503, 94 Atl. 269; *Crevelli v. Chicago M. & St. P. Ry. Co.* (1917) 98 Wash. 42, 166 Pac. 66. But the more modern view seems to be that the marriage relation is insufficient for the imputation of liability except where the negligent person acted as agent for the other. *Phillips v. Denver City Tramway Co.* (1912) 53 Colo. 458, 128 Pac. 460; *Love v. Detroit, J. & C. R. Co.* (1912) 170 Mich. 1, 135 N. W. 963; *Macdonald v. O'Reilly* (1904) 45 Ore. 589, 78 Pac. 753. In the light of the dissolution of the common-law unity of husband and wife, the latter view seems preferable, and the Missouri court in the principal case decided to adopt it and overrule its previous view. *O'Flaherty v. Union Ry. Co.*, above.

The decision that there could be no apportionment of damages seems to be based almost entirely upon the fact that the statutory sum is described as a penalty. The full amount was awarded despite the many cases in other jurisdictions which abate the award to the extent of the interest of persons contributorily negligent. This view seems to be accepted in all other states where contributory negligence is considered a defense to the statutory action and where the negligence of one parent is not to be imputed to the other. *Phillips v. Denver City Tramway Co.*, above; *Wolf v. Lake Erie & W. R. Co.* (1896) 55 Ohio St. 530, 45 N. E. 708; 8 R. C. L. 786; 17 C. J. 1244; 23 A. L. R. 670, 690. The opinion indicates that the decision is based upon a desire to limit the application of the doctrine of contributory negligence in statutory actions. The court does not assume to overrule the previous cases under the statute in which contributory negligence has been a good defense; but because of its disapproval of the principle, refuses to apply it to facts not clearly covered by the decisions. The court might have justified the result it reached by completely reversing its former position and holding that in an action for a statutory penalty contributory negligence is no defense. *McKay v. Syracuse Rapid Transit R. Co.* (1913) 208 N. Y. 359, 101 N. E. 885; *Wilmot v. McPadden* (1905) 78 Conn. 276, 61 Atl. 1069; *Watson v. Southern R. Co.* (1903) 66 S. C. 47, 44 S. E. 375. Absent such a basis, the decision lacks both logic and authority. J. A. G., '31.

JUDGMENTS—EFFECT OF FAILURE TO SERVE ALL JOINT DEFENDANTS.—Three defendants were sued as joint tort-feasors, but only one was served. Plaintiff proceeded to judgment without dismissing as to the two not served. On appeal the judgment was declared void as against all defendants. *Cunningham v. Franke* (Mo. A. 1929) 18 S. W. (2d) 106. The decision was put on the ground that it did not settle the rights of all parties to the action, and that R. S. Mo. (1919) sec. 4223, which provides for contribution among joint tort-feasors, would give defendants properly served rights against the other defendants without service on them, unless this result was reached.

A number of cases follow what seems to be the more conservative view in holding that failure of service against some joint defendants causes the judgment to be void against all. *Boutwell v. Grayson* (1918) 118 Miss. 80,

79 So. 61; *Lawrence v. Stone* (1909) 160 Ala. 382, 49 So. 376. But the majority of modern cases reach the opposite result. *Taylor v. Hunstead & Taylor* (Tex. Com. App. 1924) 257 S. W. 232; *Torrey v. Bruner* (1910) 60 Fla. 365, 53 So. 337. Missouri has uniformly held in contract cases that the judgment is valid against the defendants properly served. *Nations v. Beard* (1924) 216 Mo. A. 33, 267 S. W. 19; *Boyd v. Ellis* (1891) 107 Mo. A. 394, 18 S. W. 29; *Williams v. Hudson* (1887) 93 Mo. 524, 6 S. W. 261; *Lenox v. Clark* (1873) 52 Mo. 115. The question presented by the principal case is whether there is sufficient reason to reach the opposite result in tort cases.

The reason given by the Missouri court in reaching its decision is that because of the statute of contribution an injustice would be worked by the other possible result. The statute, R. S. Mo. (1919) sec. 4223, reads as follows: "Defendants in a judgment founded on an action for a private wrong shall be subject to contribution, and all other consequences of such judgment, in the same manner and to the same extent as defendant in an action founded on contract. . . ." It is evident that the purpose of the statute was to give a right of contribution in tort cases equal to the right in contract cases. But as we have seen, the Missouri court will not in a contract case declare a judgment void against all defendants merely because some are not served, notwithstanding the right of contribution among joint obligors. Why this right of contribution should be given greater importance in a tort case is difficult to see, in view of the fact that the statute creating the right declares it to be the same as in a contract action. In either case the right exists whether or not the joint obligors or tort-feasors are joined; and since it was not necessary that they be joined in the first instance, failure to serve one should not invalidate the judgment against the others.

It is true of course that no judgment against defendants improperly served should be recorded; but it does not necessarily follow that it should therefore be declared entirely void. The names of those not served should be striken from the record but the judgment alllowed to be good against those who have had their day in court. Against them the plaintiff has committed no error. J. A. G., '31.

TRESPASS BY AIRPLANE—EXTENT OF ESTATES IN LAND.—Plaintiff owned an estate next to defendant's air port, so located that planes frequently passed over plaintiff's land at low altitudes in landing and taking off. Being able to prove no actual damage, plaintiff sought to enjoin what he alleged was a technical trespass to his land. The court recognized the trespass but denied the injunction on the grounds that planes never pass twice in the same place, that there was no danger of a prescriptive easement, and that no damage was shown. *Smith v. New England Aircraft Co.* (Mass. 1930) 170 N. E. 385.

At common law, property in land was said to extend upward to infinity. *"Cujus est solum, ejus est usque ad coelum et ad infernos."* Co. Litt. 4a; 17 C. J. 391; Broom, LEGAL MAXIMS (9th ed. 1924) 260; *Hannabalson v.*