and apparent ownership of the goods and the lack of registration of any lien thereon. HARRY L. BROWN.

DEFAMATION

LIBEL BY PUBLICATION OF PICTURE

A petition alleged that the defendant published an article concerning a convict in the state penitentiary connected with the Lindbergh kidnapping and that in the article was the plaintiff's picture with the convict's name thereunder. The lower court sustained a demurrer to the petition. Held, such a petition states a good cause of action for libel. *Petransky* v. *Repository Pub. Co.*, 51 Ohio App. 306, 200 N.E. 647 (1935).

A libel is a publication, expressed in printing or writing or by signs and pictures, tending to injure the reputation of a person and to expose him to public hatred, contempt, or ridicule. *Burns* v. *Telegram Pub. Co.*, 89 Conn. 549, 94 Atl. 917 (1915); *Willetts* v. *Scudder*, 72 Ore. 535, 144 Pac. 87 (1914). It is well settled that a libel can be made by a picture, portrait, or caricature. *McGeary* v. *Leader Pub. Co.*, 52 Pa. Super Ct. 35 (1912); *Ellis* v. *Kimball*, 16 Pick. (Mass.) 132, (1834); *Snively* v. *Record Pub. Co.*, 185 Cal. 565, 198 Pac. 1 (1921). Motion pictures may constitute the basis of an action for libel. *Brown* v. *Paramount Publix Corp.*, 270 N.Y.S. 540, 340 App. Div. 520 (1934).

In the principal case the defendant contended that since a person reading the whole article would see that it meant someone other than the plaintiff, it was not libelous. In support of this contention he relied on *Woolf* v. *Scripps Pub. Co.*, 35 Ohio App. 343 (1930), in which case the defendant published the plaintiff's picture in an article about a third person involved in an alienation of affections suit, with the name of the third person under the picture. The court held that the controlling question is not whether the article referred to the plaintiff, but whether it was calculated to lead persons reading it to believe that it referred to the plaintiff. This is the only other Ohio case in point, and is supported by *Ball* v. *Evening American Pub. Co.*, 237 Ill. 592, 86 N.E. 1097 (1909). There seems to be little other authority for this proposition.

The court in the principal case, in overruling the Woolf case, held that the only question is whether the mode of defamation which has

been adopted is capable of conveying a meaning detrimental to the plaintiff. Newell on slander and libel, 4th ed., 267. The fact that a person's name is not mentioned in a publication alleged to be a libel on him does not render it less libelous if the publication would be understood as referring to him. *Barron* v. *Smith*, 19 S.D. 50 (1904). Some persons might know the plaintiff by sight and not by name, or else believe that he gave a fictitious name. Thus the defamatory article is easily capable of conveying a meaning detrimental to the plaintiff.

The publication is libelous if it harms the party alluded to in the estimation of an important and respectable part of the community, and it is no excuse that the picture is published by mistake or in good faith. *Peck* v. *Tribune Co.*, 214 U.S. 185, 29 S. Ct. 154 (1908). Innocence in a mistake, however, may mitigate damages. *Van Wiginton* v. *Pulitzer Pub. Co.*, 218 Fed. 795, 134 C.C.A. 483 (1915). The defendant also argued that under modern conditions, a publisher should not be held to such strict accountability, because of the manner in which news must be obtained and published. The court replied to this argument with the following quotation from Lord Mansfield: "Whatever a man publishes, he publishes at his peril."

The principal case is in accord with the majority rule. *Peck* v. *Tribune Co.*, supra; *De Sando* v. *New York Herald*, supra; *Wandt* v. *Hearst's Chicago American*, 129 Wis. 419 (1906); *Farley* v. *Chronicle Pub. Co.*, 113 Mo. App. 216, 87 S.W. 565 (1905); *James* v. *Ft. Worth Telegram*, 117 S.W. 1028 (1909). It is believed that this view reaches the better result. It conforms to the generally accepted definitions of libel, and will compensate a person for injuries to his reputation caused by an innocent mistake where the defendant has used the greatest of care possible under the circumstances as well as for those injuries caused by the defendant's negligence or malice.

GEORGE COLE.

EVIDENCE

BURDEN OF PROOF IN PROBATE AND CONTEST PROCEEDINGS

Corneal J. McWilliams, one day before his death, executed a codicil wherein he revoked the prior appointment of the Central Trust Co. of Cincinnati as executor-trustee of his will. Arthur J. O'Connell was substituted in its place. The will was admitted to probate, but the codicil was rejected. Upon appeal the judgment of the common pleas court was affirmed upon the ground that McWilliams was not of sound mind