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**United States Court of Appeals Eighth Circuit, No. 14,681, Civil,
Loren E. Lair, Appellant, vs. The Christian Restoration Association
and Robert E. Elmore, Appellees, Appeal from the District Court of
the United States for the Southern District of Iowa.**

Paul W. Walters

Loren E. Lair

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United States Court of Appeals

EIGHTH CIRCUIT.

NO. 14,681.

CIVIL.

LOREN E. LAIR,

Appellant,

VS.

THE CHRISTIAN RESTORATION ASSOCIATION

and ROBERT E. ELMORE,

Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF IOWA.

BRIEF OF APPELLANT.

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FILED

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STATEMENT OF THE CASE.

This was a libel action brought by Loren E. Lair, plaintiff, a minister of the Disciples of Christ, against the Christian Restoration Association and Robert E. Elmore, defendants, based on alleged false statements and numerous charges of infidelity, apostasy and perversion of the Scriptures, contained in a series of articles published by them, which charges plaintiff alleged were falsely and maliciously made concerning him. (R. 1-11)

The defendants in their answer admitted publication as alleged, but denied the same constituted a libel. They did not specifically deny that the charges referred to plaintiff. Their defenses were:

(1) That modernists in the church had introduced the practice of open membership, (the admission of persons not immersed), and the practice, which defendants claimed was sinful, of having incorporated missionary organizations, specifically the United Christian Missionary Society and the Iowa Christian Missionary Society. (R. 12, 13)

(2) That the articles issued by defendants were in reply to publications purporting to have been made by The Brotherhood Action Committee, which they claimed were broadcast generally by the plaintiff, and that their replies were therefore justified and fair comment. (R. 14)

(3) That the statements in the articles were true (R. 15); and

(4) That the defendant Elmore, as an ordained minister of the Church of Christ had a duty to expose whatever he believed to be sinful or a departure from the faith, that the publications were made in good faith, without malice and therefore justified. (R. 15, 16)

The plaintiff filed a motion to strike from defendants' answer (R. 25) the paragraphs pleading the defenses mentioned at (1) and (4) above, because as to the first, it was claimed the matter was not germane to the issues or a defense, and the libel charged being the applying of certain terms to the plaintiff, any controversy between defendants and other persons was immaterial; and as to the latter, the fact that defendant Elmore was a minister would not relieve defendants from liability for calling plaintiff names. The motion was overruled. (R. 25)

The plaintiff pleaded in reply (R. 26) that he had never engaged in any controversy with defendants, that he had never been an officer or member of The Brotherhood Action Committee, nor the author of its documents, and that the same were not published by him or under his direction.

These were the issues tried to a jury.

The jury returned a verdict for the defendants. Plaintiff's motion for new trial was overruled. (R. 254)

A MORE DETAILED STATEMENT.

History and Background.

The Disciples of Christ is an established religious body.

Although it is sometimes referred to as the Christian Church, this communion is officially known and listed in the United States census as the Disciples of Christ. Its churches always have one of two names, Christian Church or Church of Christ, according to local preference. (R. 76)

It has more than 8700 congregations of which approximately 320 are in Iowa. It has a total membership of over 1,800,000 of whom 80,000 are members in Iowa. (R. 121) It is the largest protestant body originating on American soil, beginning as a distinctive communion in the United States in about the year 1809.

Congregations of the Disciples are self governing and autonomous, that is, there is no ecclesiastical organization above the local church with any power over it. Nevertheless, almost from the beginning, the members of local churches worked together by meeting in district, state and national annual conventions to get the work of the total church done. While these are merely meetings of the brethren at which any member may appear and vote, they constitute the means through which direction is given to the larger work by local churches and their members on an entirely voluntary basis. As an outgrowth of these conventions, the Disciples have had from the beginning missionary organizations. (R. 146) Thus the Iowa Christian Missionary Society, which is the state organization of the Christian Churches in Iowa and the American Missionary society, a national missionary organization were in existence prior to the year 1850. The International Convention,

which is a convention for the total communion had its first meeting in 1849.

Across a period of 140 years various agencies have been established. There are many colleges of the Disciples and they are considered as agencies, and there is a Board of Higher Education, which coordinates the work of member colleges. There is a National Benevolent Association, which takes care of the homes for the aged and the children, which are scattered over the country. There is a Pension fund, which is a separate board having charge of pensions of ministers and other workers. There is the United Christian Missionary Society established in about 1919, to consolidate the work of several missionary agencies. It is charged with the responsibility of the work of foreign missions, home missions, and religious education. There is the Board of Church Extension, which helps in planting new churches, and in providing funds and loans for them. There is the Christian Board of Publication, which operates a publishing house providing literature for the churches. There is a corporation called Unified Promotion which presents the needs of the various organizations to the churches and distributes the offerings on a percentage basis to those organizations participating in it. There are more than 50 agencies that cooperate in Unified Promotion. (R. 73) The agencies that are national in scope report to the International Convention.

About the year 1920 there began to develop a group which attacked the Disciples of Christ and endeavored to persuade its churches to separate themselves from it. This group assert that all organizations outside the framework and control of the local church are sinful and the work of "modernists." Accepting only a literal interpretation of the Scriptures, they call themselves fundamentalists. (R. 13)

The attacks made by this group have been extremely

bitter and abusive. Charges of deceit, infidelity and apostasy have been freely made. Examples of this may be found in the articles in suit, Exhibits A to H inclusive, (R. 37 - 68) which were published in The Restoration Herald, a monthly magazine published by the Christian Restoration Association, defendant here.

While this group claims it is sinful for others to have organizations outside the framework and control of the local church, they have organizations themselves. For example, The Christian Restoration Association, defendant here, is itself a corporation, with a self perpetuating membership of nine persons, responsible to no one and "outside the framework and control" of any church. (R. 32)

This group has established its own schools for the training of ministers, developed its own direct support missions, its own benevolent organizations, set up its own youth camps and conferences, held its own conventions and written its own literature. It will not have anything to do with the organizations or conventions of the Disciples of Christ and is in fact a separate sect or communion. (R. 146)

It has an aggressive policy of sending its printed attacks into the Christian Churches with the object of converting the membership to its point of view. Sometimes, because replies were not made, members were persuaded that the charges were true with the result that a division occurred or the church was taken over by them. Examples of such divisions are the Iowa churches at Eldora, Pleasantville, College Avenue of Des Moines, and Cherokee. (R. 128)

How The Case Arose.

In the fall of the year 1949, a group of laymen, who were concerned about the situation in the Iowa churches, incorporated The Brotherhood Action Committee. These men were Wayne O. Dailey, Fred H. Kemp, John P. Wollard

and Paul W. Walters. One of them, John P. Wollard, was a member of the College Avenue Church in Des Moines, where the attacks were being strongly pressed and where there was a division. The Brotherhood Action Committee decided to get out some information to the Iowa churches and ministers, and it published several documents, which are in the record. (R. 91)

The first Brotherhood Action Committee letter is quoted in full in The Restoration Herald article which appears in the record at page 37. It stated in substance that a group of laymen had banded themselves together for the purpose of promoting the interest and welfare of the Christian Churches, that unwarranted attacks had been made on ministers and organizations on the level of falsehood, abuse, name-calling and libel and slander. It stated that the purpose of The Brotherhood Action Committee was the sending out of accurate information to the churches through the medium of bulletins, letters and pamphlets, and that it would not resort to name-calling or undertake to pass judgment on the Christian conviction of others, but that it would attempt to help churches in distress. Further documents were promised.

Its second letter, which is Exhibit 6, (R. 114) enclosed the first publication of the committee, and stated in substance that members reading it would have a better understanding of the church, that definition of the rights of members had become important because uninformed individuals had been deprived of their rights and even expelled from their churches in some instances. It stated that if a church had been organized as a Christian Church or Church of Christ, and had part in the state and national work of the communion, it was a Christian Church and that its faith could not be changed. Two Iowa cases were cited in support of this statement. The letter suggested that if the local church was divided, steps could be taken

to become informed as to its organization and history and an attempt made to persuade the entire membership to follow the historic practices, customs and teachings of the communion.

