Michigan Law Review

Volume 47 | Issue 3

1949

LIBEL-LIMITATION OF ACTIONS-"SINGLE PUBLICATION RULE" EXTENDED TO INCLUDE BOOKS

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LIBEL—LIMITATION OF ACTIONS—"SINGLE PUBLICATION RULE" EXTENDED TO INCLUDE BOOKS—In November, 1941, defendant book publishers commenced distribution of a book containing allegedly libelous statements concerning plaintiff. Thereafter, there were seven additional printings, the last in December, 1943, distribution of which began in March, 1944. Although more than 12,000 copies of the book were sold prior to this reprinting, only 60 copies were sold from stock during the year immediately preceding July 2, 1946, the date plaintiff instituted his action. To determine whether the action was barred by the statute of limitations, the following question was certified to the New York Court of Appeals: "Do sales from stock by a book publisher of copies of a book containing libelous material constitute republications of the libelous matter, so as to give rise to new causes of action . . . where copies sold are from an impression made and released for wholesale distribution more than one year prior to the dates of such sales?" *Held*, no. Three judges dissented. Plaintiff's action was barred by the statute. *Gregoire v. G. P. Putnam's Sons*, 298 N.Y. 119, 81 N.E. (2d) 45 (1948).

Under the common law rule a right of action for libel accrues at the time of publication,[1] and each time libelous matter is brought to the attention of a third person not privileged, a new publication occurs; each such publication constitutes a separate, actionable tort.[2] However, some states[3] have developed the so-called "single publication rule," which purports to recognize changed conditions brought on by modern methods of mass printing and distribution of newspapers and magazines. Under this rule, although one issue of a newspaper or magazine may consist of thousands of copies, it constitutes but one "publication" and gives rise to but one cause of action; the statutes of limitation run from the date of "publication" (in the trade sense of that term), the number of copies receiving consideration only in determining the amount of damages.[4] The later decisions[5] indicate an evolutionary redefinition of the terms "publication" and "republication," as used in the law of libel, to approximate more nearly the lay meaning of the words, in order to restrict the number of actions which may be based on a libel appearing in a single issue of a newspaper or other periodical. Where does the principal case stand with respect to these trends? The court states: ". . . it is our view that the publication of a libelous book . . . affords the one libeled a legal basis for only one cause of action which arises when the finished product is released by the publisher

[1] 53 C.J.S., Libel and Slander, § 156. The word "publish," as regards the tort "libel," refers to the act of making the defamatory matter known publicly, of disseminating it, or communicating it to one or more persons. See Age-Herald Pub. Co. v. Huddleston, 207 Ala. 40, 92 S. 193 (1921), 37 A.L.R. 898 (1925) for a distinction between "publishing" a libel, and "publishing" a newspaper.

[2] See 3 TORTS RESTATEMENT 200 (1938); NEWELL, SLANDER AND LIBEL, 4th ed., 236-237 (1924); ODGERS, LIBEL AND SLANDER, 5th ed., 166 (1911) and cases cited.

[3] Notably Alabama and New York. See Age-Herald Pub. Co. v. Huddleston, 207 Ala. 40, 92 S. 193 (1921); Wolfson v. Syracuse Newspapers, 279 N.Y. 716, 18 N.E. (2d) 676 (1939).

[4] Hartmann v. Time, Inc., (D.C. Pa. 1946) 64 F. Supp. 671 at 679 and cases cited.

[5] See cases cited supra, notes 3 and 4.

for sale in accord with trade practice."[6] Clearly the case represents the extension of the "single publication rule," hitherto restricted to newspapers and magazines, to cover books. But more than this, its holding, another step in the redefinition of the term "republication," appears to identify the technical meaning with the lay meaning of that word. While there is almost universal agreement with the court's statement that "nothing is so dead as yesterday's newspaper," and generally the same can be said of magazines, can the same be said of books? It would appear that in the view of the majority of this court, the likelihood of injury to one libeled in a modern book, at least after the running of the statute on the original cause of action, is not appreciably greater than that to be expected from libelous matter disseminated through newspapers and other periodicals. While the result in the principal case appears justified on its facts, the decision, in terms of the question certified, can be construed as laying down a rule so broad as to constitute a virtual "license for continued wrongdoing."[7] Whether justice permits a coincidence of the libel and lay definitions of the term "republication" may well be questioned. Assume an initial printing of 100,000 copies of a book containing libelous matter, the sale during the first year of only 50 copies, none of which came to the attention of the party libeled, and an extensive national advertising campaign during the year following, as a consequence of which the remaining 99,950 books were sold. There is little doubt that the old common law rule permitting an almost infinite number of actions does not achieve justice when applied to modern methods of mass dissemination of information. Neither does the "single publication rule" when applied to books. It is submitted that this situation requires another rule somewhere between these two extremes, which will take into consideration the likelihood of substantial injury arising from the circulation of the book subsequent to the statutory period immediately following its initial distribution, as compared with the likelihood of injury arising from its circulation during that period.[8]

W. M. Myers

[6] Principal case at 49.

[7] See dissenting opinion, id. at 51.

[8] Notes on cases marking the growth of the "single publication" idea appear in 16 N.Y. UNIV. L.Q. 658 (1938); 52 HARV. L. REV. 167 (1938); 13 St. JOHNS L. REV. 401 (1939); 26 MINN. L. REV. 131 (1941); 19 So. CAL. L. REV. 287 (1946); 24 CHI-KENT L. REV. 278 (1946); 21 N.Y. UNIV. L.Q. 309 (1946); and 94 UNIV. PA. L. REV. 335 (1946).