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Montana and the Federal Judgment Lien

Fred J. Weber

this course of procedure may be followed for the reason that if the coercive relief be denied the court can still proceed with the substantive issues and grant a declaration that may for all practical purposes produce the same result.[38]

Thus, though the declaratory judgment may at first blush seem only to declare rights, it in reality does much more:

> "It enables disputes to be determined in their incipiency before they have grown into devastating battles. . . . A decision is obtainable without the prior necessity of a purported violation of law or precarious leap in the dark. . . . It enables the citizen to avoid the extraordinary legal remedies and injunctions that have accumulated so vast a cargo of technicalities that the complainant desirous of challenging an administrative power or privilege finds himself frequently engulfed in a procedural bog which bars him from his goal."[39]
>
> "And, most important of all, since no wrong is charged against the defendant and no damages are asked for, there is present in most such cases a notable absence of the bitterness and hostility frequently present in ordinary damage suits and the litigants are able to continue their business relations."[40]

Arthur Martin

[38]State ex rel. Smith v. Board of Commissioners of Shawnee County, (1931) 132 Kan. 233, 294 P. 915. (quo warranto plus declaration asked; quo warranto denied, declaration granted.)

In a case where the sewer of a municipal corporation emptied into that of another under an agreement held ultra vires, the court considered the great inconvenience of suddenly closing a sewer in daily use and refused the injunction, but declared the plaintiff's right to relief with leave to apply for an injunction after a reasonable time, should the defendant fail to make other arrangements. Islington Vestry v. Hornsey U. D. C., C. A. (1900) 1 Ch. 695.

[39]Borchard, *op. cit. supra* note p. XV.

[40]Potts, *op. cit. supra* note 36, p. 326.

MONTANA AND THE FEDERAL JUDGMENT LIEN

Does the judgment of a federal court rendered in Montana become a lien as soon as docketed by the clerk of the Federal court? Must a title searcher in Montana go to the office of the Federal District Court to be sure there is no judgment lien against his property? These questions indicate the murky[1] atmosphere surrounding Federal judgment liens in this state since the decision of *Rhea v Smith.*[2]

[1]WEBSTER'S NEW INTERNATIONAL DICTIONARY (2d ed. 1940) dark; obscure; thick or impenetrable.

[2]Rhea v. Smith (1927) 47 S. Ct. 698, 274 U. S. 434, 71 L. Ed. 1139.

Such judgment liens do have a common law background; but today "A judgment or execution lien is regarded as created, not by the act of the parties, but by operation of law . . . . Consequently, such liens are creatures of statutory provisions, owe their life and force entirely to legislation, and do not exist except by their authority."[3] Therefore this study requires a reference to various state and federal statutes. As a result of the "Process Acts" of Congress and other acts (1789, 1792, 1828, 1840)[4] the judgments of federal courts were held to be liens wherever similar state court judgments were liens within the state of rendition. These Acts do not indicate an intent of Congress to place federal court judgments in a more favorable position than state court judgments; but instead show that

> ". . . . in this, as in all other matters relating to the practice and proceedings for obtaining and enforcing judgments in the federal courts, it has always been the policy of Congress to conform the processes in the federal courts to those in the state courts."[5]

Nevertheless, the decisions interpreting the above named Acts raised several questions. The most important of these was the territorial extent of the federal judgment lien. Although several cases stated that the lien of a federal judgment was a lien throughout the state, whether the state constituted one or more federal districts,[6] the generally accepted principle is that stated in the leading case of *Massinghill v Downs*[7]:

> "In those States where the judgment on the execution of the State court creates a lien only within the county in which the judgment is entered, it has not been doubted that a similar proceeding in the Circuit Court (now District Court) of the United States would create a lien to the extent of its jurisdiction."

[3]31 AM. JUR. Judgments Sec. 302.
[4]Note: 47 L. R. A. 470, statutes and cases there cited.
[5]Dartmouth Savings Bank v. Bates (C. C. D. Kans. 1890) 44 Fed. 547.
[6]Manhattan Co. v. Evertson (N. Y. Ch. 1937) 6 Paige 457; Prevost v. Gorrell (C. C. E. D. Pa. 1877) 19 Fed. Cas. No. 11,400; Edwards, FEDERAL COURT JUDGMENT LIENS, 6 WASH. L. REV. 49, 54.
[7]Massinghill v. Downs (1849) 7 How. 766, 12 L. Ed. 903. In accord with that decision, Shrew v. Jones, 22 Fed. Cas. No. 12,818 (C.C. D.Ind. 1840); Ludlow v. Clinton Line R. R. (C.C. N.D. Ohio 1861) 15 Fed. Cas. No. 8,600; Ward v. Chamberlain (U.S. 1862) 2 Black 430; Carroll v. Watkins (D.C. S.D. Miss. 1870) 5 Fed. Cas. 2,547; United States v. Humphreys (C.C. E.D. Va. 1879) 26 Fed. Cas. No. 15,422; Evans, THE LIEN OF A FEDERAL JUDGMENT, 6 Mo. L. REV. 297, 303.