The pamphlet which was enclosed, "The Rights of Members in the Christian Church," appears in the record at page 121. It gave a brief picture of the religious body known as the Christian Church or Disciples of Christ, the Iowa Christian Missionary Society and the pattern of organization in the local church and on district, state and national levels. It stated that each member had the right to participate in his local church, in district, state and national meetings by voting, the right of participation in the local church and in the higher organizations, the right of giving and the right of receiving information issued by the state and national bodies. It further stated that teachers had arisen who were trying to change the local church to another faith, who attacked the total Christian Church with falsehoods and abuse, that these could usually be identified by their refusal to have fellowship with, or participate in the total work of the church on state and national levels. It stated that the end of this sort of thing was sometimes a divided church or expulsion of members. It further stated the doctrine of the ecclesiastical trust and that this principle was established in the Iowa courts.

A third communication of The Brotherhood Action Committee described the situation in the Laurens, Goldfield, Eldora and Pleasantville Churches. (R. 21) This, like the other documents, carried the name of the corporation and post office box number at Des Moines, Iowa.

The Libels Claimed.

Defendants assumed that the plaintiff had "resorted to the publication" of these documents, (R. 14) and commen-

ced the publication of a series of articles in which his name figured prominently. (R. 37-67)

In the April 1950 issue of The Restoration Herald, the monthly magazine published by the defendant Christian Restoration Association, edited by the defendant Elmore, there appeared an article entitled "Brotherhood Action", written by him, which formed the basis for Count I of the petition. (R. 1) This article was Exhibit A and appears at page 37 of the record. It set out the first Brotherhood Action Committee communication (Exhibit 6, R. 114) and stated that "an Iowa preacher received this one by way of the Lair in Des Moines," and that it was "dressed in the customary platitudes and weasel phrases of the Pharisees." It then said, the strategy of the Disciples High Command from the beginning has been, as C. C. Morrison sharply said, to continue to "deny what is true and affirm what is not true." The words in quotation marks above were alleged to be libelous and were submitted to the Jury by the court. There were other statements of similar import in the article such as the statement that this was "just another package of hierarchal humbuggery, passed on in the name of some anomomous laymen" but we will mention in the following paragraphs only those submitted.

In the June 1950 issue of The Restoration Herald there was published an article entitled "From the Lair" (Exhibit B, R. 39) which plaintiff claimed referred to him and was the basis for Count II of the petition. Plaintiff claims the article charged him with being "official apostate", "responsible for raids now being made in the Civil Courts against the free Churches of Christ", guilty of "false doctrines", "apostate practices", "false dealings", "evil works", and being "one of the Disciples state and national deceivers".

In the April 1950 issue of The Restoration Herald there was published an article written by Elmore (Exhibit C, R. 41) which discussed the document of The Brotherhood Ac-

tion Committee, "The Rights of Members in the Christian Church". This was entitled "From the Lair", and this title was charged to be libelous. This article was the basis for Count III of the petition.

In the June 1950 issue of The Restoration Herald, there was published an article written by Elmore entitled "The Pattern". (Exhibit B, R. 43) This article stated that Mr. Lair's job was to make the Churches of Christ a part of the Disciples denomination by hook or crook, and "that accounts for the epidemic of court actions to dispossess the free churches of their property" and is followed by the statement, "Was the Master bitter when he dubbed them ravening wolves, clad in well tailored sheeps clothing?" This article was the basis for Count IV of the petition.

In the September 1950 issue of The Restoration Herald, there was published an article by Elmore entitled "Report to the Brethren", which it was claimed classed plaintiff with "false brethren", "false teachers", "deceivers", "corrupters of missionary societies, colleges and the press", "perverters of the gospel framing the ecclesiastical syndicate called the United Christian Missionary Society", "with the deceivers in the seats of authority and power", of participating in a "missionary monopoly", a "secretarial scheme to take over the management of all missionary activities and reduce the free Churches of Christ to pawns in the hands of official overlords", of using "a former minister, a typical Disciples double-dealer" who had "slyly built up a fifth column of supporters of the State Society and other Disciples agencies" to accomplish his purposes, of "utilizing a menacing fifth column of the Disciples denomination", of participating in the "gospel perverting program handed down from Disciples headquarters", of proceeding by "misrepresentation, trickery, and unfair and unchristian" methods, of seeing to it that "new articles of incorporation were adopted, all offices were voted vacant and

new officers were elected as per bill of lading", by means of a "democratic steam roller". This article was published after the original petition was filed in July of 1950 and was Elmore's version of a meeting held in the Pleasantville church at which Elmore was present. These statements formed the basis for Count V of the petition contained in the amendment. The article was Exhibit E1, E2, E3 found at pages 45, 46, 47 of the record.

In the October 1950 issue of The Restoration Herald there was published an article written by Elmore, entitled "The Die is Cast" (Exhibit F, R. 51). This article referred to the suit brought by Mr. Loren E. Lair, State Secretary of the Iowa Christian Missionary Society and referring to the Christian Restoration Association, stated that every man on its board . . . voted not only to defend aggressively the Association and Mr. Elmore, but also to use this golden opportunity to bring to the attention of tens of thousands of New Testament Christians "the indisputable facts of apostasy on the part of certain leaders and lesser lights among the Disciples of Christ." This statement formed a basis for Count VI of the amendment to the petition.

In the November 1950 issue of The Restoration Herald, the defendants published an article about the Laurens church, which was a reprint of an article published in the Good Word, purporting to be an interview between James W. Nichols and Emmett Nafe. (R. 53) Members of the church there had brought a law suit to oust Mr. Nafe, who had been the minister of the church, and this case was settled by Mr. Nafe's leaving. Plaintiff claims the article was defamatory in the sense that it accused him in being "in a secret meeting", "advising a packed vote to eliminate the minister", "of making false statements", about Nafe, of taking charge "of a meeting where Nafe was discharged as minister", of being "very willing to get into the fight", "to try to make a test case in Iowa." The article charged plaintiff with

initiating the case as a test case and stated that the court held "there were no grounds for an action" and "recommended that the trial be dismissed". It further claimed that the plaintiff "made the statement in the presence of the Judge and lawyers that they had a million dollars in the bank and they were going to use all of it if necessary to fight this case. They were going to carry it to the Supreme Court, that they further stated that if we beat them in the Supreme Court, that they would immediately tie up the property of the church at Laurens and that we'd have to go back into court again then to find out whether or not they were owners of the property." The article accused plaintiff of casting a ballot in the annual election of the church, although he was not a member, of stating "he was going to get me", of "just dying to get one of the Churches of Christ in Iowa into a law suit", of being "constantly in conference with the Catholic priest during the trial", which was untrue, and of "trying to get control of the Churches of Christ". This article formed the basis for Count VII of the amendment to the petition.

In the January 1951 issue of The Restoration Herald, there were published three articles written by Elmore, which formed the basis for Count VIII of the amendment to the petition. (Exhibits H1, H2, H3, R. 59-67). In the first article, the defendants stated that while the case was entitled "Lair vs. The Christian Restoration Association and Robert E. Elmore", it really involved "the Promulgation of the Gospel versus the Perversion of the Gospel". The article "On Taking the Stand" asserted that the "rulers, elders and scribes of the Disciples denomination", the class in which plaintiff claimed he had been put by the defendants, were "false teachers", "inwardly ravening wolves", who "invaded, sabotaged and enslaved churches" and now "sell them for thirty pieces of silver". It was claimed the article entitled Oyez! Oyez! classed the plaintiff as "a per-

verter of the gospel", one of those who "forged fetters for every free church in the land", as "an infidel", and one of the "Disciples apostates", as one of "those selling the church into the bondage of ecclesiasticism", as one "guilty of spiritual wickedness in high places", as a "Disciples deceiver", as a "dictator", as "being on the side of Satan", as one whose "infidelity should be exposed", as an "overlord", as one who fellowships with "darkness", "as one of the Sons of Belial wearing the name Disciple", and as one of "the Disciple officials, overlords, apostates and perverters of the gospel."

