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TORTS IN MISSOURI—1957*

GLENN A. McCLEARY**

As our relationships continue to become more and more complex in an ever changing society, tort law must continue to show an elasticity in recognizing new claims. The automobile brings the driver into infinitely more relationships than the slower vehicle of the prior period. Likewise, the risks of producing injuries by one spouse on the other before the days of the automobile usually were not so great. The policy of upholding the marital relation weighed more heavily than the need for compensation for the tort committed, and courts approved the reasoning that due to the marital relation, the husband and wife were one juristic person, and one could not commit a tort on oneself nor could one sue oneself in tort. The married women's acts together with the seriousness of the injuries resulting from automobile accidents are causing the courts to re-examine the doctrine that one spouse cannot sue the other in tort, particularly in certain situations which would not strain the marital relation. Intentional and willful injuries arise when there is little left of the relation between the spouses. Instances of simple negligence place no strain on the relation where there is insurance to ease the feeling of blame. Our court recognized this where it was an attitudinal tort, the parties marrying two days later.

Another step in this direction was taken in *Ennis v. Truhitte*,¹ in an action against the administrator of the estate of plaintiff's deceased husband for negligence in the operation of an automobile in which the wife was a passenger and the husband the driver, and for willful, wanton and intentional wrongdoing, the court en banc holding that the action was maintainable. The husband being dead, the court recognized that

*This Article contains a discussion of selected 1957 Missouri court decisions.

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1. 306 S.W.2d 549 (Mo. 1957) (en banc), 23 Mo. L. Rev. 366 (1958). Judge Eager dissented on the ground that the rule of strict disability, which forbids a wife to sue her husband in tort, should not be "abruptly abandoned" by judicial decision; instead the change should be made by the legislature. He admits that there are somewhat logical arguments in favor of change, but he fears "far-reaching implications" beyond the automobile cases where "the liberalizing of this rule of disability has been 'encouraged by the presence of liability insurance . . .'" For a case abrogating the common law rule, see *Leach v. Leach*, 300 S.W.2d 15 (Ark. 1957), 23 Mo. L. Rev. 103 (1958).

"the reasons of policy upon which the rule is based, the fact of their being husband and wife, have vanished."²

More frequently, cases are appearing for injuries suffered in accidents involving aircraft. They show the ever expanding area of tort law and, at the same time, illustrate the capacity of common law principles to apply to new situations.

In reviewing the negligence cases, it has seemed to the writer that, perhaps, this article might with some propriety, be labelled a study of instructions, for the cases which have been appealed are based mainly upon the contention that prejudicial error has been committed in the giving, or in the refusal to give, certain instructions. Many of the cases have been reversed on this ground and a second trial necessitated. There does not seem to be much contention about the law involved; instead it is over the proper hypothesization of the facts to aid the jury. The court approved an earlier decision which pointed out that "the practice of sprinkling quantities of 'if so', 'if any' or 'if you so find' after each hypothesis in an instruction tends to make it confusing and unintelligible. . . ."³ In *Nichols v. Steffan*,⁴ the court approved an instruction in which, after the initial "if you find and believe"⁵ heading, the defendant separated every other fact submitted in the instruction from all others with "and". The appellant had contended that the jury would be misled in determining the question of fact presented by concluding that the disputed fact in question was assumed to be true. The court did not agree with this contention and said that the word "and" was a conjunction and "as used in the instruction joined all of the facts hypothesized . . . after the words 'if you find and believe from the evidence.'"⁶

I. NEGLIGENCE

A. Duties to Persons in Certain Relations

1. Possessors of Land

While store proprietors may not be negligent in failing sufficiently

2. 306 S.W.2d at 550.

3. *Nichols v. Steffan*, 299 S.W.2d 417, 419 (Mo. 1957).

4. 299 S.W.2d 417 (Mo. 1957).

5. *Id.* at 420.

6. *Ibid.*

to illuminate a parking lot maintained for customers, if there is some other condition or object combined with the lack or insufficiency of light which creates the hazard, liability may be found. In *Dean v. Safeway Stores, Inc.*,⁷ a customer made a submissible case for the jury for injuries sustained in a fall, while carrying groceries from the store to his car in the parking lot, when he tripped over a fifteen-inch wire hoop from a banana crate.⁸

2. Carriers

There was the usual number of cases brought by employees against railroads under the Federal Employers' Liability Act. However they presented no very unusual factual situations arising from an alleged failure to provide a reasonably safe place to work. These cases are noted below.⁹

7. 300 S.W.2d 431 (Mo. 1957). The trial court had set aside a verdict for the customer and had entered judgment for the store and manager and, in the alternative, had sustained a motion for a new trial. The judgment was reversed and the cause remanded.

