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Torts—Corporations—Slander

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the witness testifies, but that that is largely within discretion of the trial court;¹⁰ nor the rule that the inquiry should usually be confined to the witness's reputation in the locality where he resides.¹¹ Specific acts of wrongdoing or misconduct are not proper proof of character for impeaching credibility,¹² except as they may be brought out in cross examination.¹³ The decision in the principal case would logically preclude any evidence as to particular traits other than that for truth and veracity.¹⁴ Conviction of some crimes is everywhere allowed to be used as affecting credibility.¹⁵

R. S. L. '36.

TORTS—CORPORATIONS—SLANDER.—In the case of *Atterbury v. Brink's Express Co. et al.*¹ recently (Feb. 17, 1936) decided by the Kansas City Court of Appeals, Missouri, the plaintiff, a messenger of the Brink's Express Co., brought suit for slander against the Brink's Express Co. and against the manager of its Kansas City office, one Mick, who uttered the defamatory statement. The court held that the statement uttered by Mick would justify finding that the words charged or necessarily imputed that the plaintiff had committed a crime and thereby constituted slander per se. The court for all practical purposes affirmed the lower court's decision in favor of the plaintiff, but reversed and remanded the case because of an error in the plaintiff's pleadings with which we are not concerned here.

The case raises the important question which apparently was not even considered by the court of the liability of an employer for the slanderous words uttered by an employee, a question on which there is a distinct diversity of opinion.

¹⁰ 2 Wigmore, *Evidence*, secs. 927-928; 28 R. C. L. 632; 70 C. J. 828; *State v. Scott*, supra n. 1; *Page v. Payne* (1922) 293 Mo. 600, 240 S. W. 156; *State v. Parker* (1888) 96 Mo. 382, 9 S. W. 728; *Wood v. Matthews* (1881) 73 Mo. 477; *Baillie v. Hudson* (1926) 278 S. W. 1056; *Winn v. Modern Woodmen of America* (1909) 138 Mo. App. 701, 119 S. W. 536.

¹¹ 28 R. C. L. 631; see also 2 Wigmore, *Evidence*, sec. 930 and 70 C. J. 831; *Ulrich v. Chicago B. & Q. R. Co.* (1920) 281 Mo. 697, 220 S. W. 682; *State v. Parker*, supra n. 10; *Waddingham v. Hulett* (1887) 92 Mo. 528 5 S. W. 27; *Johnson v. Martindale* (1926 Mo. App.) 288 S. W. 970.

¹² 28 R. C. L. 623; 70 C. J. 834; see also 2 Wigmore, *Evidence*, sec. 924; *State v. Williams* (1934) 335 Mo. 234, 71 S. W. (2d) 732 (not the principal case); *State v. Cox* (1924 Mo.) 263 S. W. 215; *Winn v. Modern Woodmen of America*, supra n. 10; *State v. Sassman* (1908) 214 Mo. 695, 114 S. W. 590.

¹³ *State v. Williams*, supra n. 12; *State v. Sherry* (1933 Mo.) 64 S. W. (2d) 238; *State v. Nasello* (1930) 325 Mo. 442, 30 S. W. (2d) 132.

¹⁴ Mo. courts have allowed inquiries as to particular traits; *State v. Grant* (1883) 79 Mo. 113, 49 Am. Rep. 218; *State v. Pollard* (1903) 174 Mo. 607, 74 S. W. 969; *Winn v. Modern Woodmen of America*, supra n. 10; but have also held such evidence inadmissible, *State v. Gant* (1931 Mo.) 33 S. W. (2d) 970; *State v. Irvin* (1929) 324 Mo. 217, 22 S. W. (2d) 772 (particular trait involved in offence alleged).

¹⁵ 2 Wigmore, *Evidence*, sec. 926; 28 R. C. L. 624; *State v. Hawes* (1933 Mo.) 60 S. W. (2d) 684; *State v. Harrison* (1930) 24 S. W. (2d) 985; *State v. Forsha* (1905) 190 Mo. 296, 88 S. W. 746, 4 L. R. A. (N. S.) 576.

¹ 90 S. W. (2d) 807.

The majority view logically places slander in the same class as all other wilful torts, and holds that a corporation like any other principal is liable for the slanderous words uttered by the agent while engaged in the ordinary course of employment.² The court in *New York Central & Hudson River Railroad Co. v. United States*³ sets forth the rationale of this view: "In action for tort, the corporation may be held responsible for damages for the acts of its agent within the scope of his employment. And this is the rule when the act is done by the agent in the course of his employment, although done wantonly or recklessly or against the express orders of the principal. In such cases the liability is not imputed because the principal actually participates—, but because the act is done for the benefit of the principal while the agent is acting within the scope of his employment—, and justice requires that the principal shall be responsible for damages to the individual who has suffered by such conduct."