The plaintiff claimed that the above quoted statements and articles in which the quoted words appeared were false and malicious and conveyed the meaning that plaintiff was insincere, false to his calling and position and apostate, that he was injured in his reputation and in the pursuit of his calling as a minister and he prayed for damages both actual and exemplary in the sum of \$50,000.00.

Defenses Made To The Claims.

Defendants in their answer admitted the authorship, publication, and circulation of the articles claimed to be libelous in The Restoration Herald magazine, that the plaintiff was an ordained minister and Executive Secretary of the Iowa Christian Missionary Society, an organization of the Christian Church (Disciples of Christ) in Iowa.

Defendants pleaded affirmatively that the controversy between the parties arose under these circumstances: that in the beginning various churches were formed, which were separate and known as Churches of Christ; that the doctrine of said church and its followers was that God was the Father; that Jesus is the Christ, Son of God and the Saviour; that the Bible is the Word of God; that baptism by immersion was necessary to salvation; that they observed the institution of the Lord's Supper; that they ac-

cepted no creed but Christ, no rule of faith and conduct but the Bible; that the relationship between the various churches was the same as existed in Bible times in the various Bible churches; that each church was autonomous; that it was believed that whatever was done in the way of missions was to be done by the church and its members individually or within the framework of the church itself and not otherwise. That as time went on the portion of the membership became unfaithful to these beliefs and modernistic in that it was accepted that baptism might be effective by sprinkling and certain churches began receiving into their membership persons who had either been sprinkled or not baptized at all, and the church became split by reason thereof, the fundamentalists adhering to the old doctrines and the modernists permitting "open membership". (R. 12)

They pleaded also that originally donations to various missions were made by the members themselves or through their individual churches and that no other way was proper; that the modernists began a practice which was considered sinful, which was that work of this character should be done through agencies or corporations other than the church and district from and outside the church. Such procedure also caused a division in the church because said organizations wasted money entrusted to them. (R. 13)

That in the situation existing the plaintiff resorted to the publication of anonymous circular letters. (Exhibit 6, R. 114, Exhibit 7, R. 121 and the answers; Exhibit 4, R. 21). That said letters were anonymous because only the name of The Brotherhood Action Committee, the post office box number and the City of Des Moines, Iowa were given; that said letters were calculated to invite controversy and a reply; that said letters, pamphlet and bulletin were "prepared and sent out and were intended by the plaintiff to be construed to apply to these defendants, with the intent

that it should provoke them to wrath and expose them to public contempt and deprive them of the benefit of the public confidence, to which they were entitled". (R. 14-15).

Defendants further pleaded that under existing circumstances the conclusions in the articles so published by them were justified, fair comment, a fair rebuttal of the statements and charges made in and by the letters and papers so broadcast by the plaintiff, and were not libelous. That their articles were published for the Christian purpose of proclaiming the basic faith of the believers in the Church of Christ and in its doctrines in the face of opposition to resist the course being pursued by the plaintiff and his corporation. They also stated that the conclusions drawn by the plaintiff from the said articles were not warranted by the wording and context.

Defendants also stated that the statements of fact contained in the said articles were true. (R. 15) Mr. Sibbald also stated during the trial "Our position is, your Honor, we are claiming that what is published is true, and believed to be such by Mr. Elmore in his publications." (R. 6) The defendants did not deny specifically that the articles referred to the plaintiff.

A further defense was set out in paragraph 12 of the answer, (R. 15) to the effect that the defendant Elmore, as an ordained minister of the Church of Christ had a duty to expose iniquity and whatever he believed sinful, or a departure from the faith, that the publications were made in good faith, without malice, and therefore justified.

Plaintiff's Motion To Strike.

Plaintiff made a motion to strike paragraphs 5, 6, 7 and 9 of defendants answer (R. 12, 13, 14, 15) which set out the defenses that modernists had introduced the practice of open membership, and that missionary organizations above

the level of the local church were sinful and wasteful, directed to the point that:

(a) What someone else might have done was not relevant to any controversy the defendants might seek to have with plaintiff. It was stated "that the matters set out in said paragraphs of the answer are not germane to the issues involved; that the matter set out in the said paragraphs is an attempted statement of controversy that the defendants seek to have with the brotherhood known as the Disciples of Christ, sometimes known as the Christian Church and sometimes known as the Church of Christ. That the libel alleged by the plaintiff is that the defendants charge the plaintiff with being a certain kind of person, and applying certain terms to him, all of which is libelous.

(b) The petition alleges that the plaintiff was not the author of the pamphlet assaulted by the defendants, that the plaintiff has never engaged in a controversy with the defendant on religious matters which would warrant the defendants of the privilege of comment.

(c) The defendants having admitted the publications about the plaintiff, the matters set out in said paragraphs are not relevant, nor are they a defense to the charge of libel."

Plaintiff also moved to strike from the defendants answer paragraph 12 (R. 15) which related to defendant's claim of immunity because defendant Elmore was a minister, for the reason that "(I) There were no facts pleaded which would amount to a defense, and (II) The matters pleaded are no defense to the libel which is based on calling the plaintiff names." (R. 26)

This motion was made as to all counts of the answer and was overruled. This is one of the rulings that plaintiff claims to be in error.

Issues Made by The Reply.

In reply plaintiff denied that any controversy had arisen or existed between the parties to this action under the circumstances alleged by defendants, save that initiated by them in publishing the articles in question. He stated that although the Disciples of Christ believe in the Fatherhood of God, that Jesus is the Christ, the Son of God and Saviour; teach baptism by immersion; observe the ordinance of baptism by immersion; have no creed but Christ and no rule of conduct but the Bible, these are not all the beliefs, teachings and practices and customs of the Christian Churches of the Disciples of Christ, and further that the beliefs, teachings, customs and practices pleaded in the answer were those of a separate and distinct sect to which defendants adhered. Plaintiff denied paragraphs 5 to 12 of the answer and specifically the plaintiff denied that he had "resorted to the publication" of The Brotherhood Action Committee documents. He stated he was not their author, that they were not written, mailed or sent out by him, or under his direction, that he had never been a member or an officer of said organization, nor had it ever been under his direction or control, nor had he ever broadcast the said documents as alleged. He denied that the articles of the defendants were justified or fair comment. (R. 26)

The Trial.

On the issues thus joined, the case was tried to a jury March 10, 1951.

Plaintiff offered proof of the allegations of his petition and reply. He showed the particulars of the faith he espoused when he became a minister in 1934. That it included following the New Testament in spirit, faith, repentance, confession, baptism and walking in newness of life, no creed but Christ, self government of churches, Chris-

tian unity and cooperation, (R. 72) which he defined as members and churches working together through organizations. (R. 95) He stated he had not forsaken these beliefs at any time, (R. 81) nor was any proof offered by the defendants that either he or the Iowa Christian Missionary Society, of which he was Executive Secretary, had done so.

He showed that members of his faith had set up various agencies to carry on the work for the Disciples of Christ on a state, national and world basis, participation in which, by members and churches, was voluntary. That these were in existence prior to his becoming a member and minister.

He offered proof to show the meanings of the words claimed to be libelous, his own innocence of the charges made, the falsity as to him of the statements made by the defendants, and that he had never engaged in any controversy with the defendants.

With regard to Count VII (R. 8), the Laurens article, (Exhibit G, R. 53-55-57) plaintiff showed by the witness Beneke (R. 69-71) and his own testimony (R. 87-89) that the statements claimed to be libelous were wholly false and untrue. This evidence was not rebutted by the defendants, but motion to direct was later sustained as to this count, which it is claimed was erroneous.

With regard to The Brotherhood Action Committee and its documents, plaintiff testified that the four laymen organized it, asked for and had a conference with him at which the difficulties in several churches, about which they were concerned, were discussed, but at which organization of the group was not discussed. That they subsequently incorporated The Brotherhood Action Committee, without assistance from him. (R. 91) He showed by the witnesses Dailey and Kemp (R. 163-165) that The Brotherhood Action Committee members wrote and sent out the various documents, that he did not know their contents before they were published, that they paid for them and sent them out.

