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THE LAW OF LIBEL IN COLORADO

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of the Denver Bar

Our Supreme Court has decided thirty-one libel and slander cases and the Court of Appeals nine. Many were reversed for new trials, so the sums finally awarded do not appear in the reports. These decisions, however, indicate that the amount of recovery was very small. In one case it was only one cent.[1]

I have never brought a libel case, but have defended many of them. I always tell a client when he wants to start such a suit, "If you are above criticism start the suit, otherwise forget it."

In Colorado, by its Constitution,[2] "the jury shall determine the law and the fact." So no matter what instructions the court may give, they can be entirely disregarded by the jury, which may pay no more attention to them than they do to many arguments of counsel.

Many years ago the newspapers were not very careful of what they said about people. The proprietor of one of them started a libel suit, but it ended very suddenly. In the 1890's, Tom Patterson, owner of the Rocky Mountain News, sued the Denver Republican, the other morning paper, for libel. Tom O'Donnell, a brilliant and forcible lawyer of the old school, was interrogating the jury, and asked one of them:

"You have no prejudice in this case, I presume?"

Answer: "None at all, Mr. O'Donnell. However, I think that a man who runs a newspaper should be able to take his own medicine."

Amid shouts of laughter, the case blew up.

The libel statute in Colorado is for criminal libel, but it has been construed to apply as well as civil libel.[3] This law reads as follows:[4]

> A libel is a malicious defamation expressed either by 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 defects of one who is alive, and thereby to expose him or her to public hatred, contempt or ridicule. Every person, whether writer or publisher, convicted of this offense, shall be fined in a sum not exceeding five hundred dollars or imprisoned in the penitentiary not exceeding one year. In all prosecutions for a libel the truth thereof may be given in evidence in justification, except libels tending to blacken the memory of the dead or expose the natural defects of the living.

It is a penal statute and must be construed strictly. There-

[1] Byers v. Martin, 2 Colo. 605.
[2] Art. II, Sec. 10.
[3] Republican Publishing Co. v. Mosman, 15 Colo. 399, 408.
[4] COLO. STAT. ANN., c. 48, § 199 (1935).

fore it is essential to bear in mind the following definitions in libel, italicized portions of all quotations being the author's:[5]

Impeach: "To bring an accusation against; to impute some fault or defect to; to bring or throw discredit on: to call in question; to challenge."

Honesty: "Quality or state of being honest; freedom from fraud."

Integrity: "Denotes uprightness or incorruptibility, moral soundness; freedom from corrupting influence or practice, especially strictness in the fulfillment of contracts, the discharge of agencies, trusts and the like; uprightness; rectitude."

Virtue: "Moral practice or action, conformity to the standard of right; moral excellence; integrity of character; uprightness of conduct; rectitude; morality."

Reputation: "The estimation in which one is held; the character imputed to a person in a community or public; especially good reputation; favorable regard; public esteem; general credit; good name."

Hatred: "Strong aversion or detestation coupled with ill-will."

Contempt: "The feeling with which one regards that which is esteemed mean, vile or worthless; disdain, scorn."

Ridicule: "To laugh at, mockingly or disparagingly. Remarks concerning a subject or a person, designed to excite laughter with a degree of contempt for the subject of the remarks."

Innuendo:

> The office of an innuendo in pleading is to explain the defendant's meaning in the language employed, *and also to show how it relates to the plaintiff, when that is not clear on its face.* * * * It is only where the words are not prima facie libelous that an innuendo is necessary.[6]
>
> Defamatory words actionable per se are those which on their face and without the aid of extrinsic proof are recognized as injurious; but if the injurious character of the words appears, not from their face in their usual and natural signification, but only in consequence of extrinsic facts, showing the circumstances under which they were said or the damage which resulted to the defamed party therefrom, they are not libelous per se, and in such cases * * * the words are said to require an innuendo.[7]

Colloquium:

> In actions for defamation, the rule is that it *must appear from the complaint* * * * *that the plaintiff is the person defamed.* Where the publication forming the subject matter of the action does not contain any direct reference to the plaintiff, the complaint must, in order to state a cause of action, contain appropriate allegations to show such application.
>
> These allegations, commonly known as the colloquium, appear to have consisted at common law of statements of facts.[8]

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[5] From *Webster's New International Dictionary* unless otherwise indicated.
[6] Republican Publishing Co. v. Miner, 2 Colo. App. 568, 574.
[7] 53 C.J.S. 42.
[8] 33 Am. Jur. 218.

