Abstracts of Recent Cases

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Recommended Citation
Available at: https://researchrepository.wvu.edu/wvlr/vol61/iss2/17

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is chargeable for the hazards of such services. The aggravation caused by the unskilful treatment of a doctor would not have occurred if there had been no original injury and the aggravation is regarded as the proximate result which naturally flows from the original injury.

It is possible that the instant case may be cited as affirming a limitation on the liability of the original tortfeasor for the subsequent repair of property. The problem of causation is one of ascertaining the ambit of the risk created by the defendant. Pound, *Causation*, 67 *Yale* L.J. 1, 18 (1957). In the *Cleary* case, *supra*, the court recognized that it is the probability of the occurrence of the intervention of another conscious agent which is material. It is submitted that the test of liability should be foreseeability of the intervention and not whether it involves personal injury or property damage.

A. G. H.

**ABSTRACTS OF RECENT CASES**

**Conflict of Laws—Full Faith and Credit—Judgment of a Sister State.**—Ds, West Virginia residents, in purchasing a house trailer, had given P, a Pennsylvania corporation, a promissory note authorizing a confession of judgment in the event of a default of payment. When Ds became delinquent in an installment, P's agent requested that Ds sign a release on the trailer, and he orally promised that such release would end the transaction between the parties. After obtaining the signatures, P brought an action in Pennsylvania on the note, and obtained a judgment against Ds pursuant to the provisions of the note. P then instituted an action in debt on the judgment in West Virginia. Upon the court's refusal to give the judgment full faith and credit under U.S. *Const.* art. 1, § 4, because the judgment had been obtained through fraud, P appealed. *Held*, that a judgment in a court of record of a sister state will not be given full faith and credit where it is shown that the judgment was procured through fraud. *Consumer Credit Co. v. Bowers*, 104 S.E.2d 869 (W. Va. 1958).

The full faith and credit clause does not preclude a court from impeaching the validity of the judgment of a sister state. *Crover v. Baker Sewing Machine Co.*, 137 U.S. 287 (1897); *Bonnet-Brown Sales Service v. Utt*, 323 Mo. 589, 19 S.W.2d 888 (1929).
In determining whether a defense should bar recovery on the judgment, the overwhelming majority of jurisdictions hold that the only defenses which may be set up are those which would have been available in the state where the judgment was obtained. *Ward v. Hunter Mach. Co.*, 263 Mich. 445, 248 N.W. 864 (1933).

Restatement, Conflict of Laws § 440 (1934), states the rule as follows: "A valid foreign judgment for the payment of money which was obtained by fraud will not be enforced if (a) equitable defenses may be interposed in an action at law at the forum, and (b) the fraud was of a character such as to constitute grounds for equitable relief in the state where the judgment was rendered."

A few jurisdictions have enumerated those defenses which they will allow as a bar to recovery without regard to the law of the state where the judgment was rendered. *Jeanette Glass Co. v. Indemnity Ins. Co.*, 370 Pa. 409, 88 A.2d 407 (1952) (the court listed lack of jurisdiction, nul talis record, and legal satisfaction as the only defenses available).

The West Virginia court in the instant case held that satisfaction prior to the entry of the judgment revokes the warrant of attorney to confess judgment and any judgment thereafter obtained is done so through such fraud as to render the judgment void and open to collateral attack. The court made no mention of whether fraud is a bar to recovery in Pennsylvania where the judgment was obtained. This is contrary to the view followed by the majority of the jurisdictions and seems to deny full faith and credit in that a defense which would have been unavailable in the original action might be allowed in the subsequent action.

**Torts—Recovery for Fright and Shock Without Impact.**—D's cattle wandered onto P's farm through a fence which D had negligently left open. One of D's bulls charged toward P but was diverted before coming into contact with her. P collapsed and suffered an attack of coronary insufficiency. P brought suit against D for damages arising out of her fright and shock. Upon being nonsuited, she appealed. Held, that there can be no recovery for injuries resulting from fright or nervous shock unless they are accompanied by physical injury or physical impact. *Bosley v. Andrews*, 142 A.2d 263 (Pa. 1958).
This decision is in accord with a long line of Pennsylvania decisions denying recovery for fright or shock due to negligence where there is no accompanying physical injury or impact. The impact or injury is said to be required in order to prevent the courts from being flooded by fraudulent claims.

The majority of jurisdictions, among which is West Virginia, follows the rule that there can be a recovery for fright and shock accompanied by physical injury even though there is no impact. Restatement, Torts § 313 (1938), has adopted this view. See Monteleone v. Co-operative Transit Co., 128 W. Va. 340, 86 S.E.2d 475 (1935); Annot., 98 A.L.R. 402 (1935); 52 Am. Jur. Torts §§ 76, 78, 83 (1944).

Only a small and shrinking minority now follows the rule that an impact is required along with the injury in order for there to be a recovery. And even in these jurisdictions the impact need only be slight. Prosser, Torts § 37 (2d ed. 1955).

Criminal Law—Statute Providing for Transcripts Without Charge to Indigent Persons Convicted of Crimes—Right to Cross-Examination.—Ds, after being convicted of felonies, gave notice that they would petition for writs of error. Their petitions requested transcripts of the proceedings at the state's expense as authorized by W. Va. Code ch. 51, art. 7, § 7 (Michie 1955), which provided for transcripts without charge to indigent persons convicted of a crime. The state objected and requested a right to cross-examine as to whether there was indigency, but no answer was filed and no counter-affidavit was tendered. The court ordered that the transcripts be issued and the state instituted this proceeding for a writ of prohibition to prevent the order from being carried out. Held, that where the state had notice but filed no answer or counter-affidavit, it was within the court's discretion to grant a hearing with a right of cross-examination on the questions raised in the petitions. State v. Bosworth, 105 S.E.2d 1 (W. Va. 1958).

The court in the instant case pointed out that the filing of the affidavit by the defendants established a prima facie case that there was indigency. The state could have overcome this presumption during the hearing by showing through cross-examination that the defendants were not in fact indigent. But where the state fails to answer, the court may in its discretion deny such hearing and cross-
examination without being guilty of an abuse of discretion which would warrant a writ of prohibition.


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**Bills and Notes—Conditional Delivery.**—D executed and entrusted his promissory note negotiable in form to P which contained blanks as to due date, sum, and date of payment. It was orally agreed that the instrument was not to be operative until D notified P of the acceptance of P's offer to install certain awnings. P without authority completed the note and sued D thereon. D tendered instructions, which the court refused, to the effect that the condition not having occurred, the instrument was never validly delivered. Held, that if the evidence supported the allegation, it was error to refuse the instruction. Leverett v. Awnings, Inc., 104 S.E.2d 686 (Ga. 1958).

It is settled law that evidence of a conditional delivery of a promissory note may be established against one who does not qualify as a holder in due course. This view was followed by the courts in the majority of jurisdictions prior to and was later incorporated in Uniform Negotiable Instruments Act § 16.

The parol evidence rule is inapplicable in this situation because the evidence is offered to prove an absence of delivery rather than a change in the terms of the instrument. See Annot., 54 A.L.R. 702 (1928).

For a discussion of conditional delivery see 10 C.J.S. Bills and Notes § 79 (1938); 7 Am. Jur. Bills and Notes §§ 40, 41 (1937); Britton, Bills & Notes § 54 (1943).

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