Volume 25 | Issue 2 Article 14

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Practice and Procedure--Judgements--Supervision by Court Over Orders and Proceedings at Rules

instead that "the tortious act itself—the act in the manner in which it was done"—be within the scope of the partnership business. Thus, it has been said that committing illegal acts cannot be "within the scope of the partnership, which could only exist for lawful purposes," *Hutchins* v. *Turner,* 8 Hump. 414, 417 (Tenn. 1847), that partners "are not answerable for the wrongs of each other" even though done in the course of the partnership business, *Rosenkranz* v. *Barker,* 115 Ill. 331, 3 N. E. 93, 96 (1885), and that committing a tort is not "within the power constructively delegated to one partner as the agent of the other." *Farrell* v. *Friedlander,* 63 Hun 254, 18 N. Y. Supp. 215 (1892). Since such cases also hold that there is no legal presumption that one partner concurs in the wrongful acts of another, *Taylor* v. *Jones,* 42 N. H. 25, 37 (1860), it follows that they require express authorization or ratification of the tort to impose liability. Since the liability of one partner for the tort of his copartner is governed by the same principles as the liability of a master for the tort of his servant or a corporation for the tort of its agent, *Marshall* v. *Anderson,* 92 S. E. 421 (W. Va. 1917); *Linton* v. *Hurley,* 14 Gray 191 (Mass. 1859), it would seem that cases opposed to the principal case would not be followed should this question arise in West Virginia. This seems clearly deducible from West Virginia cases holding a master liable for the tort of his servant "done in the course of the principal's business, though unauthorized or forbidden," *McDonald* v. *Cole,* 46 W. Va. 186, 188, 32 S. E. 1033 (1899), and even though the act was wilful and malicious. *Bess* v. *Railway Co.,* 35 W. Va. 492, 496, 14 S. E. 234 (1891); *Gillingham* v. *Railroad Co.,* 35 W. Va. 588, 14 S. E. 243, 14 L. R. A. 798 (1891); *Gregory, Adm'r.* v. *Railroad Co.,* 37 W. Va. 606, 16 S. E. 819 (1893); *Hall* v. *Norfolk & W. R. Co.,* 44 W. Va. 36, 37, 28 S. E. 754, 41 L. R. A. 669, 67 Am. St. Rep. 757 (1897). These cases are clearly based on the test as to whether the service in which the tortious act was done—rather than the act itself—was incident to the employment. The holding of the principal case that the test of liability is whether the tortious act was such that, if it had been done in a non-tortious manner, the service would have been within the ordinary course of the partnership business, and within the real or apparent scope of the partner's authority, is clearly correct on principle and in *accord* with the trend of analogous authority in West Virginia.

PRACTICE AND PROCEDURE—JUDGMENTS—SUPERVISION BY COURT OVER ORDERS AND PROCEEDINGS AT RULES.—In a suit in equity, one of the defendants died on the rule day on which a decree *pro confesso* was entered at rules and the cause set for hearing. Argued, that the entries at rules were void on account of the death of the defendant and that the court had no authority to award a *scire facias* on motion, because the suit was not properly on the hearing docket. *Held,* that the court, having authority to enter any such

order as the clerk should have entered at rules, had authority to award the *scire facias* regardless of the validity or invalidity of entries at rules. *Moore* v. *Moore,* 93 S. E. 937 (W. Va. 1917).

By virtue of c. 125, § 60, WEST VIRGINIA CODE, "the court shall have control over all proceedings in the office during the preceding vacation. It may reinstate any cause discontinued during such vacation, set aside any of the proceedings or correct any mistake therein, and make such order concerning the same as may be just." The language of the statute would seem to give the court absolute control over proceedings at rules, with power to revoke, amend, supply, or substitute all orders in such proceedings without limitation. Nevertheless, former decisions have restricted the application of the statute. It has been held that "a defendant takes notice of these rule-day entries, and relies upon them. If none is made, he has a right to rest upon the knowledge that the cause is not being prosecuted against him to a hearing at which he must respond." *McDermitt* v. *Newman,* 64 W. Va. 195, 199, 61 S. E. 300 (1908). The same rule had already been announced in *Gallatin Land, Coal and Oil Co.* v. *Davis,* 44 W. Va. 109, 119, 28 S. E. 747 (1897), where it is held that a cause should be remanded to rules for the purpose of supplying omitted orders. In *Darnell* v. *Flynn,* 69 W. Va. 146, 149, 71 S. E. 16 (1911), it was held that "the taking of the rules is purely a ministerial, not a judicial act." This case opened the way for the modern rule, clearly opposed to the old rule and which is finally and definitely established in *Sayre* v. *McIntosh,* 92 S. E. 443 (W. Va. 1917). In the latter case, the West Virginia court adopts the Southeastern Reporter's syllabus point 2, prefixed to the opinion of the Virginia court in *Southern Express Co.* v. *Jacobs,* 109 Va. 27, 63 S. E. 17 (1908), as laying down the rule now recognized: "Where plaintiff had done all that was required to entitle him to his office judgment, he could not be prejudiced by the failure of the clerk to enter the rules properly as required by statute." The principal case is merely the latest enunciation of the same principle. It seems that orders at rules are now recognized as, in effect, coming *in esse* and operating automatically. In such a view, the court is essentiallly entering a *nunc pro tunc* order, which comes into being automatically and the mere entry of which was omitted by the clerk. But it is not necessary to base the supervisory authority of the court upon the *nunc pro tunc* principle, because the statute itself expressly gives such authority. The modern rule is entirely in harmony with the letter and spirit of the statute. WEST VIRGINIA CODE, c. 125, § 4. A defendant is bound to know what orders *should* be entered at rules. Hence, the actual entry gives him no additional notice. He in no instance can object to the entry of a proper order at rules, whether he has had notice of its entry or not, and if an improper order has been entered against him, the very same supervisory power of the court may be invoked in his favor.