1-1-1984

Reasonable or innocent : the innocent construction rule in Illinois

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REASONABLE OR INNOCENT:
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CONSTRUCTION RULE
IN ILLINOIS

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24 April 1984

Innocent construction as a legal concept has been around, at least, since 1879. In the period from Young v. Richardson (1879) to Chapski v. Copley Press (1982) the courts lost control, especially after the John v. Tribune Co. (1962) decision. Adults were calling each other "dishonorable," "sly, coy" and "evasive." They were accusing one another of "poor management" and of being "slum lords." They were getting away with it, with the court's blessing.

This pattern gave the defendants in libel cases virtually free reign because in more cases than not the innocent construction rule, peculiar to Illinois, was applied. When this occurred the cases usually were decided in favor of the individual allegedly committing the libel.

Articles, broadcasts and conversations were to be read as a whole and the words given their natural and obvious meaning and requires that words allegedly libelous that are capable of being read innocently must be read so and declared nonactionable as a matter of law (John v. Tribune Co., 24 Ill. 2d 437, 441).

This, on its face, appears reasonable enough. Unfortunately, as with many good judicial tests, the original intentions of a particular justice might be warped in subsequent decisions. So, by Chapski, the innocent construction defense had turned into a carte blanche for the news media and others who sought to use it.

Originally adopted in England as the doctrine of "mitior sensus," the rule is that when the words which form the heart of a defamation suit can be given two or more meanings, one of which is favorable and not defamatory, the court will construe the words in a favorable sense, Dauw v. Field Enterprises, Inc., 78 Ill. App. 3d 67, 71 (1979). The rule, which became a more popular defense than truth of the publication, was first enunciated at the Illinois Supreme Court level in the John case. It had its begins in Illinois law, however, as far back as 1879. Although the John case spelled out the essence of the innocent construction rule, many other aspects became attached to the defense by the time the state supreme court handed down its decision in Chapski.

In the late nineteenth century, three cases were decided which started the snowball effect. Schmisseur v. Kreilich, 92 Ill. 347 (1879) and Obadiah Huse v. Inter-Ocean Pub. Co., 12 Ill. App. 627 (1883) were one of the last few times in Illinois judicial history, until Chapski, where the courts decided the words uttered would hurt the reputations of the plaintiffs. In Obadiah Huse the court said it was libelous to impute to appellant the crime of embezzlement (at 628). While, in Schmisseur, the court thought, although the alleged slander was in French, saying someone "acted the whore" was actionable (at 351-352).

Then Young v. Richardson, 4 Ill. App. 364 (1879), parts company. This case brings out two important points to be used for more than 100 years after this decision.

First, innuendo cannot enlarge or change the sense of the words published (at 371). Second, relying on Cooley on Torts, it is a principle of law that "words alleged to be libelous will receive an innocent construction if they are fairly susceptible of it" (at 374). Although the Illinois Supreme Court does not cite this case in its John decision, this is where the concept first received public exposure.

From 1900 to 1950 only six cases pertaining to the concept stated in Young v. Richardson were decided. Harkness v. Chicago Daily News Co., 102 Ill. App. 162 (1902), revealed another element of what would be included later in the century regarding the innocent construction rule. In order to ascertain its meaning, the whole of the libel should be considered. Each phrase must be construed in the light of the entire publication. The words are to be taken in their natural and obvious meaning, and in the sense that fairly belongs to them (at 165).

Dowie v. Priddle, 26 Ill. 553 (1905); Fulrath v. Wolfe, 250 Ill. App. 130 (1928); LaGrange Press v. Citizen Pub. Co., 252 Ill. App. 482 (1929) and Creitz v. Bennett, 273 Ill. App. 88 (1933) reiterate what the previously cited cases said:
1. the meaning of the words alleged to be libelous cannot be, by innuendo, extended beyond a reasonable construction;
2. words alleged to be libelous will receive an innocent construction if they are reasonably susceptible of it (LaGrange Press at 485-486).

LaGrange Press also added the dimension of once words in the article were considered together it must be determined how men of common and reasonable understanding would interpret them (at 485). This is a different idea than accepting words in their natural and obvious meaning. In LaGrange Press the court was becoming more specific as to whom should understand the words.

Zurawski v. Dziennik Zjednoczenia Pub. Corp., 286 Ill. App. 106 (1936) introduced an idea from Gregory v, Nelson, 103 Kan. 192, which has become commonplace in libel law and not peculiar to the innocent construction rule. If the words used induce others to think the person charged has committed a crime, the injury has been inflicted and the author is liable unless the statement in its entirety shows that no crime was committed (at 110).