The colloquium shows "the defamatory character of the language used when applied to the plaintiff."[9]

THE DISTINCTION BETWEEN LIBEL PER SE AND PER QUOD

> Defamatory words may be divided into those that are actionable per se, which on their face and without the aid of extrinsic proof are recognized as injurious, and those which are actionable per quod, *as to which the injurious character appears only in consequence of extrinsic facts.* [10]
>
> Words may be actionable in themselves or per se, or they may be actionable only *on allegation and proof of special damage or per quod.* The distinction is based on a rule of evidence. Words of both classes are actionable on the same grounds and for the same reasons. The noxious quality in both lies in the fact that they are the natural and proximate causes of pecuniary damage to those concerning whom they are maliciously uttered. The difference between them is in the matter of the resulting injury. In the case of words actionable per se their injurious character is a fact of common notoriety, established by the general consent of men, and the court consequently takes judicial notice of it. They necessarily import damage, and therefore in such cases general damages need not be pleaded or proved but are conclusively presumed to result, and special damage need not be shown to sustain the action. Moreover, malice is presumed as a matter of law in such cases. *Words actionable only per quod are those whose injurious effect must be established by due allegation and proof.*[11]
>
> Words may be actionable per se, that is in themselves, or they may be actionable per quod, that is, only on allegation and proof of special damage. * * * In his complaint he has attempted to allege innuendos which are unnecessary, if the words are libelous per se. Words which are libelous per se do not need an innuendo, and conversely, *words which need an innuendo are not libelous per se.*[12]

The very recent *Lininger* case, discussed *infra,* is to the same effect.[13]

THE COMPLAINT

Identification of Plaintiff

If the plaintiff is named in the offending printing and it comes within the statute, the libel is *per se.* All that is then necessary to state in the complaint are the names of the parties, the article, publication thereof, and the damages asked for. If exemplary damages are also sought, follow Rule 101.

Old code sections 74 and 75 on pleading and evidence in libel have been retained in the Rules. They appear in Appendix B of the Rules of Civil Procedure.[14] The section pertaining to the complaint reads as follows:

> Sec. 2. LIBEL AND SLANDER: HOW PLEADED. In an action for libel or slander, it shall not be necessary to state in the complaint any extrinsic facts, for the purpose of showing the application to the plaintiff, of the defamatory matter out of which the cause of

[9] 53 Am. Jur. 247, 248.
[10] 53 C.J.S. 41.
[11] 17 R.C.L., 264.
[12] Knapp v. Post Publishing Co., 111 Colo. 492.
[13] Lininger v. Knight, decided Jan. 15, 1951, 1950-51 CBA Advance Sheet 186 (No. 9 for Jan. 20).
[14] COLO. STAT. ANN. Vol. I, Rules of Civil Procedure. p. 403, §§ 2 and 3.

> action arose; but it shall be sufficient to state generally that the same was published or spoken concerning the plaintiff; and if such allegation be controverted, the plaintiff shall establish on the trial that it was so published or spoken.

This section was approved in an early Colorado case in which the plaintiffs were not mentioned in the published article.[15]

The latest Colorado libel case holds, however, that if the publication is not personally applicable to the plaintiff, and can only be identified by innuendo, it becomes libel *per quod.* This is the *Lininger case*[16] in which Charlotte Knight, doing business as Overbrook Knight Klub, brought a libel suit claiming Lininger had filed a petition with the Board of County Commissioners of Jefferson County to cancel the liquor license of the Klub, stating therein that the Klub "is a hide-out for people who want to drink and carry on in a manner objectionable to the established records of this community." The filed petition asked that the mountain area be kept clean and that the nuisance be cancelled. It was signed by thirteen people, and a copy was later published in two newspapers.

