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Contracts - Survey of Illinois Law for the Year 1948-1949

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the holding that a minor, doing some work for a parent who is under the act, may be able to claim compensation from his parent for fairly unsubstantial services although he normally would not be permitted to sue for payment for such services or for harm arising therefrom, even if the services were substantial in nature.68

II. CONTRACTS

While there has been the customary dearth of cases dealing with general contract doctrines, the same thing cannot be said of certain of the specialized segments of contract law hereinafter mentioned, which segments have been treated separately for the benefit of those practicing therein.

INSURANCE

It could be expected that a host of claims of variable description would follow in the wake of the disastrous fire which swept through the LaSalle Hotel early one morning in 1946. Many of these claims have been settled, but one culminated in the case of Denham v. LaSalle-Madison Hotel Company.1 The plaintiff-insurer therein sought a declaratory judgment freeing it from liability in excess of $10,000 under an insurance policy whereby it had agreed to pay, on behalf of the insured and subject to definite limits of liability, all sums which the insured should become "legally obligated to pay to any person or persons by reason of liability for damage to or loss of property of any guest or invitee while said property" was in the custody or control of the assured or on the premises. The maximum limit of liability for any one occurrence or catastrophe was set at $10,000 with the further proviso that any payment made should automatically reduce the insurer's liability pro tanto, except as the contract might be reinstated under condition "H" of the policy. That clause directed that the policy should be "immediately reinstated as respects any subsequent loss, to ap-

68 See 27 CHICAGO-KENT LAW REVIEW 257 at 258, and Wilhelm v. Industrial Commission, 399 Ill. 80, 77 N. E. (2d) 174 (1948), on the related problem of the possibility of compensation between husband and wife.
1 168 F. (2d) 576 (1948).
ply in accordance with the limits of liability as before any loss occurred."

The case was heard in the District Court of the United States on a stipulation of facts which led to a finding that the claims of guests and invitees for damage or loss by fire arose out of one occurrence or catastrophe but that the claims for property found to be missing when the guests were permitted to return to their rooms represented separate occurrences and subsequent losses within the policy terms, thereby adding the maximum limit to the insurer's liability for each separate claim. On appeal by plaintiff, the issues centering around the doctrine of proximate cause were (1) whether or not all losses sustained constituted "one occurrence or catastrophe;" (2) whether, assuming the losses by fire and those by theft or mysterious disappearance were separate occurrences, each theft loss suffered by the individual guest constituted a "separate occurrence" so as to impose maximum liability for each individual loss; and (3) the extent of the duty of the insurer to defend claims in suits brought by the guests against the insured.

Plaintiff relied on numerous cases tending to establish the argument that the theft losses were proximately caused by the fire so as to make all losses part of the one transaction. The

2 168 F. (2d) 576 at 577.

3 A summary of the stipulation revealed some 250 claims against the hotel company for damage or loss totalling over $100,000, two-thirds of which represented claims for missing property; that due to the rapid progress of the fire, all patrons and employees had been compelled to depart in haste leaving their belongings behind; that the devastating effects of the fire prevented anyone from returning for at least seventeen hours, after which each guest or invitee was personally conducted to the room, and only to the room, previously occupied for the sole purpose of recovering his or her property; that it took several days before all concerned had been so escorted, and that the damage or loss due to disappearance occurred in the interim. The insurer's tender of the face amount of the policy was made without prejudice to its right to deny further liability and without prejudice to any right of the defendant to assert further claims which might be covered thereby.

defendant, arguing that the fire and theft losses belonged in different categories, relied heavily on three cases. The reviewing court concluded that none of the cases dealt with the precise factual situation involved, preferring to rest its holding on the statement of one authority that in case of the "concurrence of different causes, to one of which it is necessary to attribute the loss, it is to be attributed to the efficient predominating peril, whether it is or is not in activity at the consummation of the disaster." It necessarily followed, from that line of reasoning, that the limit of plaintiff's liability was the sum originally tendered.

