Chicago-Kent Law Review

Volume 21 | Issue 1 Article 2

December 1942

Notes and Comments

G. Maschinot

R. C. Nelson

R. Burdett

P. M. Hickman

NOTES AND COMMENTS

Irresistible Impulse as a Defense in Criminal Cases

One hundred years ago the House of Lords in England, answering certain questions propounded in *McNaghten's Case*,[1] established a test to be used to determine the existence of insanity whenever a defendant pleaded that the presence of a mental disease should excuse his otherwise criminal conduct. The "ability to distinguish right from wrong" thereby regarded as the touchstone, became the foundation for all modern inquiry into insanity as a defense, and has been adopted into the law of most American jurisdictions.[2] It was a test fairly easy to apply and one not likely to confuse a jury of laymen. It also served social ends because, by the verdict, the defendant was either branded as a criminal and punished accordingly, or else was found to be insane and, therefore, a fit subject for institutional treatment.

In the succeeding century, however, medical science has progressed and psychiatric investigations have proved that the vague term "insanity" covers a multitude of mental disorders, physical as well as functional. It is a long cry from the day when "insanity" was regarded as being a condition in which the abnormal human being was no different from the beast of the field, or, as the law put it, was "mad on all points."[3] Various types of feeblemindedness have been recognized to exist and scales of human mental progress, from idiot through imbecile to moron, have been developed as yardsticks of mental development.

Following such discoveries, some of the courts have broken away from the McNaghten test, and have promulgated doctrines which recognize that persons not "insane" by that standard may nevertheless be unable to formulate the necessary *mens rea*, or criminal intent, essential to sustain a conviction for crime. Thus, if a person be partially insane, i.e., sane as to most matters but clearly irrational upon some specific point, this condition would warrant a discharge upon a criminal accusation for acts committed relating to that specific irrationality[4] though not for acts committed while the rational mind controlled.

Perhaps the most far-reaching of such developments is that most frequently referred to as the "irresistible impulse," a condition which supposes that the accused may have realized that an act was wrong, morally and legally so, yet have been so much the victim of a physical or mental urge as to be unable to control himself. Not being a free agent though fully conscious of the enormity of his conduct, the person driven by such impulse is to be regarded just as much "insane" as the one who could not differentiate a rightful course of conduct from a wrong

[1] 10 Cl. & Fin. 200, 8 Eng. Rep. 718, 1 Car. & K. 130, note, 174 Eng. Rep. 744, note (1843).

[2] 70 A.L.R. 659.

[3] Arnold's Trial, 16 Howell's St. Trials 695 at 765 (1724).

[4] Hopps v. People, 31 Ill. 385 (1863).

one. This doctrine has, however, met with confused reception, and a review of the status of authority, a century after McNaghten's case, may prove profitable.

Of the forty-eight American states, twenty-four have, without qualification, flatly rejected the idea, refusing to regard the defendant's claim of irresistible impulse as being a type of insanity within the meaning of the term as used in a court of law, or disbelieving the evidence offered by defendant to evince the existence of such a condition.[5] In contrast, eighteen states have accepted the doctrine, though of course leaving the question of proof of the existence of such condition to the jury.[6] To these states should also be added the District of Columbia and the Federal Courts.[7]