Mr. Lair testified that his only relationship with the matter was that The Brotherhood Action Committee gave his name as a reference when it applied for a postoffice box, it requested permission of him to use the Iowa Christian Missionary Society addressograph list of Iowa ministers, which was granted, he was asked to intervene with The Messenger Printing Co. at Ottumwa, Iowa, which firm did printing work for the Iowa Christian Missionary Society, to get them to print the pamphlet "The Rights of Members in the Christian Church" for The Brotherhood Action Committee, which he did. He also thought one of the girls at the Iowa Christian Missionary Society had run off, outside of office hours, on her own time, one of the letters on its mimeograph machine. He testified further that after The Brotherhood Action Committee had published the pamphlet, "The Rights of Members in the Christian Church", it furnished him with some of them and that the only time he gave any of them to anyone was in response to an inquiry by a Mrs. Maude Taylor (Exhibit 10).

Proceedings At The Trial Giving Rise To The Appeal.

On cross examination Mr. Lair was asked if there was any division in the Iowa churches and what the division was. Objection was made to this line of questioning.

Q. Can you tell us what that division was?

MR. WALTERS: I would like to have this objection stand that this matter is incompetent, irrelevant and immaterial to any issue in this cause. We are getting into the edge of something which may take us a long time to try out if we are going to do it and it is not cross examination.

THE COURT: I think the witness may answer. I think the testimony here with regard to alleged libelous articles makes it competent. You may proceed. You may answer the question, Mr. Lair. (R. 94, 95)

Again, (R. 96)

Q. When you went to Drake University in that professorship, what was the policy at Drake as applied to the fundamentalists as compared to liberals or modernists?

MR. BUMP: That is objected to as incompetent, irrelevant and immaterial and not cross examination. The issue of what was the doctrine at Drake University Bible College is not an issue here.

This objection was also overruled.

Without identification except that it was a full page advertisement appearing in the Ohio State Journal during the 1946 convention of the Disciples of Christ at Columbus, Ohio, defendant offered as a part of the cross examination of the witness Lair Exhibit 2, which was as follows:

"An Open Letter!" Quoting from Matthew 18:16,17. But if he will not hear thee, then take with thee one or two more, than in the mouth of two or three witnesses, every word may be established.

"If he shall neglect to hear them, tell it unto the Church: But if he neglect to hear the church, then let him be unto thee as a heathen man.—Words of Jesus.

"To International Convention Disciples of Christ, Its Sponsors and Directors: United Christian Missionary Society, and Christian Board of Publication:

"For many years faithful Christians have pleaded in vain with your groups to desist from your attacks upon the Bible as God's Holy Word. Such pleas were ignored.

"Now in complete and detailed obedience to the mandate of the Saviour in Matt. 18:16,17, we issue this final urgent, and prayerful invitation, as we take the issue to the brethren.

"We urge that, by definite and specific action of your convention, you publicly repudiate your men and your organizations which have attacked the authority of the Bible; that you adopt a declaration of faith and loyalty

to God's Holy Word; and that you elect to office only leaders whose life records and pronouncements mark them as unflinching champions of the Book of Books.

"Only by such action can you repair the division in our ranks which your individual and collective attacks against the Bible have created.

"Your offenses against the Christian Churches (Churches of Christ) are many and grievous. Among those which you should publicly confess and repent of, are the following:

"Your False Pretensions of Representative Authority.

"The International Convention of the Disciples of Christ has presumed to appoint members of the Federal Council of Churches of Christ in America on the numerical basis of the total membership of churches listed in the Year Book published by the International Convention. In view of the fact that the International Convention is a mass meeting of individuals, and does not, and cannot, have official standing, such appointments are a misrepresentation. Similarly fraudulent is the claim of the Christian Board of Publication to be the denominational publishing house of the 'Disciples of Christ.'

"The motto of our movement has always been: 'Where the Bible speaks, we speak; where the Bible is silent, we are silent.' By your recent attacks on the Bible, you seem bent on changing that motto to read: 'Where the Bible speaks, it speaks falsely.' When, in the early 19th century, Thomas and Alexander Campbell, Walter Scott, Barton Stone, Racoon John Smith, and other leaders pioneered in our Restoration movement, they had no intention of founding another church or sect. They sought a common ground or basis, upon which all denominations could unite, as you well know. The result of their prayerful planning was an invitation to men of all churches or sects, to lay aside their man-made creeds which divided them, and upon which no two could agree, and to accept the New Testament as

the sole rule of faith and practice. On all interpretative controversies, complete freedom of opinion was guaranteed to all.

"From this sprang the aforementioned motto, making the Bible the very foundation of our brotherhood, and thus your attacks upon the Bible and your denial that it is God's Holy Word are more peculiarly abhorrent to our brotherhood than they could be to any other group.

"You Represent Less than One Per Cent of Our Brotherhood.

"As you well know, since and because of the attacks on the Holy Bible by leaders and literature of the above named sponsors, you do not represent one per cent of our brotherhood. Easily could faithful neighboring churches send thousands of delegates into your convention on election day and take over. But that is not the Christian way. No effort will be made from the floor to have your suggestions accepted. In recent years, the trends of your conventions has been such that faithful Bible-loving Christians do not attend. Your action will be dominated, without interference, by those groups to whom this communication is addressed. In Christian love and prayer we send this final plea, as even now thousands of faithful brethren are carrying the news of the attacks against the Bible to the brotherhood. Thus, we have gone one step further even, toward peaceful solution than the admonition of the Saviour, as quoted above.

"The Vital Issue Which You Must Decide.

"The International Convention, the constituent agencies of the United Christian Missionary Society and the Christian Board of Publication, once were among the honored institutions of our brotherhood. They were led by faithful Bible-loving Christians. They grew and prospered by the favor of God and the financial and moral support of our brethren.

"If faithful Bible-loving Christians are forced to expose or destroy their agencies, and to build others, it will be because your leaders have:

"1. Repeatedly and persistently attacked the Bible as God's Word, and denied its truth.

"2. Usurped authority over a brotherhood whose fundamental tenet is full and final authority of the word of God administered through the local congregation.

"3. Wasted our money in administrative expense and travel charged for roving 'secretaries' whose work is largely occupied with church politics and the sale of printed matter which is not true to the Bible.

"4. Completely divided our brotherhood by their attacks upon the Bible, so that hundreds of our churches will have nothing to do with their self-styled 'organized effort.'

"Finally

"If you refuse to heed this suggestion for a return to unity and loyalty to the Bible, which is the very foundation of our brotherhood, then we challenge you to designate a champion, such as Mr. Lemmon or Mr. Hopkins, or both, to set a date and place where they will publicly attack the Bible, as did the late Robert G. Ingersoll, with all the power and knowledge at their command. We will designate a spokesman who will publicly defend the Bible as God's Holy Word, from the same forum.

"Let the number and length of the addresses be such as Mr. Lemmon or Mr. Hopkins, or both may choose. Let the discussion be advertised as an attack by your champion against the Bible. Let the newspapers and the radio chains be employed.

"Too long have vital facts been kept from the brethren. Ninety per cent know nothing of the attacks against the Bible—

"Ninety per cent know nothing of the attacks against the Bible because thousands of our churches will not permit such literature, on their premises, and members of other churches have not examined the subtle attacks upon the Scriptures, which features Anti-Bible literature.

"In all good conscience, and with perfect candor, we desire to inform you that plans have been made to print 2,000,000 of the accompanying statements of fact, and to arrange for every member of every Christian Church (Church of Christ) to receive one. Copies of the folder, or statement of fact, which has been signed by thousands, and is now being distributed, are herewith attached.

"Still cherishing the hope that your convention, and its sponsors and directors will completely reverse its recent trends and return to the faith one for all delivered to the saints, we remain Loyal to His Word and Service.

"The Committee of One Thousand, By Willis H. Meredith, Chairman of Executive Board." R. 116-120)

MR. BUMP: We object to this as incompetent, irrelevant and immaterial to any issue in this case, and for the reason that a casual examination of this ad in the newspaper indicates that a group of people, known as The Committee of One Thousand, signed by Willis H. Meredith—and that is as far as there is any description of who they are—are making an assault upon the International Convention of the Disciples of Christ in a public newspaper. How that is any issue in this case—is certainly far afield. (The Court reserved ruling on the objection). (R. 99)

(R. 101) THE COURT: (Jury excused) Mr. Sibbald what is the purpose of the offer of the Exhibit 2, to which counsel has objected?