Another case, of importance because of the unsettled condition of the law in Illinois, is to be noted in the Court of Appeals decision in Preston v. Aetna Life Insurance Company. The suit was based on an accident policy insuring plaintiff "against loss directly and independently of all other causes from bodily injuries . . . effected solely through accidental means." The insurer sought to avoid liability under an exclusion clause specifically negativing recovery for "injury . . . or other loss caused directly, wholly or partly . . . by disease in any form." The facts, in brief, disclosed that plaintiff, in 1944, seated at his office desk with his right shoe removed because that foot was


6 It did give particular attention to the holding in Mammina v. Homeland Ins. Co., 371 Ill. 555, 21 N. E. (2d) 726 (1939), inasmuch as it was an Illinois case in which recovery was sought for the full amount of a loss due to the total destruction of a truck following a collision with a railroad train and an ensuing fire. The court had there quoted with approval from Phillips, Insurance, §§ 1136-7, to the effect that in case of "concurrence of two causes of loss, one at the risk of the assured and the other insured against . . . if the damage by the perils respectively can be discriminated, each party must bear his proportion," and also that where different parties "are responsible for different causes of loss and the damage by each cannot be distinguished, the party responsible for the predominating efficient cause, or that by which the operation of the other is directly occasioned, as being merely incidental to it, is liable to bear the loss."


8 The issue concerning the insurer's duty to defend, growing out of a clause requiring it to do so in "any suit . . . alleging such loss and seeking damages on account thereof, even if such suit is groundless, false or fraudulent," was decided on the basis that, plaintiff's liability being only for $10,000 and being discharged by its tender, no further insurance was afforded under the policy so the obligation to defend had consequently been terminated.

9 174 F. (2d) 10 (1949).
sore, being about to place his foot on the desk-top, struck his
great toe on the corner of the desk. The toe became black and
blue and an ulcer developed which failed to heal. Gangrene fol-
lowed and amputation of the right leg below the knee became
necessary to save plaintiff's life. The insured, prior to the ac-
cident and dating back to 1941, had experienced pain in his right
leg and, in the year immediately preceding the injury, had been
receiving treatment for a circulatory trouble of the leg diagnosed
as peripheral vascular disease. The trial court, on defendant's
motion for summary judgment based largely on opinion evi-
dence of physicians, had ruled that, under the policy terms as
construed in accordance with the law of Illinois, no recovery
could be had because plaintiff’s injury and the consequent am-
putation of his leg grew from the combined effects of acci-
dent and pre-existing disease. The reviewing court, admitting
Illinois law to be applicable declared itself free to apply what,
in its opinion, was the better Illinois view inasmuch as the Su-
preme Court of Illinois had not spoken on the point involved
and the Appellate Courts were in conflict on the subject. After
discussing the several cases relied upon by plaintiff and de-
fendant respectively, it put emphasis upon the basic cases which
had given rise to the divergent views in Illinois.

10 77 F. Supp. 743 (1948). The trial judge evidently based his decision on the
premise that it was "agreed on both sides that the condition of the plaintiff's
right leg contributed to the gangrene and amputation by preventing normal healing
of the injury to the toe." See 77 F. Supp. 743 at 744.
11 Erie Railroad Co. v. Tompkins, 304 U. S. 64, 58 S. Ct. 817, 82 L. Ed. 1188
(1938).
12 That federal courts are bound by the decision of state intermediate appellate
courts unless there is persuasive evidence that the highest state court would rule
otherwise, is borne out by Stoner v. New York Life Ins. Co., 311 U. S. 464, 61 S.
Ct. 336, 85 L. Ed. 294 (1940); West v. American Teleph. & Teleg. Co., 311 U. S.
223, 61 S. Ct. 179, 85 L. Ed. 139, 132 A. L. R. 956 (1940); Six Companies of Cal.
13 Nelson v. Business Men's Assur. Co. of America, 108 F. (2d) 363 (1939); Scan-
lon v. Metropolitan Life Ins. Co., 93 F. (2d) 942 (1937); Rebenstorf v. Metro-
(1943); Wolte v. Metropolitan Life Ins. Co., 305 Ill. App. 120, 27 N. E. (2d) 63
(1940); Schroeder v. Police & Firemen's Ins. Ass'n., 300 Ill. App. 375, 21 N. E.
(2d) 16 (1939); Ebbert v. Metropolitan Life Ins. Co., 289 Ill. App. 342, 7 N. E.
(2d) 336 (1937); Wayne v. Travelers Ins. Co., 220 Ill. App. 493 (1921); Robison
v. United States Health & Acc. Co., 192 Ill. App. 475 (1915); Strehlow v. Aetna
Life Ins. Co., 183 Ill. App. 50 (1913); Crandall v. Continental Casualty Co., 179
Ill. App. 330 (1913).
In *Rebenstorf v. Metropolitan Life Insurance Company*, the Appellate Court for the First District had posed the query as to why the real test should not be whether or not the injury itself was accidental. "If," it said, "the accident, when operating upon either a healthy or unhealthy body causes death by putting in motion a chain of events which can be directly traced back to the accidental injury, why then should not such accident be considered the sole cause of the death?" It had ruled that the question of whether the death of the insured, within the meaning of the policy, was due solely as the result of an accidental injury was properly for the jury to determine, and it saw fit to affirm a judgment for the plaintiff based on a jury verdict.

