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Criminal Libel—Inadmissibility of Evidence to Explain Meaning of Libelous Statement

will not enforce such "contracts," and as a warning of this fact the case is important. There is no question of policy sufficient to justify extending contract principles to protect parties from a trap which they themselves create. The parties who enter into such agreements need only look well to the drawing thereof and be sure that there are obligations mutually binding so that the contract will be enforceable. B. L. W., '31.

CRIMINAL LIBEL—INADMISSIBILITY OF EVIDENCE TO EXPLAIN MEANING OF LIBELOUS STATEMENT.—Defendant was prosecuted for criminal libel based on a placard paraded by him in front of the Massachusetts State House bearing the words, "Fuller—Murderer of Sacco and Vanzetti." *Held*, that a directed verdict for the defendant was properly refused, since the words taken in their usual and popular sense import a charge of murder and are libelous *per se*. Testimony that the words on the placard were used to charge only moral responsibility was held properly rejected. *Commonwealth v. Canter* (Mass. 1930) 168 N. E. 790.

Certain publications are said to be actionable *per se* and may be made the occasion of criminal prosecution—by this is meant that an action will lie for making them without proof of actual injury because their necessary consequence would be to cause injury to the person of whom they are spoken, and therefore injury is to be presumed. Words are to be taken in that sense in which they would be understood by those who heard or read them—in other words, it is a question of the natural and obvious meaning of the words used. *Ingalls v. Morrissey* (1913) 154 Wis. 632, 143 N. W. 681; *Pollard v. Lyon* (1875) 91 U. S. 225, 308; *Ogden v. Riley* (1833) 14 N. J. L. 186.

Words which are apparently actionable in themselves may be rendered not actionable by the surrounding circumstances. *Yakoviche v. Valentukevicius* (1911) 84 Conn. 350, 80 Atl. 94. The question is how would ordinary men of reasonable prudence naturally understand the language. *Herringer v. Ingberg* (1903) 91 Minn. 71, 97 N. W. 460. Thus Shakespeare has said, "A jest's prosperity lies in the ears of him who hears it."

However positive may be the charge, if it is accompanied by words which qualify the meaning and show to the bystanders that the act imputed is not criminal, this is no slander since the charge, taken altogether, does not convey to the minds of those who hear it an imputation of criminal conduct. *Brown v. Meyers* (1883) 40 Ohio St. 99. This doctrine has led to many broader extensions. In *Bridgeman v. Armer* (1894) 57 Mo. A. 528, it was held that if it appears that the words were used as a mere term of abuse, and there was in point of fact no imputation of actual theft conveyed thereby, there is no cause of action. See also *Haynes v. Haynes* (1848) 29 Me. 247; *Fawsett v. Clark* (1878) 48 Md. 494.

Some jurisdictions seem to cling to a stricter doctrine. The guilt of a person must be determined by the article itself and the meaning that would naturally be attributed to the words used therein, whether the hearers be-

lieved the charge or not. *Miller v. Johnson* (1875) 79 Ill. 58; *Rea v. Harrington* (1885) 58 Vt. 181. Chief Justice Shaw in speaking in *Carter v. Andrews* (Mass. 1834) 16 Pick. 1, said, "It is no defense to this action that the charge could not be true."

Evidence to show motive or malice of accused in making the statement for which he is prosecuted is admissible. *Russell v. State* (1919) 169 N. C. 312, 84 S. E. 807. But under the narrow doctrine of some jurisdictions evidence as to what the accused intended by the alleged libelous article was held inadmissible under the rule that the meaning is to be gathered by determining what men of ordinary understanding would infer therefrom. *People v. Strouch* (1910) 247 Ill. 220, 93 N. E. 126. In a case arising in Scotland a birth notice printed by a newspaper in good faith and in the normal course of business was held actionable because of the extrinsic fact, entirely unknown to the publishers, that the supposed parents had been married less than a month. *Morrison v. Ritchie* (1902) 4 Scotch Sess. Cases (5th ser.) 645. *Morrison v. Smith* (1903) 83 App. Div. 492, 82 N. Y. S. 111; *Switzer v. Anthony* (1922) 71 Colo. 291, 206 Pac. 391; *Farley v. Evening Chronicle* (1905) 113 Mo. A. 216, 87 S. W. 565. If the plaintiff may show the applicability to him and their defamatory character as determined by extrinsic facts, there is no reason why the defendant should not be accorded the same right.

The rejection of the evidence offered by the accused in the principal case presents an utter anomaly, and indicates that an unhealthy provincialism dominated the Massachusetts court. It is hardly probable that the language of the publication, in the light of the sorry history of the Sacco-Vanzetti affair, was calculated to induce those who read it to believe that the person of whom it was written was guilty of a crime. It was plainly criticism and abuse of the governor. E. S., '31.

INHERITANCE—EFFECT OF LEGITIMATING STATUTE.—An interesting case which shows the way the law develops is *In re Cross* (1929) 197 N. C. 334, 148 So. 456, in which the claimant sought to share in the estate of his uncle. It was admitted that he was born out of wedlock, but he claimed the benefit of the statute legitimating bastards. "When the mother of a bastard child and the reputed father of such child subsequently intermarry . . . the child shall, in all respects after such intermarriage, be deemed legitimate and entitled to all rights in the estate of its father and mother that it would have had had it been born in lawful wedlock." N. C. Code (1927) sec. 279. The court held that such a statute did not entitle the child to inherit from ancestors beyond the father and mother. Inasmuch as the statue is in derogation of the common law it should be strictly construed.

At common law a bastard was said to be *filius nullius*. He could not inherit from any one, and none could inherit from him except his direct descendants, nor did subsequent marriage of his parents remove this disability. The law has now been changed generally by statute. Kale's CASES