MR. SIBBALD: Only for the purpose of showing the existence of a religious controversy of long standing.

MR. BUMP: Where and between what?

MR. SIBBALD: Between members of what you call the brotherhood. Between, if you please, the Christian Restoration Association and the United Christian Missionary Society and its related societies or corporations.

MR. BUMP: My objection was that it is incompetent, irrelevant, and immaterial, doesn't support any issue in the case. It doesn't establish a controversy that is involved in these articles published by The Restoration Herald.

THE COURT: It occurs to me that these articles are claimed to be libelous; it is very apparent from the context of the article that there is a difference, a doctrinal difference, between the writer of the articles and a group that he is trying to influence; and I believe in view of the plea of privilege and of truth that the Court will have to rule that it is to be admissible in evidence. I don't see how it is possible for this Court to ignore the fact that a doctrinal difference does exist and therefore the fact of its existence and the integrity of the beliefs of the parties has very much to do in the matter of privilege.

I haven't discussed this with counsel, but I take it that counsel will not disagree that under the law of Iowa a minister is a public person and therefore comment—Mr. Lair being a minister—comment as to his conduct and activities and beliefs is permissible within the limits that they are fair and made in good faith. That doesn't excuse libel; don't misunderstand me, but nevertheless it may be pleaded as a defense and I am assuming that this is offered as defense matter to that end.

MR. SIBBALD: That is right, Your Honor.

MR. BUMP: Let me make this additional objection, Your Honor.

THE COURT: Very well.

MR. BUMP: That that document, Exhibit 2, is not an exposition of a controversy that has arisen and is being

treated by these articles that are in suit here. Now just a word: There is a group—there isn't any question about it—who we think have taken themselves out of the brotherhood and they are having state conventions, international conventions of their own, and that was one of them.

THE COURT: Well, the Court will try, so far as lies within its power, to have the jury understand when the time comes that they are not to make any decision of any doctrinal controversy within this church. They are going to apply their attention as to whether or not the articles complained of here are libelous. But I think for the purpose of presenting their defense and proof of lack of malice—I am referring both to actual and legal malice—that I will have to admit this, so the objections are overruled.

It is the ruling of the Court that Exhibit 2 will be admitted in evidence.

Exhibit 3, a pamphlet of The Committee of One Thousand similar to Exhibit 2, entitled "Where Does Your Missionary Dollar Go?", which attacked the United Christian Missionary Society, was also offered and received in evidence without identification, as was Exhibit 4, a document of The Committee of One Thousand, similar to Exhibit 2, entitled "Attacks on the Holy Bible by the Christian Board of Publications". (Exhibits 3 and 4 are not printed in the record because of their length, but will be certified to this Court.)

The same objection was made to Exhibits 3 and 4 as to Exhibit 2, namely that they were incompetent, irrelevant and immaterial to any issue, not properly identified, not an authentic presentation of any facts made by any person or persons authorized to speak for any faction or group. (R. 106, 108, 115) The objections to Exhibits 3 and 4 were overruled.

In substance, Exhibits 2, 3, 4 attack three organizations of the Disciples of Christ, The International Convention,

The United Christian Missionary Society, and The Christian Board of Publications. It is claimed the court erred in admitting these documents.

Following the admitting of Exhibits 2, 3, and 4, an article in The Restoration Herald of December 1949 at which time Mr. Elmore was editor, was marked Exhibit Q, and offered and received in evidence. It was as follows:

"Committee of One Thousand. Many letters of inquiry necessitate the following statement: Since the death of Heber Nations and the withdrawal of Willis Meredith, founders and co-chairmen of the Missouri Committee of One Thousand, the Committee as such is now defunct." (R. 141)

Plaintiff then moved to strike Exhibits 2, 3, and 4 from the record and withdraw them from the consideration of the jury for the reason that the record then showed that organization to have been defunct before any of the articles in this suit were published and they could not therefore be the basis for controversy and fair comment by the defendant. This motion was overruled. (R. 167)

Following the ruling on Exhibits 2, 3, and 4, the defendants sought to show by the cross-examination of Mr. Lair that the Campbell Institute, an association of some Disciple ministers, had been repeatedly charged over a period of years with being a group of false teachers and deceivers. The court declined to admit evidence regarding the Campbell Institute, (R. 137-141). Defendants' offer with regard to that is in the record, pages 167 to 170.

The defendants on their part testified that they were fundamentalists in that they believed in the infallibility of the Scriptures and accepted them literally. They complained that there were individual ministers and leaders among the Disciples of Christ who believed in individual interpretation of the Scriptures, that they therefore did not accept the infallibility of the Scriptures and were modern-

ists. They claimed that the United Christian Missionary Society had among its missionaries some who practiced open membership, that the organization was wasteful and that direct support of missionaries by the churches was a better way and more economical.

Objections were made to evidence as to what the United Christian Missionary Society had done that defendants disagreed with. For instance:

"As to what the United Christian Missionary Society was doing that was contrary to my ideas, and my duties in the Christian Restoration Movement, (objected to as immaterial to any issue) the United Christian Missionary Society continued the practice of open membership, the promotion of liberalism or modernism on the mission field at home and abroad." (R. 204)

Again:

"As to whether, in my study of the books and works and publications of the United Christian Missionary Society I have found instances in which these liberals have done the things I have described (proper objection) I have tried as conscientiously as I could to reveal to the brotherhood at large the false teaching of these agencies, the leaders, the officials of the United Society and Christian Board and sometimes state societies, etc." (R. 205)

Error is charged in the admission to this type of evidence.

Admission was made by defendant Elmore that some references in the articles were to the plaintiff. He said:

"By the words, the Lair, I meant the habitation or headquarters of false teachers and whoever it might have been that was writing those Brotherhood Action Committee articles that were included in that generalization. The state secretary was in Des Moines and he was included as a false teacher." (R. 233)

For additional examples see R. 212 and R. 218.

The defendant Elmore on cross-examination (R. 221) stated:

"I have been a minister of the Christian Church of the Disciples of Christ a good many years." However, after an extensive criticism of the United Christian Missionary Society and the Christian Board of Publications, organizations of the Disciples of Christ, he stated, (R. 225):

"It is true my name is carried in the Disciples Year Book as a minister. I didn't suggest that it be there, however.

Q. No, and you really don't claim to be a minister of the Disciples of Christ, do you?

A. I do not. As to whether it is out of generosity or mistake my name is carried in the Year Book, I do not care to say. They put my name in it. I am a minister of the Church of Christ and have been so for many years."

No proof was offered by the defendant that the plaintiff had ever approved or practiced open membership or that he was untrue to the Scriptures in any particular, or guilty of any waste of funds, nor was any such proof offered as to his employer, the Iowa Christian Missionary Society.

Motion to Direct As To Count VII.

At the conclusion of the evidence, defendants made a motion for directed verdict, (R. 229) in substance on the grounds that no charge of libel per se had been proven, that the statements complained of were proper comment and privileged, that no legal malice had been shown, that no defamation of the plaintiff had been shown, that insofar as the proof related to any class of persons, all were not proved innocent of the charges and that the matter was a religious controversy which the Court could not legally decide. To these grounds were added the usual grounds

of insufficiency of the evidence, that a verdict would be contrary to the evidence, contrary to law and would have to be set aside if the jury returned a verdict for the plaintiff, which motion was overruled as to all counts except VII and sustained as to that count. Plaintiff claims the sustaining of the motion as to Count VII was error.

Requested Instructions.

Prior to the preparation of the instructions and the ruling on the motion for directed verdict, plaintiff filed the following instructions (R. 234) which were as follows:

You are instructed that Count 7 of the plaintiff's petition containing the article in the November 1950 issue of the Restoration Herald, contained among other things the following: "The Judge, through our attorneys, recommended to us that we should have the trial dismissed with prejudice and get our back pay or salary and get out of the thing for this reason—the State Secretary made the statement in the presence of the Judge and the lawyers that they had a million dollars in the bank and they were going to use all of it if necessary to fight this case." This statement published by the defendants as admitted in their pleadings and in the proof is libelous per se.

