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# Radio Broadcasting - Libel and Slander - Joint Tort Feasors

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have repeated, it seems almost without thinking, that unfortunate dicta of Lord Eldon. Certainly the whole question of reputation is peculiar in this, that society offers no adequate compensation for its loss. Unlike converted personal property, something similar or equivalent to it cannot be purchased with money, nor can it be restored like other matters of substance by the person who has wrongfully taken it. Reputation is necessary for a man to live as befits his nature; injury to it results often in irreparable damage to the individual's personal, economic, and social life. For that reason society owes an urgent duty to preserve it for the individual. Adequate protection can only be given by preventing the cause of damage; money damages are altogether inadequate, just as they are in the case of unique chattels. Today, will some court say that a good name, and honor in the community, merit equitable protection?[27]

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RADIO BROADCASTING—LIBEL AND SLANDER—JOINT TORT FEASORS —There is always a certain amount of time elapsing between the enactment of a new law and its interpretation by the court, and the case of the Radio Act of 1927[1] is no exception to the rule. Five years after the passage of this law we find the first interpretation of one of its section,[2] by the supreme court of the state of Nebraska. The court was provided with an opportunity in *Sorenson* v. *Wood*[3] to extend, by analogy, the law of slander and libel to a virgin soil, that of the field of radio broadcasting. A brief review of the above case shows a radio station being joined as a joint tort feasor with a political speaker who

libels in respect to the right of publication; the constitutional guarantee should apply to both. A libelous attack on a man's business will be prevented; but what is more fundamental, a libelous attack on the man's own good name, will not, it seems, be prevented. *Ex parte Tucker,* 110 Tex. 335, 220 S.W. 75 (1920) directly denied equity jurisdiction as being unconstitutional; but *Hawks* v. *Yancey,* 265 S.W. (Tex. Civ. App.) 233 (1924) granted an injunction for slander, distinguishing its decision from the preceding case on the grounds of intimidation, (no property right, other than that of good name, was involved in the case). *Northern Wis. Co-operative Tobacco Pool* v. *Bekkedal,* 182 Wis. 571 197 N.W. 936 (1924) restrained oral solicitations injuring business. *John F. Jelke Co.* v. *Hill,* 242 N.W. (Wis.) 576 (1932) evaded a direct decision on the question upon technical grounds, but asserted that there may be limitations on the right to speak, citing in particular *State ex rel. Olson* v. *Guilford,* 174 Minn. 457, 219 N.W. 770, 58 A.L.R. 607 (1928) and *Near* v. *Minn, ex rel. Olson,* 283 U. S. 697, 51 Sup. Ct. 625 (1931).

[27] See Chafee, Freedom of the Press, for further discussion of the constitutional aspect of the question.

[1] Feb. 23, 1927 C. 169 § 18, 44 Stat. 1170.

[2] 47 United States Court of Appeals § 98, 44 Stat. 1170.

[3] 243 N.W. 82 (Neb. 1932).

had uttered defamatory statements concerning the plaintiff in the action. By means of this defendant's equipment. Defendant set up as a defense order No. 31[4] of the federal radio commission as well as the requirements of the statute noted above.[5]

The court in the formulation of its opinion set forth the view that this act of congress does not contain an authorization or sanction to libel. It states that in so doing, it would conflict with the fifth amendment of the constitution, which prohibits the taking of property without due process of law. The act confers no privilege upon the broadcasting station, and in the court's interpretation, it refers merely to a censorship of political views. The court was forced to decide as to whether the utterances into the ether were slander or libel, since liability imposed for each has its own limitations. Libel, of course, is the more serious offense since "written defamation may be circulated more widely and can therefore do more harm; it is more permanent in form; and that it requires deliberation and is therefore more injurious."[6] According to *Mills* v. *Wamser,*[7] the writing of the speech before broadcast constitutes sufficient publication to make the speaker liable.

Whether an analogy should be drawn between a newspaper and a radio broadcast, or between a common carrier such as the telephone or telegraph and a radio broadcast presented a perplexing question. Arguments for the former were the weightier in the mind of the court. In telephone service, the communications are between the parties to the conversation, over whom the company has no control. In a radio broadcast, there is a joint participation[8] of the station and the speaker, for without both, there could be no sounds broadcast. Moreover, the speaker speaks to an invisible audience, thousands in number. The telegraph companies are granted a limited liability due to their state as common carriers.[9] a radio company can deal with its advertisers as it sees fit;

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[4] Order No. 31, Federal Radio Commission "such licensee shall have no power of censorship over material broadcast under the provisions of" 47 United States Court of Appeals § 98.

[5] 47 United States Court of Appeals § 98. Use of broadcasting station by legally qualified candidates; censorship. "If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other candidates for that office in the use of such broadcasting station, and the licensing authority shall make rules and regulations to carry this provision into effect. Provided that such licensee shall have no power of censorship over the material broadcast under the provisions of this section."

[6] 3 Air Law Journal 64-67 Jan. 1932. Charles L. Melton.

[7] Unreported, Superior Court of Washington for the City of Spokane.

[8] 2 Journal of Radio Law 673-707 Oct. 1932. Lawrence Vold.

[9] 104 Fed. 628, 1900 *Nye* v. *Western Union Telegraph Company.*

and since such power is given to it, it is essential that it exercise a certain amount of control. Thus, a radio cannot qualify as a common carrier.[10]

A radio broadcast offers to the speaker a wider circulation than can a newspaper; and though it is less permanent, it remains a great force in swaying the public mind. The deliberation involved in placing in written form a defamatory speech is fully as great as that in giving the same to a newspaper for publication.[11] Radio, though in its infancy, is already waging a winning battle for the favor of the large advertisers, and is in direct competition with the newspapers in this field, as well as in the dissemination of news. Neither should receive special favors not accorded the other.

An honest mistake, in spite of the use of due care, finds the newspaper liable in the courts of law.[12] The means of control within the powers of a newspaper, are found in similar form in the operation of a radio station. In the first place, station operators can demand a copy of the speech to be broadcast, and, in addition, exact promises from the speaker to refrain from going beyond its contents. Then, during the course of the broadcast, which are as a rule "monitored,"[13] the operator at the controls may, by the movement of a switch, cut off the speaker at the slightest deviation from the continuity of the speech, to insure the station from defamation, in the heat of argument. But what of the words which may inadvertently pass into the ether? This would seem to be a risk that the radio stations will have to bear because of the nature of the business in which they are engaged.[14]

Though the courts refuse to impose previous restraints upon the publication of libels,[15] there is nothing which can prevent a newspaper from refusing to publish that which they see to be libelous. Having established the strong analogy between radio broadcasting and newspaper publishing, the conclusion which may be drawn is that a radio company may likewise exercise this degree of censorship to free itself from liability which necessarily must follow, and as did follow in this case.[16]

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[10] 2 Journal of Radio Law 673-707 Oct. 1932.

[11] 3 Air Law Journal 64-67 Jan. 1932.

[12] 214 U. S. 185, 1909, *Peck* v. *Tribune Company.*

[13] "Monitored"—A radio station by means of its auxiliary equipment may hear the broadcast as it goes out into the ether, and within reach are the switches which control the transmitter. This operation of listening to and controlling the broadcast is called monitoring.

[14] 214 U. S. 185, *Peck* v. *Tribune Company.* "If the publication was libelous, the defendant took the risk."

[15] *Near* v. *Minnesota,* 283 U. S. 697 (1930).

[16] *Sorenson* v. *Wood,* 243 N.W. 82 (Neb. 1932).