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Criminal Law--Manslaughter in the Second Degree--What Constitutes Culpable Negligence (People v. Hoffman, 162 Misac. 677 (1937))

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the family affairs of others whereby the wife was induced to leave the husband, or so conduct herself that the comfort of the married life was destroyed.

Today this right of action no longer exists in view of the *Hanfgarn* and *Fearon* cases and the fact that the Supreme Court of the United States has recently decided that no substantial federal question is involved.[13] Thus the constitutionality of Article 2-A may be regarded as definitely established insofar as it concerns the abolition of "heart balm" suits. "This does not mean that husband and wife are no longer entitled to mutual chastity; the statute merely takes away the right of action." [14] It will be interesting to note if the courts will once more take cognizance of the remedies employed by outraged husbands during the early common law.

R. J. M.

CRIMINAL LAW—MANSLAUGHTER IN THE SECOND DEGREE—WHAT CONSTITUTES CULPABLE NEGLIGENCE.—The defendant was indicted for manslaughter in the second degree [1] for having with culpable negligence smoked and handled a cigarette so as to set fire to a dwelling, causing the death of one of the occupants thereof. The evidence that was presented to the grand jury showed that the defendant, after drinking three bottles of beer, fell asleep while smoking a cigarette. He was later aroused by smoke and heat and ran to the street leaving his door open and failing to warn any other occupants of the premises. The defense moved to dismiss the indictment on the ground that the legal evidence received by the grand jury was insufficient to support the indictment. *Held,* motion granted, with leave to the district attorney to resubmit the case to the grand jury. Culpable negligence is something more than the slight negligence necessary to support a civil action for damages.[2] *People* v. *Hoffman,* 162 Misc. 677, 294 N. Y. Supp. 444 (1937).

The facts of the instant case presented to the court another opportunity to discuss the degree of negligence required to constitute

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[13] May 24, 1937—Supreme Court dismissed an appeal by Catherine Fearon challenging the constitutionality of Article 2-A of the Civil Practice Act; October 1, 1937—Lawrence Hanfgarn filed a petition with the Supreme Court to have Article 2-A declared unconstitutional (motion pending).

[14] EDGAR AND EDGAR, LAW OF TORTS (3d ed. 1936) 148.

[1] PENAL LAW § 1052: "Such homicide is manslaughter in the second degree, when committed without a design to effect death: 3. By any act, procurement or *culpable negligence* of any person, which, according to the provisions of this article, does not constitute the crime of murder in the first or second degree, nor manslaughter in the first degree." (Italics supplied.)

[2] People v. Angelo, 246 N. Y. 451, 159 N. E. 394 (1927); State v. Goetz, 83 Conn. 437, 76 Atl. 1000 (1910).

culpable negligence. The courts have always found it a difficult problem to define the various degrees of negligence,[3] and there has as yet been no judicial guide which has drawn the precise line between civil and criminal negligence. The dividing line between the two is "just as shadowy and vague as that dividing murder from manslaughter".[4]

Many times the distinction between civil and criminal negligence has been made by the use of adjectives such as "culpable", "wanton", "gross" or "reckless" as distinguished from "ordinary" or "slight".[5] The courts of this state, in attempting to define that degree of negligence called culpable, have said, "To sustain a criminal prosecution there must be evidence to show a reckless and wanton disregard of the rights of others sufficient to amount to an intent to inflict the injury or at least be indifferent whether the injury happens or not." [6] Although it is usually a question for the jury to determine whether or not this exists, just as it is a question of fact whether or not negligence exists at all, the question may become one *of law* when the negligence is so slight as not to reach the required standard, and it is, then, the duty of the court to direct the acquittal of the accused.[7]

The law of New York,[8] following the weight of authority,[9] appears to be that in criminal cases the negligence required must be something more than the failure to exercise the care of an ordinary prudent person under the particular circumstances which will allow a recovery in tort. It is submitted that in defining criminal negligence, the courts were in reality looking for a substitute for real intent and therefore where the courts have allowed culpable negligence to take the place of intent it must be something that is practically equivalent thereto.[10]

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[3] "* * * courts must continue * * * to find their anchors somewhere in the vacillating, nebulous limitations and definitions of degrees of human care which seem to have no legalistic formula for division save that of each case for itself to be met as each presents itself." Seitz v. Yates Lehigh Coal Co., 142 Misc. 366, 255 N. Y. Supp. 279 (1931).

