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Admissability of Bills As Evidence of Value

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in a trolley motorman could excuse the defendant carrier from liability in the absence of negligence on its part.[31]

As precipitant senselessness requires a jury trial, evidence of an inducing affliction and its source supported by the reasons such attack is unexpected, will constitute a valid defense. It would be neither feasible nor advisable that existence of certain facts, as matter of law, should spell out blame therefor. Since the facts must lead us to a finding of negligence, and then the tort of negligence to a conclusion of liability, any permission of facts to immediately determine liability would be to ignore the meaning of Negligence. Our standard of care is that of the "Jural Man of ordinary mental and physical capacity and of ordinary prudence"—that is—whether or not any conduct may be called willful or negligent. Further extensions of the law of Negligence would be unreasonable and abhorrent to all principles of equity and justice. The fallacy of contrary reasoning is apparent and cannot and ought not to be sustained.[32] Where there has been no lack of proper precautionary prudence nor normal probability of resulting damage—any "sudden unforeseeable unconsciousness" should rightly excuse a defendant.

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ADMISSIBILITY OF BILLS AS EVIDENCE OF VALUE

Among the items of damages, which a plaintiff in a personal injury or property damage suit seeks to recover, are the expenses for his medical and hospital treatment and for the repair of his property. Almost invariably the plaintiff will have bills for these expenses, receipted if paid. Let us consider the admissibility of these bills in such negligence litigation.

Fundamentally, the liability of a negligent tort feasor to one damaged in property or injured in person through the tort, is limited to those damages which are the proximate [1] consequences of the negligent act. They include the necessary repairs to, or replacement of, the property, and the treatment of the person, computed as to cost by the standard of reasonable value.[2] This standard of limiting the amount of the items of damage to their reasonable value is understood by considering the development of the present day negligence action from trespass-on-the-case and *indebitatus assumpsit,* in which

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[31] Beiner v. Nassau Electric Ry., 191 App. Div. 371, 181 N. Y. Supp. 628 (1920), cited *supra* note 9.

[32] Williams v. Hays, 157 N. Y. 541, 548, 52 N. E. 589, 592 (1899), cited *supra* notes 7, 8, 12, 27.

[1] Statler v. Ray, 195 N. Y. 478, 88 N. E. 1063 (1908).

[2] Gumb v. Twenty-third Street Ry., 114 N. Y. 411, 21 N. E. 933 (1899).

reasonableness was an essential; rather than from *special assumpsit* in which the agreed amount was the principal concern.

With the requirement of reasonable value in mind, it is clear that the consideration of the ease of the plaintiff's proof (if he could establish these items of damages merely by the introduction of his doctor's, nursing, hospital, or mechanic's bills) is outweighed by the law's solicitude for the preservation of the substantive rights of a defendant. Thus, at common law, bills were not admissible as evidence of such damages in negligence actions.[3]

In *Gumb v. Twenty Third Street Railway Co.*[4] the owner of a butcher wagon, which had collided with one of the defendant's street cars, sued to recover for his personal injuries and for the damage to his wagon. He testified that he had paid seventy dollars for the repairs to the wagon, and he introduced a paid bill from the repair man in that sum. Objection was made to such testimony and to the admission of the bill. The plaintiff also testified as to what his physician charged him and introduced a bill from the physician. No evidence of payment to the physician, or of the value of the physician's services was given, except the incidental remark of the physician who, after testifying as to the extent of the injuries of the plaintiff and as to the treatment given, further testified:

> Seventy-five dollars is the amount of my bill now; that is very small too.

The Court of Appeals reversed the judgment for the plaintiff and granted a new trial stating with respect to the evidence of the wagon repairs:

> In the absence of evidence that the repairs were proper or worth the sum paid, it was error to hold that the sum paid could be recovered . . .

With reference to the evidence of the physician's services the court went on to state:

> This error was repeated. The plaintiff, under a like objection was permitted to show how much the physician had charged him without giving evidence of payment or [5] any evidence of the value of the services, except the incidental remark of the physician. The judgment should be reversed and a new trial granted . . .[6]

The *Gumb* case is New York's most authoritative decision on the admissibility of bills in a tort action. It has been cited approv-

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[3] Peterson v. Zaremba, 110 N. J. L. 529, 166 Atl. 527 (1933). *See* SEDGWICK, MEASURE OF DAMAGES (8th ed. 1891) §§ 242, 243, 1294.

