

to the real essence of the injury. In the celebrated case of *Roberson v. Rochester Folding Box Co.*, 171 N.Y. 538, 50 L.R.A. 478, the unauthorized publication of a girl's portrait to advertise flour was passed upon chiefly as a matter of a right to privacy, and the court pointed out the lack of proper allegations for a charge of libel. The decision denied that there was any injury to the right of privacy. On the other hand, in *Pavesich v. New England L. Ins. Co.*, 122 Ga. 190, 69 L.R.A. 101, the court held that an unauthorized publication of a person's portrait for advertising another's business is a violation of the right of privacy; but it also held that such publication, under the facts of that case, constituted a libel. A clear analysis of the elements of the wrong in cases of this class unmistakably leads to the conclusion that, where an actionable wrong is done by publishing a person's portrait, it is in its nature essentially a matter of libel. No court has held—probably no court ever will hold—that the mere fact of publishing the portrait of another person is necessarily, and under all circumstances, an injury of any kind whatever. If published in such a way as to injure him, it inevitably becomes libellous in character. There doubtless will be cases in which the wrong, if any, is slight; but such a case as that of *Peck v. Tribune Co.* presents an unmistakable wrong.

Good faith on the part of the publisher of an advertisement cannot certainly be a complete defense, though the resulting liability may be in some sense a hardship; but the publisher, in such cases, must rely on the responsibility to him of his advertiser who brings him the libel to be published. It would be a strange perversion of reason and justice to make the innocent victim of a libel remediless because the publisher had been deceived in his business dealings with the advertiser. Good faith may preclude punitive damages, but, obviously, the publisher of a libel is not excused for the wrong by the fact that he was deceived by the person who furnished it to him. The amount of damages was not passed upon in the *Tribune Company's* case, but the decision merely established the plaintiff's right to prove her case and go to the jury.