This case resulted from an epigram of Pushkin, the Russian poet, which the plaintiff argued referred to him as a "thief" and implied he committed the crime of larceny (at 111). The poem reads:

> O Lord God Jesus Christ,
> You have saved a thief on a cross
> And now you have new trouble
> To save a cross on a thief (at 108).

The court did not agree with Zurawski's assessment of the situation and reversed the lower court's decision.

This case brought up a point the courts later would have to wrestle with--the idea that a single word, in this case, "thief," could make an entire publication libelous.

Here, as will be the result in later cases, the court said, no, this is not libelous. The reasoning used by the court is not as strained here as it will become later in the century.

The next series of cases involving innocent construction began cropping up in 1950. These cases did not do anything more than repeat the three standards already stated in previous cases. These standards were: 1. publication must be stripped of innuendo; 2. it must be understood by men of common and reasonable understanding and 3. if more than one construction is available, the innocent one will be favored.

Dilling v. Illinois Pub. & Prtg. Co., 340 Ill. App. 303 (1950) involves the Chicago Herald-American and the plaintiff argued an article printed in August 1947 was libelous because it was tantamount to charging her with a crime of sedition if not treason. Reading the article as a whole and excluding innuendo, the court decided the publication was reasonably susceptible of an innocent construction (at 305-306).

> Nowhere in the article complained of is there a statement that plaintiff is a Communist or a Fascist or that she is an adherent of Communism or Fascism. 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 (at 306).

Apparently the court did not think that associating the plaintiff with subversive activities was sufficient grounds for a libel action.

Parmelee v. Hearst Pub. Co., 341 Ill. App. 339 (1950), also concerned an individual who claimed the publication would lead people to believe he was a Communist. The court quoted from Dilling in applying the innocent construction rule. It also cited Schmisseur v. Kreilich when it said the innuendo in the complaint must be considered as surplusage.

The court said:

> . . We think that what was said about plaintiff in the first part of the article rather excluded him from the "malignant Communists" species and left him under the genus "wild people" in a species "strange Company" (at 345).

In Brewer v. Herast Pub. Co., 185 F.2d 846 (1950), the United States Court of Appeals, Seventh Circuit cited Dowie v. Priddle. It decided if an article is to be libelous per se it must be stripped of all innuendo, colloquium or extrinsic or explanatory circumstances; if the words are unambiguous and incapable of an innocent meaning they may be declared libelous as a matter of law (at 850).

The only new cocept spelled out in Eick v. Perk Dog Food Co., 347 Ill. App. 293 (1952), comes from Fulrath v. Wolfe and LaGrange Press v. Citizens Pub. Co. The court said in the instant case, where allegedly libelous matter is ambiguous, the court will interpret the matter innocently, if possible (at 306). The concept was not new but the court made clear it would attempt to use an innocent interpretation before a defamatory one.

The Chicago Tribune printed a story which led to the suit Belt v. Tribune Co., 6 Ill. App. 2d 489 (1955). Belt was indirectly blamed for problems that resulted with an engineering project in France. The court followed the same reasoning as it had in previously mentioned cases but concluded the trial court erred in finding the article nonactionable. The appellate court, then, reversed the decision and remanded the cause with directions.

Judge v. Rockford Memorial Hospital, 17 Ill. App. 2d 365 (1958), was an interesting case resulting from a letter written by the director of nurses to the Nurses' Professional Registry requesting Judge's services no longer be available to the hospital. The letter included the statement, "Over a period of the past three months, we have had three vials of demerol disappear from our locked medicine cabinet on the floor where she (Judge) was specialing" (at 373). The letter concluded by saying, "This in no way reflects upon the care which Mrs. Judge has given patients in our hospital" (at 373).

The court decided:

> The plaintiff urges that the letter imputes to the plaintiff the commission of a crime--stealing demerol from the hospital. We believe it will not fairly bear that construction. It does not say that (at 386).

The appellate court affirmed the trial court's ruling.

Five other cases also were decided in the decade: Schy v. Hearst Pub. Co., 205 F.2d 750; Tiernan v. East Shore

Newspapers, Inc., 1 Ill. App. 2d 150; Epton v. Vail, 2 Ill. App. 2d 287; Clark v. Tribune Co., 11 Ill. App. 2d 420 and Crosby v. Time, Inc., 254 F.2d 927. The Clark and Epton opinions were not published in full and it therefore is difficult to know the contents of those cases. The others listed followed the standards already set and did not exhibit any unusual characteristics.

One case was decided in 1960 regarding innocent construction before the John Illinois Supreme Court decision. Proesel v. Myers Pub. Co., 24 Ill. App. 2d 501 (1960), does cite John v. Tribune Co., 19 Ill. App. 2d 547, before the supreme court handed down its verdict to illustrate the precedent.

