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by the family head whenever he or she dies leaving a child or children.[18] In the instant case, the daughter's future might well have been furthered by a finding of no homestead, so that the spendthrift trust could have been impressed. This result could have been effected, however, without overturning the established Florida law in relation to family headship. The Supreme Court quite properly adhered to the law and at the same time pointed the way to achievement, on a valid basis, of the result indicated as best by the equities of the situation.

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LIBEL: NOTICE AS A CONDITION PRECEDENT TO PROSECUTION FOR CRIMINAL LIBEL

In re *Rice, 62 So.2d 911 (Fla. 1953)*

Petitioner, a newspaper publisher, was in custody under an information charging criminal libel. He instituted habeas corpus proceedings for his release on the ground that the information failed to allege that the prosecutor had served notice "in writing on defendant specifying the article and statements therein which he alleges to be false and defamatory," as prescribed by statute.[1] The Circuit Court for Seminole County denied the petition and remanded petitioner for trial. On appeal, HELD, the giving of notice is a condition precedent to the filing of a charge of criminal libel against publishers of periodicals, and the criminal information should contain an allegation of the fact that the required notice was given. Judgment reversed and prisoner discharged from custody.

In 1933 the Florida Legislature enacted a libel statute requiring notice to publishers of periodicals as a condition precedent to an action or criminal prosecution for libel.[2] This statute was revised and re-enacted in its entirety in two separate statutes, one covering civil libel[3] and one covering criminal libel,[4] by the 1941 Legislature. These statutes remain unchanged today.

[18]FLA. CONST. Art. X, §4.

[1]FLA. STAT. §836.07 (1953).
[2]Fla. Laws 1933, c. 16070, §1.
[3]FLA. STAT. §770.01 (1953).
[4]FLA. STAT. §836.07 (1953).

The instant case is the first interpretation by the Florida Supreme Court of the criminal libel statute. The precedent for this decision is *Ross v. Gore*,[5] which made notice as a condition precedent to an action for libel a mandatory procedure under the civil libel statute. The constitutionality of the civil libel statute was attacked as a violation of due process of law and a deprivation of freedom of speech and the press under the Florida Constitution[6] and of similar provisions of the United States Constitution.[7] In upholding the constitutionality of the statute the Court stated that the provision requiring notice as a condition precedent to a libel suit is peculiarly appropriate to newspapers and periodicals and that the public service rendered by these publications justifies such a classification.[8] The Court also took cognizance of the legislative intent to foster public interest in the free dissemination of news and to assure the security flowing to all from a free press. The case left little doubt that the Court would strictly adhere to the basic rule of statutory interpretation that a statute is to be given its plain and obvious meaning when the language is clear and unambiguous.[9]

The statutory requirement that notice be given to a party charged with a crime as a condition precedent to the filing of an information finds no precedents in the English common law or Florida criminal law. In order to understand the basic reasoning in such a departure as the instant case, an analysis of the background and historical development of the twin libel statutes and the decisions construing the civil statute[10] is necessary.

The severity of the common law rules which held newspapers and periodicals to strict liability for all defamatory statements,[11] permitting the defense of truth in civil but not in criminal libel,[12] has

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[5]48 So.2d 412 (Fla. 1950).

[6]FLA. CONST. Decl. of Rights §§4, 13.

[7]U.S. CONST. AMEND. XIV.

[8]Allen v. Pioneer Press Co., 40 Minn. 117, 41 N.W. 936 (1889); *cf.* Hunter v. Flowers, 43 So.2d 435 (Fla. 1949).

[9]A. R. Douglass, Inc. v. McRainey, 102 Fla. 1141, 137 So. 157 (1931).

[10]*E.g.*, Caldwell v. Crowell-Collier Pub. Co., 161 F.2d 333 (5th Cir. 1947); Ross v. Gore, 48 So.2d 412 (Fla. 1950); Metropolis Co. v. Croasdell, 145 Fla. 455, 199 So. 568 (1941).

[11]Peck v. Tribune Co., 214 U.S. 185 (1909); Jones v. Hulton & Co., [1909] 2 K.B. 444, *aff'd*, [1910] A.C. 20 (1909).