This century-old principle is still a controlling factor in recent decisions.

However the inherent injustice of automatically extending the federal judgment lien to the limits of the territorial jurisdiction, while a state judgment lien was normally limited to a county, is and was apparent.

> "This rule resulted in giving suitors in the federal courts a preference over those in the state courts as to the territorial extent of the lien, and worked a hardship on the citizens generally. The mass of the people relied confidently on the records in the clerk's office of their county disclosing all judgments that were liens on property in the county. Most people were ignorant of the all prevading lien of a judgment in a federal court, and they bought and sold lands on the faith of what the county records disclosed. The result was that cases of great hardship occurred."[8]

Clearly the result is not conformity of state and federal processes, the stated aim of the Federal legislation.[9]

II

In this state of the law, on August 1, 1888, Congress enacted the following statute:[10]

> "Judgments and decrees rendered in a district court of the United States within any State, shall be liens on property throughout such State in the same manner and to the same extent and under the same conditions only as if such judgments and decrees had been rendered by a court of general jurisdiction of such State. Whenever the laws of any State require a judgment or decree of a State court to be registered, recorded, docketed, indexed, or any other thing to be done, in a particular manner, or in a certain office or county, or parish in the State of Louisiana before a lien shall attach, this section and section 813 of this chapter shall be applicable therein whenever the laws of such State shall authorize the judgments and decrees of the United States courts to be registered, recorded, docketed, indexed, or otherwise conformed to the rules and requirements relating to the judgments and decrees of the courts of the State."[11]

[8]Dartmouth Savings Bank v. Bates, note 5 supra.
[9]Note 5, supra.
[10]25 Stat. 357 (1888), 37 Stat. 311 (1912), 28 U.S.C.A. §812; hereinafter referred to as the Act of 1888.
[11]As stated in 28 U.S.C. §812 (1934), 4 Fed. Stat. Ann. (2d ed.) 608, and 25 U.S. Stat. 357, the words underlined in the following quotation

This act resulted in a state's being able to limit the territorial extent of the federal judgment lien in two ways: (1) by refraining from requiring "a judgment or decree of a state court to be registered, docketed, indexed, or any other thing to be done, in a particular manner"; or (2) by enacting requirements as conditions precedent to establishing a state judgment lien, and also a conformity statute authorizing "the judgments and decrees of the United States courts to be registered, recorded, docketed, indexed, or otherwise conformed to the rules and requirements relating to the judgments and decrees of the courts of the State."

It must be remembered that Congress could not *order* the states to conform to a certain pattern, for ". . . . the power of Congress was not adequate to the task of extending the territorial operation of a judgment lien in the mode provided by state laws for a judgment in the state court . . . . But it was entirely competent for the state to require her clerks to perform this service . . . ."[12]

As the only United Supreme Court interpretation of the Act of 1888, *Rhea v Smith*[13] deserves careful consideration. The facts were such that if a judgment rendered by a District Court of the United States[14] were a lien on the debtor's land in the county of rendition, without the filing of a transcript of the judgment with the clerk of the state court for that county, then Rhea was entitled to recover. The Missouri statutes[15] attempting to comply with the Congressional Act of 1888, as pertinent to this discussion, provided that: (1) judgments obtained within any Federal court in Missouri shall upon filing of a transcript in the office of the clerk of any state circuit court[16] become a lien on the real estate located within the county of filing; and (2) judgments rendered by any state court of record shall be a lien from the day of rendition. The supreme court held that these Missouri statutes failed to show the uniformity required by the Federal Act

are added: ". . . by a court of general jurisdiction of such state: *Provided, that* whenever the laws of any state. . . ." The difference in wording appears immaterial.

