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Defamation Defined

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DEFAMATION DEFINED

HISTORICAL BACKGROUND

The law of defamation is divided into two distinct actions, libel and slander. Because of this division, or more accurately perhaps because there is no sound, logical reason for the division, there exists a great deal of confusion and disorder in the law of defamation. As a result, the general practitioner is severely handicapped in his ability to successfully try an action in libel or slander, mainly because of the anachronistic rules which apply to both substantive and procedural law in defamation.¹

Like most actions in tort, the law pertaining to defamation arose to meet a social need. In man's early stages, he satisfied a slur on his honor and name by violent means. Thus, a single incident could balloon into a bloody conflict between tribes, lasting generations. As man emerged as a social animal, however, he realized the necessity of resolving these disputes in a manner which allowed the injured party satisfaction for his injury, and, concomitantly, extinguished possible continuing feuds. To implement this need, a money payment, or *wer*, was allowed for words of dishonor.² To call someone a "wolf" or "hare" meant a three shilling fine; a spurious accusation of a woman's unchastity cost forty-five shillings; and if one falsely accused another of being a "thief" or "manslayer," the defendant not only had to pay damages, but also had to publicly confess himself a liar while holding his nose with his fingers.³ In all of these cases, the penalty exacted aimed at giving the party offended a feeling of satisfaction or required vengeance for the injury done to him.

The injury to the plaintiff was always to his honor or esteem, and the harm could only be measured in relation to his peers in the community. Thus, in the 13th and 14th centuries, whenever an action in defamation was tried it would be conducted in front of those who were present when the attack on the plaintiff's reputation was made.⁴

Whenever the injury to the person's reputation could conceivably be the result of some sin committed by the defendant, such as an attack on chastity, the plaintiff's business ethics, or the like, the ecclesiastical courts took jurisdiction. The usual punishment was an affirmation of the falsity of the insult in the presence of the clergy, and an apology to the person defamed.⁵ But this relatively mild penalty, coupled with a growing disenchant-

¹ For a comprehensive analysis of the pitfalls of libel and slander pleadings, see Wyse, *The Complaint in Libel and Slander*, 33 Chi.-Kent L. Rev. 313 (1955).

² Veeder, *The History and Theory of the Law of Defamation*, 3 Colum. L. Rev. 546, 548 (1903). For other general sources on the history of defamation, consult Donnelly, *History of Defamation*, 1949 Wis. L. Rev. 99; and Note, 69 Harv. L. Rev. 875 (1955).

³ Veeder, *op. cit. supra* note 2, at 548.

⁴ *Id.* at 549.

⁵ *Id.* at 551.

ment with these courts because of rampant corruption, eventually led to the dissolution of this type of tribunal.

In 1275, the statute known as *De Scandalis Magnatum* was decreed, giving the King's courts jurisdiction over actions in defamation where the party defamed was the King or "great men of this realm," the latter including the nobility, judges, and "other great officers."⁶ This gave the crown absolute control over political heretics, and the law was administered by the notorious Star Chamber. By the time of Elizabeth I, at the end of the 16th century, the King's courts had assumed jurisdiction over all actions in defamation.

It was during this period that most of the formalistic procedure we know today was formed. The law of defamation only recognized certain actions: imputations of an indictable offense; imputation of a contagious disease; imputations affecting a person's business, trade or occupation; and, any imputation which in fact caused special damages.⁷ Also during this time the courts developed the doctrine of *mitior sensus*, which was used in considering the alleged defamatory language in the writs.⁸ If more than one meaning could be construed from the language, then the courts would presume the words to be said in their less harmful sense.⁹ There is no clear reason for the existence of these purely arbitrary rules, but it has been suggested that they were adopted as an expedient, since it appears that there was a surfeit of defamation litigation brought to the courts during this time, and the use of these rules was an effective way of unclogging the courts.¹⁰

With the advent of printing, the crown was quick to realize the inherent dangers in an unbridled press, and so it is not surprising to find actions in defamation emanating from the printed word under the jurisdiction of the Star Chamber. Previous to this, several instances of defamation by writing had appeared, but no distinction had been made between oral and written defamation. To provide for this novel situation the Star Chamber extracted, with modification, the provisions of the Roman Law, *libellus famosus*.¹¹ Briefly, the doctrine applied to a defamatory statement made in a public manner, and was treated more severely, on the basis that the state-

⁶ *Id.* at 553.