[4] Gumb v. Twenty-third Street Ry., 114 N. Y. 411, 21 N. E. 933 (1889), cited *supra* note 2.

[5] *But see* Morsemann v. Manhattan Ry., 16 Daly 249, 10 N. Y. Supp. 105 (1st Dep't 1890), cited *infra* note 13.

[6] Gumb v. Twenty-third Street Ry., 114 N. Y. 414, 21 N. E. 994 (1890).

ingly by [7] the Appellate Division of the Second Department in *Parilli v. Brooklyn City Railroad Co.*[8] and in *Larsen v. Simonson.*[9]

In the *Parilli* case [10] a car owner had sued the railroad for damage to her automobile through collision with the defendant's street car and, at the trial, since the mechanic who repaired the car was unavailable, had introduced the repair bill under a stipulation that the mechanic, if called to the stand, would testify that the amount of the bill for the repairs was paid. The Appellate Division, although affirming a judgment for the plaintiff on other grounds, ruled that the bill, even with the concession, should not have been admitted, stating:

> Of course there must be proof that the repairs were necessary and were reasonably worth the sum paid, for without it, neither the value of the repairs, nor the extent of the injury is thereby established. . . . It is not sufficient to make proof of the amount paid without proof that such repairs were necessary and that the charge therefore was reasonable in amount . . .[11]

In *Larsen v. Simonson* [12] the plaintiff had been injured when his motorcycle and the defendant's automobile had collided. The plaintiff testified concerning his injuries and treatment and introduced physicians' and hospital bills unpaid. The Appellate Division ordered a reversal of the judgment for the plaintiff unless he agreed to reduce its amount by the total of these bills, stating:

> Unpaid bills from the hospitals, in the absence of proof that the charges were reasonable were incompetent.[13]

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[7] Larsen v. Simonson, 243 App. Div. 563, 276 N. Y. Supp. 177 (2d Dep't 1934); Parilli v. Brooklyn City R. R., 236 App. Div. 577, 260 N. Y. Supp. 60 (2d Dep't 1932). *But see* Meade v. Goldman, 145 App. Div. 509, 129 N. Y. Supp. 899 (2d Dep't 1911), *rehearing denied,* 145 App. Div. 940, 130 N. Y. Supp. 1121 (1911); Hoffman v. Edison Electric Illuminating Co., 87 App. Div. 371, 84 N. Y. Supp. 437 (1st Dep't 1903); Clark v. Westcott, 2 App. Div. 503, 37 N. Y. Supp. 1111 (1st Dep't 1896); Shimpf v. Sliter, 64 Hun 463, 19 N. Y. Supp. 644 (3d Dep't 1892); Mayo v. Sherwood, *not officially reported,* 13 N. Y. S. (2d) 899 (1939); Miller v. Levy, 146 Misc. 823, 260 N. Y. Supp. 823 (1907); Reid v. New York City Ry., *not officially reported,* 93 N. Y. Supp. 533 (1905); Goodson v. New York City Ry., *not officially reported,* 94 N. Y. Supp. 10 (1905); Quinn v. Metropolitan Street Ry., 36 Misc. 830, 74 N. Y. Supp. 1143 (1901); *accord,* Griebel v. Ruden, 61 S. D. 507, 249 N. W. 810, *aff'd,* 62 S. D. 469, 253 N. W. 447 (1933); Herter v. City of Detroit, 245 Mich. 425, 222 N. W. 774 (1929); Campbell v. Frey, 8 D. & C. 593, 40 Lanc. Rev. 70, 39 York 201 (Pa. 1924); McLaughlin Bros. v. J. E. Baker, 5 D. & C. 781, 39 Lanc. Rev. 393 (Pa. 1924); W. S. Conrad Co. v. St. Paul Ry., 130 Minn. 128, 153 N. W. 256 (1915); Galveston Houston Electric Ry. v. English, 178 S. W. 666 (Tex. 1915); St. Louis South Western Ry. v. Moss, 37 Tex. Civ. App. 461, 84 S. W. 281 (1904).

[8] Cited *supra* note 7.

[9] *Ibid.*

[10] *Ibid.*

[11] Cited *supra* note 7, 236 App. Div. at 578, 260 N. Y. Supp. at 62.

[12] Cited *supra* note 7.

