Notre Dame Law Review

Volume 21 | Issue 4 Article 3

6-1-1946

Recent Decisions

Charles T. Dunn

Arthur A. May

Roger D. Gustafson

Lawrence Turner

the same deduction as they allow an innocent defendant. Leading case so holding is the *Weymouth v. Chicago and N. W. R. Co.*[9]

Another rule which was laid down in a Supreme Court decision allows an innocent plaintiff to recover from the willful trespasser the value of the property at the time it is finally converted to the use of the trespasser; i.e., its value as enhanced by the labor of the defendant. It will be recalled that this rule is very similar to the one applied in the Indiana case above cited as *Sunnyside v. Reitz,* where the defendant's trespass was not willful, but was negligent.

In summary of the above citations and discussions, it would seem sound advice to the person who contemplates conversion of metals and ores in Indiana to so do without the display of any willful or intentional act in addition to a course of complete abstention from all negligent performance.

R. L. Miller.

RECENT DECISIONS

FALSE IMPRISONMENT.—Burlington Transportation Company et al. v. Josephson, Circuit Court of Appeals, Eight Circuit (1946) 153 Fed. (2) 372.—Action for false imprisonment was brought by the plaintiff, Josephson, against the above mentioned bus company, its agent and two police officers. Verdict and judgment were for the plaintiff in the District Court of the United States for the District of South Dakota, and defendant bus company appeals.

On the 14th of July, 1944, plaintiff boarded a bus of the defendant company at Rapid City, South Dakota; and when, after forcing his way past the driver, he was requested to surrender his ticket, he refused to do so. The plaintiff then proceeded to conduct himself in a violent, unreasonable and objectionable manner. His presence, therefore, became objectionable, annoying and a source of danger to the passengers.

At this point, Spargur, the agent of the company at Rapid City, made a complaint in writing before the deputy clerk of the Municipal Court. As a result of this complaint two police officers went to the bus and took the plaintiff into custody. Josephson was within a short time placed upon bond; the entire period of his detainment was about two and one half hours.

The plaintiff appellee was awarded $19,500 plus cost by the inferior court for false arrest and false imprisonment. "False Imprison-

[9] Weymouth v. Chicago and N. W. R. Co., 17 Wis. 550 (1863).

ment," according to a definition in *Treadway v. Berks,* 59 S. D. 649, 242 N. W. 590, 591, "is the unlawful restraint by one person of the physical liberty of another." The restraint must be initiated by an assault. And a false arrest is an assault and one means of committing a false imprisonment.

Therefore, it did appear from the facts that there had been a false arrest and imprisonment since the arrest had been made without a warrant. A police officer may arrest for a public offense committed in his presence, and in cases of felonies even when the crime is not so committed. Plaintiff, it appears, was not disturbing the peace at the time of arrest.

But in regard to the state's law, it is interesting to note that the South Dakota code of 1939 Sect. 8.0903 makes it unnecessary apparently to look to police officers for assistance in such cases. This statute states that "a common carrier may demand the fare of passengers at starting or at any subsequent time. A passenger who refuses to pay his fare or to conform to any regulation of the carrier may be ejected from the vehicle by the carrier. This must be done with as little violence as possible and at any usual stopping place or near some dwelling house."

We can assume that a peaceful ejectment, followed by violence from the passenger, would make right to the peace officer what had previously been wrong.

The Circuit Court, however, did not agree with the inferior court in regard to the liability of the bus company or its agent. True, the agent did request police to remove plaintiff from a bus and did sign a complaint charging a disturbance of the peace, but there was no proof that the agent or the company participated in the arrest or the detention of the plaintiff without a warrant.

The major questions remaining before the court pertained to procedure and the amount of damages.

Josephson was a physican and specialist from New York City. He attempted to collect damages for losses in remodeling his building in New York as well as damages for losses in his professional duties.

This court held that a claim of the former kind was for special damages and could not be granted since they were not pleaded. Moreover, when speculative damages are requested, they must be specifically stated in accordance with the Federal Rules of Civil Procedure, Section 9 (g).

Special, as distinguished from general, damages are those which are the natural but not the necessary consequence of the act complained of. This includes loss of professional earnings which were not shown.

Only general compensatory damages, as for humiliation and costs incident to obtain release, were claimed here.

For these reasons the verdict and judgment were reversed and the case remanded for a new trial.

Charles T. Dunn.

LANDLORD AND TENANT.—Jameson v. Nelson et al., March 15, 1946, 65 N. E. (2d) 502—Ind.—Prior to August, 1944, one Robert F. Higgins was the owner of the involved real estate and Jameson was his tenant on a month to month lease, the rent being payable in advance. Nelson served as agent of Higgins and collected the rent. On August 14, 1944, the owner served upon Jameson a notice to vacate the leased premises for causes other than the non payment of rent. All rent had been paid to August 30, 1944. Higgins then brought an action against Jameson for possession which was later dismissed. On February 13, 1945, Nelson acquired title to the real estate and several days later brought an action against Nelson for possession. This action was also dismissed. On February 23, 1945, Nelson notified Jameson to vacate for non payment of rent. An action was then brought by Nelson for possession for non payment of rent. Jameson answered by claiming that the notice to vacate served upon him by Higgins had terminated the tenancy and thus he was not obligated to pay rent. The trial court awarded possession to Nelson from which Jameson appeals.

