Kentucky Law Journal

Volume 36 | Issue 1 Article 16

1947

Torts--Negligent Interference with Contractual Relations

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TORTS—NEGLIGENT INTERFERENCE WITH CONTRACTUAL RELATIONS

One of the most rapidly growing phases of the law is the tort action which has been allowed in many cases where there is interference with contractual and advantageous relationships. The chief purpose of this note is to examine the applications to negligent interference with contracts, with appropriate references to analogous relationships.

I. HISTORICAL BACKGROUND.

It will be useful to trace briefly this development with respect both to intentional and to negligent interferences.

Historically a contract affected only the parties to it.[1] Later, rights from assignments came to be protected, then the third party beneficiary came to be looked upon favorably. Meantime interference with family relations, such as that of master and servant, became actionable. In a similar way the Roman law allowed the *paterfamilias* to recover where violence or insults had been inflicted upon his family or slaves, on the ground that the injury was one to himself.[2] The same principle was applied in thirteenth century England when a master recovered for forcible interference with his servant.[3] The shortage of labor following the Black Death gave birth to the Ordinance of Labourers of 1349 which granted the master a remedy against any person who enticed away his servants although without violence or force.[4] As the element of family status faded out, relations of contract came into the picture; and following them, interference with advantageous relations, with some exceptions, became actionable.

In the early cases, there was liability for negligent action which interfered with performance of services to the master by the servant. Thus in 1614, in *Evarard* v. *Hopkins*,[5] a physician who treated a servant in a negligent manner was held to be liable for the amount which represented the master's loss of services. It should be noted

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[1] Tweddle v Atkinson, 1 B. & S. 393, 121 Eng. Rep. R. 762 (Q. B. 1861) Penson and Higbed's Case, 4 Leon. 99, 74 Eng. Rep. R. 756 (K. B. 1589)

[2] PROSSER, TORTS (1941) 976. In fact, the origin was even older than the Roman law for the Athenians allowed the master an action against one who beat or mistreated his servants. 3 BL. COMM. *142. PROSSER, TORTS (1941) 976.

[4] 23 EDW III, Stat. 1. It was enforced under the Statute of Labourers, 1350, 25 EDW III, Stat. 1. The effect of these statutes is mentioned by PROSSER, TORTS (1941) 977, and in the article, Carpenter, *Interference with Contract Relations* (1928) 41 HARV. L. REV. 728, 729.

[5] 2 Bulstrode 332, 80 Eng. Rep. R. 1164 (K. B. 1614)

that the emphasis of the law was slowly changing from the status of master and servant to the contract of employment itself.[6] In 1840, *Hodsoll* v. *Stallebrass*[7] reached the same result as the *Evarard* case when the negligence consisted of the keeping of a vicious dog which bit and injured the servant.

At first, liability for interference, whether willful or negligent, was confined to cases where the master-servant relationship existed and was not extended to include actions by the employer for injuries done to his employees. For instance, in *Taylor* v. *Neri*,[8] the plaintiff, who was the manager of a theatre, engaged *B* to sing during the season at a named salary The defendant assaulted *B* and so injured him that he was not able to perform his part of the contract. The court held that *B* was not a servant but was an employee, and stated that " if the present action could be supported, every man, whose servant, whether domestic or not, was kept away a day from his business, could maintain an action."[9] Thus the harm was recognized, but the remedy asked was without precedent and the court feared to tread upon strange ground.

So the important case of *Lumley* v. *Gye*,[10] decided in 1853, became a milestone in the law The defendant was held to be liable in a tort action for having maliciously induced a singer not to perform her contract with the plaintiff. In the majority opinion of the court Crompton, J. stated that " the principle of the action for enticing away servants [applies] to a case where the defendant maliciously procures a party, who is under a valid contract to give her exclusive personal services to the plaintiff for a specified period, to refuse to give such services during the period for which she had so contracted, whereby the plaintiff was injured."[11]

II. NEGLIGENT INTERFERENCE.

In the law today it is not necessary that the parties occupy the relationship of master and servant, since the contract itself is the object of protection.[12] The prevailing rule is that where a third party

