

Torts--Negligent Language--Breach of Duty to Give Correct Information (International Products Company v. Erie Railroad Company, 244 N.Y. 331 (1927))

St. John's Law Review

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

Recommended Citation

St. John's Law Review (1927) "Torts--Negligent Language--Breach of Duty to Give Correct Information (International Products Company v. Erie Railroad Company, 244 N.Y. 331 (1927))," *St. John's Law Review*: Vol. 2 : No. 1 , Article 20.
Available at: <https://scholarship.law.stjohns.edu/lawreview/vol2/iss1/20>

This Recent Development in New York Law is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact lasalar@stjohns.edu.

appear, become a burden of government. In view of the inability, financial and otherwise, of public institutions of higher education to accommodate the increasing number of students seeking their benefits, it does not seem unreasonable to say that an organization of the type under discussion, which makes it possible for those of limited means to secure an education, to some extent lessens the burden of government. By such acts it denotes itself a beneficent and charitable organization and should bring itself within the statutes exempting property from taxation.

TORTS—NEGLIGENT LANGUAGE—BREACH OF DUTY TO GIVE CORRECT INFORMATION.—Plaintiff expected an importation on a certain vessel and arranged with the defendant to store the goods on one of its piers. Before the railroad took delivery of the goods from the steamship, one of plaintiff's officers called defendant on the telephone and informed it that he was desirous of obtaining insurance on the goods while in its care and asked where the goods were stored. The defendant, taking time to obtain the required information, replied that they were docked at Pier "F". In fact defendant had not yet received the goods. Neither plaintiff nor defendant knew this. Plaintiff procured insurance for the goods naming Pier "F" as the warehouse. Later the goods were received by the defendant and placed on Pier "D" which subsequently, with the goods thereon, was destroyed by fire. Plaintiff could not collect the insurance. It seeks to recover the loss from the defendant *Held*, that plaintiff established a cause of action for negligence. A negligent statement as well as a negligent act may be made the basis for a recovery of damages in such cases where there is a duty, if one speaks at all, to give the correct information. *International Products Company v. Erie Railroad Company*, 244 N. Y. 331, 155 N. E. 231 (1927).

In England it is well settled that there is no liability for negligence in word as distinguished from act.¹ Earlier English cases contained dicta to the effect that such a cause of action was maintainable,² but it was decided by the House of Lords in 1889³ that no action could be based upon a mere statement although untrue and although acted upon to the damage of the person to whom the statement was made, unless the speaker knew the statement to be false.⁴ And the same principle has been applied in equity.⁵ The American Courts and writers have been more liberal⁶ and have permitted in some instances the maintenance of such an action. The Court, in the

¹ Pollock on Torts, 12th ed., p. 565; *Fish v. Kelly*, 17 C. B., N. S. 194 (1864).

² *Burrowes v. Lock*, 10 Ves. 471 (1805); *Slim v. Croucher*, 1 De G., F & J. 518 (1866).

³ *Peek v. Derry*, L. R., 14 A. C. 335 (1889).

⁴ *Dickson v. Reuters Telegraph Co.*, L. R., 3 C. P. Div. 1 (1877).

⁵ *Low v. Bouverie*, L. R., 3 Ch. 82 (1891).

⁶ *Dickle v. Abstract Co.*, 89 Tenn. 431 (1890); *Edwards v. Lamb*, 69 N. H. 599 (1899); *Herriott v. Plimpton*, 166 Mass. 585 (1896); *Landie v. Telegraph Co.*, 126 N. C. 431 (1900); *Bailey v. Tel. Co.*, 227 Pa. St. 522 (1910).

principal case, based its holding on its prior decisions⁷ indicating that such prior decisions permitted the action. Examination of these decisions fails to disclose that any of the cases have been decided on such a theory. In one case the action was for negligence of a physician in the performance of his services.⁸ In others, the Court spelled out an express contract and held the defendant liable for a breach of that contract.⁹ The decision in the principal case was, at most, based on dicta in the prior decisions. However, it would appear that where there is a fiduciary or contractual relationship, in all justice, a cause of action should be maintainable.¹⁰ The principal case presents possibilities for opening up an entire new field of litigation, especially in New York where the complexities of modern business are at their height. This, however, should not deter a Court from handing down a decision that is sound in principle and does substantial justice.

TORTS—MALICIOUS PROSECUTION—ABUSE OF PROCESS—EXTRADITION—ORIGINAL CRIMINAL PROCEEDING UNDETERMINED.—The defendant charged the plaintiff in the State of Florida with having committed larceny. Through the action of the defendant the governor of the State of Florida made requisition upon the governor of the State of New York for extradition of the plaintiff, who was in New York. The plaintiff was arrested upon the process of a magistrate issued in New York State, under its procedure and brought before the governor who determined that the prisoner was not a fugitive and should not be surrendered. The plaintiff was thereupon discharged, and instituted this action for malicious prosecution alleging that defendant falsely and maliciously and without probable cause accused him of being a fugitive from justice, as a result of which he was arrested in New York as a fugitive and imprisoned. *Held*, when extradition proceedings are set in motion by one maliciously and without probable cause to believe that the subject of the proceeding is a fugitive from justice, and such proceeding terminates upon the ground that the subject was not a fugitive from justice, an action for malicious prosecution will lie, though brought prior to the termination of the original criminal prosecution. *Keller v. Butler*, 246 N. Y. 249, 158 N. E. 510 (1927).

The Court reached its decision on the theory that extradition proceedings could not be instituted unless the subject was in Florida actually, and not constructively, at the time of the larceny so as to make him a fugitive.¹ Extradition can lie only where the subject

⁷ *Carpenter v. Blake*, 75 N. Y. 12 (1878); *Bush Terminal Co. v. Insurance Co.*, 182 App. Div., aff'd 228 N. Y. 575 (1920); *Glanzer v. Shepard*, 233 N. Y. 236 (1922); *Jaillet v. Cashman*, 235 N. Y. 511 (1923).

⁸ *Carpenter v. Blake*, *supra*, note 7.

⁹ *Bush Terminal Co. v. Insurance Co.*, and *Glanzer v. Shepard*, *supra*, note 7.

¹⁰ See (1900) 14 Harv. L. Rev. 184, for full discussion of advisability of permitting such an action to lie.

¹ *Hyatt v. Corkran*, 188 U. S. 691 (1903); *McNichols v. Pease*, 207 U. S. 100 (1907).