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The Good Samaritan Statute

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and silence would be sufficient to toll the statute as being fraudulent concealment. However, there was present in *Barnes*, affirmative acts of fraud which initially induced the transaction. If those acts also constituted fraudulent concealment, the case does not hold that mere silence is enough. The fact that acts of fraudulent concealment occurred prior to the accruing of a cause of action is usually irrelevant for the purpose of tolling the statute of limitations.⁴⁰

Though Illinois has not yet decided, the better rule would seem to be that silence when there is a duty to speak is a fraudulent concealment that will toll the statute. When a case does present itself to the Illinois courts, there is no reason to suppose that they would choose to adopt the contrary rule. This conclusion draws some support from Illinois decisions which have recognized that there is no duty to use due care in discovering the fraud of one who stands in a confidential relationship to another.⁴¹ Recognizing the extra protection given one who stands in a confidential relationship to another, the Illinois court's adoption of a rule that invariably requires an affirmative act would be somewhat inconsistent.

MERRILL C. HOYT

THE GOOD SAMARITAN STATUTE

The Illinois Legislature has recently passed (June 21, 1965) an act designed to promote the giving of medical aid to accident victims. The theory behind the passage of the act was to encourage physicians fearful of malpractice suits to stop and render aid to those injured in automobile accidents. The statute reads,

Any person licensed pursuant to this act, or any person licensed to practice the treatment of human ailments in any other State or Territory of the United States, except a person licensed to practice midwifery, who in good faith provides emergency care without fee at the scene of a motor vehicle accident or in case of nuclear attack shall not, as a result of his acts or omissions, except wilful or wanton misconduct on the part of such person, in providing such care, be liable for civil damages.¹

This statute, or one similar to it, has been adopted by some thirty-two states.² However, it is curious that its enactment was thought to be necessary in Illinois where there is not a single reported case of a doctor being

⁴⁰ 34 Am. Jur. *Limitations* § 234 (1941).

⁴¹ *Supra* note 37.

¹ Ill. Rev. Stat. ch. 91 § 2a (1965).

² A complete list of those states where this statute or one similar to it has been enacted can be found in 13 DePaul L. Rev. 297 (1964). Also included there is a more complete review of the reasons for enacting the Good Samaritan Statute and the good expected to be thereby achieved.

sued for malpractice after stopping to render aid in an emergency situation.³ The object of the statute must have been to remove what was apparently an unfounded fear. Perhaps a program designed to educate physicians would have served the same end without denying a victim of negligent emergency care his remedy. Nevertheless, the statute has been enacted and does bar all actions which arise under the conditions described in the statute.

This statute has not yet been tested as to its constitutionality. It would appear to be especially vulnerable to an attack Article II, § 19 of the Illinois Constitution:

Every person ought to find a certain remedy in the laws for all injuries and wrongs which he may receive in his person, property or reputation; he ought to obtain, by law, right and justice freely, and without being obligated to purchase it, completely and without being obligated to purchase it, completely and without denial, promptly, and without delay.

That the statute clearly deprives a person injured by the negligent treatment of a doctor in certain emergency situations is clear. Whether it is in fact unconstitutional as conflicting with Article II, § 19 will not be discussed here.⁴

MERRILL C. HOYT

³ 13 DePaul L. Rev. 297 (1964).

⁴ The first time the legislature passed the Good Samaritan Statute, Governor Kerner vetoed it. The Governor stated that, in his opinion, the statute would be unconstitutional under the equal protection clause of the 14th Amendment of the United States Constitution, and as special legislation prohibited by the Illinois Constitution, Art. IV, § 22.

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