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William E. Grant

been actual malice may the plaintiff recover punitive damages. There seems to be no duty on the plaintiff to request a retraction, in the absence of statutory law on this point, and he still can prove a failure to retract on the part of the defendant if he can prove that the defendant had actual knowledge of the falsity of the publication. There seems, therefore, to be an affirmative duty on the publisher of libelous material to print a retraction if requested by the person libeled or if he discovers from other sources that the article is false, as a failure to retract will be evidence of his bad faith.[35] The laws surrounding retraction should attempt to restore the reputation of the individual defamed. Often times it appears that the courts are more concerned with compensating him for the damage to his reputation. Damages in this unrealistic approach are difficult to ascertain. A better procedure would seem to be to have the aggrieved individual request the retraction within a certain time limit after the publication of the item. The publisher should then draft a retraction, and submit it to the requester for his approval. Then, upon the publishing of the retraction so approved, the damages of the defamed person should be limited to his actual damages, in the absence of proof of a definite intent on the part of the publisher to knowingly and maliciously attack the individual. Several states have adopted portions of this proposed solution, but none have a combination of all of these measures of retraction procedure. However, the problem of two parties who are antagonistic toward one another will still be encountered, preventing a solution which will be satisfactory to both parties. A right to reply will run into similar difficulties as the publisher may believe that the reply goes too far considering the original publication. Such irreconcilable conflicts must still be resolved by the courts.

ROBERT J. HAND

ADMISSIBILITY OF TESTIMONY RE FACTS INCLUDED IN CONFIDENTAL ACCIDENT REPORTS

A statutory privilege has been enacted in most states to the effect that motor vehicle accident reports made by individuals to the state motor vehicle department shall be "without prejudice to the individual so reporting."[1] Such statutes normally provide that the reports themselves

35. For an interesting treatment of the laws of retraction from the standpoint of a newspaper man, see Steigleman, Walter, The Newspaper Man and the Law, 314 ff. (1915).

1. E.g., Cal. Veh. Code § 488 (Supp. 1951); Ga. Code Ann § 68-315(e) (Supp. 1951); Iowa Code § 321.271 (1950); Mich. Comp. Laws § 257.624 (1952 Supp.); Minn. Stat. Ann § 169.09(13) (Supp. 1951); Wyo. Comp. Stat. §§ 60-631 (1945), as amended. The Wyoming statute, which is typical, reads as follows: (a) All accident reports made by persons involved in accidents shall be without prejudice to the individual so reporting and shall be for the confidential use of the department or other State agencies having use for the records for accident prevention purposes, or for the administration of the laws of this State relating to the deposit of security and proof of financial responsibility by persons driving or the owners of motor

cannot be used as evidence in any civil or criminal trial arising out of the accident. Does the statute in addition bar *all* testimony concerning facts or statements included in the confidential accident report? Such an interpretation would cut the heart out of the testimony customarily given in automobile negligence suits. Moreover, it would be difficult to administer; e.g., if the report is confidential, who is to say whether certain testimony covers information included in the report?

Examination of the statutes indicates that their primary object is not to create a privilege for individuals, but to create a privilege for the benefit of government. As the Supreme Court of Iowa recently put it:[2]

> "The interest of the state in securing correct, truthful and accurate data for its use in administrative activities pertaining to safety on the highways, justifies the subordinating of the interests of private litigants. . . ."

Dean Wigmore has pointed out that the basis for the privilege generally is that where the government needs information for the conduct of its functions, and the persons possessing the information need the encouragement of privacy in order to be induced freely to make disclosure, the protection of a privilege will be accorded.[3] In this respect it is similar to the informer's privilege.[4] Specifically regarding motor vehicle accidents, the main object is to investigate conditions and causes with a view to future administrative action; hence the State can afford to abdicate the use of such reports for the purposes of punishment or of private litigation, even though the facts reported reveal a legal liability on the part of the person reporting.[5]

But, of course, the statute is significant in private litigation. In order to bring the problem into sharp focus, let us assume the following factual situation: A is involved in an automobile collision and makes an accident report to a police officer at the time of the accident, in conformity with the applicable statutory provision. This report covers such matters as the position of the two automobiles just prior to the collision, the speed of each, and the actions of the drivers immediately preceding the collision.

