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Recent Decisions

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RECENT DECISIONS

CONSTITUTIONAL LAW — FELA — STATE REFUSAL TO ENTERTAIN WRONGFUL DEATH ACTION FOR DEATH OCCURING IN ANOTHER STATE.—*Allendorf v. Elgin, Joliet & Eastern Ry.*, 8 Ill. 2d 164, 133 N.E.2d 288 (1956). Relying upon the Federal Employers' Liability Act, 35 STAT. 65 (1908), 45 U.S.C. §§51-59 (1954), suit was brought in Illinois for the wrongful death of plaintiff's decedent, a nonresident of Illinois, the fatal injury having been sustained outside the State of Illinois. A verdict for plaintiff having been rendered, defendant moved alternatively for judgment notwithstanding the verdict or a new trial, alleging that the Illinois Injuries Act, ILL. ANN. STAT. c.70, §2 (Smith-Hurd Supp. 1955), was a bar to this action, in that it required that ". . . no action . . . be brought . . . for a death occurring outside of this State . . . [if] a right of action . . . exists . . . where such death occurred and service of process . . . may be had [there]." Plaintiff maintained the Illinois statute was unconstitutional, contravening the supremacy clause, article six, of the United States Constitution. Defendant's alternative motions were denied.

On appeal, the Illinois Supreme Court held the motions were properly denied. The court regarded *Hughes v. Fetter*, 341 U.S. 609 (1951), as settling, on the basis of the full faith and credit clause of the Constitution, U.S. CONST., art. IV, § 1, that no state can refuse to entertain wrongful death actions that arise under the laws of another state, if it would adjudicate such actions arising under its own laws. This being so, the supremacy clause of the Constitution, U.S. CONST., art. VI, § 2, prohibits a state from refusing to entertain an action under the FELA, *supra,* for a death that occurred outside the state; to allow such refusal would be to allow discrimination against a right that has arisen under federal law rather than under state law. A state statute that bars adjudication in the state courts of a wrongful death action under the FELA simply because the death has occurred in another state is an unconstitutional violation of the supremacy clause of the United States Constitution. *Allendorf v. Elgin, supra.*

The conflict inherent in *Hughes v. Fetter, supra,* the basis for the court's decision that the Illinois statute in question was unconstitutional, was between the unifying policy of the full faith and credit clause as applied to state jurisdictional statutes on the one hand, and the local determination of judicial jurisdiction on the other hand. In concluding that Wisconsin had no "real feeling of antagonism" toward such wrongful death actions, 341 U. S. at 612, and thereby overruling Wisconsin's limiting jurisdictional statute, the Supreme Court in the *Hughes* case minimized the policy considerations favoring local determination of jurisdiction. This is pointed out in the dissenting opinion, 341 U. S. at 618: "This Court should certainly not require that the forum deny its own law and follow the tort law of another State where there is a reasonable basis for the forum to close its courts to the foreign cause of action." The *Hughes* extension of the full faith and credit clause to state jurisdictional statutes is inconsistent, however, with the Supreme Court's policy on the doctrine of forum non conveniens. See *Missouri ex rel Southern Ry. Co. v. Mayfield,* 340 U.S. 1 (1950), wherein the Court held that the FELA did not require a state court to reject the doctrine of forum non conveniens, and stated that the state court should be free ". . . to decide the availability of the principle of *forum non conveniens* in these suits according to its own local law." 340 U.S. at 5.

The policy considerations at the root of the Illinois statute in question are much akin to those motivating a dismissal of a suit on forum non conveniens grounds. See *Gulf Oil Corp. v. Gilbert,* 330 U.S. 501, 508-09 (1947), enumerating the possible criteria of forum non conveniens; *Douglas v. New York, New Haven and Hartford R.R.,* 279 U. S. 377, 387 (1929), involving a New York statute similar in effect to the Illinois statute in question, enumerating the criteria motivating the statute. *Price v. Atcheson, T. & S. F. Ry.,* 42 Cal. 2d 577, 268 P.2d 457 (1954), *cert. denied,* 348 U. S. 839 (1954), decided three years after the *Hughes* case, followed the *Mayfield* doctrine of local determination of forum non conveniens in regard to FELA claims arising in foreign jurisdiction being litigated by nonresidents.