⁷ *Id.* at 558. As the reader can see, these actions are identical with the modern elements for the action of slander per se.

⁸ *Ibid.*

⁹ The most ridiculous example of this doctrine is found in *Holt v. Astrigg*, 79 Eng. Rep. 161 (1607). The defamatory words alleged were: "Sir Thomas Cook struck his cook on the head, with a cleaver, and cleaved his head, the one part lying on the one shoulder, and another part on the other." Applying the doctrine of *mitior sensus*, the writ was held not to charge an indictable crime (homicide), since there was no allegation that the cook died. This doctrine was the harbinger of the innocent construction rule, which will be discussed later in this article.

¹⁰ Veeder, *The History and Theory of the Law of Defamation*, 3 Colum. L. Rev. 546, 558 (1903).

¹¹ *Id.* at 653.

ment was less easily corrected, and thus caused more harm, than one which was occasioned in a private gathering. Under this doctrine, truth was not a defense, whereas it was in the lesser offense. The basic test, whether there was an insult to reputation, was still applied, but because of the greater potential for a breach of the peace, the scope of the action was decidedly enlarged.

DEFAMATORY NATURE OF WORDS

Defamation has been defined as a false publication calculated to bring a person into disrepute,¹² or "an attack on the reputation of another, and includes the ideas of calumny and aspersion by lying, and the injury to another's reputation by such means."¹³ Probably the most popular definition, however, is Prosser's:

Defamation is an invasion of the interest in reputation and good name, by communication to others which tends to diminish the esteem in which the plaintiff is held, or to excite adverse feelings or opinions against him.¹⁴

This definition is sufficiently broad so as to include pity, sympathy, ostracism or disgrace. The injury to the plaintiff's reputation is not measured in terms of his wounded feelings, but rather the damage to his reputation¹⁵ as seen in the eyes of others.¹⁶ This serves to protect the defendant in most instances, for while the plaintiff is bound to be offended by any allegedly defamatory statement, with this safeguard, the defendant will not be liable for acts which the community itself does not regard as defamatory, such as political cartoons, abusive language in the heat of anger, and the like.

The defamatory statement need not be direct in its accusation, however, and if an insinuation is reasonably clear, it may be found to be defamatory.¹⁷ Thus, in *Cobbs v. Chicago Defender*,¹⁸ defendant published an article stating that the plaintiff, a prominent South side minister, had been the subject of a rumor purportedly involving a large scandal. Any and all details of the scandal were omitted (perhaps because the defendant feared a law suit). The court found that although the plaintiff was not defamed by any specific statement, since a minister's reputation was more likely to be tarnished than one of another occupation, such veiled statements as those published by the defendant were defamatory. (Why the courts have not

¹² Newell, *Libel and Slander* 32 (2d ed. 1898).

¹³ 53 C.J.S., *Libel and Slander* 1 (1948).

¹⁴ Prosser, *Torts* 756 (3d ed. 1964). Also, 33 Am. Jur., *Libel and Slander* § 6 (1941); Salmond, *Torts* 398 (8th ed. 1934); Restatement, *Torts* § 559 (1938). For statutory definitions, see Ill. Rev. Stat. ch. 38, § 27-1 (1963) (Criminal Libel); Ill. Rev. Stat. ch. 126, §§ 1-4 (1963) (Civil Slander).

¹⁵ *Cook v. East Shore Newspapers*, 327 Ill. App. 554, 64 N.E.2d 751 (4th Dist. 1945).

¹⁶ *Voris v. Street and Smith Publ.*, 330 Ill. App. 409, 71 N.E.2d 338 (1st Dist. 1947).

¹⁷ *Spanel v. Pegler*, 160 F.2d 619 (7th Cir. 1947); *Meclaskey v. Mecartney*, 324 Ill. App. 498, 58 N.E.2d 630 (1st Dist. 1944).

¹⁸ 308 Ill. App. 55, 31 N.E.2d 323 (1st Dist. 1941).

seen fit to apply this rule to protect others from such irresponsibility by the press is a signal illustration of the court's confusion in the law of defamation.)

