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Torts - Survey of Illinois Law for the Year 1946-1947

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SURVEY OF ILLINOIS LAW FOR THE YEAR 1946-1947*

VIII. TORTS

The volume of tort cases doubtless has not diminished, but there is little of novelty to report about. Two significant cases deal with aspects of defamation not heretofore determined in this state. In *Spanel* v. *Pegler,*[1] the federal Circuit Court of Appeals reversed a decision which had dismissed a complaint in libel. The suit grew out of the publication of a syndicated column in which the columnist had commented upon the fact that plaintiff, president of a corporation, had caused paid advertisements to be published which were more in the nature of political arguments indicative of plaintiff's inclination toward leftist tendencies, advertisements which were certainly never anti-communist in character. The court noted that, while Illinois law was controlling, no decision of this state had yet determined whether or not it was libelous per se to characterize a person as a communist or a communist sympathizer even though that question had elsewhere been answered in the affirmative. It therefore adopted such view as the law to be applied in the case but left it to a jury to determine whether the article in question was susceptible of being understood, by the average reader, to mean that plaintiff was either a communist or a sympathizer. In the other case, that of *Latimer* v. *Chicago Daily News,*[2] plaintiffs were duly licensed attorneys who were engaged in defending certain persons charged with sedition. The defendant published an article referring to that trial in which appeared the statement that "the scum of political gangsterdom in this country are represented by as craven a group of lawyers" as the writer thereof had ever seen. Plaintiffs claimed that, as they were among the "group of lawyers" referred to, they had a right of action for libel. Defendant, on the other hand, contended that as none of the plaintiffs were identified

* The first seven sections of this survey appeared in 26 CHICAGO-KENT LAW REVIEW 1 et seq.

[1] 160 F. (2d) 619 (1947), noted in 14 U. of Chi. L. Rev. 697 and 22 N. Y. U. L. Q. 514.

[2] 330 Ill. App. 295, 71 N. E. (2d) 553 (1947). Leave to appeal has been denied.

specifically no right of action accrued to any particular individual. The Appellate Court affirmed a judgment dismissing the complaint on the ground that where a derogatory remark is made about a group no right of action accrues to any one member of the group unless it can be said that the language used applies, with certainty, to all who compose the group. Again, Illinois precedents were lacking but ample authority to sustain that view exists in other jurisdictions.

Note has already been made of the soft-drink case of *Patargias* v. *Coca-Cola Bottling Company of Chicago.*[3] The complaint therein charged both a breach of warranty and also negligence in permitting a dead mouse to remain in the bottle of soft drink sold to and consumed by plaintiff. Negligence was found to exist in permitting the dead mouse to remain in the bottle at the time of cleaning and filling the same and in failing to discover the defect on inspection.[4] A claim that plaintiff was guilty of contributory negligence was rejected on the ground that while plaintiff noticed an "awful" taste after consuming a portion of the contents, the assurance of her sister, present at the time, that "hers was all right" plus the right to assume the bottle was not contaminated justified plaintiff in consuming the balance of the contents up to the moment when she became aware of the foreign substance. The absence of direct medical evidence that the injury was proximately caused by defendant's negligence was excused with the comment that the "causal connection" was clearly apparent and that it was "unnecessary for the jury to speculate or conjecture" as to the basis for plaintiff's illness.

Mention was made last year of the Appellate Court decision in *Miller* v. *Miller,*[5] a case which did not involve any new point of

[3] 332 Ill. App. 117, 74 N. E. (2d) 162 (1947). A discussion of the warranty aspects of the case appears ante under the topic of Sales.

[4] The court commented upon the inadequacy of the inspection by noting that the person charged with the task admitted that he had to perform a "tedious" operation at the rate of 264 bottles a minute, a speed which could hardly permit of a careful inspection for breaks, cracks and foreign substances.

[5] 328 Ill. App. 171, 65 N. E. (2d) 597 (1946), noted in 25 CHICAGO-KENT LAW REVIEW 88-9.

law but did present a novel factual situation with respect to the guest statute.[6] The plaintiff there concerned had been injured while riding in a trailer truck accompanying some livestock which he had hired the defendant to carry, but a judgment in his favor had been reversed. The Supreme Court took the case on certificate of importance and affirmed the judgment for defendant on the ground that one may be a "guest," even though riding in a trailer truck, providing no manner of payment, either in cash or services, is made for the ride.[7]

The right of an infant to sue for alienation of parental affections was upheld in *Johnson* v. *Luhman*[8] as a proper extension of existing doctrines. It is to be hoped that either the Supreme Court will settle, once and for all, that question or else that the legislature will concern itself with providing a sound and unquestionable basis for such actions.

A statutory change of significance has increased the maximum possible recovery in wrongful death cases of $15,000,[9] but the proviso in that statute concerning suits based on deaths "occuring outside of this state" was given interpretation in *Carroll* v. *Rogers*[10] so as to permit suit here if the actual process of dying occurs in Illinois although the fatal injuries be inflicted elsewhere. The converse of that situation was heretofore held not to deny jurisdiction.[11]

[6] Ill. Rev. Stat. 1947, Ch. 95½, § 58a.

[7] Miller v. Miller, 395 Ill. 273, 69 N. E. (2d) 878 (1946).

[8] 330 Ill. App. 598, 71 N. E. (2d) 810 (1947), noted in 25 CHICAGO-KENT LAW REVIEW 260.

[9] Laws 1947, p. 1094, H. B. 17; Ill. Rev. Stat. 1947, Ch. 70, § 2.

[10] 330 Ill. App. 114, 70 N. E. (2d) 218 (1946), noted in 25 CHICAGO-KENT LAW REVIEW 338.

[11] See Crane v. Chicago & Western R. R. Co., 233 Ill. 259, 84 N. E. 222 (1908).