The appellate court decides here the articles were libelous per se, thus the publication was found not to be reasonably susceptible of an innocent construction.

This case reiterates what is for the court to decide and what is left to the jury's determination.

> Where the words are ambiguous or equivocal in meaning, the question of the meaning to be ascribed to them is for the jury, although the question as to whether or not any particular meaning is libelous is for the court. Where there is a controversy as to whether or not words were spoken of and concerning the plaintiff, the question whether they were spoken is for the jury (at 510).

Although this passage does not directly deal with innocent construction, it is instructive to know these points.

In later cases, whether an alleged libel was of and concerning the plaintiff is an important factor.

John v. Tribune Co. made it to the appellate court, for the first time, in 1958. The case resulted because of two news items which appeared in the defendant's newspaper describing a police raid on an apartment at 4417 Ellis Avenue, Chicago. Dolores Reising, 57, alias Eve Spiro and Eve John, who was also known at one time as Anthony Accardo's woman friend was arrested at the time of the raid. She gave 4417 Ellis Avenue as her address.

As fate would have it, there was a woman who lived at 4417 Ellis Avenue, below the raided apartment, whose maiden name was Eve Spiro. Her married name was Eve John. The complaint alleges that the articles were understood by readers of the defendant's newspaper to refer to the plaintiff, who was approximately 30 years younger than the woman arrested. John also alleged that her reputation had been damaged and the statements caused her severe mental and physical distress and loss of practice as a psychologist (19 Ill. App. 2d 547, 550).

In this case, the appellate court determined the motion to dismiss the complaint at the trial level was improper because the language was libelous per se. The order was reversed and the cause remanded.

The plaintiff appealled again (28 Ill. App. 2d 300) contending she had not received a fair trial. The plaintiff claimed the trial court had improperly excluded evidence

offered by the plaintiff but had allowed evidence entered by the defendant (at 304). Therefore, the judgment of the circuit court was reversed and the cause remanded, not for reasons dealing with innocent construction, but rather for reasons of evidence inadmissibility.

Then John took her case to the Illinois Supreme Court. Justice Schaefer and Chief Justice Hershey dissented based on the argument that the state supreme court did not have jurisdiction in this case because it had not gone through the proper appeals process. The dissent aside, this is the case where the Illinois Supreme Court expressed the innocent construction rule. A rule which had been adopted and applied by the Appellate Courts and Federal Courts sitting in Illinois (at 442).

The court reaffirmed whether an article is susceptible of the construction for which a plaintiff claims is a question of law for the court, to be resolved by reading the offending language stripped of innuendo (at 440-441).

The court, further, decided the plaintiff's claim that the articles were taken to be "of and concerning" the plaintiff was erroneous. The plaintiff was not 57 years old, nor was her given name Dolores Reising, nor did she use her name Eve Spiro or Eve John as aliases. When aliases or assumed names appear in a publication, the first name given is clearly the subject or "target" of the publication, and such fact is one of common knowledge. Therefore the articles were not "of and concerning" the plaintiff (at 442).

The court went on to say the language in the defendant's articles was not libelous of the plaintiff when the innocent construction was consulted. It states:

> The article is to be read as a whole and the words given their natural and obvious meaning, and requires that words allegedly libelous that are capable of being read innocently must be so read and declared nonactionable as a matter of law (at 442).

John appealled to the United States Supreme Court but certiorari was denied (83 S.Ct. 148, 371 U.S. 877). So, the innocent construction rule was now clearly spelled out by the state supreme court and was to be used quite liberally in the years to follow.

Hambric v. Field Enterprises, Inc., 46 Ill. App. 2d 355 (1964), was the next case to follow John dealing with innocent construction. An article which appeared in the Chicago Daily News said, "When she had removed all of her clothing, she gave a few shakes, then picked up her clothes and ambled to the rear of the saloon" (at 358). Arthur Hambric was the sole owner of the tavern and it was named after his wife, Josephine. The plaintiffs argued the artilce created the impression the place was a hangout for prostitutes (at 360).

The court said the parts of the article complained of, including the above sentence, were not libelous per se because the article stripped of innuendo was capable of an innocent interpretation (at 358). Since the article was not libelous per se, the plaintiff was required to allege special damages

which was not done, therefore the complaint was defective (at 362).

Lorillard v. Field Enterprises, Inc., 65 Ill. App. 2d 65 (1965), resulted from an article in the Chicago Sun-Times. It stated Louis Lorillard procured two "quickie" divorces, that Mrs. Lorillard "started a suit for bigamy" against her husband and another part of the article charges the plaintiff with wife and child abandonment (at 70-71).