Words are either defamatory on their face or defamatory in light of special circumstances. In the former situation, the statement "A murdered B" is defamatory on its face, since the words themselves clearly indicate that A allegedly committed a homicide, and therefore no reference to any other circumstances is necessary. The words by themselves are calculated to hold the plaintiff up to scorn, ridicule or contempt. Where the language is not defamatory on its face, the plaintiff must resort to extrinsic aids to establish that he has been defamed, since the words themselves do not establish the defamatory language. Thus, "A was at B's house between six and nine o'clock on 1-1-66," is a harmless statement. But when the complaint also alleges that it was known by the hearer that "B was murdered in his home between the hours of six and nine o'clock on 1-1-66," the plaintiff has alleged the outside circumstances which have caused him to be subjected to hatred, scorn, and ridicule, and the statement, coupled with the known outside circumstances, infers that A has murdered B.

DEFAMATORY LANGUAGE

Although it would be an almost insurmountable task to collect and categorize all the language held to be defamatory in Illinois, some attempt has been made.¹⁹ Examples of such defamatory language are: "Communist";²⁰ "They are simply getting their money under false pretenses";²¹ "idiotic skunk";²² adulterous charges;²³ embezzlement charges;²⁴ "shake-down";²⁵ putting plaintiff's picture in the "rogue's gallery";²⁶ "false prophet . . . lewd . . . filthy person";²⁷ "forger";²⁸ "She is a thief";²⁹ "you are a damn thief";³⁰ "you stole the timber";³¹ "whore";³² "woman of the streets";³³ "I

¹⁹ 24 Callaghan's Digest, Libel and Slander § 4-15 (1957); Smith-Hurd Annotated Statutes, ch. 126, § 1 (1965).

²⁰ Spanel v. Pegler, 160 F.2d 619 (7th Cir. 1947); Ward v. Forest Preserve Dist., 13 Ill. App. 2d 257, 141 N.E.2d 753 (1st Dist. 1957). Illinois bars state employment of Communists. Ill. Rev. Stat. ch. 127, § 166(a) (1965).

²¹ Interstate Optical Co. v. Illinois St. Soc. of Optometrists, 244 Ill. App. 158 (1st Dist. 1927).

²² Danville Press Co. v. Harrison, 99 Ill. App. 244 (3d Dist. 1901).

²³ Hunner v. Evening American Pub. Co., 175 Ill. App. 416 (1st Dist. 1912).

²⁴ Huse v. Inter-Ocean Pub. Co., 12 Ill. App. 627 (1st Dist. 1883).

²⁵ Cook v. East Shore Newspapers, 327 Ill. App. 559, 64 N.E.2d 751 (4th Dist. 1945).

²⁶ Wisher v. City of Centralia, 273 Ill. App. 168 (4th Dist. 1933).

²⁷ Dowie v. Priddle, 116 Ill. App. 184, *aff'd*, 216 Ill. 553, 75 N.E. 243 (1905).

²⁸ Zuckerman v. Sonnenschein, 62 Ill. 115 (1871).

²⁹ Stumer v. Pitchman, 124 Ill. 250, *affirming* 221 Ill. App. 339 (1888).

³⁰ McGregor v. Eakin, 3 Ill. App. 340 (4th Dist. 1879); Halsey v. Stillman, 48 Ill. App. 413 (3d Dist. 1892).

³¹ Winchell v. Strong, 17 Ill. 597 (1856).

³² Schmeisser v. Kreilich, 92 Ill. 347 (1879).

³³ Mercy v. Talbot, 189 Ill. App. 1 (1st Dist. 1914).

screwed her”;³⁴ but “bitch”³⁵ and “slut”³⁶ have been held not to be defamatory on their face.

INDUCEMENT, COLLOQUIUM AND INNUENDO

Inducement, colloquium and innuendo are used when the words are not defamatory on their face. They are necessary aids to the plaintiff in drawing his complaint. Unfortunately, these aids are not always easy to work with, and are sometimes a source of confusion to those who are unfamiliar with them.

