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Damages -- Unauthorized Disclosure of Telegram as Basis of Punitive Damages

Ervid Eric Ericson

would be regarded by the Federal Courts as having any effect, in as much as such procedure would hamper banking relations.[22]

HARRY W. MCGALLIARD.

Damages—Unauthorized Disclosure of Telegram as Basis of Punitive Damages.

The plaintiff sued for the wrongful disclosure of the contents of a telegram from his divorced wife. The disclosure was made to the plaintiff's fiancée by one of the defendant's employees who had erroneously concluded from the message that the plaintiff was still married. Although the fiancée then knew of the previous marriage and divorce, she immediately broke off the engagement. The plaintiff's recovery was limited to nominal damages. *Held,* a corporate employer is not liable for punitive damages without having participated in or ratified his servant's act.[1]

In actions *ex delicto* where the tortious conduct was characterized by malice or wantonness, exemplary damages are discretionary with the jury.[2] As in the principal case, the wantonness may take the form of a reckless disregard for another's rights.[3] Verdicts in excess of the plaintiff's actual loss are the exception rather than the rule.[4]

Concerning the liability of employers for exemplary damages, in most jurisdictions the practice prevails of limiting an individual employer's liability to those acts of his servant in which he has himself participated.[5] Judicial opinion is rather evenly divided on the question of the liability of corporate employers.[6] The federal courts and

[22] Allied Mill v. Horton, *supra* note 1, at 710. The court states with reference to the stipulation accompanying the draft, *supra* note 3: "If each time such a draft is collected the collecting bank under such notice is required to place the specific funds received in a safe deposit box or in a package for the drawer, the transaction of business through drafts . . . would be quite revolutionized."

[1] Western Union Telegraph Co. v. Aldridge, 66 F. (2d) 842 (C. C. A. 9th, 1933).

[2] Lake Shore & Michigan Southern R. Co. v. Prentice, 147 U. S. 101, 13 Sup. Ct. 261, 37 L. ed. 97 (1893). *Contra:* Boott Mills Co. v. Boston & Maine R. Co., 218 Mass. 582, 106 N. E. 680 (1914) (Louisiana, Nevada, and Washington follow Massachusetts in rejecting the doctrine of exemplary damages completely).

[3] Lake Shore & Michigan Southern R. Co. v. Rosenzweig, 113 Pa. 519, 6 Atl. 545 (1886).

[4] Cock v. Western Union Telegraph Co., 84 Miss. 380, 36 So. 392 (1904).

[5] Haines v. Schultz, 50 N. J. L. 481, 14 Atl. 488 (1888).

[6] McCormick, *The Doctrine of Exemplary Damages* (1930) 8 N. C. L. REV. 129, 132.

many states have extended to corporations the treatment accorded individual employers.[7] A great number of jurisdictions, however, adhere to the contrary rule of unrestricted liability by which, if an employee's wrongful act is such as to render him liable for exemplary damages and his corporate employer for compensatory damages, the latter may be held for the exemplary damages as well.[8] The adherents of this rule hold that, because of the pecuniary irresponsibility of employees who are placed in positions of trust for the benefit of the corporations, unrestricted liability is a social necessity which justifies the lenient interpretation of the requirement of malice as a basis for the recovery of punitive damages.[9]

In the federal courts, where the question of exemplary damages is considered a matter of general jurisprudence and decided in accordance with the federal rule,[10] to recover such damages the plaintiff must show that the corporate employer was privy to the misconduct.[11] This connection may be established by proof of specific or general authorization,[12] actual participation through a company executive,[13] employment or retention of an employee of known incompetence or recklessness,[14] or subsequent ratification of the wrong.[15]

An addressee may sue a telegraph company in tort for a breach of its public duty, such as an unauthorized disclosure.[16] Thus, the nominal award of $1 compensatory damages in the principal case does not appear to represent fully the plaintiff's actual injury. It is true that he cannot recover for the loss of the engagement. The interest of the parties to a marriage engagement is not protected against its rupture by third persons,[17] regardless of the aggravated nature of the circumstances.[18] In addition, the fiancée's admission of prior

[7] Lake Shore & Michigan Southern R. Co. v. Prentice, *supra* note 2; Lightner Mining Co. v. Lane, 161 Cal. 689, 120 Pac. 771 (1911); Marlatt v. Western Union Telegraph Co., 167 Wis. 176, 167 N. W. 263 (1918).