The court decided "quickie" divorce was not libelous per se based on words must be taken in the sense which readers of common and reasonable understanding would ascribe to them. The court determined "quickie" merely indicates a type of divorce (at 71).

An innocent construction was given to the claim of wife and child abandonment. The word "teenage" was used and that word includes 18 and 19-year-old people, under the innocent construction rule that statement cannot be construed as charging the plaintiff with the crime of child abandonment. (at 77).

However, stating the wife "started a suit for bigamy" is libelous per se and imputes a crime to the plaintiff. Bigamy is a crime (at 72). Nowhere in the article is there language to dispel the charge of bigamy. The entire article is disparaging to the plaintiff and strengthens his charge of libel when read as a whole (at 74). Since the appellate court found the statement concerning bigamy to be libelous per se, the lower court was reversed and the cause remanded.

Reed v. Albanese, 78 Ill. App. 2d 53 (1966), concerned an article written by Albanese for the North Loop News. The basis of Reed's action was if a person of common and reasonable understanding only read the headline accompanying the article, which Reed was the subject of, the individual would conclude Reed had been jailed, when he had not. (at 59). The headline read, "Reed Jailed for Housing Violations" (at 56).

In determining if an article is libelous per se the words complained of must be construed in the context of the article as a whole, and in doing this the headline of the article must be considered together with the text of the article (at 58). The court decided when the headline was read with the article and the innocent construction rule was applied, the article, as a whole, did not impute that the plaintiff was placed in jail (at 59).

In Grabavoy v. Wilson, 87 Ill. App. 2d 193 (1967), The Spectator newspaper said the plaintiff owed for tax liens in excess of $64,000 but the plaintiff claimed to have paid them and the records inadvertently had not acknowledged that (at 195). The court said the publisher of the newspaper was not required to exhaustively investigate each news item. Under the "innocent construction rule" since there was no knowledge of the release of liens the complaint failed to state a cause of action (at 202).

In Zeinfeld v. Hayes Freight Lines, Inc., 42 Ill. App. 2d 345 (1968), the Illinois Supreme Court attempted to apply the

innocent construction rule. The court was convinced that the letter in question "stripped of innuendo," charged the plaintiff with sufficient acts to constitute a criminal offense and was therefore libelous per se (at 348).

Bontkowski v. Chicago Sun-Times, 115 Ill. App. 2d 229 (1969), involved a letter to the editor of the "TV Prevue" section of the paper. Plaintiff complained the letter was not written by him, although it had been attributed to him, and that the accompanying editor's note was wholly false. The plaintiff also claimed both the letter and editor's note were written by the editor of the section (at 231-232).

The court said further:

> Plaintiff, however, erroneously contends that the foregoing "innocent construction" rule is only applicable and available to protect news media in the responsible reporting of news, as is the rule that holds that innuendo must be disregarded in determining whether printed material is libelous per se as an adjunct to protecting the freedom of the press (at 234).

The court, in the previous passage, said the innocent construction rule applies not only to reporting but, in essence, to everything that appears in a newspaper.

Several other cases were decided in the 1960s regarding the innocent construction rule. Archibald v. Belleville News Democrat, 54 Ill. App. 2d 38 (1964) and Turley v. W.T.A.X., Inc., 94 Ill. App. 2d 377 (1968) applied the innocent construction rule in the manner previously stated.

Kramsler v. Chicago American Pub. Co., Inc., 82 Ill. App. 2d 86 (1967) concluded that the statements which said plaintiff had no known permanent address and was known by several aliases could be innocently construed (at 89). In Fleck Bros. Co. v. Sullivan, 385 F.2d 223 (1967), the court said anything less than a "direct" charge of fraud, mismanagement or financial instability on the part of a business man or firm was not libelous per se (at 224).

In the 1970s an absolute deluge of innocent construction cases cropped up. Thirty-eight cases were decided between October 1971 and December 1979 and virtually all of them relied upon what the state supreme court said in 1962.

Delis v. Sepsis, 9 Ill. App. 3d 217 (1972), resulted from a letter entirely written in the Greek language and sent through the United States mails. In this letter the plaintiff had been called a "liar" and "dishonorable." The plaintiff had not bothered to indicate the things said about him were false so they were presumed to be true (at 220). With that in mind, the court said describing the plaintiff as "dishonorable," "sly,coy and evasive" and a "liar" were capable of being read innocently (at 221). In essence, the court said the above words amounted to nothing more than "name calling."

Ashe v. Hatfield, 13 Ill. App. 3d 214 (1973), was the result of a memorandum regarding the plaintiff's work performance. The plaintiff was, at the time of the case, a news writer for the Columbia Broadcasting System. The court

pointed out that lack of injury or harm to plaintiff was evident because he still held the position with reference to which the words had application. The innocent construction rule applied here because the language of the memorandum was not directed against the plaintiff but instead was directed only to a small paragraph written by the plaintiff (at 217).

