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Torts - Libel and Slander - Calling a Person a Communist as Slader Per Se

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TORTS—LIBEL AND SLANDER—CALLING A PERSON A COMMUNIST AS SLANDER PER SE—In an action for slander, plaintiff alleged that on three separate occasions defendant had orally called or referred to plaintiff as a communist. The court rendered judgment against the defendant, holding that calling a person a communist is slander per se. On appeal, *held,* affirmed. Since membership in the Communist Party is a felony under Pennsylvania statute,[1] falsely referring to a person as being a communist is slander per se. *Solosko v. Paxton,* (Pa. 1956) 119 A. (2d) 230.

Falsely labeling one a communist has had a varying legal effect over the years, for its connotations have changed with the times and the current of public opinion.[2] With the growing recognition of the character, aims, and methods of communism,[3] almost all courts have come to regard such an accusation as being clearly defamatory.[4] A different question, however, is presented as to whether such an accusation is slander per se. An action in slander founded upon the use of defamatory words must be supported by a showing of special damages unless it falls within one of the common law classifications of slander which are actionable per se, viz., accusing the plaintiff of having committed a serious indictable crime, accusing him of having certain loathsome diseases, making imputation incompatible with the proper conduct of the plaintiff's business, trade, profession, or office, or imputing unchastity to a woman.[5] In the cases involving slander actions based on a false charge of communism there is a lack of harmony with regard to whether or not such accusation falls within any of the above categories.[6] Two courts hold that while calling one a communist is defam-

1 Pa. Stat. Ann. (Purdon, 1945; Supp. 1954) tit. 18, §3811.

2 The Pennsylvania Supreme Court had stated previously obiter in early 1950 that calling one a communist or socialist was not defamatory. McAndrew v. Scranton Republican Publishing Co., 364 Pa. 504, 72 A. (2d) 780 (1950).

3 See the concurring and dissenting opinion of Justice Jackson in American Communications Assn., C.I.O. v. Douds, 339 U.S. 382 at 422, 70 S.Ct. 674 (1950).

4 See PROSSER, TORTS, 2d ed., 578 (1955), and cases collected in 33 A.L.R. (2d) 1196 (1954).

5 See 3 TORTS RESTATEMENT §570 (1938); PROSSER, TORTS, 2d ed., 588 (1955).

6 Remington v. Bentley, (D.C. N.Y. 1949) 88 F. Supp. 166 (slander per se to call one a communist in that it imputes professional unfitness to one in the occupation of a government economist); Lightfoot v. Jennings, 363 Mo. 878, 254 S.W. (2d) 596 (1953) (slander

atory, it is not slander per se, and one cannot recover unless he alleges and proves special damages.[7] Federal statutes which impede communist activities in the United States are the Smith Act,[8] the Seditious Conspiracy Act,[9] and the Communist Control Act of 1954.[10] The practical effect of such federal legislation and similar state legislation[11] against subversive activities is to make it everywhere in the United States a crime to be a member of any organization which advocates or encourages the violent overthrow of the United States Government if the member has knowledge of the character of the group. It is frequently stated that according to the theory of the Federal Government in the prosecution of eleven communist leaders,[12] membership in the Communist Party is now a crime.[13] Under this theory an effective argument could thus be made that calling one a communist is slander per se in that it imputes violation of a criminal statute, and the only possible defense would be as to the "seriousness" of the offense imputed thereby. In Pennsylvania the court has taken judicial notice of the fact that the Communist Party advocates the overthrow of the United States Government by force and violence,[14] and Pennsylvania law specifically makes membership in the Communist Party a felony.[15] The question then arises, whether calling one a communist conveys the meaning that the person referred to is a member of the Communist Party. The defendant in the instant case argued that it is only membership in the Communist Party which is a criminal offense under the statute, and

per se to call one a communist in that it imputes commission of a serious crime under United States laws). The Florida court, without categorizing the alleged defamatory words, found that calling one a communist necessarily caused injury to the plaintiff in his social, official and business relations. By way of dictum the Florida court also stated that referring to one as a communist "certainly charges him with having a loathsome state of mind or loathsome ideas which are communicable." Joopanenko v. Gavagan, (Fla. 1953) 67 S. (2d) 434.

7 Gurtler v. Union Parts Mfg. Co., 285 App. Div. 643, 140 N.Y.S. (2d) 254 (1955); Keefe v. O'Brien, 116 N.Y.S. (2d) 286 (1952); Krumholz v. Raffer, 195 Misc. 788, 91 N.Y.S. (2d) 743 (1949); Peyck v. Semoncheck, (Ohio App. 1952) 105 N.E. (2d) 61.

8 18 U.S.C. (1952) §2385.

9 18 U.S.C. (1952) §2384.

10 68 Stat. L. 775 (1954), 50 U.S.C. (Supp. II, 1955) §841.

11 See, e.g., Fla. Stat. (1955) §§876.01 to 876.10; Mass. Laws Ann. (1956) c. 264, §§16 to 23; Pa. Stat. Ann. (Purdon, 1945; Supp. 1954) tit. 18, §3811. The continuing effect of such state legislation will be dependent upon congressional reaction to Commonwealth of Pennsylvania v. Nelson, 350 U.S. 497, 76 S.Ct. 477 (1956), which held that Congress had occupied the field of sedition, and that state sedition statutes were superseded, at least insofar as they apply to sedition against the federal government. On April 9, 1956, Rep. Donovan introduced H.R. 10335 to the Committee on the Judiciary, House of Representatives, the effect of which would be to give concurrent effect to state sedition laws with federal acts on the same subject. 102 CONG. REC. 5358 (April 9, 1956).

12 Dennis v. United States, 341 U.S. 494, 71 S.Ct. 857 (1951), reh. den. 342 U.S. 842 (1952).

13 50 COL. L. REV. 526 at 528 (1950). See also Lightfoot v. Jennings, note 6 supra. A contrary opinion has been expressed by the New York Appellate Division in Gurtler v. Union Parts Mfg. Co., 285 App. Div. 643, 140 N.Y.S. (2d) 254 (1955).

14 Albert Appeal, 372 Pa. 13, 92 A. (2d) 663 (1952).

15 Pa. Stat. Ann. (Purdon, 1945; Supp. 1954) tit. 18, §3811.

since defendant had not accused plaintiff of membership in the Communist Party, the defamation could not be slanderous per se. The court disagreed, holding that calling a person a communist connotes that he is a member of the Communist Party.[16] It would seem that the court's view is the correct one. Although it may be argued that individuals exist who approve of Marxist principles and communist ideology without actually being members of the Communist Party, the ordinary person would nevertheless infer that a person so accused is affiliated with, or a member of, the illegal organization.[17]

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[16] Principal case at 232.
[17] See 4 DUKE B.J. 1 (1954).