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LIBEL AND SLANDER-NECESSITY FOR ALLEGATION OF SPECIAL DAMAGES FOR DEFAMATION NOT SHOWN LIBELOUS PER SE

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LIBEL AND SLANDER—NECESSITY FOR ALLEGATION OF SPECIAL DAMAGES FOR DEFAMATION NOT SHOWN LIBELOUS PER SE—Defendants, the deacons, pastor, and clerk of the Gallatin Baptist Church, published to the church membership a letter to the plaintiff, an ordained minister of the Baptist Church, and a member of the Gallatin Church, requiring him to report and show cause why the hand of fellowship should not be withdrawn from him because of heresy. The plaintiff's complaint for libel set out the letter published, but a motion to dismiss for failure to state a cause of action was sustained by the circuit court on the grounds that there was no allegation of special damages to the plaintiff. On appeal, *held*, affirmed. In the absence of an allegation of some special loss or injury, the charge of "heresy" in a church disciplinary proceeding is not libelous and actionable per se. *Creekmore v. Runnels, et al.*, 359 Mo. 1020, 224 S.W. (2d) 1007 (1949).

All written defamation at common law was deemed necessarily to lead to damage, and consequently no damages had to be proved by the plaintiff to entitle him to recover.[1] The Missouri court has repudiated this doctrine, merging the slander and libel laws to the extent that only certain types of defamation are actionable without allegation of special damage to the plaintiff.[2] Although the damages required to be alleged are defined in terms of loss or injury,[3] the court's statement in the principal case that "in some connotations a charge of 'heresy,' if its suggestive significance is explicitly set forth, would be injurious to a clergyman in his professional character and office,"[4] raises a question whether the court was actually thinking about the requirement that the plaintiff show particular loss. The statement seems to refer to the doctrine that words not defamatory on their face may be shown defamatory by means of pleading extrinsic facts (the inducement) correlated to the language (the innuendo).[5] "Explicitly set forth" probably refers to a pleading requirement, rather than to the defendant's verbosity. If that is the case, then the requirement of special damages as ordinarily understood was not really in issue. Moreover, it would seem that a charge of heresy[6] by a Board of Deacons against its minister, even without elucidation through extrinsic facts, would "impute a lack of integrity or misconduct importing . . . mental unfitness in him to discharge his duties as a clergyman."[7] There are few decided cases dealing with defamations con-

[1] Thorley v. Lord Kerry, 4 Taunt. 355, 128 Eng. Rep. 367 (1812).

[2] Eby v. Wilson, 315 Mo. 1214, 289 S.W. 639 (1926); Seested v. Post Print. & Publ. Co., 326 Mo. 559, 31 S.W. (2d) 1045 (1930).

[3] Eby v. Wilson, supra note 2.

[4] Principal case at 1025.

[5] Commonly referred to as "libel per quod" which has no logical relation to the matter of damages. PROSSER, TORTS 797 (1941); 35 MICH. L. REV. 500 (1937).

[6] ". . . a false opinion repugnant to some point of doctrine clearly revealed in Scripture, and either absolutely essential to the Christian faith, or at least of most high importance." 2 BURNS, ECCLESIASTICAL LAW 303 (1842); 2 PHILLIMORE, ECCLESIASTICAL LAW 842 (1895).

[7] Principal case at 1024, citing Baldwin v. Walser, 41 Mo. App. 243 at 251 (1890).

cerning a minister's intellectual capability, and most of these involve general charges of unfitness, rather than charges of specific faults.[8] The majority of cases dealing with defamation of the clergy have involved charges of moral unfitness.[9] Recognizing, however, that the duties of a clergyman extend beyond leading an exemplary life and include teaching the doctrines of his particular church,[10] a charge of heresy could be thought to imply unfitness to carry out this duty of teaching. However, it is probable that even if the plaintiff had succeeded in establishing the charge as defamatory, he would have failed to recover because there is good authority for holding communications in church disciplinary actions privileged.[11] Since the question came to this court on a motion to dismiss for failure to state a cause of action, the question of privilege as a matter of defense was not properly before the court. However, it carefully couched its conclusion in the following language: ". . . it may not be said that the general charge of 'heresy' in a church disciplinary proceeding is libelous and actionable per se."[12] To what extent the court relied on its qualification "in a church disciplinary proceeding" cannot be ascertained from the opinion.

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[8] Cited with approval by the court in the principal case as necessarily imputing unfitness to fulfill duties of a clergyman's office: ". . . is not responsible . . . or may not be entirely of a sane mind," Hellstern v. Katzer, 103 Wis. 391 at 394, 79 N.W. 429 (1899); ". . . ignorant . . . (un)charitable . . . an immigrant ignoramus . . . ," Pentuff v. Park, 194 N.C. 146 at 149, 138 S.E. 616 (1927); ". . . unfit for ministry . . . improper person to be allowed to preach . . . ," Flanders v. Daly, 120 Ga. 885 at 886, 48 S.E. 327 (1904); "I would not have anything to do with him or touch him with a ten-foot pole," Cole v. Millspaugh, 111 Minn. 159 at 160, 126 N.W. 626 (1910).

[9] Warren v. Pulitzer Publ. Co., 336 Mo. 184, 78 S.W. (2d) 404 (1934); Haynes v. Robertson, 190 Mo. App. 156, 175 S.W. 290 (1915). See cases collected 53 A.L.R. 637 (1928).

[10] "It is the province of the minister to feed the flock of Christ committed to his charge, to preach the glorious gospel of the blessed God to the perishing, to see that the church is kept free from heresy and sin, and to administer baptism and the Lord's Supper. The minister should be blameless, the husband of one wife, vigilant, sober, of good behavior, given to hospitality, apt to teach. He should be free from all vices and have a good report of them who are without." CATHCART, BAPTIST ENCYCLOPEDIA 798 (1883); ZOLLMAN, AMERICAN CIVIL CHURCH LAW 345 (1917).

[11] Landis v. Campbell, 79 Mo. 433 (1833); O'Donaghue v. M'Govern, 23 Wend. (N.Y.) 26 (1840). See cases collected 63 A.L.R. 649 (1929). In Nunnery v. Bailey, 65 Okla. 260, 166 P. 82 (1917), on which the court in the principal case relies, the court held that publication of "withdrawal of the hand of fellowship" from a Baptist minister was not actionable without allegation of special damages. Though authority for the decision rendered in the principal case, it too seems open to the question of how far the court anticipated privilege as a defense.

[12] Principal case at 1025.