WILKINSON *v.* DOWNTON.

1897
May 8.

Action—Cause of—Nervous Shock—Practical Joke causing—Remoteness of Damage.

The defendant, by way of a practical joke, falsely represented to the plaintiff, a married woman, that her husband had met with a serious accident whereby both his legs were broken. The defendant made the statement with intent that it should be believed to be true. The plaintiff believed it to be true, and in consequence suffered a violent nervous shock which rendered her ill:—

Held, that these facts constituted a good cause of action.

Victorian Railways Commissioners v. *Coultas*, (1888) 13 App. Cas. 222, and *Allsop* v. *Allsop*, (1860) 5 H. & N. 534, considered.

FURTHER CONSIDERATION before Wright J. after trial with a jury.

On April 9, 1896, Thomas Wilkinson, the husband of the plaintiff, went to a race-meeting, and on the evening of the same day the defendant came to the plaintiff's house and represented to her that her husband, while returning in a wagonette with some friends from the races, had met with an accident and had both his legs broken, that he was lying at The Elms public-house at Leytonstone, and had desired the defendant to request the plaintiff to go at once with a cab and some pillows to fetch him home. These statements were false. They were meant by the defendant to be believed to be true, and the plaintiff so believed them, with the result that she became seriously ill from a shock to her nervous system. She also on the faith of the defendant's statement incurred a small expense for railway fares of persons whom she sent to Leytonstone to see after her husband. The jury assessed the expense of the railway fares at 1*s.* 10½*d.*, and the damages for the injury caused by the nervous shock at 100*l.*

It was contended on behalf of the defendant that so far as the damage caused to the plaintiff by nervous shock was concerned the action could not be supported.

Warburton, and *A. N. Talbot*, for the plaintiff.

Abinger, for the defendant.

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WRIGHT J. In this case the defendant, in the execution of what he seems to have regarded as a practical joke, represented to the plaintiff that he was charged by her husband with a message to her to the effect that her husband was smashed up in an accident, and was lying at The Elms at Leytonstone with both legs broken, and that she was to go at once in a cab with two pillows to fetch him home. All this was false. The effect of the statement on the plaintiff was a violent shock to her nervous system, producing vomiting and other more serious and permanent physical consequences at one time threatening her reason, and entailing weeks of suffering and incapacity to her as well as expense to her husband for medical attendance. These consequences were not in any way the result of previous ill-health or weakness of constitution; nor was there any evidence of predisposition to nervous shock or any other idiosyncrasy.

In addition to these matters of substance there is a small claim for 1*s.* 10½*d.* for the cost of railway fares of persons sent by the plaintiff to Leytonstone in obedience to the pretended message. As to this 1*s.* 10½*d.* expended in railway fares on the faith of the defendant's statement, I think the case is clearly within the decision in *Pasley* v. *Freeman*. (1) The statement was a misrepresentation intended to be acted on to the damage of the plaintiff.

The real question is as to the 100*l.*, the greatest part of which is given as compensation for the female plaintiff's illness and suffering. It was argued for her that she is entitled to recover this as being damage caused by fraud, and therefore within the doctrine established by *Pasley* v. *Freeman* (1) and *Langridge* v. *Levy*. (2) I am not sure that this would not be an extension of that doctrine, the real ground of which appears to be that a person who makes a false statement intended to be acted on must make good the damage naturally resulting from its being acted on. Here there is no injuria of that kind. I think, however, that the verdict may be supported upon another ground. The defendant has, as I assume for the moment, wilfully done an act calculated to cause physical

(1) (1789) 3 T. R. 51. (2) (1837) 2 M. & W. 519.

harm to the plaintiff—that is to say, to infringe her legal right to personal safety, and has in fact thereby caused physical harm to her. That proposition without more appears to me to state a good cause of action, there being no justification alleged for the act. This wilful injuria is in law malicious, although no malicious purpose to cause the harm which was caused nor any motive of spite is imputed to the defendant.