[13] See note 7 *supra,* 243 App. Div. at 563, 276 N. Y. Supp. at 178. *But cf.* Alessi v. Lovel, 152 Misc. 411, 273 N. Y. Supp. 637 (1st Dep't 1934), which

Section 374(a) of the New York Civil Practice Act, providing for the admissibility of writings made as memoranda in the regular course of business, of any act or occurrence in connection therewith, would seem at first reading to sanction the admissibility of bills. However, judicial interpretation has declared that this 1928 amendment does not make admissible, evidence which is otherwise hearsay and inadmissible at common law.[14] Nor, does the section give evidentiary worth to what before was without probative value.[15]

The probative value which these interpretations of Section 374(a) require to be inherent in the writing before it can be admitted thereunder, arises from those indications in the very nature of the writing from which the triers of the facts might reasonably infer the truth of what the writing is offered to show.[16]

Rulings in the courts of other states have permitted the introduction in evidence of bills on the grounds that such bills constitute a presumptive evidence of reasonable value sufficient to enable the plaintiff to establish a *prima facie* case.[17] In *Carangelo v. Nutmeg Farm, Inc.*,[18] the Supreme Court of Errors of Connecticut, in affirming a judgment awarding damages for personal injuries suffered by an infant plaintiff, approved the admissibility of a hospital bill as evidence of the value of the treatment. The court stated with regard to the physician's bill:

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held that testimony with respect to the actual condition of the automobile after the collision and payment of fifty-two dollars for subsequent repairs, sufficed to make out a *prima facie* case. *Colwell v. Manhattan Ry.*, 57 Hun 452, 10 N. Y. Supp. 636 (N. Y. 1st Dep't 1890), decided that a paid bill for one hundred dollars for nursing services might be considered as some evidence of the value of the work performed. Cf. *Morseman v. Manhattan Ry.*, 16 Daly 249, 10 N. Y. Supp. 105 (1st Dep't 1890), in which a paid bill of a physician was held to have been properly admitted, even without proof of the value of the physician's services. The court, erroneously, it is submitted, distinguished the *Gumb* case wherein the physician's bill was not paid. *Accord,* Marks v. Thompson, *not officially reported,* 1 N. Y. S. (2d) 215 (1937).

[14] Johnson v. Lutz, 253 N. Y. 124, 170 N. E. 517 (1930); People v. S. W. Straus & Co., 158 Misc. 186, 285 N. Y. Supp. 648 (2d Dep't 1935).

[15] Poses v. The Travelers Ins. Co., 245 App. Div. 304, 281 N. Y. Supp. 126 (1st Dep't 1935).

[16] *See* NEW YORK CITY MUN. CODE (1915) c. 279. Title XI, §§ 179, 180, 182 vests power in justices to amend, by majority vote, the rules of procedure. The purpose of this power would seem to effectuate substantial justice in cases where the claim does not exceed fifty dollars. However, under the wording of the statute, the use of this power must still be in accordance with the principles of substantive law.

[17] Gant v. Gas Service Co., 156 Kan. 685, 135 P. (2d) 533 (1943); Warren v. City of Bridgeport, 129 Conn. 355, 28 A. (2d) 1 (1942); Schwecke v. D. Leone, Inc., 21 N. J. Misc. 6, 29 A. (2d) 624 (1942); Knoble v. Ritter, 145 Pa. Sup. 149, 20 A. (2d) 848 (1941); Stewart v. Peck, *not officially reported,* 135 S. W. (2d) 405 (1939); Burrows v. Checker Taxi Co., 290 Mass. 231, 195 N. E. 112 (1935); Wise v. Miller, *not officially reported,* 2 S. W. (2d) 806 (1928); Brown v. Blaine, 41 Wash. 287, 83 Pac. 310 (1906); Western Gas Co. v. Danner, 97 Fed. 882, 38 C. C. A. 528 (1899).

[18] Carangelo v. Nutmeg Farm, Inc., 115 Conn. 457, 162 Atl. 4 (1932).