The position of Illinois on this subject was left somewhat doubtful for

[5] People v. Donegan, 32 Cal. App. (2d) 716, 90 P. (2d) 856 (1939); Crews v. State, 143 Fla. 263, 196 So. 590 (1940); Rozier v. State, 185 Ga. 317, 195 S.E. 172 (1938); State v. Buck, 205 Ia. 1028, 219 N.W. 17 (1928); State v. White, 112 Kan. 83, 209 P. 660 (1922); State v. Knight, 95 Me. 467, 50 A. 276 (1901); Spencer v. State, 69 Md. 28, 13 A. 809 (1888); State v. Simenson, 195 Minn. 258, 262 N.W. 638 (1935); Eatman v. State, 169 Miss. 295, 153 So. 381 (1934); State v. Jackson, 346 Mo. 474, 142 S.W. (2d) 45 (1940); Sherman v. State, 118 Neb. 84, 223 N.W. 645 (1929); State v. George, 108 N.J.L. 508, 158 A. 509 (1932); State v. Moore, 42 N.M. 135, 76 P. (2d) 19 (1938); People v. Schmidt, 216 N.Y. 324, 110 N.E. 945 (1915); State v. Cooper, 170 N.C. 719, 87 S.E. 50 (1915); North Dakota as said in 30 P. (2d) 1041 at 1047; Hoggatt v. State, Okl. Cr. 377, 94 P. (2d) 264 (1939); State v. Riley, 147 Ore. 89, 30 P. (2d) 1041 (1934); Commonwealth v. Torr; 111 Pa. Sup. 178, 169 A. 238 (1933); State v. McIntosh, 39 S.C. 97, 17 S.E. 446 (1893); Wilcox v. State, 94 Tenn. 106, 28 S.W. 312 (1894); Witty v. State, 75 Tex. Cr. App. 440, 171 S.W. 229 (1914); State vs. Fugate, 103 W.Va. 653, 138 S.E. 318 (1927); Lowe v. State, 118 Wis. 641, 96 N.W. 417 (1903).

[6] Parsons v. State, 81 Ala. 577, 2 So. 854 (1887); Wilson v. State, 203 Ark. 920, 159 S.W. (2d) 726 (1942); Ryan v. People, 60 Colo. 425, 153 P. 756 (1916); State v. Johnson, 40 Conn. 136 (1873); State v. Jack, 4 Pennew. (Del.) 470, 58 A. 833 (1903); People v. Geary, 298 Ill. 236, 131 N.E. 652 (1921); Conway v. State, 118 Ind. 482, 21 N.E. 285 (1889); Cline v. Commonwealth, 248 Ky. 609, 59 S.W. (2d) 577 (1933); State v. Lyons, 113 La. 959, 37 So. 890 (1904); Commonwealth v. Clark, 292 Mass. 409, 198 N.E. 641 (1935); People v. Quimby, 134 Mich. 625, 96 N.W. 1061 (1903); State v. Leaky, 44 Mont. 354, 120 P. 234 (1911); State v. Jones, 50 N.H. 369 (1871); State v. Green, 86 Utah 192, 40 P. (2d) 961 (1935); State v. Kelsie, 93 Vt. 450, 108 A. 391 (1919); Thurman v. Commonwealth, 107 Va. 912, 60 S.E. 99 (1908); State v. Hawkins, 23 Wash. 289, 63 P. 258 (1900); Flanders v. State, 24 Wyo. 81, 156 P. 39, 1121 (1916).

[7] So in the District of Columbia it was first conceded that the strict test of right and wrong was defective, but held that it was not practicable to obtain legal proof in accordance with another test, the Court also saying: "But this would be no reason for an adherence to the present rule were a sounder and safer one discovered." United States v. Young, 25 F. 710 at 713 (1885). It must have been felt in 1929 that medical science had progressed enough to justify the adoption of a new rule, for it was then said in the same jurisdiction: "The accepted rule in this day and age, with the great advancement in medical science as an enlightening influence on this subject, is that the accused must be capable, not only of distinguishing between right and wrong, but that he was not impelled to do the act by an irresistible impulse, which means before it will justify a verdict of acquittal that his reasoning powers were so far dethroned by his diseased mental condition as to deprive him of the will power to resist the insane impulse to perpe-

a while. The McNaghten rule was accepted in 1859 in the case of *Fisher* v. *People*.[8] In 1863 the court was asked to accept the defense of irresistible impulse but held that, to be a defense, the condition should be caused by an unsoundness of the mind sufficiently strong to obliterate the notion of right and wrong.[9] By 1884 however the court was willing to approve an instruction which submitted to the jury not only the standard test but also the question of defendant's ability to choose between right and wrong.[10] By 1920 the court had reached the point where it could say that it was error to refuse to charge upon the question of irresistible impulse.[11] The next year, in the light of advancements in scientific detection and treatment of insanity, the court accepted the doctrine as a settled rule.[12] It seems clear, then, that Illinois, though among the minority, has committed itself to the proposition that an accused person is not to be regarded as a criminal, even though knowing the nature of the act about to be committed and fully aware that the same is wrongful, if he has no ability to make a conscious choice to do or not to do that act.

