LIBEL AND SLANDER - PUBLICATION - COMMON INTEREST IN SUBJECT MATTER

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Libel and Slander — Publication — Common Interest in Subject Matter — Attorneys for plaintiff wrote a letter to a bus company claiming damages for an injury resulting from the negligence of the bus company. This letter was referred to the insurer of the bus company. Insurer, in reply, wrote a letter charging the plaintiff with an attempt to defraud, calling him a shyster lawyer, and making other disparaging remarks. Although intended for the bus company, this letter was inadvertently sent to plaintiff's attorneys. In a libel action brought against the bus company and the insurance company, the defendants moved to dismiss, claiming that the communication was privileged. Held, between the defendants there was privilege, but the privilege did not extend to a communication sent to plaintiff's attorneys. Love v. Commercial Casualty Ins. Co., (D. C. Miss. 1939) 26 F. Supp. 481.

The instant court decided that a privilege existed between the bus company and the insurance company, due to a mutual interest. A privilege exists, it has been
said, "where it is the duty of the defendant to make a communication to another person who has an interest in the subject matter of the communication or some duty in connection with it," or "where the defendant has an interest in the subject matter of the communication, and the person to whom the communication is made has a corresponding interest or some duty in connection with the matter." 1 Clearly the insurance company and the bus company were within the area protected by this privilege. But the privilege is a conditional one, and its protection may be lost by excessive publication (as, for example, publication to one who has no interest to protect), 2 or by the addition of defamatory matter which is not relevant to the interest which creates the privilege. 3 Proof of malicious intent in making the statement will destroy the protection given by the privilege. 4 In a libel action plaintiff is compensated only for injury to his reputation, 5 and before his reputation can be injured there must be a defamatory publication to a third party. 6 Communication to the plaintiff himself does not injure his reputation. 7 In the instant case the communication was made to plaintiff's attorneys, authorized to handle his negligence claim. While the plaintiff's attorneys were outside the limits of the existing privilege, it is arguable that there was no liability because of the absence of publication. Cases have held that where an attorney-client relation exists, and the attorneys make demands in carrying out their authority, the client has authorized his attorneys to receive answering

1 Odgers, Libel and Slander, 6th ed., 206 (1929). The same author, in discussing the second type of privilege, quotes the rule as stated by Lord Escher, M. R., in Hunt v. Great Northern Ry., [1891] 2 Q. B. 189 at 191: "If the communication was of such a nature that it could be fairly said that those who made it had an interest in making such a communication and those to whom it was made had a corresponding interest in having it made to them . . . the occasion is a privileged one, and the question whether it was or was not misused is an entirely different one." See also Harper, Torts, § 249 (1933); 1 Cooley, Torts, 4th ed., § 159 (1932); 3 Torts Restatement, §§ 594, 595 (1938); Stroud v. Harris, (C. A. 8th, 1925) 5 F. (2d) 25; 17 R. C. L. 341 (1917).


5 Harper, Torts, § 235 (1933).


7 Terwilliger v. Wands, 17 N. Y. 54 (1858).
communications.\textsuperscript{8} Such answers, if defamatory, do not constitute a publication any more than if sent to the plaintiff himself.\textsuperscript{9} Following these cases, a reply by the bus company to plaintiff's attorneys would not constitute a publication. Certainly the bus company had a right to write to the attorneys denying liability. It seems logical to say that the insurance company, on behalf of the bus company, should have a similar right. If a right existed to communicate directly, it is hard to see how it was lost in making inadvertent indirect communication.