The Missouri courts have adopted this majority rule.⁴

The minority rule is upheld by the courts of Michigan,⁵ Tennessee,⁶ Kentucky,⁷ Georgia,⁸ and Alabama.⁹ The principal argument advanced by these courts is that slanderous words, usually spoken in excitement and anger, are so peculiarly the expression of the personal feeling or opinion of the one who utters them that his principal who has neither authorized nor ratified the statement ought not to be liable therefor. The Alabama court in *Singer Mfg. Co. v. Taylor*, supra, made the following statement, often quoted in support of the minority view:

"By reason of the fact that the offense of slander is the voluntary and tortious act of the speaker, and is more likely to be the expression of momentary passion or excitement of the agent, it is, we think, rightly held that the utterance of slanderous words must be ascribed to the personal malice of the agent, rather than to an act performed in the course of his employment and in the aid or interest of his employer, and exonerating the company unless it authorized or approved or ratified the act of the agent in uttering the particular slander."

These same courts, however, go a step farther and draw a distinction between slander and libel, holding a principal liable for the libelous publications of an agent on the ground that they are not spontaneous outbursts of

² *W. T. Grant Co. v. Owens* (1928) 149 Va. 906, 141 S. E. 860; *L. J. Roemer v. Jacob Schmidt Brewing Co.* (1916) 132 Minn. 399, 157 N. W. 640, L. R. A. 1916E 771; *Buckeye Cotton Oil Co. v. Sloan* (1918) 250 F 712.

³ (1909) 212 U. S. 481 (l. c. 493, 494), 29 Supt. Ct. 404, 52 L. Ed. 613.

⁴ *Fensky v. Maryland Casualty Co.* (1915) 264 Mo. 154, 174 S. W. 416; *Priest v. Central States Fire Insurance Co.* (1928) 9 S. W. (2d) 543.

⁵ *Flaherty v. Maxwell Motor Co.* (1915) 153 N. W. 45.

⁶ *Southern Ice Co. v. Black* (1916) 136 Tenn. 391, 189 S. W. 861, Ann. Cas. 1917E 695.

⁷ *Stewart Dry Goods Co. v. Heuchtker* (1912) 148 Ky. 228, 146 S. W. 423; *Pruitt v. Goldstein Millinery Co.* (1916) 184 S. W. 1134; *Duquesne Distributing Co. v. Greenbaum* (1909) 135 Ky. 182, 24 L. R. A. (N. S.) 955.

⁸ *Jackson v. Atlantic Coast Line R. Co.* (1911) 8 Ga. App. 495, 69 S. E. 919; *Behre v. National Cash Register Co.* (1897) 100 Ga. 213, 27 S. E. 986, 62 Am. St. Rep. 320.

⁹ *Singer Mfg. Co. v. Taylor* (1907) 150 Ala. 574, 43 So. 210, 9 L. R. A. (N. S.) 929, 124 Am. St. Rep. 90.

temper and emotion. This distinction has been much criticized on the ground that a libelous publication is as much an expression of personal malice as slanderous words, and can no more be connected with the agent's duties or warranted by the employment than slanderous words.

Although one may prefer the logic and common sense of the majority view, it seems at times to lead to questionable results. In the *Schmidt Brewing Co.* case, *supra*, the plaintiff, two days before the uttering of the slanderous words by the agent, had had a fight with the agent in a saloon. Yet in spite of the personal malice which was known to exist between the two, the court, following the majority rule, held that the corporation was liable for the slanderous words of its agent because the words were spoken in the course of the agent's employment. (The agent had been employed by the corporation to examine the accounts of employees, one of whom was the plaintiff.) In such a case the minority rule would seemingly have led to a more just result.

But admitting, with the majority and Missouri view, that a corporation is liable for the slanderous words of its agent uttered in the course of his employment, obviously the important issue in all cases of this nature is whether or not the agent was acting within the scope of his employment or whether he was merely accomplishing a purpose of his own, wholly foreign to any duty he owed to his employer. It is important to note that in all cases where the agent has been held to have been acting within the scope of his employment the courts have stressed some peculiar relationship or set of facts as the basis of their finding—the agent, a detective, was investigating the crime of which he accused the plaintiff;¹⁰ the agent, a manager, called the plaintiff a thief in refusing to pay her;¹¹ the agent made the statement to keep the plaintiff from taking customers of his employer with him.¹²

But in the *Brink's Express Co.* case no justifying circumstances of this nature can be found. The court itself states that the words were not spoken in the course of an investigation. The court further says that Mick at the time was not seeking information concerning the missing funds. And unless there are some pertinent facts which the report of the case does not disclose, there would seem to have been no justification for the making of the statement on the basis that it was furthering the employer's interest.