At least one of the American jurisdictions, once willing to accept the concept that an irresistible impulse was a form of insanity,[13] has since overruled that decision, but was led to that end by the passage of legislation on the subject.[14] Five other states, which have rejected the doctrine, have also felt constrained so to do because of local statutes[15] but will give it credence if the condition be so strong as to obliterate the notion of right or wrong.[16]

It must be noted also that kleptomania, the impulse to commit larceny, which is nothing but a strong form of irresistible impulse, is a validly recognized plea in at least two of those States which definitely reject the doctrine itself.[17]

The most recent expression on the subject has been given in Ohio,

---

trate the deed, though knowing it to be wrong." Smith v. United States, 36 F. (2d) 548 at p. 549 (1929). The Federal Courts seem to define insanity so as to include irresistible impulses: Davis v. United States, 165 U. S. 373, 17 S. Ct. 360, 41 L. Ed. 750 (1897).

[8] 23 Ill. 218 (1859).

[9] Hopps v. People, 31 Ill. 385 (1863).

[10] Dunn v. People, 109 Ill. 635 (1884).

[11] People v. Lowhone, 292 Ill. 32, 126 N.E. 620 (1920).

[12] People v. Geary, 298 Ill. 236, 131 N.E. 652 (1921). For a complete study of the subject of insanity in Illinois criminal law, see Clifford J. Hynning, "Mental Disorder in Illinois Criminal Law," 12 CHICAGO-KENT REVIEW, pp. 19-51 (1933).

[13] Adair v. State, 6 Okl. Cr. 284, 118 P. 416 (1911).

[14] Tittle v. State, 44 Okl. Cr. 287, 280 P. 865 (1929); Arms v. State, 49 Okl. Cr. 34, 292 P. 76 (1930); Merrick v. State, 56 Okl. Cr. 88, 34 P. (2d) 281 (1934); Hoggatt v. State, 67 Okl. Cr. 377, 94 P. (2d) 264 (1939).

[15] Rozier v. State, 185 Ga. 317, 195 S.E. 172 (1938), cf. Ga. Code of 1933, §26-301; State v. Simenson, 195 Minn. 258, 262 N.W. 638 (1935), cf. Mason's 1927 Minn. Stat. § 9915; People v. Schmidt, 216 N.Y. 324, 110 N.E. 945 (1915); North Dakota, as said in 30 P. (2d) 1041 at p. 1047; State v. Hassing, 60 Ore. 81, 118 P. 195 (1911).

[16] Rozier v. State, 185 Ga. 317, 195 S.E. 172 (1938).

[17] State v. McCullough, 114 Iowa 532, 87 N.W. 503 (1901); People v. Sprague, 2 Park. Cr. (N.Y.) 43 (1849).

where the court, though failing to find proof of an irresistible impulse, nevertheless announced the same would have been no defense even had its existence been proven.[18] An earlier case in that state had rejected the doctrine[19] but subsequent thereto the Supreme Court of Ohio said: "Sanity . . . must suppose freedom of will, to avoid a wrong, no less than the power to distinguish between the wrong and the right."[20] In a later case, *Blackburn* v. *State*[21] the court came to the conclusion that a charge to the jury as to whether the accused was at the time of the act capable of judging whether the act was right or wrong was not different from the requested charge whether he had the power to refrain from doing the act although he knew it was morally and legally wrong. Such a holding would indicate a failure to realize that a difference exists between the "right and wrong test" laid down in McNaghten's case and the irresistible impulse doctrine. It may be surmised though, that the decision might be predicated upon some fear that such impulse might be used as a defense whether proceeding from a diseased mind or not.[22] Also implicit may be the fear that persons using this defense may not only escape punishment but, being generally rational, may also avoid segregation and treatment in a proper institution.

