of a representative of defendant, and the use of defendant's form-blanks. But can it be said that the presence of the appellant's representative takes the case out of the rule, if the same agreement between seller and creditor, consummated by telephone in the ordinary way, would fall within it? It is perhaps significant that the court expressed, by way of *dictum*, grave doubts as to the wisdom of the general rule and said that it was difficult to say what the credit differential represented, if not interest.[12]

Parties extending credit in sales transactions are subject to certain risks which must be covered by increasing the price of the article. It is questionable whether the creditor could survive if forced to compute this increase in price on the basis of the legal interest rates. The usury laws were intended to apply to small loan transactions in which the lender, owing to the dire need of the borrower, was able to exact from him almost any rate of interest.[13] The question is whether these laws are now to be extended to financing transactions involving conditional sales. The courts, except in this case, have answered in the negative. If regulation of this type of financing is necessary, would it not be more successfully and justifiably dealt with through legislative or administrative channels, rather than by judicial decision? J. W. F.

TORTS—LIBEL—LIABILITY OF ADVERTISING COMPANY FOR PUBLICATION OF CLIENT'S CIRCULAR—[Missouri].—Defendant's business consisted of selling to his clients lists of prospective customers. Incidentally, defendant would mail advertising matter supplied by such clients. Pursuant to this business it mailed out 10,000 copies of a circular furnished by a client, which contained a passage libelling plaintiff. Plaintiff brought an action for damages, against defendant. *Held*, that defendant, though unconscious of the libel, made the publication and was liable for it. *McDonald v. Polk & Co.*[1]

Generally there is absolute liability for the publication of a libel;[2] privi-

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12. Id. at 555. The court suggests that it is wrong to say broadly, as a matter of law, that a seller may demand one price for cash and another for credit without infringing the usury statute, and submits that it would be more correct to say that if the difference in price exceeds the legal rate of interest, the contract as a matter of law is usurious, and that if the evidence raises an issue on the point, it becomes one of fact.

13. In Frorer v. People (1892) 141 Ill. 171, 31 N. E. 395, 399, the court said: "Usury laws proceed upon the theory that the lender and the borrower of money do not occupy toward each other the same relations of equality that parties do in contracting with each other in regard to the loan or sale of other kinds of property, and that borrower's necessities deprive him of freedom in contracting, and place him at the mercy of the lender; * * *." Ryan, *Usury and Usury Laws* (1924) 128.

1. (Mo. 1940) 142 S. W. (2d) 635.

2. Peck v. Tribune Co. (1909) 214 U. S. 185; Washington Post Co. v. Chalconer (1919) 250 U. S. 290; Hulton v. Jones [1910] A. C. 20, 16 Ann. Cas. 166; Taylor v. Hearst (1895) 107 Cal. 262, 40 Pac. 392; Laudati v. Stea (1922) 44 R. I. 303, 117 Atl. 422, 26 A. L. R. 450; Morrison v. Ritchie & Co. (1902) 39 Scot. L. R. 432. See Harper, *Torts* (1938) 503, sec. 237.

leged publications are exceptions to this rule.[3] A publication is defined as an intentional or negligent communication of defamatory matter to a third person.[4] But a voluntary communication of a libellous statement is held to be intentional; *i. e.*, if a person by any act requests, procures, or causes a communication to a third party, that person has made an intentional publication.[5] Since the owner of a newspaper has indirectly procured the writing and the printing of his newspaper, a newspaper is held to be strictly liable for any communication of defamatory matter.[6] The liability of a broadcasting company is generally held to be similar to that of a newspaper.[7] However, dissemination of defamatory matter by a vendor or distributor of a newspaper,[8] a magazine or a book,[9] is not held to be a publication unless there was knowledge of the libel, or negligence in not knowing of it.[10]

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3. Cf. Scott v. Stansfield (1868) L. R. 3 Exch. 220 (anything judge does in official capacity is absolutely privileged); Garey v. Jackson (1917) 197 Mo. App. 217, 193 S. W. 920 (communications from president of corporation to its shareholders concerning the business methods of competitors is privileged). See Harper, *Torts* (1938) 24, secs. 9, 247-252, and cases cited.

4. Harbison v. Chicago, R. I. & P. Ry. (1931) 327 Mo. 440, 37 S. W. (2d) 609, 79 A. L. R. 1 (publication defined as communication of defamatory matter to third party); Howard v. Wilson (1919) 195 Mo. App. 532, 192 S. W. 473 (R. S. Mo. (1929) sec. 4368 has not changed the common law rule of publication). See Restatement, *Torts* (1938) sec. 577; Harper, *Torts* (1938) 503, sec. 237.

5. Clay v. People (1877) 86 Ill. 147; Fogg v. Boston & L. R. Corp. (1889) 148 Mass. 513, 20 N. E. 109, 12 Am. St. Rep. 583. See: Yocum v. Husted (Iowa 1918) 167 N. W. 663; State v. Armstrong (1895) 106 Mo. 395, 16 S. W. 604, 13 L. R. A. 419, 27 Am. St. Rep. 361; Odgers, *Libel and Slander* (6th ed. 1929) 141-142. Cf. Restatement, *Torts* (1938) sec. 580, comment b.

