Truth As a Complete Defence in an Action for Libel

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In the First Amendment to the Federal Constitution we find authority for the proposition that "Congress shall make no law abridging the freedom of speech, or of the press." Whereby the populace is guaranteed freedom of speech and of the press by their own Constitution. But, at the same time, it must not be forgotten that the above restriction is merely placed upon the Federal Government and not the individual governments of the separate states. The states, however, have similar provisions in their individual constitutions placing a like restriction upon their legislative function of government.

Now it cannot be denied that we have the 'privilege' to speak or print as we desire. But before proceeding we must qualify the precedent statement in that we have only that freedom of speech that permits the truth to be uttered—matter that would not be injurious to another person or persons, that which would not be likely to cause disorder, riot, or insurrection, or that which might give scandal. As to scandal, that only can be prohibited by a moral obligation in that we should not seek to humiliate, mortify, or bring disgrace to our fellow-citizens. And today few newspapers give little thought to the scandalous news they print being in such haste to satisfy the desires of an anxious "scandal-monging" public. This, however, we are not directly interested in at the present writing.

Particularly interesting at this period when our country is so rapidly making history, taking time neither to look to the right nor to the left, is the question of libel. Little can we foresee in that which we might utter today might be the basis for an action of libel tomorrow. At the present time there have been noticeably few libel cases as in comparison with the number of similar actions appearing on the dockets a half a century or so arear. Business today is being carried on with greater rapidity, reliability, and accuracy and reaching magnitudes that never were conceived by the greatest of economic historians. But no matter how good
we may be, we will always have evil among us. So also, there will always be a certain degree of inaccuracy, unreliableness, and untruths to combat.

People are in a hurry to work and in the same hurry to return to their homes after their days work has been completed. Perchance they will pick up a newspaper, glanced through its contents, perhaps reading the headlines, giving little attention to the true meaning which the articles have to convey. Perhaps the articles may be very detrimental and damaging to one who has arisen to great heights, both locally and nationally. But to mean anything to the average reader, the article must be outstanding, probably must appear in bold type; it would have to be of singular importance in order to attract and hold their attention. And if one item in particular had sufficient qualities, what-so-ever they might be, to hold this reading public interest; would it, to any intelligible degree, discount the report—would it put unwarranted faith in the same, or would it cast the paper to one side and say "bunk"?

It cannot be denied that some would make such a statement, but there are many others that would take the contents of the said article into thorough consideration, give it much thought which might possibly cause the public not only to lose their absolute faith in the person concerning whom the statement was printed, but to evidently deprive the person of his position. It is against this latter class of citizens that the law protects the aggrieved and gives them a redress.

But a month ago, on occasion of debating the distinguished Jones Bill before its passage by the United States Congress, the Honorable James Reed, in a very eloquent deliverance against the passing of such deteriorating law, threatened to name a list of the Congressmen who were temperate and in the same breath not. No doubt if such a list ever had been delivered, it would have been the leading scope of news to appear in publication that day. And how many actions of libel would the Ex-senator Reed have had to answer after the publication. In his exposure, Ex-senator Reed would have accused many nationally prominent men of having committed felonies or misdemeanors, leaving himself open to an indictment for criminal libel, if his statement were not true. But there can be no doubt that Mr. Reed would utter
none other than the truth, and as we shall later see in this paper, the truth of the defamatory charge is a complete defense in an action of libel. Also, it must not be forgotten that the truth is not always so easily proved.

At about the same time that Mr. Reed made his disturbing threat, a busy reporter hurried about the Indiana Legislature while it was in session and brought forth the “scope of news” that an ample majority of the representatives, there making up the assembly, voted dry and drank wet. But this inquiring reporter was very careful so as not to name the personages individually, who were so implicated. And we have not heard the last of these reports as we are sooner or later to see brought forth from a “little black box” a similar list which will reach publication. And it shall be particularly interesting to note what if any libel actions that might result from such a “defamation”, if we might so term it.

Probably the most interesting of libel actions to appear of late in the Indiana courts is the case of George Dale, publisher of a daily newspaper in Muncie, Indiana. In 1925 Dale published in his paper, an article supposingly accusing one Warner of having escaped prosecution because of his alleged connection with the Ku Klux Klan. This was during the height of the Klan regime in Indiana during which time a criminal action of libel, resultant of the publication, was brought against the Muncie publisher. He was tried and convicted under undeniable circumstances of prejudice. This case, however, was just recently reversed by the Supreme Court of Indiana, the prejudice of Judge Dearth and the community at large being assigned as one of the principal errors.

The question might be asked, just what is criminal libel. Black, in his Law Dictionary, 2nd edition, sets out a very complete definition. “A libel is a malicious defamation, expressed either by writing, printing, or by signs or pictures, or the like, tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue, or reputation, or publish the natural or alleged defects, of one who is alive, and thereby to expose him to public hatred, contempt, or ridicule. (Cases there cited.) As for the definition of criminal libel see Burns Annotated Statutes Revised 1926, section 2437 wherein one is declared guilty of
With what we are primarily concerned in this paper, is the truth of the statement or publication as being a complete defense in an action for libel. Originally, at common law, the truth of the defamatory matter was held not to be a complete defense in an action for libel, the theory being that the greater the truth, the greater the liability. But such rule, at first blush, appears to have no basis for its foundation. The most probable reasoning being that merely because the matter was true, it should not be made public so as to deprive someone of his good character and reputation. In 2 A. L. P. 207 it is stated that the operation of the general law is quite harsh in cases where the plaintiff has reformed and for several years lead a law abiding and useful life.