8. Other cases predicated on the liability of store proprietors to invitees *Wattels v. Marre*, 303 S.W.2d 9 (Mo. 1957) (falling on a step where the floor of the tavern was lower than the floor of the dining room with a step between); *Vogrin v. Forum Cafeterias of America*, 308 S.W.2d 617 (Mo. 1957) (slippery condition of terrazzo sidewalk due to rain water); *Stafford v. Wolferman, Inc.*, 307 S.W.2d 468 (Mo. 1957) (falling on stairway which was wet because of slush tracked in by customers in wet snowy weather). In the last case the court reversed a judgment for the customer and remanded for retrial on the issue of liability, because of error in failing to instruct that the proprietor had a duty to warn only if the dangers would not have been known to customers in their exercise of ordinary care. The discussion by the court of the instruction given in that case makes clear just what the extent of that duty is and is quite worth reviewing.

9. *Roderick v. St. Louis Southwestern Ry.*, 299 S.W.2d 422 (Mo. 1957), there was a recovery for injuries resulting from dermatitis allegedly sustained by the employee through contact with sodium bichromate in a rust inhibitor used in the cooling system of diesel engines.

Elmore v. Missouri Pacific R.R., 301 S.W.2d 776 (Mo. 1957) was another dermatitis case arising in the same fashion as in the *Roderick* case, but recovery was denied for error in instructions for the plaintiff which submitted a finding that the places where the employee worked were not reasonably safe places of employment due to the presence of sodium bichromate, without requiring a finding of negligence. It was held that an employer may not be held on the theory of having furnished an unsafe place to work, if the unsafeness is inherent in the work itself, and is not negligent merely because he knows that the business is of a dangerous character, yet sets his employee to work at it. Before an employer engaged in a dangerous business may be liable to an employee, it must appear that the dangerous condition was not only reasonably subject to being remedied but also that the employer failed to use reasonable care to protect the employee by taking steps to remedy or abate the dangerous condition. An employer is not an insurer of his employees' safety.

In an action for the loss of a railroad brakeman's right eye allegedly occurring as a result of dust particles lodging therein when he was holding his head out of the train to watch for a signal, the jury may find that the railroad had a duty to

3. Automobiles

In *Boese v. Love*,¹⁰ the owner of a truck was held for the injuries sustained by a four year old boy, when he was struck by an automobile while he was crossing a street, at an intersection, in front of a store where the view of the driver of the automobile had been blocked by the parked delivery truck of the defendant. The evidence was held to warrant an instruction directing a verdict against the truck owner upon a finding that the truck driver knew or should have known that the truck, while so parked, was likely to endanger the safety of the boy while attempting to cross the street from the store, by obstructing the view of pedestrians by drivers of vehicles as they approached the intersection, and that the truck could have been parked at a place reasonably convenient in making deliveries without endangering the boy's safety. The driver of the automobile was found by the jury not to be negligent.

The operator of a truck, which was parked for several minutes at the curb of the street while unloading deliveries of goods to a retail merchant, in swinging the rear doors outward and striking a passing vehicle in an adjoining lane, was held in *Teters v. Kansas City Pub. Serv. Co.*,¹¹ to be "operating" a motor vehicle within the meaning of the statute requiring the highest degree of care.¹²

furnish the brakeman with goggles without cost as a protection against flying particles while in the performance of his duty. *Fitzpatrick v. St. Louis-San Francisco Ry.*, 300 S.W.2d 490 (Mo. 1957) (reversed and remanded on other grounds).

In *Wiser v. Missouri Pacific R.R.*, 301 S.W.2d 37 (Mo. 1957), the railroad employee sustained injuries when he slipped and fell on a railroad siding while inspecting cars by reason of the fact that a rock was embedded in ballast on the track.