In holding local determination of the availability of the state's courts subordinate to the unified determination dictated by the interaction of the full faith and credit clause and the supremacy clause of the Constitution, thus forcing the Illinois court to entertain the suit at bar, the decision in the instant case contravenes the Supreme Court's prior determination that FELA does not expand the jurisdiction of state courts to entertain such a suit. The concurrent jurisdiction granted in FELA formerly was deemed permissive and not mandatory. *Second Employers' Liability Cases,* 223 U. S. 1 (1911).

In the leading Illinois case involving the FELA, *Walton v. Pryor,* 276 Ill. 563, 115 N.E. 2 (1916), *appeal dismissed,* 245 U. S. 675 (1917) (which the instant decision effectively overrules without majority comment — see dissent in instant case, 133 N.E.2d at 299), it was concluded that Congress cannot confer jurisdiction upon any court which it has not created. This was reaffirmed in *Loftus v. Pennsylvania R.R.,* 107 Ohio St. 352, 140 N.E. 94 (1923), *appeal dismissed,* 266 U.S. 639 (1924). The case at bar, by means of the supremacy clause, has accomplished the mandatory extension of jurisdiction in FELA suits which *Loftus* proscribed.

It appears, therefore, that by judicial sleight of hand, under the guise of an "interplay of judicial decisions," the present court sought to achieve that which Congress has not attempted to do, assuming it had the power: force FELA jurisdiction upon state courts in circumstances where the state legislature has deemed it unwise or undesirable to entertain such actions.

William C. Rindone, Jr.

CORPORATIONS—STOCKHOLDERS' ACTION TO COMPEL PAYMENT of DIVIDENDS—SECURITY FOR COSTS STATUTE NOT APPLICABLE.—*Knapp v. Bankers Securities Corp.,* 230 F.2d 717 (3d Cir. 1956). Certain shareholders of the Bankers Securities Corporation brought an action against the corporation and its directors to compel a declaration of dividends. Before answering, the corporation moved to require the shareholders to furnish security for costs pursuant to PA. STAT. ANN. tit. 12, §1322 (Purdon 1953), which applies to suits brought against officers or directors by holders of less than five per cent of the outstanding stock. The district court denied the motion, and defendant appealed. Held, an action to compel the declaration of dividends is a suit to enforce the personal individual rights of the shareholder, and not a derivative or secondary suit within the purview of the security for costs statute. *Knapp v. Bankers Securities Corp., supra.*

A derivative suit is brought by a shareholder or shareholders to redress a wrong against the corporation for which the corporation has failed to assert a claim for relief in its own name. The gravaman of the complaint is injury to the corporation or to the whole body of its stock or property without any severence or distribution among individual holders. *Gagnon Co. v. Nevada Desert Inn,* 45 Cal. 2d 448, 289 P.2d 466, 471 (1955); *Sutter v. General Petroleum Corp.,* 28 Cal. 2d 525, 170 P.2d 898, 900 (1946). A personal suit is one in which the wrong to be redressed is a wrong against the individual shareholder. It is an action to enforce his own personal and individual right. *Horwitz v. Balaban,* 112 F. Supp. 99 (S.D.N.Y. 1949).

Concerning the question whether a suit to compel dividends is primary or derivative, the cases and authorities are in conflict, partially because of a lack of precise definition of the rights asserted and the relief sought. Some courts have held that the action is wholly derivative, *Lydia E. Pinkham Medicine Co. v. Gove,* 303 Mass. 1, 20 N.E.2d 482 (1939); *Gordon v. Elliman,* 306 N.Y. 456, 119 N.E.2d 331 (1954). It is reasoned that dividend policy is a management function vested in the directors, and failure to perform that function properly constitutes mismanagement, creating a cause of action in behalf of the corporation, for the right to bring an action based on directors' misconduct rests in the corporation. *Jones v. Van Heusen Charles Co.,* 230 App. Div. 694, 246 N.Y. Supp. 204 (3d Dep't. 1930). An earlier New York decision, in holding the action personal, pointed out that though the action depended upon misconduct of the directors, it was misconduct towards the shareholders and not misconduct towards the corporation. *Swinton v. W. J. Bush & Co.* 199 Misc. 321, 102 N.Y.S.2d 994, 996 (Sup. Ct.), *aff'd,* 278 App. Div. 754, 103 N.Y.S.2d 1019 (1st Dep't. 1951). The New York Court of Appeals in *Gordon v. Elliman, supra,* rejected this argument and held the contrary view.