In direct opposition thereto, is the holding of the Appellate Court for the Second District in *Crandall v. Continental Casualty Company*. That court had divided accidental injuries associated with disease or bodily infirmity into three classes, to-wit: (1) accidents that cause the disease which causes the death; (2) accidents that cause the death of a person suffering from a disease or bodily infirmity, which latter condition has no causal connection with the death; and (3) accidents to persons suffering from pre-existing disease or bodily infirmity, where death results from the accidental injury and the pre-existing condition operating together. Cases falling in the first and second of these categories treat the accident as the sole cause of the injury or death. In the third class, however, as it cannot be said that the accident is the sole cause or a cause independent of all others, recovery has been denied.

15 299 Ill. App. 71, 19 N. E. (2d) 420 (1939). The insured there concerned had been involved in an automobile collision on Christmas Day, 1934. He complained of severe pain over the lower ribs on the right side. The doctor taped him at chest and abdomen as X-rays showed no broken bones. No abnormality of the abdomen was observed prior to February 14th the following year at which time it was determined that the gall bladder was not functioning properly because of the presence of stones. The bladder was removed on April 1st and testimony showed that, in all probability, it had not functioned properly for many years. The insured died on April 3rd, the operating physician being of the opinion that the stress and strain of the operation had caused heart failure. See 299 Ill. App. 71 at 76, 19 N. E. (2d) 420 at 422.

16 299 Ill. App. 71 at 83, 19 N. E. (2d) 420 at 425.

17 179 Ill. App. 330 (1915).

18 See 179 Ill. App. 330 at 335.
After due consideration of the Crandall case and others in accord, the Court of Appeals in the instant case cast its weight in favor of the opposite view, as reflected in the Rebenstorf and similar cases, deeming it to be representative of the majority view in the United States. In reversing and remanding the case for trial on the merits, it concluded that the rule adopted would be the one favored by the Illinois Supreme Court whenever the question should come before it for decision.

Attention is directed to legislative enactments adopted in 1949 affecting the law of insurance. Broader fields for investment of funds of domestic companies have been opened by granting permission to invest in the bonds of the University of Illinois and of the World Bank as well as in savings or building and loan associations, so long as such organizations are "insured institutions" and provided "over-all" percentage restrictions are observed. Local mutual, district, county and township insurance companies now have permission to cover risks up to $20,000 or more provided the company has attained a specified size. They may carry part of their investment in home office buildings and a wider operating territory has been opened to them. Stock companies having a minimum capital stock of $500,000 and a surplus of $250,000 may write both fire and casualty lines, permission to do which had previously been granted only to mutuals. Of interest to life companies is the change in the Probate Act which allows guardians and conservators to invest the funds of their wards in life insurance.

19 See cases cited in note 14, ante.
23 Laws 1949, pp. 1058-9, S. B. 234 and 233; Ill. Rev. Stat. 1949, Vol. 1, Ch. 73, §§ 204.9, 204.16, 204.22, 204.23.
Internal company operations have been aided by House Bill 92 which permits domestic companies to photograph, microphotograph or film any or all of its records and the like, with permission to destroy the originals provided the reproductions are preserved. Stock companies may now change the size of the directorate by amendment to the by-laws, where formerly they were required to preserve the number fixed in the articles of incorporation. Mutual benefit associations are obliged to follow a particular statutory form for their membership, but facility of payment provisions may now be included in group accident and health policies. Premiums for credit insurance must now be approved by the Director of Insurance, and companies from without the state, soliciting business in Illinois by mail, have been made subject to service of process here.

