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Torts--Suicide While Insane as Result of Conversion Held Actionable in Wrongful Death (Cauverien v. De Metz, 188 N.Y.S.2d 627 (Sup. Ct. 1959))

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Therefore the Real Property Transfer Tax must be construed so as to limit the authority of the city to tax only those transactions occurring within New York City.

The Real Property Transfer Tax law imposes a tax on each deed by which real property is transferred within New York City, at a rate of one-half of one per centum of the consideration or value, provided that an exception of twenty-five thousand dollars is allowed on the interest or property conveyed. The effect of this tax will be avoided by transacting realty closings outside the territorial limits of New York City whenever possible. This will result in a burden on the attorneys in that they will be forced to travel beyond the territorial limits of the city to effectuate their closings. It will also necessitate that a representative of the title search company travel to the place of the closing, making an increase in the fee inevitable because of the additional time and expense spent in traveling. All these additional expenses and inconveniences in no way will benefit New York City.

In view of these obvious and fatal effects, it is only reasonable that this ordinance be repealed or in the alternative amended so as to include recordation of the deed as the taxable event upon which the Real Property Transfer Tax is levied.

TORTS—SUICIDE WHILE INSANE AS RESULT OF CONVERSION HELD ACTIONABLE IN WRONGFUL DEATH.—Executrix brought this action for wrongful death based on testator's suicide allegedly induced by defendant's conversion. The defendants were diamond dealers who refused to return or pay for a diamond consigned to them by decedent-broker. Plaintiff claimed that this constituted a threat to the broker's reputation, causing an irresistible impulse in the deceased to commit suicide. Upon a motion to dismiss, the Court *held* that the complaint stated a cause of action. *Cauverien v. De Metz,* 188 N.Y.S.2d 627 (Sup. Ct. 1959).

Authority in the United States indicates that there can be no recovery in wrongful death where the deceased took his own life.[1] The rule denying recovery arose in the United States during the last quarter of the nineteenth century.[2] The early cases were disposed of on the ground that the deceased's death by suicide was not the

[1] Scheffer v. Railroad Co., 105 U.S. 249 (1882); Salsedo v. Palmer, 278 Fed. 92 (2d Cir. 1921); Stevens v. Steadman, 140 Ga. 680, 79 S.E. 564 (1913); Daniels v. New York, N.H. & H.R.R., 183 Mass. 393, 67 N.E. 424 (1903); Jones v. Stewart, 183 Tenn. 176, 191 S.W.2d 439 (1946).

[2] See, *e.g.,* Scheffer v. Railroad Co., *supra* note 1.

natural and probable consequence of defendant's wrongful act.[3] Another reason advanced by the cases denying liability was that the suicidal act of the decedent was a new and independent agency which broke the chain of causation.[4]

Gradually, however, the rule was modified by numerous dicta to the effect that recovery should be allowed where the suicide was done in a state of frenzy or under an uncontrollable impulse.[5] This modification of the rule evolved from the test used by the courts in resolving an analogous problem in insurance cases.[6] In interpreting life insurance policies which excepted from the terms of the contract deaths by suicide or by the hand of the assured, the courts had held that the self-destructive act of one in an uncontrollable frenzy was not death by the insured's own hand within the meaning of the policy.[7]

Where the decedent was allegedly insane at the time of his death by his own hand, the courts take different approaches in determining whether recovery should be allowed. Some courts indicate by dicta that where the suicide is effected in a state of delirium or frenzy, or under the control of an irresistible impulse, the defendant's wrongful act, and not the suicide, is the proximate cause of decedent's death.[8] Some courts emphasize the deliberateness of the act of suicide and maintain that even if the deceased was not in full control of his faculties, his own act, if deliberate, and not defendant's wrongful act, is the proximate cause of death.[9] Other courts decide on the basis of whether decedent was aware of the physical consequences of his act at the time of his death. This they determine by examining the method he used to effect suicide.[10]

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[3] Scheffer v. Railroad Co., *supra* note 1, at 252.

