

Stein v. Trager

232 N.Y.S. 2d 363 (Supreme Court, Erie County, 1962)

Judge Lawless:

Plaintiff was a research fellow of the University of Buffalo and defendant was a professor in the Department of Anthropology and Linguistics at that university and was teaching the plaintiff. The complaint charges the defendant with having referred to plaintiff as “psychopath”, “very destructive”, “anti-social”, “son-of-a-bitch”, “intellectually incompetent”, “immoral”, “liar”, “homosexual”, and “made up all the data for his Master’s thesis”.

It is fundamental that in a complaint based upon slander there must be an allegation of special damage, or the words spoken must be slanderous per se. To be held slanderous per se, the words must charge a person with a punishable crime, or, they must tend to injure a person in his trade, occupation or profession.

In the complaint before this court, the only word spoken which might remotely constitute a punishable crime is the allegation that the plaintiff is a “homosexual”. However, an examination of the New York Criminal Code and Penal Law fails to disclose any specific crime embraced in the phrase “homosexual”. [The “Crimes Against Nature” section of the state Penal Law] relates to specific acts not necessarily embraced in the phrase “homosexual”. We conclude, therefore, that the use of this phrase does not constitute words which charge a punishable crime and that this word is not slanderous per se.

The other group of words that have been held to be slanderous per se, are those which tend to injure a person in his trade, occupation, or profession. The words must be spoken in relation to the profession or trade. Disparagement of a professional man will ipso facto be actionable per se.

In the complaint before us, there is no allegation that the plaintiff was pursuing a trade, business or profession at the time of the alleged slander. The claim is that he was a graduate student seeking to continue graduate study. The complaint before us is deficient because it fails to allege that the plaintiff was engaged in a trade, business or profession, and it fails further, for the reason that it does not allege that the words damaged plaintiff in his trade, business or profession.

Points for Discussion

1. If libel plaintiffs are treated differently depending upon whether they are “pursuing a trade, business or profession,” would this suggest that the law of defamation has a class-ist flavor to it, that poor people are less protected than more successful ones?
 2. The court’s treatment of the “libel per se” issue rests on a posited distinction between being homosexual, which cannot be illegal, and performing specified homosexual acts, which, at least at the time, were illegal in New York. Can the same status vs. conduct distinction apply to allegations of other kinds of criminal behavior? Is a “drug addict” someone who uses illicit drugs, or who only wants to use them?
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