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Right of Parent to Sue Child for Child's Negligence, in Pennsylvania

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conversions are committed under just these circumstances, and it is no defense to say that there was an intention to reimburse the owner.[48] It is the fact that the defendant uses the property of another, even though temporarily, for his own or some other's benefit without the owner's consent which makes his conduct criminal.[49] If he converts the property, knowing his act to be wrong, he is guilty irrespective of his intention as to making right his wrong. Nor is it a defense to say that the owner later ratified the conversion. Once having, with criminal intent, used another's property, the offense has been committed, and ratification will not make it less criminal.

While the intent of the accused must be criminal, the intent of the prosecutor or the owner is immaterial. In the case of *Com. v. Gartman*[50] the defendant attempted to justify his conduct and criminal intent by pointing to the prosecutor's illegal purpose. The prosecutor had given the defendant a large sum of money with which to buy "bootleg" liquor, and the defendant absconded with the money. This fact, however, did not exempt the defendant from the operation of the statute. An illegal intention on the part of the owner of the property does not make the wrongful intention of the accused less criminal.

H. L. Weary

RIGHT OF PARENT TO SUE CHILD FOR CHILD'S NEGLIGENCE, IN PENNSYLVANIA

An action may not be maintained by a parent against an unemancipated child for personal injuries of the parent resulting from the negligence of the child. *Duffy v. Duffy*, 117 *Pa. Super.* 500, April 15, 1935.

By this case Pennsylvania adopts the conservative view. There are three other cases in which this question arose.[1] In only one jurisdiction may the parent sue the child in this situation.[2] It is interesting to note that in all four of these cases the plaintiff-parent was the mother.

The reasons advanced by the Pennsylvania court are threefold: (1) in the converse situation, the great weight of authority will not permit an

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[48]Com. v. Meile, 115 Pa. Super. 269.
[49]Com. v. Gilliam, 82 Pa. Super. 75.
[50]83 Pa. Super. 108.

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[1]Crosby v. Crosby, 230 App. Div. 651, 246 N. Y. S. 384, (1930); Schneider v. Schneider, 160 Md. 18, 152 A. 498, (1930); Wells v. Wells, 48 S.W. (2d.) 109, (Mo., 1932).
[2]Wells v. Wells, 48 S.W. (2d.) 109, (Mo. 1932).

unemancipated minor to sue his parent for personal injuries of the child resulting from the negligence of the parent; (2) the public policy is to prevent rather than to promote "discord in the home, disorganization of the family relation, and the severing of the natural ties of affection" which "are apt to follow"; and, (3) the parent is the natural guardian of the child,—" 'The ordinary position of parent and guardian of a minor, and that of a plaintiff seeking to recover from the minor, are positions which cannot both be occupied by one person at one and the same time.' "[3]

The *Duffy* case cites *Crosby v Crosby,* 246 *N. Y. S.* 384, as a similar case in which recovery was denied. In the *Crosby* case, however, the parent's judgment against the minor child was reversed because the trial court had refused to admit the defendant's plea that no cause of action existed in favor of the plaintiff because the defendant was an infant.

The *Duffy* case also cites *LoGalbo v. Lo Galbo,* 246 *N.Y.S.* 565, as a similar case in which recovery was denied. But in the *Lo Galbo* case the father's administratrix, his widow and the mother of the defendant, was permitted to sue the minor child for two reasons: (1) the child was emancipated, and (2) "it is a matter of common knowledge that a great proportion of owners of automobiles are protected against damages by insurance," which abrogates the old reason of non-suability based on public policy.

The *Lo Galbo* case and other authorities[4] consider the element of insurance contracts usually maintained by automobile operators;[5] but the Pennsylvania court disposed of this factor by stating that "without a legislative mandate, we see no justification for making such a discrimination, thus segregating automobile cases from other actions by a parent growing out of the negligent conduct of an unemancipated minor, because in many automobile cases insurance might be carried that would give protection. That distinction has never been recognized in any of the decisions called to our attention, and we refuse . . . to adopt such a theory."

The opposite view is maintained in *Wells v. Wells,*[6] which held that a parent may sue a minor child in tort. The Pennsylvania court distinguishes the *Wells* case on the ground that that case is based on an earlier case in the

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[3]The court here is quoting Schneider v. Schneider, 160 Md. 18, 152 A. 498, (1930).

[4]Schneider v. Schneider, 160 Md. 18, 152 A. 498; Fidelity & Casualty Co. v. Marchand, 4 D. L. R. 157, S. C. R. 86, 13 B. R. C. 1135, (Can.); Dunlap v. Dunlap, N. H., 150 A. 905; Goheen v. Goheen, 9 N. J. Misc. Rep. 507, 154 A. 393; Lund v. Olson, 183 Minn. 515, 237 N. W. 188; Belleson v. Skilbeck, 185 Minn. 537, 242 N. W. 1; Canen v. Kraft, 41 Ohio App. 120; 43 Harv. L. R. 1030, 1074; 44 Harv. L. R. 135; 79 U. Pa. L. R. 649; 16 Cornell L. Q. 286; 33 Columbia L. R. 360; 13 Boston U. L. R. 357, 361; 1 Duke B. A. J. 51.

[5]All of these parent *versus* child cases have arisen from negligence alleged on the part of the child in operating an automobile.

[6]48 S. W. (2d) 109, (Mo. 1932).

same state, and that the earlier case is to be differentiated because the infant plaintiff was suing a person who stood in loco parentis. Nevertheless the *Wells* case does permit a natural parent to sue an unemancipated minor child for the infant's negligence in an automobile accident. The *Wells* case represents the liberal view. It answers the public policy contention by asserting that there is a general rule which permits a parent to bring a suit concerning property against a minor child[7] and that a suit concerning property introduces no more antagonism in the parent-child relationship than a suit based on personal injuries.[8]

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[7]See McKern v. Beck, 126 N. E. 641, (Ind., 1920).

[8]See Titman v. Titman, 64 Pa. 480, (1870), a suit arising from a contract between parent and minor child.