Inducement is used to state facts to explain the background in which the statement is made. A statement, taken by itself, can be immediately harmless. But the character of the statement can be drastically altered when it is shown that the hearer or reader is aware of facts not in the statement itself. It is as if the outside circumstances were read into the statement. Thus, a newspaper article stating that Mary Smith had twins yesterday would seem to be only the announcement of a joyous occasion. However, when it is pleaded by way of inducement that the readers knew Mary Smith to be single or married only a short time before, an entirely different meaning is conveyed.³⁷

In the inducement it is necessary to plead all the facts, so as to justify the inferences made by the innuendo. In *McLaughlin v. Fisher*,³⁸ the plaintiff was the president of the Illinois Miners' Protective Association, a precursor of the United Mine Workers. During the turbulent days when unions were first being organized, the defendant, Fisher, stated to a gathering of coal miners that the plaintiff was on the payroll of a local coal company, and that he was being paid by the company to keep agitating the southern and central Illinois mine workers, so that labor trouble would give northern mines all the business. The court on appeal sustained the granting of a demurrer to the slander action, stating that the complaint failed because the plaintiff's innuendoes were not warranted by way of matters pleaded by inducement. The plaintiff had failed to state in the inducement whether agitation was against the best interests of the miners; at the same time, there was no allegation in the inducement that the statement was prejudicial to the plaintiff or the association, or that the plaintiff's \$100 a month salary from the association was gratuitous or actual compensation for the office.³⁹

The inducement is also used to fit a defamatory meaning into one of the categories of slander per se. An oral statement that John Jones is a drunken sot, and that his nerves are all shot is defamatory on its face, but

³⁴ *Hatch v. Potter*, 7 Ill. 725 (1845).

³⁵ *Roby v. Murphy*, 27 Ill. App. 394 (1st Dist. 1888).

³⁶ *Claypool v. Claypool*, 56 Ill. App. 17 (3d Dist. 1894).

³⁷ *Morrison v. Ritchie & Co.*, 39 Scot. L.R. 432 (1902).

³⁸ 136 Ill. 111, 24 N.E. 60 (1890).

³⁹ *Ibid.*

unless it fits into one of the slander per se categories, it is not actionable without proof of special damages. But when it is pleaded by inducement that John Jones is a brain surgeon, sufficient facts are stated to show slander to a plaintiff's business, trade or occupation. Again, where sexual relations between two people are not criminal unless one or both were married to a third person, language imputing such conduct to the plaintiff would not be slander per se unless it was pleaded by inducement that the plaintiff or his partner was married.⁴⁰

The office of the colloquium is to connect the defamatory words, plus the inducement and innuendo, with the plaintiff.⁴¹ It is summarily treated in most complaints by the allegation that the words "were of and concerning the plaintiff."⁴²

In most actions where the complaint is based upon a libelous article containing a reference to a nickname or alias, the colloquium is the Achilles' heel of the plaintiff's complaint. In *Voris v. Street and Smith Publications*,⁴³ the defendant's magazine, Pic, published an article about big time gamblers across the nation and made reference to one called "Snapper Charlie." It was alleged that the article was "of and concerning the plaintiff," since he apparently had the same nickname. The appellate court sustained the lower court's dismissal, stating:

... [A] complaint is insufficient which fails to show that the alleged libelous article was understood by its readers to refer to the plaintiff. There is no allegation that any person or persons who read the article knew that it referred to the plaintiff. It is not enough that to constitute libel that plaintiff knew that he was the subject of the article, or that defendant knew of whom they were writing. It should appear upon the face of the complaint that persons other than these must have reasonably understood that the article was written of and concerning the plaintiff and that the so-called libelous expression related to him.⁴⁴

In *John v. Tribune Company*,⁴⁵ the defendant published an account of a vice raid conducted by the Chicago police. The address of the establishment was given, and the madam's name, Dorothy Clark, as well as her age, 57, and a reference to her aliases, "Dolores Reising, Eve Spiro, and Eve John." By the oddest of coincidences, the plaintiff lived in the same building. Her name was Eve John, *nee* Spiro, although the plaintiff was 27. In affirming the dismissal of the suit, the court said,

When *aliases* or assumed names appear in a publication, the first name given is clearly the subject target of the publication, and

⁴⁰ *Pollard v. Lyon*, 91 U.S. 225, 23 L. Ed. 308 (1876).

⁴¹ *People v. Spielman*, 318 Ill. 482, 149 N.E. 166 (1925); 33 Am. Jur., *Libel and Slander* § 240 (1941); 53 C.J.S., *Libel and Slander* § 162(b) (1948).

