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Torts - Right of Privacy

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early jurisprudence as exemplified by *Bonnable v. First Municipality*[27] was to the effect that a vendor warranted his vendee only peaceable possession of the property sold. The present rule, interpreting Civil Code Articles 2500-2501, that an eviction is not a prerequisite to an action in warranty by the vendee against his vendor as long as there exists a perfect outstanding title in a third person, was established in *Bonvillain v. Bodenheimer*[28] (which overruled the *Bonnable* case). It has since been held that when the vendee fails to prove an outstanding title in a third person he cannot successfully sue to resolve.[29] Since under the facts of the instant case the minors probably did not have a perfect title, it is doubtful that the vendee would have been sustained in his action. It is interesting to note that in order to determine whether there was perfect outstanding title in the minors the court would probably have had to decide whether substantial compliance with Act 209 of 1932[30] was sufficient.

The agreement between the parties herein provided that the title must be merchantable. A title is not merchantable if it is suggestive of serious future litigation. As the minors were shown to have a claim with a substantial basis for future litigation, the decision is in accord with the prior jurisprudence. However, it is submitted that the court was not justified in refusing to determine whether or not substantial compliance with Act 209 of 1932 was sufficient. The fact that there was no jurisprudence previously determining the question should not deter the courts of a civil law jurisdiction. Had the court decided this question in the affirmative, a more equitable result might have been reached.

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TORTS—RIGHT OF PRIVACY—An innocent citizen had been charged with and acquitted of the supposed murder of the plaintiffs' father, though the body had not been discovered. Twenty-five years later, the father's body, together with a will, was returned from another state. It was thus revealed that he had not been murdered but had been residing in another state since his disappearance. Years after his actual death, defendant's radio station produced this story concerning the plaintiffs' father, and the plaintiffs sued for invasion of their right of privacy. *Held*, the passage of time could not give privacy to the acts of their father

27. 3 La. Ann. 699 (1848).
28. 117 La. 793, 42 So. 273 (1906); Comment (1940) 15 Tulane L. Rev. 122.
29. Kuhn v. Breard, 151 La. 546, 92 So. 52 (1922).
30. Dart's Stats. (1939) § 4844-4847.

because the story of his life was a part of the history of the community. *Smith v. Doss*, 37 So. (2d) 118 (Ala. 1948).

The right of privacy is "the right of a person to be free from unwarranted publicity."[1] There are no established legal limits on the extent of this right, and, consequently, the courts must use a variable formula to test each set of facts. The interest of the individual in the privacy of his affairs is balanced against the interest of the public in the dissemination of legitimate news items. In the absence of extenuating circumstances, the courts usually decide that an unusual contemporaneous event is the subject of legitimate public interest. Thus, no invasion of privacy was found when a woman committed suicide,[2] a lawyer solved a famous crime,[3] a bartender was indicted under the alien and sedition act,[4] a picture which might have concerned a crime was printed,[5] a group of two-hundred pound women were working out with new gymnasium equipment,[6] or a picture was printed of a party to proceedings concerning custody of his children.[7]

In cases involving the revitalization of previously published news the balance of interests is somewhat different. From the plaintiff's standpoint his affairs have previously been exposed to public scrutiny through the initial publication of the news event now being revitalized; hence, his claim is to the right to retreat from the public eye. The defendant's claim rests upon the nature of the public interest, which the passage of time has changed from an interest in common news to one in entertainment.[8] Thus the question becomes whether the public interest in entertainment supersedes the private interest in withdrawing ing from public surveillance. The courts speak in terms of

1. 41 Am. Jur. 925.
2. Metter v. Los Angeles Examiner, 35 Cal. App.(2d) 304, 95 P.(2d) 491 (1939).
3. Humiston v. Universal Film Mfg. Co., 189 App. Div. 467, 178 N.Y. Supp. 752 (1919).
4. Elmhurst v. Pearson, 153 F.(2d) 467 (App. D.C. 1946).
5. Themo v. England Newspaper Pub. Co., 306 Mass. 54, 27 N.E.(2d) 753 (1940).
6. Sweenek v. Pathe News, Inc., 16 F. Supp. 746 (E.D. N.Y. 1936).
7. Bern v. Minneapolis Star & Tribune Co., 79 F. Supp. 957 (D. Minn. 1948).
8. There are situations where the interest will not be in entertainment, such as interest in the historical summary or the year's news in review. In such cases, the court will probably impose the same test that it would have in the initial publication of news events, and such rare cases should not be confused with the present article.
The phrase "interest in entertainment" may appear vague. It is suggested that an interest in entertainment is primarily an interest in emotional enjoyment, while an interest in "news" is primarily an interest in factual enlightenment or useful knowledge.

