TORTS—RIGHT OF PRIVACY—VIOLATION BY TAPPING TELEPHONE WIRES.—Petition alleged that defendants illegally tapped telephone wires leading to plaintiff's house, listened in on plaintiff's private conversations, and employed a stenographer to take shorthand notes of such conversations. *Held,* such action constitutes a legal injury as an unwarranted invasion of the right of privacy for which redress will be granted. *Rhodes v. Graham et al.* (1931) 238 Ky. 225, 37 S. E. (2d) 46.

It is interesting to note that this is a further extension to a novel set-up of a comparatively recent branch of the law, and that Kentucky was the second state in this country to recognize this doctrine. *Foster Milburn Co. v. Chinn* (1909) 134 Ky. 424, 120 S. W. 364. Georgia had previously done so in *Pavesich v. New England Life Ins. Co.* (1905) 122 Ga. 190, 50 S. E. 68. It is also in this jurisdiction that the most recent development of such law has taken place. See note (1929) 14 ST. LOUIS L. REV. 306; Ragland, *The Right of Privacy* (1929) 17 KY. L. J. 85.

In *Brents v. Morgan* (1927) 221 Ky. 765, 299 S. W. 967, the appellant was held liable in tort for an unwarranted invasion of the plaintiff's right of privacy by having placed upon his show window a conspicuous notice to the effect that plaintiff owed him an account which he had made frequent promises to pay but which the plaintiff had failed to do. The court recognized the right of privacy as defined in Brandeis and Warren, *The Right to Privacy* (1890) 4 HARV. L. REV. 193, and further stated that certain limitations which the authors proposed were sound. Among those which the court recognized was the principle that there could not be a grant of redress for the invasion of privacy by oral publication.

The exception that the right to privacy does not prohibit any publication of matter which is of public or general interest has led to controversy as to what constitutes such matter, but the privilege in regard to such matters has been recognized. See Ragland, *The Right of Privacy,* above. In *Smith v. Suratt* (1926) 7 Alaska 416, it was held that a North Pole expedition and its equipment, the movements of its machinery and airplanes, were of a public nature so that defendant had a right to photograph anything connected with the enterprise, provided he did so lawfully, without violating any confidence of the expedition or interfering with its members. In *Jones v. Herald-Post Co.* (1929) 230 Ky. 227, 18 S. W. (2d) 972, publication of a woman's photograph with language attributed to her that she fought with men who killed her husband was held not to be a violation of the right of privacy since plaintiff had innocently become an actor in an occurrence of general public interest. In *Melvin v. Reid* (Cal. App. 1931) 297 Pac. 91, the defendants, without permission, released a motion picture based on the true story of the plaintiff's life as found in the court records seven years after plaintiff's acquittal on a murder charge, using plaintiff's maiden name as a means of advertisement. Here it was held that the release of the biographical picture, advertised as such, was a violation of the plaintiff's right of privacy, the court relying on the fact that the California Constitution guarantees the right to pursue and obtain happiness.

The recognition of the right of privacy as a right distinct from that protected by the rules of slander and libel has been extended in a growing number of cases. In *Deon v. Kirby Lumber Co.* (1926) 162 La. 671, 111 So. 55, a petition alleging malicious injury to plaintiff's social standing by forbidding defendant's employees and their families from visiting and associating with plaintiff and his family, was held to state a cause of action. A petition by the plaintiffs alleging an invasion of their right of privacy by an unauthorized publication of a picture of their malformed child, taken without their consent, after its death, was held, on demurrer, to state a cause of action. *Bozemore v. Savannah Hospital et al.* (1930) 155 S. E. 194, 171 Ga. 257.

In the cases above cited, it will be noted that the element of publication has been present. The right of privacy, however, is not dependent upon the fact that parties other than the defendant are involved; the basis of the action is the plaintiff's right to be let alone—to move about unhampered. In *Schultz v. Frankfort Marine Accident & Plate Glass Insurance Co.* (1913) 151 Wis. 537, 139 N. W. 386, shadowing of the plaintiff by private detectives was held actionable on the grounds that it publicly proclaimed him as suspect. The principal case is significant in that there seems to be no publication involved, and the nature of the right is clearly recognized as involving the feelings and sensibilities of the plaintiff without regard to the public at large. An interesting question would arise as to the liability of a party for listening in on telephone conversations without the element of wire tapping being present.

It would seem that the right of privacy, while still in a state of evolution, is an established right and in those jurisdictions in which it has been recognized, has developed mainly in accordance with the limitations suggested by *Brandeis and Warren*, above. The principal case seems to be an extension beyond the original claim of right, but it is a development which has been made necessary by the invention and ever increasing use of the telephone and radio, devices not in common use when the principles governing the right were crystallized. That further extension of the doctrine along other lines will be made necessary by modern scientific advances seems probable. H. H. G., '33.