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LIBEL AND SLANDER-CLASSIFICATION OF DEFAMATORY BROADCASTS FROM A PREPARED SCRIPT

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LIBEL AND SLANDER—CLASSIFICATION OF DEFAMATORY BROADCASTS FROM A PREPARED SCRIPT—In an action for libel or slander, plaintiff's complaint alleged that defendant, a radio commentator, broadcast from a prepared script a charge that plaintiff was the leader of a movement which favored peace because Germany was losing the war and blamed the United States for killing children in Europe and Asia. Defendant moved to dismiss the complaint; *held*, that the complaint stated a good cause of action. Since the remarks complained of were not defamatory per se, the court considered the decision as turning on whether they constituted libel or slander and held that they were libelous, distinguishing a previous New York case [1] which reached the opposite conclusion as to extemporaneous broadcasts. *Hartmann v. Winchell*, 187 Misc. 54, 63 N.Y.S. (2d) 225 (1946).

A comment published in the *Michigan Law Review* states that "In the few cases that have arisen in this country on the subject of radio defamation, the courts, so far as possible, have avoided the task of determining whether the broadcasting of defamatory matter is libel or slander, but it is safe to say that, at least in the cases where defamation is read from a script, the courts are quite likely to follow the view of the American Law Institute committee" [2] that it is libel. Since this comment was published, no court of last resort has reached a decision squarely following the Nebraska view that such a broadcast constitutes libel rather than slander,[3] or the Australian view that it is slander rather than libel [4] or the Pennsylvania view that radio defamation is a new tort, neither libel nor slander.[5] In Massachusetts, a recent adoption of the traditional rule that reading defamatory matter from a letter constitutes libel rather than slander [6] has been considered as indicating that the Nebraska rule would be followed in that jurisdiction.[7] The rather circuitous route followed by the New York courts in reaching the decision in the principal case [8] illustrates the tendency to avoid resolving the question presented by radio broadcasts, and the holding itself is a further indication that where the issue cannot be avoided broadcasts of defamatory material from a script will generally be considered libelous.

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[1] Locke v. Gibbons, 164 Misc. 877, 299 N.Y.S. 188 (1937).

[2] 39 MICH. L. REV. 1002 at 1004 (1941).

[3] Sorenson v. Wood, 123 Neb. 348, 243 N.W. 82 (1932).

[4] Meldrum v. Australian Broadcasting Co., [1932] Vict. L. Rep. 425.

[5] Summit Hotel Co. v. National Broadcasting Co., 336 Pa. 182, 8 A. (2d) 302 (1939).

[6] Bander v. Metropolitan Life Insurance Co., 313 Mass. 337, 47 N.E. (2d) 595 (1943).

[7] 24 BOST. UNIV. L. REV. 94 at 95 (1944).

[8] In a 1943 case involving another Winchell broadcast, the New York Supreme Court had held for the plaintiff on two grounds: that written script broadcasts were libel; and that the alleged remarks were defamatory per se. This decision was affirmed without opinion by the Appellate Division, their decision being interpreted by the court in the Hartmann case as resting on the first ground.