

Peck Vs. Tribune Co.

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Court : US Supreme Court

Decided On : May-17-1909

Appeal No. : 214 U.S. 185

Appellant : Peck

Respondent : Tribune Co.

Judgement :

Peck v. Tribune Co. - 214 U.S. 185 (1909)

U.S. Supreme Court Peck v. Tribune Co., 214 U.S. 185 (1909)

Peck v. Tribune Company

No. 191

Argued April 29, 30, 1909

Decided May 17, 1909

214 U.S. 185

CERTIORARI TO THE CIRCUIT COURT

OF APPEAL FOR THE SEVENTH CIRCUIT

SYLLABUS

The publication of a portrait with a statement thereunder imports that the original of the portrait makes the statement even if another name be attached to the statement. *Wandt v. Hearst's Chicago American*, 129 Wis. 419; *Morrison v. Smith*, 177 N.Y. 366, approved on this point.

Publication of the portrait of one person with statements thereunder as of another, by mistake, and without knowledge of whom the portrait really is, is not an excuse. A libel is harmful on its face, and one publishing manifestly hurtful statements concerning an individual does so at his peril; and, if there is no justification other than that it was news or advertising, he is liable if the statements are false or are true only of some one else. See *Morasse v. Brochu*, 151 Mass. 567.

An unprivileged falsehood need not entail universal hatred to constitute a cause of action; to be libelous, a statement need not be that the person libelled has done or said something that everyone, or even a majority of persons in the community, may regard as discreditable; it is sufficient if the statement hurts the party alluded to in the estimation of an important and respectable part of the community.

A woman whose portrait is published in connection with an endorsement of a brand of whiskey may be seriously hurt in her standing with a considerable portion of her neighbors, and she is entitled to prove her case and go to the jury.

Quaere, and not decided whether the unauthorized publication of a person's likeness is a tort *per se*.

154 F. 330 reversed.

The facts are stated in the opinion.

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MR. JUSTICE HOLMES delivered the opinion of the Court.

This is an action on the case for a libel. The libel alleged is found in an advertisement printed in the defendant's newspaper, The Chicago Sunday Tribune, and, so far as is material, is as follows:

"Nurse and Patients Praise Duffy's -- Mrs. A. Schuman, One of Chicago's Most Capable and Experienced Nurses, Pays an Eloquent Tribute to the Great Invigorating, Life-Giving, and Curative Properties of Duffy's Pure Malt Whisky."

Then followed a portrait of the plaintiff, with the words, "Mrs. A. Schuman," under it. Then, in quotation marks,

"After years of constant use of your Pure Malt Whisky, both by myself and as given to patients in my capacity as nurse, I have no hesitation in recommending it as the very best tonic and stimulant for all local and run-down conditions,"

etc., etc., with the words, "Mrs. A. Schuman, 1576 Mozart St., Chicago, Ill.," at the end, not in quotation marks, but conveying the notion of a signature, or at least that the words were hers. The declaration alleged that the plaintiff was not Mrs. Schuman, was not a nurse, and was a total abstainer from whisky and all spirituous liquors. There was also a count for publishing the plaintiff's likeness without leave. The defendant pleaded not guilty. At the trial, subject to exceptions, the judge excluded the plaintiff's testimony in support of her allegations just stated, and directed a verdict for the defendant. His action was sustained by the circuit court of appeals, 154 F. 330.

Of course, the insertion of the plaintiff's picture in the place and with the concomitants that we have described imported that she was the nurse and made the statements set forth, as

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rightly was decided in *Wandt v. Hearst's Chicago American*, 129 Wis. 419, 421; *Morrison v. Smith*, 177 N.Y. 366. Therefore, the publication was of and concerning the plaintiff, notwithstanding the presence of another fact, the name of the real signer of the certificate, if that was Mrs. Schuman, that was inconsistent,

when all the facts were known, with the plaintiff's having signed or adopted it. Many might recognize the plaintiff's face without knowing her name, and those who did know it might be led to infer that she had sanctioned the publication under an alias. There was some suggestion that the defendant published the portrait by mistake, and without knowledge that it was the plaintiff's portrait, or was not what it purported to be. But the fact, if it was one, was no excuse. If the publication was libelous, the defendant took the risk. As was said of such matters by Lord Mansfield, "Whenever a man publishes, he publishes at his peril." *The King v. Woodfall*, Lofft, 776, 781. See further *Hearne v. Stowell*, 12 Ad. & El. 719, 726; *Shepherd v. Whitaker*, L.R. 10 C.P. 502; *Clarke v. North American Co.*, 203 Pa. 346. The reason is plain. A libel is harmful on its face. If a man sees fit to publish manifestly hurtful statements concerning an individual without other justification than exists for an advertisement or a piece of news, the usual principles of tort will make him liable if the statements are false, or are true only of someone else. See *Morasse v. Brochu*, 151 Mass. 567, 575.

The question, then, is whether the publication was a libel. It was held by the circuit court of appeals not to be, or at most, to entitle the plaintiff only to nominal damages, no special damage being alleged. It was pointed out that there was no general consensus of opinion that to drink whisky is wrong, or that to be a nurse is discreditable. It might have been added that very possibly giving a certificate and the use of one's portrait in aid of an advertisement would be regarded with irony, or a stronger feeling, only by a few. But it appears to us that such inquiries are beside the point. It may

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be that the action for libel is of little use, but, while it is maintained, it should be governed by the general principles of tort. If the advertisement obviously would hurt the plaintiff in the estimation of an important and respectable part of the community, liability is not a question of a majority vote.

We know of no decision in which this matter is discussed upon principle. But obviously an unprivileged falsehood need not entail universal hatred to constitute a

cause of action. No falsehood is thought about or even known by all the world. No conduct is hated by all. That it will be known by a large number, and will lead an appreciable fraction of that number to regard the plaintiff with contempt, is enough to do her practical harm. Thus, if a doctor were represented as advertising, the fact that it would affect his standing with other of his profession might make the representation actionable, although advertising is not reputed dishonest, and even seems to be regarded by many with pride. *See Martin v. The Picayune*, 115 La. 979. It seems to us impossible to say that the obvious tendency of what is imputed to the plaintiff by this advertisement is not seriously to hurt her standing with a considerable and respectable class in the community. Therefore it was the plaintiff's right to prove her case and go to the jury, and the defendant would have got all that it could ask if it had been permitted to persuade them, if it could, to take a contrary view. *Culmer v. Canby*, 101 Fed.195, 197; *Twombly v. Monroe*, 136 Mass. 464, 469. *See Gates v. New York Recorder Co.*, 155 N.Y. 228.

It is unnecessary to consider the question whether the publication of the plaintiff's likeness was a tort *per se*. It is enough for the present case that the law should at least be prompt to recognize the injuries that may arise from an unauthorized use in connection with other facts, even if more subtlety is needed to state the wrong than is needed here. In this instance, we feel no doubt.

Judgment reversed.

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