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TORTS — CAUSE OF ACTION FOR INDUCING SUICIDE

In an action for the wrongful death of her husband who committed suicide, plaintiff alleged that deceased was a New York diamond dealer who received a diamond on consignment and reconsigned it to defendant, a retailer. It was also alleged that defendant, maliciously and with intent to harm the deceased, converted the diamond and refused to return it knowing that this refusal would ruin the deceased's reputation and business. Plaintiff further alleged that this malicious and intentional conversion induced in the deceased an irresistible impulse which caused him to take his life. On trial of defendant's motion to dismiss, *held*, motion denied. A petition alleging an intentional and malicious conversion inducing a suicide states a cause of action.¹ *Cauverien v. De Metz*, 188 N.Y.S. 2d 627 (N.Y. Sup. Ct. 1959).

The majority of cases in which it was held that a cause of action for wrongful death was stated when the deceased committed suicide have been situations in which the deceased was physically injured by some act of the defendant prior to the suicide.² Generally speaking, the rule that has been followed in these cases is that recovery will be allowed only when the physical injury has produced insanity which causes the deceased to take his own life under an irresistible impulse.³ Most courts have also required as a prerequisite to recovery that the insanity deprive the deceased of the realization that his act will produce death, and recovery has often been denied because it appeared

1. See N.Y. Decedent Estate Law § 130 (1949).

2. *Elliot v. Stone Baking Co.*, 49 Ga. App. 515, 176 S.E. 112 (1934); *Brown v. American Steel & Wire Co.*, 43 Ind. App. 560, 88 N.E. 80 (1909); *Long v. Omaha & Council Bluffs Street Ry.*, 108 Neb. 342, 187 N.W. 930 (1922); *Koch v. Fox*, 71 App. Div. 288, 75 N.Y. Supp. 913 (Sup. Ct. 1902); *Arsnow v. Red Top Cab Co.*, 159 Wash. 137, 292 Pac. 436 (1930). See Comment, 15 N.Y.U. INTRA. L. REV. 31 (1959); Annot., 11 A.L.R.2d 751 (1950); 23 A.L.R. 1271 (1923).

The writer has found no reported cases dealing with the exact subject matter of this Note in which damages have been recovered in a wrongful death action involving suicide. Recovery has been allowed in workmen's compensation cases involving the same problem, however. See *In re Sponatski*, 220 Mass. 526, 108 N.E. 466 (1915); *Delinousha v. National Biscuit Co.*, 248 N.Y. 93, 161 N.E. 431 (1928); *Lupfer v. Baldwin Locomotive Works*, 269 Pa. 275, 112 Atl. 458 (1921).

3. See cases cited in note 2 *supra*. See also *Daniels v. New York, N.H. & H. R.R.*, 183 Mass. 393, 399, 67 N.E. 424, 426 (1903), which is often cited as authority. The rule stated therein is: "[T]he liability of a defendant for a death by suicide exists only when the death is the result of an uncontrollable impulse, or is accomplished in delirium or frenzy caused by the collision, and without conscious volition to produce death, having knowledge of the physical nature and consequences of the act. An act of suicide resulting from a moderately intelligent power of choice, even though the choice is determined by a disordered mind, should be deemed a new and independent, efficient cause of the death that immediately ensues." See PROSSER, LAW OF TORTS 273-74 (2d ed. 1955).

that the deceased was conscious of his actions when he took his life.⁴ In the few suicide cases where the defendant inflicted no physical injury, but prompted the deceased's self-destruction by inducing fear, humiliation, or worry, the courts have held that no cause of action was stated.⁵

Although in the instant case there was no physical injury, the court applied the rule that allows recovery for wrongful death from suicide when there is insanity and an irresistible impulse. Prior cases in which recovery for suicide was denied, apparently on the ground that no physical injury preceded the suicide, are distinguishable from the instant case in that here the defendant committed the independent tort of conversion.⁶ It is well recognized that, where there is a showing of malice, the damages recoverable in a conversion action may extend to the emotional distress caused thereby and even physical consequences resulting from this distress.⁷ Whether resultant insanity and suicide come within the limits of this rule appears to be an open question. However, in a case where the conversion is extremely malicious, it is likely that the resulting insanity would be compensated. If the insanity is compensable, only a small step is necessary to allow recovery for suicide resulting from an irresistible impulse.