⁴² *Eggleston v. Whitlock*, 242 Ill. App. 379 (1st Dist. 1926).

⁴³ 330 Ill. App. 409, 71 N.E.2d 338 (1st Dist. 1947).

⁴⁴ *Id.* at 412-3, 71 N.E.2d at 339.

⁴⁵ 24 Ill. 2d 437, 181 N.E.2d 105 (1962).

such fact is one of common knowledge. Any name or names reported as the "aliases," or also-knowns, are the names that have been assumed by the subject identified by the name preceding the *alias*, and this fact, too, is one of common knowledge and understanding. The *alias* names do not change the subject of publication, (here Dorothy Clark-Dolores Reising) but simply disclose the subject's false name or names. The *alias* names, therefore, necessarily cannot be read as identifying the "of and concerning" or "target" name of the publication.⁴⁶

The innuendo is used to bring out the meaning of the defamatory statement, by interpreting the matter in the light of inducement and colloquium.⁴⁷ The language must reasonably be subject to a defamatory interpretation,⁴⁸ and the innuendo cannot be used to enlarge or extend the construction beyond its natural import.⁴⁹ "The office of the innuendo is to deduce inferences from premises already stated, not to state the premises themselves."⁵⁰ In *Fulrath v. Wolfe*,⁵¹ the defendant, secretary of Nash Motors, wrote a letter to plaintiff, a Nash dealer in Chicago, stating that "because of the facts disclosed by our investigation into your methods of merchandising Nash cars, we must discontinue our business relationship with you."⁵² The plaintiff contended that it was reasonable to include in this letter, by innuendo, a recent verbal conversation between plaintiff and defendant, wherein the latter allegedly said the plaintiff was a "gypper." The court dismissed the contention, sustaining the demurrer, and stated:

. . . Such innuendoes are not available to impute a libel to the letter which in itself is otherwise innocent of any libelous meaning. . . . The innuendoes, in order to be available as a pleading in libel, must be of the very words and phrases used in the letter upon which the libel charge is grounded. . . . If the word "gypper" was anywhere found in the letter, these observations would have no application.⁵³

The innuendo likewise has a dual purpose—while the main one is to convey the reasonable defamatory meaning, it is also used to fit the statement into the categories of slander per se. In *Dilling v. Illinois Publishing and Printing Co.*,⁵⁴ the defendant published a story reporting the events which transpired at a California American Legion Convention. The headings of the article read "Name Subversive Leaders in U.S." and "Name

⁴⁶ *Id.* at 442, 181 N.E.2d at 108.

⁴⁷ 53 C.J.S., *Libel and Slander* § 162 (1948); 33 Am. Jur., *Libel and Slander* § 241 (1941).

⁴⁸ *Bihler v. Gockley*, 18 Ill. App. 496 (1st Dist. 1886).

⁴⁹ *McLaughlin v. Fisher*, 136 Ill. 111, 24 N.E. 60 (1890); *Dilling v. Illinois Publ. and Prtg. Co.*, 340 Ill. App. 303, 91 N.E.2d 635 (1st Dist. 1950).

⁵⁰ *Voris v. Street and Smith Publ.*, 330 Ill. App. 409, 413, 71 N.E.2d 338, 339 (1st Dist. 1947).

⁵¹ 250 Ill. App. 130 (1st Dist. 1928).

⁵² *Id.* at 131-2.

⁵³ *Id.* at 134-5.

⁵⁴ 340 Ill. App. 303, 91 N.E.2d 635 (1st Dist. 1950).

Mrs. Dilling." The body of the article recited how the American Legion had denounced certain groups and persons as "fostering subversive activities," and that the Legion had adopted a resolution charging that the "Communists and Fascists continue to threaten our cherished ideals of Americanism." The court felt that,

It is not reasonable for an ordinarily intelligent person to ascribe to the term "Subversive" standing *alone* the invidious meaning which plaintiff gives in her complaint. To give the quotation the meaning alleged would be straining the words unduly, especially in view of the unqualified use of the term "Subversive" in the paragraph naming plaintiff, and the use of the phrase "against Communism and other subversive elements" in the first paragraph. All the article says about the plaintiff is that she is named in the resolution as one who is fostering subversive activities. In our opinion the language used does not charge plaintiff with the crimes of treason or sedition, nor can the language of the published article be construed as charging plaintiff with any crime.⁵⁵

