

Parent and Child–Negligence (Wick v. Wick, 212 N.W. 787 (Wisc. 1927))

St. John's Law Review

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been interpreted to mean that whenever the intoxication of a defendant arises upon the evidence in a trial for murder, the jury should say whether such intoxication prevented the intent, premeditation and deliberation essential to constitute the crime and failure to so instruct is error although no request to so charge is made on the defendant's behalf. *People v. VanZandt*, 224 N. Y. 354, 120 N. E. 725 (1918); *People v. Leonardi*, 143 N. Y. 360, 38 N. E. 322 (1894). This rule applies not only to total, but to partial intoxication also. *People v. Gerdvne*, 210 N. Y. 184, 104 N. E. 129 (1914). But where a person, after previously determining to commit a homicide, voluntarily drinks himself into a state of intoxication, it is no defense under the Code. *People v. Kocner*, 191 N. Y. 528, 84 N. E. 1117 (1908); *State v. Shelton*, 164 N. C. 513, 79 S. E. 883 (1913).

PARENT AND CHILD—NEGLIGENCE—An action brought by an infant, his mother as guardian ad litem, against his father, defendant, to recover for personal injuries sustained in an automobile accident by reason of the defendant's negligence. *Held*, the suit could not be maintained inasmuch as a child under the age of 14 could not recover damages against the parent on the above stated facts. Judgment reversed and cause remanded with instructions to sustain demurrers. *Wick v. Wick*, 212 N. W. 787 (Wisc. 1927).

Inasmuch as there are no English cases as a precedent the inference may be drawn that such action was not maintainable at common law. Up to the year of 1891, this issue was not decided by an appellate court until the case of *Hewlett v. George*, 68 Miss. 703, 9 So. 885 (1891), wherein it was held that the action was untenable. Following this adjudication, many states have based their decisions, most consistently and in surprising judicial harmony. *McKelvey v. McKelvey*, 111 Tenn. 388, 77 S.W. 664 (1903); *Roller v. Roller*, 37 Wash. 242, 79 Pac. 788 (1905); *Taubert v. Taubert*, 103 Minn. 247, 114 N. W. 763 (1908); *Small v. Morrison*, 185 N. C. 577, 118 S. E. 12 (1923); *Smith v. Smith*, 81 Ind. Rep. 566, 142 N. E. 128 (1924); *Materese v. Materese*, 47 R. I. 131, 131 Atl. 198 (1925); *Mannion v. Mannion*, 3 N. J. Misc. 68, 129 Atl. 431 (1925). In support of this doctrine, the reasons advanced are on the ground of public policy. The family consists of a unit of sanctity, wherein the strongest natural ties bind all of its members to mutual love, interest and welfare. For to question parental authority encourages the impairment and undermining of the wholesome influence of the home. The disruption of the fireside's peacefulness and stability is the proximate result. However, —where one standing *in loco parentis* is guilty of excessively punishing a child, he is liable for damages. *Steber v. Norris*, 188 Wis. 366, 206 N. W. 173 (1925).

In the able dissent of Crownhart, J., it is pointed out that the Constitution of Wisconsin, Art. I, Sect. 9, provides for the relief of any person for injuries received to his person, property or character. As to a principle of common law, the maxim is "there is no wrong without a remedy." Especially well stressed is this forceful argument. Why is a cause of action by an infant against his parent tenable for a debt due or for an accounting of trust funds or for the

recovery of real estate and untenable for personal injuries? "Are property rights, strictly speaking, of more importance to the infant than the rights of person?"

SPECIFIC PERFORMANCE—EQUITABLE JURISDICTION—In 1919, the appellant Bockler contracted to buy from Wurfel certain realty on which was located a store building together with the merchandise contained therein. Part of the purchase price was to be paid in cash, the balance by delivery of a deed of a lot in Portland. Appellant moved upon the premises where he remained for five years. Wurfel, after considerable trouble perfected his title and tendered a deed which was not accepted. He sued for specific performance. The court denied a decree, finding that his title was defective as to part of the realty and that the lot to be deeded by Bockler was owned by his wife who had not joined in the contract. Mrs. Bockler then began an action to have removed an alleged cloud upon her title. Her husband was joined as a party defendant. *Held*, that Mrs. Bockler was the absolute owner of the Portland lot, that Wurfel should recover from the appellant Bockler \$3500, the agreed value of the lot, and made this sum a lien upon the property purchased. Pending appeal, Wurfel issued execution and at the public sale became the purchaser of the property. *Bockler v. Wurfel, et al.*, 254 Pac. 353 (Sup. Ct. Oregon, 1927).

Appellant's principal objection was that the result was wholly inequitable, his vendor now having both the property and a substantial part of the purchase price. This seemingly carried force, but the court pointed out that the vendee had had the use of the store for five years and quoted from his testimony to show the value of the business to him. The appellant's further objection that the passage of time precluded a decree of specific performance of the original agreement was disapproved. Time was not of the essence, the vendor had perfected his title without having been guilty of laches, and the court could at this time properly decree specific performance of the original agreement to the extent possible. *Katz v. Hathaway*, 66 Wash. 355, 119 Pac. 804 (1911).

The trial court in proceeding to dispose finally of the entire controversy was held to have properly exercised its equitable jurisdiction. This accords with general principles of Equity and with the doctrine of similar cases. *Wood v. Hill* 214 App. Div. 417, 212 N. Y. Supp. 550 (1925); *Madsen v. Bonneville Irr. Dist.*, 65 Utah 571, 239 Pac. 781 (1925). As was well said in *Brown v. Winne*, 92 Okla. 289, 219 Pac. 114 (1923), "A Court of Equity which once obtains jurisdiction of a controversy administers complete relief."

EQUITY—ORAL AGREEMENT TO BUY PROPERTY AND HOLD FOR MORTGAGOR—STATUTE OF FRAUDS.—The plaintiff executed a deed of trust on a plantation to defendants as security for loans. By written agreement defendant Tchula was to operate the property for plaintiff's benefit until 1925, but in February, 1924, plaintiff was informed that the property would be sold in March, 1924, due to the pressure of the state bank examiner. It was thereupon verbally agreed that the de-