UNITED STATES v. McCOY et al.[1]

(District Court, S. D. Alabama. January 21, 1893.)

1. PLEADING—AMENDMENT—ADDING INDIVIDUAL TO JOINT CLAIM.
When suit for a trespass committed by a partnership is brought against individuals as doing business under the firm name, it is not permissible to amend by adding a claim against one partner alone.
2. SAME—SURPLUSAGE.
When a suit for a trespass committed by a partnership is brought against individuals as doing business under the firm name, it is surplusage, and not allowable, to amend by adding the name of one partner individually, inasmuch as by the form of the action he is already embraced.

At Law. On motion to amend complaint brought against Franklin J. McCoy and B. E. Brooks, doing business under the firm name and style of the Wilson Lumber Company, by adding the name of "Franklin J. McCoy, individually." Denied.

M. D. Wickersham, U. S. Dist. Atty., for the motion.
G. L. & H. T. Smith, opposed.

TOULMIN, District Judge. The two defendants, Franklin J. McCoy and B. E. Brooks, are individually liable for the acts of the partnership of which they were members, and the complaint is against them individually as well as against the partnership for the trespass complained of as having been committed by them doing business under the firm name and style of the Wilson Lumber Company. Superadding the name of Franklin J. McCoy and the word "individually" could not make him any more liable therefor, if that is the purpose. The amendment proposed is therefore useless and unnecessary, would be mere surplusage, and should not be allowed for that reason. Beavers v. Hardie, 59 Ala. 573. But if the purpose of the amendment is to embrace in the same suit an individual demand against Franklin J. McCoy, and a demand against the partnership of which he was a member, it is not permissible. The two separate demands cannot be joined in the same suit. Beavers v. Hardie, supra; Miller v. Bank, 34 Miss. 412; Lynch v. Thompson, 61 Miss. 360.

The statute of Alabama authorizes the amendment of the complaint by adding new parties defendant upon such terms and conditions as the justice of the case may require; but this statute is construed to mean that only such parties defendant may be added as were liable in the given cause of action at the time of the commencement of the suit. Burns v. Campbell, 71 Ala. 289. The given cause of action, as shown by the complaint in this suit, is a trespass committed by Franklin J. McCoy and B. E. Brooks, doing business under the firm name and style of the Wilson Lumber Company, and is not a trespass committed by Franklin J. McCoy individually. If the name of Franklin J. McCoy as one of the company had been omitted, it could be added by amendment. But it was not omitted. The amendment proposed is therefore not allowable, and the motion for leave to make the same must be denied.

[1] *Reported* by Peter J. Hamilton, Esq., of the Mobile, Ala., bar.

LAPHAM v. NOBLE.

(Circuit Court, S. D. New York. February 6, 1893.)

LIBEL—WHAT CONSTITUTES—WORDS TENDING TO INJURE BUSINESS.

A circular letter of and concerning an agent and broker for government supply contractors, composed, published, and sent by the secretary of the interior to intending bidders for such supply contracts, and stating that "any interference on the part of W. R. L., [plaintiff,] a former chief of the stationery and printing division, with the business in any way, will not be to the interest of any person or firm represented," is capable of a libelous interpretation, and a complaint which properly pleads the same is good as against a demurrer.

At Law. Action by W. R. Lapham against John W. Noble for libel. Defendant demurs to the complaint. Overruled.

Edward M. Groat, for plaintiff.
Myers & Anable, for defendant.

WALLACE, Circuit Judge. The defendant's demurrer raises the question whether the complaint states facts sufficient to constitute a cause of action. The action is to recover damages for the publication of a circular letter concerning the plaintiff, upon the theory that it was a libel. The complaint alleges that at the time of publication the defendant was, and for some time prior thereto had been, the secretary of the department of the interior of the United States; that for many years prior to December 15, 1891, the plaintiff had been an employe in the stationery and printing division of said department, and for some time had been chief of such division; that on December 15, 1891, the plaintiff resigned his position, and entered upon, and has since continued in, the business of a government contractor for supplying the various departments of the government at Washington with stationery and office supplies, and also in that of an agent or broker for others in that business, employed by them to arrange their bids, and negotiate and procure the acceptance of the same. The complaint further alleges that on March 28, 1892, while the plaintiff was still prosecuting his said business, the defendant composed, of and concerning the plaintiff and his business, a circular, and, with the intent of injuring the plaintiff in his business, caused it to be sent to all persons who were, or had been, or were likely to be, bidders for government contracts for supplies for the use of the several departments. The circular is as follows:

"Department of the Interior, Washington, March 28, 1892.

"Sir: In order that there may be no misapprehension on the part of persons intending to submit bids for furnishing envelopes and stationery for the use of this department during the ensuing year, you are informed that any interference on the part of Mr. W. R. Lapham, a former chief of the stationery and printing division, with the business in any way, will not be to the interest of any person or firm represented.

"Respectfully, John W. Noble, Secretary."

The complaint alleges that the defendant meant by the word "interference" in the circular to say falsely that the plaintiff, by the prosecution of his business, was meddling with matters which