Chicago-Kent Law Review

Volume 31 | Issue 1 Article 9

December 1952

Torts - Survey of Illinois Law for the Year 1951-1952

Chicago-Kent Law Review

may, therefore, have envisioned the presentation of a future case in which the unrelated and non-exempt uses might have constituted an even larger portion of the total use.

In the foregoing case, the question of exemption was raised in the customary manner by filing objections in the county court. A reverse situation is presented in the case of *Goodyear Rubber Company* v. *Tierney*[78] where the plaintiff sought to assert an exemption by means of a declaratory judgment proceeding but was held to be precluded from such remedy because a more customary statutory remedy was available.[79] The plaintiff, lessee of property owned by the federal government, had urged that the assessment was against the fee interest, whereas the defendant had contended that the assessment was made against the leasehold interest of the plaintiff, as permitted under Section 26 of the Revenue Act.[80] The court, holding that a suit for declaratory judgment could not be maintained, distinguished the cases involving the use of an injunction, offered by the plaintiff by way of analogy, as being applicable only where the property was totally exempt or where the tax had already been assessed and constructive fraud was present. This resolution of a question heretofore unanswered in Illinois was made in accordance with the general weight of authority throughout the country.[81]

VIII. TORTS

Save for those torts cases which have been more appropriately discussed in connection with other sections of this survey,[1] no cases of transcendental importance arose during the year in that

78 411 Ill. 421, 104 N. E. (2d) 222 (1952), noted in 40 Ill. B. J. 535.

79 Ill. Rev. Stat. 1951, Vol. 2, Ch. 120, § 675, provides for the payment of taxes under protest and for objection in the county court.

80 Ill. Rev. Stat. 1951, Vol. 2, Ch. 120, § 507, provides: "When real estate which is exempt from taxation is leased to another whose property is not exempt, and the leasing of which does not make the real estate taxable, the leasehold estate and the appurtenances shall be listed as the property of the lessee thereof, or his assignee, as real estate."

81 See, for example, Kariher's Petition, 284 Pa. 455, 131 A. 265 (1925). See also Borchard, Declaratory Judgments, 2d Ed., pp. 320 and 342.

1 See Division I for tort cases growing out of the master-servant relationship; Division V for those connected with the family; and Division VI regarding wrongs arising from property.

area of the law which deals with delictual conduct and its civil consequences. A few negligence cases, however, might be said to be of significance. In *Beadles* v. *Servel, Inc.*[2] for example, the tort liability of the manufacturer of a gas refrigerator, for a defect in its construction, was carried over so as to permit recovery by a second-hand purchaser thereof on the theory that one who makes an inherently dangerous article should be liable to those whom he should expect would "use the chattel . . . or be in the vicinity of its probable use."[3]

The standard of care to be expected of operators of motor vehicles was considered in two cases. In one of them, that of *Cockrell* v. *Sullivan,*[4] the owner of an automobile who had failed to comply with a provision of the Motor Vehicle Act,[5] in that he had left the car unattended without first locking the ignition and removing the key, was absolved from liability for harm inflicted by a thief fleeing therein when the Appellate Court for the Third District took a position directly opposed to the majority opinion of the First District in the case of *Ostergard* v. *Frisch.*[6] The situation would now seem ripe for determination by the Supreme Court. In the other case, that of *Van Cleave* v. *Illini Coach Company,*[7] the prime issue was the degree of care to be expected from an operator of a school bus for the safety of its non-paying student passengers. The Appellate Court for the Third District likened the duty of a person engaged in the transportation of school children to something akin to that of a common carrier.[8]

Responsibilities of real property owners were considered in

2 344 Ill. App. 133, 100 N. E. (2d) 405 (1951), noted in 30 CHICAGO-KENT LAW REVIEW 168.

3 344 Ill. App. 133 at 145, 100 N. E. (2d) 405 at 411.

4 344 Ill. App. 620, 101 N. E. (2d) 878 (1951), noted in 30 CHICAGO-KENT LAW REVIEW 277.

5 Ill. Rev. Stat. 1951, Vol. 2, Ch. 95½, § 189(a).

6 333 Ill. App. 359, 77 N. E. (2d) 537 (1948), noted in 27 CHICAGO-KENT LAW REVIEW 225. It is understood that the Appellate Court for the First District, not in the period of this survey, reaffirmed its position on the point through the medium of the case of Ney v. Yellow Cab Co., 348 Ill. App. 161, 108 N. E. (2d) 508 (1952).