It remains to consider whether the assumptions involved in the proposition are made out. One question is whether the defendant's act was so plainly calculated to produce some effect of the kind which was produced that an intention to produce it ought to be imputed to the defendant, regard being had to the fact that the effect was produced on a person proved to be in an ordinary state of health and mind. I think that it was. It is difficult to imagine that such a statement, made suddenly and with apparent seriousness, could fail to produce grave effects under the circumstances upon any but an exceptionally indifferent person, and therefore an intention to produce such an effect must be imputed, and it is no answer in law to say that more harm was done than was anticipated, for that is commonly the case with all wrongs. The other question is whether the effect was, to use the ordinary phrase, too remote to be in law regarded as a consequence for which the defendant is answerable. Apart from authority, I should give the same answer and on the same ground as the last question, and say that it was not too remote. Whether, as the majority of the House of Lords thought in *Lynch* v. *Knight* (1), the criterion is in asking what would be the natural effect on reasonable persons, or whether, as Lord Wensleydale thought (2), the possible infirmities of human nature ought to be recognised, it seems to me that the connection between the cause and the effect is sufficiently close and complete. It is, however, necessary to consider two authorities which are supposed to have laid down that illness through mental shock is a too remote or unnatural consequence of an injuria to entitle the plaintiff to recover in a case where damage is a necessary part of the cause of action. One is the case of *Victorian Railways Commissioners*

(1) (1861) 9 H. L. C. 577, at pp. 592, 596. (2) 9 H. L. C. 577, at p. 600.

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v. *Coultas* (1), where it was held in the Privy Council that illness which was the effect of shock caused by fright was too remote a consequence of a negligent act which caused the fright, there being no physical harm immediately caused. That decision was treated in the Court of Appeal in *Pugh* v. *London, Brighton and South Coast Ry. Co.* (2) as open to question. It is inconsistent with a decision in the Court of Appeal in Ireland: see *Bell* v. *Great Northern Ry. Co. of Ireland* (3), where the Irish Exchequer Division refused to follow it; and it has been disapproved in the Supreme Court of New York: see Pollock on Torts, 4th ed. p. 47 (*n*). (4) Nor is it altogether in point, for there was not in that case any element of wilful wrong; nor perhaps was the illness so direct and natural a consequence of the defendant's conduct as in this case. On these grounds it seems to me that the case of *Victorian Railways Commissioners* v. *Coultas* (1) is not an authority on which this case ought to be decided.

A more serious difficulty is the decision in *Allsop* v. *Allsop* (5), which was approved by the House of Lords in *Lynch* v. *Knight.* (6) In that case it was held by Pollock C.B., Martin, Bramwell, and Wilde BB., that illness caused by a slanderous imputation of unchastity in the case of a married woman did not constitute such special damage as would sustain an action for such a slander. That case, however, appears to have been decided on the ground that in all the innumerable actions for slander there were no precedents for alleging illness to be sufficient special damage, and that it would be of evil consequence to treat it as sufficient, because such a rule might lead to an infinity of trumpery or groundless actions. Neither of these reasons is applicable to the present case. Nor could such a rule be adopted as of general application without results which it would be difficult or impossible to defend. Suppose that a person is in a precarious and dangerous condition, and another person tells him that his physician has said that he

(1) 13 App. Cas. 222.

(2) [1896] 2 Q. B. 248.

(3) (1890) 26 L. R. Ir. 428.

(4) [This decision has since been reversed on appeal: *Mitchell* v. *R. R. Co.*, 151 N. Y. 107.—F. P.]

(5) 5 H. & N. 534.

(6) 9 H. L. C. 577.

has but a day to live. In such a case, if death ensued from the shock caused by the false statement, I cannot doubt that at this day the case might be one of criminal homicide, or that if a serious aggravation of illness ensued damages might be recovered. I think, however, that it must be admitted that the present case is without precedent. Some English decisions—such as *Jones* v. *Boyce* (1); *Wilkins* v. *Day* (2); *Harris* v. *Mobbs* (3)—are cited in Beven on Negligence as inconsistent with the decision in *Victorian Railways Commissioners* v. *Coultas*. (4) But I think that those cases are to be explained on a different ground, namely, that the damage which immediately resulted from the act of the passenger or of the horse was really the result, not of that act, but of a fright which rendered that act involuntary, and which therefore ought to be regarded as itself the direct and immediate cause of the damage. In *Smith* v. *Johnson & Co.* (5), decided in January last, Bruce J. and I held that where a man was killed in the sight of the plaintiff by the defendant's negligence, and the plaintiff became ill, not from the shock from fear of harm to himself, but from the shock of seeing another person killed, this harm was too remote a consequence of the negligence. But that was a very different case from the present.

There must be judgment for the plaintiff for 100*l.* 1*s.* 10½.

Judgment for plaintiff.

Solicitor for plaintiff: *J. S. Waters.*
Solicitor for defendant: *G. E. Philbrick.*

(1) (1816) 1 Stark. 493.
(2) (1883) 12 Q. B. D. 110.
(3) (1878) 3 Ex. D. 268.
(4) 13 App. Cas. 222.
(5) Unreported.

J. F. C.