

December 2019

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### Recommended Citation

John F. Lynch, *Truthful Libel and Right of Privacy in Wyoming*, 11 Wyo. L.J. 184 (1957)  
Available at: <https://scholarship.law.uwyo.edu/wlj/vol11/iss3/7>

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ity can give assistance regardless of whether there is a direct benefit to all the inhabitants of the city or not. Once it has been established that an expenditure is for a public purpose, then it is only subject to legislative discretion and its reasonable exercise.

AL KAUFMAN

### TRUTHFUL LIBEL AND RIGHT OF PRIVACY IN WYOMING

When a plaintiff has been exposed to ridicule and contempt because of a defendant spitefully publishing a true defamatory statement about the plaintiff, the courts have generally tried to give him relief. In a libel action the answer would undoubtedly raise the defense of justification with an allegation that the defamatory publication or statement was true. Under the common law, evidence of the truth of a defamatory statement was excluded in a prosecution for a criminal libel.<sup>1</sup> The maxim "the greater the truth, the greater the libel" is usually attributed to Lord Mansfield.<sup>2</sup> There is much disagreement about whether the maxim ever applied to civil actions, however, under the common law the truth was probably a complete defense to a civil action for libel.<sup>3</sup>

Regardless of what the rule was under the common law, the truth is now a complete defense to a civil action for libel in the great majority of the states.<sup>4</sup> A few states have put limitations on the rule by a constitutional or statutory provision or by court rule. Wyoming's Constitution provides that in a civil trial for libel, the truth, when published with good intent and for justifiable ends, shall be a sufficient defense.<sup>5</sup> Three states require the truth with good motives<sup>6</sup> and four states require in addition to good motives that the publication be for justifiable ends for a defense to a civil action for libel.<sup>7</sup> One state requires that there be a freedom from actual

1. Ray, *Truth: A Defense to Libel*, 16 Minn. L. Rev. 43, 44 (1931).

8. "Dost not know that old Mansfield,

Who writes like the Bible,

Says the more 'tis a truth, sir,

The more 'tis a libel?"

—Burns, "The Reproof."

3. *Johns v. Gittings*, Cro.Eliz. 239 (1590); Prosser states that "The criminal law rule seems never to have been applied in civil actions." Prosser, *Torts* p. 630 (1955); Holdsworth, *Defamation in the Sixteenth and Seventeenth Centuries*, 41 L.Q. Rev. 13, 28 (1925).

4. Prosser, *Torts*, p. 630 (1955); Harnett and Thornton, *The Truth Hurts: A Critique of a Defense to Defamation*, 35 Va. L. Rev. 425, 429 (1949).

5. Wyo. Const., Art. 1, § 20. Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right; and in all trials for libel, both civil and criminal, the truth, when published with good intent and (for) justifiable ends, shall be a sufficient defense, the jury having the right to determine the facts and the law, under direction of the court.

6. Florida: Decl. of Rights, § 13; *Briggs v. Brown*, 55 Fla. 417, 46 So. 325 (1905); Rhode Island: Const., Art. 1, § 20; Maine: Maine Rev. Stat., § 113-47 (1954); *Stanley v. Prince*, 118 Me. 360, 108 Atl. 328 (1919).

7. Illinois: Const., Art. 2, § 4; *Oregon v. Rockford Star Printing Co.*, 288 Ill. 405, 123 N.E. 587 (1919); Nebraska: Const., Art. 1, § 5; *Wertz v. Sprecher*, 82 Neb. 834, 118 N.W. 1071 (1908); West Virginia: Const., Art. 3, § 8; *Barger v. Hood*, 87 W.Va. 78, 104 S.E. 280 (1920); Wyoming: Const., Art. 1, § 20.

malice,<sup>8</sup> another that the truth be published for public information and with no malicious or mischievous motives<sup>9</sup> and still another for public information and that the publication is not maliciously made.<sup>10</sup> One jurisdiction requires that the publication be true, in good faith, on a proper occasion and for a justifiable purpose without a constitutional or statutory provision to that effect.<sup>11</sup>

At the time the Wyoming Constitution was passed in 1890, a statute had already been adopted clarifying the common law.<sup>12</sup> The effect of this statute is to make the truth a complete defense to a civil action for libel or slander. The result of these two provisions in Wyoming civil actions is that the truth is a complete defense in an action for slander and in an action for libel it is a complete defense if published with good intent and for justifiable ends, with the possibility that the truth alone may constitute a complete defense.