Seemingly, the courts which hold the action derivative overlook the fact that a shareholder may sue as an individual where he is directly and individually injured, even though the corporation may also have a cause of action arising out of the same wrongful acts of the directors. *Sutter v. General Petroleum Corp.,* 28 Cal. 2d 525, 170 P.2d 898, 901 (1946). The directors owe a fiduciary duty to the stockholders concerning their investment, *Cavanaugh v. Cavanaugh Knitting Co.,* 226 N.Y. 185, 193, 123 N.E. 148, 151 (1919), and it is the breach of this fiduciary duty which gives rise to a direct individual injury.

Another reason for holding the action to compel payment of dividends to be personal is that if the shareholders are successful, and recovery granted, it benefits the shareholders and not the corporation. *Raynolds v. Diamond Paper Mills,* 69 N.J.Eq. 299, 60 Atl. 941 (1905); only in very rare situations is the corporation benefited by the declaration of a dividend. Since a dividend, once declared, is another corporate liability, *Staats v. Biograph Co.,* 236 Fed. 454 (2d Cir. 1916); *Wheeler v. Northwestern Sleigh Co.,* 39 Fed. 347 (7th Cir. 1889), the corporation will eventually have to part with some of its assets. The loss of assets is exactly what the true derivative suit seeks to prevent, just as relief is sought for the corporation, not from it. *Gagnon v. Nevada Desert Inn,* 45 Cal. 2d 448, 289 P.2d 466, 471 (1955).

As was pointed out in the well reasoned dissent of the *Gordon* case, *supra,* 119 N.E.2d at 344, since a corporation has no right to compel itself to declare a dividend, the stockholders' right cannot possibly derive from it. By applying the actual benefit rationale to the question in the instant case, the court has approached the problem in the most realistic manner possible in view of the nature of an action to compel payment of dividends and the policy considerations inherent in a security for costs statute.

Ray F. Drexler

LABOR LAW—NO DISTRIBUTION RULE—DISTRIBUTION OF UNION LITERATURE BY NON-EMPLOYEES IN COMPANY PARKING LOTS.—*NLRB v. Babcock and Wilson Co.,* 351 U.S. 105 (1956). Pursuant to section 8 (a) (1) of the Labor Management Relations Act, 61 STAT. 140 § 8 (a) (1) (1947), 29 U.S.C. § 158 (a) (1) (1952), the National Labor Relations Board issued cease and desist orders against three employers, following separate hearings arising out of charges of unfair labor practices. The Board maintained that the act had been violated by the employers' refusals to allow non-employee union representatives access to company parking lots for the purpose of distributing literature in their efforts to organize employees. In each case, the employer barred not only union distribution, but any and every kind of distribution. Each employer initiated a separate action in the courts of appeals for reversal of the Board's orders. The decision in two cases was a refusal to enforce the order, while in the third enforcement was granted. The Supreme Court of the United States granted certiorari to resolve the conflicting decisions. Held, a no distribution rule barring non-employee organizers from distributing union organizational literature in company parking lots is not illegal under section 8 (a) (1) of the NLRA, *supra,* where the employees reasonably may be reached at their homes, and where no other kinds of distribution are allowed by the employer. *NLRB v. Babcock and Wilcox Co., supra.*

In rendering its decision, the Supreme Court distinguished a prior case, *Republic Aviation Corp. v. NLRB,* 324 U.S. 793 (1945), which had affirmed a Board determination that employees were entitled to distribute union literature on company parking lots during non-working time. The instant case drew a distinction between the organizational rights of employees and non-employees, and expressly declared it a distinction of substance, since the rights of the non-employee organizers depend upon the degree of self-organization which the employees can achieve by themselves. Thus, it was held that union non-employee organizers may properly be refused access to company property if employees can be contacted through other reasonable means.

The Supreme Court refused to enforce the Board's orders because it found no impediment that would prevent union representatives from contacting employees outside of company property, for the majority of employees lived within a close proximity of the plant and could be reached by personal contact, telephone, or other means of communication.

In conformity with the instant case is *NLRB v. Monsanto Chemical Co.*, 225 F.2d 16 (9th Cir. 1955), *cert. denied*, 351 U.S. 923 (1956). However, in the *Monsanto* case the court intimated that if some contact existed between employees and non-employee organizers, but union representatives could not offer sufficient proof that the employees had authorized the organizational efforts, that fact of itself should require a refusal to enforce a Board order that management grant limited access to company property. The Court in the instant case failed to consider the question of authorized representation.

