those who learned of it in some other manner? See *Hambrook v. Stokes Bros.*, [1925] 1 K. B. 141, 152; German Supreme Court, Sept. 21, 1931, 133 Entscheidungen des Reichsgerichts in Zivilsachen 273. Inability to see a definite stopping place may perhaps justify a court in refusing to recognize any liability for nervous shock caused by apprehension for the safety of another. But once it is conceded, as the court does in the principal case, that a parent may recover for such shock if he was also imperiled, it seems rather arbitrary to exclude recovery merely because plaintiff was in no physical danger, although the conduct of defendant is the same, and the danger of shock to the parent is as great.

Unfair Competition—Broadcasting News Reports—[Federal].—Defendant, radio station, broadcast news reports by reading from newspapers after their general publication without stating the source of the news. The Associated Press, of which the newspapers were members, sought to enjoin the defendant's use of such news until twenty-four hours after publication. *Held*, injunction denied; complainant had no property right in the news after publication; nor did defendant's acts amount to unfair competition since defendant did not compete in disseminating of news for profit. *Associated Press v. KVOS*, 9 F. Supp. 279 (D.C. Wash. 1934).

The traditional concept of unfair competition included only that narrow field of cases in which the defendant had attempted to pass off his goods on the buying public as those of the plaintiff. See *Hanover Milling Co. v. Metcalf*, 240 U.S. 403, 412 (1915). In the news piracy cases, deception of the public or a breach of contract or trust by defendant have been considered unnecessary since *International News Service v. Associated Press*, 248 U.S. 215 (1918); see *Gilmore v. Sammons*, 269 S.W. 861 (Tex. Civ. App. 1925). In recent cases, radio stations have been enjoined from broadcasting news gathered from complainant's newspaper after general publication. *New Orleans Times-Picayune v. Ohalt*, N. Y. Times, June 30, 1933, 15 (New Orleans Civil Dist. Ct.); *Associated Press v. Sioux Falls Broadcasting Co.*, U.S. Dist. Ct., S.D., Mar. 14, 1933; see 4 Air L. Rev. 323 (1933). The broad concept of unfair competition expressed in these cases seems to be that no one shall be allowed to appropriate to his own profit the product of his competitor's effort and expense. 17 Mich. L. Rev. 490 (1919); *cf.* the German cases discussed in Caldwell, Piracy of Broadcast Programs, 30 Col. L. Rev. 1087, 1104, 1106 (1930). But the courts have been loath to subscribe to that broad doctrine in cases in which the thing appropriated by defendant was not news. Where the defendant had appropriated dress designs, courts have refused an injunction, limiting the *International News* case to its particular facts. *Cheney Bros. v. Doris Silk Corp.*, 35 F. (2d) 279 (C.C.A. 2d 1929), cert. denied 281 U. S. 728 (1930); see *Margolis v. National Bellas Hess Co.*, 139 Misc. 738, 249 N.Y.S. 175 (1931); *cf. Montegut v. Hickson*, 178 App. Div. 94, 164 N.Y.S. 858 (1917); see 31 Col. L. Rev. 477 (1931). Likewise, where a competitor appropriated plaintiff's scheme, device, plan or system, the courts have been reluctant to find unfair competition, unless there was some element of passing off or breach of contract or trust. *Fonotipia v. Bradley*, 171 Fed. 951 (D.C. N.Y. 1909); *Steiff v. Bing*, 215 Fed. 204 (D.C. N.Y. 1914); *Meccano v. Wagner*, 234 Fed. 912 (D.C. Ohio 1916); *Fed. Electric Co. v. Flexlume Corp.*, 33 F. (2d) 412 (C.C.A. 7th 1929); *Nat'l. Tel. Directory Co. v. Dawson Mfg. Co.*, 214 Mo. 683, 263 S.W. 483 (1924); *Crump v. Lindsay*, 107 S.E. 679 (Va. 1921); but see *Meyer v. Hurwitz*, 5 F. (2d) 370 (1925), affd. 10 F. (2d) 1019 (1926); Haines ,Efforts to Define