It should be noticed that it is not any irresistible impulse that will serve as a defense. It must be an impulse caused by mental disease, i.e. an insane, or pathological, irresistible impulse. Such at least is the requirement in Illinois, and for such persons the statute makes provision for segregation and treatment of insane criminals.[23] Similar examples may be found in other states recognizing the doctrine.[24] Doubtless where provisions exist for scientific treatment of insane criminals, it seems more humane and more conducive to social good to allow the defense of the irresistible impulse since it will result in treatment and segregation conducive to reform and improvement. The older test of right and wrong probably must remain the standard wherever public welfare institutions have not yet been sufficiently developed to make practicable a more modern test.

G. J. MASCHINOT

CIVIL PRACTICE ACT CASES

APPEAL AND ERROR—REQUISITES FOR TRANSFER OF CAUSES—WHETHER DEFECT IN NOTICE OF APPEAL REQUIRES DISMISSAL OF APPEAL—In *Luner* v. *Gelles*[1] the plaintiff received a verdict against the defendant in a personal injury action, but upon the return thereof, because of the insufficiency

18 State v. Cumberworth, —Ohio App.—, 43 N.E. (2d) 510 (1942).
19 Clark v. State, 23 Ohio App. 474, 156 N.E. 219 (1926).
20 Farrer v. State, 2 Ohio St. 54, at p. 70 (1853).
21 23 Ohio St. 146 (1872).
22 See, for example, State v. Harrison, 36 W.Va. 729, 15 S.E. 982 (1892).
23 Ill. Rev. Stat. 1941, Ch. 38, § 592.
24 Colo. Sess. Laws 1927, p. 296, Ch. 90; Pub. Laws of N.H. (1926), Vol. I, Ch. 11; Pub. Laws of Vt. (1933), § 4020; Ann. Laws Mass. (1942), Vol. 4, Title XVII, Ch. 123, § 100.
1 314 Ill. App. 659, 42 N.E. (2d) 313 (1942).

of the damages awarded, he made a motion for a new trial. The motion was denied and judgment in his favor was entered upon the verdict. Ten days later, plaintiff filed notice of appeal specifying that he was appealing from the order denying his motion for a new trial. The notice said nothing about appealing from the judgment. A motion was made by the defendant to dismiss the plaintiff's appeal on the ground that no appeal would lie from an order denying a new trial. It was held, however, that while the notice of appeal should have specified the judgment instead of the order denying such motion, still the court would not dismiss the appeal for such "error of form," since there was a final judgment and plaintiff's appeal, in effect, was an appeal from that final judgment.

The Illinois Civil Practice Act provides that an appeal may be taken from an order allowing a motion for a new trial,[2] but it is logically silent on the effect of a denial of such a motion since whatever judgment has thereupon been entered then becomes a final judgment, and it is from this final judgment that the appeal should be taken. Before the adoption of our Civil Practice Act no appeal could be had from an order either allowing or overruling a motion for a new trial,[3] because such a motion was not a "final order," and, hence, not appealable.

There is precedent, however, for the broad view taken in the instant case,[4] and there are cases with similiar holdings in other jurisdictions.[5] It is true that the filing of notice of appeal is made jurisdictional by Section 76 (2) of the Civil Practice Act,[6] but to specify that the appeal is being taken from the order denying a motion for new trial, provided that upon denial a final judgment is entered, is essentially an appeal from that final judgment. A liberal construction of the act, as directed by Section 4 thereof,[7] would require that the appellate courts consider the effect of the errors complained of, and, if substantive rights are preserved, an appeal should not be dismissed for error of such trivial nature as occurred in the instant case. The defendant was not misled nor harmed by the technically incorrect specification in the notice of appeal; hence the result is a just one. R. C. NELSON

APPEAL AND ERROR—TIME OF TAKING APPEAL—WHETHER DATE COURT INDICATES DECREE OR DATE OF SIGNING AND ENROLLING DECREE CONTROLS—In the case of *Snook* v. *Shaw*,[1] a proceeding in equity, the chancellor,

2 Ill. Rev. Stat. 1941, Ch. 110, § 201.

3 Atkins v. Huston, 5 Ill. App. 326 (1880); J. W. Reedy Elevator Manufacturing Company v. Pitvowsky, 35 Ill. App. 364 (1890); Peirce v. Ott, 201 Ill. App. 46 (1915).