That this publication is not subject to privilege as herein instructed by the court and you should return the verdict on this count for the plaintiff in such sum as you think the plaintiff has been damaged.

Note: It is admitted in the deposition that this article was published. There was no proof offered by the defendant that the statement was true; on the contrary two witnesses for the plaintiff testified that it was not true, but false.

It cannot be subject to the privilege of fair comment or criticism for the reason that it does not involve any religious doctrine asserted as a privileged comment.

Error is claimed by reason of the Court's failure to give this instruction as to Count VII.

Exceptions To The Instructions.

Prior to the submission of the instructions, plaintiff excepted to the instructions as follows: (R. 235)

MR. BUMP: The plaintiff excepts to instruction 5 and particularly that part of it which withdraws from the consideration of the jury Count 7 of the plaintiff's petition.

The plaintiff objects to instructions generally on this point: That the court assumes in these instructions that the plaintiff, Mr. Lair, was the author of the articles sent out by The Brotherhood Action Committee and does not differentiate or require the jury to find from the evidence that he was the author of these documents which caused the defendants to comment thereon. Mr. Lair was not the author of these documents and engaged in no controversy with Mr. Elmore or the Restoration Herald, which the instructions as a whole assume that he had done.

Error is claimed in the ignoring of these exceptions.

The jury returned a verdict for the defendant and thereupon, March 24, 1952, the plaintiff filed a motion for new trial, which raised all the matters charged here as error. This motion was overruled on June 4, 1952.

ERRORS RELIED UPON FOR REVERSAL.

1. The Court erred in overruling Plaintiff's Motion to Strike portions of Defendants' Answer, (R. 25, 26.) being paragraphs 5, 6, 7, 8, 9 and 12 of each division thereof.

2. The Court erred in admitting evidence as to an alleged division over the support of missionary organizations. (R. 94, 95.)

3. The Court erred in admitting evidence as to the policy of Drake University. (R. 96, 97, 98.)

4. The Court erred in admitting Defendants' Exhibits 2, 3 and 4, containing unproved accusations made by unidentified persons against the International Convention of the Disciples of Christ, The United Christian Missionary Society and The Christian Board of Publication. (R. 99, 101-103, 115-120.)

5. The Court erred in admitting evidence of alleged policies and practices of the United Christian Missionary Society. (R. 204, 205.)

6. The Court erred in refusing to give Plaintiff's requested instruction as to Count VII of the petition (R. 234) which would have instructed jury to bring in a verdict for the Plaintiff on this count. (This requested instruction is set out in full in the statement of the case.)

7. The Court erred in sustaining Defendants' motion for Directed Verdict as to Count VII. (R. 229-230.)

8. The Court erred in ignoring Plaintiff's Exceptions to the Instructions (R. 235) which excepted specifically to the withdrawing of Count VII from the consideration of the jury, and generally to the failure of the Court to submit the issue of whether the Plaintiff was the author of the documents on which Defendants commented, or whether he had engaged in any controversy with them, and also excepted to the assumption, in the instructions as a whole, that he was the author of them, and had engaged in such a contro-

versy. (These exceptions are set out in full in the statement of the case.)

PROPOSITION I.

THE TRIAL COURT ERRED IN OVERRULING PLAINTIFF'S MOTION TO STRIKE PARAGRAPHS 5, 6, 7, 8, 9 and 12 OF EACH DIVISION OF THE DEFENDANTS' ANSWER (R. 25, 26) BECAUSE THE MATTER PLEADED DID NOT CONSTITUTE A DEFENSE.

Authorities.

Corpus Juris Secundum, Libel and Slander, article 177, page 275.
Corpus Juris Secundum, Libel and Slander, article 197, page 308.
Fey vs. King, 194 Iowa 835, 190 N.W. 519.
Shaw vs. Des Moines Dress Club, 215 Iowa 1130, 245 N.W. 231, 86 A.L.R. 839.
Websters New International Dictionary, 2nd Edition.

Argument.

The publications upon which the case was based were made in Iowa.

Under the Iowa rule, a publication to be libelous per se must consist of two elements: (1) Malicious defamation of a person. (2) Publication of such defamation by any printing, writing, sign, picture, representation or effigy tending to provoke him to wrath or expose him to public hatred, contempt or ridicule or to deprive him of the benefits of public confidence or social intercourse. *Fey vs. King*, 194 Iowa 835, 190 N.W. 519; *Shaw vs. Des Moines Dress Club*, 215 Iowa 1130, 245 N.W. 231, 86 A.L.R. 839.

The trial court held that various statements made in the

articles published by the Defendants were libelous per se. (See instructions R. 235-254.)

Libel being the malicious defamation of a person, the question then became (1) Were the statements made about the Plaintiff, and (2) Were they true as to him?

The various statements (see R. 236-239 for list) were charges of apostasy. Webster's New International Dictionary, Second Edition defines an apostate as one who has forsaken the faith, principles, or party to which he before adhered; esp., one who has forsaken his religion for another; renegade.

Plaintiff became a minister of the Disciples of Christ in June, 1934. (R. 72) The faith he espoused at that time is stated at the same page of the Record, and included the democratic principles of congregational government together with the principle of "cooperation" which Plaintiff defined at the trial as churches and members working together, through district, state and national conferences and organized agencies. (R. 95)

The ultimate question to be resolved was therefore whether the Plaintiff had become apostate as to these beliefs.

The Disciples of Christ is a communion or brotherhood made up of individuals. This body of people has various organizations in which individual members or churches may participate as they see fit. (R. 73)

The Defendant's Answer, (Par. 5, R. 12) charged that in the beginning various churches were formed which practiced baptism by immersion, but that "modernists" (unidentified) relaxed the doctrine and practiced immersion by sprinkling, (open membership). They also charged that "modernists" had introduced a practice considered by them to be sinful of supporting missionary work through missionary organizations, specifically the Iowa Christian Mis-

sionary Society and the United Christian Missionary Society, and that these organizations were wasteful. (R. 13)

Paragraphs 6, 7, 8 and 9 of the Defendants' Answer (R. 14, 15) alleged in substance with the situation thus existing the Plaintiff resorted to the publication of several letters, bulletins and pamphlets "purporting" to be signed by The Brotherhood Action Committee, but in fact prepared and sent out by the Plaintiff, charging that persons who are not in unity with him were irresponsible and had resorted to "falsehoods, abuses, name-calling, and even libel and slander" and that therefore the articles of the Defendants were only fair comment and privilege.

Paragraph 12 of the Answer alleged in substance that Defendant Elmore was a minister, and therefore entitled to expose whatever he believed sinful or a departure from the faith.

Plaintiff's Motion to Strike (R. 25) was directed to all of the paragraphs of the Answer above mentioned, but particularly to paragraph 6 because the defenses pleaded were not germane, they were a statement of a controversy the Defendants sought to have with others than the Plaintiff, and that the libel alleged was the Defendants charged the Plaintiff with being a certain kind of person, and applying certain terms to him. The Motion further was based on the claim that the various paragraphs stated no defense to the libel charge.

Although the Christian Missionary Society was organized prior to 1850, the American Missionary Society in 1849, and the United Christian Missionary Society in 1920, (R. 108), long prior to the Plaintiff's becoming a member and minister, (1932-1934), the Motion was overruled.

Thus the door was open to the presentation of accusations for which the Plaintiff was not responsible and over which he had no control. For example, at the trial, Defendants were permitted to assert that the United Christian

Missionary Society had practiced open membership, but no proof was ever offered that the Plaintiff had ever practiced open membership or approved it, or even known about it, if true. Similarly, charges of waste were made against this organization, but none charged against the Plaintiff.

Truth was pleaded as a defense. It is said in 53 C.J.S., Libel and Slander, article 177, page 275: "A plea of justification is one of confession and avoidance whereby Defendant admits the utterance of or publication of the words, but seeks to excuse his conduct by asserting that Plaintiff's character is not defamed because the words are true", but the truth must be germane. It is said in the same volume, article 197 at page 308, regarding the admitting of evidence, that "The evidence must be relevant and must not come within the prohibitions of the hearsay rule."