It is settled that non-employee organizers do not share the same privileges regarding solicitation on company premises as employee organizers. *Marshall Field & Co. v. NLRB*, 200 F.2d 375 (7th Cir. 1953). However, if union representatives offer proof that lack of accessibility to company premises would amount to a unique handicap in employee self-organization and concerted activity, management will be compelled to grant limited access to company property for purposes of allowing union representatives to inform employees of the advantages of organization. *Marshall Field & Co., supra*, at 381 (dictum).

Another condition under which a non-employee may enter and solicit union membership is where a non-solicitation rule is enforced discriminately against unions; in such cases, this privilege is permitted even though employees may be contacted outside of company premises. *NLRB v. Stowe Spinning Co.*, 336 U. S. 226 (1949). If a non-solicitation rule is enforced rigorously only against unions, the admission of non-employee organizers to company property is allowed under section seven of the act, although there is no express reference in the act to such a union privilege. See the dissenting opinion in the *Stowe* case, 336 U. S. at 241. *Cf. NLRB v. Babcock & Wilcox Co.*, 222 F.2d 316 (5th Cir. 1955) (the instant case reported in the circuit court). In another context, the Court has reasoned that the more an owner opens his property for use by the public for his own advantage, the more his rights become subrogated to the constitutional rights of those who use the property. See *Marsh v. Alabama*, 326 U.S. 501 (1946). In the *Marsh* case the Court held it was a violation of the first and fourteenth amendments to prohibit the use of a street in a company owned town by a distributor of religious literature. The Supreme

Court's decision in the *Stowe* case, *supra,* and in the instant case, dictum, 351 U. S. at 112, gives the same privilege to distributors of union literature, the source of such privilege being the Labor Management Relations Act rather than the Constitution.

Judging from a literal interpretation of the NLRB, it appears that management only is prohibited from affirmative interference with employee organization. Nonetheless, recent decisions require management to maintain a positive position regarding union organization, by compelling employers to grant restricted use of their property for union solicitation and organization. See *Bonwitt Teller, Inc. v. NLRB,* 197 F.2d 640 (2d Cir. 1952), *cert. denied,* 345 U. S. 905 (1953). Although the instant case did distinguish between the rights of employee and non-employee organizers, and to that extent slowed the encroachment of labor upon the property rights of management, it also restated conditions under which such advance, even by non-employee organizers, will be sanctioned.

Eugene G. Griffin

PROPERTY—TENANCY BY THE ENTIRETIES—DISPOSITION WHERE HUSBAND MURDERS WIFE.—*National City Bank v. Bledsoe,* 125 Ind. App. 430, 133 N.E.2d 887 (1956). Plaintiff, personal representative of the wife's estate, brought action against the personal representative of the husband's estate to sell the realty owned previously by the husband and wife as tenants by the entireties; to determine the title to this realty; and to make a distribution to the wife's heirs. It was alleged that the wife had been murdered by the husband, who subsequently committed suicide. The probate court sustained a demurrer to the amended complaint and plaintiff appealed.

Despite the existence of an Indiana statute providing that one who has been legally convicted of intentionally causing the death of another shall become a constructive trustee of property acquired from such person due to his death, for the benefit of those legally entitled to it other than the guilty person, IND. ANN. STAT. § 6-212 (Burns 1953), the Appellate Court of Indiana upheld defendant's demurrer. The court reasoned that title in a tenancy by entireties vests at the time of the original grant to the husband and wife, and is owned by the marriage entity. Therefore, by succeeding to his wife's interest on her death, the husband acquired no new or additional interest in the property held by the entireties. Property held under a tenancy by the entireties goes entirely to the estate of the husband when the husband murders his wife just prior to committing suicide himself. *National City Bank v. Bledsoe, supra.*

The courts have followed two principal lines of reasoning on this question. The strict view follows the common law rule that sole ownership vests in the surviving spouse, and asserts that any change in this rule must be made by the legislature. *Wenker v. Landon,* 161 Ore. 265, 88 P.2d 971 (1939). The equitable view follows the principle that "no man should profit from his wrongdoings," by treating the tenancy by entireties as severed by the feloneous act into a tenancy in common, subjecting one half to a constructive trust—*Goldsmith v. Pearce,* 345 Mich. 146, 75 N.W.2d 810 (1956); *Barnett v. Couey,* 224 Mo. App. 913, 27 S.W.2d 757 (1930)—or subjecting the entire estate to a constructive trust in favor of the victim's representatives—*Colton v. Wade,* 32 Del. Ch. 122, 80 A.2d 923 (1951); *Neiman v. Hurff,* 11 N.J. 55, 93 A.2d 345 (1952)—or enforcing a trust on a fraction of the estate based on the deceased's life expectancy at the time of death—*Sherman v. Weber,* 113 N.J. Eq. 451, 167 Atl. 517 (1933).

