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## Partnership–Liability for Libel Published by One Partner

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same manner that parents have been held for intrusting dangerous firearms to children. *Meers v. McDowell*, 110 Ky. 926, 62 S. W. 1013, 96 Am. St. Rep. 475, 53 L. R. A. 789 (1901). Cf. *Allen v. Bland*, 168 S. W. 35 (Tex. Civ. App. 1914) where a parent had given an automobile to his son, aged 11 years, whose head barely came above the steering wheel. The court held an automobile not *per se* a dangerous instrumentality, but found the boy incompetent to be intrusted with it. The test is the parent's negligence. In some jurisdictions there are statutes restricting or forbidding the operation of automobiles by infants below a certain age. See, for example, WEST VIRGINIA ACTS, 1917, c. 66, § 127; NEBRASKA REVISED STATUTES, 1913, c. 28, § 195; NEW YORK CONSOL. LAWS, c. 25, § 282 (2). It is clear that a parent's act in permitting a child below the statutory age to operate a car is at least evidence of negligence by the parent. *Walker v. Klopp*, 99 Neb. 794, 157 N. W. 962 (1916); *Schultz v. Morrison*, 154 N. Y. Supp. 257 (1915); cf. *Dickinson v. Stuart Colliery Co.*, 71 W. Va. 325, 328, 76 S. E. 654 (1912). In the absence of a statute or of evidence that the daughter was not a fit person to be entrusted with the operation of an automobile, it would seem clear that the decision in the principal case is correct since the daughter in operating the car was acting for her own purposes at the time of the injury. Cases reaching a contrary decision necessarily depart from well-settled principles of liability. If a rule of absolute liability is desirable in such cases, its creation is within the province of the legislature. See 28 HARV. L. REV. 91; L. R. A. 1916F, 228, note.

**PARTNERSHIP—LIABILITY FOR LIBEL PUBLISHED BY ONE PARTNER.**—A partner, while in charge of the firm's correspondence during the absence of his copartner, wrote to a customer a libelous letter concerning a transaction with the firm. *Held*, that the firm is liable for the publication of the libel. *Henry Myers & Co. v. Lewis*, 92 S. E. 988 (Va. 1917).

Although the principal case appears to be one of first impression in Virginia as to the liability of one partner for a libel published by his copartner, there is ample authority in accord in other jurisdictions. *Lathrop v. Adams*, 133 Mass. 471, 43 Am. Rep. 528 (1882); *Dunn v. Hall*, 1 Ind. 344 (1849); *Burgess & Co. v. Patterson*, 32 Ky. Law Rep. 624, 106 S. W. 837 (1908); see ROWLEY, MODERN LAW OF PARTNERSHIP, § 513. There is also authority in West Virginia, *Citizens' Nat. Bank of Parkersburg v. Blizzard et al.*, 93 S. E. 338 (W. Va. 1917), that one partner may be liable for the tort of his copartner committed in the conduct of the partnership business. Cases which seem opposed to the principal case appear to disregard the question whether the service in which the tort was committed, if done in a *proper* manner, would have been within the ordinary course of the partnership affairs and incident to its business, but require

instead that "the tortious act itself—the act in the manner in which it was done"—be within the scope of the partnership business. Thus, it has been said that committing illegal acts cannot be "within the scope of the partnership, which could only exist for lawful purposes," *Hutchins v. Turner*, 8 Hump. 414, 417 (Tenn. 1847), that partners "are not answerable for the wrongs of each other" even though done in the course of the partnership business, *Rosenkranz v. Barker*, 115 Ill. 331, 3 N. E. 93, 96 (1885), and that committing a tort is not "within the power constructively delegated to one partner as the agent of the other." *Farrell v. Friedlander*, 63 Hun 254, 18 N. Y. Supp. 215 (1892). Since such cases also hold that there is no legal presumption that one partner concurs in the wrongful acts of another, *Taylor v. Jones*, 42 N. H. 25, 37 (1860), it follows that they require express authorization or ratification of the tort to impose liability. Since the liability of one partner for the tort of his copartner is governed by the same principles as the liability of a master for the tort of his servant or a corporation for the tort of its agent, *Marshall v. Anderson*, 92 S. E. 421 (W. Va. 1917); *Linton v. Hurley*, 14 Gray 191 (Mass. 1859), it would seem that cases opposed to the principal case would not be followed should this question arise in West Virginia. This seems clearly deducible from West Virginia cases holding a master liable for the tort of his servant "done in the course of the principal's business, though unauthorized or forbidden," *McDonald v. Cole*, 46 W. Va. 186, 188, 32 S. E. 1033 (1899), and even though the act was wilful and malicious. *Bess v. Railway Co.*, 35 W. Va. 492, 496, 14 S. E. 234 (1891); *Gillingham v. Railroad Co.*, 35 W. Va. 588, 14 S. E. 243, 14 L. R. A. 798 (1891); *Gregory, Adm'r. v. Railroad Co.*, 37 W. Va. 606, 16 S. E. 819 (1893); *Hall v. Norfolk & W. R. Co.*, 44 W. Va. 36, 37, 28 S. E. 754, 41 L. R. A. 669, 67 Am. St. Rep. 757 (1897). These cases are clearly based on the test as to whether the service in which the tortious act was done—rather than the act itself—was incident to the employment. The holding of the principal case that the test of liability is whether the tortious act was such that, if it had been done in a non-tortious manner, the service would have been within the ordinary course of the partnership business, and within the real or apparent scope of the partner's authority, is clearly correct on principle and in accord with the trend of analogous authority in West Virginia.

PRACTICE AND PROCEDURE—JUDGMENTS—SUPERVISION BY COURT OVER ORDERS AND PROCEEDINGS AT RULES.—In a suit in equity, one of the defendants died on the rule day on which a decree *pro confesso* was entered at rules and the cause set for hearing. Argued, that the entries at rules were void on account of the death of the defendant and that the court had no authority to award a *scire facias* on motion, because the suit was not properly on the hearing docket. *Held*, that the court, having authority to enter any such