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is not the primary motivation of certain communications, but where there is a common interest between the communicating parties, and the one owes at least a moral or social duty to the other. Such a privilege is deemed "qualified," because it does not extend beyond such good faith statements as are made in the performance of his duty and believed to be true.[8] The Commissioner had two opportunities to make an official report upon his theory regarding the failure of the wildlife project, and thus could have acted within the absolute privilege accorded him. He neglected to make mention of it in his annual report to the Governor and the Legislature, and also in the then current issue of the *Conservationist,* an official magazine published by the Conservation Department. Since the Commissioner had a ready, effective and legal means of handling the situation, such a filing charges and giving the plaintiff an opportunity to be heard, the Court could see no need to extend a qualified privilege under the circumstances in which this statement was made. The audience addressed could do nothing about the situation, and the defendant owed them no legal or moral duty. Since the statement was not made in the exercise of his executive functions, the defendant could not avail himself of an absolute privilege, and the defense of qualified privilege was not available to the defendant because he had acted apart from his official duties.[9]

Recognizing that the absolute privilege accorded an official report or a speech on the floor of the Legislature was absent, the minority opinion favored a public policy that would allow a public officer, reporting to his constituents concerning the administration of the business of the State, to be protected by a qualified privilege. Unless qualified privilege is extended, informing the public concerning governmental affairs will become difficult and dangerous.

However, if the public interest requires that the public be informed of official acts, it equally requires that such information communicated, be truthful, reasonable and reliable. A less strict application of qualified privilege may foster ill-founded opinions, since truth is not a requisite to the privilege. Truthful and reasonable opinions may be communicated to the public through the privilege of fair comment, since such privilege provides the safeguards essential to reliable information, for such opinions must be reasonably inferred from true facts that in good faith are believed to be true.

JOINDER OF PARTIES UNDER SECTION 290-C OF TAX LAW

The certified question of whether a motion to sever a joint tax proceeding, brought under Section 290-c of the New York Tax Law was properly granted by the two lower courts was unanimously answered in the negative by the Court of Appeals. The Court held that modern practice, in the interests of mitigating expenses and facilitating justice, has become greatly liberalized concerning joinder procedures.

8. *Supra* note 3.
9. Whether or not such a privilege exists is a matter of law to be decided by the court. Byam v. Collins, *supra* note 5.

In the case of *Allen v. Rizzardi*[10] two groups of thirty-five and forty-eight home owners in the same housing development in New Rochelle joined in a suit against the City Assessor charging that their homes, all of which were built according to one basic plan, had been given an excessive valuation, and asked for a review of these assessments. The defendant assessor's motion to sever the causes of action and require each petitioner to file a separate petition was granted by the Supreme Court and affirmed by the Appellate Division. The case was then certified to the Court of Appeals on the question of whether this order was properly granted.

The Court of Appeals held that the two lower courts had placed excessive reliance on the case of *People v. Feitner*,[11] in which the court quashed a petition for review of assessment because of misjoinder of parties. However, the facts of that case were so different from those of the present one that it was held not to be controlling.[12] In addition to the fact differential, more than half a century had elapsed since the *Washington* decision, and during this time the Rules of Civil Practice have evolved from the point of misjoinder of parties being a grounds for dismissal, to the present New York rule, that no action shall be defeated because of misjoinder of parties.[13] Even at the time of the *Washington* decision (1900), this trend toward more liberal joinder procedures was much in evidence, as witnessed by the fact that three Justices dissented in that case.[14] While the factors which prompted this evolution were several, one of the most prominent was the growing awareness, both in the legislature and on the bench, that our economy, our way of life, has developed into a highly interrelated system. As a result, the rules which govern the procedure of our courts must facilitate the adjudication of the quite complex lawsuits which are an inevitable consequence of this development.