Unfair Competition, 29 Yale L.J. 1 (1919). And unless the appropriation of plaintiff's device tended to diminish his sales, plaintiff is not entitled to an injunction, no matter how much the defendant profited by his deception of the public. *American Washboard Co. v. Saginaw Mfg. Co.*, 103 F. 281 (CC.A. 6th 1900); *Mosler Safe Co. v. Ely-Norris Safe Co.*, 273 U.S. 132, rev'g. 7 F. (2d) 603 (C.C.A. 2d 1927). It may be argued that the news cases should be exceptional and that the plaintiff should be given a property right in news even after publication similar to that held by an author or lecturer. 13 Ill. L. Rev. 708 (1919). But such property is difficult to find because the events which make news are no one's property and if defendant takes "tips" on news gathered by plaintiff and proceeds to verify them before publishing, the defendant has not taken the plaintiff's property. See *Sports and General Press Agency, Ltd. v. "Our Dogs" Publishing Co., Ltd.*, [1916] 2 K.B. 880; *International News Service v. Associated Press*, 248 U.S. 215 (1918); but see opinion of Judge Augustus Hand in lower court, 240 Fed. 983 (C.C.A. 2d 1917). Moreover, to find a property right after publication in newspapers, the common law theory of abandonment on general publication must be stretched. Recently a broadcast of a skit over the radio, however, was held not to constitute an abandonment of property in the skit. *Uproar Co. v. Natl. Broadcasting Co.*, 8 F. Supp. 358 (D.C. Mass. 1934); *cf. Gotham Music Service, Inc. v. Denton & Haskins Music Pub. Co.*, 259 N.Y. 86, 181 N.E. 57 (1932).

In the instant case there is neither a passing off nor a deception of the public which would cause anyone to believe that the newspapers had copied from the earlier news of the radio. See opinion of Justice Holmes in *International News Service v. Associated Press*, 248 U.S. 215, 246 (1918). And the plaintiff's and defendant's services are so dissimilar that the sale of plaintiff's newspapers is not decreased but may be increased by defendant's news broadcasts. N.Y. Times, April 26, 1936, 1; Stockbridge, Radio and Press, Outlook and Independent, Dec. 31, 1930, 692; see 35 Col. L. Rev. 304 (1935). But radios and newspapers are competing for the good will of advertisers who pay the costs of both services. N.Y. Times, April 23, 1931, 14; April 24, 1931, 16; April 25, 1931, 11; April 27, 1933, 15. So it may seem unfair to allow the radio to become a more popular advertising medium by using news gathered at plaintiff's effort and expense. The public, however, has an interest in the rapid dissemination of news, which may justify the courts' refusal to restrict defendant's use of any news. See German cases in Caldwell, Piracy of Broadcast Programs, 30 Col. L. Rev. 1087, 1104, 1106 (1930); but see 44 Yale L.J. 877 (1935). Moreover, it may be argued that an injunction would foster a monopoly of news by newspapers which might be contrary to the public interest. The press-radio agreement under which, since March 1, 1934, the press has been giving news to radio in five-minute reports in a manner calculated to preserve the value of the news to nineteen hundred newspapers, has been said to be unsatisfactory to the public. N.Y. Times, April 26, 1935, 1; Whittemore, Radio's Fight over News, 81 New Rep. 354 (1935). But unless the radio develops a news-gathering agency of its own, an injunction would force it to accept the terms dictated by the press. Keating, Pirates of the Air, Harper's, 463 (Sept. 1934). The Associated Press will not sell news to radios. N.Y. Times, April 26, 1935, 1. On the other hand, a news-gathering agency for radios, the Transradio Service, has been started. Whittemore, Radio's Fight over News, 81 New Rep. 354 (1935). So one possible effect of granting an injunction would be to force radio to develop its own news service, thus fostering competition in the dissemination of news. The principal case raises close questions of debatable

