

133. State statutes imposing a license tax on soft drink retailers have been upheld. *Wingfield v. South Carolina Tax Commission* (1928) 147 S. C. 116, 144 S. E. 846. It is true that ordinances requiring a license for persons in certain occupations have at times been declared invalid, but such holdings seem to be based upon a specific conflict with statutory provisions or else qualified by the particular circumstances in issue. *City of Lubbock v. Magnolia Petroleum Co.* (Tex. 1928) 6 S. W. (2d) 80; *Case-Fowler Lumber Co. v. Winslett* (Ga. 1929) 149 S. E. 211; *People v. Hervieux* (App. Div. 1929) 236 N. Y. S. 129. C. V. E., '31.

CONTRACTS—MUTUALITY OF OBLIGATION IN ADVERTISING AGREEMENTS.—An advertising agency entered into three "contracts" with a publisher whereby the latter was authorized to publish certain advertising matter in its three newspapers. The space was to be used in one year from the date of the first insertion and to be paid for at a stated price. Both parties properly signed the "contracts." The agency never did furnish the copy and there was no first insertion. The publisher sued for damages for failure to perform. Held, that defendant, the advertising agency, was not required to make such insertion, was not bound by the "contracts," and that the so-called contracts could not be enforced for want of mutuality. *All Church Press, Inc. v. E. C. Harris Advertising Agency, Inc.* (1927) 36 Ga. App. 616, 138 S. E. 85

Mutuality of obligation is not an essential element in every contract since a promise by one person is merely one of the kinds of consideration that will support a promise by another. 6 R. C. L. 686, sec. 93. But where there is no consideration for a contract except the mutual promises of parties, the contract is not binding on one party unless it is also binding on the other. *Pope v. Thompson* (1920) 171 Wis. 468, 177 N. W. 607; *Bernstein v. W. B. Mfg. Co.* (1920) 235 Mass. 425, 126 N. E. 796; *Miami Coca-Cola Bottling Co. v. Orange-Crush Co.* (D. C. S. D. Fla. 1923) 291 F. 102; 1 Williston, CONTRACTS (1920), sec. 103e. Here the only possible consideration to support the promise of the publisher was a binding promise on the part of the advertising agency. But there was no such express promise in writing, and the court failed to find any grounds for implying one. The reasoning of the court is sound and certainly from the standpoint of the substantive law of contracts there is nothing startling about the decision. The case is followed by *Haverty Furniture Co. v. Lyon-Young Printing Co.* (1927) 37 Ga. App. 263, 139 S. E. 921.

The unenforceable "contracts" involved in the main case are thoroughly typical of advertising agreements being entered into every day. They were drawn without any regard to the incorporation of mutually binding promises, and they illustrate perfectly the "mutuality pitfall" which renders such agreements unenforceable. Though many details were provided for in the agreement it contained no binding promise on defendant to do anything. Publishers in particular should be interested to know that courts

will not enforce such "contracts," and as a warning of this fact the case is important. There is no question of policy sufficient to justify extending contract principles to protect parties from a trap which they themselves create. The parties who enter into such agreements need only look well to the drawing thereof and be sure that there are obligations mutually binding so that the contract will be enforceable. B. L. W., '31.

CRIMINAL LIBEL—INADMISSIBILITY OF EVIDENCE TO EXPLAIN MEANING OF LIBELOUS STATEMENT.—Defendant was prosecuted for criminal libel based on a placard paraded by him in front of the Massachusetts State House bearing the words, "Fuller—Murderer of Sacco and Vanzetti." Held, that a directed verdict for the defendant was properly refused, since the words taken in their usual and popular sense import a charge of murder and are libelous *per se*. Testimony that the words on the placard were used to charge only moral responsibility was held properly rejected. *Commonwealth v. Canter* (Mass. 1930) 168 N. E. 790.

Certain publications are said to be actionable *per se* and may be made the occasion of criminal prosecution—by this is meant that an action will lie for making them without proof of actual injury because their necessary consequence would be to cause injury to the person of whom they are spoken, and therefore injury is to be presumed. Words are to be taken in that sense in which they would be understood by those who heard or read them—in other words, it is a question of the natural and obvious meaning of the words used. *Ingalls v. Morrissey* (1913) 154 Wis. 632, 143 N. W. 681; *Pollard v. Lyon* (1875) 91 U. S. 225, 308; *Ogden v. Riley* (1833) 14 N. J. L. 186.

Words which are apparently actionable in themselves may be rendered not actionable by the surrounding circumstances. *Yakoviche v. Valentukevicius* (1911) 84 Conn. 350, 80 Atl. 94. The question is how would ordinary men of reasonable prudence naturally understand the language. *Herringer v. Ingberg* (1903) 91 Minn. 71, 97 N. W. 460. Thus Shakespeare has said, "A jest's prosperity lies in the ears of him who hears it."

However positive may be the charge, if it is accompanied by words which qualify the meaning and show to the bystanders that the act imputed is not criminal, this is no slander since the charge, taken altogether, does not convey to the minds of those who hear it an imputation of criminal conduct. *Brown v. Meyers* (1883) 40 Ohio St. 99. This doctrine has led to many broader extensions. In *Bridgeman v. Armer* (1894) 57 Mo. A. 528, it was held that if it appears that the words were used as a mere term of abuse, and there was in point of fact no imputation of actual theft conveyed thereby, there is no cause of action. See also *Haynes v. Haynes* (1848) 29 Me. 247; *Fawsett v. Clark* (1878) 48 Md. 494.

Some jurisdictions seem to cling to a stricter doctrine. The guilt of a person must be determined by the article itself and the meaning that would naturally be attributed to the words used therein, whether the hearers be-