The appellate court affirmed the decision of the trial court. In affirming the decision, the appellate court said that the tenant could not retain possession after the notice to vacate had been served and they also held that the lease was terminated by the notice to vacate which operated as constructive eviction. These contentions are adverse to one another and the tenant must either vacate the premises and consider the lease terminated or remain in possession and consider the lease still in effect. *Arthur A. May.*

MUNICIPAL CORPORATIONS.—State ex rel. Harrell v. City of Wabash et al., March 15, 1946, 65 N. E. (2d) 494—Ind.—Harrell was appointed by the Mayor of Wabash as fire chief for a term of four years. The question presented by this case, is whether or not the fire chief is such a member of the fire force to qualify for the firemen's pension fund created by the legislature. The statutes, which created the pension fund make it clear that only members of the fire forces shall be eligible for pension. The statute, which governs the appointments to the fire force,

clearly indicates that such members of the fire force may only be removed by showing sufficient cause. The statute which governs the appointment of the fire chief, makes it clear that the fire chief serves at the pleasure of the mayor. In rendering the decision, the appellate court declared the purpose of the act was to provide an income for the members of the fire force who had been discharged or retired after many long years of service. Since the fire chief is appointed by the mayor for a four year term and is subject to dismissal by the mayor, the court held that the fire chief was not a member of the fire force. To hold that the fire chief was a member and to enable him to qualify under the pension fund, would be to defeat the purpose for which the pension fund was created. I believe that this decision was justly decided but that it will work hardships on many fire chiefs. There are many of them that devote their whole life to the service of the fire forces as do the members of the fire force. Thus I believe that a qualification should be made between a fire chief who serves for a short period and a chief who serves for a number of years.

Arthur A. May.

OCCUPATIONAL DISEASE.—Sandy v. Walter Butler Shipbuilders, Inc., 21 N. W. (2d) 612 (1946)—Minn.—This action was brought by Clifford Sandy against the Walter Butler Shipbuilders, Inc. to recover damages for a skin ailment, which is medically termed dermatitis, which the plaintiff, according to his allegations, contracted while in the employ of the defendant. The lower court overruled a demurrer and the defendant appealed.

The plaintiff, who was a qualified machinist, was employed as such by the defendant at its Riverside Plant in Duluth, Minnesota from August, 1943 to December 24, 1944. It was in December of 1944 that the plaintiff was forced to quit his employment as a result of contracting the skin disease, dermatitis. On the 19th of December, 1944, the plaintiff was forced to report to a company first aid station for treatment and on the 24th of December, he was forced to quit his employment and report to the St. Marys Hospital in Duluth for further treatment and hospitalization for the above named condition.

During the period of the plaintiff's employment, he was engaged in building and fitting ships which were being constructed for the United States Maritime Commission. The bulk of the plaintiff's work was done within the hull in the hold and lower regions of ships. There were large scaffoldings constructed within the ships and he was required to work below these scaffoldings and below the deck floors of the ships. Because of the position in which he was forced to work, a great deal of spun glass dust which is known as spun glass insulation fell upon

him. In the use of this material, which was done by other employees, the plaintiff's clothes and body became infested with such dust. The plaintiff alleged that this spun glass, which was sharp and irritating to the body, and abrasive, was the cause of his skin ailment.

The action is founded upon the grounds that the defendant "carelessly, negligently, and in utter disregard of the health and safety of the plaintiff, allowed this dust to accumulate and remain for long periods of time." The defendant demurred upon the grounds that the court did not have jurisdiction and that the complaint did not state a cause of action. The defendant further claims that the disease did not arise directly from the plaintiff's field of employment, and therefore no recovery should be had.

In limiting the field of liability of the employer, the court said, "An employer is not liable for any occupational disease which cannot be traced to the employment as a direct and proximate cause and is not recognized as a hazardous characteristic of and peculiar to the trade, occupation, process, or employment, or which results from a hazard to which the workman would have been equally exposed outside of the employment." This statement seems to nullify the claim of the defendant that they should not be liable because the plaintiff did not technically contract his ailment directly from his work.

Under the Minnesota statute, the court determined that those occupational diseases intended to be covered were those: (1) Arising out of employment. (2) If there be a direct causal connection between the condition under which the work is performed and the disease. (3) And if the disease follows as a natural incident of the work as a result of the exposure occasioned by the nature of the employment.