public policy that seem to be rather within the province of the legislature than of the court. The legislature can investigate and determine when and to what degree news disseminating is a business affected with a public interest, whether monopoly or competition will better meet that public interest, and what means can best be used to obtain the ends desired. See opinion of Justice Brandeis in *International News Service v. Associated Press*, 248 U.S. 215, 248 (1918); also see Harris, Radio and the Press, Annals Amer. Acad. of Pol. and Soc. Sci., 163 (Jan. 1935); Dill, Radio and the Press; A Contrary View, Annals Amer. Acad. of Pol. & Soc. Sci., 170 (Jan. 1935); Pew, Free as the Air, 3 Today 8 (1935).

Water Rights—Opposite Riparian Owners' Right To Flow of Stream under Oregon Code—[Oregon].—Acting under authority of the Oregon Water Code (Ore. Code (1930), tit. 47) the state engineer issued a permit to defendant riparian owner, to appropriate the greater portion of the flow of a stream for power purposes. Plaintiff, the opposite riparian owner, claiming a vested property right in a "continuous flow," sought to enjoin the appropriation on the ground it violated the due process clause of the Fourteenth Amendment. *Held*, the appropriation is constitutional even though it limits the riparian right of the plaintiff to water being put to a beneficial use. *California-Oregon Power Co. v. Beaver Portland Cement Co.*, 73 F. (2d) 555 (C.C.A. 9th 1934).

The present law of water rights in our western states has evolved from a conflict of two rather antagonistic theories. Shaw, The Development of the Law of Waters in the West, 189 Cal. 779 (1922); Walton, Origin and Growth of Western Irrigation Law, 21 Ill. L. Rev. 126 (1926); Harowitz, Riparian and Appropriation Rights to the Use of Water in Washington, 7 Wash. L. Rev. 197 (1932). The doctrine of *prior appropriation* originated in the usage of "placer" miners. The first person to appropriate the water, regardless of the amount, was entitled to it as against subsequent takers. 1 Nichols, Eminent Domain (2d ed. 1917), § 144; 2 Farnham, Waters and Water Rights (1904), § 462; *Coffin v. Left Hand Ditch Co.*, 6 Colo. 448 (1882). Later, as the various states adopted the English common law, the question arose as to whether the common law doctrine of riparian rights was included. *Jones v. Adams*, 19 Nev. 78 (1885) (overruling *Van Sickle v. Haines*, 7 Nev. 249 (1872) which had followed the common law rule of riparian rights); *Boquillas Land and Cattle Co. v. St. David Co-operative Commercial and Development Assoc.*, 11 Ariz. 128, 89 Pac. 504 (1907), affd. 213 U.S. 339 (1909) (*riparian right* doctrine never became a part of Arizona common law). This riparian right view was inconsistent with the former view, each owner, under the riparian right view, subject to the right of other riparian owners to a reasonable use of the stream, being entitled to an undiminished flow, regardless of prior appropriations. As the need for extensive irrigation developed neither doctrine was found to be satisfactory. That of *prior appropriation* was unfair to lower riparian owners; *Lux v. Haggin*, 69 Cal. 255, 4 Pac. 919 (1884); and the riparian right view did not satisfy the irrigation needs of lands non-adjacent to streams. *Kan. v. Colo.*, 206 U.S. 46, 105 (1907). The incompatibility of the two theories and the inadequacy of each resulted in statutory enactments in all western states placing water rights in the control of state administrative boards in order to distribute the water equitably among those desiring to use it beneficially. Lasky, From Prior Appropriation to Economic Distribution of Water by the State—Via Irrigation Administration, 1 Rocky Mt. L. Rev. 161, 248 (1928); 2 Rocky Mt. L. Rev. 35 (1929).