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SLANDER OF TITLE - NATURE OF THE ACTION - STATUTE OF LIMITATIONS

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SLANDER OF TITLE — NATURE OF THE ACTION — STATUTE OF LIMITATIONS — Plaintiff brought an action to recover damages occasioned by certain letters, alleged to be false and malicious, written by the defendant of and concerning the title to plaintiff's property. Since the letters were written more than one year prior to the commencement of the action, defendant argued that the action was barred by a clause in the local statute of limitations providing that "actions for libel and slander shall be commenced within one year after the cause of action shall have accrued." [1] On the other hand the plaintiff asserted that the case came under the statute's two-year limitation of actions for "injury to the . . . rights of another, not arising on contract, and not herein especially enumerated. . . ." [2] *Held*, that the limitation as to commencement of actions for libel and slander applies whether the slander involves property or person. *Woodard v. Pacific Fruit & Produce Co.*, (Ore. 1940) 106 P. (2d) 1043.

The owner of an estate or interest in any real or personal property has a

[1] 1 Ore. Comp. Laws Ann. (1940), § 1-207 (2).

[2] 1 Ore. Comp. Laws Ann. (1940), § 1-206 (1). The statute of 21 James I, c. 16 (1623), on which most modern statutes of limitation are based, provided that all actions on the case for torts, other than slander, must be brought within six years.

cause of action against one who maliciously denies or impugns his title thereto if he thereby suffers damages.[3] Originally the term "slander" was applied only to words or utterances the nature of which was defamatory to the reputation of an individual.[4] At common law an action for slander of title was not properly brought as an action for libel or slander but rather as an action on the case for damages wilfully done without just occasion or excuse.[5] The use of the term "slander" was soon extended, however, to cover words, oral or written, disparaging another's title to property,[6] and thereby to include two actions which in fact were essentially different. By resort to a fiction personifying title, certain of the rules for slander and libel were applied to slander of title.[7] Injury to the reputation of a person is of the essence of defamation. Whether a speech or writing is slander of title or defamation depends on whether it goes to disparage the title of a thing or the reputation of a person.[8] Whether a particular case is held to be defamation or slander of title will make a great difference in the rules applied thereto by the court.[9] Thus it is clear that the two concepts are not identical.[10] There is, however, an apparently fundamental similarity between the two and it is this feature that has confused the courts. In all these cases the law is protecting the plaintiff against loss resulting from words of the defendant spoken or written to third parties. It can also be argued that there must be actual pecuniary damage to the plaintiff in all cases and that where the law makes libel and certain kinds of slander actionable per se it is conclusively presuming actual damage.[11] Taking this view, it would seem that slander of title is merely slander or libel applied to a slightly different fact situation. However, it is evident that the courts have been continually moving toward the protection of reputation as such and the giving of damages for injury thereto regardless of actual pecuniary loss.[12] Thus, while the two actions were once quite similar in theory though different in practice, they are slowly becoming

[3] Hill v. Ward, 13 Ala. 310 (1848). "Liability is imposed on one who (a) communicates to a third person (b) statements disparaging the plaintiff's title, (c) which are not true in fact, and (d) which cause the plaintiff actual damage." HARPER, TORTS, § 274 (1933). See also Hanson v. Hall Mfg. Co., 194 Iowa 1213, 197 N. W. 967 (1922); Kelly v. First State Bank of Rothsay, 145 Minn. 331, 177 N. W. 347 (1920).

[4] Lyman v. New England Newspaper Publishing Co., 286 Mass. 258, 190 N. E. 542 (1934); Kimmerle v. New York Evening Journal, 262 N. Y. 99, 186 N. E. 217 (1933).

[5] Ratcliffe v. Evans, [1892] 2 Q. B. 524; Malachy v. Soper, 3 Bing. N. C. 371, 132 Eng. Rep. 453 (1836).

[6] Potosi Zinc Co. v. Mahoney, 36 Nev. 390, 135 P. 1078 (1913); Pickens v. Hal J. Copeland Grocery Co., 219 Ala. 697, 123 So. 223 (1929).

[7] Wilson v. Dubois, 35 Minn. 471, 29 N. W. 68 (1886).

[8] Holmes v. Clisby, 118 Ga. 820, 45 S. E. 684 (1903); Lynotype Co. v. British Empire Type-setting Machine Co., 81 L. T. 331, 15 T. L. R. 524 (1899).

[9] 3 TORTS RESTATEMENT 323, introductory note (1938).

[10] BOWER, ACTIONABLE DEFAMATION, 2d ed., 209 (1923).

[11] TOWNSHEND, SLANDER AND LIBEL, 3d ed., c. 4 (1877), and authorities therein cited. And see note in 38 MICH. L. REV. 253 (1939).

[12] Pound, "Interests of Personality," 28 HARV. L. REV. 343, 445 (1915).

different in theory as well. On this basis the words "slander and libel" would certainly not include actions for slander of title. It is submitted, however, that the mistake of so including them is of no more than academic interest so far as the statute of limitations is concerned. The considerations involved in setting a limit on the time for the bringing of these actions would be the same in both cases and thus the statutory period should be the same.[18]

Herbert R. Whiting

[18] The courts seem to approach the problem from the point of view that there is no reason for limiting the words of the statute "actions in slander and libel" to words defamatory of persons only. McDonald v. Green, 176 Mass. 113, 57 N. E. 211 (1900); Buehrer v. Provident Mutual Life Ins. Co., 123 Ohio St. 264, 175 N. E. 25 (1931); Carroll v. Warner Bros. Pictures, (D. C. N. Y. 1937) 20 F. Supp. 405; and principal case. Also see Chesebro v. Powers, 78 Mich. 472, 44 N. W. 290 (1889); Bush v. McMann, 12 Colo. App. 504, 55 P. 956 (1899). And compare the two Illinois cases, Jones v. Barmm, 217 Ill. 381, 75 N. E. 505 (1905), and Reliable Mfg. Co. v. Vaughan Novelty Mfg. Co., 294 Ill. App. 601, 13 N. E. (2d) 518 (1938).