The complaint was only based on the petition filed with the county commissioners. Yet the district court, over objection, admitted evidence as to the newspaper publications. The Supreme Court reversed practically every ruling of the district court and on this point stated:

> It is doubtful whether or not plaintiff could maintain this action as set up in her complaint, for the reason that there is nothing in the petition as presented to the County Commissioners, or as published, that is personally applicable to the plaintiff. It is not ascertainable from the petition who is defamed, *and that could be ascertained only by innuendo.* By the petition here presented, if any individual could be said to have been defamed, it could easily have been applicable to some other person or persons besides the plaintiff.
>
> Under these prevailing facts, we find, as a matter of law, and so determine, that the trial court was in error in holding the petition as presented to be libelous per se. We see nothing in the petition that specifically points to plaintiff or would tend to expose her to public hatred or contempt. To *be libelous per se, the petition must contain defamatory words specifically directed at the person claiming injury, which words must, on their face and without the aid of instrinsic proof, be unmistakably recognized as injurious.*
>
> *The Entire Instrument Must Be Pleaded*
>
> The general weight of authority is that in an action for libel or slander the exact language of the defamatory publication must be set out in the complaint, and it is not sufficient to set out the publication in its substance and effect. * * * If a libel is contained in two or more successive letters, and no one of them is complete without the others, all letters must be set out. Likewise, the whole of a libelous article in a newspaper must be produced if the passages alleged to be libelous are not clear, or where the rest of the article would vary the meaning, though if the omitted parts would not vary the meaning, the omission is not fatal. * * * The reason for requiring

[15] Craig v. Pueblo Press Publishing Co., 5 C.A. 212.
[16] *Supra,* note 13.

> the pleader to set forth the alleged defamatory matter with such particularity is twofold. In the first place, whether there is any liability depends on what was said or on what the writing complained of contained and the language employed must be set forth so that the court may properly judge of its sufficiency to impose liability. In the second place, the alleged defamatory matter must be set out in *haec verba* in the complaint in order that the defendant may be advised as to the exact charges which he will be called on to meet * * *[17]

Each Libel Must Be Separately Pleaded

Moreover, each libel must be pleaded in a separate count. "No law is better suited than that each publication of a libel is a separate and independent claim, and that each must be pleaded as a separate cause of action."[18] If not so done, a motion to dismiss is in order.

Special Damages Must Be Pleaded In Libel Per Quod

Rule 9 (g) provides that "When items of special damage are claimed, they shall be specially stated".

Five Colorado cases discuss special damages. "* * * in cases where the words are not actionable per se, * * * special damages must be alleged and proved to warrant a recovery."[19]

In a later case, plaintiff had been in the insane asylum and was paroled.[20] Later a lunacy commission held him still insane. A newspaper published an article stating that he had been *sent back to the asylum.* The italicized portion was, in fact, false, and an action of libel was filed on the falsity of the statement. Special damages were not pleaded. A demurrer was sustained and the action dismissed. It was held that the statement was not libelous *per se* and that special damages must be alleged. The court cited 25 Cyc. 454, which is as follows:

> When words in themselves not actionable become so by reason of some special damage, occasioned by them, such special damage must be particularly averred in the declaration. *In such case it is necessary that the declaration should set forth precisely in what way the special damage resulted from the publication of the words.* It is not sufficient to allege generally that plaintiff has suffered special damage. The special damages thus alleged must be the natural and probable consequence of the publication.

A case in our Court of Appeals[21] cited with approval a U.S. Supreme Court case, *Pollard v. Lyon,*[22] which holds:

> Special damage is a term which denotes a claim for the natural and proximate consequence of a wrongful act; and it is undoubtedly true that the plaintiff in such a case may recover for defamatory words spoken of him or her by the defendant, even though the words are not in themselves actionable, if the declaration sets forth such a claim in due form, and the allegation is sustained by sufficient evidence; *but the claim must be specifically set forth, in order that the*

[17] 17 R.C.L. 390.
[18] Lininger v. Knight, *supra,* note 13.
[19] Republican Publishing Co. v. Moseman, 15 Colo. 399.
[20] Coulter v. Barnes, 71 Colo. 243.
[21] Bush v. McMann, 12 Colo. App. 504.
[22] 91 U. S. 225, 23 L. ed. 309, 314.

> *defendant may be duly notified of its nature*, and that the court may have the means to determine whether the alleged special damage is the natural and proximate consequence of the defamatory words alleged to have been spoken by the defendant. * * *
> Such an action is not maintainable, unless it be shown that the loss of some substantial or material advantage has resulted from the speaking of the words. * * *
> Where the words are not in themselves actionable, * * * special damage must be alleged and proved in order to maintain the action. * * *
> In such case, it is necessary that the declaration should set forth precisely in what way the special damage resulted from the speaking of the words. It is not sufficient to allege generally that the plaintiff has suffered special damages, or that the party has been put to great costs and expenses. * * *
> Doubt upon that subject cannot be entertained; but the special damage must be alleged in the declaration, and proved.