On the other hand, in 36 C. J. 1231, it is stated that "at common law and, oftentimes, by force of constitutional or statutory provisions,—the truth of a charge is a defense to a civil action for defamation." This statement follows the law as enacted in Indiana. Section 62, Burns Annotated Statutes revised, 1926, states, "In all prosecutions for libel, the truth of the matter alleged to be libelous may be given in justification." And section 397 further mentions that "the defendant may allege the truth of the matter charged as defamatory and mitigating circumstances to reduce the damages——etc." From the above mentioned Statutes of the Indiana Code it is shown that the truth of the defamatory matter charged to be libelous may be set up as a defense in all prosecutions for libel, including both criminal and civil. Indiana not only has stated her position on this point by the enactments of statutes but there are to be found two exceptional opinions handed down by the Supreme Court.

The most distinguished case on record is that of Heilman v. Shanklin et al, 60 Ind. 424. Prominent was this case, as it arose during the Congressional election of 1878 when the plaintiff, Heilman, was a candidate for Representative to the United States Congress. The defendants in the case were owners and publishers of the Evansville Daily Courier, in which newspaper they caused to be published an article which accused the plaintiff of running on a platform of beer and bribery. Heilman brought an action of libel for damages stating the defendants had accused
him of having committed a felony. If the statements published were true, there could be no doubt that the plaintiff was guilty of having committed the crime with which he had been charged. Wherefore the defendants pleaded in forty-two separate paragraphs the truth of their accusation naming divers persons and places where the plaintiff had bought beer and given money to induce the participants and recipients thereof to vote for him. Justice Hawk, in his able opinion, cited section 87 of the practice act which was in identical wording to section 397 of Burns Annotated Statutes, Revised 1926 (supra). Said Justice Hawk, that "in Folkard's Starkie on Slander and Libel, section 692, it is said, that "The defendant is, prima facie, justified in law, and exempt from all civil responsibility, if that which he publishes be true." In the same section it is further said: "When a plaintiff is really guilty of the offence computed, he does not offer himself to the courts as a blameless party seeking a remedy for a malicious mischief; his original misbehavior taints the whole transaction with which it is connected, and precludes him from recovering that compensation to which an innocent person would be entitled." In this quotation will be found the reason for the rule of law, that the truth of the charge alleged to be libellous may be pleaded as an absolute bar to an action for the recovery of damages therefor.

"In Townshend on Slander and Libel, section 212, page 362, it is said: 'The justification must always be as broad as the charge, and of the very charge attempted to be justified. A justification on the ground of truth need not go further than the charge, and it is sufficient to justify so much of the defamatory matter as is actionable, or so much as constitutes the sting of the charge; it is unnecessary to justify every word of the alleged defamatory matter; it is sufficient if the substance of the libellous charge be justified'." Thusly the Indiana Supreme Court summarizes the law in civil actions for libel when the defense is the truth of the defamatory matter alleged as libellous.

In conformity with the above quoted law is the great weight of authority. To refer once again to 36 C. J. 1231, we find that 'In the absence of statutory or constitutional provisions to the contrary, the general rule is that in all civil actions of libel, the defendant is justified in law and exempt from all civil respon-

As to the truth being a complete defense to a charge of libel in a criminal prosecution, the same rule is applied as in civil actions for damages. See *Heilman v. Shanklin (supra)*. In *State v. Bush et al*, 122 Ind. 43, 23 N. E. 677, a criminal prosecution was brought by the state of Indiana against Bush et al, editors of a newspaper in which the alleged libellous publication was made. The court in its brief and concise decision stated that "If the words published, were, in fact, true, whether published in good faith or not, the appellees were not guilty of the crime charged." *Mosier v. State*, 119 Ind. 244. Indiana not only declares emphatically that the truth of the defamatory matter charged to be libellous is a complete defense, but that it matters not with what motive the publication be made, whether it be good or bad, the requisite being that the defamatory statement be true. In accord with Indiana see *Sullings v. Shakespeare*, 46 Mich. 408, 41 Am. Rep. 166, 9 N. W. 451; also, 2 A. L. P. 207.

Only with the rule of law as above quoted would an individual have the courage to publish any defamatory matter, no matter how true the publication might be. This is especially true today as there are many incidents that the public should be informed of. Daily the public is placing more confidence in a smaller group and intrusting this group with duties which formerly they, themselves, performed. Because of this confidence being placed within a few individuals, no matter how libellous the

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1 For an extended note and citations following the general rule that the truth of the defamatory matter is a complete defense in a civil action for libel, see 31 L. R. A. (N. S.) 132. Also, 36 C. J. 1231, section 198; Waters-Poer Co. v. Bridwell, 165 S. W. 126, 107 Ark. 310; La Monte v. Shinn, 160 N. W. 864, 169 Iowa 531; *Kirkpatrick v. Journal Publishing Co.*, 195 Pac. 666, 185 Calif. 20; *McIntosh v. Williams*, 128 S. E. 872, 160 Ga. 461; *Phillips v. Pullitzer Publishing Co.*, 238 S. W. 127 (Mo.); *Grand Union Tea Co. v. Lord*, 231 Fed. 300. There is a minority view which state that the truth is not a complete defense unless the defamatory matter constituting the libel be published in good faith with a good motive.
defamatory publication may be, if it be true, and for the enlight-
ment of the "settlers" as to the performance of their "trustees" it
should be published and set before them in order to prevent a
reoccurrence of the same act. And exposure can be assured only
when the utterer has certain proof of exemption from liability in
an action of libel. And at the same time it must not be forgotten
that only the truth should be uttered.