The *Allen* case points out that the New York Tax Law must now be read in light of the New York Civil Practice Act in its present form, at least in the field of petitions for relief from overvaluation of property.[15] In the *Washington* case, the court granted the motion to quash a petition for misjoinder, in view of the more rigid provisions pertaining to joinder as contained in Section 209

10. 5 N.Y.2d 493, 186 N.Y.S.2d 225 (1959).
11. 163 N.Y. 384, 57 N.E. 624 (1900).
12. In the above cited case, 22 owners of 22 different parcels of land in different areas of New York City joined. In the present case all owned largely identical homes in the same housing development. Said the Court in the Allen case, "The facts in that case constituted ample ground for the Court's . . . decision." *Supra* note 1 at 497, 186 N.Y.S.2d 227 (1959).
13. N.Y. Civ. Prac. Act § 192. Neither is this transformation from rigid to liberal joinder procedures peculiar to New York State. The procedure of joinder in the federal courts is also flexible. See Fed. R. Civ. Proc. 19, 20, 21.
14. See Allen v. Rizzardi, *supra* note 11, where the Court said, *inter alia*, "For . . . the remedy of each is less burdensome if all unite to obtain it." *Supra* note 2 at 388, and "Much labor . . . would thus be saved." at 387.
15. In addition to stating the requirements of a petition for relief from assessment, § 290-c of the New York Tax Law states, "Two or more persons assessed upon the same roll or rolls who are affected in the same manner by the alleged illegality, error or inequality, may unite on the same petition."

of the then existing Civil Practice Act.[16] However, the *Allen* case is the first in over fifty years where the Court of Appeals has been called upon to interpret Section 290-c of the New York Tax Law, which Tax Law has remained virtually unchanged over this period. To read the Tax Law in a vacuum, however, would be a considerable error, for as was said in the case of the *People v. Sexton*,[17] it must be read in conjunction with the Civil Practice Act where the Tax Law is silent. Section 290-c of the Tax Law says nothing of misjoinder of parties. The Civil Practice Act is where the pressures for more liberalized joinder procedures are reflected, not in the opinions of cases decided fifty years ago. In particular, Section 290-c of the Tax Law must be read in conjunction with Section 96 of the Civil Practice Act.[18] The result is that now a motion to have joined parties file separate claims can only be granted, as Section 96 of the Civil Practice Act says, "Whenever it can be done without prejudice to a substantial right."[19]

SIX-YEAR STATUTE OF LIMITATION APPLICABLE TO MUNICIPAL LAW SECTION 205-A ACTION

New York General Municipal Law, Section 205-a, grants to a fireman injured on the job a right of action to recover a minimum of $1000 from the violator of a government regulation if the violation was the cause of the injury. Is such an action one for a penalty or one for compensation?

That question was decided by the Court of Appeals in *Sicolo v. Prudential Savings Bank of Brooklyn*.[20] In December 1951 the plaintiff fireman was injured while fighting a fire in defendant's bank building. The original complaint charging negligence was served in January 1954 and was dismissed for insufficiency in March 1956.[21] An amended complaint,[22] setting forth a cause of action under Section 205-a, was served in May 1956, more than four years after the accident. Defendant contended that an action under Section 205-a was one for a penalty and therefore within the three year limitation of Section 49 of the New York Civil Practice Act. Plaintiff maintained that the action was merely one on a liability created by statute and so within the six year limitation of Section 48.[23] Special Term denied defendant's motion to dismiss the complaint.[24] The Appellate Division reversed that ruling and granted defendant's motion.[25]

16. N.Y. SESS. LAWS 1920, ch. 925, 209. At that time this section of the CIV. PRAC. ACT stated that a motion to sever may be granted if joinder "may embarrass or delay the trial of the action. . . ."

17. 274 N.Y. 304, 8 N.E. 869 (1937).

18. Section 96 of the N.Y. CIV. PRAC. ACT states that a proceeding "may be severed . . . whenever it can be done without prejudice to a substantial right."

19. *Ibid.*

20. 5 N.Y.2d 254, 184 N.Y.S.2d 100 (1959).

21. 2 Misc.2d 289, 151 N.Y.S.2d 295 (Sup. Ct. 1956).

22. The amended complaint charged that the plaintiff's injury was caused by the defendant's violation of the New York City Administrative Code § C19-161.1 which forbids the use of combustible draperies under certain conditions.

23. N.Y. CIV. PRAC. ACT § 48.

24. Sicolo v. Prudential Savings Bank of Brooklyn, 155 N.Y.S.2d 299 (Sup. Ct. 1956).

25. Sicolo v. Prudential Savings Bank of Brooklyn, 4 A.D.2d 790, 165 N.Y.S.2d 222 (2d Dep't 1957).