Some courts, with more convincing facts than these to deal with, have held that the agent was not acting within the scope of his employment. An Arkansas case held that a corporation was not liable for the slanderous accusations of its auditor while investigating the accounts of the plaintiff which showed a shortage, on the basis that it was not within the scope of his employment to accuse anyone of crime in connection with such defalcations.¹³ In *Courtney v. American R. Exp. Co.*¹⁴ the corporation was held not

¹⁰ *Allen v. Edward Light Co.* (1912) 209 Mo. App. 165, 233 S. W. 953.

¹¹ *Lee v. McCrary Stores Corp.* (1921) 117 S. C. 236, 109 S. E. 111.

¹² *Manion v. Jewel Tea Co.* (1916) 135 Minn. 250, 160 N. W. 767.

¹³ *National Packing Co. v. Boulton* (1912) 105 Ark. 326, 151 S. W. 244.

¹⁴ (1922) 113 S. E. 332 (S. C.)

liable for the slanderous statements of its agent, a special investigator, in a casual conversation struck up with another employee while waiting for a train, for it was held not to have been made in the furtherance of the company's business.

In the light of the facts given in the report of the case under discussion, there is nothing other than the bare fact that the statement was made to another employee which would seem to take it from the class of mere sociable conversation among fellow-employees. In view of the facts as we have them, it is submitted that a different result should have been reached at least in so far as the Brink's Express Co. was concerned.

F. L. K. '38.

TORTS—RELEASE—JOINT TORT-FEASORS.—There is a sharp division of authority among the various jurisdictions as to whether or not the release of one joint tort-feasor releases other joint tort-feasors.¹ The common law rule which is still adhered to in many states is that the release of one joint tort-feasor releases all.² This view is based on the theory that a person is entitled to only one compensation for an injury and he should not be allowed double payment for a single wrong.³ Under this view the intention of the parties does not matter. In fact, it is held in some jurisdictions that even where the injured party has reserved his rights against another joint tort-feasor, the latter is released.⁴ The prevailing tendency, however, is that if an intention not to release other joint tort-feasors appears, they are not released, if, first, the amount received as consideration for the release is not full satisfaction for the injury,⁵ or, second, where rights of the person harmed against other parties jointly liable are reserved.⁶ Courts tend to look more favorably at one or both of the preceding two views in cases where the amount of the losses can be accurately ascertained, so that it can be readily determined whether or not the amount received in settlement with one tort-feasor is less than the total amount of the whole loss.⁷

In many jurisdictions statutes have given effect to the prevailing tendency by providing that a release must be given effect according to the

¹ 50 A. L. R. 1057—annotation.

² For older Mo. cases holding to this view see *Hubbard v. St. Louis & M. River Co.* (1903) 173 Mo. 249, 72 S. W. 1073; *Laughlin v. Excelsior Powder Mfg. Co.* (1911) 153 Mo. App. 508, 135 S. W. 961.

³ *Dulaney v. Buffum* (1903) 173 Mo. 1, 73 S. W. 125; *Clark v. Union Electric Light & P. Co.* (1919) 279 Mo. 69, 213 S. W. 851.

⁴ *Ruble v. Turner* (1808) 2 Hen. & M. (Va.) 38; *Mitchell v. Allen* (1880) 25 Hun (N. Y.) 543; *Gilbert v. Timms* (1905) 28 Ohio C. C. 107; *Flynn v. Manson* (1912) 19 Cal. App. 400, 126 Pac. 181.

⁵ 50 A. L. R. 1057; *Burton v. Joyce* (1930 Mo. App.) 22 S. W. (2d) 890; *Clifton v. Caraker* (1932) 50 S. W. (2d) 758; *Knoles v. Bell Telephone Co.* (1924) 218 Mo. App. 235, 265 S. W. 1005; *S. W. Gas & Electric Co. v. Williams* (1935) 76 F (2d) 49; *Herberger v. Anderson Motor Service Co.* (1934) 268 Ill. App. 403; *Jamison v. Kansas City* (1930) 17 S. W. (2d) 621.

⁶ *Harpers On Torts*, sec. 302; *Fidelity & Casualty Co. v. Christenson* (1931) 183 Minn. 182.

⁷ 50 A. L. R. 1057.