The constitutional provision was enacted in Wyoming and other states to secure and safeguard freedom of the press.<sup>13</sup> This is evidenced by the words, "Every person may freely speak, write and publish on all subjects. . . ."<sup>14</sup> It seems possible to reason that the statute making the truth alone a sufficient defense does not violate the constitution since it enlarges freedom of the press. The framers of the constitution could have intended that no one should ever be liable under present or future law for the truth when published with good intent and for justifiable ends. By this reasoning, the constitution would represent a point beyond which the legislature might not act. It may not enact a law declaring that the truth is not a defense, or that the truth when published with good intent and for justifiable ends is not a defense. It is arguable that the constitution draws an insulating line which the legislature may not pierce, but that does not prevent the legislature from acting below that line and declaring the truth a complete defense. There is very little authority to support this view.<sup>15</sup>

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8. Massachusetts: Mass. Gen. Laws, § 231-92 (1932); see *Conner v. Standard Publishing Co.*, 183 Mass. 474, 67 N.E. 596 (1903).
  9. Delaware: Del. Rev. Code, § 4693 (1935); *Delaware F. & M. Ins. Co. v. Croasdale*, 6 *Houst.* 181 (1880).
  10. Pennsylvania: Pa. Purdon's Stat., tit. 12, § 1582 (1936); *Burkhart v. North American Co.*, 214 Pa. 39, 63 *Atl.* 410 (1906).
  11. New Hampshire: *Hutchins v. Page*, 75 *N.H.* 215, 72 *Atl.* 689, 31 *L.R.A. (N.S.)* 132 (1909).
  12. Wyo. Comp. Stat., § 3-1416 (1945). In the actions mentioned in the last preceding sections (libel and slander), the defendant may allege and prove the truth of the matter charged as defamatory; and in all cases he may prove any mitigating circumstances to reduce the amount of damages.
  13. Ray, *Truth: A Defense to Libel*, 16 *Minn. L. Rev.* 43, 47 (1931).
  14. Wyo. Const., Art. 1, § 20.
  15. *Tilton v. Maley*, 186 *Ill.App.* 307 (1914); *Larson v. Cox*, 68 *Neb.* 44, 93 *N.W.* 1011, 1012 (1903), in which the court states in a dictum: ". . . there is much reason to suppose that the constitutional provision upon which the plaintiff relies was designed as a pure and permanent protection, both in civil and criminal actions, to persons who have occasion, in the discharge of some legal, social, or moral duty, to write and publish criticisms on the character and conduct of others, and that it was not any part of its purpose to take away from the defendant in a libel case any right given him either by statutory law or the common law."

West Virginia, Illinois and Nebraska, with constitutional provisions similar to Wyoming's except for the substitution of the word "motives" where Wyoming uses "intent" in the phrase "when published with good intent and (for) justifiable ends,"<sup>16</sup> have not followed this view. Six years after the Constitution of West Virginia was ratified, the Supreme Court of Appeals held that truth alone was not a defense to a civil libel action but must be accompanied with good motives and be for justifiable ends,<sup>17</sup> and this interpretation was later affirmed.<sup>18</sup>

In interpreting the Constitution of Illinois the Supreme Court of that state held that if a defendant attempted to justify on the ground of truth in a civil action for libel, he must further allege and prove that he published the defamatory matter with good motives and for justifiable ends.<sup>19</sup>