THE INNOCENT CONSTRUCTION RULE

Closely allied with the use of the innuendo is the innocent construction rule. The defamatory statement must be considered in its entirety,⁵⁶ and the words must be considered in their plain and obvious meaning.⁵⁷ Where the matter is ambiguous, and susceptible of several interpretations, the court must, as a matter of law, apply the innocent meaning.⁵⁸ But it must be pointed out that there appears to be substantial early case law to the effect that where there are two interpretations, one innocent and the other defamatory, the construction should be left to the jury.⁵⁹ The Illinois Supreme Court however, recently defined the innocent construction rule in *John v. Tribune Co.*:⁶⁰

That rule holds that the article is to be read as a whole and the words given their natural and obvious meaning, and requires that

⁵⁵ *Id.* at 306, 91 N.E.2d at 637.

⁵⁶ *Zurawski v. Dziennik Zjednoczenia Publ. Corp.*, 286 Ill. App. 106, 2 N.E.2d 956 (1st Dist. 1936); *Huse v. Inter-Ocean Publ. Co.*, 12 Ill. App. 627 (1st Dist. 1883); *Cook v. East Shore Newspapers*, 327 Ill. App. 559, 64 N.E.2d 751 (4th Dist. 1945).

⁵⁷ *Herrick v. Tribune Co.*, 108 Ill. App. 244 (1st Dist. 1903); *Belt v. Tribune Co.*, 6 Ill. App. 2d 489, 128 N.E.2d 638 (1st Dist. 1955); *Dilling v. Illinois Publ. and Prtg. Co.*, 340 Ill. App. 303, 91 N.E.2d 635 (1st Dist. 1950); *Lorillard v. Field Enterprises*, 65 Ill. App. 2d 65, 213 N.E.2d 1 (1st Dist. 1965).

⁵⁸ *Eick v. Perk Dog Food*, 347 Ill. App. 293, 106 N.E.2d 742 (1st Dist. 1952); *Fulrath v. Wolfe*, 250 Ill. App. 130 (1st Dist. 1928); *Epton v. Vail*, 2 Ill. App. 2d 287, 119 N.E.2d 410 (1st Dist. 1954) (abstract); *Clark v. Tribune Co.*, 11 Ill. App. 2d 420, 137 N.E.2d 664 (1st Dist. 1956) (abstract); *Judge v. Rockford Memorial Hosp.*, 17 Ill. App. 2d 365, 150 N.E.2d 202 (2d Dist. 1958).

⁵⁹ *Kenny v. Illinois State Journal Co.*, 64 Ill. App. 39 (3d Dist. 1895); *White v. Borquin*, 204 Ill. App. 83 (2d Dist. 1917); *Beeson v. Gossard Co.*, 167 Ill. App. 561 (1st Dist. 1912); *Ogren v. Rockford Star Printing Co.*, 288 Ill. 405, 123 N.E. 587 (1919), *Tiernan v. East Shore Newspapers, Inc.*, 1 Ill. App. 2d 150, 116 N.E.2d 896 (4th Dist. 1953); *Proesel v. Myers Pub. Co.*, 24 Ill. App. 2d 501, 165 N.E.2d 352 (1st Dist. 1960); *Young v. Richardson*, 4 Ill. App. 364 (2d Dist. 1879).

⁶⁰ 24 Ill. 2d 437, 181 N.E.2d 105 (1962).

words allegedly libelous that are capable of being read innocently must be so read and declared non-actionable as a matter of law.⁶¹

In a more recent case, *Lorillard v. Field Enterprises*,⁶² the appellate court followed the *John v. Tribune Co.* mandate on the innocent construction rule. The defendant published an article written by a society columnist, in which he stated that plaintiff had obtained a "quickie" divorce from his wife, only to have this set aside by the United States Supreme Court. Plaintiff then obtained another "quickie" divorce in a different state and promptly remarried. The first Mrs. Lorillard instituted a second suit to set aside the divorce and "also started a suit for bigamy." The columnist then related how he had visited the first Mrs. Lorillard in a cottage owned by the plaintiff and found the woman and "her two teenage children living in a state of siege at her husband's orders, she has no phone, no electricity and virtually nothing else."