In *Ferguson v. St. Louis-San Francisco Ry.*, 307 S.W.2d 385 (Mo. 1957) (en banc), plaintiff was using a sidewalk as a place to clean lamps. In making a running inspection of passing trains to see if any were loose or dragging or if there were hot boxes, also a part of his duties, he stepped backward from the tracks and off the sidewalk into a ditch or water drain about four feet deep at the edge of the sidewalk. It was not necessary to step off of the sidewalk to make this inspection. In directing a verdict for defendant on the issue of whether or not this was an unsafe place to work, the court held there was no negligence in failing to provide a guardrail at this point for the protection of employees (dissenting opinion by Judge Hollingsworth).

10. 300 S.W.2d 453 (Mo. 1957). For another case in which this question of liability has been presented, see *Domitz v. Springfield Bottlers, Inc.*, 359 Mo. 412, 221 S.W.2d 831 (Mo. 1949), 16 Mo. L. REV. 191 (1951).

11. 300 S.W.2d 511 (Mo. 1957). The issue was the contributory negligence of the operator of the truck.

12. A submissible case may be made against a defendant in a collision which occurred between defendant's car while being driven on defendant's right hand side of the highway and plaintiff's car being driven on his left hand side of the highway when the latter car was trapped between a truck plaintiff was passing and defendant's oncoming car. In *Nelms v. Bright*, 299 S.W.2d 483 (Mo. 1957) (en banc), a jury case was made out on the ability of the defendant, after he actually saw this

4. Aircraft

A judgment for the plaintiff was reinstated, in *Cudney v. Braniff Airways, Inc.*,¹³ for injuries sustained by an airline passenger when she was thrown from her seat during a severe downdraft while the airplane was passing through a thunderstorm. Negligence was alleged in flying through the storm after the pilot had been forewarned by scientific weather information. The case is an important contribution to the case law in this area of liability in that it shows what detailed facts a plaintiff may be able to prove in support of his allegations of specific negligence.¹⁴ At the first trial of the case, plaintiff had attempted to rely upon the doctrine *res ipsa loquitur*, but the court held that the doctrine was not applicable in this type of situation, remanding the case so that the plaintiff might plead specific negligence.¹⁵

Common law principles of negligence applicable to torts on land were prescribed to determine liability for personal injuries and property damage sustained in *Hough v. Rapidair*,¹⁶ when plaintiff's airplane crashed following an attempt to avoid a near mid-air collision with defendant's plane in the traffic pattern at a municipal airport. The evidence was held sufficient for the jury on the question of negligence of the pilot of defendant's airplane in failing to maintain a lookout for and to avoid other air traffic to the right of the airplane and aircraft

situation, to stop his car before reaching the point of the collision or to slacken his speed sufficiently to have avoided the collision.

For an instruction for the defendant where, in an effort to avoid an imminent head-on collision with the plaintiff's car being driven on plaintiff's left side of the highway, the driver of defendant's truck turned to his left, see *Morris v. Baggett Transportation Co.*, 306 S.W.2d 445 (Mo. 1957).

An instruction in *Martin v. Turner*, 306 S.W.2d 473 (Mo. 1957), that any person operating an automobile upon the public highway was required to use the highest degree of care that a very careful person would use under like or similar circumstances to prevent injury or death to persons on such highways and the absence of such care constituted negligence, was held prejudicially erroneous as it fell far short of the requirements of the statute defining the duty of such persons.

13. 300 S.W.2d 412 (Mo. 1957), 23 Mo. L. Rev. 100 (1958).

14. The plaintiff was able to show the weather forecast given to the pilot before the take-off; the actual weather conditions encountered before the sudden lurch; the weather conditions which gave warning of the likelihood of encountering downdrafts on the course which the plane was following; the custom of pilots to avoid flying through such conditions as were forecast, or to reduce speed; the discretion of the pilot to deviate from the course and to reduce speed, neither of which being attempted here; and other facts.

15. *Cudney v. Midcontinent Airlines, Inc.*, 363 Mo. 922, 254 S.W.2d 662 (Mo. 1953) (en banc), 18 Mo. L. Rev. 326 (1953). Between the two trials Midcontinent Airlines was merged with Braniff Airways.