[6] MAINE, ANCIENT LAW (6th ed. 1876) 170.
[7] 11 A. & E. 301, 113 Eng. Rep. R. 429 (Q. B. 1840)
[8] 1 Espinasse 386, 170 Eng. Rep. R. 393 (C. P 1795)
[9] *Id.* at 386, 170 Eng. Rep. R. at 394.
[10] 2 E. & B. 216, 118 Eng. Rep. R. 749 (Q. B. 1853)
[11] *Id.* at 231, 118 Eng. Rep. R. 755.
[12] The law has thus extended its protection beyond the status or relationship of master and servant, and later of employer and employee, to the contractual relation. All types of contracts, and not merely those involving personal services as in *Lumley* v. *Gye* are included within this protection. Temperton v Russell, (1893) 1 Q. B. 715.

Another distinction between the case of *Lumley* v. *Gye* and the present-day law should be made. In that case "malice" meant actual ill will, but now it is sufficient to say that the term means "the in-

brings about a breach of the contract by means of inducement or intentional interference with performance by one of the parties, such person is liable to the other party to the contract to the extent of the damage which he has caused.[12] It should be noted that there is no liability to a third person for either intentional or negligent action against a party to a contract which disables him from performing unless the interferer has knowledge of the contractual relation or has reason to believe that it exists.[14]

We should next inquire as to the feasibility of extending liability to cases where there is negligent interference with the performance of the contract. Very few courts have expressly recognized any legal remedy in such cases, although many of the cases allowing recovery for intentional interference state the rule in language which is sufficiently broad to include liability for negligence. Thus the recent Illinois decision in *Krauter* v. *Adler* states that "A party to a contract has a property right therein, and any injury thereto amounts to a tort for which [the] injured party may claim compensation by an action in tort for damages."[15] The reasons most commonly given for denying liability for negligent interference are remoteness of causation and the placing of an undue burden on inter-

tentional doing of a wrongful act without legal justification or excuse." Westinghouse Electric & Mfg. Co. v Diamond State Fibre Co., 268 Fed. 121, 127 (D. Del. 1920) *see* Campbell v Gates, 236 N. Y. 457, 460, 141 N. E. 914, 915 (1923), South Wales Miners' Federation v. Glamorgan Coal Co., (1905) A. C. 239, 255.

[13] Bitterman v. Louisville & Nashville R. Co., 207 U. S. 205 (1907), Hornstein v. Podwitz, 254 N. Y. 443, 173 N. E. 674 (1930), Temperton v. Russell, (1893) 1 Q. B. 715.

[14] For example, one having a contract with a town for the support of its paupers can not maintain an action against a person who assaults and beats one of the paupers. Anthony v. Slaid, 52 Mass. (11 Metc.) 290 (1846) cited in The Federal No. 2, 21 F 2d. 313, 314 (C. C. A. 2d. 1926) *accord:* Standard Oil Co. of Calif. v United States, 153 F 2d. 958 (C. C. A. 9th, 1946)

The rule that a master can recover for injuries inflicted upon his servant is the exception. See Evarard v Hopkins and Hodsoll v. Stallebrass which appear in the text. A municipality recovered damages for injuries to a policeman in Bradford v Webster (1920) 2 K. B. 135; and a master recovered for injuries inflicted upon his apprentice in Ames v. Union Ry., 117 Mass. 541 (1875).

As it has been stated in the text the emphasis in many cases has shifted from the relationship of master and servant to the contractual relation. In Bradford v. Webster (1920) 2 K. B. 135, the court used the term "servant" (*id.* at 144) and also spoke of the contract (*id.* at 143).

[15] 328 Ill. App. 127, 65 N. E. 2d 215 (1946). The question before the court, however, was whether or not a broker who had been deprived of his commissions for which he had contracted with a corporation, could recover damages against the defendants who had conspired to dissolve the corporation and thereby to stop the payment of the commissions. The plaintiff was held to have stated a cause of action in tort.

ferers.[16] It is thought that liability might lead to disastrous consequences in the daily affairs of life.