Perhaps the hesitancy of courts to find a cause of action in wrongful death actions in which the deceased committed suicide, but was not previously physically injured, reflects an unex-

4. *Scheffer v. Washington City, Va., Midland & Gt. So. R.R.*, 105 U.S. 249 (1881); *Brown v. American Steel & Wire Co.*, 43 Ind. App. 560, 88 N.E. 80 (1909); *Daniels v. New York, N.H. & H. R.R.*, 183 Mass. 393, 67 N.E. 424 (1903); *Long v. Omaha & Council Bluffs Street Ry.*, 108 Neb. 342, 187 N.W. 930 (1922); *Koch v. Fox*, 71 App. Div. 288, 75 N.Y. Supp. 913 (Sup. Ct. 1902); *Arsnow v. Red Top Cab Co.*, 159 Wash. 137, 292 Pac. 436 (1930).

5. *Salsedo v. Palmer*, 278 Fed. 92 (2d Cir. 1921) (unlawful imprisonment, threats); *Stevens v. Steadman*, 140 Ga. 680, 79 S.E. 564 (1913) (letter requesting deceased's resignation from job); *Waas v. Ashland Day & Night Bank*, 201 Ky. 469, 257 S.W. 29 (1923) (false accusations and violent threats of imprisonment); *Jones v. Stewart*, 183 Tenn. 176, 191 S.W.2d 439 (1946) (false accusation that deceased stole money).

6. *Of. Salsedo v. Palmer*, 278 Fed. 92 (2d Cir. 1921). In this case a cause of action was denied to the plaintiff whose husband was unlawfully imprisoned, tortured, and threatened until he became insane and mentally irresponsible, leaping from a fourteenth story window. For comments on this case, see 22 COLUM. L. REV. 601 (1922), 31 YALE L.J. 667 (1922).

7. In *Wright v. Husband*, 193 Ark. 347, 99 S.W.2d 583 (1936), defendant was held liable for plaintiff's nervous breakdown caused by his wrongful attachment of her automobile. In *Urban v. Hartford Gas Co.*, 139 Conn. 301, 93 A.2d 292 (1952), defendant was held liable for emotional distress and recurrence of plaintiff's dormant diabetic condition caused by his wrongful attempt to repossess her water heater. See Vold, *Tort Recovery for Intentional Infliction of Emotional Distress*, 18 NEB. L. BULL. 222, 230 (1939).

pressed doubt that mere worry, concern, fear, or humiliation are capable of producing an insanity so intense that the victim will be entirely deprived of his ability to choose between life and death. However, any reluctance resting on such a foundation might be overcome if it were found that suicide by the victim was the very purpose to be served by the defendant's conduct.⁸ It is difficult to believe that one who deliberately practices hypnotism, or who plays on his victim's superstitions in order to induce his self destruction would not be held legally accountable for his death whether or not the deceased was actually insane at the time of his suicide. Such a case might be compared to a battery, except that here the defendant would be using the psychic propensities of the deceased as a weapon.

Despite the tendency of courts to refuse recovery in wrongful death actions involving suicide with no antecedent physical injury, recent developments in the law⁹ indicate that a different position might well be taken. Although it is not relied upon in the instant case, the Restatement of Torts¹⁰ has recognized that one who by his extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is liable for the emotional distress and the resulting bodily harm. The cases cited in support of this section indicate that the bodily harm protected against is usually physical illness such as paralysis, heart attack, or miscarriage resulting from the emotional distress.¹¹ It would seem that insanity could easily fall within the protection of the same rule. It is submitted that, once liability for insanity is established, the situation is similar to the physical injury cases, and a death resulting from an irresistible impulse induced by the insanity should therefore be compensated.¹²

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TORTS — DUTY OF A COMMON CARRIER TO PASSENGER WITH INFIRMITY

Plaintiff's intestate was a passenger in defendant's subway car which remained stalled in a tunnel for almost two hours after

8. See RESTATEMENT, TORTS § 280 (1934).

9. See Prosser, *Insult and Outrage*, 44 CALIF. L. REV. 40 (1956).

10. RESTATEMENT, TORTS § 46 (Tent. Draft No. 1, April 5, 1957).

11. Nickerson v. Hodges, 146 La. 735, 84 So. 37 (1920); Alabama Fuel & Iron Co. v. Baladoni, 15 Ala. App. 316, 73 So. 205 (1916); Rogers v. Williard, 144 Ark. 587, 223 S.W. 15 (1920); Johnson v. Sampson, 167 Minn. 203, 208 N.W. 814 (1926); Janvier v. Sweeney, [1919] 2 K.B. 316; Wilkinson v. Downton, [1897] 2 Q.B.D. 57.

12. See RESTATEMENT, TORTS § 455 (1934).