Parent and Child—Right of Child To Recover in Tort Against Parent

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recognized by the legislature as a valuable property right, separate and distinct from the oil and gas. It is therefore arguable that such right should be expressly bargained for, and not be acquired by implication. Thus, in both the principal case and in the hypothetical case, the right to use the containing space for the storage of gas has independent significance. It is not an implied right, and if the mineral owner expects more in connection with his grant, he ought to stipulate for it.

C. J. C.

Parent and Child—Right of Child to Recover in Tort Against Parent.—P, a minor aged seven, sought damages for injuries caused by the alleged negligence of D, a partnership. P’s father was a member of the partnership. Held, on appeal, that a parent in his business or vocational capacity is not immune from a personal tort action by his unemancipated minor child. Signs v. Signs, 156 Ohio St. 566, 103 N.E.2d 743 (1952).


In this country prior to 1891, only three cases dealing with the tort liability of parents and persons in loco parentis had appeared. Inclination toward liability was expressed in all three. Gould v. Christianson, 10 Fed. Cas. 857, No. 5,636 (D.C.S.D.N.Y. 1836); Nelson v. Johansen, 18 Neb. 180, 24 N.W. 730 (1885); Lander v. Seaver, 82 Utah 114, 76 Am. Dec. 156 (1889).

Hewlett v. George, 68 Miss. 703, 9 So. 885 (1891), is the leading case in the United States denying recovery to the child in an action
against his parent for personal injury. This case has been generally followed by the American courts, including two intermediate appellate courts in Ohio. *Canen v. Kraft*, 41 Ohio App. 120, 180 N.E. 277 (1931); *Krohngold v. Krohngold*, 181 N.E. 910 (Ohio App. 1932). Since the Mississippi case cites no authority and offers very little discussion, its far-reaching effect among the courts appears remarkable.

In upholding parental immunity, the chief reason offered is that domestic tranquillity and parental discipline and control would be disturbed by the action. *Mesite v. Kirchenstein*, 109 Conn. 77, 145 Atl. 753 (1929); *Small v. Morrison*, 185 N.C. 577, 118 S.E. 12 (1923). Supporting elements offered by advocates of the rule are that a contrary rule would prevent the possibility that the family finances might be depleted at the expense of the other children, or that the door might be opened for fraudulent claims. Others state that such actions would be against public policy. *Luster v. Luster*, 299 Mass. 480, 13 N.E.2d 438 (1938); McCurdy, *Torts Between Persons in Domestic Relations*, 43 Harv. L. Rev. 1030 (1930).

In comparatively recent years, dissenting voices have been raised in criticism of adherence to an absolute rule which in some instances has resulted in a denial of justice. There has been a growing judicial inclination to depart very materially from the broad doctrine that an unemancipated minor cannot maintain a tort action against his parent. *Dunlap v. Dunlap*, 84 N.H. 352, 150 Atl. 905 (1930); *Cowgell v. Boock*, 189 Ore. 218, 218 P.2d 445 (1950); *Worrell v. Worrell*, 174 Va. 11, 4 S.E.2d 343 (1939).

The modern view is exemplified by the trend of the West Virginia cases. In 1931, the initial case involving parental immunity in a tort action was decided by the supreme court. In this case, *Securo v. Securo*, 110 W. Va. 1, 156 S.E.2d 750, 37 W. Va. L.Q. 315 (1931), involving an action by an unemancipated daughter against her father for injuries sustained in an automobile accident, the court denied the daughter the right to recover. In granting parental immunity, the court based its decision on the ground that society has an interest in preserving harmony in domestic matters, and in not permitting families to be torn asunder by suits for damages by insolent and ungrateful children, for real
or fancied grievances. However, in the much cited case of *Lusk v. Lusk*, 113 W. Va. 17, 166 S.E.2d 538 (1932), the court deviated from the majority view of the nonliability of a parent for a personal injury sustained by an unemancipated minor or child. In this case the father was protected by an indemnity insurance policy he and his employer carried. In delivering its opinion, the court declared that the rule of parental immunity for an injury to a child will not be extended where the reason for the rule fails. The *Securo* case was not overruled but rather distinguished from the *Lusk* case. The court rationalized that recovery in actions of this nature should assure domestic harmony rather than disrupt it. The opinion in the *Lusk* case reflects the view on parental immunity in West Virginia, that is, recognition of the general rule of parental immunity subject to deviations where the reason for the rule fails.

Authority for another exception to the general rule has been created by the decision of the principal case. Practically all the previous exceptions have been limited to instances where there was either a willful tort by the parent, or the parent was financially protected by insurance (or workmen's compensation). *Dunlap v. Dunlap*, supra; *Cowgell v. Cowgell*, supra; *Worrell v. Worrell*, supra. The court in the principal case declared that the problem should be solved irrespective of the presence of indemnity insurance.

Perhaps the reason underlying the court's ruling was that the complete burden of liability would not necessarily fall upon the parent's shoulders, since he was a member of a partnership. However, the opinion shows no indication that the partnership element was the ground for decision. If the court had relied on this fact, its decision might be better justified. The court has not discarded the parental immunity rule, but has refused to follow the rule where a parent is engaged in his business or vocational capacity when the tort is committed. However, the language used by the court to support its holding indicates that the only reason it did not reject the rule was because it was not necessary to go so far in this case. Evidently, the Ohio court had little regard for the sound policy of the majority which attempts to preserve the tranquility of the home. It is doubtful that the courts of other juris-
dictions which have approved some deviation from the absolute rule of immunity will follow the liberal view of the principal case.

I. M. L.

BOOK REVIEWS


From the lawyer's viewpoint, here is a book which may be used in numerous ways.

Before dealing specifically with that evaluation, the uniqueness of the book ought to be noted. This appears to be the first joint effort of a psychiatrist and a lawyer to interpret legal psychiatry, resulting in a presentation of the subject more understandable to either psychiatrists or lawyers — and the public — than a treatment by either alone would have produced. The material written by each seems easily identifiable, but one cannot fail to notice the apparent influence of the one writer upon the other in his presentation. The psychiatrist's special vocabulary is rarely found in this book, and the legal rules and principles are presented in a manner intelligible by the jury — presumably intended to be the public.

The book should have a strong appeal to those lawyers who are interested in improving the administration of justice. Here is the only general book on legal psychiatry which has appeared in this country during the past quarter century during which period psychiatry has been making its greatest progress in both practice and influence. Have these developments been reflected by appropriate changes in the law? A general treatment of this question is found in the book, but the West Virginia lawyer will be more interested in noting how few steps have been taken in this jurisdiction, as compared with procedures elsewhere, to recognize in our law established findings of psychiatry. Often such changes have not been forthcoming because of misunderstanding and mis-