16. 298 S.W.2d 378 (Mo. 1957).

making a final landing approach. After a verdict for the defendant, the trial court sustained plaintiff's motion for a new trial which, on appeal by the defendant, was affirmed. The plaintiff in his petition alleged negligent operation of aircraft in violation of the Air Traffic Rules of the Civil Air Regulations promulgated by the Civil Aeronautics Board, and the trial court, in giving plaintiff's principal verdict-directing instruction, instructed the jury that the violation of such rules was negligence. On this appeal the court held that violation of these rules was not to be considered negligence as a matter of law, but that the pertinent rules promulgated by federal authority in promoting safety in flight and in developing and regulating air transportation "were properly considered in evidence and were of value to the trial court and to the jury in submitting and determining the issues of negligence in failing to take the precautions commensurate with the dangers to be reasonably apprehended in the shown circumstances of this case."¹⁷

5. Telephone Service

A new question of liability in Missouri was presented in *Jennings v. Southwestern Bell Tel. Co.*,¹⁸ where notice of the emergency of fire was given to the defendant telephone company, but the operator negligently failed to connect the subscriber with the fire department, thereby delaying the arrival of the firemen with fire-fighting equipment. Due to the smoke in the house, the plaintiff alleged that the number of the fire department could not be ascertained from the telephone book; that the plaintiff advised the operator of her name and address, of the fire, smoke and emergency; that plaintiff requested the operator to connect her with the fire department; that the operator negligently failed to connect the plaintiff with the fire department or otherwise give notification of the emergency and of plaintiff's request to the fire department; that ten minutes later another attempt was made with the same result; that a third effort was made ten minutes after the second attempt and this time plaintiff was connected with the fire department which responded immediately, arriving in two or three minutes after receipt

17. *Id.* at 383. The court further said, "and we see no reason that a trial court in its discretion should not permit pertinent rules to be read into evidence; or that a violation of the substance of pertinent rules should not be hypothesized for a jury finding of negligence."

For negligence in failing to maintain sufficient airspeed on take-off, resulting in a crash of the airplane when it stalled, see *Grimm v. Gargis*, 303 S.W.2d 43 (Mo. 1957).

18. 307 S.W.2d 464 (Mo. 1957), 23 Mo. L. Rev. 369 (1958).

of the notification and successfully extinguishing the fire. The action was for the damages resulting from the delay of about twenty minutes. On motion by the defendant, the trial court had dismissed the action on the ground that the petition failed to state a cause of action. On appeal, the order of the trial court was reversed and the cause remanded for trial so that the question of proximate cause could be presented to a jury.

6. Fright and Shock

A rather extensive review was made in *Brisboise v. Kansas City Pub. Serv. Co.*,¹⁹ decided by the court en banc, of the problem of liability in the Missouri decisions for injuries suffered as a result of negligently producing fright and shock. The husband brought the action against the streetcar company for the loss of the consortium of his wife, who was allegedly injured as a result of the fright, shock, terror and alarm, suffered while driving an automobile when she was caught on the streetcar track in a traffic snarl where she was threatened with injury by the manner in which the motorman operated the streetcar in moving toward her. It was alleged that the operator "sounded or rang the bell or gong . . . loudly and incessantly, and accelerated and slackened the speed thereof, and caused a loud and hissing sound until it arrived within a very short distance of plaintiff's said wife,"²⁰ and, as a result of being frightened and terrified and put in fear of her life from being caught in a helpless and inextricable position, she then and there fainted and suffered an injury to her brain, resulting in total paralysis in her left side.

The action of the trial court in dismissing the petition, on the ground that it failed to state a claim upon which relief could be granted, was affirmed. The court distinguished various types of cases where relief might be granted for injuries resulting from mental distress, as where there was some independent tort committed, or where the conduct of the defendant toward the plaintiff was willful, wanton, and reckless, from the instant case of negligently produced fright and shock resulting in physical injuries, but where there was no "battery or bodily injury resulting other than from the alleged alarm, shock, terror or fright."²¹ In this case the facts alleged refuted the idea of intentional wrongdoing or of wanton and reckless misconduct on the part of the motorman.

19. 303 S.W.2d 619 (Mo. 1957) (en banc).

20. *Id.* at 620.

21. *Id.* at 621.

