

manufactured or tested but is not liable for the breach of an implied warranty to such persons. The breach of warranty theory has been applied only in cases involving deleterious food products and, even then, the liability for such does not extend to a donee of a remote vendee. Thus the liability of a manufacturer or vendor of chattels extends to a larger class of persons than the manufacturer of food products but the latter is held more strictly accountable to those to whom his liability does extend. It would seem that the extent of liability should be the same in both cases.

ROSSE MORRISS

LIABILITY OF A RADIO STATION FOR DEFAMATORY UTTERANCES

I. THE PROBLEM

Within the last quarter century radio has become our most extensive and influential system of mass communication. In the light of such growth, it becomes increasingly important for the judiciary or the legislature to clear up the current confusion with a consistent theory of liability for defamation propagated through the facilities of a radio station. When the same problems arise in the television field, their judicial determination, in the absence of controlling legislation, will be upon the precedents established in the radio cases.¹

Our problem may be simply stated. A broadcasting company leases or donates radio time to one who makes defamatory statements which are heard by a large listening audience. The broadcasting company is not aware of the fact that defamatory utterances were to be made. Is the broadcasting company liable in the absence of negligence, and if not how specifically ought we to define negligence in such a situation?

If we are to operate within the general framework of the existing common law of defamation it would seem that our answer will depend upon our treatment of the broadcasting company:

1. As of January 1, 1949, the F. C. C. had authorized 2,127 standard radio stations, 964 F. M. stations, and 214 television stations in the continental United States. Chet Thomas, *Brass Tacks*, St. Louis Advertising Club, Feb. 14, 1949.

1. as an original publisher of the defamatory matter and so absolutely liable even in the absence of any intent to make a defamatory utterance or of any negligence,² or
2. as a secondary disseminator of the defamatory material—one who has no intent to defame and no reason to know of the defamatory nature of the material—liable only for negligence.³

Each of these bases has received recognition by the American Law Institute⁴ in appropriate situations. The policy of not unduly hampering commercial intercourse appears to be the only justifiable basis for selecting the second alternative. No one would think it economically justifiable nor feasible to impose absolute liability upon the corner newsboy for a libel appearing upon the inside page of the paper he hawks. This principle has been extended to newsvendors,⁵ booksellers,⁶ telephone and telegraph companies,⁷ libraries,⁸ the proprietors of public halls, and to newspapers to the extent that the publication is in the form of "canned" news (A. P., I. N. S., and U. P. releases),⁹ while newspapers other than in the "canned" news situation,¹⁰ marketing specialists,¹¹ and laymen who repeat defamatory statements¹² are

2. RESTATEMENT, TORTS § 577 (1938).

3. *Id.* § 581. Compare this with § 578 and 580. The term "disseminator," as it shall hereafter be used in this discussion, shall refer to the legal recognition of a secondary disseminator only, not an initial propagator.

4. But, more specifically, see RESTATEMENT, TORTS § 581, comment f (1938), which contains the following: "f. Radio Broadcasting. The proprietors of a radio broadcasting station are at least liable under circumstances which would make a disseminator of defamatory matter liable under the rule stated in this Section, that is, if they fail to exercise reasonable care to prevent the publication of defamatory matter. The *Caveat* to §577 raises the question, on which the Institute takes no position, as to whether such persons are not further liable as original publishers under the rule stated in that Section." The *Caveat* to §577, at p. 196, sets forth: "*Caveat*: The Institute expresses no opinion as to whether the proprietors of a radio broadcasting station are relieved from liability for a defamatory broadcast by a person not in their employ if they could not have prevented the publication by the exercise of reasonable care, or whether, as an original publisher, they are liable irrespective of the precautions taken to prevent the defamatory publication."

5. *Weldon v. "The Times" Book Company*, 28 T. L. R. 143 (C. A. 1911); *Emmens v. Pottle*, 16 Q. B. D. 354 (1885); RESTATEMENT, TORTS § 581, comment c (1938).

6. *Vizetelly v. Mudie's Select Library*, [1900] 2 Q. B. 170; *Martin et ux. v. Trustees of the British Museum*, 10 T. L. R. 338 (1894); RESTATEMENT, TORTS § 581, comment d (1938).