[12]Dartmouth Savings Bank v. Bates, note 5, supra, p. 549. In accord: Lineker v. Dillon (D.C. N.D. Calif. 1921) 275 Fed. 460; Cooke v. Avery (1893) 13 S.Ct. 340, 147 U.S. 375, 37 L.Ed. 209.

[13]Note 2, supra.

[14]District Court, So. Div. of Western District of Missouri.

[15]Mo. Rev. 1919 §§1554, 1555, 1556.

[16]The court of original jurisdiction in Missouri; i.e., the equivalent of Montana's district court.

of 1888. The holding of the court in its narrow sense cannot be easily attacked, but further discussion is enlightening.

The court referred to *Massinghill v Downs* which stated that Federal court judgments were liens throughout the territorial jurisdiction of the Federal courts;[17] and decided that Congress intended to change or limit that rule

> ". . . . only in those states which passed laws making the conditions of creation, scope, and territorial application of the liens of Federal court judgments the same as state court judgments, so that where any state has not passed such laws, the rule that Federal judgments are liens throughout the territorial jurisdiction of such courts must still be in force."[18]

This sentence is the crux of the decision, and a very questionable one. For careful reading of the Congressional Act of 1888 fails to show one word conditioning the applicability of the Act on whether a state statute makes the "conditions of creation, scope, and territorial application" of a Federal lien the same as for a state lien.[19] Such a statement, especially in referring to "conditions of creation", assumes by it wording that a state has power to regulate Federal judgment liens; but Congress, by Art. I, §8, of the Federal Constitution, is the repository of that power. And it is a fundamental principle that such power can not be delegated. In addition, the Act of 1888 shows no intent on the part of Congress to delegate any such power to the states. The Act only provided for application of the Act of 1888 when a state provided equal recording facilities.

Notwithstanding any criticism, the decision is still that of our Supreme Court; and as such must be followed by the separate states in its interpretation of the Federal statutes. The tests in the case to determine the conformity or non-conformity of a state statute are best shown by quoting:

> (a) "We are dealing here with a question necessarily of great nicety in determining the effect and the priority of liens upon real estate, and the subject requires exactness. Merely approximate conformity with reference to such a

[17]Note 7, supra.
[18]Note 2, supra, p. 441.
[19]For excellent discussions on this problem see Evans, THE LIEN OF A FEDERAL JUDGMENT 6 MO. L. REV. 324; Stockton, STATUS OF THE LIEN OF FEDERAL JUDGMENTS, 15 A.B.A.J. 65; Edwards, FEDERAL COURT JUDGMENT LIENS, 6 WASH. L. REV. 62.

subject matter will not do, especially where complete conformity is entirely possible."

(b) "The risk to be run, however, is in the danger that the agent or attorney of a judgment creditor in the Federal court may forget to have the judgment transcribed and filed in the clerk's office of the circuit court of the county. Such forgetfulness by those charged with the duty is a factor to be considered and makes a real difference between the provision for the lien of the Federal court judgment and the instant attaching of a lien upon the entry of the state court judgment without further action."

(c) "It is the inequality which permits a lien instantly to attach to the rendition of the judgment without more in the state court which does not so attach in the Federal court in the same county that prevents compliance with the requirement of §1 of the Act of 1888."[20]

It is apparent from these quotations that the Supreme Court insists on *exact equality,* and will not allow even the slightest advantage in the method of inception of a state lien over a federal lien.

The court referred to *Re Jackson Light & Traction Co.,*[21] and distinguished the decision on the grounds that the judgments of Federal and state courts became liens from the time of enrollment in the county, and so there was no advantage as to a state judgment. However, from the facts of the Jackson case it appears that the clerk, as a matter of course, is required by Mississippi statutes to enroll all judgments rendered in the state court. On such facts, it may well be argued that conformity is lacking, as there is no such requirement of enrolling federal judgments. This point is not discussed in *Rhea v Smith,* but it is questionable whether this case gives the "exact conformity" spoken of in that decision.