6. Thorley v. Lord Kerry (C. P. 1812) 4 Taunt. 355; Morrison v. Ritchie & Co. (1902) 39 Scot. L. R. 432; Hulton v. Jones [1910] A. C. 20, 16 Ann. Cas. 166. See: Clark v. North American Co. (1902) 203 Pa. 346, 53 Atl. 237; Comment (1934) 22 Geo. L. J. 635. Cf.: Sweet v. Post Publ. Co. (1913) 215 Mass. 450, 102 N. E. 660; Corrigan v. Bobbs-Merrill Co. (1920) 228 N. Y. 58, 126 N. E. 260, 10 A. L. R. 662. See: Odgers, *Libel and Slander*, (6th ed. 1929) 142-144, and cases cited; Harper, *Torts* (1938) 505, sec. 237, and cases cited; Restatement, *Torts* (1938) sec. 580, comment c. But see Jones v. Polk & Co. (1915) 190 Ala. 243, 67 So. 577; Wood v. Edinburgh Evening News, Ltd. (Scot. 1910) Sess. Cas. 895.

7. Coffey v. Midland Broadcasting Co. (1934) 8 F. Supp. 889; Sorenson v. Wood (1932) 123 Neb. 348, 243 N. W. 82; Miles v. Louis Wasmer, Inc. (1933) 172 Wash. 466, 20 P. (2d) 847. See: Vold, Basis For Liability For Defamation By Radio (1935) 19 Minn. L. Rev. 611; Vold, Defamatory Interpolations (1940) 88 U. of Pa. L. Rev. 249; Note (1937) 23 WASHINGTON U. LAW QUARTERLY 262. But see Summit Hotel Co. v. National Broadcasting Co. (Pa. 1939) 384 A. (2d) 304; Comment (1939) 25 WASHINGTON U. LAW QUARTERLY 133; Note (1932) 46 Harv. L. Rev. 133.

8. Emmens v. Pottle (1885) 16 Q. B. D. 354; Street v. Johnson (1891) 80 Wis. 455, 50 N. W. 395, 14 L. R. A. 203, 27 Am. St. Rep. 42; Bowerman v. Detroit Free Press (1939) 287 Mich. 443, 283 N. W. 642. Cf. Hibschman, Liability of News Vendor or Distributor for Libel (1940) 5 John Marshall L. Q. 416.

9. Vizetelly v. Mudies Select Library, Ltd. [1900] 2 Q. B. 170; Haynes v. De Beck (1914) 31 T. L. R. 115.

10. This rule applies to any one who is not the author, writer, or printer

It is a close question under the facts of the principal case whether defendant's liability should parallel that of a vendor or that of a newspaper. The Missouri court decided that, in view of the nature of the services rendered as an advertising company, defendant's liability should be determined by the rules of law applicable to a broadcasting company or a newspaper. Although the advertising company voluntarily transmitted the printed matter, like a distributor it did not compose, edit, or print what it transmitted. Like the distributor it could have exercised control over the publication of the libel only by refusing to transmit the printed matter at all. Like the distributor it could do so only if it were conscious of the libel. Why should consciousness be presumed in the case of the advertising company though not in the case of the distributor? If the advertising company had mailed a 500-page catalogue instead of a brief circular, would the analogy between its activities and those of a distributor have been more persuasive?

On the other hand, so far as it is a question of the nature of the activities, it seems as justifiable to hold defendant liable for publication in the principal case as it does to hold a broadcasting company liable for the transmission of defamatory interpolations made *ad libitum*.[11] Moreover, each may insure itself against loss by increasing rates, or by requiring surety contracts of those who use its facilities.

The trend in most fields of tort law has been away from liability without fault.[12] Yet, in the light of recent decisions, it seems that there is a countertendency to increase the application of strict liability in the field of libel and slander.[13] It has been argued that such a development is in line with good public policy, on the grounds that the protection of the individual from loss through defamation of character is socially more important than the protection of corporations from loss accruing from liability for innocent publications of a libel.[14] L. E. M.

TRUSTS—TENTATIVE TRUSTS—JOINT BANK ACCOUNT PAYABLE TO EITHER OR SURVIVOR—[Missouri].—The deceased opened a joint bank account for herself and the defendant payable to either or survivor. Deceased retained possession of the pass book, drew the interest during her lifetime, and made one withdrawal, which she later redeposited. Plaintiff, administrator of

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of a libel, or not in any way connected with or responsible for its being composed and written or printed. Odgers, *Libel and Slander* (6th ed. 1929) 132-140. When such a person innocently communicates a libel, it is sometimes said that there was an unconscious publication for which there is no liability. See: Odgers, *Libel and Slander* (6th ed. 1929) 132; Becker v. Brinkop (1935) 230 Mo. App. 871, 78 S. W. (2d) 538; Restatement, *Torts* (1938) sec. 581, comment c; Harper, *Torts* (1938) 505, sec. 237.

11. Cf.: Vold, Basis for Liability for Defamation by Radio (1935) 19 Minn. L. Rev. 611; Vold, Defamatory Interpolations (1940) 88 U. of Pa. L. Rev. 249.

12. See Harper, *Torts* (1938) c. 1; Holmes, *The Common Law* (1881) 94.

13. See supra note 7.

14. Cf. Vold, Basis for Liability for Defamation by Radio (1935) 19 Minn. L. Rev. 611.