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Civil Liability Created by the Violation of a Penal Statute in Pennsylvania

Dale F. Shughart

and in default of issue, to his next of kin. At the time of the creation of the life estate the plaintiff was a sister of the life tenant, but subsequently, and prior to the death of the life tenant, plaintiff was adopted by a third person. It was held that upon the death of the life tenant without issue, plaintiff could not take as the next of kin of the life tenant, since the remainder so created was contingent until the death of the life tenant, and at that time the plaintiff was not entitled as his next of kin since section 16 (b) of the Intestate Act provides that an adopted child cannot inherit from the family of his natural parents.

In *Hall's Estate*[17] the plaintiff was adopted by proceedings in the Orphans' Court in New Jersey, under a decree which expressly reserved his right of inheritance from his natural parents. It was held that he was entitled to inherit from his natural parents in Pennsylvania, even though a decree of adoption in this state would have precluded him from so doing. The Court said that adoption proceedings are contractual in their nature, and rights reserved therein to the adopted child may be asserted by him in the courts of any other jurisdiction.

The final point to be noted from the decisions appears in *Herner's Estate*[18] where the Court said that property passing upon death to an adopted son of decedent's daughter is subject to transfer inheritance tax under section 2 of the Act of May 15, 1925 P. L. 806, at the rate of 10%. The term "adopted children" as used in that statute, refers only to those adopted by the decedent himself. The Court reaches this result because the act uses the words "child" and "lineal descendants." The former is limited to issue of the first generation and "lineal descendants" means issue more remote. On the same basis the Court says that an "adopted child" is a child of the first generation, and not more remote. Therefore an adopted person more remote than the first generation is not included within the definition of a direct descendant under the act, so he must pay tax as a collateral at the rate of 10%.

Jesse P. Long.

CIVIL LIABILITY CREATED BY THE VIOLATION OF A PENAL STATUTE IN PENNSYLVANIA

If conduct which is not criminal but which is harmful to an individual is made criminal by statute, is such conduct, by implication, made a civil wrong

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[17] 20 Pa. D. & C. 214 (1934).
[18] 19 Pa. D. & C. 563 (1933).

at the suit of the individual injured thereby? This question has received varying answers from the courts.

The answer to this question depends upon the character of the legal duty that the statute creates. A legal duty means liability to legal sanction, i. e., some evil to be suffered in consequence of violating a rule of law. A person who will incur a legal sanction if he acts or does not act, is, respectively, under a legal duty not to act or to act. A duty is owed to the person who, according to law, may enforce the legal remedy for its breach. Duties are of two classes, absolute and relative. Absolute duties are owed only to the state which imposes them. Relative duties are owed to persons other than the state which imposes them and correlative with rights vested in the person to whom they are owed.

The answer to the question under consideration therefore depends upon whether the duty created by the statute whose violation has caused an injury to an individual was absolute or relative.

Much of the difficulty caused by this problem in Pennsylvania has been caused by the decision of the court in the comparatively early case of *Mack v. Wright.*[1] The court held that if the legislature had intended to create a civil liability in addition to the penalty imposed by the statute it would have so stated, thus giving the statute strict construction. The court went on to say that the presumption is that where a statute imposes a duty where none before existed, the remedy provided therein for the breach of the duty is exclusive. This case has been followed by the dicta in one later case.[2] In the opinion the court stated that nothing was shown to charge the defendant with negligence except the failure to comply with the duty required by the statute and that such failure was not shown to be the proximate cause of the injury. This later statement has provided a loophole wherein the other cases have entered to so undermine the doctrine that it can hardly be said to be the law today. There is no case that expressly overrules the case of *Mack v. Wright,* but the court has said that it was not without exceptions.[3]

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[1]Mack v. Wright, 180 Pa. 472—"If the legislature had intended that in addition to the penalty imposed by the statute under consideration for nonperformance of the duty prescribed by it a party injured by such nonperformance should have an action for damages sustained thereby it would have said so."

[2]Brynelson v. Turner, 239 Pa. 346—dicta; a specific penalty is attached to the act and it is to be strictly construed.

[3]Danner v. Wells, 248 Pa. 105—"If a plain duty is imposed for the benefit of individuals, and the penalty is obviously inadequate to compel performance the implication will be strong, if not conclusive, that the penalty was meant to be cumulative to such remedy as the common law gives when a duty owing to an individual is neglected."

If we take the true basis of the decision in *Mack v. Wright*, namely, that the violation of the statute was not the proximate cause of the injury but merely an accompanying condition, then the cases in Pennsylvania can be reconciled. Most of the cases involve statutes providing for the safety of workmen in factories and mines. In these cases the court has decided that a duty is owed not only to the public, but a duty is also owed to the individual employed; hence for the breach of this duty the penal liability is not exclusive of a civil liability.

Where the failure to perform the duty imposed by a penal statute creates a civil liability it does so through the field of negligence. It is upon this question that there is a great conflict of authority in the several states. To what extent should the violation of a penal statute be regarded as negligence? Should it be negligence per se or merely some evidence of negligence or should the violation of the statute render the defendant absolutely liable for the results flowing from his act?

The cases in Pennsylvania depend upon the type of statute violated, thus accounting for the difference in the decisions. In all the cases involving the violation of a penal statute the plaintiff must be a member of the class of persons whom the statute aims to protect,[4] for it is axiomatic that to recover for negligence the plaintiff must show a duty owing to the plaintiff.

