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Insanity and the Law

D.J. McCarthy

LeRoy M. A. Meader

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Berry, Judge. Action to recover for money had and received, for goods sold and delivered, and for storage charges for grain stored. From a judgment for the defendants, plaintiff appeals.

MODIFIED and remanded with directions to enter judgment for the plaintiff on two of the several causes of action set out in the complaint.

Opinion of the Court by Nuessle, J.

S. E. Ellsworth, Plaintiff and Respondent, vs. Martindale-Rubbell Law Directory, Inc., a corporation, Defendant and Appellant.

SYLLABUS: 1. In an action for libel the defamatory publication must be set out in the complaint. It is not sufficient to allege such publication in substance and effect. Held, for reasons set out in the opinion that the complaint sufficiently alleges a defamatory publication.

2. In determining whether a publication is libelous per se, it must be stripped of all innuendo, colloquium and explanatory circumstances.

3. A defamatory publication is libelous per se when without the aid of innuendo it must be presumed to expose the plaintiff to hatred, contempt, ridicule or obloquy, or cause him to be shunned or avoided, or have a tendency to injure him in his occupation.

4. General damages do not result, as a matter of course, from the publication of defamatory matter that is not libelous per se, and in an action for libel based thereon the complaint is demurrable if it does not allege special damages.

5. A publication that is not libelous per se cannot be assumed to be understood in a defamatory sense by the readers thereof. A complaint alleging such publication fails to state a cause of action unless a defamatory understanding is also alleged.

APPEAL from the District Court of Stutsman County, Hon. H. L. Berry, Sp. J.

REVERSED AND REMANDED. Opinion of the Court by Morris, J.

INSANITY AND THE LAW

The discussion in this article is confined to the meaning of the term insanity, as used in the criminal law—a disease or defect of mind which renders the individual incapable of entertaining a criminal intent.

The standards of conduct which have been set up by the criminal law are closely related to currently accepted social standards of morality. "These standards are more or less empirical." They are based upon that which common experience seems to teach us is fair to expect from the average man. He is presumed to be capable of living up to these empirical standards, and when he falls short of these requirements it is *prima facie* presumed that he has done so voluntarily and by intent, and he must expect to bear the consequences if he is apprehended and convicted. But if he can show that for some reason or other he did not

have the requisite intent, where intent is an element of the act, he may be excused. One of the grounds for such excuse is the fact of mental disease or defect of such character that he could not entertain the intent. The chief difficulty, however, is to establish criteria by means of which we may be able to judge, with reasonable certainty, whether or not he was suffering from such a mental disorder.

The "right and wrong" test, as laid down in the famous M'Naghten case, which makes lack of ability to distinguish right and wrong the test of insanity, is not a satisfactory test. Such ability is not even an important factor in deciding a question of mental disease. Many persons regarded as sane by medical men have at best vague right and wrong concepts, and many persons who are clearly insane have keen perception of right and wrong.

The delusion test is unsound because it proceeds upon the basis that the delusion is separated from the rest of the mental faculties; whereas in fact it colors the whole of the mental processes, judgments, and conceptions of right and wrong. This "test is not practical, just or certain."

"The law unaided, or aided as it is by the opinion of experts in courts bound and limited by the rules of evidence, is not competent to decide matters of insanity." It should seek the aid of the medical sciences, and it should try to keep its tests of insanity abreast with the developments in these sciences of human disease and behavior. Mere abnormality is not necessarily insanity or even evidence of insanity such as should be the basis of excuse for the violation of the criminal law.

The criteria of insanity should be those of medical insanity, and the determination of the question should not be left to a jury but should be dealt with by committing the person who pleads insanity to an institution at once. In such an institution he should be under the surveillance and observation of a commission of three experts, experienced in mental medicine, with the task before them of determining the issue of his sanity. This commission should report fully to the court its findings as to insanity at the time of the commission of the crime and as to insanity at the time of the examination. The commission, of course, should be open to cross-examination, but it should not be required to give an iron-clad definition of insanity. Such a report would carry tremendous weight. It would be concrete and definite; it would carry a presumption of scientific and impartial observation and report; it would enable the physicians to act as friends of the court. The general result of such a procedure would be the rationalization of the inquest of insanity, and would conduce to findings which would be, to a high degree, in conformity with the truth.—D. J. McCarthy, M. D., University of Pennsylvania, LeRoy M. A. Meader, M. D., LL. B., Pennsylvania Mental Hygiene Committee.

CONFIRMING COMING OF HON. WILLIAM L. RANSON

President Hildreth announces that definite assurance has been received from Hon. William L. Ranson, President of the American Bar Association, that he will deliver an address at our annual meeting to be held at Fargo on August 10th and 11th.