[4] Wechsler and Michael, *A Rationale of the Law of Homicide* (1937) 37 COL. L. REV. 701; People v. Angelo, 246 N. Y. 451, 159 N. E. 394 (1927), this is the leading case in New York on the subject of culpable negligence.

[5] Riesenfeld, *Negligent Homicide, A Study in Statutory Interpretation* (1936) 25 CALIF. L. REV. 1; (1926) 24 MICH. L. REV. 286.

[6] People v. Waxman, 232 App. Div. 90, 249 N. Y. Supp. 180 (1st Dept. 1931).

[7] Instant case at p. 446.

[8] People v. Buddensieck, 103 N. Y. 487, 9 N. E. 44 (1886); People v. Polstein, 184 App. Div. 260, 171 N. Y. Supp. 501 (1st Dept. 1918), *aff'd*, 226 N. Y. 593, 123 N. E. 882 (1918); People v. Jackson, 125 App. Div. 873, 110 N. Y. Supp. 807 (1st Dept. 1908); People v. Pace, 220 App. Div. 495, 221 N. Y. Supp. 778 (4th Dept. 1927).

[9] (1924) 22 MICH. L. REV. 717; State v. Clark, 196 Iowa 1134, 196 N. W. 82 (1923); People v. Falkovitch, 280 Ill. 321, 117 N. E. 398 (1917); State v. Dorsey, 118 Ind. 167, 20 N. E. 777 (1889). See (1926) 25 CALIF. L. REV. 18.

[10] (1924) 22 MICH. L. REV. 722, (1926) 24 MICH. L. REV. 286, "Perhaps in the last analysis what the courts really mean by the term 'criminal negligence' is 'thinly masked intent'. To put the idea in legal terms, are not the courts in

Unfortunately, a legislative enactment would be of little assistance in distinguishing the types of negligence for each case must be decided on its own particular facts.[11]

It has been suggested that in view of the statute making the driver of a motor vehicle who leaves the scene of an accident guilty of a misdemeanor,[12] that a similar "measure should be enacted imposing upon a person who negligently starts a fire a duty to take all reasonable means, short of risking serious injury, to give warning to those whose lives he has placed in jeopardy".[13]

S. S. N.

HUSBAND AND WIFE—LIABILITY OF WIFE FOR SUPPORT OF HUSBAND ON PUBLIC RELIEF—SECTIONS 125 AND 128 OF PUBLIC WELFARE LAW.—The defendant and her husband were married October 8, 1901. Her husband received, from the Department of Public Welfare of the City of New York, monthly payments as old age security relief aggregating $2,025, between September 1, 1931 and July 1, 1935. During most of this time, she was of meagre means, possessing neither real nor personal property, until the death of her uncle. By his will, she received on May 1, 1935, $1,000. She has since received several thousand dollars on account of her distributive share which will total $29,000. The plaintiff, Commissioner of Public Welfare of the City of New York, seeks to recover from the defendant, under Section 128 of the Public Welfare Law,[1] the entire sum paid

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requiring as a substitute for criminal intent, *intent implied in fact?"* (Italics ours.)

[11] (1937) 6 FORD. L. REV. 309, n. 3.

[12] N. Y. VEHICLE AND TRAFFIC LAW § 70, subd. 5-a.

[13] See note 11, *supra.*

[1] N. Y. PUBLIC WELFARE LAW § 125 (L. 1929 c. 565 effective Jan. 1, 1930) creates the liability, and relatives may be compelled to support under N. Y. PUBLIC WELFARE LAW § 126 or N. Y. CODE OF CRIM. PRO. § 915. See Hodson v. Grumlich, 156 Misc. 199, 280 N. Y. Supp. 193 (1935).

N. Y. PUBLIC WELFARE LAW § 126: *"Liability of relatives to support.* The husband, wife, father, mother, grandparent, child or grandchild of a recipient of public relief, or of a person liable to become in need of public relief, shall, if of sufficient ability be responsible for the support of such person."

Note: N. Y. CODE OF CRIM. PRO. § 914, amended by L. 1933, c. 589, is now similar to this portion of N. Y. PUBLIC WELFARE LAW.

N. Y. PUBLIC WELFARE LAW § 128: *"Recovery from a person discovered to have property.* A public welfare official may bring an action against a person discovered to have real or personal property * * * if such person, or anyone for whose support he is or was liable received relief or care during the preceding ten years, and shall be entitled to recover up to the value of such property the cost of relief. Any public relief received by such person shall constitute an implied contract."