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vehicles, except that the department may disclose the identity of a person involved in an accident when such identity is not otherwise known or when such person denies his presence at such accident.

(b) All accident reports and supplemental information filed in connection with the administration of the laws of this State relating to the deposit of security or proof of financial responsibility shall be confidential and not open to general public inspection, nor shall copying of lists of such reports be permitted, except, however, that such reports and supplemental information may be examined by any person named therein or by his representative designated in writing.

(c) No reports or information mentioned in this Section shall be used as evidence in any trial, civil or criminal, arising out of an accident, except that the department shall furnish upon demand of any party to such trial, or upon demand of any court, a certificate showing that a specified accident report has or has not been made to the department in compliance with law.

2. Erhardt v. Ruan Transportation Corp., 245 Ia. 193, 61 N.W.2d 696 (1953).
3. Wigmore, Evidence, § 2377, p. 761.
4. McCormick on Evidence, p. 311.
5. Wigmore, Evidence, § 2377, pp. 766-768.

In a subsequent civil action for negligence arising out of the above accident, will the statute disqualify A, or any other person, to testify concerning these same matters of position, speed and drivers' actions?

The courts are not unanimous in deciding this issue. A majority of courts do consider such testimony or evidence as admissible.[6] These courts give divergent reasons for their decisions. One court[7] reasoned that to exclude evidence other than the accident report itself would be an extension of the statute[8] to include a prohibition which was not contained in it. In this case defendant was the driver of a truck which collided with the car in which plaintiff's decedent was riding. Defendant had stated after the collision that he failed to stop before entering the highway. He made this statement to the sheriff, who was a witness at the trial. The accident report was not offered in evidence, but the defendant contended that because of the statute this statement or admission offered through the sheriff was not admissible. The court held that the statute rendered the report itself inadmissible, but did not bar the sheriff's testimony.

Other courts have used this same reason that only the report itself is inadmissible. In a California case[9] the court stated that only the reports are confidential, and that testimony as to facts that occurred at the time of the vehicular accident is not privileged. This case was a negligence action involving injury to a 6 year old child. The defendant motorist relied on the statute in unsuccessfully contending that testimony of a police officer concerning the physical facts of the collision was privileged.

In another California case[10] there was a clear conflict as to the length of skid marks which were important in establishing speed. Despite the statute, the court permitted the reporting police officer to refresh his memory from memoranda from the accident report. The state highway patrol officer made measurements and observations after the accident and reduced them to writing. Without the notes he could not have recalled the measurements. He testified from the memorandum, but not from any written accident report.

In an action for personal injuries where plaintiff pedestrian was struck by defendant's car the court admitted statements made by the police officer as to what the defendant said to him. Defendant stated that he didn't stop, but only shifted to second gear at a stop street. The court reasoned that this testimony as to what defendant said to the police officer did not contravene the statute's purpose.[11]

6. Stroud v. Hansen, 48 Cal.App. 556, 120 P.2d 102 (1941); Heiman v. Kolle, 317 Mich. 548, 27 N.W.2d 92 (1947); Rockwood v. Pierce, 235 Minn. 566, 18 N.W.2d 455; Kelliher v. Ray, 43 Cal.App. 252, 110 P.2d 712 (1941); Ritter v. Nieman, 329 Ill.App. 163, 67 N.E.2d 417 (1946).
7. Ritter v. Nieman, 329 Ill.App. 163, 67 N.E.2d 417 (1946).
8. Ill. Rev. Stat. § 141, Chap. 95½ (1951).
9. Stroud v. Hansen, 48 Cal.App. 556, 120 P.2d 102 (1941).
10. Kelliher v. Ray, 43 Cal.App. 252, 110 P.2d 712 (1941).
11. Heiman v. Kolle, 317 Mich. 548, 27 N.W.2d 92 (1947).