Only one court has deprived the surviving tenant by entireties of his entire interest in the property and treated it as if it had belonged solely to the deceased spouse. *Van Alstyne v. Tuffy,* 103 Misc. 445, 169 N.Y. Supp. 173 (Sup. Ct. 1918).

In the instant case the court adopted the strict view and held that any condition, limitation, or exception to the general rules of survivorship relating to tenancy by the entirety must be made by the legislature and not interposed by the courts.

The majority of states have statutes providing that any person convicted of murder should not be entitled to inherit from his victim. See Note, 49 HARV. L. REV. 715 (1936). These statutes generally have been held inapplicable to a tenant by the entireties since it was not the legislative intent that vested rights should be forfeited by the crime. Rather the statutes were only intended to prevent a murderer from acquiring any *new* property interest as the result of his crime. *Ashwood v. Patterson,* 49 So. 2d 848 (Fla. 1951); *Wenker v. Landon, supra.* Some courts, however, hold that the surviving spouse is receiving an additional interest which he previously did not have and therefore the survivor should take only one half the property and the heirs of the wife the other half. *Grose v. Holland,* 357 Mo. 874, 211 S.W.2d 464 (1948).

In the instant case the court construed the Indiana statute, *supra,* providing for a constructive trust over all property acquired by "a person who shall have been legally convicted of intentionally causing the death of another," as having no application outside the law of descent; thus it would have no effect on the vested interest of a tenancy by entirety as no new interest is acquired upon the death of the spouse. The statute also was held inapplicable on the ground that no conviction had been obtained against the husband for the alleged killing of his wife. The court stressed the illogicality of a civil court declaring an individual guilty of this crime without affording the individual the opportunity to defend against the charge. This is particularly true where there is a governing statute as in the instant case. Without the statute the reasoning and result might be different and the requirement of a conviction in order to set up a constructive trust might be dropped. 3 SCOTT, TRUSTS § 492.4 (1939).

Generally, the courts that have decided cases involving the distribution of entireties property where the surviving spouse either committed suicide or was declared insane before conviction do not seem to have been troubled with the necessity for a conviction in order to impose a constructive trust over part or all the property. *Ashwood v. Patterson, supra; Barnett v. Couey, supra; Shermon v. Weber, supra.* In *Goldsmith v. Pearce, supra,* the court merely inferred that the crime of murder was present although the husband had been declared insane after the killing and before a conviction was obtained. The court in *Wenker v. Landon, supra,* presumed the feloneous act but said that such an act even upon conviction would not deprive the killer of his estate in a tenancy by the entireties.

The dissenting opinion in the instant case adopted the unique holding in *Van Alstyne v. Tuffy, supra,* and would have completely divested the surviving spouse of all interest in the tenancy by the entireties. The dissent agreed with the majority that the statute was not applicable, but maintained that a constructive trust should have been imposed on the property whether or not there was a conviction, especially in this case as the demurrer prevented the court from considering any of the husband's defenses to the murder charge. Apparently the dissenter did not believe that the investiture of the entire estate by entireties took place at the execution of the original conveyance, but rather that the estate normally passed or vested with the death of one spouse, indicating he did not regard tenancy by the entireties to be a holding of property as "one".

It must be agreed with the dissent that some additional interest does pass to the survivor of such a tenancy, although this additional interest is not an enlargement of the legal interest in the estate, but merely a right to convey without a joinder by the co-tenant. The right of a tenant by the entireties to hold the entire estate at the death of the spouse is derived from the original investiture and not from the deceased spouse. This is particularly true in states holding the common law fiction that the husband and wife are "one" and that each party holds the entire fee from the moment of investiture by reason of their marital status. Thus, upon the death of one spouse no additional legal interest in the estate is acquired. See annotation, 32 A.L.R.2d 1099 (1953).

An analysis of the various solutions to this problem leads to the conclusion that the only feasible escape from the dilemma created by the courts in attempting to keep within judicial bounds on the one hand, and to accomplish the equitable results of preventing a murderer from profiting by his unlawful act on the other hand, is to enact legislation expressly encompassing the situation where property is held by entireties, resolving this problem as an exception to the general rule of survivorship. By this mode alone will a uniform and just solution be available to erase murder as an effective method of terminating tenancy by the entireties.

