Louisiana Law Review

Volume 2 | Number 1
November 1939

Libel and Slander - Defamation by Radio

K. J. B.

LIBEL AND SLANDER—DEFAMATION BY RADIO—An entertainer made an extemporaneous defamatory remark[1] by radio through use of the defendant's broadcasting facilities. Defendant had required the sponsors to submit a script of the program for inspection. The defamatory statement not being contained in the script, the defendant had no means of preventing its publication. *Held*, for defendant: (1) defamation by radio is neither libel nor slander but a separate tort and (2) a broadcasting company is not liable for defamatory remarks made over its facilities unless *fault* can be shown. *Summit Hotel Co. v. National Broadcasting Co.*, 8 A. (2d) 302 (Pa. 1939).

Before the decision in the principal case, it had been held that defamatory matter read over the radio constitutes libel;[2] extemporaneous defamation published over the same medium was said to be slander.[3] The holding of the instant case, that defamation by radio is neither libel nor slander, is not of much importance in Louisiana; for, in a suit for slander, it is not necessary to show special damage even though the words spoken were not "actionable per se." The common law distinction between words "actionable per se" and words not so actionable does not obtain in Louisiana.[4]

Several decisions prior to the instant case imposed an absolute liability upon radio stations for defamatory publications.[5]

---

1. The exact statement was as follows: "But tell me, Sam, what did you do after you got out of college?" Answer: "I turned golf professional and in 1932 I got a job at the Summit Golf Club in Uniontown, Pennsylvania." The entertainer replied: "That's a rotten hotel." Summit Hotel Co. v. National Broadcasting Co., 8 A. (2d) 302, 303 (Pa. 1939).

2. Sorensen v. Wood, 123 Neb. 348, 243 N.W. 82 (1932). Cf. Miles v. Louis Wasmer, Inc., 172 Wash. 460, 20 P. (2d) 847 (1933).

3. See Locke v. Gibbons, 299 N.Y. Supp. 188 (1937). In the *Locke* case the court intimated that should the question arise of determining the nature of defamatory matter read over the radio, the holding of Sorensen v. Wood, 123 Neb. 348, 243 N.W. 82 (1932), would be applied. The court stated, "Perhaps in such a case the analogies of the cases holding that reading from a defamatory letter was libel, would apply." (299 N.Y. Supp. at 193.)

4. Miller v. Holstein, 16 La. 395 (1840); Feraz v. Foote, 12 La. Ann. 894 (1857); Warner v. Clark & Co., 45 La. Ann. 863, 135 So. 203 (1893).

5. Coffey v. Midland Broadcasting Co., 8 F. Supp. 889 (1934); Sorenzen v. Wood, 123 Neb. 348, 243 N.W. 82 (1932); Miles v. Louis Wasmer, Inc., 172 Wash. 466, 20 P. (2d) 847 (1933).

The *Coffey* case is particularly strong. Defamatory remarks were made by a speaker over a radio station in New York; the broadcast was transmitted by telephone to defendant's station in Kansas City, Missouri. Defendant had no opportunity to suppress the defamatory remarks. In holding the Missouri corporation to liability without fault the court said, "In my thought, then, I put the primary offender in the local studio of KMBC at Kansas City. I assume his good reputation; I assume that nothing in any former

An analogy was drawn between defamation by the press and defamation by radio; the rule that a newspaper is liable for defamatory publications regardless of fault[6] being extended to radio. Despite this analogy, the court in the instant case, upon finding the radio station completely absolved of negligence, denied recovery. The refusal to hold the radio station responsible was based on the fact that in Pennsylvania absolute liability for defamation is not imposed on a newspaper; only a very high standard of care is required.[7]

Article 2315 of the Revised Civil Code[8] has never been interpreted to impose absolute liability on the press, although such a high standard of care is required that for all practical purposes the same result is obtained.[9] It follows that Louisiana courts probably will refuse to apply the concept of absolute liability to defamation by radio.

As a practical matter, defamation by radio and defamation

---

performance by him should put the owner of the station on inquiry; I assume even that he has submitted a manuscript and that nothing in it is questionable; I assume a sudden utterance by him of defamatory words not included in the manuscript, an utterance so quickly made as to render impossible its prevention; *I assume, in short, a complete absence of the slightest negligence on the part of the owner of the station.* With these assumptions is the owner of KMBC liable to one of whom the primary offender has falsely spoken as an ex-convict who has served time in the penitentiary?