7. Humanitarian Negligence

The cases predicated on the humanitarian doctrine are treated separately in this issue of the REVIEW by Mr. Becker, so that special consideration may be given to this important doctrine in the tort law of Missouri.²²

B. Defenses in Negligence Cases

Since a subsequent divisional opinion cannot overrule a prior en banc pronouncement, the St. Louis Court of Appeals was confronted with a situation which it described as "difficult and delicate"²³ in passing upon the question whether, in a case arising in Illinois, the plaintiff was obliged, under the substantive law of Illinois, to plead and prove his own due care or lack of contributory negligence, notwithstanding the Missouri rule making contributory negligence an affirmative defense. The prior en banc opinion had held this to be a procedural matter; the subsequent divisional opinion held it to be substantive. In re-examining the problem, the court en banc in *O'Leary v. Illinois Terminal R.R.*,²⁴ expressly approved the position taken in division and overruled earlier Missouri decisions which had been followed in the prior en banc ruling.²⁵

Whether the law of Missouri or of Illinois applied in *Gerhard v. Terminal R.R. Ass'n of St. Louis*,²⁶ turned on whether accidents occurring on the Illinois side of a bridge spanning the Mississippi River between the states fell within the "concurrent jurisdiction" of the courts of each state under their respective enabling acts. The automobile of the deceased motorist had struck a curved curbing on the ramp approach to the bridge, had veered to the opposite side, and had crashed through the bridge railing. The question presented was whether the accident occurred "on the river Mississippi"²⁷ within the intent of Congress as expressed in the enabling acts. If answered in the affirmative, Missouri law would apply. The court held that the accident did not occur "on the river Mississippi" and, therefore, the law of Illinois applied, for the reason

22. See William H. Becker's article entitled "The Missouri Humanitarian Doctrine—1956, 1957" which appears in this issue of the REVIEW.

23. *O'Leary v. Illinois Terminal R.R.*, 299 S.W.2d 873, 875 (Mo. 1957) (en banc).

24. 299 S.W.2d 873 (Mo. 1957) (en banc). For a more complete discussion of the problem, see 23 Mo. L. REV. 361 (1958).

25. See also *Gerhard v. Terminal R.R. Ass'n of St. Louis*, 299 S.W.2d 866 (Mo. 1957) (en banc).

26. 299 S.W.2d 866 (Mo. 1957) (en banc).

27. *Id.* at 869.

"that the term 'concurrent jurisdiction' in this situation 'refers to the effect of the law of each state within the domain of the other covered by water divided by the boundary line between the two states, as regards persons or things on the water concerned or connected in some way with the use thereof for purposes of navigation . . .'"²⁸ and "'does not extend to permanent structures attached to the river bed or the banks.'"²⁹ However, the court, by dictum, agreed with the conclusion in an earlier St. Louis Court of Appeals decision,³⁰ in which the injuries resulted from a collision of two automobiles upon the Illinois side of a bridge spanning the Mississippi River, and where it was held that the case fell within the concurrent jurisdiction of Missouri and, thereby, was governed by the laws of Missouri. In that case the court reasoned that the bridge, being used as a means of transportation by the parties, was a situation analagous to the use of a ferryboat. In the instant case the court felt that the appeals decision represented "an extreme and liberal application of the doctrine and that the courts will likely be very reluctant to extend it further."³¹

In an action for injuries sustained in a side-swipe collision, resulting in the amputation of the plaintiff's arm, the evidence was held sufficient, in *Martin v. Turner*,³² to authorize a finding that the negligence of the plaintiff, in driving with his left arm out of the window of his car, was a direct contributing cause of the loss of his arm, and a refusal of defendant's requested instruction on this issue of plaintiff's contributory negligence was prejudicial error.³³

28. *Ibid.*

29. 299 S.W.2d at 870.

30. *Smoot v. Fischer*, 248 S.W.2d 38 (St. L. Ct. App. 1952).

31. 299 S.W.2d at 870.

32. 306 S.W.2d 473 (Mo. 1957).

33. Other cases may be noted in which defensive issues were raised but no new problems.

Where defendant's instruction submits plaintiff's contributory negligence, plaintiff's verdict-directing instruction which permitted the jury to find for plaintiff, if it found that the negligence of the defendant "'directly caused or contributed to cause' the automobile collision and injury," was prejudicially erroneous where there was no evidence submitting any cause of the collision other than evidence tending to show the negligence of defendant and plaintiff. *Marsh v. Heerlein*, 299 S.W.2d 441 (Mo. 1957).

