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Civil Practice Act Cases

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JUDGMENT—RENDITION, FORM AND REQUISITES IN GENERAL—WHETHER MORE THAN ONE JUDGMENT MAY BE RENDERED IN THE SAME CASE AGAINST SEVERAL DEFENDANTS SUED AS JOINT TORT-FEASORS—The legal effect of a verdict purporting to apportion damages between joint tort-feasors was considered by the Appellate Court of Illinois for the First District in the recent case of *Stoewsand* v. *Checker Taxi Company.*[1] The plaintiff there sued a taxicab company and a municipality for bodily injuries sustained when the cab in which she was a passenger struck a hole in a city street. The trial court submitted several customary optional forms of verdict to the jury and the parties stipulated that, upon return of a sealed verdict, the jurors were to be permitted to separate and polling of the jury was waived. When court reconvened, the sealed envelope containing the verdict was opened and therein was found two separate verdicts by which the jury declared each defendant to be guilty and assessed the plaintiff's damages at the same figure, to-wit: $10,000.00. The envelope also contained a single joint verdict finding both defendants guilty and assessing damages at $20,000.00, but this form was not signed. Separate judgments were entered on the first two verdicts in favor of plaintiff and against each defendant. The taxicab company filed notice of appeal from the judgment so entered and the city joined therein. Pending the appeal, plaintiff settled with the taxicab company and executed a covenant not to sue it, but the city nevertheless continued with its appeal. The judgment was reversed and the cause remanded for a new trial when the reviewing court sustained appellant's contention that Section 50 of the Illinois Civil Practice Act[2] had not in any way modified the common-law rule that there can be no apportionment of damages between joint tort-feasors.[3]

That rule has been so widely adopted and so rarely challenged in this country that it has become almost axiomatic.[4] Plaintiff, admitting the

[1] 331 Ill. App. 192, 73 N. E. (2d) 4 (1947).

[2] Ill. Rev. Stat. 1947, Ch. 110, § 174.

[3] Humason v. Michigan Central R. Co., 259 Ill. 462, 102 N. E. 793 (1913); Pecararo v. Halberg, 246 Ill. 95, 92 N. E. 600 (1910).

[4] See Southwest Gas & Electric Co. v. Godfrey, 178 Ark. 103, 10 S. W. (2d) 894 (1928); Kerrison v. Unger, 135 Cal. App. 607, 27 P. (2d) 927 (1934); Jiannetti v. National Fire Ins. Co. of Hartford, Conn., 277 Mass. 434, 178 N. E. 640 (1931); Begin v. Liederbach Bus Co., 167 Minn. 84, 208 N. W. 546 (1926); Neal v. Curtis & Co., 328 Mo. 389, 41 S. W. (2d) 543 (1931); Melosh v. Public Service Ry. Co., 4 N. J. Misc. 361, 132 A. 666 (1926); Klepper v. Seymour House Corp. of Ogdenburg, 246 N. Y. 85, 158 N. E. 29, 62 A. L. R. 955 (1927), reversing 218 App. Div. 686, 218 N. Y. S. 476 (1926); Cain v. Quannah Light & Ice Co., 131 Okla. 25,

general existence of such a rule, argued that the pertinent section of the Civil Practice Act had modified the common-law rule since it permitted the entry of separate judgments in the same case. In that connection, plaintiff relied on *Shaw* v. *Courtney*.[5] In that case, the plaintiff had filed a two-count complaint charging assault and battery and also unlawful imprisonment against several defendants. The testimony showed that all of the defendants were not guilty of all of the same wrongful acts. The jury returned separate verdicts as to the several defendants and separate judgments for varying amounts were entered thereon. The Appellate Court reversed these judgments, believing that the verdicts on which they were based were against the manifest weight of the evidence. The Illinois Supreme Court affirmed on the ground that the Appellate Court decision, whether treated as one involving purely a question of fact or a mixed question of fact and law, was binding on it.[6] It did, however, admonish that this "opinion should not be considered as giving sanction to or disapproval of any of the questions of law considered"[7] by the Appellate Court. It may be inferred that, if the Illinois Supreme Court had the question of apportionment of damages between joint tort-feasors properly before it, the court would have reversed as it had done on prior occasions before the adoption of the Civil Practice Act.[8] That case cannot, therefore, be considered as valid authority for the proposition that Section 50 of the Civil Practice Act has modified or relaxed the common-law rule in this respect.

The provision in question was adopted, without substantial modification, from a New Jersey statute which in turn had borrowed from an English provision.[9] In each of these jurisdictions, subsequent to the adoption of the reformed procedure, cases have held that no change has been made in the common-law rule regarding the nature of the liability of joint tort-feasors.[10] While the language of Section 50 of the Illinois

267 P. 641 (1928); Gill v. Selling, 126 Ore. 584, 270 P. 411, 58 A. L. R. 1556 (1928); McShea v. McKenna, 95 Pa. Super. 338 (1930); Gonsalves v. Baptiste, 133 A. (R. I.) 439 (1926); Mooney v. McCarthy, 107 Vt. 425, 181 A. 117 (1935); New River and Pocahontas Consol. Coal Co. v. Eary, 115 W. Va. 46, 174 S. E. 573 (1934).

