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Torts—Slander per se

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Slander per se

The plaintiff was accused of being a Communist by defendant employer in the presence of his fellow workers. The Court, affirming the Appellate Division,¹⁸ held that the words "Communist. You are a Communist.", are not slanderous per se, and that therefore the complaint was insufficient without the allegation of special damages.¹⁹

In certain situations slander is actionable without proof of damages. Examples of this are an imputation of a serious crime,²⁰ the imputation of certain loathsome diseases,²¹ imputations affecting plaintiff in his trade, business, profession or office,²² and in New York, included also is the imputation of unchastity to a woman.²³ In all other actions for slander, special damages must be alleged and proved.²⁴

Only two of the four types of slander per se can be considered to be possibly involved in this case, the imputation of a serious crime and imputations affecting a person in his business, trade, office or profession. As to the former, it has been held that something more than mere membership in the Communist Party is necessary to constitute a crime.²⁵ As to the latter, it is essential that the words spoken not only injure plaintiff in his business or profession, but also are spoken in connection with that business,²⁶ as for example calling a minister immoral or a lawyer an ignoramus. The term "Communist" is not so connected with the engineering profession.²⁷ Since none of the types of slander per se were applicable to this case, it was necessary for the plaintiff to allege special damages to prevent the complaint from being dismissed.

The instant case restates the New York law of slander as it has been interpreted in the past. If the plaintiff was really damaged by these accusations, the burden was upon him to allege his loss in his complaint.

18. *Gurtler v. Union Parts Mfg. Co.*, 285 App. Div. 643, 140 N. Y. S. 2d 254 (1st Dep't 1955).

19. *Gurtler v. Union Parts Mfg. Co.*, 1 N. Y. 2d 5, 132 N. E. 2d 889 (1956).

20. *Torres v. Huner*, 150 App. Div. 798, 135 N. Y. Supp. 332 (2d Dep't 1912).

21. *Moore v. Francis*, 121 N. Y. 199, 23 N. E. 127 (1890).

22. *Bornmann v. Star Co.*, 174 N. Y. 212, 66 N. E. 723 (1903).

23. *Hemmens v. Nelson*, 138 N. Y. 517, 34 N. E. 342 (1893); N. Y. R. Civ. PRAC. 97.

24. *Hartmann v. Winchell*, 296 N. Y. 296, 73 N. E. 2d 29 (1947).

25. *Dennis v. United States*, 341 U. S. 494 (1950); See also *United States v. Lightfoot*, 228 F. 2d 861 (7th Cir. 1956); Despite public opinion, mere membership is not a crime; there must be knowledge of the aims and ideals of the Communist Party; with the strict construction given to these exceptions to the necessity of showing special damages, the words used would not constitute slander per se.

26. See note 22 *supra*.

27. A different result might be reached if an attorney were called a communist. Cf. *Levy v. Gelber*, 175 Misc. 746, 25 N. Y. S. 2d 148 (Sup. Ct. 1948).