

ualty etc. Co. of N. Y. (1917) 178 Ky. 369, 198 S. W. 1163. In determining whether an injury occurred by "accidental means" it would appear that the cause should govern the result, and not the result the cause, and that however unexpected the result may be, no recovery should be allowed under such a provision unless there is something unexpected in the cause or means which produced the result. *New Amsterdam Casualty Co. v. Johnson, Adm'r's*. (1914) 91 Ohio St. 155, 110 N. E. 475.

In *Caldwell v. Travelers' Insurance Co.* (1924) 305 Mo. A. 619, 267 S. W. 907, 39 A. L. R. 56, a well-considered case, it was held that death resulting from an unusual and unexpected obstruction of deceased's bowels by an operation on him for hernia is not within a policy insuring against death through accidental means. This case points out that the rule that injury or death is produced by accidental means when the result is unusual, unexpected and unforeseen, seems largely to be built upon a misconception of the language of the case of *United States Accident Ass'n v. Barry*, above. See also *Zack v. Fidelity & Casualty Co. of New York* (Mo. A. 1925) 272 S. W. 995.

In the principal case the act which preceded the injury was the drinking of the supposed grain alcohol, and that which was "unforeseen, unexpected, and unusual therein" was the fact that it contained wood alcohol, a deadly poison. In other words, there was the unintentional and unexpected drinking by insured of a poisonous substance. The case falls within the class of cases involving the unintentional taking of poison, cases in which the insured intended to swallow what he did, but was ignorant of the fact that it contained poison. Such cases without exception have been held to involve death by accidental means. *Healey v. Mutual Accident Ass'n of the Northwest* (1890) 133 Ill. 556, 25 N. E. 52; *Traveler's Insurance Co. v. Dunlap* (1896) 160 Ill. 64, 43 N. E. 765.

The distinction between a voluntary act as the means and the unexpected result as insisted upon by one line of cases seems more logical. Yet we cannot completely divorce cause and effect. On a subject of such complexity the factual situation in each individual case is conclusive. The tendency, moreover, is to construe a policy of insurance more liberally in favor of the insured, and where the words are without violence susceptible of two interpretations, that which will cover the loss should in preference be adopted.  
E. S., '31.

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**LIBEL—PUBLICATION—COMMUNICATION TO ATTORNEY AND TO STENOGRAPHER.**—In *Freeman v. Dayton Scale Co.* (Tenn. 1929) 19 S. W. (2d) 255, the plaintiff was an employee of the defendant and had his attorney write the defendant in regard to a balance alleged to be due him. The libelous letter in question passed from the defendant to the attorney in the course of the correspondence. The defendant dictated the letter to a stenographer as indicated by the initials "C. K." on the left-hand side of the letter. The Court held that: "Communications made to a libelled party's attorney corresponding for him regarding the specific matter in connection with which

the libelous matter is used, are not thereby given publication; and the incidental dictation of such communication to an employee stenographer is not a publication of libelous matter."

The general rule in regard to a publication of libel is that any communication of defamatory matter to a third person constitutes a publication. 36 C. J. 1223; *Vicknair v. Daily States Pub. Co.* (1923) 153 La. 677, 96 So. 599; *Roberts v. English Mfg. Co.* (1908) 155 Ala. 414, 46 So. 752. This rule indicates that publication is purely a question of fact, and having decided that a communication is a publication, it is necessary to decide whether or not it is privileged. The *Freeman* case overlooks this distinction and merely states that there has been no publication. Two New York cases, *Wells v. Belstrat Hotel Corporation* (1925) 212 App. Div. 366, 218 N. Y. S. 625 and *Schinzel v. Vuyk* (1926) 126 Misc. 202, 213 N. Y. S. 135, also overlook the distinction spoken of—although of course, the conclusion reached is of the same practical effect—and seem to be the best authority for the *Freeman* decision, on the view that communications to an attorney are held not to constitute a publication. In *Wright v. Great Northern Ry. Co.* (Mo. A. 1916) 186 S. W. 1085, the court refused to term a letter written in reply to a demand by libellee's agent a privileged communication. In accord: *Com. v. Pavitt* (Penn.) 2 Del. Co. Rep. 16. See also *Brown v. Elm City Lumber Co.* (1914) 167 N. C. 9, 82 S. E. 961, where the court made a statement to the same effect, although the question in the case was whether or not there was any libelous matter.