The Circuit Court of Appeals in 1942 interpreted the Illinois statutes as providing clear conformity.[22] The statutes[23] provided that the judgments and decrees of courts of the United States, and all writs, returns, and certificates may be "registered, recorded, docketed, indexed, or otherwise dealt with, in the public offices of this state . . ."; and in addition that the judgments of United States courts shall be a lien in the same manner as state judgments. The Illinois legislature

[20]Note 2, supra, pp. 442, 443, 444; (a), (b), and (c) are this writer's designation.
[21](C.C.A. 5th 1920) 269 Fed. 223.
[22]Reconstruction Finance Corp. v. Maley (C.C.A. 7th 1942) 125 F. 2d 131.
[23]Par. 69, 69a, Chap. 77, Illinois Revised Statutes, 1939.

is to be complimented for passing statutes so clearly in conformity with the decision of *Rhea v. Smith.*

The Federal District Court in Missouri,[24] in a matter of historical interest, ruled that the Missouri statutes, revised since shown to be not in conformity in the *Rhea v. Smith* decision, were now in proper conformity with the Act of 1888. However, the decision is only dictum as to the statutes involved in *Rhea v Smith.* Several other cases have decided the state statutes involved were in conformity,[25] but none of these have any particular bearing on this article.

The result of the decision in *Rhea v Smith* was and still is considerable confusion in the different states. In 1928, after *Rhea v Smith,* Parsons[26] made an excellent study of the statutes in each of the forty-eight states. His conclusion was that twenty-five states had statutes in conformity, twenty-two had statutes not in conformity, and one state was in doubt. Glen, in 1931,[27] stated that some twenty odd states were in default in adopting legislation. It is interesting to notice that by 1938 Patton[28] indicates that thirty-five states had established the conformity needed to come under the Act of 1888; eight states having statutes of questionable conformity, and five states having no provisions which would all the Act of 1888 to apply. These articles clearly indicate the varied state interpretations of the conformity required by the Act of 1888, both before and after *Rhea v Smith.*[29]

III

Having discussed the interpretations of the Act of 1888, let us consider the question of the conformity of the Montana statutes. Montana code sections are:

> R.C.M. 1935 §9410: "Immediately after filing the judgment-roll, the clerk must make the proper entries of the judgment, under appropriate heads, in the docket kept by him; and from the time the judgment is docketed it becomes a lien upon all real property of the judgment debtor not exempt from execution in the county, owned

[24]In re B. P. Lientz Mfg. Co. (D.C.W.D. Mo.W.D. 1940) 32 Fed. Supp. 233.

[25]Rathbone v. Kimball (1928) 117 Neb. 229, 220 N.W. 244; B. A. Lott Inc. v. Padgett (Fla. 1943) 14 So. 2d 667.

[26]*Parsons,* THE LIEN OF FEDERAL COURT JUDGMENTS, 21 Law. & Bank. 349.

[27]GLEN, FRAUDULENT CONVEYANCES (1931) §23, p. 38.

[28]PATTON ON TITLES §356, p. 1051.

[29]The discussions of these authors pertaining to the conformity of the Montana statutes will be considered in section III of this article.

> by him at the time, or which he may afterward acquire, until the lien ceases. The lien continues for six years, unless the judgment be previously satisfied."
> R.C.M. 1935 §9413: "A transcript of the original docket, certified by the clerk, may be filed with the district court clerk of any other county, and from the time of the filing the judgment becomes a lien upon all the real property of the judgment debtor, not exempt from execution, in such county, owned by him at the time, or which he may afterward, and before the lien expires, acquire. The lien continues for six years, unless the judgment be previously satisfied."
> R.C.M. 1935 §9415: "A transcript of the original docket of any judgment rendered in the circuit or district court of the United States, ninth circuit, district of Montana, certified by the clerk of said court, may be filed with the district court clerk of any county, and from the time of the filing the judgment becomes a lien upon all real property of the judgment debtor, not exempt from execution, in such county, owned by him at the time, or which he may afterward, and before the lien expires, acquire. The lien shall continue for six years, unless the judgment be previously satisfied."

The Montana Supreme Court has held[30] that notwithstanding the code provisions which provide for recording final judgments, or certified copies thereof, in the office of the county recorder,[31] thereby imparting constructive notice to lienholders; still R.C.M. 1935 §9410 declares positively that a lien exists from the time of docketing the judgment.[32] In the same way the Montana court held that "The mere rendition of a judgment creates no lien,"[33] and again stated that docketing of the judgment is necessary to so create a lien.