7. RESTATEMENT, TORTS § 581, comment e (1938).

8. *Id.*, comment d.

9. See *Layne v. Tribune Co.*, 108 Fla. 177, 146 So. 234 (1933).

10. See comments to RESTATEMENT, TORTS § 577 (1938).

11. *Ibid.*

12. *Ibid.*

regarded as publishers and held absolutely liable. The publication is complete with a communication to a third person, and courts have given the fullest possible scope to that term.¹³ Even a republisher will be subject to the same absolute liability as the original propagator.¹⁴ It would seem, then, that our problem becomes whether, *on the basis of public policy*, the broadcasting company should be held absolutely liable as a publisher or liable only for negligence as a disseminator.

It is important to note at this point that certain assumptions are implicit in this discussion: (1) that an unprivileged defamation has been uttered,¹⁵ so that the plaintiff would have a cause of action against the actual speaker; and (2) that the actual speaker is not the agent of the broadcasting company, in which case the latter would be clearly liable as an intentional tortfeasor under the *respondet superior* doctrine.¹⁶ Furthermore, the problem of whether this type of tort should be classified as libel or slander, a problem which has provoked much discussion, is without the scope of this note. We shall assume that a tort *sui generis*¹⁷—having characteristics of both libel and slander—has been committed.

II. PROBLEMS PECULIAR TO RADIO

It has been said that the casual listener to a radio broadcast listens passively to the program and, having no reason to doubt the truth of what he hears, accepts the statements made as true. It has also been pointed out that radio audiences have no way of knowing whether the words are part of a prepared script edited

13. RESTATEMENT, TORTS § 577 (1938).

14. See *Buck v. Jewell-LaSalle Realty Co.*, 283 U. S. 191 (1931).

15. Complex problems as to privilege arise under the few Federal statutes relating to radio liability for political broadcasts, and the prohibitions against censoring such type of broadcast. Such problems are outside the purview of this discussion. See Communications Act of 1934, 48 STAT. 1088 (1934), 47 U. S. C. § 315 (1946), as well as the proposed *White Bill*, SEN. REP. NO. 1333, 80th Cong., 1st Sess. (1947), 94 Cong. Rec. 7738 (June 9, 1948). Also see RESTATEMENT, TORTS § 578, comment *b* (1938): "The republication of a libelous article, being a separate publication, may make the publisher liable although the original publisher is protected by a privilege. On the other hand, the republication of a libel may be privileged although the original publication was unprivileged."

16. RESTATEMENT, TORTS, § 577, comment *e* (1938).

17. Meyer, *Radio Defamation: Neither Fish Nor Fowl*, 2 *The Lawyer and Law Notes* 7 (1947-1948) for the view that radio defamation should constitute a new tort which would recognize the peculiarities of the broadcaster's position. SOCOLAW, *LAW OF RADIO BROADCASTING* 466 (1939); Note, 104 A. L. R. 877 (1936).

by the broadcasting company, or are interpolated remarks, or oftentimes, whether the station actually approves, tacitly or otherwise, of the statements which are made. Because of the fact that the injury to the plaintiff would appear to be the same in any of the above situations, some writers have argued that different bases for liability varying with the manner in which the defamation arises are not justifiable and that one consistent theory of liability should obtain in all cases.¹⁸ The cases demonstrate that different bases of liability have evolved in the varying fact situations in spite of the fact that the harm to the plaintiff may be as great in one case as in another, and that the listener is not in a position to detect the degree of responsibility of the broadcasting company. In general, tort liability under our system of law is predicated on blameworthiness,¹⁹ and variations in liability in spite of the equal degree of harm to the individual prevail in other fields of the law. Blameworthiness should not be excluded here.

The following distinctive fact situations may arise:

- 1) the defamation appears in a prepared script which is not edited;
- 2) the defamation is an extemporaneous deviation
 - a) from a prepared script, previously edited, or
 - b) from a prepared script, *not* previously edited;
- 3) the defamation occurs on a totally extemporaneous program (*e. g.*, man-on-the-street broadcast).