[4] Brown v. American Steel & Wire Co., 43 Ind. App. 560, 88 N.E. 80, 85 (1909); Koch v. Fox, 71 App. Div. 288, 298, 75 N.Y. Supp. 913, 920 (1st Dep't 1902); Daniels v. New York, N.H. & H.R.R., 183 Mass. 393, 67 N.E. 424, 426 (1903); Long v. Omaha & C.B. St. Ry., 108 Neb. 342, 187 N.W. 930, 934 (1922); Konazewska v. Erie R.R., 132 N.J.L. 424, 41 A.2d 130, 132 (1945); Arsnow v. Red Top Cab Co., 159 Wash. 137, 292 Pac. 436, 444 (1930).

[5] Cases cited, note 4 *supra*.

[6] Daniels v. New York, N.H. & H.R.R., *supra* note 4.

[7] Koch v. Fox, *supra*, note 4; Daniels v. New York, N.H. & H.R.R., *supra*, note 4.

[8] Elliott v. Stone Baking Co., 49 Ga. App. 515, 176 S.E. 112 (1934); Brown v. American Steel & Wire Co., 43 Ind. App. 560, 88 N.E. 80 (1909); Daniels v. New York, N.H. & H.R.R., 183 Mass. 393, 67 N.E. 424 (1903); Long v. Omaha & C.B. St. Ry., 108 Neb. 342, 187 N.W. 930 (1922); Arsnow v. Red Top Cab Co., 159 Wash. 137, 292 Pac. 436 (1930).

[9] See Scheffer v. Railroad Co., *supra* note 1; McMahon v. City of New York, 141 N.Y.S.2d 190 (Sup. Ct. 1955); Salsedo v. Palmer, *supra* note 1; Daniels v. New York, N.H. & H.R.R., *supra* note 8.

[10] See 12 Mo. L. REV. 89 n.5 (1947) and cases therein cited. Apparently, the reason the courts reach various results in concluding whether deceased was aware of the physical effects of his act is the inability to prove the status of the deceased's mind.

The first problem presented to the Court in the instant case[11] was whether a conversion is a "wrongful act, neglect or default" within the meaning of Section 130 of the New York Decedent Estate Law.[12] The New York courts have not limited "wrongful act, neglect or default" to negligent wrongs, but have construed these words to include "any trespass upon the person," [13] even a breach of implied warranty of fitness for consumption.[14] Therefore, it appears that a conversion is a sufficient wrongful act to satisfy the requirements of section 130.[15] But the ultimate question presented to the Court was whether a complaint alleging that defendants caused decedent's death by a malicious conversion should survive a motion to dismiss in view of the judicial interpretation of section 130 requiring proximate causation.[16] Whether defendant's wrongful act can be the proximate cause of decedent's death where the decedent committed suicide appears unsettled in New York.[17]

The improbability of causing another to take his own life by depriving him of something he has a lawful right to possess as well as a legal obligation to return or pay for, is not so overwhelming that reasonable men may not differ on it. The fact that an insane person is liable for his torts does not compel the fixing of responsibility for a death by suicide on decedent. The rationale of tort liability of the insane is not that an insane person doing a wrongful act is at fault, for, being incapable of exercising control over his faculties, the insane man cannot be expected, as other people are, to adhere to the standards of the "reasonable man." [18] Rather, it seems that the reason for establishing the rule is that as against the person injured and the insane wrongdoer the more innocent one is the person

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[11] Cauverien v. De Metz, 188 N.Y.S.2d 627 (Sup. Ct. 1959).

[12] *Id.* at 630-31.

[13] Sullivan v. Dunham, 161 N.Y. 290, 55 N.E. 923 (1900).

[14] Greco v. S.S. Kresge Co., 277 N.Y. 26, 12 N.E.2d 557 (1938).

[15] Cauverien v. De Metz, *supra* note 11.

[16] Salsedo v. Palmer, 278 Fed. 92 (2d Cir. 1921); Seifter v. Brooklyn Heights R.R. Co., 169 N.Y. 254, 62 N.E. 349 (1901); Shapiro v. Tchernowitz, 3 Misc.2d 617, 155 N.Y.S.2d 1011 (Sup. Ct. 1956).