In 1910 the Circuit Court of Appeals[34] held that what is now R.C.M. 1935 §9410[35] applied to the judgments of federal courts; that is, that a federal court judgment became a lien as soon as docketed by the clerk of the *federal court*. The decision appears in conflict with R.C.M. 1935 §9415 quoted above, but in actuality such is not the case. For R.C.M. 1935 §9415 was not enacted until 1907, and therefore had no effect on the federal

[30]Gaines v. Van Demark (1937) 106 Mont. 1, 74 P. 2d 454.
[31]R.C.M. 1935 §§4801 and 4802.
[32]In accord: Sklower v. Abbott (1897) 19 Mont. 228, 47 P. 901; Butte Hardware Co. v. Frank (1901) 25 Mont. 344, 65 P. 1; McMillan v. Davenport (1911) 44 Mont. 23, 118 P. 756.
[33]Wyman v. Jensen (1901) 26 Mont. 227, 67 P. 114.
[34]Great Falls Nat. Bank v. McClure (C.C.A. 9th 1910) 176 Fed. 208.
[35]Then termed Rev. C. 1907 §6807.

judgment in question, which was rendered in 1902. Therefore, though cited in some articles,[36] it seems this decision should be disregarded in considering the question of the conformity of the present Montana statutes.

These decisions of Montana and Federal courts furnish very little guidance on the question of the conformity of Montana statutes under the Act of 1888. They only settle the question of the necessity of docketing a judgment before a lien will attach in Montana.

The authors referred to in the preceding section[37] are not in accord in their views on the Montana statutes. Patton[38] states that inasmuch as the judgments of both state and federal courts become liens, either within or without the county in which rendered, by docketing in the office of the district court clerk of the county, there is the conformity required by the Act of 1888.[39]

However, it appears to this writer that the above opinions were given without sufficient study of *Rhea v Smith* and the Montana codes. There is little debate: (1) That R.C.M. 1935 §9410 requires a docketing of the state judgment in the *county of rendition* before it becomes a lien, and that R.C.M. 1935 §9413 requires the filing of a transcript of the original docket to establish a lien in a county *other than the county of rendition;* (2) That R.C.M. 1935 §9415 gives permission to file a transcript of the original docket of any Federal court judgment with Montana district court clerk *of any county* and from the time of filing it becomes a lien; (3) That these code sections indicate apparent conformity between state and federal judgments.

However, let us consider the other pertinent Montana statutes. R.C.M. 1935 §§9403 and 9407 make it the duty of the clerk to enter judgment within twenty-four hours after the rendition of the verdict in the judgment book. R.C.M. 1935 §9409 makes it the duty of the clerk, immediately after entering the judgment, to file certain papers, which constitute the judgment-roll. And R.C.M. 1935 §9410 as stated before, makes it the additional duty of the clerk, immediately after filing the judgment-roll, to enter the judgment in the docket. At this time if it is the judgment of a Montana court, it becomes a lien.

[36]Note 26, supra, p. 365.
[37]Note 29, supra.
[38]Note 28, supra, p. 1053.
[39]In accord: *Parsons*, THE LIEN OF FEDERAL COURT JUDGMENTS, note 26. supra.

As a result the judgment of a Montana court becomes a lien because of a series of statutory duties imposed on the clerk of court, regardless of any non-action on the part of the judgment creditor or his attorney. Yet, under R.C.M. 1935 §9415, such non-action on the part of the judgment creditor or his attorney where a Federal court judgment is involved, results in the judgment's failing to become a lien. The statute specifies that the creditor or his attorney must file a transcript of the Federal judgment docket with a Montana district court clerk before the judgment becomes a lien. Test (b) under *Rhea v Smith*[40] indicates the danger that a judgment creditor or his attorney may forget to file a transcript in the clerk of the state court's office, thus failing to create a lien. The Supreme Court indicates that such a possibility "makes a real difference."

It is this writer's opinion that the Montana statutes provide for only ". . . . approximate conformity . . . . where complete conformity is entirely possible'"[41]; and so are not in sufficient conformity with the Act of 1888 to require the filing of any federal court paper wth a Montana district court clerk before a lien comes into being.[42]

Even though the above statements are not completely accepted, the conformity of the Montana Statutes is still in doubt. It is entirely possible that on review the United States Supreme Court would hold that such a lack of conformity exists, and as a result hold that Federal judgments in Montana become a lien as soon as docketed in the office of the *clerk of the Federal court.*[43]

Such a result would be completely contrary to the intent of the legislators who passed the federal and state statutes. Their desire was to protect the innocent title searcher and to increase efficiency by greatly reducing the number of places a title search must be made.