The case of *Stehle v. Jaeger Automatic Machine Co.*,[5] has decided that the statute providing for the safety of workmen may be penal and violations upon conviction are punishable by fine and imprisonment, yet these remedies are not exclusive and do not preclude the right of action for damages in a civil proceeding. Although the court did not mention *Mack v. Wright*[6] its conclusion practically overrules that case. The court concludes by saying, "if the injury resulted by reason of employment prohibited by law there can and should be a recovery."

In this case and others where the violations of statutes prohibiting the employment of minors in dangerous occupations are involved the courts are more ready to find the defendant liable than in any others. One case held that the defendant could not defend himself on the grounds of voluntary as-

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[4]Drake v. Fenton, 237 Pa. 8—recovery was refused to a fireman who fell through an open gate of an elevator shaft (which was in violation of a statute) because the owner owed no duty to the plaintiff because he was on the premises under a license given by law.

[5]Stehle v. Jaeger Automatic Machine Co., 220 Pa. 617.

[6]Mack v. Wright, 180 Pa. 472.

sumption of risk.[7] Another case said, "when employment is shown to be illegal because forbidden by statute (child labor) that in itself is sufficient evidence of the defendant's negligence and if the injury was sustained in the course of that employment that would show sufficient causal relation to find the defendant liable."[8]

Statutes involving the sale of firearms to minors are of the same type and the court has held that in such cases the violation of the statute is negligence *per se* and further the violation is treated as the proximate cause of the injury.[9] In both these cases and the ones involving statutes prohibiting the employment of minors at dangerous occupations neither voluntary assumption of risk[10] nor contributory negligence is available as a defense.

Another class of cases involves statutes regarding general safety regulations in mining, manufacturing, and buildings. These statutes are mandatory and create a duty *per se*, but no cause of action arises from the breach of such duty unless such wrongdoing is the proximate cause of the injury.[11] In this type of case the defense of contributory negligence is available to the defendant. The defense of voluntary assumption of risk is not available to the defendant, however.[12]

Where the statute has been complied with, such as having a gate to close an elevator shaft, but an injury has been suffered because the gate was left

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[7]Lanahan v. Pittston Coal Mining Co., 218 Pa. 311—"An employer who has violated a statute prohibiting the employment in certain factories or at dangerous work of children under ages does so at his peril and if sued for personal injuries cannot defend on the ground of assumption of risk."

[8]Krutilies v. Bull's Head Coal Co., 249 Pa. 162—"When the employment of a minor is shown to be illegal because forbidden by statute that in itself is sufficient evidence of the defendant's negligence, and if the injury complained of occurred in the course of plaintiff's service under such unlawful employment, that is enough to show a causal relation, and the law will refer the injury to the original wrong as the proximate cause."

[9]Wassel v. Ludwig, 92 Pa. Super. Ct. 341—"When he sold the gun in defiance of the statute he made himself liable for any injurious result which might naturally or probably flow as a consequence of his act."

[10]Wassel v. Ludwig, 92 Pa. Super. Ct. 341.

[11]Johnson v. Endura Mfg. Co., 282 Pa. 322—"The violation of a penal statute may constitute negligence *per se*, but no right of action arises therefrom, unless such wrongdoing is the proximate cause of the injury." Here the plaintiff was hired legally and was injured while doing a legal task although at times he had performed tasks which he could not legally perform. Accord; McMillen v. Steele, 275 Pa. 584.

[12]Lanahan v. Araspha Mfg. Co., 240 Pa. 292—"The performance of the statutory duty imposed upon the proprietor of an industrial plant is the only excuse which the law will accept from him when charged with the disregard of it resulting in injuries to an employee unless the latter be guilty of contributory negligence." Accord; Bollinger v. Crystal Sand Co., 232 Pa. 636; Fritz v. Elk Tanning Co., 258 Pa. 187; Jaras v. Wright, 263 Pa. 490.

open by another employee the defendant is not liable.[13] The reason here is obvious: first, the defendant did not violate the statute, and second, because there is no duty upon the manager to follow his employees to see if they perform their tasks properly.

In summary we submit the following rule, if the statute was violated and the person injured was one whom the statute aimed to protect, then:

1. If it was a statute prohibiting the sale of firearms to minors or the employment of minors at certain dangerous occupations, then the violation is negligence *per se* and is treated as the proximate cause of the injury. Further, the defendant may not use the defence of voluntary assumption of risk or the contributory negligence of the minor.[14]

2. If the statute is one involving the violation of statutes providing for the general safety in mining, manufacturing, and buildings then the violation is negligence *per se*, but proximate cause must be established in order to make the violation actionable. The contributory negligence of the plaintiff will be available as a defense, but voluntary assumption of risk will not be.

Dale F. Shughart.

PARTNERSHIP LIABILITY OF MEMBERS OF DEFECTIVE CORPORATIONS

As the body of law governing corporations is being refined and perfected, the question of defective incorporation and the results which arise therefrom is steadily growing less important. However, there still remain situations in which it may become necessary to determine just what is the status of the members of a supposed corporation which actually has no legal existence as such.

In this discussion the term "defective corporation" is used to describe an association of individuals which purports to be a corporation, but which has not attained either a de jure or a de facto corporate existence. Consequently, since by hypothesis no corporate existence of any sort has been attained in these cases, it is not necessary to consider at all the provisions of the various

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[13]Beach v. Hyman, 254 Pa. 135.
[14]36 Dickinson Law Review 192.
[15]36 Dickinson Law Review 192.