Are there any cases or authorities which recognize a cause of action against a third person for negligent interference with contractual interests? The reader will note that there are several types of interests. For example, A and B may have a contract with which C, not a party to any contract, negligently interferes. Or when A and B are bound by a contract, C may also have a contract with one of parties which he (C) performs negligently so as to cause damage to one or both of the parties to the first contract. Then again, one of the parties to a contract may perform it negligently so that a third party is injured, as in the telegraph cases to be considered later in this note.

A. SUITS WHERE THIRD PERSONS ARE INVOLVED.

In an American case, *The Aquitania* (1920)[17] a collision occurred between the defendant's ship and one which had been chartered by the plaintiffs. Damages for the property loss and for the loss of use while the ship was being repaired were recovered by the charterers. Without speaking of actual knowledge of the contract, the court said: "When the ship starts on her voyage, the insurance which the time charterer should have is that a court of justice will see to it that a wrong which deprives him of his use under his charter will be appropriately redressed."[18] This is strong language indeed. The court also treated the charterer's interest in the vessel as a property right, and it was pointed out that the term "property" is not limited to tangibles but may include franchises, rights of action, and even contractual interests. There is no adequate reason, however, to reduce the interest to a property right.

B. SUITS BY THE OWNER OF PROPERTY.

In *The Argentino*,[19] an English case decided in 1889, a ship of that name collided with another vessel because of negligence on the part of the operators of both ships. The owners of the *Argentino* sustained loss because they were unable to fulfill the terms of a contract to be performed in the future but entered into prior to the

[16] Remoteness of causation is the reason given in The Federal No. 2, 21 F 2d 313 (C. C. A. 2d, 1927). A writer in the Note (1935) 23 CALIF. L. REV. 420, 421, states that the courts are trying to express in vague terms of causation that the law denies responsibility to third persons because of the fear of an undue burden. Professor Prosser also believes that the fear of an undue burden is one of the reasons. PROSSER, TORTS (1941) 993.

[17] 270 Fed. 239 (S. D. N. Y. 1920) *accord*: Hines v. Sangstad S. S. Co., 266 Fed. 502 (C. C. A. 1st, 1920).

[18] *Id.* at 245.

[19] 14 App. Cas. 519 (1889).

collision. In allowing the owners (and not the charterers, as in *The Aquitania*) recovery for the loss of earnings which would have been derived from the employment contracted for, Lord Herschell stated in his opinion:

> "I think that damages which flow directly and naturally or in the ordinary course of things, from the wrongful act, cannot be regarded as too remote. The loss of the use of a vessel and of the earnings which would ordinarily be derived from its use during the time it is under repair, and therefore not available for trading purposes, is certainly damage which directly and naturally flows from a collision."[20]

By that language the English Admiralty court is shown not to have been influenced by the fear of extending liability unduly to extremes of remoteness. It is important to keep in mind that no mention is made of knowledge of the plaintiff's contract; and that fact will be considered shortly Both *The Aquitania* and *The Argentino* were cases in admiralty

In the very recent case of *The Aurora*,[21] the facts are similar to those of *The Argentino*. The motor boat *Karankawa* was regularly engaged in hauling shrimp for a wholesale firm in Louisiana. The negligence of the defendant in causing a collision resulted in damage to the boat and loss of use for fifteen days. The owner of the *Karankawa* recovered from the owner of the *Aurora* the cost of repairs and the loss of use. *The Argentino* and *The Aurora* are alike in that the owners rather than the charterers brought suit, but in both cases the amounts representing the loss of profits under the contracts were allowed by the courts. The principle involved in all three of these cases is the same concerning damages, namely, that the owner (in the cases of *The Argentino* and *The Aurora*) and the time charterer (in *The Aquitania*) could recover the loss of profits under contracts of which the negligent party had no specific knowledge of the employment but could reasonably have been expected to know that such contracts existed.

C. SUITS BETWEEN PARTIES TO THE CONTRACT.

In relation to the two cases in which the owner recovered damages for the loss of profits of which the wrongdoer did not specifically know the case of *Hadley* v. *Baxendale*[22] may be helpful. The plaintiffs were the owners of a flour mill. They sent a broken engine shaft to the office of the defendants, who were common carriers, for the purpose of shipment. The clerk of the defendants was told that

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[20] *Id.* at 523.