"The conclusion seems inescapable that the owner of the station is liable. It is he who broadcasted the defamation." (8 F. Supp. at 890.) (Italics supplied.)

6. Peck v. Tribune Co., 214 U.S. 185, 29 S. Ct. 554, 53 L. Ed. 960, 16 Ann. Cas. 1075 (1909).

7. See Summit Hotel Co. v. National Broadcasting Co., 8 A. (2) 302, 307 (Pa. 1939). Cf. Shelby v. Dampman, 1 Pa. Super. 115, 123 (1896).

8. Art. 2315, La. Civil Code of 1870: "Every act whatever of man that causes damages to another, obliges him by whose *fault* it happened to repair it. . . ." (Italics supplied.)

9. Upton v. Times-Democrat Pub. Co., 104 La. 141, 28 So. 970 (1900). In this case the plaintiff, a clergyman, attended a meeting of the police jury of East Baton Rouge parish and read a petition asking the police jury to order an election for the purpose of voting on prohibition of liquor sales in that parish. The defendant's correspondent telegraphed an account of the proceedings to the defendant. In transmission an error was made and the report which reached the defendant described the plaintiff as a "colored gentleman" instead of a "cultured gentleman." In conformance with its policy the defendant changed the term "colored gentleman" to "negro" and in the article published described the plaintiff as a negro. In holding the defendant liable the court said, "injury resulting from oversight or negligence, even when there is no malice or evil intent, may give rise to liability in damages. A newspaper would yet be liable if an injurious untruth should find its way into its columns, though by the merest accident. . . . The fact that a management may be all that can be expected to guard against unfortunate accidents is not in itself a protection from damages and a sufficient defense." (140 La. at 144, 28 So. at 971.)

by newspapers are the same offenses.[10] Therefore, the rules applicable to the press should not be modified when extended to radio broadcasting.

K. J. B.

SPECIFIC PERFORMANCE—CONTRACT TO DRILL AN OIL WELL—DIFFICULTY OF ENFORCEMENT OF DECREE—Defendant contracted to drill an oil well on a lease owned jointly by the plaintiff and defendant. After drilling a dry hole on a nearby plot, defendant refused to continue. In holding the defendant liable in damages,[1] the Louisiana Supreme Court stated that a contract to drill a well in search of oil or gas is one which, because of its nature, the courts have no means of compelling specific performance. *Fite v. Miller,* 192 La. 229, 187 So. 650 (1939).

The instant case follows another Louisiana decision which held that the specific enforcement of a contract to drill an oil well was subject to so many contingencies that specific performance was impracticable.[2] This is in accord with the universal rule of denial of injunctive relief in such cases.[3] The common law has always been reluctant to decree specific performance of an act requiring continued supervision of the court and it has been decreed only in exceptional and unusual cases, where damages for the breach were clearly an inadequate remedy.[4] The Louisiana rule is stated in Articles 1926 and 1927 of the Louisiana Civil Code,[5] which provide that ordinarily damages are adequate com-

---

10. The statement of the court in the instant case [Summit Hotel Co. v. National Broadcasting Co., 8 A. (2d) 302, 308 (Pa. 1939)] to the effect that the analogy between defamation by radio and defamation by the press is not well taken because newspapers have the opportunity to supervise and prevent publication of libelous matter seems unsound in that it fails to take into consideration the practical impossibility of newspapers detecting defamatory statements in those instances wherein the libel is not defamatory on its face.

1. For a discussion of the damage point, see Note (1939) 13 Tulane L. Rev. 639.

2. Caddo Oil & Min. Co. v. Producers' Oil Co., 134 La. 701, 64 So. 684 (1914).

3. Jeffers v. Rondeau, 1 S.W. (2d) 380 (Tex. Civ. App. 1927); 3 Summers, The Law of Oil and Gas (1938) 226-234, §§ 533-534.

4. Pomeroy, Specific Performance of Contracts (1926) §§ 307, 312.

5. Art. 1926: "On the breach of any obligation to do, or not to do, the obligee is entitled either to damages, or, in cases which permit it, to a specific performance of the contract, at his option, or he may require the dissolution of the contract, and in all these cases damages may be given where they have accrued, according to the rules established in the following section."

Art. 1927: "In ordinary cases, the breach of such a contract entitles the party aggrieved only to damages, but where this would be an inadequate compensation, and the party has the power of performing the contract, he