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Libel of Relatives of a Deceased Person

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TORTS

LIBEL OF RELATIVES OF A DECEASED PERSON

Defendant newspaper published an article concerning the death of the plaintiff's father and husband erroneously identifying him as a notorious murderer. The plaintiffs, who were mentioned only as the surviving wife and children of the deceased, sued to recover damages for injuries to their reputations. Held, no recovery. *Rose v. Daily Mirror, Inc.*, 31 N. E. (2d) 182 (N. Y. 1940).

Most jurisdictions deny recovery by anyone for libel of the memory of a deceased. *Saucer v. Giroux*, 54 Cal. App. 732, 202 Pac. 887 (1921); *Bradt v. New Nonpareil Co.*, 108 Iowa 449, 79 N. W. 122 (1899). Contra: OKLA. STAT. (1931) § 724. However, the question actually involved in the principal case is whether there was a libel of the plaintiffs themselves. The majority of the court discussed only recovery for libel of the deceased. The dissenting opinion, however, is focused entirely on the defamation of the plaintiffs.

It is libelous to falsely assert that one is illegitimate because it reflects on the family of the plaintiff. But although the defamation relates primarily to the family, the child can recover. *Harris*

v. Nashville Trust Co., 128 Tenn. 573, 162 S. W. 584 (1914) The same principle should apply to this case. And some courts have allowed recovery on similar facts, one court going so far as to deem an erroneous statement that the plaintiff was the brother of a thief to be defamatory. *Van Wignton v. Pulitzer Pub. Co.*, 218 Fed. 795 (C. C. A. 8th, 1914); *Merrill v. Post Pub. Co.*, 197 Mass. 185, 83 N. E. 419 (1908); *Dow v. Long*, 190 Mass. 138, 76 N. E. 667 (1906). New York, however, has adopted the contra view. *Wellman v. Sun Printing & Pub. Ass'n.*, 66 Hun 331, 21 N. Y. Supp. 577 (2d Dep't 1892); cf. *Sorenson v. Balaban*, 11 App. Div. 164, 42 N. Y. Supp. 654 (Sup. Ct. 1911). For liability in any case, the statement must be "of and concerning" the plaintiff and thus must mention or refer to him. *Atlanta Journal Co. v. Farmer*, 48 Ga. App. 273, 172 S. E. 647 (1934); *Saucer v. Giroux*, 54 Cal. App. 732, 202 Pac. 887 (1921).

R.R.L.