From number three, the court determined that the disease contracted must have its roots, from a causal point of view, in the work being done. This of course, was impossible, when the plaintiff was a machinist. The court felt that a broader interpretation should be given and said, "We think the logical conclusion to be drawn is that the provision 'arising out of and in the course of employment peculiar to the occupation in which the employee is engaged and due to causes in excess of the hazards ordinary of the employment' refers to the hazards which the plaintiff was exposed to in doing his work. Were this not so, it is difficult to find an adequate reason for the adoption of the statute. * * * The definition does not require that a disease, to be within the definition, should be one which arises solely out of the particular kind of employment in which the employee is engaged, nor that it should be due to causes in excess of the ordinary hazards of that particular kind of employment. The phrase, 'peculiar to the occupation,' is not here used in the sense that the conditions of that employment must result in a hazard which distinguishes it in character from the general run of occupation.

The court went on to say that the compensation law was remedial and should be given a liberal interpretation. The decision of the court was that the plaintiff's cause was within the provisions of the statute and that he must proceed under it, and, therefore, the order was reversed.

Roger D. Gustafson.

RIGHT TO BRING ACTION FOR ALIENATION OF FATHER'S AFFECTIONS —Daily v. Parker, 152 F. (2d) 174, also 61 F. Supp. 701 (1945).— In the summer of 1945 two actions were instituted against Mrs. Marian Lammers Parker; the first by Mrs. Olive Means Daily and the second by the four minor children of Mrs. Daily with their mother as next friend. These actions were brought for alienation of affections and criminal conversation. They alleged that Marian Parker illegally and maliciously induced Willifred J. Daily, husband and father of the plaintiffs in the two causes respectively, to consort and associate with her. In the first cause judgment was for the plaintiff.

In the latter cause the plaintiffs' right to sue was denied, and judgment was rendered for the defendant. However, on appeal this judgment was reversed.

Three specific questions arose in the adjudication of this case. (1) Will the Federal Court recognize and enforce such a cause of action in the absence of any direct holding by the state court upholding such cause of action? (2) Should a state or Federal court recognize such a cause of action in the absence of legislation by the state granting such a cause of action to the minor children? (3) Is there anything in the constitutions or statutes of the states in which the parties to the action were residents which prevents that court from recognizing such a cause of action in the plaintiffs?

Having answered these three questions, the first two in the affirmative and the last in the negative, the court went on to say:

In a family, constituting father, mother, and children, each is entitled to the society and companionship of the others and within the limits of the others' abilities, each is entitled to the financial aid and support of the others.

Children are entitled to shelter, food, clothing and schooling and to the social and moral support, guidance and protection of their father.

That these rights have not heretofore been recognized is not a conclusive reason for denying them.

If no precedents can be found, courts may indulge in law-making by decisions, or engage in "judicial empiricism." (The Spirit of the Common Law," by Dean Pound, p. 183.)

The contention that children could not have been damaged by loss of society of a father who deserted them to run away with a married woman, though not without weight, would merely raise a fact question for jury on issue of damages and would not require application of the *maxim dammum absque injuria* so as to preclude recovery from those who caused the desertion.

Lawrence Turner, Jr.

STATEMENT OF THE OWNERSHIP, MANAGEMENT, CIRCULATION, ETC., REQUIRED BY THE ACT OF CONGRESS OF AUGUST 24, 1912.

Of the NOTRE DAME LAWYER, published quarterly, in March, June, September and December at Notre Dame, Indiana, for June, 1946.

State of Indiana } ss.
St. Joseph County }

Before me, a Notary Public in and for the State and County aforesaid, personally appeared John F. Power, who having been duly sworn according to law, deposes and says that he is Editor-in-Chief of the Notre Dame Lawyer and that the following is, to the best of his knowledge and belief, a true statement of the ownership, management, etc. of the aforesaid publication for the date shown in the above caption, required by the Act of August 24, 1912, embodied in Section 411, Postal Laws and Regulations, printed on the reverse of this form, to-wit:

1. That the names and addresses of the publisher, editors, managing editors, and business manager are:

Publisher—College of Law of the University of Notre Dame, Notre Dame, Ind.

Editor-in-Chief—John F. Power, Notre Dame, Ind.

Assistant Editor—Arthur M. Diamond, Notre Dame, Ind.

Business Manager—Arthur A. May, Notre Dame, Ind.

2. That the owner is: The University of Notre Dame, Notre Dame, Indiana.

President—Rev. Hugh O'Donnell, C.S.C., Notre Dame, Indiana.

Vice-President—Rev. John Cavanaugh, C.S.C., Notre Dame, Indiana.

Secretary—Rev. William Connor, C.S.C., Notre Dame, Indiana.

Treasurer—Brother Albinus, C.S.C., Notre Dame, Indiana.

3. That the known bondholders, mortgagees, and other security holders owning or holding one per cent or more of total amount of bonds, mortgages, or other securities are: None.

JOHN F. POWER,
Editor.

State of Indiana } ss.
St. Joseph County }

Subscribed and sworn to before me this 15th day of August, 1946.

LOIS WRIGHT,
Notary Public.

[SEAL]

My commission will expire June 28, 1948.