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TORTS - RIGHT OF PRIVACY - NEWSREEL AS VIOLATION OF

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TORTS — RIGHT OF PRIVACY — NEWSREEL AS VIOLATION OF — Section 51 of the New York Civil Rights Law provides that: "Any person whose name, portrait or picture is used . . . for advertising purposes or for the purposes of trade without the written consent first obtained . . . may maintain an equitable action . . . to prevent and restrain the use thereof; and may also sue and recover damages for any injuries sustained by reason of such use. . . ." [1] *Held*, publication by defendant of a newsreel showing plaintiff and other stout women exercising in a gymnasium with the aid of unique and novel apparatus is not an advertising or trade use within the meaning of the statute. *Sweenek v. Pathe News, Inc.*, (D. C. N. Y. 1936) 16 F. Supp. 746.

The relatively new concept of protection of a right of privacy [2] has received

[1] N. Y. Consol. Laws, c. 6, "Civil Rights Laws," § 51.

[2] Defined as the right to live one's life in seclusion, without being subjected to unwarranted or undesired publicity; the right to be let alone. Jones v. Herald Post Co., 230 Ky. 227, 18 S. W. (2d) 972 (1929). On nature of the right, see also 21 R. C. L. 1196; Warren and Brandeis, "The Right to Privacy," 4 HARV. L. REV. 193 (1890).

varying treatment in courts where it has been presented. Some courts have recognized it as a common law development, with a strong plea for growth of the law.[3] Others have in effect given it protection through a tie-up with some other accepted right, as protection of a contract relation,[4] or property interest.[5] Still others [6] expressly refuse to recognize it as a separate right in the absence of statute, on the ground that the law does not protect mere feelings, and to do so now would violate principles which have long been guides to the public.[7] In New York, after a decision denying any right of privacy at common law,[8] the statute quoted above was passed,[9] protecting one's name or likeness from advertising or trade uses. However recognized, the right is not an unlimited one, and the wisdom of the policy may be dependent upon the limitations which are applied.[10] The common-law protection does not apply to public characters, who may be said to have dedicated themselves to the public.[11] And the instant case is in accord with authority, as to both the common law and the statute, that "news" is privileged, as being matter in which the public has a justifiable interest.[12] The principal case is especially interesting in view of previous cases brought under the New York statute, one holding that a movie dramatization of a recent sea rescue in which plaintiff was named and impersonated was a violation of the statute,[13] another holding that a bona fide newsreel showing plaintiff's picture was not a prohibited trade use,[14] and a more recent three-to-

[3] Pavesich v. New England Life Insurance Co., 122 Ga. 190, 50 S. E. 68, 69 L. R. A. 101, 106 Am. St. Rep. 104, 2 Ann. Cas. 561 (1905), noted 18 HARV. L. REV. 625 (1905); Rhodes v. Graham, 238 Ky. 225, 37 S. W. (2d) 46 (1931), noted 45 HARV. L. REV. 194 (1932).

[4] Pollard v. Photographic Co., 40 Ch. Div. 345 (1888); Corliss v. E. W. Walker, (C. C. Mass. 1894) 57 F. 434, 64 F. 280, 31 L. R. A. 283.

[5] Edison v. Edison Polyform Co., 73 N. J. Eq. 136, 67 A. 392 (1907).

[6] A majority of those considering the question, it is stated in 21 R. C. L. 1196 (1918). HARPER, TORTS, § 277 (1933), says there is a constantly accumulating body of authority in support of the principle.

[7] 21 R. C. L. 1197 (1918); Melvin v. Reid, 112 Cal. App. 285, 297 P. 91 (1931) (but the court here allows the action on a basis of violation of plaintiff's constitutional right to the pursuit of happiness); Hillman v. Star Publishing Co., 64 Wash. 691, 117 P. 594 (1911); Atkinson v. John E. Doherty & Co., 121 Mich. 372, 80 N. W. 285 (1899).

[8] Roberson v. Rochester Folding Box Co., 171 N. Y. 538, 64 N. E. 442 (1902).

[9] N. Y. Consol. Laws, c. 6, "Civil Rights Law," § 51.

[10] HARPER, TORTS, § 277 (1933).

[11] Corliss v. Walker, (C. C. Mass. 1894) 57 F. 434, 64 F. 280, 31 L. R. A. 283; Melvin v. Reid, 112 Cal. App. 285, 297 P. 77 (1931). Cf. the principle of fair comment in libel and slander.

[12] Jones v. Herald Post Co., 230 Ky. 227, 18 S. W. (2d) 972 (1929); Smith v. Suratt, 7 Alaska 416 (1926), noted 27 MICH. L. REV. 353 (1929); Damron v. Doubleday, Doran & Co., 133 Misc. 302, 231 N. Y. S. 444 (1928); HARPER, TORTS, § 277 (1933).

[13] Binns v. Vitagraph Co., 210 N. Y. 51, 103 N. E. 1108, L. R. A. 1915C 839 (1913).

[14] Humiston v. Universal Film Corp., 189 App. Div. 467, 178 N. Y. S. 752 (1919).

two decision stating that a movie "sight-seeing tour" of New York City violated the statute in showing plaintiff selling bread on the streets.[15] The present decision would indicate that the last of these cases limits the second.

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[15] Blumenthal v. Picture Classics Inc., 235 App. Div. 570, 257 N. Y. S. 800 (1932). For another case where news material was converted into a trade use, see Martin v. New Metropolitan Fiction, 139 Misc. 290, 248 N. Y. S. 359 (1931).