4 National Bank of the Republic of Chicago v. Kaspar American State Bank, 369 Ill. 34, 15 N.E. (2d) 721 (1938).

5 Chinnis v. Pomona Pump Company, 36 Cal. App. (2d) 633, 98 P. (2d) 560 (1940); Unemployment Compensation Commission of Wyoming v. Mathews, 56 Wyo. 479, 111 P. (2d) 111 (1941); In re Westberg's Estate, 279 N.Y. 316, 18 N.E. (2d) 291 (1938).

6 Ill. Rev. Stat. 1941, Ch. 110, § 200 (2).

7 Ill. Rev. Stat. 1941, Ch. 110, § 128.

1 315 Ill. App. 594, 43 N.E. (2d) 417 (1942).

on May 15th, ordered a decree in favor of the plaintiff to be prepared. The plaintiff, through his attorney, thereafter prepared the decree and forwarded the same to the presiding judge on May 22nd. The decree, however, was not duly approved and filed with the clerk until June 18th. On July 14th, the defendant offered a motion to vacate, which was denied on October 7th. Thereafter notice of appeal was filed by defendant on November 15th. Plaintiff moved to dismiss the appeal on the ground that the ninety-day period for appeal had commenced to run on the day the decree was rendered, i.e. when the judge ordered the decree prepared or, at least, from May 22nd when the same had been prepared and mailed by plaintiff to the presiding judge, hence the appeal had come too late. It was held, however, that the ninety-day period did not commence to run until the motion to vacate the decree was disposed of, hence the appeal had been taken in apt time.

The court, in rejecting plaintiff's contention, pointed out that for the purpose of Section 76 of the Illinois Civil Practice Act,[2] a decree in equity never becomes final until it is drawn up by the attorney for the litigant in whose favor the judgment is rendered, is approved and signed by the court and entered upon the rolls of the court by the clerk. In this respect, the court recognized a distinction between judgments at law and decrees in equity which had early found its place in the law of Illinois. As a practical matter, the work of preparing a decree in equity was delegated to the successful attorney, who would present the same to the court for approval or disapproval as the case might be.[3] Upon approval, indicated by signing, the decree was given to the clerk who would then enroll the same upon the records. This enrolling was considered as making the decree final.[4] If a decree had been enrolled, though it was inexpertly drawn and even though caption, date, and other technical portions had been left out, it still had finality.[5]

A final judgment at law, however, existed as soon as the judgment was orally pronounced in open court.[6] Failure by the clerk to enter such judgment did not have the effect of suspending it until entry occurred.[7]

2 Ill. Rev. Stat. 1941, Ch. 110, § 200(1).

3 In Stevens v. Coffeen, 39 Ill. 148, at 155 (1866), the court said: ". . . the invariable practice . . . for near half a century, (has been) for the solicitor of the party in whose favor a decree is pronounced, to write it out in due form and submit it to the judge who endorses his approval upon it, which is the authority to the clerk to enrol it or enter it upon the record."

4 Hughs v. Washington, 65 Ill. 245 at 249 (1872), where it was stated: "The decree is *inchoate* until it is approved by the chancellor and filed for record, or shall be recorded. . . . " See also Horn v. Horn, 234 Ill. 268, 84 N.E. 904 (1908).