[12]Ray, *Truth: A Defense to Libel*, 16 MINN. L. REV. 43 (1931).

resulted in ever-increasing pressure from the press,[13] with the consequent outgrowth of civil retraction statutes in almost half of the states.[14] The purpose of these statutes, requiring plaintiff to notify a newspaper or periodical of the alleged libel before bringing an action thereon, is to furnish the publisher an opportunity to publish a retraction,[15] particularly when the defamatory article is published in good faith and is the result of an honest misunderstanding of the facts.[16] If a full and fair retraction is made in a conspicuous manner in the same or succeeding editions of the newspaper or periodical, only actual damages may be recovered.[17] Most states,[18] including Florida,[19] have upheld the constitutional validity of these retraction statutes. California, in *Werner v. Southern California Associated Newspapers,*[20] has gone further than any other state by upholding a retraction statute limiting recovery to special damages;[21] two states, however, have held such statutes unconstitutional.[22]

In most jurisdictions the serving of notice is not a condition precedent to the recovery of actual damages in civil libel actions,[23] although these retraction statutes have been interpreted to specifically require such notice when punitive damages are sought.[24] There has not been

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[13]Donnelly, *The Law of Defamation: Proposals for Reform,* 33 MINN. L. REV. 609 (1940); Morris, *Inadvertent Newspaper Libel and Retraction,* 32 ILL. L. REV. 36 (1937).

[14]Donnelly, *supra* note 13, at 614.

[15]Roth v. Greensboro News Co., 214 N.C. 23, 197 S.E. 569 (1938).

[16]Lay v. Gazette Pub. Co., 209 N.C. 134, 183 S.E. 416 (1936); Morris, *supra* note 13.

[17]Ellis v. Brockton Pub. Co., 198 Mass. 538, 84 N.E. 1018 (1908); Osborn v. Leach, 135 N.C. 628, 47 S.E. 811 (1904).

[18]*E.g.,* Post Pub. Co. v. Butler, 137 Fed. 723 (6th Cir. 1905); Fitzpatrick v. Age-Herald Pub. Co., 184 Ala. 510, 63 So. 980 (1913); Ellis v. Brockton Pub. Co., *supra* note 17; Gripman v. Kitchel, 173 Mich. 242, 138 N.W. 1041 (1912); Allen v. Pioneer Press Co., 40 Minn. 117, 41 N.W. 936 (1889); Osborn v. Leach, *supra* note 17.

[19]Ross v. Gore, 48 So.2d 412 (Fla. 1950).

[20]216 P.2d 825 (Cal. 1950).

[21]See MCCORMICK, HANDBOOK ON THE LAW OF DAMAGES §8 (1935).

[22]Hanson v. Krehbiel, 68 Kan. 670, 75 Pac. 1041 (1904); Park v. Detroit Free Press Co., 72 Mich. 560, 40 N.W. 731 (1888); *accord,* Meyerle v. Pioneer Pub. Co., 45 N.D. 568, 178 N.W. 792 (1920) (statute upheld, but interpreted to give general damages also).

[23]*E.g.,* Estill v. Hearst Pub. Co., 186 F.2d 1017 (7th Cir. 1951); Fitzpatrick v. Age-Herald Pub. Co., 184 Ala. 510, 63 So. 980 (1913); Roth v. Greensboro News Co., 214 N.C. 23, 197 S.E. 569 (1938); Osborn v. Leach, 135 N.C. 628, 47 S.E. 811 (1904).

[24]Fitzpatrick v. Age-Herald Pub. Co., 184 Ala. 510, 63 So. 980 (1913); Osborn v.

a similar interpretation in the field of criminal libel. North Carolina has a libel statute[25] that is nearly identical with the initial Florida statute of 1933 as to the provision requiring notice in civil and criminal actions, but the criminal part of this statute has never been judicially interpreted. An analogy can readily be drawn between the mandatory requirement of notice as a condition precedent to a civil action seeking punitive damages and the similar requirement prior to the institution of a criminal action, since the purpose of both punitive damages and criminal penalties is deterrent in nature.