The appellate court in Valentine v. North American Company for Life and Health Insurance, 16 Ill. App. 3d 277 (1973), determined that calling the plaintiff a "lousy agent" was susceptible of an innocent meaning (at 281). At the time of the alleged slander, the plaintiff had been very successful in his chosen occupation, that of a full-time life insurance salesman. The decision of the court in this case reversed that of the lower court which found for the plaintiff.

Valentine then appealled his case to the Illinois Supreme Court. The court said in judging the phrase "lousy agent" in the context of the rest of the conservation, the words were capable of being innocently construed. The court said the words meant the plaintiff did not properly or satisfactorily represent the company and that there had been a "lousy" or generally unsatisfactory agency relationship (at 171).

Justice Ward dissented in the case. The justice said he considered the innocent construction rule to be out of place in this case. Part of the innocent construction rule as enunciated in John v. Tribune Co. calls for words to

be "given their natural and obvious meaning." As the justice said, I think few will say the majority has given "lousy" its natural and obvious meaning (at 173).

This case also is credited with making slander susceptible to the innocent construction rule. The court said the principle is well established that statements are not to be considered slanderous per se if the words complained of are capable of an innocent construction (at 171).

Jacobs v. Gasoline Retailers' Association, 28 Ill. App. 3d 7 (1975), resulted from the cover design on the March 1972 issue of the "Gasoline Dealers News," a magazine published by the association. The plaintiff's picture was on the cover with the word "WANTED!" above the photo. Under the photo was the message, "from Robert (Bobby) Jacobs $4,435.24!" The plaintiff complained the wanted poster design of the front cover implies the plaintiff was found guilty of wrongfully taking money (at 9).

The court used the innocent construction rule in declaring the words nonactionable. The front cover stated the plaintiff was wanted for a sum of money, not for a crime. Taken as a whole the publication is more susceptible to an innocent construction than not (at 10).

Three cases emerged in the mid-seventies which were not susceptible to an innocent construction. In Welch v. Chicago Tribune Co., 34 Ill. App. 3d 1046 (1975), the plaintiff was allegedly libeled by a memorandum which notified members of

the department in which he worked for the reasons of the plaintiff's termination. The memorandum had been posted on a bulletin board at the edge of the sports department (at 1049).

The memorandum read:

> Aug. 7
> Tom Welch's services have been terminated as of this date because of alcoholism, inefficiency, lack of punctuality, and unreliability.
> (signed)
> Cooper Rollow (at 1049).

The plaintiff denied the truth of the statement in the memorandum and alleged he was told his termination was the result of economic consitions (at 1049).

The court followed the innocent construction rule and determined the words given their natural and obvious meaning could not be construed innocently (at 1053).

The second case was Troman v. Wood, 62 Ill. 2d 184 (1975), an Illinois Supreme Court case dealing with a photo and article. The caption of the photo read, "Home of Mrs. Mary Troman at 5832 N. Wayne. Thomas Troman testified that he is a member of a gang." Neither the article nor the caption identified the relationship between between Thomas and Mary nor did it identify her house as gang headquarters (at 188).

The plaintiff argued readers would think the house was a gang headquarters and that she was somehow associated with the gang. The court agreed, stating that identification of the plaintiff and identifying the house as her residence had taken place, unlike in the John case. The court also said

any question as to whether readers understood that the article referred to the plaintiff would ultimately be a question for the jury (at 188-189). The dismissal of the complaint was erroneous and the judgment of the circuit court was reversed and the cause remanded (at 199).

The third case where the innocent construction rule did not apply was Moricoli v. Schwartz, 46 Ill. App. 3d 481 (1977). The case arose from a statement used of and concerning the plaintiff whose stage name was Tommy Lane. The defendant had said, "Tommy Lane is a fag and we don't want any fag working for us." The complaint alleged further that the plaintiff's contract was cancelled because the defendant alleged the plaintiff was "a fag" (at 482). The plaintiff's complaint stated the above statements were slanderous per se because they allege the plaintiff is a homosexual.

Although Webster's Third Internationl Dictionary of the English Language characterized the word "fag" as slang, the sole occasion upon which the word is commonly used in the United States is in the form of a noun and to connote an adult human being is a homosexual. The court went on to state, to suggest otherwise serves only to further tax the gullibility of the credulous and require this court to espouse a naivete unwarrented under the circumstances (at 483). In light of this, the court said the trial court erred in finding the statements nonactionable and therefore reversed the order and remanded the cause.