The leading case of *Sorenson v. Wood*,²⁰ which falls into (1) above, was decided by the Supreme Court of Nebraska in 1932. Station KFAB in Lincoln offered its services to defendant, Wood, to make a political broadcast. The slanderous matter was printed in a written script which the station might have obtained, but did not, before the broadcast. Although the slander continued for several minutes, defendant-station did not use the mechanical means available to shut defendant-Wood off the air. The Nebraska court, after having considered such factors as the size of the publication and the impossibility of retraction, found the

18. Donnelly, *Defamation by Radio: A Reconsideration*, 34 IOWA L. REV. 12, 26 (1948), where he says: "The distinction between defamatory words read from a manuscript and those interpolated is just as fictitious in determining the basis of liability as it is in classifying the words as libel or slander. The harm to the plaintiff is as great in either situation and the listener is not in a position to detect the form the words take."

19. Justice Holmes has said: "The law does, in general, determine liability by blameworthiness." HOLMES, *THE COMMON LAW* 108 (1881).

20. *Sorenson v. Wood*, 123 Neb. 348, 243 N. W. 82 (1932).

broadcasting company absolutely liable, and based its decision upon this theory:

The defendant company, like most radio broadcasters, is to a large extent engaged in the business of commercial advertising for pay. It may be assumed this is sufficient, not only to carry its necessarily large overhead, but to make at least a fair return on its investment. For it appears that the opportunities are so attractive to investors that the available airways would be greatly overcrowded by broadcasting stations were it not for restrictions of the number of licensees under federal authority. Such commercial advertising is strongly competitive with newspaper advertising because it performs a similar office between those having wares to advertise and those who are potential users of those wares. It competes with newspapers, magazines, and publications of every nature. The fundamental principles of the law involved in publication by a newspaper and by a radio station seem to be alike. There is no legal reason why one would be favored over another nor why a broadcasting station should be granted special favors as against one who may be a victim of a libelous publication.²¹

The *Sorenson* case drew an immediate wave of comment from legal writers, not all of it adverse.²² The precedent was followed the next year in *Miles v. Louis Wasmer, Inc.*,²³ a Washington case. Defendant-broadcasting station was held absolutely liable under a closely analogous set of facts, the outstanding distinction being that the defamatory matter was of briefer duration. This court also placed considerable reliance upon the law relating to newspaper defamations.

A considerable body of opinion arose subsequent to these decisions advocating the reduction of the station's liability to that of a disseminator. Admitting that a high degree of care was essential, these critics pointed out the large degree of social utility attributable to radio, predicted eventual injustice in cases involving extemporaneous utterances, and questioned the validity of the analogy to newspaper defamations.²⁴ They succeeded in

21. *Id.* at 357, 243 N. W. at 85.

22. Vold, *Defamatory Interpolations in Radio Broadcasts*, 88 U. OF PA. L. REV. 256 (1940), where he voices accusations that the chief critics of the *Sorenson* doctrine were counsel for the large broadcasting corporations, that their motives were selfish, and that all arguments now directed to the courts were raised in the *Sorenson* case and "properly" determined there.

23. *Miles v. Louis Wasmer, Inc.*, 172 Wash. 466, 20 P. 2d 847 (1933).

24. See Bohlen, *Fifty Years of Torts*, 50 HARV. L. REV. 725, 729-31 (1937); Haley, *Law on Radio Programs*, 5 GEO. WASH. L. REV. 157, 187 (1937); Keller, *Federal Control Defamation by Radio*, 12 NOTRE DAME

raising sufficient doubt so as to prevent the American Law Institute from taking any but a neutral position, and the *Caveat* to Section 577 was adopted²⁵ although no cases prior to that date other than those finding absolute liability can be located.