In the absence of evidence that there was anything said or done by the driver of the automobile, in the rear seat of which plaintiff was riding as a passenger, which would indicate to the passenger that the host motorist was not exercising or would not exercise the highest degree of care in operating the automobile on the highway, the passenger had no duty to maintain a lookout for other automobiles approaching the highway from a private driveway. *Happy v. Blanton*, 303 S.W.2d

C. *Damages in Negligence Cases*

In *Moss v. Mindlin's Inc.*,³⁴ a measure-of-damage instruction while not commended by the court, was not held to be prejudicially erroneous. The court observed that detailed and complicated damage instructions in the usual personal injury case may list items which may be somewhat overlapping, and it would be better to leave many of the suggested items for jury argument, thus obviating objections that the instructions authorized the recovery of double, triple, and quadruple damages. The instruction in this case was found by the court not to be prejudicially erroneous for the reason that "the first paragraph tells the jury that it is to assess damages against the defendant in whatever amount it may find and believe from the evidence will *properly and reasonably compensate* the plaintiff for *any and all injuries received* as a direct result of the casualty. The items which follow are matters which the jury may consider in assessing the damages correctly *directed* in the first paragraph."³⁵ The instruction was as follows:

The court instructs the jury that if you find the issues in favor of the plaintiff and against the defendant as submitted in other instructions herein, then it becomes your duty to assess damages against the defendant in whatever amount you may find and believe from the evidence would properly and reasonably compensate the plaintiff for any and all injuries received as a direct result of the fall mentioned in evidence.

In arriving at the damages, if any, you may take into con-

633 (Mo. 1957). Giving an instruction submitting contributory negligence which requires a guest passenger to maintain a lookout and to warn the driver of dangerous situations she could have seen had she maintained a lookout, even though the driver had been exercising the highest degree of care and there was no reason to believe he would not continue to do so, constituted error.

The giving of an "accident" instruction in negligence cases where the cause of the injury is known has long been condemned by the court for the issue is whether or not defendant was negligent. *Rehkop v. Higgins*, 306 S.W.2d 516 (Mo. 1957). Where the cause of the casualty is known the jury should be instructed on the specific issues of fact presented, otherwise an abstract instruction would tend to confuse the jury. Thus the giving of an accident instruction is limited to instances where there is evidence tending to show the cause of the casualty to be unknown.

For an application of the "rescue doctrine" as affecting the usual standards of contributory negligence, see *Dulley v. Berkley*, 304 S.W.2d 878 (Mo. 1957).

A judgment for \$65,000 in favor of the plaintiff was reversed in *Coleman v. North Kansas City Elec. Corp.*, 298 S.W.2d 862 (Mo. 1957), where plaintiff, an electrician, had taken a position atop a transformer in close proximity to a high tension wire knowing of the hazardous position and knowing his employer had reason to expect it of him.

34. 301 S.W.2d 761 (Mo. 1957).

35. *Id.* at 768-69.

sideration and account the following: The nature, character and extent of the injuries, if any, received by the plaintiff; the pain, suffering and misery which plaintiff has endured and which you may find and believe from the evidence he is reasonably certain in the future to endure as a direct result of such injuries; the physical disability and impairment which you may find and believe from the evidence that plaintiff has suffered and may be reasonably certain to suffer in the future as a direct result of said injuries; such medical, hospital, doctors, nursing, X-ray bills and other services and charges as shown in evidence, which you may find and believe from the evidence, was reasonably required to treat the said injuries if any, of plaintiff; any and all impairment of earning power and ability to work, labor and earn, if any, and all actual loss of wages and earnings as you may find and believe from the evidence the plaintiff has suffered as a direct result of said injuries; together with any future pain, suffering and disablement which you may find and believe from the evidence it is reasonably probable plaintiff may be expected to suffer and undergo as a direct result of said injuries.³⁶

II. UNLAWFUL ARREST

A marshal of a city of the fourth class and his surety were held liable, in *City of Advance v. Maryland Casualty Co.*,³⁷ for injuries sustained by the plaintiff because of an unlawful arrest and an assault made by the marshal and, thereafter, forcibly restraining him of his liberty. The marshal had seen the plaintiff drive an automobile past the defendant's home in the city at an alleged excessive speed. Some four or five hours later, the defendant drove to a place beyond the city limits, and there, without process, arrested the plaintiff for violation of the speed ordinance of the city. The section of the statute defining the powers of marshals of cities of the fourth class provides that he shall have the power to make arrests without process in all cases in which any offenses against the laws of the city or of the state shall be committed in his presence. As interpreted by the court, this section, however, does not empower the marshal to make an arrest beyond the city limits even though the offense of speeding was committed within his presence within the city.

36. *Id.* at 768.

37. 302 S.W.2d 28 (Mo. 1957).