The Florida Legislature adopted, as of July 4, 1776,[26] "the common law of England in relation to crimes, except so far as same related to the modes and degrees of punishment, . . . where there is no existing provision by statute on the subject."[27] Since the Legislature has the power to define crimes,[28] specify the modes and degrees of punishment,[29] and enact mandatory procedural requirements,[30] it is clearly within the scope of its authority, no matter how foreign to the field of criminal law, to require notice as a condition precedent to the filing of an information for libel.

Florida had previously followed the common law in considering a criminal prosecution for libel warranted only when the alleged libel affected the public in such a manner as to render a breach of the peace imminent or probable.[31] The Florida Supreme Court, in overruling the circuit court's view that "the giving of such notice was not a condition precedent to the institution of suit, but was available to the defendant at the trial as defensive matter only,"[32] was undoubtedly swayed by the modern trend to overlook the breach of the peace requirement for criminal libel and to treat the grounds for civil and criminal libel as identical.[33]

Leach, 135 N.C. 628, 47 S.E. 811 (1904); Williams v. Smith, 134 N.C. 249, 46 S.E. 602 (1904).

[25]N.C. CODE c. 99, §1 (Cum. Supp. 1953).

[26]FLA. STAT. §2.01 (1953).

[27]FLA. STAT. §775.01 (1953).

[28]Nation v. State, 154 Fla. 337, 17 So.2d 521 (1944).

[29]FLA. STAT. §775.01 (1953).

[30]Keen v. State, 89 Fla. 113, 103 So. 399 (1925).

[31]Annenberg v. Coleman, 121 Fla. 133, 163 So. 405 (1935); Smith v. McClelland, 99 Fla. 362, 126 So. 292 (1930); Kennerly v. Hennessy, 68 Fla. 138, 66 So. 729 (1914).

[32]At p. 912.

[33]*E.g.* Coulson v. State, 16 Tex. App. 189 (1884). *Contra:* Krasner v. State, 248 Ala. 12, 26 So.2d 519 (1946); Kennerly v. Hennessy, 68 Fla. 138, 66 So. 729 (1914); McCurdy v. Hughes, 63 N.D. 435, 248 N.W. 512 (1933). For a collection of state

This decision makes the serving of notice upon the defendant a mandatory procedure preceding prosecution for libel and places upon the state prosecutor the burden for such notice and the allegation that the notice has been served. The Court in so doing has filled the gap in Florida libel law, thereby enabling the defendant to reduce or mitigate by a proper retraction[34] the penalties evolving from inadvertent libel. This step was fairly to be anticipated in view of the ever-growing need of modern society for the rapid dissemination of news[35] and the psychological value of retraction,[36] but particularly in light of the limited liability guaranteed the press by Section 836.08 of Florida Statutes 1953:[37] ". . . and if, in a criminal proceeding, a verdict of 'guilty' is rendered on such a state of facts, the defendant shall be fined one dollar and the costs, and no more."

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CONTRACTS: INTENT TO BENEFIT A THIRD PARTY

United States v. Carpenter, 113 F. Supp. 327 (E.D.N.Y. 1949)[1]

Defendant importer and a Canadian exporter executed a contract for the importation of potatoes into the United States. One clause of the contract limited the resale of the potatoes to seed purposes. The Canadian Government required insertion of the clause in pursuance of an executive agreement between the United States,

statutes illustrative of the trend, see Beauharnais v. Illinois, 343 U.S. 250, 254 (1951); Note, *Constitutionality of the Law of Criminal Libel,* 52 COL. L. REV. 521, 525 (1952); Tanenhaus, *Group Libel,* 35 CORNELL L. Q. 261, 273 and n.67 (1950); 2 WHARTON, CRIMINAL LAW §§1930, 1934 (12th ed., Ruppenthal, 1932).

[34]FLA. STAT. §770.02 (1953).

[35]Layne v. Tribune Co., 108 Fla. 177, 146 So. 234 (1933).

[36]See ROTHENBERG, THE NEWSPAPER 70 (1948).

[37]In order to be eligible, however, the defendant must meet the following requirements: "If it appears upon the trial that said article was published in good faith, that its falsity was due to an honest mistake of the facts, and that there were reasonable grounds for believing that the statements in said article were true, and that within ten days after the service of said notice a full and fair correction, apology and retraction was published in the same editions or corresponding issues of the newspaper or periodical in which said article appeared, and in as conspicuous place and type as was said original article . . . ."