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Obiter Dicta

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"An *obiter dictum,* in the language of the law, is a gratuitous opinion, an individual impertinence, which, whether it be wise or foolish, right or wrong, bindeth none—not even the lips that utter it."*

Ode to a Mouse

"Consider the little mouse, how sagacious an animal it is which never entrusts its life to one hole only." Plautus, Truculuntus, Act IV, Sc. 4, 15.

The mus musculus, or the common house mouse, originated in the Far East, but through prolific effort, his family name and fame have spread the world over. His usual habitat gave him his name. However, he has been known to deviate from his normal residence, showing his blithe spirit, and this has led to much litigation and the development of mouse-made law.

Of Mice and Men(s Rea)

The Newark Evening News of July 15, 1955 under the banner headlines of "Mouse Found Guilty" reported a decision of the Appellate Division of New Jersey. The court held that "a *baby* mouse which crawled on the leg of a woman worker was legal grounds for a workmen's compensation award of $3800." Judge Francis said, "The indication is that Mrs. Hylander was not disturbed too much by the presence of the mice so long as they stayed away from her." A present example of peaceful co-existence, but the court continued saying "it is clearly deducible . . . that the thought of one of them on her person was horrifying to her." Thus compensation coverage was given to those who must suffer with factory mice.

The Pause that Refreshes

The mouse in a beverage bottle is not a myth as can be seen in Trembly v. Coca Cola Bottling Co., 285 App. Div. 539, 138 N.Y.S. 2d 332 (3d Dep't 1955). The unpredictable rodent was found, with regret by the drinker, in a "coke" bottle which the plaintiff had purchased from a vending machine at her place of business. There was uncontroverted evidence proving she drank from it before discovering the added "flavor." The court affirmed the lower decision stating the issue of the defendant's negligence was clearly for the jury. The novel question of privity of contract, necessary for a breach of warranty cause of action, was decided in the plaintiff's favor in spite of the argument of the defendant that the beverage was sold to the dealer for resale in the vending machine.

A La Carte

Perhaps the most celebrated of the mice cases is Barrington v. Hotel Astor, 184 App. Div. 317, 171 N.Y. Supp. 840 (1st Dep't 1918). The plaintiff, a temporarily unemployed actor by his own testimony, registered at the defendant hotel. Soon after he entered the dining room and ordered a dinner of kidney sauté. What he received was Kidney sauté à la souris.

After the plaintiff had eaten part of the meal, he discovered the intruder, neatly carved in two, half being on his plate and half on the casserole. As soon as the plaintiff discovered the unexpected addition to his order, he became violently sick, and remained so for some weeks. He suffered from a pronounced loss of appetite for good reason, and developed an unconscious habit of searching every meal before he ate. This neurosis can be extremely embarrassing especially in mixed company.

To add affront to injury, the defendant relied upon the argument that the plaintiff

*BIRRELL, OBITER DICTA (1885) title page.

for heinous motives carried the mouse into the hotel with him, and added to the meal himself. After all, the plaintiff was an actor and unemployed.

To meet this challenge, the court sought evidence as to the condition of the mouse. The court stated, "Whether the mouse was cooked or in its natural state, the plaintiff was unable to state, although he gave details of its condition, not necessary to be here recited, which indicated it had been subjected to heat." Further its state, whether rare, medium, or well done was difficult to determine ". . . because of the lack of familiarity of the witnesses with the external indication thereof as to this particular type of flesh." This delicate problem of proof could have easily been solved if the remains of the rodent were offered in evidence. However, it seems that the evidence was eaten by one of the defendant's waiters before his attention was called to the additional ingredient therein.

The court concluded saying, "A guest of a hotel, who orders a portion of kidney sauté has the right to expect, and the hotel keeper impliedly warrants, that such dish will contain no ingredients beyond those ordinarily placed therein." Held for the plaintiff, and he was thereby vindicated of the charge that he performed the devious act himself.

For the Growing Boy

In Ritchie v. Sheffield Farms Co., 129 Misc. 765, 222 N.Y. Supp. 724 (1927) the villain found his way into a bottle of milk and in an action for negligence the plaintiff invoked the doctrine of MacPherson v. Buick Motor Co., 217 N.Y. 382, 111 N.E. 1050 (1916). The court with deep sympathy stated what a horrible experience it must have been and that few persons would like to undergo it. The inherent danger of milk and mice in the same container was recognized by the court and the plaintiff recovered.

Fresher Tasting

The filtered tip cigarette received a boost in Foley v. Liggett & Myers Tobacco Co., 136 Misc. 468, 241 N.Y. Supp. 233 (1930). The court held the plaintiff had a cause of action in alleging negligence for permitting dead animal matter (mouse) to enter a cigarette.

Shop the SafeWay

The shopper's paradise came under attack in Young v. Great Atlantic and Pacific Tea Co., 15 F. Supp. 1018 (W. D. Pa. 1936). This time the discovery came when the plaintiff opened a jar of preserves which his wife had just purchased from the defendant market. What he found was not listed in the ingredients and he brought this action for breach of warranty. The court held that the wife is presumed to be the agent of the husband but recovery was denied because there was no actual physical injury from the mouse.

Morpheus Denied

In Gray v. Pet Milk Co., 108 F. 2d 974, (C.C.A. 7th Cir. 1940) the plaintiff decided to drink some cocoa before retiring, since cocoa is conducive to sleep. She mixed the cocoa with the defendant's milk which seemed to pour rather slowly. After drinking the mixture, she became ill and discovered the cause of her illness in the milk. The company had given literal expression to its brand name and the defendant was held liable for the "pet."

TV Mouse

As reported in New York Law Journal, May 4, 1955, a different variety of mouse entered on the scene. The New York Mirror reported court proceedings involving the Plaintiff and her husband. Under the headline of "Video Widower's Wife Shows Movie Mouse" the story told of the wife's promise to a city magistrate four days earlier to forego the late, late, late show in order to preserve her marriage. She was now in court to complain that her husband had blackened her eye because she took the children with her to a movie. The term "Movie

Mouse" was used succinctly to describe the condition of the plaintiff's eye.

Mrs. Bedekovich, not being in the humor for such a flippant description of her home life, brought this action of libel against the Hearst Corporation. The court held that mere coloration of the facts, such as above, and the reporting that the husband wanted to "enroll his wife in TV Viewers Anonymous" and that she watched TV so avidly to lead one to believe the credit company was about to pick up the set, was still fair comment.

Thus is ended this terse discourse in a series on Animal Life and American Law.