In 1934, the Federal District Court for the Western District of Missouri followed the absolute liability principle in *Coffey v. Midland Broadcasting Company*.²⁶ The defamation involved appeared in a prepared script, properly ratified and rehearsed by the Columbia Broadcasting System. The broadcast originated in New York and was sent via a telephonic connection to Kansas City, Missouri, where it automatically was transmitted by the local outlet, Station KMBC. The Remington-Rand Corporation, sponsors of the program; the Columbia Broadcasting System, and KMBC were made parties-defendant. A demurrer to the complaint by KMBC was overruled. The court found absolute liability against all three defendants, stating that the irreparable nature of the damage and the size of the publication were controlling factors. A judicial suggestion that advertising rates might be raised to cover such "inevitable" defamations was advanced.²⁷

It would seem that reliance on the cases discussed *supra* was unnecessary here, at least insofar as defendant-Columbia Broadcasting system was concerned. The System authorized the defamation and thus became liable as an intentional tort-feasor.²⁸ Although defendant-KMBC could only be held liable on absolute liability grounds, it should be noted that as an agent of the network the local outlet, if it were forced to pay, would have an action over against its principal, the Columbia Broadcasting System, on simple agency grounds. Thus the rule is not so harsh when applied under these circumstances.

LAW, 15 (1936), 12 NOTRE DAME LAW, 134, 151-162 (1937); Guider, *Liability for Defamation in Political Broadcasts*, 2 J. RADIO L. 708, 713 (1932); Nash, *Application of the Law of Libel and Slander*, 17 ORE. L. REV. 307, 309 (1938); Note, 14 ORE. L. REV. 492 (1935); Sprague, *Freedom of the Air*, 8 AIR L. REV. 30 (1937) Note, 8 So. CALIF. L. REV. 359 (1935); Farnum, *Radio Defamation and the A. L. I.*, 16 B. U. L. REV. 1 (1935); Note, 12 ORE. L. REV. 149 (1933); 2 SOCOLAW, LAW OF RADIO BROADCASTING 858 (1939); DAVIS, LAW OF RADIO COMMUNICATION 163-164 (1927); *Report of Standing Committee on Communication*, 57 A. B. A. REF. 423, 445-446 (1932).

25. See note 4 *supra*. See Farnum, *supra* note 24.

26. *Coffey v. Midland Broadcasting Co.*, 8 F. Supp. 889 (W. D. Mo. 1934).

27. *Id.* at 891.

28. RESTATEMENT, TORTS § 876-877 (1939).

With the decision in *Summit Hotel Company v. National Broadcasting Company*,²⁹ an entirely new theory as to the liability of a broadcaster was introduced. Generally, the case fits within classification 2a.³⁰ The National Broadcasting Company leased radio time to the J. Walter Thompson Advertising Corporation, which paid all the entertainers for a series of programs; the advertising corporation was in turn paid by a commercial sponsor. The script was submitted to the broadcasting network and approved. On one of the broadcasts, an entertainer was interviewing a golf champion and when the latter mentioned he had once been employed by the plaintiff, the entertainer rejected "That's a lousy hotel." The remark was entirely outside the script; there was no way defendant-broadcasting company could have prevented it. The Supreme Court of Pennsylvania reviewed the decisions noted *supra* and then found for the defendant-broadcasting company, saying:

A broadcasting company that leases its time and facilities to another, whose agents carry on the program, is not liable for an interjected defamatory remark where it appears that it exercised due care in the selection of the lessee, and, having inspected and edited the script, had no reason to believe an extemporaneous defamatory remark would be made. Where the broadcasting station's employee or agent makes the defamatory remark, it is liable, unless the remarks are privileged and there is no malice.³¹

The court also refuted the analogy to defamatory remarks published in a newspaper, finding that theories hitherto used in other fields were being misapplied to radio broadcasts. The decision represented a very substantial contraction of the broad basis of liability enunciated in the *Sorenson* case, *supra*.

The court in the *Summit Hotel* case did leave assurance of adequate redress for failure to censor a prepared script. Much emphasis was placed on the extemporaneous nature of the remark, and it seems logical to assume the Pennsylvania court would find failure to eliminate defamatory matter from a script negligence as a matter of law. Thus failure to edit would leave the broadcaster in the same position as defendant in the *Sorenson* case.

29. 336 Pa. 182, 8 A. 2d 302 (1939).

30. See *infra*.

31. *Summit Hotel v. National Broadcasting Co.*, 336 Pa. 182, 204, 8 A. 2d 302, 312 (1939).

