Kentucky Law Journal

Volume 30 | Issue 3 Article 10

1942

Publication of a Debt--Newspaper's Liability

Mary Louise Barton
University of Kentucky

Kentucky would probably follow the majority in saying it is up to the bailee to prove freedom from negligence.[12]

It is possible that Kentucky would not follow the majority in holding that the bailee may limit his liability. This view is based on the Warehousemen Statutes, which in effect say that any person who takes personal property into his care can not make a contract restricting his common law liability for the goods stored.[13] However, because the statute enumerates many articles (an automobile is not included) it is probable that the doctrine of *ejusdem generis* will apply and exclude articles not in the enumerated class. Therefore, since no article of transportation is listed, automobile parking lot owners are doubtlessly excluded. JOHN HOWE

PUBLICATION OF A DEBT—NEWSPAPER'S LIABILITY

A creditor caused a notice to be published in the defendant newspaper stating the amount of plaintiff's overdue bill and requesting payment.[1] The creditor and the newspaper were joined as defendants in this suit by the debtor. The suit as to the newspaper was dismissed and plaintiff appealed. *Held:* The petition stated a good cause of action against defendant newspaper. *Trammel* v. *Citizens News Co.*, 285 Ky. 529, 148 S. W. (2d) 708 (1941).

It is not uncommon for newspapers to be held responsible for publications amounting to libel and those amounting to an invasion of an individual's right of privacy, by the unwarranted use of name and picture. However, this is the first case in which a newspaper has been held liable for invasion of the right of privacy for publishing a notice that the debtor owed a bill and would not pay it.

In most jurisdictions a publication by a private person which imputes to a debtor an unwillingness to pay a just debt is libel per se.[2]

---

[12] Goodyear Tire and Rubber Company v. Altamont Springs Hotel Company, 206 Ky. 494, 267 S.W. 555 (1924).

[13] Kentucky Statutes (Carroll, 1936) Sec. 4768; Sec. 4780.

[1] Plaintiff knew that the notice was to appear and had requested defendant newspaper not to publish it. Publication after this notice, however, was not the basis for the decision in the case.

[2] Salomon v. Armour & Co., 123 Fed. 342 (1903); Ferdon v. Dickens, 161 Ala. 181 49 So. 888 (1909); Ingraham v. Lyon, 150 Cal. 254, 38 Pac. 892 (1894); Todd v. Every Evening Printing Co., 6 Pennewill 233, 66 Atl. 97 (Del. 1907); White v. Parks, 93 Ga. 633, 20 S.E. 78 (1894); Thompson v. Adelberg and Berman, 181 Ky. 487, 205 S.W. 558, 3 A.L.R. 1594 (1918); Tuyes v. Chambers, 144 La. 723, 81 So. 265 (1919); Patterson v. Evans, 153 Mo. App. 684, 134 S.W. 1030 (1911); Masters v. Lee, 39 Neb. 574, 58 N.W. 222 (1894); Hutchins v. Page, 72 N.H. 215, 72 Atl. 689 (1909); Wells v. Belstrat Hotel Corp., 308 N.Y. Supp. 625, 212 App. Div. 366 (1925); Cleveland Retail Grocer's Assn. v. Exton, 18 Ohio Cr. Ct. R. 321, 10 O.C.D. 145 (1899); Sanders v. Hall, 22 Tex. Civ. App. 282, 55 S.W. 594 (1899); Nettles v. Somervell, 6 Tex. Civ. App. 627, 25 S.W. 658 (1894); Burton v. O'Neill, Tex. Civ. App. 613, 25 S.W. 1013 (1894); Muetze v. Tuteur, 77 Wis. 236, 46 N.W. 123, 9 L.R.A. 86 (1890); Wolfenden v. Giles, 2 B.C. 279 (1892); Green et ux v. Minnet, et al., 22 Ont. 177 (1891). Note that Kentucky also has called this libel. Thompson v. Adelberg and Berman, *supra.*

The publication of such a notice carries with it the implication of dishonesty and the debtor's reputation is injured by this implication of dishonesty rather than the mere publication of the fact that he owes money to the creditor.[3] It necessarily follows that the truth of the mere existence of the debt is not a defense.[4]

The actions of libel and invasion of privacy are strikingly similar; in this situation they may overlap. One apparent difference is that truth is a defense in the former and not in the latter.[5] Probably the reason for giving the action for invasion of the right of privacy is to avoid the harshness of the rule in libel that truth is a complete defense. In either case recovery is for substantially the same thing. Although in invasion of privacy compensation is allowed for injury to feelings and in libel for injury to reputation[6] still an individual's feelings are hurt only because his private affairs have been disclosed to others and this tends to subject him to contempt, ridicule and disgrace.[7] The remaining question is whether the law as to publication is the same in each case.

