. supra note 1, at 815.

6. Where expression in syllabus prepared by the court is modified by opinion, the opinion must be looked to for the authority of the decision. See Cabral v. Victor and Provost, 181 La. 139, 146, 158 So. 821, 823 (1934). See also Burdick v. Ernst, 232 U.S. 162, 165, 34 S.Ct. 299, 301, 58 L.Ed. 551, 554 (1914).