The Colorado case then stated, "A complaint for libel which alleges special damage as a consequence of words apparently harmless in themselves, which fails to explain by facts how the words produced the damage, is not a good complaint."[23]

The *Knapp* case, already cited,[24] settles the matter. "As the complaint contains no allegation of special damages, it is insufficient to state a cause of action on the words as libelous per quod."

Our Supreme Court reversed a judgment for plaintiff which included special damages for loss of use of his car, following a collision because this was not pleaded. The court held:[25]

> Such damage is special and without the averment of the facts from which it is to be inferred, the defendant had no reason to be prepared to meet it. * * * The defendant was entitled to notice and time for preparation, and that is the basis of the rule that special damages must be specifically pleaded. The rule is too well established to require citation of authorities to support it.

Malice, too, must be pleaded by the plaintiff if the libel is *per quod.*

Motions to Dismiss

If the libel is *per quod* and special damages are not pleaded, the complaint, under the Rules, is subject to dismissal for failure to state a claim (the old demurrer).

> The proper method of attacking a complaint which fails to allege special damages, where the alleged defamatory matter is not actionable per se, is a demurrer for failure to state a cause of action.[26]

Also, where the publication is privileged, the complaint may be attacked by motion to dismiss. "Where * * * it appears from the allegations of the complaint that the publication sued on is privileged, a demurrer is the proper method of raising the point."[27]

Radio Slander

Under a recent Colorado statute,[28] no damages can be recov-

[23] *Supra*, note 21.
[24] *Supra*, note 8.
[25] Hunter v. Quaintance, 69 Colo. 30.
[26] 37 C. J. 49.
[27] Morley v. Post, 84 Colo. 41, 48.
[28] COLO. LAWS, c. 257, p. 718 (1947).

ered against the owners or proprietors or employees of radio stations for a broadcast by a third party if the defendant alleges and proves that he exercised due care to prevent the publication or utterance of the broadcast. It also applies to radio statements by candidates or their supporters where by any Federal law or rule censorship of such statements in advance of publication is prohibited.

THE ANSWER

As has been indicated, former code section 75, covering the rules for the pleading and evidence of the libel defendant, has been retained in the new Rules, and appears in Appendix B thereof:[29]

> Sec. 3. . . . In an action for libel or slander the defendant may, in his answer, allege both the truth of the matter charged as defamatory and any mitigating circumstances to reduce the amount of damages, and whether he prove the justification or not, he may give in evidence the mitigating circumstances.

Complete Defenses

There are three complete defenses to a complaint of libel: privilege, the statute of limitations, and truth.

Privilege: Four Colorado cases clearly define privilege. "Publications made in the bona fide discharge of a public or private duty, legal or moral, are privileged."[30]

> It is the occasion of the communication, not the communication itself, that determines its character as to being privileged, either absolute or qualified. * * * In the interest of society at large and public policy, generally, it is good defense to an action for libel or slander, that the publication, or communication, is privileged, either absolute, or qualified. It is a right, or privilege on the one side, and a sacrifice on the other, that every citizen has or must make, for the benefit of the common welfare, and in the interests of organized society.[31]
>
> A communication made bona fide upon any subject matter, in which the party communicating has an interest, or in reference to which he has a duty, is privileged if made to a person having a corresponding interest or duty, although it contains incriminatory matter, which, without this privilege would be slanderous and actionable * * * [32]

The fourth Colorado citation is under qualified privilege, *infra*. The texts support the Colorado doctrine of privilege:

> There is no liability for the publication of a defamatory statement which is legally justified.[33]
>
> A privileged communication * * * is one which, except for the occasion on which or the circumstances under which it is made, would be defamatory and actionable.
>
> An absolutely privileged communication is one in respect of which, by reason of the occasion on which, or the matter in reference to which it is made, no remedy can be had in a civil action, however

[29] *Supra*, note 14.
[30] Republican Publishing Co. v. Conroy, 5 C. A. 262.
[31] Hoover v. Jordan, 27 Colo. App. 515.
[32] Melcher v. Beeler, 48 Colo. 233.
[33] 33 Am. Jur. 117.

