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Libel and Slander—Strict Liability—Press Dispatches—Defamation by Radio

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RECENT CASES

LIBEL AND SLANDER—STRICT LIABILITY—PRESS DISPATCHES—DEFAMATION BY RADIO. The defendant newspaper published an Associated Press dispatch which carried the imputation that the plaintiff, an attorney in the trial of a case, had been censured for giving false testimony under oath. The charge was untrue, and plaintiff brought an action for damages. The defendant asked for an instruction to the effect that a newspaper which merely reprints a dispatch sent from a distant city by a reputable news service is not to be held to the same responsibility for the truth as in instances where the newspaper's own reporters write the story. The instruction was refused and judgment for the plaintiff was affirmed. *Carey v. Hearst Publishing Co.*, 119 Wash. Dec. 697, 143 P(2d) 857 (1943).

The *Carey* case represents the first decision in Washington upon the particular question involved. The holding is in accord with the usual rule that re-publication of a libel is actionable to the same extent as the original release, and the repetition is not privileged by the mere fact that the source is indicated and can ordinarily be depended upon to speak the truth. Strict liability is the standard applied. *Peck v. Tribune Co.*, 214 U. S. 185, 53 L. Ed. 960 (1909); 39 Am. Juris. 20, §32; Prosser on *Torts*, p. 819. Apparently the only authority for a more liberal view is found in the case of *Layne v. Tribune Co.*, 108 Fla. 177, 146 So. 234 (1933). In that decision under practically identical facts, it was held that the publication was not libelous *per se*, and that in order to set up a good cause of action, it must be alleged and shown that the defendant was reckless or wanton in publishing the falsehood. The Florida Court justified its departure from the strict rule formulated at common law upon the ground that great changes have occurred in the manner of reporting and publishing news items, and that under such new conditions, it is unreasonable to require newspapers to verify reports from far-distant points in order to protect themselves in the event of error on the part of the press service. As yet, no cases have been cited as following the *Layne* opinion, but at least one writer has voiced a similar criticism of the general rule. 2 Cooley on *Constitutional Limitations*, 8th ed., pp. 939.

Immediately following the *Layne case*, a flood of law review articles were written concerning it (these are collected in Prosser on *Torts*, pp. 817, 820). For the most part, these articles attacked the validity of the new view, but the advantages to be gained by such a change in the law were also pointed out. In support of the general rule, it was indicated that as a practical matter, a newspaper is better able to bear the loss than is the injured individual. 81 U. PA. L. R. 779. This argument is sound so far as it goes, but should take into consideration the fact that the primary wrongdoer (the press service) is also liable and usually capable of compensating the plaintiff. It does not seem unreasonable to suggest that public policy might be better served if the injured party were required to seek his remedy against the originator of the libel. 37 MICH. L. R. 495. It has been suggested that even if the plaintiff does recover damages against the press service, his remedy will not be complete, because such an action would not be effective in clearing him of guilt of the accusations in his home community. 46 HARV. L. R. 1032. The reply to this contention is that the plaintiff could attain this result by an action in equity to compel the local newspaper to publish a retraction. 37 MICH. L. R. 495.

A problem similar to that faced by publishers confronts broadcasters. It has been held that publication by radio is analogous to publication by

newspaper, and the same standard of liability is applicable in actions against the station owner where defamatory utterances of others are disseminated through his station. Good faith is no defense. *Miles v. Wasmer Inc.*, 172 Wash. 466, 20 P(2d) 847 (1933). It is interesting to note that the burden upon the broadcaster has been relieved to some extent by a recently enacted statute in Washington. WASH. SESSION LAWS, C. 229 (1943). It provides that the broadcaster shall not be liable for defamation by the speaker (beyond the script), if he has previously examined the script and cuts off the broadcast immediately upon departure from the approved matter.

There may be some merit in the arguments presented for the change in the existing rule of law. However, modern law is developing a policy of imposing strict liability (liability without fault) in cases where the defendant's activity is one involving a high degree of danger to others even though it is carried on with all possible precaution. Prosser on *Torts*, Sec. 56, p. 426. An untrue publication, particularly by a newspaper or on the radio, should be placed on the same basis because of the usual serious injury to the plaintiff, the fact that it is irreparable, and it is generally of doubtful utility.

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