It is therefore suggested that R.C.M 1935 §§9410, 9413 and 9415 be repealed, and the following statute, basically as prepared by Professor Evans,[45] be substituted:

[40]Note 20, supra.
[41]Test (a), note 20, supra.
[42]In accord: *Hackman*, CONCERNING RHEA V. SMITH, 22 Law. & Bank. pp. 35, 43.
Evans, THE LIEN OF A FEDERAL JUDGMENT, note 19, supra, p. 317, indicates there is no satisfactory solution as to whether or not Montana statutes supply the needed conformity.
[43]Similar result to Rhea v. Smith, note 2, supra.
[44]Note 5, supra.
[45]Evans, THE LIEN OF A FEDERAL JUDGMENT, note 19, supra, p. 328.

"1. The county clerk of every county within this state is hereby authorized to receive duly authenticated transcripts of the original docket of all judgments and decrees rendered by courts of record of this state, and by courts of the United States held within this state. It shall be his duty to note upon such transcripts the exact time and date when they were received, and to enter them promptly and uniformly in a judgment book, to be kept for that purpose. He shall also maintain an index to the judgment book, and shall index the judgments by the names of every judgment debtor, alphabetized to the letter of his family name.

"2. Judgments and decrees of courts of record of this state, and of courts of the United States rendered within this state, shall be liens upon real estate situated in any county of this state in which a transcript of the original judgment docket thereof has been filed with the county clerk of that county, as above provided. The lien shall be effective from the time the transcript is filed with the county clerk.

"3. Any bona fide purchaser for value of real estate subject to the lien of a judgment of the courts of this state or of the United States may maintain an action against the county clerk of any county for damages suffered because of the delay of said county clerk in entering and indexing said judgment."

Note that this proposed statute requires recording in the county clerk's office. In this way there is no possibility of favoring state over federal judgments as the present Montana statutes appear to do. And in addition this puts the record of judgment liens with other records of title—in the county clerk and recorder's office, and thus provides greater convenience and protection for the innocent title searcher.[46]

Calif. Code Civ. Proc. 674 provides for recording an abstract of the judgment of a state or federal court with the county recorder at which time the lien is acquired. This statute seems to show the conformity required under the Act of 1888; but does not fit in with the remainder of the Montana code provisions as well as the statute quoted above.

Therefore it is respectfully suggested that the Legislature of the State of Montana might well enact a statute such

[46]Should such a statute be adopted in Montana, it would be necessary to change R.C.M. 1935 §9414 to provide for recording a satisfaction of judgment in the county clerk's office.

as the one above quoted, before a case of great hardship occurs;[47] and in order to increase the efficiency of title search in Montana.[48]

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[47]Note 8, supra.

[48]As the justice courts of Montana are not courts of original jurisdiction, the code provisions referring to their judgments are not important in a consideration of the Congressional Act of 1888.

However R.C.M. 1935 §9690 permits the filing of the abstract of judgment of a justice court in the office of the clerk of the district court. R.C.M. 1935 §9692 indicates that from the time of filing of the abstract of judgment, a judgment rendered in a justice's court becomes a lien upon all real property of the judgment debtor in the county, with certain exemptions. It is therefore possible in Montana to create a real property lien by the proper filing of a justice court judgment.

LIBEL PER SE — OR NO LIBEL

Plaintiff sued for libel upon a publication without alleging special damages and rested his case on the contention that the newspaper article was actionable per se, then by innuendo attempted to show its damaging character. It was held among other reasons, that unless the words are actionable per se, special damages must be proven, and "For the words to be actionable per se their injurious character must be a fact of such common notoriety as to be established by the general consent of men so that the court takes judicial notice of it." *Griffin v. Opinion Publishing Company.*[1]

Under Montana's interpretation of its statute,[2] unless a publication is libelous per se, the complaint must to state a cause of action for libel, allege special damages.[3] As used by our court, "The term 'per se' means by itself; simply as such; in its own nature without reference to its relations. The words used in the libelous article must be susceptible of but one meaning to constitute libel per se."[4] Thus, we have in effect a doctrine which distinguishes between words that convey a defamatory meaning on their face, and, on the other hand, words of veiled detraction whose offense is apparent only

[1](1943) 114 Mont. 502, 138 P. (2nd) 580.

[2]R.C.M. 1935, §5690. Libel defined. Libel is a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation to the eye, which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation.

[3]Brown v. Independent Pub. Co. (1914) 48 Mont. 374, 138 P. 258; Lemner v. The "Tribune" (1915) 50 Mont. 559, 148 P. 338.

[4]Woolston v. Montana Free Press (1931) 90 Mont. 299, 2 P. (2d) 1020.