> hard it may bear upon a person who claims to be injured thereby, and even though it may have been made maliciously.
>
> The class of absolutely privileged communications is narrow and is practically limited to legislative and judicial proceedings and other acts of state, *including communications made in the discharge of a duty under express authority of law*, by or to heads of executive departments of the state * * *. (This is) for the promotion of the public welfare.[34]

Colorado Statute of Limitations: "All actions for * * * slanderous words and for libels shall be commenced within one year, next after the cause of action shall accrue, and not afterwards."[35]

Truth: That the article or other alleged libel is true, of course, is a complete defense. The facts as to the truth do not have to be pleaded.[36]

Partial Defenses

There are five partial defenses to a charge of a libel: qualified privilege, fair comment, mitigation, interest and motive, and retraction to show lack of malice.

Qualified Privilege: The Labor Advocate, a trade union paper, published an article labeling union drivers who had gone to work for non-union employers as "traitors," "three of the most despicable characters known to organized labor", and said "that they had sold their manhood, if they ever possessed any, for a few dollars".

The court held this a qualified privileged communication, and the plaintiffs were non-suited for failure to prove malice:[37]

> Nor was the qualifiedly privileged character of the article lost by reason of the language used. True it is that bad taste was shown and less offensive words might have been chosen. * * *
>
> The test appears to be this. Take the facts as they *appeared to the defendant's mind at the time of publication*, are the terms used such as the defendant might have honestly and bona fide employed under the circumstances? If so the judge should stop the case. For if the defendant honestly believed the plaintiffs' conduct to be such as he described it, the mere fact that he used strong words in so describing it is no evidence of malice to go to the jury.

Fair Comment: That the matter commented on is in the public interest,[38] or that the plaintiff has a bad character, but the defendant does this at his peril. If he fails to prove the plaintiff's bad character, the damages probably will be greatly enhanced.

Mitigation: This is the belief of the defendant that the article was true. The circumstances of publication must be stated.[39]

Interest and Motive: That the defendant had no interest in attacking plaintiff, and did so only from public duty.

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[34] 33 Am. Jur. 123, 124.
[35] COLO. STAT. ANN., c. 102, § 2.
[36] Sec. 3 of Appendix B to Rules of Civil Procedure, COLO. STAT. ANN., Vol. I. p. 403, *supra* p. 127, See also Rule 8 (b) as to form of denials.
[37] Bereman v. Power Publishing Co., 93 Colo. 581.
[38] ODGERS, LIBEL AND SLANDER, p. 197, 5th ed.
[39] Republican Publishing Co. v. Miner, 12 Colo. 77; Republican Publishing Co. v. Hosman, 15 Colo. 399; Rocky Mountain News v. Fridborn, 46 Colo. 440; and Wertz v. Lawrence 66 Colo. 55.

Retraction: This shows lack of malice, and may cause mitigation of the damages.[40]

PROOF ON TRIAL

If the publication is libelous *per se*, all the plaintiff has to do is to identify himself and the defendant, introduce the article, prove publication by the defendant, and he has a *prima facie* case. Malice of the defendant is presumed.

The following additional testimony is admissible: mental suffering of plaintiff;[41] plaintiff's general social standing and condition in life;[42] and the circulation of defendant if newspaper or magazine. As to the business and financial standing of plaintiff, the authorities are divided.

If the publication is libelous *per quod*, then special damages must be proved as alleged in the complaint. These must be specific items tracing each one to the libel. Malice must be shown; it is not presumed.

The plaintiff *cannot* prove: suffering of his family and friends;[43] what a witness understood the words to mean;[44] a different innuendo;[45] good character, except in rebuttal, since this is presumed; and special damages not alleged.

The defendant must prove the averments of his answer.

A CLASSIC AMONG LIBEL CASES

In closing, I wish to quote the all-time classic in libel, with which most of the older members of the bar are familiar, but which will amuse our younger brethren. This is the case of *Cherry v. Des Moines Leader*.[46] An article as published in the Des Moines paper read as follows:

> "Effie was an old jade of 50 summers, Jessie a frisky filly of 40, and Addie, the flower of the family, a capering monstrosity of 35. Their long skinny arms, equipped with talons at the extremities, swung mechanically, and anon waived frantically at the suffering audience. The mouths of their rancid features opened like caverns, and sounds like the wailings of damned souls issued therefrom. They pranced around the stage with a motion that suggested a cross between the danse du ventre and fox trot,—strange creatures with painted faces and hideous mien. Effie is spavined, Addie is stringhalt, and Jessie, the only one who showed her stockings, has legs with calves as classic in their outlines as the curves of a broom handle."