The case of Halpern v. News-Sun Broadcasting Co., 53 Ill. App. 3d 644 (1977), applied the innocent construction rule here and determined three of four portions of articles deserved to be innocently construed. The three papragraphs received an innocent construction mainly because the alleged defamatory statements were not "of and concerning" the plaintiff (at 649). The fourth paragraph did sufficiently allege actual malice and therefore was actionable (at 651). The articles concerned the death of a mentally retarded nursing home patient where the plaintiff was the director, president and chief operating officier (at 646).

Krauss v. Champaign News Gazette, 59 Ill. App. 3d 745 (1978), cited the Valentine case when it affirmed the lower court and said:

> Certainly, if characterizing an insurance salesman as "a lousy agent" can be excused under the doctrine of innocent construction, so then can the assertion in this article that plaintiff has an affinity for public relations (at 748).

The Sloan v. Hatton, 66 Ill. App. 3d 41 (1978), case slaps the Fleck Bros. Co. decision in the face. In Fleck Bros. Co. the court said a "direct" charge of fraud, mismanagement or financial instability would be considered an actionable phrase. In the instant case the defendant said of the plaintiff, in a letter, "...was in the mobile home business and has since had to close his doors mainly because of poor management" (at 41). The court said here the statement

was protected by innocent construction because it was made in the heat of a business dispute (at 44).

In Catalano v. Pechous, 69 Ill. App. 3d 797 (1978), the case surrounds the phrase "240 pieces of silver changed hands" which appeared in an article in the Chicago Sun-Times. Pechous, city clerk of Berwyn, made the statement implying alderman had received the money for awarding a sanitiation contract (at 801). The defendant argued the above phrase constituted symbolic speech which did not necessarily impute the taking of a bribe but more commonly implies only the betrayal of trust (at 805). The appellate court disagreed with the trial court's acceptance of the defendant's innocent construction. Therefore the court reversed the trial court's summary judgment for the defendant (at 812).

The case was taken to the Illinois Supreme Court, 83 Ill. 2d 146 (1980), where the appellate court's decision was affirmed. The defendant argued that his words may be given an additional meaning which is not defamatory based on the John case. The defendant, however, could not suggest an alternative construction.

The plaintiff in Makis v. Area Publications Corp., 77 Ill. App. 3d 452 (1979), asked the court to abandon the innocent construction rule. The appellate court declined to do so stating it was not the approproate forum to seek a change in this well-established rule of law (at 457).

The Dauw v. Field Enterprises, Inc., 78 Ill. App. 3d 67 (1979), case reworded one condition of the innocent construction rule. The court said the rule insures that no article will be held libelous unless the editors know that the only reasonable interpretation which can be given to their article is defamatory (at 71). That was the first and only time the editors' knowledge was a stated condition.

The plaintiff in Vee See Construction Co., Inc. v. Jensen and Halstead, Ltd., 79 Ill. App. 3d 1084 (1979), also tried to get the court to abandon the innocent construction rule. The plaintiff claimed the rule was born of judicial error. Vee See maintained the older, more correct rule states when words are ambiguous, and susceptible of both an innocent and a defamatory meaning, it is the province of the jury to determine whether the words are libelous (at 1086). The court, however, preferred to use the innocent construction rule from John and thus affirmed the lower court's dismissal of the complaint.

The following cases also were decided in the 1970s, but all affirmed the use of the innocent construction rule and were not peculiar in any way: Snead v. Forbes, Inc., 2 Ill. App. 3d 22 (1971); Kaplan v. Greater Niles Twp. Pub. Corp., 2 Ill. App. 3d 1090 (1971); Van Tuil v. Carroll, 3 Ill. App. 3d 869 (1972); Conrad v. Logan, 4 Ill. App. 3d 981 (1972); Watson v. Southwest Messenger Press, 12 Ill. App. 3d 968 (1973); Krass v. Froio, 24 Ill. App. 3d 924 (1975); Roemer v. Zurich

Insurance Co., 25 Ill. App. 3d 606 (1975); Johnson v. Bd. of Junior College Dist. No. 508, 31 Ill. App. 3d 270 (1975); Kirk v. Village of Hillcrest, 31 Ill. App. 3d 1063 (1975); Kilbane v. Sabonjian, 38 Ill. App. 3d (1976); Byars v. Kolodziej, 48 Ill. App. 3d 1015 (1977); Cooper v. Rockford Newspapers, Inc., 50 Ill. App. 3d 247 (1977); Wilson v. Hunk, 51 Ill. App. 3d 1030 (1977); National Educational Advertising v. Cass Student, 454 F.Supp. 71 (1977); Bruck v. Cincotta, 56 Ill. App. 3d 260 (1977); Dombrowski v. Shore Galleries, Inc., 59 Ill. App. 3d 237 (1978); Anderson v. Matz, 67 Ill. App. 3d 175 (1978); Belmonte v. Rubin, 68 Ill. App. 3d 700 (1979); Wexler v. Chicago Tribune Co., 69 Ill. App. 3d 610 (1979); Ware v. Carey, 75 Ill. App. 3d 906 (1979) and Garber-Pierre Food Products v. Crooks, 78 Ill. App. 3d 356 (1979).