The necessity for publication is apparent for there is no injury until the private matter is made known to others. The question then arises, would a newspaper be liable for a second publication of a notice which had already been published and invaded plaintiff's right of privacy? For example, in *Brents* v. *Morgan*[8] the notice of the existence of the debt was displayed in the defendant's window. Had a newspaper copied the notice into a news story and published it what would be the result? If the newspaper may not invade an individual's right of privacy unless the matter printed is of a general public interest, it would follow that the newspaper would be

---

[3] Flaks v. Clarke, 143 Md. 377, 122 Atl. 383 (1923) (no imputation that plaintiff would not pay an honest debt); Zier v. Hofflin, 33 Minn. 66, 21 N.W. 862 (1885) (notice for plaintiff to pay a bill was made under such circumstances as not to convey the impression that the plaintiff was dishonest); Porak v. Sweitzer, Inc., 87 Mont. 331, 287 Pac. 635 (1930) (dictum to the effect that it is not libelous to publish one's name in a list of delinquent debtors unless those who saw the list understood that the persons thereon were branded as persons who would not pay their debts; Murphy v. News and Courier Co., 141 S.C. 41, 139 S.E. 189 (1927) (failure to give bond in criminal case carries no implication of bad financial standing).

[4] Harper, Torts (1933) 521.

[5] Harper, Torts (1933) 601.

[6] Warren and Brandeis, *The Right of Privacy* (1890), 4 Harv. L. Rev. 193, 197.

[7] In Trammel v. Citizens News Co., 285 Ky. 529, 532, 148 S.W. (2d) 708, 709 (1941), the court says:

> "However, the primary cause of the injury to appellant, if any, was the publishing of the notice in appellee's newspaper. The contents of the notice were not matters of public interest, and the appellee necessarily knew that its publication would tend to expose appellant to public contempt, ridicule or disgrace, and that its purpose was to coerce payment of the account."

[8] 221 Ky. 765, 299 S.W. 967, 55 A.L.R. 964 (1927).

equally liable for the second publication. The wrongful act of the creditor in first publishing has not changed the matter into one of public interest and, therefore, each publication would be a new invasion.

The courts have never decided what constitutes a sufficient publication to invade an individual's right of privacy. Warren and Brandeis* suggest that oral publications are so trivial that they should be protected in the interest of free speech. However, it is possible to imagine a situation in which an oral publication would be as serious as a written one. For example, under the same situation presented in the Trammel case if the creditor had addressed a public gathering or announced over a public address system to crowds in the street that plaintiff owed the bill and would not pay, the result would have been as harmful to plaintiff as it was in the present case. It is unlikely, however, that the courts would say that a publication to one person would tend to expose the plaintiff "to public contempt and ridicule or disgrace," but it is hard to determine just when a publication has been made to a sufficient number to invade the plaintiff's right. Probably the only rule that could be followed would be to allow recovery only when a publication of plaintiff's private matters is unreasonable under the circumstances. This rule would take into account all the circumstances of the case such as matter published, manner of publication, size of the community and the proportionate part of the community to which publication has been made.

MARY LOUISE BARTON

UNSATISFIED JUDGMENT AGAINST THE SERVANT AS A BAR TO SUIT AGAINST THE MASTER

Plaintiff was injured in a collision caused by the negligence of a truck driver employed by defendant. Execution raised on a judgment against the truck driver was followed by a return of "No property found." Plaintiff then sued defendant, seeking to hold it liable on the doctrine of respondeat superior. Defendant contended that plaintiff's prosecution to judgment of the suit against the servant barred suit against the master. *Held:* That an unsatisfied judgment against the servant would not bar suit against the master. Sherwood v. Huber & Huber Motor Express Company, 286 Ky. 775, 151 S.W. (2d) 1007 (1941).

The main issue in this case is whether an unsatisfied judgment against the servant will bar suit against the master. There are very

*Warren and Brandeis, *supra* note 5.