On analogy to criminal libel[17] it would seem ill-advised for a court to sanction a movement of this type, which likewise tends to provoke retaliation,[18] and to disturb the peace.[19] A certain degree of violence, however, seems a necessary accompaniment to any effort on the part of a previously subjected group to improve its conditions, as many labor disputes will illustrate, and it has been suggested that "the alternative of abandoning all attempts at progress is hardly preferable."[20] It is particularly noteworthy that if the negroes organized as a labor union and demanded employment for its members, there would clearly be a labor dispute within the meaning of the Norris-LaGuardia Act.[21] Thus the argument as to the likelihood of violence seemingly loses its vigor.

In the present case, in contrast to the labor dispute, the interests of organized labor will not be advanced and living standards will not be raised by a compliance with the demands of the defendant. Because of this factor, there seems less justification for applying the same liberal attitute now accorded labor.[22] A solution, both providing for the economic progress of the negro race and eliminating the possibility of racial conflict, would be a legislative prohibition against the exclusion of any person from union membership because of race or color.[23]

Torts—Slander Actionable per se—Extension of Scope of Business Slander—[England].—The plaintiff's employer, a diamond merchant, and most of the customers of the business, were Jewish. The alleged words, spoken by the defendant to the plaintiff's employer, were, "Victor [the plaintiff] is a Jew-hater." No special damages were proved. *Held*, that these words were actionable *per se*, as touching the plaintiff in his employment. *De Stemple v. Dunkels*.[1]

The categories of slander actionable *per se* rest on arbitrary distinctions, which have been strictly maintained by the courts.[2] Although recovery for slander generally

[17] "The gist of the offense is its tendency to provoke a breach of the peace." Miller, Handbook of Criminal Law §170 (1934).

[18] Where members of a labor union picketed a restaurant owner because he refused to discharge his colored employees after the union rejected an offer from the negroes seeking admission to the union. Willis v. Restaurant Employees, 26 Ohio N.P. (N.S.) 435 (1927).

[19] It should be noted that while there is a broad social justification in the instant case, there is no justification for criminally libelling another.

[20] 83 U. of Pa. L. Rev. 383 (1935).

[21] Lauf v. E. G. Skinner Co. 58 S. Ct. 578 (1938). But see Donnelly Garment Co. v. International Ladies' Garment Workers' Union, 21 F. Supp. 807 (Mo. 1937), noted 5 Univ. Chi. L. Rev. 514 (1938).

[22] Exchange Bakery v. Rifkin, 245 N.Y. 260, 157 N.E. 130 (1927); Stillwell Theatre v. Kaplan, 259 N.Y. 405, 182 N.E. 63 (1932), *cert. denied*, 288 U.S. 606 (1932); Goldfinger v. Feintuch, 276 N.Y. 281, 11 N.E. (2d) 910 (1937).

[23] Many unions expressly exclude negroes from union membership. Spero and Harris, The Black Worker 53 *et seq.* (1931). For a recent case refusing to compel a union to accept an application for membership and stating that the problem is one for the legislature, see Miller v. Ruehl, 2 N.Y. S. (2d) 394 (Sup. Ct. 1938).

[1] 158 L.T. 19 (1938).

[2] Gatley, Libel and Slander 40 (2d ed. 1924).

requires proof of special damages, it may be had for words which affect the plaintiff in his business or profession.[3] The instant case appears to be a relaxation of the common-law rules for this type of action.

Aside from imputation of certain crimes and foul diseases, the alleged slander, to be actionable *per se*, must be clearly detrimental to, and clearly concerned with, the plaintiff in his professional or business capacity. Traditional cases are those where insolvencey is imputed to a merchant[4] or immorality to a clergyman.[5] The courts of both England and America have been reluctant to extend the doctrine beyond the limits recognized in the past.[6] Clearly defamatory statements have frequently been held not actionable under this category without proof of special damages. The leading case on this point in England is *Jones v. Jones*,[7] in which it was held that an action could not be maintained when adultery was imputed to a schoolmaster, and it was not shown that the words affected the plaintiff in his capacity to teach.[8] Similarly in *Lumby v. Allday*[9] words charging a clerk with immorality, made with the intention of procuring his discharge, were held not to concern him in his capacity as a clerk. And it has been held insufficient if the alleged slander referred to the conduct of the plaintiff on one occasion only[10] since failure once does not necessarily imply a general lack of ability in one's profession. Such a statement has likewise been held non-actionable if it would tend to make the plaintiff unpopular with only a small class.[11]

The line of demarcation between cases such as the *Jones* case and cases where the remarks have been held to affect one in his business capacity is not very distinct, but the principal case seems to go further than the authorities appear to warrant. To call

[3] Id., at 62.

[4] Jones v. Littler, 7 M. & W. 422 (1841); Harrington v. Bevington, 8 Car. & P. 708 (1838).

[5] Piper v. Woolman, 43 Neb. 280, 61 N.W. 588 (1895). Other situations where actions have been allowed are: Evans v. Gwyn, 5 Q.B. 844 (1844) (lying imputed to a clergyman); Dakhyl v. Labouchere [1908] 2 K.B. 325 (ignorance of medicine to a doctor); Craig v. Brown 5 Blackf. (Ind.) 44 (1838) (saying of a postmaster that he would rob the mails); Spiering v. Andrae, 45 Wis. 330 (1878) (of a sheriff that in his official capacity he has collected money for his own use).

[6] For a judicial expression of this reluctance, see Hellwig v. Mitchell, [1910] 1 K.B. 609.

[7] [1916] 1 K.B. 351. The court distinguishes the principal case from Jones v. Jones by saying that if the remark in the latter case had been made to the plaintiff's employer, the result would have been different.

[8] Cases reaching a similar conclusion are: Ayer v. Craven, 2 Ad. & El. 2 (1843) (adultery of a physician); Alexander v. Jenkins, [1892] 1 Q.B. 797 (drunkenness of a town councillor); James v. Brook, 9 Q.B. 7 (1846) ("conduct unfit for publication" of a police officer); Onslow v. Horne, 2 W.Bl. 750 (1771) (want of sincerity of a member of Parliament); Dallavo v. Snider, 143 Mich. 542, 107 N.W. 271 (1906) ("he isn't worth a dollar"); Kuhne v. Ahlers, 45 Misc. 454, 92 N.Y. Supp. 41 (1904) (that he had defrauded his creditors of an attorney); Liebel v. Montgomery Ward, 103 Mont. 370, 62 P. (2d) 667 (1936).

[9] 1 Cr. & J. 301, 305 (1831).

[10] Dooling v. Budget Pub. Co., 144 Mass. 258, 10 N.E. 809 (1887) (of a restaurant keeper, that he has served a bad meal); Bearce v. Bass, 88 Me. 521, 34 Atl. 411 (1896) (of a contractor that he has done one bad piece of work); Amick v. Montross, 206 Iowa 51, 220 N.W. 51 (1928) (that a physician was once too drunk to attend a patient).

[11] Leetham v. Rank, 57 Sol. J. 111 (1912).

a man a "Jew-hater" does not *prima facie* reflect on his business ability, though it might, in special circumstances, impede his business progress. On the other hand, it could be argued with considerable force that a diamond merchant's personality is his "stock-in-trade" and that anything derogatory to his personality affects him in his capacity to carry on his business. Since the words complained of, if written, would have been actionable without proof of special damages, and since there is no sound basis for the distinction between libel and slander,[12] the instant case, at most, overrides only an arbitrary distinction.

[12] Thorley v. Lord Kerry, 4 Taunt. 355, 364 (1812).