Through the failure of the Court to sustain Plaintiff's Motion the trial ultimately became a trial of the United Christian Missionary Society and Drake University, with the claimed libel all but forgotten.

We submit that the Motion should have been sustained.

PROPOSITION II.

THE TRIAL COURT ERRED IN RECEIVING EVIDENCE IN SUPPORT OF PARAGRAPHS 5, 6, 7, 8, 9 and 10 OF DEFENDANTS' ANSWER, PARTICULARLY AS TO A DIVISION (R. 94, 95), THE POLICIES OF DRAKE UNIVERSITY, (R. 96), EXHIBITS 2, 3 and 4, (R. 99, 101-103, 115-120) AND THE PRACTICES OF THE UNITED CHRISTIAN MISSIONARY SOCIETY. (R. 204, 205.)

Authorities.

53 Corpus Juris Secundum, Libel and Slander, article 197, page 309.

Argument.

Plaintiff was asked on cross-examination if there was any division in the Iowa churches. Objection was made to this line of questioning as incompetent, irrelevant and immaterial and not cross-examination, but the objections were overruled. (R. 94, 95.)

This was followed by interrogation as to what the policy was at Drake University as "applied to fundamentalists as compared to modernists." This was objected to as "incompetent, irrelevant and immaterial. The issue of what the doctrine was at Drake University Bible College is not an issue here." (R. 96) These objections were overruled, and even though the witness testified he knew nothing of any such policy there, documentary evidence, (Defendants' Exhibit 1) was received, to the effect that a student seeking entrance there had at one time been rejected by the Dean of the Bible College, because of fundamentalist beliefs. (R. 97, 234.)

Defendants' Exhibit 2 was an advertisement of The Committee of 1000, purporting to be signed by one Willis H. Meredith, published in the Ohio State Journal, August 7, 1946. It was in the form of a letter directed to the "International Convention of the Disciples of Christ, its Sponsors and Directors: United Christian Missionary Society and Christian Board of Publication." It appears in full in the Record at pages 116-120. This document accused the three agencies named of attacking "the authority of the Bible, and denying its truth; of usurping authority over the brotherhood; of wasting money in administrative expense and travel "largely occupied with church politics and the sale of printed matter which is not true to the Bible," and of "dividing the Brotherhood."

Plaintiff then made the following objections:

MR. BUMP: We object to this as incompetent, irrelevant

and immaterial to any issue in this case, and for the reason that a casual examination of this ad in the newspaper indicates that a group of people, known as The Committee of One Thousand, signed by Willis H. Meredith—and that is as far as there is any description of who they are—are making an assault upon the International Convention of the Disciples of Christ in a public newspaper. How that is any issue in this case—is certainly far afield. (The Court reserved ruling on the objection). (R. 99)

(R. 101) THE COURT: (Jury excused) Mr. Sibbald, what is the purpose of the offer of the Exhibit 2, to which counsel has objected?

MR. SIBBALD: Only for the purpose of showing the existence of a religious controversy of long standing.

MR. BUMP: Where and between what?

MR. SIBBALD: Between members of what you call the brotherhood. Between, if you please, the Christian Restoration Association and the United Christian Missionary Society and its related societies or corporations.

MR. BUMP: My objection was that it is incompetent, irrelevant, and immaterial, doesn't support any issue in the case. It doesn't establish a controversy that is involved in these articles published by The Restoration Herald.

Mr. Bump then added the following objection:

MR. BUMP: That that document, Exhibit 2, is not an exposition of a controversy that has arisen and is being treated by these articles that are in suit here. Now just a word: There is a group—there isn't any question about it—who we think have taken themselves out of the brotherhood and they are having state conventions, international conventions of their own, and that was one of them.

The objections were overruled and Exhibit 2 was received.

Exhibit 3, a pamphlet of The Committee of One Thousand, similar to Exhibit 2, entitled "Where Does Your Mis-

sionary Dollar Go?", which attacked the United Christian Missionary Society, was also offered and received in evidence without identification, as was Exhibit 4, a document of The Committee of One Thousand, similar to Exhibit 2, entitled "Attacks on the Holy Bible by the Christian Board of Publications". (Exhibits 3 and 4 are not printed in the Record because of their length, but will be certified to this Court.)

The same objection was made to Exhibits 3 and 4 as to Exhibit 2, namely that they were incompetent, irrelevant and immaterial to any issue, not properly identified, not an authentic presentation of any facts made by any person or persons authorized to speak for any faction or group. (R. 106, 108, 115) The objections to Exhibits 3 and 4 were overruled.

In substance, Exhibits 2, 3, 4 attack three organizations of the Disciples of Christ; The International Convention, The United Christian Missionary Society, and The Christian Board of Publications. It is claimed the court erred in admitting these documents.

Following the admitting of Exhibits 2, 3, and 4, an article in The Restoration Herald of December 1949 at which time Mr. Elmore was editor, was marked Exhibit Q and offered and received in evidence. It was as follows:

"Committee of One Thousand. Many letters of inquiry necessitate the following statement: Since the death of Heber Nations and the withdrawal of Willis Meredith, founders and co-chairmen of the Missouri Committee of One Thousand, the Committee as such is now defunct." (R. 414)

The Defendants then sought to go into the matter of the Campbell Institute, a club of certain Disciple ministers, but the Court, apparently realizing the matter was getting out of hand, refused to permit this. (R. 137-141). Defendants made an offer in this connection. (R. 167-170).

Objections were made to evidence as what the United Christian Missionary Society had done that Defendants disagreed with. For instance:

"As to what the United Christian Missionary Society was doing that was contrary to my ideas, and my duties in the Christian Restoration Movement, (objected to as immaterial to any issue) the United Christian Missionary Society continued the practice of open membership, the promotion of liberalism or modernism on the mission field at home and abroad." (R. 204)

Again:

"As to whether, in my study of the books and works and publications of the United Christian Missionary Society, I have found instances in which these liberals have done the things I have described (proper objection) I have tried as conscientiously as I could to reveal to the brotherhood at large the false teaching of these agencies, the leaders, the officials of the United Society and Christian Board and sometimes state societies, etc." (R. 205)

Admission was made by Defendant Elmore that some references in the articles were to the Plaintiff. He said:

"By the words, the Lair, I meant the habitation or headquarters of false teachers and whoever it might have been that was writing those Brotherhood Action Committee articles that were included in that generalization. The state secretary was in Des Moines and he was included as a false teacher." (R. 233)

No effort was made by the Defendants to prove that Plaintiff was in fact a false teacher, that he ever approved or practiced open membership, or that he or his employer, the Iowa Christian Missionary Society, ever wasted funds, or that he had ever departed from the faith he originally espoused.

As is said in Corpus Juris Secundum, Libel and Slander,

article 197, page 308: "The evidence must be relevant and must not come within the prohibition of the hearsay rule."

The objections should have been sustained.

PROPOSITION III.

THE TRIAL COURT ERRED IN SUSTAINING DEFENDANTS' MOTION TO DIRECT AS TO COUNT VII OF THE PETITION (R. 229-230) IN REFUSING TO GIVE PLAINTIFF'S REQUESTED INSTRUCTION WITH RESPECT THERETO (R. 234) AND IN IGNORING THE EXCEPTION TO THE INSTRUCTIONS WITH REGARD TO SAID COUNT VII (R. 235) BECAUSE IT WAS LIBELOUS PER SE TO ASCRIBE TO THE PLAINTIFF ACTS HE DID NOT DO, AND STATEMENTS HE DID NOT MAKE.

Authorities.

- 33 American Jurisprudence, Sec. 45, p. 67.
Anno. L.R.A. 1917-F 1093.
Belknap vs. Ball, 83 Mich. 583, 47 N.W. 674, 11 L. R.A. 72, 21 Am. St. R. 622.
Hughes vs. Samuels Bros., 179 Iowa 1077, 159 N.W. 589, L.R.A. 1917 F 1088.
Stewart vs. Swift Specific Co., 76 Ga. 280, 2 Am. St. R. 40.