With the advent of the 1980s came cases where television reporters, stations and networks were among the defendants. The TV cases did not appear to present any particular problems. For the most part, the spoken portions of broadcasts were where the alleged libels occurred. Only in one instance, Bravo Realty v. CBS, 84 Ill. App. 3d 862 (1980), did the visual juxtaposition of a billboard coincide with the voice over and result in a suit. The appellate court affirmed the lower court's view that the plaintiff failed to state a cause of action.

The Adreani v. Hansen, 80 Ill. App. 3d 726 (1980), case did not say anything revolutionary but it did reaffirm that headlines must be read together with the letter or article that follows them (at 728). The court used the innocent construction rule to add the words "greed" and "disgrace" to the list of protected words, when the publication is read in its entirety. Also, the phrase "characteristics of pure greed" was determined to mean not necessarily unfair dealing (at 729).

In a slander per se case, a psychiatrist called a policeman "unfit." Angelo v. Brenner, 84 Ill. App. 3d 594 (1980), resulted when the defendant had to post bond for his wife's traffic offense and described the plaintiff as "unfit." The court determined the word was susceptible of an innocent construction because it did not believe the defendant's remark should be interpreted as a professional opinion (at 599).

In Levinson v. Time, Inc., 89 Ill. App. 3d 338 (1980), the court shot down the plaintiff's argument that being characterized as an acquaintance or friend of a "mob boss" was defamatory. The court said the plaintiff's argument was based on isolated words or phrases which contradicted the innocent construction rule which requires "the article to be read as a whole" (at 342).

Newell v. Field Enterprises, Inc., 91 Ill. App. 3d 735 (1980), illustrated the distinction between libel per se and libel per quod. To apply the innocent construction rule

to libel per se cases, the publication must be stripped of innuendo. In this case, however, the court said a writing constitutes libel per quod if it requires an innuendo to give it a libelous meaning (at 741). This would lead one to believe the innocent construction rule cannot be applied in libel per quod cases.

The suit resulted from an article in the Chicago Daily News which told the story of how a woman died in the plaintiff's home when it burned. Yet, the plaintiff managed to rescue his pet bird. The Daily News wrote the story because the estate of the deceased woman filed a complaint against the plaintiff. The paper was reporting on the complaint.

The court concluded the article was libelous per quod because it denigrates the plaintiff's respect for human life and lowered him in the estimation of the community (at 743). Here the innocent construction rule did not hold.

Cantrell v. ABC, 529 F.Supp. 746 (1981), was a case when the network lost out. Geraldo Rivera also was named in the suit and the case surrounds an interview Rivera did for the newsmagazine "20/20." The segment concerned as arson-for-profit conspiracy and suggested the plaintiff who was the manager of a building that burned, was involved in a conspiracy to commit crimes of arson and insurance fraud.

The United States District Court for the Northern District of Illinois determined the segments were not susceptible of an innocent construction and were libelous per se.

As the court said, to conclude that the relevant segments were susceptible of innocent construction is to indulge in a fiction to the detriment of reason and logic (8 Med. L. Rptr. 1246).

Colson v. Stieg, 86 Ill. App. 3d 993 (1980), was a case involving an associate professor in the department of library sciences at Northern Illinois University who sought tenure. The plaintiff alleged two statements made by the defendant, department chariman, at meetings for the purpose of evaluating the plaintiff's work performance were slanderous per se (at 994).

The defendant claimed the statements were simply opinions expressed by a department chairman concerning the performance of a candidate for tenure. The court concluded the statements were factual expressions and not beliefs or opinions (at 996).

The court determined the second of the two statements was not actionable. The first statement read, "I have information I cannot divulge which reflects adversely on John's performance as a teacher" (at 995). The court said the above statement, if false as the plaintiff alleged, was slanderous per se (at 997).

The case was appealled to the Illinois Supreme Court, 89 Ill. 2d 205 (1982). This court affirmed the second statement was nonactionable. It, however, reversed the appellate court regarding the first statement. The court said the

first amendment privilege of New York Times should be applied to the statement made by the defendant (at 213).

Another case when ABC was defeated in court was Tunney v. ABC, 109 Ill. App. 3d 769 (1982). The words, "sinking driveways, leaking roofs and similar complaints are obviously the result of poor construction" (at 771) as broadcast by ABC through its subsidiary WLS-TV were found not to be capable of an innocent construction. Given their natural and obvious meaning the words impute to Tunney a lack of ability in his business and trade and are thus libelous per se (at 777).

