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Torts—Defamation by Radio—Liability of Broadcasting Company

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It is pertinent to inquire whether the conclusion arrived at by the Missouri Supreme Court is based upon sound principles of constitutional law. The court is sustained upon the question of notice from the statute's title by numerous Missouri decisions.²⁰ More doubtful is the decision validating the classification of all delinquent taxpayers on the basis of densities of population. The courts in Alabama,²¹ Georgia,²² Oklahoma,²³ Nevada,²⁴ South Carolina,²⁵ Tennessee²⁶ and Wisconsin,²⁷ have condemned such delinquent tax laws as special and local legislation.

The Supreme Court of Missouri has adopted a pragmatic approach to the solution of the delinquent tax problem based on factual results under the sales held in conformity with the original act. If the agreed statement of facts is true, the original act failed of its purpose in the metropolitan areas, leaving taxes unpaid and creating no vendible tax title in the purchaser. Whether the repeal of the act will achieve the end desired, only practical application can tell. As for the decision, it appears open to serious question both upon orthodox principle of statutory construction and because of its probable consequences.

S. R. S.

TORTS—DEFAMATION BY RADIO—LIABILITY OF BROADCASTING COMPANY—
 [Federal].—A radio broadcasting company leased its facilities to an advertising corporation for programs featuring a widely known entertainer as the principal performer. The actor, while conducting an interview one night, suddenly departed from the prepared and approved script and interpolated a defamatory extemporaneous remark concerning the plaintiff hotel. Defendant company had no opportunity to prevent the interjection. Plaintiff hotel brought action in trespass against the broadcasting company for defamation to recover damages for injury to plaintiff company's reputation and business. *Held*, a broadcasting company that leases its time and facilities to another, whose agents carry on the program, is not liable for an interjected defamatory remark where it appears that it had exercised due care in selection of the lessee, and had edited the script.¹

In general, the rule of absolute liability applies to the publication of defamatory material.² The publisher acts at his peril.³ This rule has

20. *Supra*, note 12.

21. *Bridges v. McWilliams* (1934) 228 Ala. 47, 152 So. 457.

22. *Atlantic & F. R. Co. v. Wright* (1891) 87 Ga. 487, 13 S. E. 578.

23. *Board of Commissioners v. Hammerly* (1922) 85 Okla. 53, 204 Pac. 445.

24. *State of Nevada v. Consolidated Virginia Mining Co.* (1882) 16 Nev. 482.

25. *Webster v. Williams* (1937) 183 S. C. 368, 191 S. E. 51.

26. *State v. Collier* (1932) 165 Tenn. 28, 52 S. W. (2d) 361.

27. *Pedro v. Grootemaat* (1921) 174 Wis. 412, 183 N. W. 153.

1. *Summit Hotel Co. v. National Broadcasting Co.* (Pa. 1939) 8 A. (2d) 302.

2. *Peck v. Tribune Co.* (1909) 214 U. S. 185; *Thorley v. Lord Kerry* (1812) 4 Taunt. 355; *Keller, Federal Control of Defamation by Radio* (1936) 12 *Notre Dame Lawyer* 134, 162.

3. *Peck v. Tribune Co.* (1909) 214 U. S. 185.

been applied to newspaper publications⁴ and in two or three instances, to cases of radio defamation.⁵ In these instances the court has predicated its decision upon the analogy between newspaper publication and publication by radio broadcasting. This analogy has been subjected to considerable discussion.⁶ The present case seems to be the first in which an appellate court has formally rejected the analogy and consequently refused to extend the doctrine of absolute liability to radio defamation. The court here said, "But where the circumstances like these now presented are such that the defamation occurs beyond the control of the broadcaster, it is perfectly clear that the analogy between newspapers and broadcasting companies collapses completely * * *"⁷ The holding of the present case seems to be in line with numerous prior decisions in Pennsylvania restricting the doctrine of absolute liability.⁸ It is also in harmony with the trend of modern authority that no man should be held liable for an unintentional injury resulting from the performance of a lawful act without negligence or wilful misconduct.⁹

D. L.

TORTS—NEGLIGENCE—LIABILITY OF SUPPLIER OF CHATELS—DANGEROUS SUBSTANCE—[Federal].—Defendant sent plaintiff, a chemistry teacher, on the latter's request, a free set of oil samples showing various forms of oil products. To insure safe shipment, defendant had substituted water for kerosene. Although it labelled the vial "kerosene", it in no way informed plaintiff of the substitution. After displaying the exhibit to the class, plaintiff poured the contents of this vial over some metallic sodium. This is the usual laboratory method for preserving the metal. Water, unlike kerosene, reacts violently with sodium. The explosion which resulted destroyed plaintiff's eye. Plaintiff brought suit for the injury and recovered

4. Peck v. Tribune Co. (1909) 214 U. S. 185; Oklahoma Pub. Co. v. Givens (C. C. A. 10, 1933) 67 F. (2d) 62; Thorley v. Lord Kerry (1812) 4 Taunt. 355.

5. Coffey v. Midland Broadcasting Co. (D. C. W. D. Mo. 1934) 8 F. Supp. 889; Sorenson v. Wood (1932) 123 Neb. 348, 243 N. W. 82; Irwin v. Ashurst (1938) 158 Ore. 61, 74 P. (2d) 1127; Miles v. Wasmer (1933) 172 Wash. 466, 20 P. (2d) 847.

6. Opposing the analogy: Guider, Liability for Defamation in Political Broadcasts (1932) 2 J. Radio L. 708, 713; Bohlen, Fifty Years of Torts (1937) 50 Harv. L. Rev. 725, 731; Farnum, Radio Defamation and the American Law Institute (1936) 16 Boston U. L. Rev. 1, 6; Nash, The Application of the Law of Libel and Slander to Radio Broadcasting (1938) 17 Ore. L. Rev. 307, 309. But cf.: Vold, The Basis for Liability for Defamation by Radio (1935) 19 Minn. L. Rev. 612, 644; Keller, Federal Control of Defamation by Radio (1936) 12 Notre Dame Lawyer 134, 154.

7. Summit Hotel Co. v. National Broadcasting Co. (Pa. 1939) 8 A (2d) 302, 309.

8. Pennsylvania Coal Co. v. Sanderson (1886) 113 Pa. St. 126, 6 Atl. 453; Malone v. Pierce (1911) 231 Pa. 534, 80 Atl. 979; Teller v. Hood (1923) 81 Pa. Super. 443; Fredericks v. Atlantic Refining Co. (1925) 282 Pa. 8, 127 Atl. 615.

9. See Holmes, *The Common Law* (1881) 108; Ames, *Law and Morals* (1908) 22 Harv. L. Rev. 97, 99.