Another basis for holding the evidence included in the accident report admissible was advanced in a Minnesota case.[12] There the defendant made statments to a highway patrolman who was making out an accident report as required by the statute.[13] The patrolman was permitted to testify to admissions then made by the defendant. The court construed the statute as not preventing persons from testifying in a trial as to facts within their own knowledge even though these facts may have been included in the accident report. This court, in effect, interpreted the statute to mean that everything the officer hears is a fact within his knowledge. Obviously, this case goes a long way.

There is a considerable body of contra authority.[14] Here also the courts holding such evidence inadmissible have given varying reasons for the result. One court[15] reasoned that it would be difficult to get the required accident information without the immunity, and therefore testimony based on memoranda used in making the accident report was held inadmissible because to hold otherwise would contravene the purpose of the statute. In the same vein, it was reasoned by another court[16] that the patrolman in making the report should have the utmost freedom, and if information from such reports is used by private litigants the *officers* in making the reports would be seriously hampered. The final rationale was that the prevention and study of accidents is more important than the use of accident report information for litigation.

The Iowa Supreme Court[17] has consistently held that statements made to the reporting officer by the reporting motorist are privileged as well as the report itself. The Iowa Court has shown the strictest and the most consistent interpretation and application of the statute, except that one Iowa case[18] limited the effect of these decisions to some extent by saying that the officer can testify as to his observation made at the scene of the accident. The basis of the Iowa view is also that if testimony as to the matters included in the report were admitted, the purpose of the statute—to obtain accident information more easily and readily through the immunity provided by statute—would be thwarted.

In a recent Iowa case[19] where there was a headon collision and a resulting action for negligence, the court held that the statutory accident privilege is primarily for the government, therefore the person reporting

12. Rockwood v. Pierce, 235 Minn. 519, 51 N.W.2d 670 (1952).
13. Minn. Stat. § 169.09 (13) (1949).
14. Lowen v. Pates, 219 Minn. 566, 18 N.W.2d 455 (1945); Haddad v. Brown & Root, Inc. 142 Tex. 624, 175 S.W.2d 269 (1943); State v. Williams, 238 Ia. 838, 28 N.W.2d 514 (1947); Vandell v. Roewe, 232 Ia. 896, 6 N.W.2d 295 (1942); McBride v. Stewart, 227 Ia. 1273, 290 N.W. 700 (1940); Erhardt v. Ruan Transportation Corp., 245 Ia. 193, 61 N.W.2d 696 (1953).
15. Lowen v. Pates, 219 Minn. 566, 18 N.W.2d 455 (1945).
16. Haddad v. Brown & Root, Inc., 142 Tex. 624, 175 S.W.2d 269 (1943).
17. State v. Williams, 238 Ia. 838, 28 N.W.2d 514 (1947); Vandell v. Roewe, 232 Ia. 896, 6 N.W.2d 295 (1942); McBride v. Stewart, 227 Ia. 1273, 290 N.W. 700 (1940).
18. Bachelor v. Woodside, 233 Ia. 967, 9 N.W.2d 464 (1943).
19. Erhardt v. Ruan Transportation Corp., 245 Ia. 193, 61 N.W.2d 696 (1953).

cannot waive the privilege. One would suppose that since the statute begins "All accident reports made by persons involved in accidents shall be without prejudice to the individual so reporting," the effect would be to give a privilege to the person reporting, which, like other privileges, can be waived by him.

If, however, the privilege canont be waived by the person reporting, it would seem to follow that such person would be barred, in a damage suit arising out of the collision, from giving testimony covering any matters included in the accident report. It is submitted that the court did not intend such a result, but that the result is an inevitable consequence of the court's reasoning. Research did not disclose any other holding that the privilege cannot be waived by the person reporting.

As to testimony by third persons, such as police officers, Dean Mason Ladd of Iowa, a leading authority in the field of evidence, has offered the following solution:[20] The information regarding the accident which the police officer sees, except the information actually given for the purpose of being included in the accident report, should be admitted into evidence. The officer should be able to testify then to all he sees and knows about the accident except what the participants in the accident actually tell the officer for the accident report.