5 Dunning v. Dunning, 37 Ill. 306 (1865). See also Freeman, Judgments (5th Ed.), I, § 50: "But the distinction between a decree and an order for a decree must not be overlooked. 'No decree can be said to be entered of record until it is formally drawn out and filed by the clerk. A mere order for a decree, before it is extended in due form and in apt and technical language, cannot be held to be a complete record of the judgment of the court.' "

6 Chicago Great Western R. Co. v. Ashelford, 268 Ill. 87, 108 N.E. 761 (1915).

7 In People v. Jarecki, 352 Ill. 207, 185 N.E. 570 (1933), a writ of mandamus was sought to compel a county judge to place on file and certify a record of tax

Therefore, since a law judgment becomes final, for the purposes of appeal, the moment the same is uttered in open court, the time for appeal in such cases begins running from the time of the pronouncement of judgment. It is true, though, that a motion to vacate will suspend both the judgment and the appeal period until such motion has been decided.[8]

While the Civil Practice Act provides that: "No appeal shall be taken to the Supreme or Appellate Court after the expiration of ninety days from the entry of the order, decree, judgment or other determination complained of. . . ."[9] and specifically includes decrees in equity in its scope, there is nothing in the act which would tend to indicate that the legislature meant to change the former practice with regard to the preparation, signing and enrolling of such decrees. Consequently, the old practice should be regarded as still in full force and effect. By its decision in the instant case, the court confirms this view.

R. BURDETT

PLEADING — AMENDMENT — RIGHT TO AMEND COMPLAINT SO AS TO PREVENT OPERATION OF STATUTE OF LIMITATIONS — In *Mann* v. *City of Chicago*,[1] one of the joint owners of certain premises which had been condemned for public purposes sued to recover interest on the amount of the judgment previously rendered. The defendant answered that such claim, if one existed, belonged to the "owner or owners" of the premises, and that payment of the award had been made to their assignees in full satisfaction of all claims. The plaintiff thereupon amended his complaint by adding his co-owner as an additional plaintiff. Defendant's amended answer, to defeat the claim of the co-plaintiff so added, introduced the additional defense of the statute of limitations on the ground that the amendment adding her as a party plaintiff was not within Section 46(2) of the Illinois Civil Practice Act[2] since it attempted to assert

---

hearings. The date of the judgment for defendant was March 7, and sixty days were granted for appeal. On the sixty-second day plaintiffs appealed contending the judgment did not become final because certain other orders were entered in the proceeding on April 6, operating to stay final judgment until that time. Held: That a judgment in law exists from the day of the pronouncement of judgment and not from its entry on the records. See also Black, Judgments, (2d Ed.) I, § 106: "In the nature of things, a judgment must be rendered before it can be entered. And not only that, but though the judgment be not entered at all still it is none the less a judgment."

8 Ill. Rev. Stat. 1941, Ch. 77, § 83. See also People v. Davis, 365 Ill. 389, 6 N.E. (2d) 643 (1937), where it was held that the right to appeal must be construed strictly according to the statute; and Carter v. Herrin Loan & Improvement Ass'n, 278 Ill. App. 382 (1935). But see Marks v. Pope, 370 Ill. 597, 19 N.E. (2d) 616 (1939), where defendant had filed motion to vacate but before decision thereon, had appealed. It was held that he thereby waived his motion and the decree became final, hence appealable. To the same effect is McCoy v. Acme Automatic Printing Co., 278 Ill. 276, 115 N.E. 1032 (1917).

9 Ill. Rev. Stat. 1941, Ch. 110, § 200(1).

1 315 Ill. App. 179, 42 N.E. (2d) 862 (1942).

2 Ill. Rev. Stat. 1941, Ch. 110, § 170(2), which reads in part: "The cause of action . . . set up in any amended pleading shall not be barred . . . if the time

a new and separate cause of action after the statutory period had expired. The trial court found in favor of both plaintiffs, but, on appeal, the claim of the co-plaintiff so added by amendment was rejected as being barred, it not having been saved by the amendment provision.