After seeing plaintiffs in court, and hearing the evidence, the court directed a verdict for the newspaper, and said: "If there ever was a case justifying ridicule and sarcasm—aye, even gross exaggeration—it is the one before us."

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[40] Switzer v. Anthony, 71 Colo. 291.
[41] Republican Publishing Co. v. Mosman, 15 Colo. 399.
[42] Morning Journal v. Duke, 128 Fed. 657.
[43] Stevens v. Snow, 214 Pac. 918 (Cal.).
[44] Republican Publishing Co. v. Miner, 12 Colo. 77, and Farmers' Life v. Wehrle, 63 Colo. 279.
[45] NEWELL, SLANDER AND LIBEL, p. 599 (4th ed.).
[46] 86 N. W. 328 (Iowa).

And then the court well laid down the law of privilege:

> If, from defendant's point of view, strong words seemed to be justified, he is not to be held liable, unless the court can say that what he published was to some extent, at least, inconsistent with the theory of good faith. These rules are well settled, and need no citation of authorities in their support. One who goes upon the stage to exhibit himself to the public, or who gives any kind of a performance to which the public is invited, may be freely criticized. He may be held up to ridicule, and entire freedom of expression is guaranteed dramatic critics, provided they are not actuated by malice or evil purpose in what they write. Fitting strictures, sarcasm, or ridicule, even, may be used, if based on facts, without liability, in the absence of malice or wicked purpose. The comments, however, must be based on truth, or on what in good faith and upon probable cause is believed to be true, and the matter must be pertinent to the conduct that is made the subject of criticism. Freedom of discussion is guaranteed by our fundamental law and a long line of judicial decisions. The editor of a newspaper has the right, if not the duty, of publishing, for the information of the public, fair and reasonable comments, however severe in terms, upon anything which is made by its owner a subject of public exhibition, as upon any other matter of public interest; and such a publication falls within the class of privileged communications, for which no action will lie without proof of actual malice.

I append hereto a list of the Colorado decisions on libel and slander. All the Colorado citations except the *Lininger* case, are under the old Code.

COLORADO CASES ON LIBEL AND SLANDER

COURT OF APPEALS (8 libel and 1 slander case)
McKenzie v. The Times, 3 Colo. App. 554. Judgment for defendant reversed.
Republican Publishing Co. v. Miner 3 Colo. App. 568. Judgment for plaintiff affirmed.
Craig v. Pueblo Press, 5 Colo. App. 208. Judgment for defendant reversed.
Republican Publishing Co. v. Conroy, 5 Colo. App. 262. Judgment for plaintiff reversed.
Bush v. McMann, 12 Colo. App. 504. Judgment for defendant reversed.
Evans v. Republican Publishing Co., 20 Colo. App. 281. Judgment for defendant affirmed.
Kobey v. Eddy, 21 Colo. App. 140. Small slander judgment for plaintiff affirmed.
Daniels v. Stock, 21 Colo. App. 651. Judgment for plaintiff affirmed.
Hoover v. Jordan, 27 Colo. App. 515. Judgment for plaintiff for $3,225 reversed.
SUPREME COURT (28 libel and 3 slander cases)
Byers v. Martin, 2 Colo. 605. Judgment for plaintiff for 1 cent affirmed.
Downing v. Brown, 3 Colo. 571. Judgment for defendant reversed.
Republican Publishing Co. v. Miner, 12 Colo. 77. Judgment for plaintiff for $3,000 reversed.
Republican Publishing Co. v. Mosman, 15 Colo. 399. Judgment for plaintiff for $775 reversed.
Willard v. Miller, 19 Colo. 534. Judgment for defendant affirmed.
Hazy v. Woitke, 23 Colo. 556. Judgment for defendant reversed.
Denver Publishing Co. v. Halloway, 34 Colo. 432. Judgment for plaintiff for $5,000 reversed.
Rocky Mt. News v. Fridborn, 46 Colo. 440. Judgment for plaintiff reversed.
Melcher v. Beeler, 48 Colo. 233. Judgment for plaintiff for $1,000 reversed.
Burns v. Republican Publishing Co., 54 Colo. 100. Judgment for defendant reversed.
Meeker v. Post, 55 Colo. 355. Judgment for defendant reversed.
Jackisch v. Quine, 62 Colo. 72. Judgment for defendant reversed.
Farmers Life v. Wehrle, 63 Colo. 279. Judgment for defendant reversed.
Wertz v. Lawrence, 66 Colo. 55. Slander judgment for plaintiff for $1,100 reversed.
La Plant v. Hyman, 66 Colo. 128. Judgment for defendant affirmed.
Wertz v. Lawrence, 69 Colo. 534. Second trial slander judgment for plaintiff for $1,500 affirmed.
Weiss v. Goad, 71 Colo. 154. Judgment for plaintiff for $1,000 reversed.
Coulter v. Barnes, 71 Colo. 243. Judgment for defendant affirmed.
Switzer v. Anthony, 71 Colo. 291. Judgment for defendant reversed.

