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Libel—Executive Immunity—Scope of Executive Authority Broadly Interpreted

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LIBEL—EXECUTIVE IMMUNITY—SCOPE OF EXECUTIVE AUTHORITY BROADLY INTERPRETED

The Attorney General of Pennsylvania sent a letter to the district attorney of Allegheny County in which he listed communistic activities of plaintiff, an assistant district attorney, and demanded her dismissal. In a suit against the Attorney General for libel, it was *held* (3-2): since the Attorney General was acting within the scope of his authority, he possessed an absolute privilege, conferring complete immunity from civil actions for libel. The dissent, relying on a prior decision that the Attorney General was powerless to discharge an assistant district attorney, contended that such a communication was outside the scope of the former's authority, leaving him only a conditional immunity which would not bar the present action. *Matson v. Margiotti*, __ Pa. __, 88 A. 2d 892 (1952).

In an action of libel two principal defenses are available to the defendant. He may plead truth, *Castle v. Houston*, 19 Kan. 417 (1877), or privilege, *Israel v. Portland News Pub. Co.*, 152 Ore. 225, 53 P. 2d 529 (1936).

Originally, absolute privilege extended only to legislative proceedings, *Coffin v. Coffin*, 4 Mass. 1 (1808), judicial proceedings, *Scott v. Stansfield*, L. R. 3 Ex. 220 (1868), and communications between the military, *Dawkins v. Lord Paulet*, L. R. 5 Q. B. 94 (1869). It was not until 1896 that this immunity was extended to the executive branch. *Spalding v. Vilas*, 161 U. S. 483 (1896). In that case, the Postmaster General had sent letters containing the alleged libel to various postmasters. The Court declared at p. 498:

> We are of opinion that the same general considerations of public policy and convenience which demand for judges of courts of superior jurisdiction immunity from civil suits for damages arising from acts done by them in the course of their judicial functions, apply to a large extent to official communications made by the heads of executive departments when engaged in discharge of duties imposed upon them by law.

It is not completely clear which executive officers possess absolute immunity. It clearly extends to the major officers of executive departments. *Mellon v. Brewer*, 18 F. 2d 168 (D. C. Cir. 1927) (cabinet officer); *De Arnaud v. Ainsworth*, 24 App. D. C. 167 (1904) (chief of War Department record and pension office); *Farr v. Valentine*, 38 App. D. C. 413 (1912) (commissioner of Indian affairs); *United States, to Use of Parravicino v. Brunswick*, 69 F. 2d 383 (D. C. Cir. 1934) (consul); *Harwood v. McMurty*, 22 F. Supp. 572 (W. D. Ky. 1938) (Internal Revenue Agent). Lesser

officers have not been granted this absolute immunity. *Peterson v. Steenerson,* 113 Minn. 87, 129 N. W. 147 (1910) (postmaster); *Hemmens v. Nelson,* 138 N. Y. 517, 34 N. E. 242 (1893) (principal of state institution for deaf mutes); *Barry v. McCollom,* 81 Conn. 293, 70 Atl. 1035 (1908) (superintendent of public schools); *Ranson v. West,* 125 Ky. 457, 101 S. W. 885 (1907) (county school trustees).

Having absolute privilege or immunity, the party is protected even where his statements are maliciously made. *Spalding v. Vilas, supra; De Arnaud v. Ainsworthy, supra; Glass v. Ickes,* 117 F. 2d 273 (D. C. Cir. 1940). But, when a party otherwise having an absolute privilege acts beyond the scope of his authority, this absolute privilege is lost and such officer is entitled only to a conditional privilege. *Harwood v. McMurty, supra.* In such a situation, when libel is established the burden is placed on the defendant to show that the communication was made in good faith in the discharge of a legal or moral duty. *Kroger Grocery & Baking Co. v. Yount,* 66 F. 2d 700 (8th Cir. 1933). And the conditional immunity is inapplicable where the libel is malicious. *Bausewine v. Norristown Herald,* 351 Pa. 634, 41 A. 2d 736 (1945).

In the instant case the court held that the Attorney General had an absolute privilege on the premise that he is vested with the broad powers of the Attorney General at common law. *Commonwealth ex rel. Minerd v. Margiotti,* 325 Pa. 17,188 Atl. 524 (1936). He acts within the scope of his authority when informing a district attorney of the character of any of his assistants; therefore, even though this libel be maliciously made, the Attorney General is immune from suit. However, approximately one year prior to this case, the same court reviewed an injunction granted to the same assistant district attorney against this same Attorney General to prohibit the latter from holding a public hearing into the alleged communistic background of the plaintiff. The court upheld the injunction on the ground that the Attorney General had no power to discharge or compel the discharge of an assistant district attorney; therefore, the Attorney General was powerless to conduct the hearing. *Matson v. Jackson,* 368 Pa. 283, 83 A. 2d 134 (1951). Thus, it appears that the court gave a broader interpretation to defendant's authority in dealing with executive immunity in a libel suit than it did in deciding the power of this Attorney General to conduct a specific proceeding.

The important role of executive immunity is accentuated by the accusations of communistic affiliations daily coming before the public. Certainly every individual desires protection from malicious actions by public officials. It can be strongly argued that a conditional privilege is sufficient protection for an executive

officer. This conditional privilege would protect him as long as his remarks are made on reasonable grounds. However, the whole policy behind executive immunity is to allow the officer freedom of action so that he will not be called to account for his every word. It may be in the public interest to extend absolute immunity to officers with investigative duties, in order to prevent the suppression of important information. As executive immunity is a creation of the courts, it is their delicate task to balance these various considerations of personal freedom and public security.

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TORTS—UNEMANCIPATED MINOR ALLOWED TORT ACTION AGAINST PARENT FOR NEGLIGENCE

Plaintiff, an unemancipated minor child, sought damages for personal injuries caused by the negligence of a partnership of which plaintiff's father was a member. *Held:* A parent in his business or vocational capacity is not immune from a personal tort action by his unemancipated minor child. *Signs v. Signs,* 156 Ohio 566, 103 N. E. 2d 743 (1952).

Various reasons have been assigned for disallowing tort actions between parent and minor child. The majority of American courts which have denied the action have relied heavily on an analogy to the policy considerations behind the common law inter-spouse immunity, *i. e.,* that such an action would disrupt the peace and harmony of the home. *Crosby v. Crosby,* 230 App. Div. 651, 246 N. Y. Supp. 384 (3rd Dep't 1930); *Small v. Morrison,* 185 N. C. 577, 118 S. E. 12 (1923); *Matarese v. Matarese,* 47 R. I. 131, 131 Atl. 198 (1925); *Wick v. Wick,* 192 Wis. 260, 212 N. W. 787 (1929); McCurdy, *Torts Between Persons In Domestic Relations,* 43 HARV. L. REV. 1030 (1930); PROSSER, TORTS 901-3 (1941). Other reasons advanced for denying the action are that such suits would: (1) impair parental discipline, *Matarese v. Matarese, supra, Buchanon v. Buchanon,* 170 Va. 458, 197 S. E. 426 (1938); (2) deplete the family finances, *Small v. Morrison, supra; Roller v. Roller,* 37 Wash. 242, 79 Pac. 788 (1905); (3) encourage fraudulent and collusive suits, *Luster v. Luster,* 299 Mass. 480, 13 N. E. 2d 438 (1938).

However, where there exists a relationship additional to that of parent and child and the fact of parenthood is, under the circumstances, merely incidental, the minor has been permitted to maintain the action. *Dunlap v. Dunlap,* 84 N. H. 352, 150 Atl. 905 (1930). Thus recovery has been allowed where the parties are