Argument.

Every person is entitled to accuracy in the reporting of his acts and statements.

In 33 Am. Jur., Sec. 45, page 67 of the article therein on Libel and Slander it is stated "... it has been held libelous per se ... to ascribe to a person statements he did not make, and which necessarily have an adverse and prejudicial effect on his standing in the community."

The Laurens article (R. 53-57) accused the Plaintiff of being in "a secret meeting", of "advising a packed vote to eliminate the minister", of "making false statements" about

one Nafe, of taking charge "of a meeting when Nafe was discharged as minister", of being "very willing to get into the fight, to make a test case in Iowa", of starting the case referred to therein for a test case, of making "the statement in the presence of the Judge and lawyers that they had a million dollars in the bank, that they were going to use all of it if necessary to fight this case. They were going to carry it to the Supreme Court, and they further stated that if we beat them in the Supreme Court, that they would immediately tie up the property of the church at Laurens and that we'd have to go back into Court again to find out whether or not they were the owners of the property", of casting a ballot in the annual election of the church, which he could not legally do, not being a member, of stating, "he was going to get Nafe", of "just dying to get one of the Churches of Christ in Iowa into a lawsuit", and of trying to "get control of the Churches of Christ".

The acts charged to the Plaintiff mentioned above were shown not to have been done and the statements attributed to the Plaintiff were shown not to have been made by the testimony of the witness, Don Beneke, (R. 69-71) and by the testimony of the Plaintiff (R. 87-89) and no proof was offered by the Defendants that Plaintiff did the acts charged to him or made the statements attributed to him.

Certainly accusing the Plaintiff, a minister, of making false statements about another minister and of being out to get him, is libelous per se because truthfulness is one of the attributes expected of a minister. Certainly also such statements as the one attributed to the Plaintiff and supposed to have been made in the presence of the Judge and lawyers that he, a minister of the gospel, had a million dollars in the bank and was going to use all of it to fight a small case which involved no more than a local church in a small community, would necessarily have an adverse and prejudicial effect on his standing with his constitu-

ency. Plaintiff was entitled to be quoted correctly as to anything that he said.

In *Stewart vs. Swift Specific Co.*, 76 Ga. 280, 2 Am. St. R. 40, the Defendant company attributed to a daughter absurd statements concerning her mother's conduct. It was held in this case that the daughter was entitled to be quoted correctly and the statements were libelous per se.

In *Hughes vs. Samuels Bros.*, 179 Iowa 1077, 159 N.W. 589, a communication purporting to have been written by an undertaker was sent to the addressee at a time when his wife was critically ill, when in fact the undertaker sent no such communication. This was held to be libelous per se.

Belknap vs. Ball, 83 Michigan, 583, 47 N.W. 674 is a holding that the publication of a letter purporting to be in the handwriting of a candidate for Congress was libelous per se when it tended to show that the candidate was illiterate.

The profession of the ministry is one in which the very highest character is expected of the individual. A mere whisper can destroy him. If the kind of thing that appears in the Laurens article can be safely attributed to a minister, then no minister is safe.

We submit that Count VII should have been submitted to the Jury, Plaintiff's Requested Instruction should have been given, the Motion to Direct as to Count VII should have been overruled and Plaintiff's Exception to the Instructions should have been granted.

PROPOSITION IV.

THE TRIAL COURT ERRED IN IGNORING PLAINTIFF'S EXCEPTIONS TO THE INSTRUCTIONS (R. 235) WITH RESPECT TO THE FAILURE OF THE COURT TO SUBMIT THE ISSUE OF WHETHER THE PLAINTIFF WAS THE AUTHOR OF THE DOCUMENTS ON WHICH THE DEFENDANTS COMMENTED, WHETHER HE HAD EVER ENGAGED IN ANY CONTROVERSY WITH THEM, AND IN ASSUMING IN THE INSTRUCTIONS AS A WHOLE THAT HE HAD ENGAGED IN SUCH A CONTROVERSY.

Argument.

The Brotherhood Action Committee was an Iowa corporation organized by four Disciple laymen. It sent out to the Iowa churches, three letters or bulletins and one pamphlet. These appear in the Record at pages 20, 21, 114 and 121. Defendants' Answer (Par. 6, 7, 8 & 9, R. 14, 15) charged the Plaintiff with the preparation and publication of these documents.

In Plaintiff's Reply, however, (R. 26) Plaintiff stated that he had not at any time issued any statement or writing concerning the Defendants and denied that he "resorted to the publication of anonymous circular letters". Plaintiff further stated that he was not the author of said documents, that they were not written, mailed or sent out by him or under his direction. He further stated he was not a member or officer of said corporation, that the said Brotherhood Action Committee was not under his control or direction. He further stated that "the documents of the Brotherhood Action Committee had not been broadcast generally by him", nor was he the author, nor were they sent out under his direction or control.

The Court in its Instructions to the Jury stated fully the

claims of the Defendants with regard to the Brotherhood Action Committee documents, (R. 240) but nowhere in the instructions did the Court mention the matters contained in the reply or that Plaintiff asserted that persons other than himself prepared and published those documents.

The Plaintiff excepted to this in the following language: (R. 235) "The Plaintiff objects to the instructions generally on this point: That the Court assumes in these instructions that the Plaintiff, Mr. Lair, was the author of the articles sent out by the Brotherhood Action Committee and does not differentiate or require the Jury to find from the evidence that he was the author of these documents which caused the Defendants to comment thereon. Mr. Lair was not the author of these documents and engaged in no controversy with Mr. Elmore or The Restoration Herald, which the instructions, as a whole, assumed that he had done." It is interesting to note that the statement of the case given by the Court in the instructions includes all the denials made by the Defendants, but the Plaintiff's position in regard to these documents is entirely omitted.

Plaintiff's total relationship to the Brotherhood Action Committee was as follows: At the request of the four laymen who organized it, he met with them in the fall of the year 1949. (It should be borne in mind at this point that as Executive Secretary of the Iowa Christian Missionary Society he met with various groups upon request.) The situation in the Iowa churches was discussed at that meeting, but no plans were made for any organization and the Plaintiff gave these laymen no assistance in incorporating. After they had incorporated they asked the Plaintiff to furnish them the addressograph list of Iowa ministers belonging to the Iowa Christian Missionary Society, which he did. They gave his name as a reference when they applied for a Postoffice box. At their request he intervened with a

printer who printed material for the Iowa Christian Missionary Society to get him to print a document for them at their expense. (R. 91) At one time a girl employed by the Iowa Christian Missionary Society mimeographed a letter for the Brotherhood Action Committee on her own time, at night. The foregoing was the extent of any knowledge or relationship. The Plaintiff did not prepare and did not publish, broadcast generally or send out any of the documents. He did not write them or see them before they were mailed. He was furnished with copies of them after they had been published generally. He stated (R. 167) that the only single document he ever sent out from his office was to a Mrs. Maude Taylor, March 28, 1950, in response to a letter from her. That letter is Exhibit 10.

It would seem that, when the Defendants were charging the Plaintiff with the preparation, the publication and general broadcasting of these Brotherhood Action Committee documents, and the Plaintiff on the other hand was asserting that other persons who were not under his direction and control had done this, the issue should have been submitted to the Jury. This more especially because Plaintiff offered the witnesses Kemp and Dailey, (R. 163, 165) who testified that in fact the Brotherhood Action Committee did publish them and prepare them and the Defendants' whole defense of fair comment and privilege depended on the issue.

We assert the exception should have been granted.

CONCLUSION.

Briefly stated, Plaintiff's Motion to Strike paragraphs 5, 6, 7, 8, 9 and 12 of the Defendants' Answer should have been sustained, and irrelevant, and incompetent and immaterial evidence as to a division and alleged policies and

practices of several organizations of the Disciples of Christ should have been excluded, particularly Exhibits 2, 3 and 4. The matters alleged in Count VII of Plaintiff's Petition should have been submitted to the Jury, and the issue of whether Plaintiff was the author and publisher of the Brotherhood Action Committee documents should have been submitted and passed upon by the Jury.

We respectfully submit that this case should be reversed and sent back for a new trial.

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