In reversing the lower court's decision to allow a motion to strike and dismiss the complaint, the appellate court said that while "quickie divorces" are not libelous per se, since the term is common parlance in today's language, the statement that Mrs. Lorillard had "started a suit for bigamy" was libelous per se, since it imputed a crime. The defendant attempted to invoke the innocent construction rule as to this language, but the court replied:

Defendant's argument that the innocent construction rule should be applied here to defeat plaintiff's claim that he has been charged with the crime of bigamy is totally without merit. That rule tells us that words must be given their natural and obvious meaning, and only if capable of an innocent construction must they be so read. Giving the words "started a suit for bigamy" their natural and obvious meaning, as the rule dictates, it is apparent that plaintiff has been charged with a crime. We do not see how an innocent construction can be given to these words.⁶³

However, the court found that the innocent construction rule did apply to the other charge created by the column, viz., child abandonment ("her and her two teenage children living in a state of siege"). In Illinois, where the suit was brought, Chapter 68, section 24 of the Illinois Revised Statutes, makes it a crime to abandon a child under 14. The court considered "teenage" to include children who are eighteen and nineteen years of age, and since the ages of Mrs. Lorillard's children were not mentioned, the court must, as a matter of law, interpret the construction innocently. (Rhode Island, where the alleged abandonment occurred, had similar statutory provisions, and so the court's decision included this possibility.)

⁶¹ *Id.* at 442, 181 N.E.2d at 108. For a discussion of this case, and an exhaustive review of the innocent construction rule, see 30 U. Chi. L. Rev. 524 (1963).

⁶² 65 Ill. App. 2d 65, 213 N.E.2d 1 (1st Dist. 1965).

⁶³ *Id.* at 76, 213 N.E.2d at 6.

The innocent construction rule, an outgrowth of the *mitior sensus* rule, developed in the early days of defamation actions. While not as arbitrary in its application as *mitior sensus*, it still is a source of confusion, not only to the practitioner, but to the jurist as well. Its purpose is to prevent the plaintiff from taking advantage of equivocal circumstances, especially where it appears from the facts that there was no overt intent on the part of the defendant to include the plaintiff in the defamatory statement. Although the rule has been much talked about, it has been little analyzed (more out of ignorance than disinterest, it appears). A fair statement of the rule would seem to be that if the defamatory statement suggests two meanings, one defaming the plaintiff and one innocent of casting any aspersions on the plaintiff, then the court must choose the innocent construction, but only if such construction can be made by using the words in their natural and obvious meaning, and the construction is reasonable. Thus, while splitting a man's head with a meat cleaver without mentioning whether he died as a result leaves open the question of whether a homicide was committed, it is safe to say that the natural and obvious meaning of the words, coupled with reasonable construction, could only interpret them as having a defamatory meaning.

The rule is not without criticism, however, and it appears that Illinois is in the minority as to its retention as opposed to the rule allowing the jury to decide what meaning was intended.⁶⁴ On the one hand, the innocent construction rule provides the publisher with a relatively inexpensive means of dispensing with litigation as compared with the cost of trial, and also serves as an inherent inhibition to plaintiffs who seek to create nuisance, or legal blackmail suits. At the same time, though, the plaintiff who has actually suffered by such ambiguous statements is left with no efficient means of recourse. It is submitted that if such cases were allowed to go to a jury, the end result would be *less* litigation in ambiguous statement matters, since the publishers would take greater pains to be explicit as to whom and to what they were referring in their articles.

KEVIN MARTIN

SLANDER AND SLANDER PER SE

The early English common law courts took no jurisdiction over cases involving defamatory utterances, because such cases were decided by the ecclesiastical courts. Since the ninth commandment of the Christian decalogue prohibited bearing false witness against one's neighbour, the ecclesiastical courts viewed slanderous statements on the basis of their sinful nature and imposed religious penance upon a sinner who defamed another. During

⁶⁴ For an excellent decision discarding the innocent construction rule in favor of one allowing wide discretion in the jury in determining whether the defamatory meaning applied to the plaintiff, see *MacLeod v. Tribune Publishing Co.*, 52 Cal. 2d 536, 343 P.2d 36 (1959).