The definition of a group life insurance policy has been broadened, by House Bill 432, to include policies issued to (1) a trustee of an employer trust fund for benefit of employees; (2) an association covering members and employees; and (3) a trustee of a fund created for employee benefits by an employers' association, a labor union or a combination of one or more employers and a labor union. That act also extends the period allowed for the retirement of indebtedness created by a group in borrowing from a financial institution or in purchasing on an installment basis where the lives of the group members have been insured for the benefit of such creditors. Other miscellaneous minor changes include a recodification of the Licensing Act which covers agents and brokers.

33 See, for example, Ill. Rev. Stat. 1949, Vol. 1, Ch. 43, §§ 135, Ch. 73, § 914, § 979(5), § 1062 et seq., and Vol. 2, Ch. 122, §§ 15-19 and 29-11a, amended by House Bills 957, 886, 931, 557, 930 and 909 respectively.
NEGOTIABLE INSTRUMENTS

No cases involving the law of negotiable instruments, worthy of inclusion herein, came before the Illinois reviewing courts during the survey period, but mention should be made of certain legislative developments. The first concerns Section 85 of the Negotiable Instruments Act and Section 17 of the Act of 1874 relating to promissory notes. The purpose thereof was to permit the establishment, where desired, of a five-day banking week. By proper resolution and by the recordation and publication thereof, a bank may, in its discretion, select one additional day a week on which to remain closed. Such chosen day is given the status of a legal holiday and paper formerly presentable for payment on that day now become presentable on the following business day.

The second deals with the time and manner to dishonor a demand instrument received by a bank upon which it has already given credit. Under the present wording, a bank, in absence of any agreement otherwise, having given credit on a demand instrument prior to midnight of the day of receipt may now dishonor or refuse payment of said instrument at any time prior to midnight of the next succeeding business day unless the instrument is presented for immediate payment over the counter. Revocation of credit given may be effected by the return of the instrument. If the instrument is being held for protest or has been lost, written notice of dishonor may be given. A provision is included for the determination of the date of dishonor and the present law defines the terms "credit" and "business day" which govern this section. The amendment should serve to recall the holding in the case of Guardian National Bank v. Huntington County State Bank, which case aptly illustrates the

36 See also Kohn, "Legislation Affecting Practice: Commercial and Bankruptcy Law," 38 Ill. B. J. 71 (1949).
40 178 N. E. 574 (1931), superseded by 206 Ind. 185, 187 N. E. 388, 92 A. L. R. 1056 (1933).
type of situation wherein Illinois banks may find the amendment to be of considerable aid.\footnote{There is some occasion to think that the amendment was brought about by reason of the problem posed in the case of Rock Finance Co. v. Central Nat. Bank of Sterling, 339 Ill. App. 319, 89 N. E. (2d) 828 (1950), not in the period of this survey. The decision therein was not released until after the amendment became effective but it parallels the thought expressed in the amended statute.}

**QUASI-CONTRACTS**

While nothing of significance has been said about the law of sales and suretyship, the essential equity which underlies the enforcement of contracts implied in law receives further illustration by reason of the holding in *Nelson v. Fricke*.\footnote{335 Ill. App. 273, 81 N. E. (2d) 763 (1948).} Plaintiff therein, having paid the price for, as well as having expended funds on the improvement of, a vacant lot, discovered that the vendor would not perform his oral promise to convey the premises. Rather than take a chance at securing specific performance on the contract, plaintiff elected to sue at law, as in general assumpsit, for recovery of the sums paid and expended. Defendant denied making any agreement to convey but particularly relied on the defense of the statute of frauds as a bar to suit. The court, acknowledging that such defense might have been applicable had the suit been based on the oral contract, affirmed a judgment for plaintiff because to do otherwise would have resulted in allowing the vendor to retain both the land and the money paid therefor, a most unconscionable result. While not new in principle,\footnote{Falls v. Visser, 250 Ill. App. 481 (1928).} the case strengthens the view that implied promises are not difficult to project when inequitable results would otherwise follow.

**III. CIVIL PRACTICE AND PROCEDURE**

**AVAILABILITY OF REMEDIES**

Intimately connected with the problem of whether a particular remedy is available to a given plaintiff is the correlative problem of whether the selected court will be legally able to award the desired relief which, in turn, leads to questions con-