Ronald Patrick Smith

TORTS — RIGHT OF PRIVACY — DEBTOR'S RIGHT OF PRIVACY INVADED BY CREDITOR'S SYSTEMATIC CAMPAIGN OF HARASSMENT. — *Housh v. Peth,* 165 Ohio St. 35, 133 N.E.2d 340 (1956). Plaintiff, an acknowledged debtor in default for over two years, brought suit against defendant collection agency alleging an invasion of her right of privacy. Defendant, in an attempt to coerce payment of the debt, telephoned plaintiff at her home and place of business six or eight times a day over a three week period, sometimes as late as 11:45 P. M., informed her employer of the debt, and had her summoned from her classroom to the telephone three times within a fifteen minute period. As a result, plaintiff alleged mental suffering and humiliation, loss of a roomer, and threatened loss of employment. A jury verdict for the plaintiff was affirmed by the appellate court. On further appeal, the Supreme Court of Ohio affirmed for the plaintiff, in a four to three decision, on the ground that the collection methods used were so unreasonable as to constitute a deliberate and systematic campaign of harassment that invaded the plaintiff's right to privacy. A creditor's systematic program of making dunning phone calls several times a day over an extended period of time to the acknowledged debtor, his employer, and his landlord, is an unlawful invasion of the debtor's right to privacy. *Housh v. Peth, supra.*

The right of privacy has been defined as the "right to be let alone," that is, to be free from unwarranted publicity and to be free from interference by the general public in matters which are not of legitimate public concern, or from the wrongful invasion in one's private affairs which results in metal anguish, shame or humiliation to a person of ordinary sensibilities. *Abernathy v. Thornton*, 263 Ala. 496, 83 So.2d 235 (1955); *Smith v. Doss*, 251 Ala. 250, 37 So.2d 118 (1948); *Continental Optical Co. v. Reed*, 119 Ind. App. 643, 86 N.E.2d 306 (1949).

Therefore, it has been held that where the creditor publishes the debt to the public at large, he will be liable for an invasion of privacy. *Brents v. Morgan*, 221 Ky. 765, 229 S.W. 967 (1927). But, if the communication is one which would be privileged if the action were for libel or slander, it is also privileged when the action is for invasion of the right of privacy. *Cason v. Baskin*, 155 Fla. 198, 20 So.2d 243 (1944). This privilege extends to a communication by the creditor to the debtor's employer concerning the debt, provided that he does not use threatening or abusive language or impute dishonesty to the debtor, for the employer has a legitimate interest in the financial obligations of his employees. He has the right to use reasonable means to avoid being named a garnishee defendant. *Patton v. Jacobs*, 118 Ind. App. 358, 78 N.E.2d 789 (1948).

Although the problem was not discussed by either the majority or the dissent in the instant case, there is considerable authority that the right to privacy cannot be invaded by mere oral communications. *Cason v. Baskin*, *supra*; *Martin v. F.I.Y. Theater Co.*, 1 Ohio Supp. 19 (C.P. 1938). This theory had its inception in the article which dynamically influenced recognition of the right of privacy as an independent and distinct legally protected right. Warren and Brandeis carefully restricted recovery to written publications, unless special damages were proven, since the damage from oral publication would ordinarily be so slight that the law, in the interest of free speech, should disregard it altogether. Warren and Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193, 217 (1890). Telephone calls have been classified as oral communications and therefore held not to afford a basis for an action for a violation of privacy. *Lewis v. Physicians and Dentists Credit Bureau, Inc.*, 27 Wash. 2d 267, 177 P.2d 896 (1947).

In cases very similar to the instant case, the debtor has recovered from the creditor, independently of any question of invasion of privacy, where it has been found that the creditor has intentionally inflicted mental pain and anguish on the debtor in an effort to coerce payment of the debt. *Barnett v. Collection Service Co.*, 214 Iowa 1303, 242 N.W. 25 (1932); *LaSalle Extension University v. Fogarty*, 126 Neb. 457, 253 N.W. 424 (1934).

It is submitted that the court in the instant case properly granted relief, but upon the wrong basis. The instant case properly does not fall within the scope of the right of privacy because (1) no publication was made to the general public, (2) the creditor was privileged to inform the employer of the employee's debt, and (3) all the communications were oral in nature. The decision stretches the concept of the right of privacy to include the intentional unreasonable infliction of mental suffering.

John G. Curran