[8] Goddard v. Grand Trunk R. Co., 57 Me. 202 (1869); Peterson v. Western Union Telegraph Co., 75 Minn. 368, 77 N. W. 985 (1899).

[9] Peterson v. Western Union Telegraph Co., *supra* note 8.

[10] Lake Shore & Michigan Southern R. Co. v. Prentice, *supra* note 2.

[11] *Ibid.*

[12] Denver & Rio Grande R. Co. v. Harris, 122 U. S. 597, 7 Sup. Ct. 1286, 30 L. ed. 1146 (1887).

[13] *Ibid.*

[14] Cleghorn v. N. Y. Central & Hudson River R. Co., 56 N. Y. 44, 15 Am. Rep. 375 (1874).

[15] Forrester v. Southern Pacific Co., 36 Nev. 247, 134 Pac. 753 (1913).

[16] Western Union Telegraph Co. v. Cowin & Co., 20 F. (2d) 103 (C. C. A. 8th, 1927).

[17] Homan v. Hall, 102 Neb. 70, 165 N. W. 881 (1917).

[18] Davis v. Condit, 124 Minn. 365, 144 N. W. 1089 (1915) (plaintiff's fiancée seduced).

knowledge of the plaintiff's first marriage tends to show that the breach did not result proximately from the disclosure. But the disclosure itself was a clear invasion of the plaintiff's right of privacy in his communications with others.[19] In an analogous class of cases dealing with the tapping of telephone wires, substantial compensatory damages are recoverable, even where there is no injurious use of the information obtained.[20] If the right of privacy in communications is to receive the protection which its importance to the individual merits, it would seem that the courts should assess substantial damages upon those who violate it.

ERVID ERIC ERICSON.

Declaratory Judgments—Recent Trends.

Plaintiff sued in the New York state courts for an injunction to restrain the sale of reclassified stock of defendant corporation and for a declaratory judgment as to the rights of preferred stockholders under the Delaware reclassification statute. The cause was removed to the Federal District Court in New York, the injunction denied, and the complaint dismissed without prejudice to any rights plaintiff might have in the matter. On appeal the Circuit Court of Appeals affirmed the denial of an injunction, but held it was error to dismiss the application for a declaratory judgment.[1]

In three leading cases,[2] the Supreme Court of the United States uttered dicta, criticized as unwarranted and inappropriate,[3] to the effect that the requirements of a case or controversy under Article III of the Constitution prevented declaratory judgments in the Federal Courts, originally or by removal. These dicta were followed in subsequent cases.[4] Recently, by a unanimous opinion in *Nashville,*

[19] Green, *The Right of Privacy* (1932) 27 ILL. L. REV. 237, 252.

[20] Rhodes v. Graham, 238 Ky. 225, 37 S. W. (2d) 46 (1931) commented on (1932) 11 ORE. L. REV. 217.

[1] Harr *et. al.* v. Pioneer Mechanical Corp., 65 F. (2d) 332 (C. C. A. 2d, 1933).

[2] Liberty Warehouse Co. v. Grannis, 273 U. S. 70, 47 Sup. Ct. 282, 71 L. ed. 541 (1927); Liberty Warehouse Co. v. Burley Tobacco Growers Co-op. Ass'n., 276 U. S. 71, 48 Sup. Ct. 291, 72 L. ed. 473 (1928); Willing v. Chicago Auditorium Ass'n., 277 U. S. 274, 48 Sup. Ct. 507, 72 L. ed. 880 (1928).

[3] Borchard, *The Supreme Court and the Declaratory Judgment* (1928) 14 A. B. A. J. 633, 635.

[4] State of Arizona v. State of California, 283 U. S. 423, 51 Sup. Ct. 522, 75 L. ed. 1154 (1931); Lamoreaux v. Kinney, 41 F. (2d) 30 (C. C. A. 9th, 1930); Marty v. Nagle, 44 F. (2d) 695 (C. C. A. 9th, 1930); City of Osceola, Iowa v. Utilities Holding Corp., 55 F. (2d) 155 (C. C. A. 8th, 1932); Chicago Bank of Commerce v. McPherson, 62 F. (2d) 393 (C. C. A. 6th, 1932.)