[17] Research has revealed three cases considering the problem. In Salsedo v. Palmer, *supra* note 16, a divided federal district court construing New York law held that, whether decedent's suicide was deliberate or the result of suicidal mania, defendant's mental and physical torture of deceased was not the proximate cause of his death. Koch v. Fox, 71 App. Div. 288, 75 N.Y. Supp. 913 (1st Dep't 1902), held that it was unnecessary to decide whether the defendant's negligence was the proximate cause of decedent's death from pneumonia contracted when deceased threw himself into a river while allegedly insane, because there was insufficient evidence of insanity. But by way of dictum the court indicated that perhaps recovery would be allowed if it were shown that defendant's negligence directly caused him to become insane, or that deceased acted under an insane impulse when he committed suicide. *Ibid.* In McMahon v. City of New York, 141 N.Y.S.2d 190 (Sup. Ct. 1955), the basis of the court's decision was that decedent was not insane and that his act of suicide was committed as an exercise of his free will.

[18] See PROSSER, TORTS 792 (2d ed. 1955); 17 HARV. L. REV. 125 (1903).

wrongfully damaged.[19] It is submitted that in the present case defendants seem to be the first wrongdoers and the parties more at fault, so there is no reason for assigning legal culpability to decedent and thereby letting defendants escape liability.

Moreover, in cases involving the Civil Damage acts;[20] in the administration of Workmen's Compensation acts;[21] and in the criminal law area,[22] the courts are more liberal in construing causation when confronted with somewhat analogous problems, and find it less difficult to trace suicide back to defendant's wrongful act. Although the analogy is by no means complete in any of these fields, the decisions reached in these areas tend to indicate that the previous wrongful act on the part of the defendant can very well be the proximate cause of death by suicide, even though courts decide these cases on policy considerations.

The disposition of the case is well justified in view of the narrow scope of the holding which the language of the case compels. It is submitted that the Court did not expand the limits of causation, although this might be the impression conveyed at first glance. Recognizing the trend of expansion of tort liability, and the advances in the scientific study of mental illness, the Court saw that the ultimate problem presented by the case was one of evidence. The Court apparently was in agreement with the sentiments expressed by Judge Mayer dissenting in *Salsedo v. Palmer:*[23]

> The point in this case is that on demurrer, when all doubts must be resolved in favor of the pleader, this complaint shows a state of facts from which it may fairly follow that the death was not the result of an independent intervening act, but the proximate result of acts whose consequences could reasonably have been foreseen.
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> On trial the allegations may turn out to be unfounded, but we are now dealing not with their merits, but solely with their effect as matter of pleading.[24]

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[19] See Seals v. Snow, 123 Kan. 88, 90, 254 Pac. 348, 349; HOLMES, THE COMMON LAW 84 (1881).

[20] The Civil Damage Acts (see, *e.g.*, N.Y. CIV. RIGHTS LAW § 16) allow recovery of damages to any person injured by the illegal sale of intoxicating liquor. In cases involving such statutes the American courts allow recovery for a death by suicide even though the deceased was fully aware of the consequences of his act. See Neu v. McKechnie, 95 N.Y. 632 (1884); Poffenbarger v. Smith, 27 Neb. 788, 43 N.W. 1150 (1889); Garrigan v. Kennedy, 19 S.D. 11, 101 N.W. 1081 (1904).

[21] See Pushkarowitz v. Kramer, 300 N.Y. 637, 90 N.E.2d 494 (1950), *affirming mem.* 275 App. Div. 875, 88 N.Y.S.2d 885 (3d Dep't 1949); Wilder v. Russell Library Co., 107 Conn. 56, 139 Atl. 644 (1927); Sinclair's Case, 248 Mass. 414, 143 N.E. 330 (1924); Lupfer v. Baldwin Locomotive Works, 269 Pa. 275, 112 Atl. 458 (1921). *But see In re* Sponatski, 220 Mass. 526, 108 N.E. 466 (1915); McKane v. Capitol Hill Quarry Co., 100 Vt. 45, 134 Atl. 640 (1926).

[22] See Stephenson v. State, 205 Ind. 141, 179 N.E. 633 (1932) (per curiam); State v. Angelina, 73 W. Va. 146, 80 S.E. 141 (1913).

[23] Salsedo v. Palmer, 278 Fed. 92 (2d Cir. 1921) (dissenting opinion).

[24] *Id.* at 101-02.