The switch in emphasis from careful guarding of the plaintiff's rights to one of sympathy for the difficult situation of the defendant embodied by the rationale of this case stimulated further academic discussion. Critics of the new theory were quick to arise, and with virtual unanimity they pointed out that Pennsylvania in no case upheld the doctrine of absolute liability for a tort. The court in its decision had carefully indicated that the affirmative inspection of the script was the reason for its decision. Yet most observers felt the case had repudiated the *Sorenson* doctrine. The *Summit Hotel* rationale received some further judicial support in New York several years later when a trial court followed the reasoning (although without citing the Pennsylvania decision) in *Josephson v. Knickerbocker Broadcasting Company*.³²

The Court of Errors and Appeals of New Jersey gave full consideration to the different theories of liability in the third leading case on radio defamation, *Kelly v. Hoffman*,³³ decided in September, 1948. Plaintiff, a public official of the city of Trenton, brought an action against defendant-announcer, an employee of the Trenton Publishing Company; defendant-publishing company, lessee of the time on the air; and the Trent Broadcasting Corporation, owner of Station WTTM, over which the broadcast was transmitted. Upon motion of the last-named defendant, the trial court struck out the third count of the complaint (the one against the station) as failing to state a cause of action, and plaintiff appealed. The appellate court discussed the problem of whether the station's liability should be predicated on that of a publisher or a disseminator, and concluded:

(a) radio broadcasting company which leased its facilities is not liable for a defamatory statement during a radio broadcast by the person hired by the lessees and not in the employ of the radio broadcasting company, the words being carried to the radio listeners by its facilities, if it could not have prevented publication by the exercise of *reason care*.³⁴ have prevented publication by the exercise of *reasonable care*.³⁴

Nevertheless, since it was felt that non-performance of the duty of reasonable care was available to the plaintiff within its complaint, the order of trial court was reversed.

32. 179 Misc. 787, 38 N. Y. Supp. 2d 985 (Sup. Ct. 1942).

33. 61 A. 2d 143, 147 (N. J. 1948).

34. *Ibid.*

The principle authority relied on was a discourse upon absolute liability as an archaic theory in modern society, Professor Bohlen's *Fifty Years of Torts*,³⁵ in which he argues that radio should be, like a bookseller, liable only as a disseminator; that the station need only take reasonable care to see that no scandal-monger takes advantages of its facilities to preach defamation.³⁶

What are duties imposed by the courts and the ends achieved thereby? It must be noted that the amount of litigation has been surprisingly small when the vast amount of broadcast time is considered. The high standards of the Federal Communications Commission, and the early doctrine of liability without fault, may share the credit for this. Self-police measures have been effective. In almost all cases, stations are careful to scrutinize scripts; in general, the broadcasters have lived up to the high obligation to the public which they shouldered when they were granted franchises to broadcast.

Continuation of this situation is most desirable. Censorship has three functions: first, it enables the station to delete defamatory matter in the script; second, it serves as a check on certain attitudes of the script-writer which cause him to use phrases whose import approach defamation; last, it calls the attention of the person using the air time, whether lessee or donee, to the gravity of the consequences of any defamatory statements.

It may seem short-sighted categorically to state that previous censorship should be the lone criterion in determining whether

35. Bohlen, *Fifty Years of Torts*, 50 HARV. L. REV. 725, 729-731 (1937).

36. The New Jersey Court was also greatly influenced by the *Summit Hotel* decision where the court said: "Against the few exceptional situations in which absolute liability may have been applied, stands the great weight of modern authority that no man should be held liable for an unintentional injury resulting from the performance of a lawful act without negligence or wilful misconduct." 8 A. 2d, 306. The court further noted Professor Ames' quotation: "The ethical standard or reasonable conduct has replaced the unmoral standard of acting at one's peril." 8 A. 2d, 307, note 10. To statements such as these, Professor Vold in *Defamatory Interpolations in Radio Broadcasts*, 88 U. OF PA. L. REV. 249, 281, says that the deep-seated underlying conception that justice and public policy require that as a general rule there should be no liability without fault is a fallacious assumption which is not true in other fields of torts and which disregards the victim of those torts. Also, "So far as underlying considerations of policy are concerned, should the courts now yield to the arguments in behalf of radio stations and substitute some variant of the law of negligence for the strict liability for defamation which is applicable as a matter of course to other publishing enterprises, they would be taking a very conspicuous step backward." Vold, *supra* note 36, at 285.