The test governing the right to amend a complaint so as to state a claim which, at the time of amendment, would have otherwise been barred by the statute of limitations, was laid down by the Illinois Supreme Court in *Metropolitan Trust Company* v. *Bowman Dairy Company*.[3] It was there indicated, following the language of the Civil Practice Act, that, if the facts set forth in the amended pleading arise from the same transaction as that described in the original complaint, then the action is not barred even though such amendment occur after the statutory period had run. Conversely, if the amendment states a cause of action based on an entirely different transaction, or involving entirely different parties, the amendment is of no avail.[4]

The problem in the instant case resolves itself, therefore, into the question of whether or not the claim of the joint tenants for interest upon the condemnation judgment arises from the "same transaction" so as to fall within the scope of Section 46(2) of the Illinois Civil Practice Act. In that connection, it must be remembered that it has been held that interest upon such a judgment as is herein involved is a separate and distinct claim from the judgment and, as such, is subject to a different limitation period.[5] The right to collect such interest is, however, vested in the judgment creditor. Inasmuch as the judgment herein sued upon ran in favor of joint parties, it would follow that suit to recover such interest should be brought in their joint names, since neither creditor could alone assert the claim,[6] nor could either alone release the claim of the other.[7] It would seem to follow that since the "transaction" relied upon in this suit was the joint claim for interest, the ineffectual attempt, in apt time, by one person to assert the claim should open up to permit an amendment adding the additional party[8]

---

prescribed . . . had not expired when the original pleading was filed . . . if it shall appear . . . that the cause of action asserted . . . grew out of the same transaction . . . set up in the original pleading. . . ."

3 369 Ill. 222, 15 N.E. (2d) 838 (1938), noted in 17 CHICAGO-KENT LAW REVIEW 60.

4 Fitzpatrick v. Pitcairn, 371 Ill. 203, 20 N.E. (2d) 280 (1939).

5 Blakeslee's Storage Warehouses, Inc. v. City of Chicago, 369 Ill. 480, 17 N.E. (2d) 1 (1938).

6 See Freeman, Judgments (5th Ed.), I, 173, § 100; and Seymour, et al. v. Richardson Fueling Co., 205 Ill. 77, 68 N.E. 716 (1903). In the event either refused to join in the suit, such person could be made a party defendant under Ill. Rev. Stat. 1941, Ch. 110, § 147.

7 For that matter, the judgment defendant when sued thereon would not have been permitted to off-set such claim by a separate judgment rendered in its favor against but one of the judgment creditors. See Howe Machine Co. v. Hickox, 106 Ill. 461 (1883).

8 Ill. Rev. Stat. 1941, Ch. 110, § 170(1), permits amendment at any time, before final judgment, ". . . introducing any party who ought to have been joined as plaintiff. . . ."

or else the entire claim be regarded as outlawed. Despite this the court seems to have concluded that each of the judgment creditors possessed a separate, though undivided, claim for his portion of the interest due. If such were the case, the assertion of the demand by one could not include any part of the demand due the other. The attempt to amend so as to include the other claim should then, of course, be regarded as being ineffectual.

By the decision in the instant case, the court has apparently placed a limitation upon the operation of the amendment provisions of the Illinois Civil Practice Act which, if correct, follows a preferable and logical view of the end sought to be accomplished.[9] All would agree that if the right to amend be not limited to the same claim, the limitation period would mean little in cases where several persons were injured in the same accident. By applying Section 46(2) in the manner contended for by the plaintiff, one of the injured persons, by filing a complaint within the statutory period, could keep alive, for the benefit of the others, all claims arising from the general transaction complained of. Such, obviously, is not the intent of the law. But the application of that doctrine to the instant case appears erroneous.

P. M. HICKMAN

9 Parker v. Alton R. Co., 295 Ill. App. 60, 14 N.E. (2d) 665 (1938); Fonyo v. Chicago Title & Trust Co., 296 Ill. App. 227, 16 N.E. (2d) 192 (1938); Weiland v. Weiland, 297 Ill. App. 239, 17 N.E. (2d) 625 (1938); Nolan v. Sloan, 305 Ill. App. 71, 26 N.E. (2d) 990 (1940), noted in 19 CHICAGO-KENT LAW REVIEW 59; Menolascino v. Superior Felt & Bedding Co., 313 Ill. App. 557, 40 N.E. (2d) 813 (1942).