[5] 317 Ill. App. 422, 46 N. E. (2d) 170 (1943), affirmed in 385 Ill. 559, 53 N. E. (2d) 432 (1944). But see criticism thereof in 21 CHICAGO-KENT LAW REVIEW 249.

[6] Ill. Rev. Stat. 1947, Ch. 110, §§ 199(2) and 216(3)(b).

[7] 385 Ill. 559 at 565, 53 N. E. (2d) 432 at 435.

[8] See cases cited in note 3, ante.

[9] Ill. Civ. Prac. Act Anno. (Foundation Press, Chicago, 1933), p. 122.

[10] Tricoli v. Centalanza, 100 N. J. Law 231, 126 A. 214 (1924); Walder v. Manahan, 21 N. J. Misc. 1, 29 A. (2d) 395 (1942); Owens v. Cerullo, 9 N. J. Misc. 776, 155 A. 759 (1931). The English case of Greenlands, Ltd. v. Wilmshurst, [1913] 3 K. B. 507, particularly p. 530, is especially applicable although it was reversed on other grounds: [1916] 2 A. C. 15.

act authorizes the use of separate verdicts and expressly indicates that "more than one judgment may be rendered in the same cause,"[11] it would seem clear that such language is intended to be limited to cases wherein the plaintiff is pursuing independent claims against several defendants but has joined them in one action for convenience of proof, in which case the use of separate verdicts[12] and of separate judgments is as much an aid to convenience as is the right to order a severance or a consolidation.[13] Decisions from other jurisdictions with apparently contrary holdings[14] turn on the fact that in each of them certain of the joined defendants were found to be subject to liability for punitive damages, hence it was regarded as proper to take separate verdicts against them for the purpose of ascertaining the amount of such additional penalty.[15]

The pleadings in *Shaw* v. *Courtney*,[16] and also in the instant case, reveal that the plaintiff was not pursuing independent causes of action which had been joined for convenience of proof, but rather had elected to treat the liability of the defendants as joint. The instant case, therefore, has the effect of overruling the earlier decision and correcting an oversight therein. It might not have done so had the plaintiff therein elected to sue the defendants separately, for the wrongs committed were not clearly joint ones and the plaintiff might have sued either even though the negligence of the one sued would not have produced damage without the concurrence of the act of the other.[17] When plaintiff did join both, the jury was obliged, if it felt that both defendants were equally guilty, to render one joint verdict against them so as not to prevent the plaintiff from having execution against both, or either, for the full amount of the damages awarded.[18] Inasmuch as separate verdicts were given, the error could have been avoided had the trial court refused to accept the

[11] Ill. Rev. Stat. 1947, Ch. 110, § 174(1).

[12] Ibid., Ch. 110, § 192(2).

[13] Ibid., Ch. 110, § 175.

[14] Louisville & N. R. Co. v. Roth, 130 Ky. 759, 114 S. W. 264 (1908); Edquest v. Tripp & Dragstedt, 93 Mont. 446, 19 P. (2d) 637 (1933); Latasa v. Aron, 109 N. Y. S. 744 (1908); McCurdy v. Hughes, 63 N. D. 435, 248 N. W. 512 (1933); Mauk v. Brundage. 68 Ohio St. 89, 67 N. E. 152 (1903); Johnson v. Atlantic Coast Line R. Co., 142 S. C. 125, 140 S. E. 443 (1927); Waggoner v. Wyatt, 42 Tex. Civ. App. 75, 94 S. W. 1076 (1906).

[15] The rule in Illinois is illustrated by Becker v. Dupree, 75 Ill. 167 (1874).

[16] See note 5, ante. The cases there relied on all involved the apportionment of punitive damages and came from jurisdictions which either expressly permit or require the use of separate verdicts in such situations: see note 14, ante.

[17] Northern Trust Co. v. Palmer, 171 Ill. 383, 49 N. E. 553 (1898); Consolidated Ice Machine Co. v. Keifer, 134 Ill. 481, 25 N. E. 799 (1890). See also Cooley, Torts, 4th Ed., Vol. 1, § 81 et seq.

[18] Postal Telegraph Cable Co. v. Likes, 225 Ill. 249, 80 N. E. 136 (1907).

same and instructed the jury as to the proper performance of its duty.[19] Since the error was not corrected in the trial court, the decision in the instant case achieves a salutary result by removing the uncertainty created by the earlier decision and by restoring a rule supported by six centuries of unbroken authority.

C. J. PRATT

[19] Such was no longer possible, of course, after the jury had been allowed to separate pursuant to the stipulation: Brownell Machinery Co. v. Walworth, 193 Ill. App. 23 (1915), abst. opinion; Wickizer-McClure Co. v. Bermingham & Seaman Co., 151 Ill. App. 540 (1909).