a radio broadcaster has sufficiently instructed its user as to his duties while on the air. Nevertheless, censorship is the most effective means of deterring future careless remarks, as well as preventing present defamation. A radio station has a high degree of public responsibility by the terms of its franchise; it must in turn see to it that the responsibilities are understood by those to whom it grants the privilege of use. This cannot be done when the program is purely extemporaneous in nature. In all other cases, an analogy can be drawn to compulsory agency, and liability determined accordingly. Thus the broadcasting company owes a fiduciary duty to the public to inform its lessee or donee of his obligation to the public.³⁷ Therefore the station should escape liability only when it can prove (by sustaining a heavy burden³⁸) that the user acted flagrantly outside the scope of the privilege previously explained.

It may be argued that the duty to explain is met by the "save them harmless" clause commonly found in contracts between a broadcasting station and a lessee. A typical provision was that found in the contract in the *Summit Hotel* case, *infra*:

Except as otherwise herein expressly provided, the Advertising Agency will save the company harmless against all liability for libel, slander, unfair competition, infringement of trademarks, trade names or program titles, violation of rights of privacy, and infringement of copyrights and proprietary rights and all other liability to third parties resulting from the broadcasting of the programs herein provided for.³⁹

The clause does serve to indicate in some measure the possibility of harm to the lessee, but it is submitted it does not sufficiently reveal the gravity of possible error. The actual speaker has no knowledge of specific contract terms. Even if he had, such knowl-

37. See Seitz, *Responsibility of Radio Stations for Extemporaneous Defamations*, 24 MARQ. L. REV. 117 (1940), where he contends the broadcasting corporation is in a position similar to an automobile owner who lends his car to another. By statute, the consent of the owner is inferred in every action of the driver except for an intentional wrongdoing. Seitz maintains that the analogy should apply to broadcasting companies, who give consent to the sponsor of the radio show to use the company's apparatus, and such consent is implied in every action except intentional torts. He concludes by saying absolute liability is just in all situations except extemporaneous defamations.

38. Disseminators must sustain the burden of proving that they had no reason to know of the defamatory character of the matter they republished. RESTATEMENT, TORTS § 581, comment c (1938).

39. Vold, *Defamatory Interpolations in Radio Broadcasts*, 8 U. OF PA. L. REV. 249, note 48 (1940).

edge would nevertheless be ineffective as compared to constant deletions by a vigilant censor.

If the speaker were to defame a third person intentionally (perhaps by reading words previously deleted), a different situation is involved. It would seem that in such a case, criminal action against the speaker would be a more effective, and just, solution.

The result reached in the *Summit Hotel* case is a sound one. According to the rationale, either malicious intent or reckless statements by the speaker will absolve the broadcasting station. These are personal manifestations of prejudice arising after the lessee had been informed of his obligations through censorship. The entire script had been ratified by the National Broadcasting Company. The lessee and his employee had had experience in radio programs. The remarks made defamed the plaintiff in spite of the use of every reasonable precaution by the defendant in seeing that the lessee and its servant understood their responsibilities.

Following this reasoning, a station should be held liable when an extemporaneous defamatory remark is interjected and the station has failed to censor the script. Legalistically, the difficulty would seem to be that the causal relation between tort and injury is insufficient. However, failure to censor has resulted in the increased possibility of future defamation, for the user has not been made aware of his obligations; there has been a neglect of duty. Since the station has failed to do all that it reasonably should have to prevent the defamation, the causal relation between the neglect and the injury is sufficient to satisfy modern theories of tort law.

The *Sorenson* and *Miles* cases, *infra*, reached a good result, but might better have been decided on a negligence theory. There was present a failure on the part of the defendants to censor a prepared script and also a possible failure to stop the transmission when the defamation became evident. The defamed plaintiff should not be forced to leave the question of liability in the hands of a jury; sufficient redress can be given only if it is determined that failure to edit a script by a broadcasting company or station constitutes negligence as a matter of law. Protection of the public requires a directed verdict when the defendant fails to sustain the burden of proof as to censorship.

