Choctaw Coal & Mining Co. v. Lillich, 204 Ala. 533

Supreme Court of Alabama
October 21, 1920, Decided
(6 Div. 117.)

CHOCTAW COAL & MINING CO. v. LILLICH.

[534] SOMERVILLE, J. The undisputed evidence shows that a typewritten sheet containing a list of the names of coal miners who did not report for work on the preceding day was each day posted on a board at the mouth of the mines operated by the defendant company; that on or about July 18, 1918, such a list was so posted by an agent of the operating company under the caption "Employees not working July 18th," and in the list was the name of the plaintiff; that one Verg West, who was defendant's assistant superintendent, thereupon wrote on said board, with chalk or paint, above the paper sheet the words "List of Slackers"; and that the board in that condition was seen by a number of people.

Although the witness Nicol testified that he was general superintendent for defendant company prior to July 9, 1920, and that on that day defendant company discontinued its operation of these mines and turned them over to another company which thenceforth operated them exclusively, there was other testimony from which the jury could properly find that defendant company continued to control and operate the mines down to a date later than July 18th.

The defendant company's responsibility for the alleged libel, assuming that it was in control of the mines at the time in question, must be based upon one of three propositions: (1) The libel must have been published by the servant West by the authority of defendant company; or (2) it must have been thereafter ratified or approved by it; or (3) it must have been published by West while acting within the scope of his authority, or within the course of his employment, in furtherance of defendant company's business. Republic I. & S. Co. v. Self, 192 Ala. 403, 68 So. 328, L. R. A. 1915F, 516; So. Exp. Co. v. Fitzner, 59 Miss. 581, 42 Am. Rep. 379; 10 Cyc. 1216, b.

It may be noted in passing that corporate liability for "oral" defamation must **[535]** be grounded upon either the express authority of the servant who utters it, or upon corporate ratification thereafter. Singer Mfg. Co. v. Taylor, 150 Ala. 574, 43 So. 210, 9 L. R. A. (N. S.) 929, 124 Am. St. Rep. 90; 10 Cyc. 1216, 5.

There is nothing in the testimony which tends in any way to show that West was authorized by defendant company to write this offensive language over plaintiff's name on the board.

Nor is there anything in the evidence that has the slightest tendency to show that defendant company ever approved or ratified the act. It appears that the writing remained on the board for a day or two at most; and, even if the inference could be drawn that defendant company had notice or knowledge of its brief presence there, there was nothing to betray

its authorship, and nothing to indicate that a servant of the company was professing to act in its behalf or assuming authority to do so.
Had the company been advised of the writing, and that it was done by its servant in its behalf, its failure to repudiate the act with reasonable promptness would no doubt have amounted to approval and ratification. Penn. Iron Works Co. v. Vogt Mach. Co., 139 Ky. 497, 96 S.W. 551, 8 L. R. A. (N. S.) 1023, 139 Am. St. Rep. 504.
But without such knowledge of authorship and purpose, a mere failure to disclaim responsibility on the part of the company cannot generate or support the inference of corporate approval or ratification.

So far as the third basis of liability is concerned, there is nothing in the evidence to even suggest that West, as assistant superintendent or in any other capacity, was authorized to do any act in the conduct of defendant's business to which this defamatory publication was a reasonable incident; nor does it appear from the circumstances of the act itself that West was assuming to act for the company or in the accomplishment of its business ends. Indeed, so far as appears, his act was spontaneous and independent--a mere vagrant impulse, whether of sport or malice--and a distinct departure from the company's authorized practice of publishing the names of absentee miners under an appropriate and lawful caption.

For the reasons stated, we hold that the general affirmative charge should have been given for defendant as requested, and its refusal was prejudicial error.

Webster's New International Dictionary (1919) defines the word "slacker" as follows:

"One who avoids or neglects a duty or responsibility; specifically, a person who shirks a duty or obligation to his country, especially in time of war, as by attempting to evade military service."

The word is not found in prewar lexicons, but had its genesis as to use and meaning in the conditions following our entrance into the World War, and in the exigencies of its successful prosecution. During the war it was unquestionably a term of the severest reproach, well understood by all men, and calculated to subject its bearer to hatred and contempt in practically every community in the land.
To falsely publish such an accusation of any person was manifestly libelous per se, and imported injury without special averment or proof. Whether or not this would be so in time of peace we need not determine.
The defamatory language being of certain import and on its face applicable to plaintiff, no colloquium, or setting, was necessary in the complaint; and, being capable of each of the meanings suggested by the innuendoes, those meanings, vel non, were questions for the jury to determine. Penry v. Dozier, 161 Ala. 292, 49 So. 909. With respect to the questions of pleading raised by demurrer to the complaint, the innuendoes, whether warranted or not, could be treated as surplusage, and did not render the complaint demurrable, since it charged a libel actionable per se. 161 Ala. 292, 301, 49 So. 909.

If there was error in overruling the demurrer to count 1, on the ground that it charged slander or libel in the alternative, the error was without prejudice to defendant, since there was no question of spoken defamation in the case as tried, and other substantially similar counts were free from that objection.

For the error noted, the judgment of the trial court will be reversed, and the cause remanded.

Reversed and remanded.
ANDERSON, C. J., and McCLELLAN and THOMAS, JJ., concur.