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## TORTS - LIBEL BY TALKING PICTURES - RASPUTIN CASE

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TORTS — LIBEL BY TALKING PICTURES — RASPUTIN CASE — The motion picture production of "Rasputin The Mad Monk" portrayed an episode in which Rasputin seduced a young lady of the Russian court. Alleging that the character of the seduced was patterned after her own so that she had been defamed, the plaintiff brought an action of libel against the producers. *Held*, the plaintiff was entitled to damages of what, in this country, would amount to about one hundred and twenty-six thousand dollars. *Yousoufov. v. M-G-M Pictures*, England (1934).

That progress in the field of invention has afforded new opportunities to libel and slander suitors is well illustrated by this decision allowing an action of libel for matter contained in a motion picture, and by another recent opinion<sup>1</sup>

<sup>1</sup> *Sorenson v. Wood et al.*, (Neb. 1932) 243 N. W. 82; 32 COL. L. REV. 1255

allowing a libel action against a radio broadcasting company for a defamation emitted from its station. An American case<sup>2</sup> had previously held that a motion picture might give rise to an action of libel, although the court termed it a "novel proceeding." However, the suit in the principal case, which was instigated by an ingenious counsel,<sup>3</sup> is the first important one in the field.<sup>4</sup> In any action for libel contained in a motion picture production, the controversy would likely be primarily concerned with whether the defamation was "of and concerning the plaintiff."<sup>5</sup> Such was true in the instant case, but an indignant jury promptly resolved the extremely doubtful point in favor of the plaintiff.<sup>6</sup> In reality, it would seem that a production which caused theater audiences to connect a character and his behavior with some actual person instead of considering the matter offered as purely fiction<sup>7</sup> would be exceptional. Because of this practical aspect, it may well be doubted if our courts would allow many cases to reach the jury. Furthermore, most of the productions which make any attempt to concern themselves with actual persons deal with historical subjects, so that suitors would be confronted with the rulings which disallow civil actions for libels of the dead.<sup>8</sup> Despite such obstacles to recovery, the principal case sounds a warning to the producers of motion pictures and will no doubt cause them some concern as regards their future offerings.

F. F. B.

(1932); 18 CORN. L. Q. 124 (1932); 46 HARV. L. REV. 133 (1932); 81 UNIV. PA. L. REV. 228 (1932).

<sup>2</sup> *Merle v. Film Corp.*, 166 App. Div. 376, 152 N. Y. S. 829 (1915); 80 CENT. L. J. 398 (1915); 1 VA. L. REG. (N. S.) 237 (1915).

<sup>3</sup> Miss Fanny Holtzman, prominent New York attorney, was "in back of the proceeding." *NEW YORKER*, March 24, 1934, p. 15.

<sup>4</sup> Counsel in the case and press reports assume this to be the first case in the field. *TIME*, March 12, 1934, p. 22; *TIME*, March 26, 1934, p. 20. Counsel for the defense made an interesting comment during the argument as to the possibilities of talking pictures creating libel and slander at one and the same time. *TIME*, March 12, 1934, p. 23.

<sup>5</sup> The presence or absence of this requisite depends upon the understanding of the parties to whom the libel was published. *THROCKMORTON'S COOLEY ON TORTS* 323 (1930).

<sup>6</sup> There were many factual differences pointed out upon the trial between the general background and history of the character and that of the plaintiff. *TIME*, March 12, 1934, p. 23.

<sup>7</sup> Discussions of the analogous decisions, where an action of libel is brought for matter contained in books of fiction, indicate that there should be a natural presumption that the characters are solely fictitious. Jeremiah Smith, "Jones v. Hulton," 60 UNIV. PA. L. REV. 461 at 479 (1912); 24 LAW NOTES 24 and 32 (1920).

<sup>8</sup> *THROCKMORTON'S COOLEY ON TORTS* 388 (1930); 35 LAW NOTES 224 (1932).