whether the plaintiff has acquired a right of privacy, but the basis of the decisions is the nature of the injury inflicted upon the plaintiff. Though the court in the present case ruled that the plaintiff could never acquire a right of privacy in a once famous news event, two other courts have reached contrary decisions. In *Melvin v. Reid*[9] where a movie portrayed the life of a reformed prostitute who had been acquitted of the murder of a third party, the court allowed recovery for the invasion of the ex-prostitute's right of privacy. A similar decision was reached in *Mau v. Rio Grande Oil, Incorporated*,[10] where the defendant produced a dramatic radio program depicting the robbery and shooting of the plaintiff sixteen months before. In both these cases the courts decided that the details of the notorious incidents were still the subject of legitimate public interest, but recovery was allowed because the plaintiffs' names were used in connection with the facts.[11] Since the plaintiffs' names were used in the present case, it might seem that these decisions are at variance; considered together, however, the three cases form a perfect pattern. In the present case injury was inflicted only upon the plaintiffs' interest in freedom from mental disturbance, but in the two previously decided cases, the plaintiffs suffered injury to other interests as well.[12] In the *Melvin* case the plaintiff's social status was injured when her newly acquired friends, who knew of her only as a virtuous woman, discovered that she had once been a prostitute, while in the *Mau* case the plaintiff suffered the loss of his job when he became so emotionally disturbed that he was unable to carry out the duties of a chauffeur. Thus, though the

9. 112 Cal. App. 285, 297 Pac. 91 (1931).

10. 28 F. Supp. 845 (N.D. Cal. 1939).

11. It would appear that the court does not intend to limit recovery to the use of the plaintiff's name, but that recovery will be allowed whenever the news item is such that one can easily identify the plaintiff with the set of facts. It is also doubted whether recovery would be allowed where the name of the plaintiff was a common one, such as "John Smith"; for it would be difficult to connect a set of facts with any, one person by that name, unless the third party knew most of the plaintiff's life history.

12. It has been suggested that the basis of recovery in these previously decided cases was the agency used and nature of the dissemination. See Feinberg, Recent Developments in the Law of Privacy (1948) 48 Col. L. Rev. 711, 721. Though there is some basis for such an opinion when news is published for the first time [Molony v. Boy Comics Publishers Inc., 188 Misc. 450, 65 N.Y.S.(2d) 173 (1946)], the present case suggests that this same distinction does not apply in cases involving the republication of events. As indicated above, the primary public interest in revitalization of news, regardless of how it is disseminated, is in entertainment. And since in terms of interest all cases involving republication of news events would fit into the same category, there appears to be no logical basis for distinguishing the radio from the newspaper, or the motion picture from television, when determining the invasion of the plaintiff's right of privacy.

public entertainment interest in the details of a previously published news event will not be jeopardized by the passage of time, the principal case indicates that the extent of this interest in the identity of the person involved will vary with the nature of the injury that would be inflicted if the news item were revitalized.[12]

In summary, the significance of the present case in the doctrine of the right of privacy relates to the revitalization of news events. In such cases the court balances the public interest in entertainment against the private interest in withdrawing from public surveillance, and in this process certain guiding principles appear to be established: (1) The details of the news event, excluding the plaintiff's identity, will always be the subject of public interest in entertainment. (2) If the identity of the plaintiff is also revealed, the extent of the public interest in entertainment will vary with the nature of the injury which would be inflicted upon the plaintiff. (a) If the plaintiff's interest in freedom from mental disturbance is all that would be invaded, the court will probably say the plaintiff has not acquired a right of privacy; however, (b) if there is more serious tangible injury, the court will probably say that the plaintiff's interest in his right of privacy is predominant.

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WORKMEN'S COMPENSATION—HAZARDOUS NATURE OF THE EMPLOYER'S BUSINESS—PROXIMITY TO CUSTOMER'S MOTOR VEHICLES—Plaintiff was injured while loading a truck in the course of his employment. He maintained that although the employer's retail feed business owned no motor vehicles, it involved their operation, since all feed was sold directly to customers who drove their vehicles to the place of business. *Held*, the mere fact that employee was required as a part of his regular duties to be near motor vehicles, which his employer did not own, operate or control, did not convert the business from nonhazardous to hazardous. *Fields v. General Casualty Company of America*, 36 So. (2d) 843 (La. 1948).

In order for a business to be hazardous within the meaning of the Workmen's Compensation Act,[1] it must either be specifically designated as such or must involve the use of a contrivance

1. La. Act 20 of 1914 [Dart's Stats. (1939) §§ 4391-4432]. For a complete discussion of hazardous businesses, see Malone, Hazardous Businesses and Employment under the Louisiana Workmen's Compensation Law (1948) 22 Tulane L. Rev. 412.