Morley v. Post, 84 Colo. 41. Judgment for defendant reversed.
Glasson v. Bowen, 84 Colo. 57. Judgment for defendant affirmed.
Radovich v. Douglas, 84 Colo. 149. Judgment for plaintiff affirmed.
Towles v. Meador, 84 Colo. 547. Judgment for defendant reversed.
Walker v. Hunter, 86 Colo. 483. Judgment for defendant reversed.
Leighton v. People. 90 Colo. 106. Conviction of criminal libel reversed.
Bearman v. People, 91 Colo. 486. Conviction of criminal libel affirmed.
Bereman v. Power Publishing Co., 93 Colo. 581. Judgment for defendant affirmed.
Kendall v. Lively, 94 Colo. 483. Slanler judgment for plaintiff for $475 affirmed.
Biggerstaff v. Zimmerman, 108 Colo. 194. Slander judgment for defendant reversed.
Knapp v. Post Publishing Co., 111 Colo. 492. Judgment for defendant affirmed.
Lininger v. Knight, decided Jan. 15, 1951, 1950-51 CBA Advance Sheet 186 (No. 9 for Jan. 20). Judgment for plaintiff reversed.

Summary

CIVIL LIBELS:
Judgment for plaintiff affirmed—7
Judgment against plaintiff reversed—10
Judgment for defendant affirmed—7
Judgment against defendant reversed—14
CRIMINAL LIBELS:
Judgment affirmed—1
Judgment reversed—1

DOUBLE RECOVERY FOR WRONGFUL DEATH BY PUBLIC CARRIER?

FRANCES HICKEY SCHALOW
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If John Doe departs this life through the negligence of a servant of a public carrier, while that servant is running a locomotive, must Mary Doe, his wife, elect whether to sue under Section one (the penal section) of the Colorado wrongful death statute [1] or under Sections two and three (the compensatory sections) of that statute, or can she recover damages under each section? The general question, it seems, is this: If the factual situation in a wrong-

[1] COLO. STAT. ANN., c. 50, §§ 1-4 (1935). The pertinent provisions of the statute are as follows:

Section one: Whenever any person shall die from any injury resulting from or occasioned by the negligence, unskillfulness or criminal intent of any officer, agent, servant or employee, whilst running, conducting or managing any locomotive, car or train of cars, or of the driver of any coach or other public conveyance whilst in charge of the same as driver, and when any passenger shall die from any injury resulting from or occasioned by any defect or insufficiency in any railroad or any part thereof, or in any locomotive or car, or in any stage coach, or other public conveyance, the corporation, individual or individuals in whose employ any such officer, agent, servant, employee, master, pilot, engineer or driver shall be at the time such injury is committed, or who owns any such railroad, locomotive, car, stage coach or other public conveyance at the time any such injury is received, and resulting from or occasioned by defect or insufficiency above described, shall forfeit and pay for every person and passenger so injured the sum not exceeding five thousand dollars, and not less than three thousand dollars, which may be sued for and recovered: . . . [Following are designated the persons who have a cause of action under the statute.]

Section two: Whenever the death of a person shall be caused by a wrongful act, neglect or default of another, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, then, and in every such case, the person who, or the corporation which would have been liable, if death had not ensued, shall be liable to an action for damages notwithstanding the death of the party injured.

Section three: All damages accruing under the last preceding section shall be sued for and recovered by the same parties and in the same manner as provided in section 1 of this chapter, and in every such action the jury may give such damages as they deem fair and just, not exceeding five thousand (5,000) dollars, with reference to the necessary injury resulting from such death, to the surviving parties, who may be entitled to sue; and also having regard to the mitigating or aggravating circumstances attending any such wrongful act, neglect or default.