[21] 64 F Supp. 502 (E. D. La. 1945) affirmed, Loje v Protich, 153 F 2d 224 (C. C. A. 5th, 1946).

[22] 9 Ex. 341, 156 Eng. Rep. R. 145 (1854)

the mill was stopped and that if necessary a special entry should be be made to hasten delivery of the shaft. Delivery to the consignee was delayed for an unreasonable time, and consequently the plaintiffs incurred a loss of profits. The Court of Exchequer denied recovery for the plaintiff on the ground that the defendants had no knowledge of the special circumstances involved in the case. However, the court stated the principle that when a party to a contract breaches it, the damages which the other party should receive are " such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it."[23] It would seem to be a sound modern principle that where one of the parties hinders the performance of the contract so that the other party is damaged in his relations with third parties, the growing demands of the law will make restitution for the damage. The party who breaches the contract owes a duty to third persons whose interests will be affected thereby

III. THE ROBINS CASE.

Following *The Aquitania* came the leading American case which denied liability for negligence. In *Robins Dry Dock & Repair Co.* v. *Flint,*[24] a case in admiralty, the contract between the owner and the charterers provided that the vessel was to be docked for repairs every six months. In pursuance of that arrangement the ship was delivered to the yards of the defendant and while it was there the propeller was damaged through negligence. A delay resulted which deprived the charterers of the use of the ship. The defendant had no specific notice of the charter party until the delay had already begun. The charterers reached a settlement with the owner and then sought to recover from the defendant such damages as resulted from the loss of use of the vessel. In denying recovery the majority opinion written by Mr. Justice Holmes stated that " as a general rule, at least, a tort to the person or property of one man does not make the tortfeasor liable to another merely because the injured person was under a contract with that other, unknown to the doer of the wrong."[25]

There is a diversity of opinion concerning the *Robins* case. It is believed by Professor Carpenter that there was no negligence toward the plaintiff at all and that the case should not be cited as denying liability where there is negligent interference.[26] As the facts show, the defendant did not have knowledge of the contract until

[23] *Id.* at 354, 156 Eng. Rep. R. at 151.
[24] 275 U. S. 303 (1927).
[25] *Id.* at 309.
[26] Carpenter, *Interference with Contract Relations* (1928) 41 HARV. L. REV. 728, 740.

after the loss had ensued. Therefore it is arguable that having no such notice, it was not negligent as respects the plaintiff. Another writer in the *Columbia Law Review* seems to adhere to the view that interference with the contract must be done intentionally or with knowledge that loss may result. It is said there that " there was nothing to show that the defendant was aware or should have been aware at the time of the act complained of, that the plaintiff was concerned in the contract of repair."[27]

It is submitted, however, that there was negligence in the *Robins* case; that, although the defendant did not know of the specific contract at the time when the delay began, it should reasonably have anticipated that the vessel was being operated by some one other than the owner who would expect to make profits from the operation and who therefore has been harmed by the negligent performance of the contract. In the case of *Twitchell* v. *Nelson,* the court found that there was substantially an intent to interfere with a contract on this ground: "From a knowledge of such facts the law imposes the duty to inquire, and the failure to do so, either willfully or negligently, constitutes bad faith and the legal inference of actual knowledge is conclusive."[28] The owner of the dry dock in the *Robins* case doubtless knew that ships were needed as soon as possible after repair in order to carry on commerce. It would seem reasonable to say that it knew, as the court stated in *The Argentino,* that " a ship is a thing by the use of which money may be ordinarily earned, "[29] Having knowledge, then, that the ship was likely to be under contract, the defendant should have used reasonable care with regard to that contractual interest, and failing to do so, should have been held to be liable. If the Minnesota court in the *Twitchell* case was able to find an intention to interfere because of circumstances of which the wrongdoer should have taken notice, *a fortiori,* the Supreme Court could have discovered negligence on the part of the defendant in the *Robins* case.