As we have already noted, the Wyoming statute provides that the accident reports shall be without prejudice to the reporting party, that the report itself shall be confidential, and the reports shall not be used as evidence in any civil or criminal trial arising out of an accident. There have been no cases in Wyoming which have interpreted or applied this statute, and in a case raising the issue our court would be obliged to make a choice between the conflicting lines of authority.

Research failed to disclose any cases in which the opponent objected to testimony *by the opposite party* at the trial of a damage suit on the grounds that such testimony covered matters included in the accident report; nor could cases be found in which the defendant in a *criminal* prosecution growing out of a motor vehicle accident objected to testimony of police officers based upon matters included in the accident report.

The problem is one of weighing two conflicting considerations: (1) If admissions made by the reporting motorist are received in evidence, the effect may be almost as prejudicial as admitting the written report itself; what the motorist has stated in the hearing of someone else may be in substance what goes into the report. Thus the immunity supposedly granted by the statute would be swept away. On the other hand, (2) should the benefits of the privilege for the person reporting outweigh the necessity for the ascertainment of truth in the litigation of civil and criminal cases?

20. Ladd, Cases and Materials On Evidence, p. 230 (2nd Ed. 1955).

It would seem better to admit all statements made by persons having accident information, including the participants, but not the accident report itself. Such a rule would hardly discourage the person making the accident report from telling the truth, but at the same time make all vital accident information available at the trial of a civil or criminal action.

WILLIAM W. GRANT

A REVIEW OF THE STATE OF THE LAW ON MARRIAGE EVASION

In 1912 the Uniform Marriage Evasion Act was approved by the National Conference of Commissioners on Uniform State Laws.[1] The Act has been adopted in five states with slight modifications.[2] The Conference withdrew the Act in 1943, stating that it tended to result in confusion, because so few states had adopted it.[3]

There are no statutes or court decisions which hold that a state will not recognize a valid marriage performed in another state if the marriage could have been validly performed in the state of domicile.

To state the evasion problem concretely, we are concerned with the effect that is given by the several states to a marriage celebrated under conditions where the party or parties leave the state of their domicile in order to evade the laws of the state, and are married in another state in which there is no impediment to their contracting a valid marriage, thereafter returning to the domicile state to live as man and wife. This situation forms the setting for the present article.

There is no doubt of the power of a state to regulate the status of its domiciliaries with regard to marriage. For example, a state has the power

1. Terry, Uniform State Laws in the United States (1920), p. 404.
"UNIFORM MARRIAGE EVASION ACT
Section 1. Be it enacted, etc., That if any person intending to continue to reside in this state who is disabled or prohibited from contracting marriage under the laws of this state shall go into another state or country and there contract a marriage prohibted and declared void by the laws of this state, such marriage shall be null and void for all purposes in this state with the same effect as though such prohibited marriage had been entered into in this state.
Section 2. No marriage shall be contracted in this state by a party residing and intending to continue to reside in another state or jurisdiction if such marriage would be void if contracted in such other state or jurisdiction and every marriage celebrated in this state in violation of this provision shall be null and void.
Section 3. Before issuing a license to marry to a person who resides and intends to continue to reside in another state the officer having authority to issue license shall satisfy himself by requiring affidavits or otherwise that such person is not prohibited from intermarrying by the laws of the jurisdiction where he or she resides.
Setcion 4. Any official issuing a license with knowledge that the parties are thus prohibited from intermarrying and any person authorized to celebrate marriage shall be guilty of a misdemeanor, and shall be punished by. . . ."
2. Ill. Rev. Stat., c. 89, §§ 19-24 (1951); La. Rev. Stat., Title 9, §§ 221-224 (1950); Mass. Gen. Laws, c. 207, §§ 10-13 (Ter.Ed. 1932); Vt. Rev. Stat., c. 154, §§ 3154, 3155, 4130 (1947); Wis. Stat. § 245.04 (1951).
3. Handbook of the National Conference of Uniform State Law, p. 64 (1943).