The cases arising in Nebraska have particular significance since Nebraska has a statute similar to Wyoming's, declaring that the truth is a complete defense.<sup>20</sup> As early as 1894 the Supreme Court of Nebraska, although not directly faced with the problem, remarked that the truth was not a complete defense in an action for libel unless it was published with good motives and for justifiable ends.<sup>21</sup> The case was later cited as authority for the proposition that it was necessary for a defendant to go further and show that the truth was published with good motives and for justifiable ends.<sup>22</sup> Some doubt was thrown upon this interpretation five years later,<sup>23</sup> but it was finally settled in 1908 that the truth alone was not a complete defense to an action for libel, but it must be alleged and proven that the defamatory matter was published with good motives and for justifiable ends.<sup>24</sup>

The Wyoming Supreme Court has never mentioned the statute declaring the truth alone to be a defense and the only time that it has been faced with the problem of the truth as a defense to a civil action for libel was in *Spriggs v. The Cheyenne Newspapers*.<sup>25</sup> This was a case in which the defendant was sued for publishing two dispatches in its newspaper concerning a disbarment proceeding filed by the state board of bar examiners against the plaintiff. The district court instructed the jury that the truth of the published articles was uncontradicted and that they were to determine whether they were published with good intent and for justifiable

16. *Supra* note 7.

17. *Sweeney v. Baker*, 13 W.Va. 158 (1878). At page 205 the court states, "The truth is a bar . . . provided the publication was made with good motives and justifiable ends, and not otherwise."

18. *Bargon v. Hood*, 87 W.Va. 78, 104 S.E. 280 (1920).

19. *Oregon v. Rockford Star Printing Co.*, 288 Ill. 405, 123 N.E. 587 (1919).

20. Neb. Rev. Stat., § 25-840 (1943). In the actions mentioned in § 25-839 (libel or slander), the defendant may allege the truth of the matter as defamatory, and may prove the same and any mitigating circumstances to reduce the amount of damages, or he may prove either.

21. *Pokrok Zakadu Pub. Co. v. Ziskovsky*, 42 Neb. 64, 60 N.W. 358 (1894).

22. *Neilson v. Jensen*, 56 Neb. 430, 76 N.W. 866 (1898).

23. *Larson v. Cox*, *supra* note 15.

24. *Wertz v. Sprecher*, 82 Neb. 834, 118 N.W. 1071 (1908).

25. 63 Wyo. 416, 182 P.2d 801 (1947).

ends. In affirming a judgment for the defendant the supreme court approved the instructions to the jury and held that in defending a civil action for libel the defendant must prove that the publication was true and that it was published with good intent and for justifiable ends. If the supreme court had recognized the statute making the truth a complete defense as applicable, it could have affirmed the judgment on the basis of the uncontradicted truth of the dispatches, and held that the instruction pertaining to the good intent and justifiable ends was not, although incorrect, reversible error since it was not prejudicial but helpful to the plaintiff's case.

On the basis of these interpretations given similar constitutional provisions by other states, and on the basis of the interpretation given in the *Spriggs* case, Wyoming would probably hold that the plaintiff had stated a claim for relief in an action for libel based on the defendant's spiteful publication of the true statement.

The plaintiff may also bring a claim for relief in an action for right of privacy. This action is a relatively new tort and many writers contend that it was developed in order to evade the rule that the truth is a complete defense in a libel action.<sup>26</sup> The right is generally referred to as the "right to be let alone,"<sup>27</sup> and takes two distinct forms. The first is concerned with the use of some element of the plaintiff's person for commercial purposes.<sup>28</sup> The plaintiff's claim for relief based on the second form of the tort is concerned with the protection of a mental interest, and courts have found that true publications concerning a plaintiff are actionable if the publications violate ordinary decencies.<sup>29</sup>