There is abundant authority concerning communications made to an employee of the libellant by way of necessity, as, for example, to a stenographer. Many courts refuse to characterize such publication as privileged on the ground that the libelous matter did not concern any duties relating to the business of the libellant or the firm by which he was employed. *Quillinan v. Stuart* (1917) 380 Ont. L. Rep. 623; *Pullman v. Hill* (1891) 1 Q. B. 524. *Nelson v. Whitten* (1921) 272 F. 135 refused to extend the privilege and held the communication to a stenographer to be a publication because it was not in the usual course of a merchant's business to write libelous letters. If he does so, he must write them himself or suffer the consequences. In accord are *Gambrill v. Schooley* (1901) 93 Md. 48, 48 Atl. 730; *Ferdon v. Dickens* (1909) 161 Ala. 181, 49 So. 888; *Sun Life Assur. Co. v. Bailey* (1903) 101 Va. 443, 44 S. E. 692; *Adams v. Lawson* (Va. 1867) 17 Gratt. 250.

A more liberal view was expressed in *Dowsius v. Goblet Freres* (1894) 1 Q. B. 842 and *Edmondson v. Birch & Co.* (1907) 1 K. B. 371, where a publication to a stenographer was held privileged upon the ground that it was the duty of the libellant in discharge of business to write the letter. This is in line with the *Freeman* case. In *Harper v. Hamilton Retail Grocer's Ass'n* (1900) 320 Ont. L. Rep. 295, the same reasoning was used to extend the privilege to situations where the stenographer was an occasional employee of the libellant. *Cartwright-Caps Co. v. Fischel* (1917) 113 Miss. 359, 74 So. 278, also extends the privilege, basing the decision on the ground that a

corporation is forced to act by agents. One case distinguishes between situations where the libellant and stenographer are employed by a common employer and those where the libellant is the employer. In the former no publication is held to occur, while in the latter an unprivileged publication takes place. *Owen v. Ogilvie Pub. Co.* (1898) 32 App. Div. 465, 53 N. Y. S. 1038. Such a distinction seems highly superficial and impractical, but has been followed expressly by *Central of Georgia R. Co. v. Jones* (1916) 18 Ga. App. 414, 89 S. E. 429, although repudiated in *Berry v. City of N. Y. Ins. Co.* (1923) 210 Ala. 369, 98 So. 290. *Globe Furniture Co. v. Wright* (1920) 49 App. D. C. 315, 265 F. 873, held that a communication to an employee other than a stenographer—the communication here being more than a mere mechanical one for the purpose of typing a letter—was privileged.

The weight of modern authority seems to regard publication to a stenographer as privileged, but hardly justifies such publication to libellee's attorney or agent unless the recent New York decisions cited are followed. It is, of course, a serious question whether the plaintiff's reputation should be sacrificed, in either of these situations, to modern business methods.

G. E. S., '31.

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**NEGLIGENCE—CONTRIBUTORY NEGLIGENCE NOT A DEFENCE FOR VIOLATION OF HIGHWAY STATUTE.**—In an action for damages for the killing of a dog, the facts showed that plaintiff violated a statute declaring it unlawful for the owner of a dog to allow it on the highway, and defendant violated an act regulating the operation of motor vehicles on the highway in driving on the wrong side of the road. *Held*, that the contributory negligence of plaintiff was no defence in view of defendant's "gross negligence" in driving on the wrong side of the road. *Craig et al. v. Stagner* (Tenn. 1929) 19 S. W. (2d) 234.

The case is unusual in declaring a violation of a highway statute "gross negligence." It must be noted that it was not shown that defendant was conscious of the peril of the dog. The court relied entirely on the findings of fact of the trial court which characterized defendant's conduct as "gross negligence." The opinion merely says that defendant was driving on the wrong side of the street. Plaintiff's negligence is found in the violation of the statute relating to the presence of dogs on the highway. The violation of a statute or ordinance is generally held to amount either to *prima facie* negligence or negligence *per se*. *Cauldwell v. Bingham & Shelley Co.* (1917) 84 Ore. 257, 163 Pac. 827; *Alexander v. Industrial Board* (1917) 281 Ill. 201, 117 N. E. 1040. In the principal case, the court followed the decision in *Cincinnati N. O. & T. R. Co. v. Ford* (1918) 139 Tenn. 291, 202 S. W. 72, and declared that the statute was designed to eliminate a public nuisance and a violation of it was therefore negligence *per se*.

A host of authorities announce the rule that when defendant's conduct amounts to wanton disregard of life or property, akin to willful misconduct, the plaintiff's negligence is immaterial. *Evans v. Illinois Cent. R. Co.*