Chapski v. Copley Press, 100 Ill. App. 3d 1012 (1981), was not much different than other innocent construction cases at the appellate level. The plaintiff based his action on a series of articles which appeared in the Daily Courier News from February 1979 to January 1980. The articles concerned the death of a 2-year-old girl as a result of child abuse. The plaintiff was the attorney of the child's mother and had represented the mother in juvenile and divorce proceedings. The articles criticized the court system and the attorney's conduct in court proceedings. They did not charge the attorney with an illegal act or incompetence. The court applied the innocent construction rule and determined the articles were not libelous.

The case then went before the Illinois Supreme Court, 92 Ill. 2d 205 (1982). The court discussed, at lenght, the innocent construction rule. The court said the strongest

reason in support of the rule is that it comports with the constitutional interests of free speech and free press and encourages the robust discussion of daily affairs (at 350).

The principal criticism of the rule, the court said, was that courts generally strain to find unnatural but possibly innocent meanings of words when a defamatory meaning is far more probable (at 350-351). Words are to be given their "natural and obvious meaning" as was decided in John. If courts strain to give an unreasonable interpretation of a publication then they are not following the rule as it was enunciated (at 351).

Because of the confusion, inconsistencies and inequities that resulted since the John case the supreme court decided to modify the innocent construction rule. The modification reads:

> We therefore hold that a written or oral statement is to be considered in context, with the words and the implications therefrom given their natural and obvious meaning;
> if, as so construed, the statement may reasonably be innocently interpreted or reasonably be interpreted as referring to someone other than the plaintiff it cannot be actionable per se.
> This preliminary determination is properly a question of law to be resolved by the court in the first instance; whether the publication was in fact understood to be defamatory or to refer to the plaintiff is a question for the jury should the initial determination be resolved in favor of the plaintiff (at 352).

The important point brought out in Chapski is the characterization must be reasonable. The emphasis is on reasonableness, not on innocence.

The first case decided after the Chapski decision, relating to the innocent construction rule, was Costello v. Capital Cities Media, 111 Ill. App. 3d 1009 (1982). An editorial in the Belleville News Democrat repeatedly attacked the county board chariman as a "liar" and referred to "two more years" of his "lying leadership" (9 Med. L. Rptr. 1434. 1435). The court invoked Chapski to determine the editorial was not susceptible of an innocent construction and was libelous per se. Thus, the decision of the lower court was reversed (at 1437,1438).

The last case to be discussed here was decided in May 1983. In Antonelli v. Field Enterprises, Inc., 115 Ill. App. 3d 432 (1983), the plaintiff alleged the Chicago Sun-Times unfairly identified him as a "mob figure" and "reputed hit man" (9 Med. L. Rptr. 1849). The headline and news report are to be considered one document (at 1850). The court decided in applying the innocent construction rule, the publication was not defamatory, particularly in light of the plaintiff's record of law breaking and convictions (at 1850).

The following cases also were decided in the 1980s but generally followed the pattern of the decade: Galvin v. Gallagher, 81 Ill. App. 3d 927 (1980); Altman v. Amoco Oil Co., 85 Ill. App. 3d 104 (1980); Kakuris v. Klein, 88 Ill. App. 3d

597 (1980); Springer v. Harwig, 94 Ill. App. 3d 281 (1981); Britton v. Winfield Public Library, 101 Ill. App. 3d 546 (1981); Rasky v. CBS, 103 Ill. App. 3d 577 (1981); Audition Division v. Better Business Bureau, 8 Med. L. Rptr. 1997 (1982); Fried v. Jacobson, 107 Ill. App. 3d 780 (1982) and Cartwright v. Garrison, 9 Med. L. Rptr. 1819 (1983).

Way back in 1879 when the court gave innocent construction its debut, part of the wording was "...if they are fairly susceptible of it." Meaning words could be construed innocently if one did not have to strain to make them such.

In the early part of the century "fairly" was replaced with "reasonably." Then somewhere along the way that distinction fell from sight. The appellate courts argued it was not their position to change the "well-established" rule. Instead, they went merrily along applying part of the innocent construction rule.

Then it took the Illinois Supreme Court 20 years before it would step in again and modify the rule. Some 40 plus cases went down the road, most were decided with a faulty rule. The high court saw what the appellate courts were doing, yet continued to let it happen.

So, finally after Chapski, we may breath more easily for a while. The "reasonable" portion of the rule has been re-established. Although determining what is reasonable is subjective, at least it will force the courts to ponder before applying the innocent construction rule.

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