7 344 Ill. App. 175, 100 N. E. (2d) 398 (1951), noted in 30 CHICAGO-KENT LAW REVIEW 190.

8 Lacking any Illinois precedent, the court followed a view adopted in Webb v. City of Seattle, 22 Wash. (2d) 596, 157 P. (2d) 312 (1945).

three other cases. In the first, that of *Jackson* v. *919 Corporation,*[9] a pedestrian was struck and injured by a plate glass store window which broke as she passed by. Despite the fact the lease to the premises contained no covenant to repair nor any reservation of a right to enter the premises, the pedestrian sought to hold the lessor jointly liable with the lessee and the building manager on the theory the lessor had washed the windows and made periodic inspections of the exterior of the building, although under no covenant to do so, hence had thereby exercised a degree of control. The Appellate Court for the First District, relying on an Oregon case[10] which had held that an express reservation of a right to enter for purpose of inspection was inadequate to constitute control by the landlord, concluded that the informal inspection and other acts performed were inadequate to hold the lessor responsible for the harm suffered.

In the second case, that of *Page* v. *Ginsberg,*[11] the court relied on one of the six exceptions to the general rule absolving lessors from liability for defects in the demised premises[12] to support recovery by the lessee's wife for injuries sustained thereby when it found that the lessor, for a specific consideration separate and apart from the tenant's obligation to pay rent, had agreed to repair a staircase but had failed to do so.[13] The third case, that of *Wagner* v. *Kepler,*[14] one treating with the question of whether or not a month to month tenancy is to be regarded as continuous or intermittent for purpose of establishing liability for injuries caused by a nuisance developing after the original entry, has been discussed elsewhere in this survey[15] but it should not be overlooked in this connection.

[9] 341 Ill. App. 519, 101 N. E. (2d) 594 (1951). Leave to appeal has been denied.

[10] Nash v. Goritson, 174 Ore. 368, 149 P. (2d) 325 (1944).

[11] 345 Ill. App. 68, 102 N. E. (2d) 165 (1951), noted in 40 Ill. B. J. 579. Leave to appeal has been denied.

[12] See Powell, Real Property, Vol. 2, §§ 238-9.

[13] While novel in Illinois, this exception has been recognized in many other jurisdictions. See annotation in 163 A. L. R. 300.

[14] 411 Ill. 368, 104 N. E. (2d) 231 (1951), reversing 342 Ill. App. 136, 95 N. E. (2d) 533 (1950).

[15] See Division VI, Landlord and Tenant, notes 34-5.

While some dram shop cases have also been already examined[16] a somewhat related problem developing out of the case of *Padulo* v. *Schneider*[17] merits attention. The plaintiff there charged a tavern keeper with common-law negligence in not protecting a female patron from being followed, and assaulted, by another intoxicated patron. The gist of the plaintiff's complaint was that the proprietor owed her a duty to protect her from molestation, to warn her that she was about to be followed, and also not to encourage her assailant to follow her in order to be rid of him. A judgment sustaining a motion to strike the complaint was affirmed by the Appellate Court for the First District when it concluded the defendant was not to be regarded as an insurer of the plaintiff's safety.

One concluding case attracts interest because of the novelty of the theory advanced to sustain a cause of action. The plaintiff, in *Altepeter* v. *Virgil State Bank*,[18] being a customer of the defendant bank, was shot and wounded while transacting business in the bank premises when an armed robber attempted to perpetrate a hold-up of the bank. He contended the defendant was negligent in not providing him with protection against an injury of that character. The Appellate Court for the Second District, affirming a judgment striking the complaint for failure to state a cause of action, came to the conclusion that the proximate cause of the injury sustained was the felonious act of an unknown bank robber whose independent wilful or negligent conduct fell beyond the boundary of reasonable anticipation by the defendant.

[16] The cases of McClure v. Lence, 345 Ill. App. 158, 102 N. E. (2d) 546 (1951), noted in 30 CHICAGO-KENT LAW REVIEW 273, 40 Ill. B. J. 464, and 65 Harv. L. Rev. 1456, and Zboinsky v. Wojcik, 347 Ill. App. 226, 106 N. E. (2d) 764 (1952), noted in 30 CHICAGO-KENT LAW REVIEW 384, are discussed above: Division II, Contracts, notes 3 to 10.

[17] 346 Ill. App. 454, 105 N. E. (2d) 115 (1952).

[18] 345 Ill. App. 585, 104 N. E. (2d) 334 (1952).