In the case of the extemporaneous program, social policy demands that different rules govern. Both the broadcasting company and the lessee of the time know that many unreliable people will be given the broadcasting facilities for a brief period. Damage is foreseeable. Since the station assumed the risk of permitting the use by irresponsible participants, it should be liable for defamation caused by this informal broadcast (which the station uses to attract listeners). If the public must bear the loss through increased advertising rates, this does not seem unjust when the position of the injured party is considered.

The most recent case, *Kelly v. Hoffman*,⁴⁰ reaches a result different from the *Sorenson* case, although the pleadings allege facts which seem to be quite similar. The case merely decided that the plaintiff's petition would stand as against a motion to dismiss for failure to state a cause of action, but in reversing the trial court, the appellate court stated that defendant-broadcasting station can be held liable only if it has failed to exercise "ordinary care." There is no mention of finding the station-owner negligent as a matter of law had the station failed to censor the material. Thus it seems that the New Jersey court decided the case without realizing the soundness of the results which had been reached in previous adjudications.

III. STATUTORY INFLUENCE

Although no state has adopted statutes which embrace all aspects of the radio defamation problem, there has been some evidence of attempts to protect the stations from absolute liability. Washington⁴¹ and Florida⁴² provide for non-liability when the speaker departs from a prepared script. The Florida statute, which carefully requires editing by the station, states:

The owner, lessee, licensee or operator of a radio broadcasting station shall have the right, but shall not be compelled to require the submission of a written copy of any statement intended to be broadcast over such station twenty-four hours before the time of the intended broadcast thereof; and when such owner, lessee, licensee or operator has so required the submission of such copy, such owner, lessee, licensee or operator shall not be liable in damages for any libelous or slanderous utterance made by or for the person

40. 61 A. 2d 143 (N. J. 1948).

41. WASH. REV. STAT. ANN. § 998-1 (Rem. Supp. 1943).

42. FLA. STAT. § 770.03 (1941).

or party submitting a copy of such proposed broadcast which is not contained in such copy; but this section shall not be construed to relieve the person or party, or the agents or servants of such person or party making any such libelous or slanderous utterance from liability therefor.⁴³

Such an enactment is a sound codification of the rationale of the *Summit Hotel* decision.

California,⁴⁴ Indiana,⁴⁵ North Carolina,⁴⁶ and Canada⁴⁷ have adopted retraction laws which permit the defendant to escape liability by retracting on later broadcast. Plaintiff must give five days notice before bringing suit and if the defamation was without malicious intent, the station can retract by means of another broadcast at the same hour and be liable only for those damages plaintiff can specifically prove.

Oregon⁴⁸ and Iowa⁴⁹ make the exercise of due care by any party a good defense. No cases have as yet been decided which indicate what the meaning of "due care" may be; the duties of the broadcaster are not set out.

IV. CONCLUSION

The basic duty of the broadcasting company is to edit and censor a prepared script whenever possible. Censorship is the only effective means of eliminating defamation in a prepared script and deterring future defamations by making those who have the opportunity to broadcast conscious of the responsibilities involved. The proof of the effectiveness of the censorship imposed to date is the extreme rarity of litigation which has resulted. There is no need for a theory of absolute liability; *the predication of liability upon a negligence theory will give satisfactory results in all instances*. As a matter of law, however, proof of the failure to edit a prepared script is negligence, entitling the plaintiff to a directed verdict.

Despite the apparent confusion as to theory of liability in the litigated cases, the results reached have been sound. The oppor-

43. *Ibid.*

44. CALIF. CIV. CODE § 48 a (1941).

45. IND. STAT. ANN. § 2-518 (Burns 1933).

46. N. C. GEN. STAT. ANN. § 99-2 b (1943).

47. Canadian Defamation Act. Manitoba Laws c. 11, § 16(1), 17(1); Alberta c. 14 (1947). For a brief discussion see Wright, *The Law of Torts*, 26 CAN. B. REV. 46, 91 (1948).

48. Ore. Laws 1941, c. 303.

49. IOWA CODE § 659.5 (1946).