Some courts base the action on a foundation of natural law and instincts of nature,<sup>30</sup> and others attempt to predicate recovery upon the constitutional guaranties of life, liberty, and the pursuit of happiness.<sup>31</sup> Although states with similar constitutional provisions have not attempted to do this, it would be possible to allow recovery by tying the right into the constitutional provision discussed in the *Spriggs* case. In an action for civil libel involving this problem, Judge Ragan of the Supreme Court of Nebraska stated:

"The framers of the constitution may have been of the opinion that the peace, good order, and well being of the state would be best subserved if every citizen devoted a least a part of his time to attending to his own business, instead of constituting himself as an agent for bruiting abroad the shortcomings of his neighbor."<sup>32</sup>

26. Harnett and Thornton, *The Truth Hurts*, 35 Va. L. Rev. 425, 440 (1949); Ray, *Truth: A Defense to Libel*, 16 Minn. L. Rev. 43, 61 (1931); Case Notes, 37 Yale L.J. 835 (1928); Recent Cases, 41 Harv. L. Rev. 1070 (1928).

27. Cooley, *Torts*, p. 29 (1888).

28. *Roberson v. Rochester Folding Box Co.*, 171 N.Y. 538, 64 N.E. 442, 59 L.R.A. 478, 89 Am.St.Rep. 828 (1902).

29. *Melvin v. Reid*, 112 Cal.App. 285, 297 Pac. 91 (1931); *Barber v. Time, Inc.*, 348 Mo. 1199, 159 S.W.2d 291 (1942).

30. *Pavesich v. New England Life Ins. Co.*, 122 Ga. 190, 50 S.E. 68 (1905).

31. *Supra* note 29.

32. *Neilson v. Jensen*, 56 Neb. 430, 76 N.W. 866, 867 (1898).

Had the plaintiff in the *Spriggs* case based his claim on right of privacy, the court by using the test of whether the true publication violated ordinary decencies would undoubtedly have reached the same conclusion as by using the test of whether the true publication was published with good intent and for justifiable ends. By applying the test in the *Spriggs* case to the right of privacy cases involving true publications violating ordinary decencies, the same results would be reached. The true publication that a plaintiff has not paid his debts is actionable in right of privacy,<sup>33</sup> and would probably be so under the constitutional provision as not being published with good intent and for justifiable ends. On the other hand, newsworthiness has been held to destroy one's right of privacy as being a matter of legitimate public interest and concern,<sup>34</sup> and this is almost the situation presented by the *Spriggs* case in which relief in an action for civil libel was denied.

The practical effect is that Wyoming's Constitution affords a plaintiff the same relief in a civil libel action as other states afford in an action for right of privacy. Since this right was probably developed to evade the rule that the truth is a complete defense in a civil libel action, a Wyoming plaintiff need not resort to an action for right of privacy for this relief. In Wyoming the two actions are in effect identical as they reach the same result when their rules are applied to cases involving the publication of a true defamatory statement.

JOHN F. LYNCH

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### TAX LIABILITY OF A TRANSFEREE

From a tax viewpoint, the United States is interested in transfers of property because of the possibility of assessing the tax, originally due from the transferor, against the transferee. The problem has centered on the question of whether such a transferee status exists that the assessment of the tax might be upheld in courts. The purpose of this article is to explore the case law regarding transfers of property, both as to corporations and individuals, and to attempt to show when such a transfer is not taxable.

The Internal Revenue Code does not attempt to define a transferee. The pertinent section<sup>1</sup> merely states:

- (A) Transferees. . . . The liability, at law or in equity of a transferee of property. . . .
- (2) Other taxes, . . . The liability, at law or in equity of a transferee of property of any person liable of any tax imposed by this title. . . .

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33. *Brents v. Morgan*, 221 Ky. 765, 299 S.W. 967, 55 A.L.R. 964 (1927).

34. *Sidis v. F-R Pub. Corp.*, 113 F.2d 806 (2nd Cir. 1940).

1. I.R.C. § 6901 (a), (1), (2).