It has been held that it is not sufficient to show the amount of the charge for such services without other evidence as to their value . . . However, we regard as preferable the rule that proof of the [medical] expenses paid or liability incurred affords some evidence of the value of the services, and if unreasonableness in amount does not appear from other evidence or through application of the triers' general knowledge of the subject matter, its reasonableness will be presumed. . . .[19]

In *Byalos v. Matheson,*[20] the owner of a Velie automobile that was stolen through the negligence of the defendant garage, sued for damages to the car which had resulted therefrom. At the trial, the owner introduced a receipted bill for one hundred fifty-six dollars for the repairs by the Velie-Bell people. No evidence was offered to show that the charges of the repair shop were reasonable and customary. Objection was made to the admission of the bill on the ground that it was not the best evidence. The objection was overruled and from a judgment for the plaintiff the defendant appealed. In affirming the judgment the Supreme Court of Illinois held:

If the plaintiff was entitled to a verdict, he could not recover more than the reasonable cost of the necessary repairs to his car. It was proper for him to prove the amount he had paid or become liable to pay, and the fact that that amount was the usual and reasonable charge for the labour and material and that the repairs were necessary as such to be made. The receipted bill was admissible to prove that the repairs had actually cost the Appellee so much money. The Appellant's objection was not based on any lack of preliminary proof or of assurance that further proof would be made, but the objection was that the receipted bill was not the best evidence. Proof of payment of the bill was *prima facie* sufficient and it was not error to admit the bill in evidence.[21]

Undoubtedly, those decisions which admit bills of physicians, hospitals, and repairmen in personal injury and property damage actions, without proof of their reasonableness, have been influenced by a desire to administer substantial justice. In the absence, however, of an authoritative survey and analysis of the many principles involved; it is submitted that where a market value of materials [22] or value of services can be shown by testimony, witnesses should be called to testify so that the evidence may be tested by cross-examination. A paid bill does not have to be admitted as *prima facie* evidence of reasonable value in such cases to be admitted at all. It can be admitted *de bene esse,* provisional upon further proof.[23]

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[19] *Id.* 115 Conn. at 462, 162 Atl. at 6.

[20] Byalos v. Matheson, 328 Ill. 269, 159 N. E. 242 (1927).

[21] *Id.* 328 Ill. at 269, 159 N. E. at 244.

[22] Jones v. Morgan, 90 N. Y. 4, 43 Am. Rep. 131 (1882).

[23] Sanders v. Hudson & Manhattan R. R., 121 N. J. L. 406, 3 A. (2d) 86 (1938), *aff'd,* 122 N. J. L. 376, 5 A. (2d) 686 (1939); Keber v. American Stores, 116 N. J. L. 437, 166 Atl. 527 (1936).

For the purpose of affording relief to a plaintiff in circumstances where testimony is shown to have become unavailable, a paid bill may be admitted as *prima facie* evidence of reasonable value. However, in order to prevent the mere admission of this evidence from becoming conclusive in effect, this procedure, if acceptable at all, should be confined to circumstances of competitive price for proven work from which a defendant may be reasonably expected to obtain any existing evidence in rebuttal. By such essential can defendants be better safeguarded against collusion between the plaintiff and his doctor and mechanic; speculative fees on the part of the physician and repairman; and the indifference of a plaintiff to the amount he has been charged induced by the belief that another has to pay the charges. As between maintenance of tested safeguards for the establishing of a *bona fide* case and the facilitating of *prima facie* presentations by allowing freedom to plaintiffs in accident cases, it would appear that the continuance of the New York requirement of valuation witnesses is to be desired.

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LOCAL PREJUDICE IN CRIMINAL TRIALS

The common law rule that an offence shall be prosecuted in the county or district where it was committed is embodied both in the United States Constitution [1] and in the constitution or statutes of many states.[2] Conditions may arise which imperil the existence of a fair and impartial trial in the county wherein the crime has been committed and a change of venue becomes necessary. The purpose of a change of venue is to provide against a trial before a jury, where there is a prejudice, insidious in its nature, which pervades a community to such an extent that prospective jurors are unconsciously affected by its influence.[3] Local prejudice may arise against the

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[1] U. S. CONST. AMEND. VI. "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law."

[2] LA. CONST. Art. I, § 9; MISS. CONST. Art. III, § 26; PA. CONST. Art. I, § 9; WASH. CONST. Art. I, § 22; MICH. STAT. ANN. (Henderson, 1938) § 28.985; N. H. REV. LAWS (1942) c. 427, § 7; N. Y. CODE OF CRIMINAL PROCEDURE § 284; WIS. STAT. (1943) § 356.01.

[3] People v. Williams, 106 Misc. 65, 173 N. Y. Supp. 883 (1919).