The view that the wrongdoer may be held to be liable for negligent interference with a contract right when he has reason to believe that harm to a third person will result, could well have been applied to cases which have not allowed recovery For example, in the case of *Byrd* v. *English,*[30] *A* owned a printing concern which required large amounts of electricity in order to operate. The power was furnished to the plant by means of underground conduits. The

[27] Note (1928) 28 COL. L. REV. 496, 497.

[28] 131 Minn. 375, 155 N. W 621, 624 (1915). In that case the defendant caused the plaintiff to be deprived of her rights under a lease and was said to have done so with implied malice.

[29] 13 P D. 191, 201 (1888) This statement appeared in the case when it was before the lower court and before it was appealed to the House of Lords and affirmed in 14 App. Cas. 519 (1889).

[30] 117 Ga. 13, 43 S. E. 419 (1903).

defendants were constructing a building on the same street. Workmen excavated dirt in a negligent manner so that a wall of earth fell on the conduits and broke the wires. *A* was thereby deprived of power and suffered losses on contracts for printing jobs. The court did not decide in favor of *A* because of the familiar rule as to negligent interference, but it stated that the damage to the conduits might reasonably have been anticipated. It seems clear that harm to the plaintiff was foreseeable, or to some one who depended upon this power to operate a business.

IV BASIS OF LIABILITY.

When there are no facts which should place the third party on notice, there should be no liability. For instance, in *Connecticut Mutual Life Insurance Co.* v. *New York & N. H. R. R. Co.*,[31] an insurance company was not allowed to recover in tort from the railroad which negligently caused the death of the insured. Presumably the court thought that the railroad in performing its contracts negligently was not required to anticipate that its wrongful act would cause harm to an insurance company which had insured the life of the promisee. It was held in *Brink* v. *Wabash R. Co.*[32] that parents whose son was killed because of the company's negligence could not collect as damages the prospective amount due under a contract for support. In both cases the harm was not reasonably foreseeable.[33]

The establishment of the tort for negligent interference with contractual relationships which seemed to be under way in *The Aquitania* is in keeping with similar and analogous applications of law. Public weighers have been held to be liable to their customers for the negligent weighing of beans when they knew that the purpose of the weighing was to determine the price that the buyer should pay.[34] This is a sound result; for suppose that the buyer had relied on the weighing, paid a higher price than he would have paid otherwise, and can not get it back because of the insolvency of the seller. A tort action should be allowed because of the foreseeability involved; emphasis in the case of the public weighers, however, was placed upon the public character of their employment. Telegraph companies have been subjected to liability to third persons for negligent delay in the transmission of telegrams where such delay was responsible for damage and where such damage was in the reasonable contemplation of the parties.[35] In such cases, there are two contracts involved: first, the contract between the sender and the tele-

[31] 25 Conn. 265 (1856).
[32] 160 Mo. 87, 60 S.W 1058 (1901).
[33] The reader is referred to the brief discussion in note 14 *supra*.
[34] Glanzer v Shepard, 233 N. Y. 236, 135 N. E. 275 (1922)
[35] Jolley v. Western Union Telegraph Co., 204 N. C. 136, 167 S. E. 575 (1933), Note (1933) 33 COL. L. REV. 759, 760.

graph company and secondly the existing or prospective contract between the sender and the addressee. The facts of the *Robins* case are similar, for the charterer who had a contract with the owner recovered from the defendant who negligently performed a second contract with the owner. In the telegraph cases the dictum of *Hadley* v. *Baxendale* applies by restricting liability to such damage as was in the reasonable contemplation of the parties at the time of the formation of the contract.[36] Of course, a public utility is involved in the case of a telegraph company and liabilities are often imposed on such utilities which private corporations do not bear.

Tort liability has been extended to the violation of expectancies under wills[37] although it has not clearly been applied in negligence cases. This may take the form of an action for damages for frustration of the execution,[38] suppression and forgery,[39] or alteration[40] of a will. Kentucky permits recovery where fraudulent interference causes a change of the beneficiary of an insurance policy.[41] The above examples would seem to be much stronger than the contract cases since in the wills and insurance cases there is no contractual relation, which is usually certain and formal; but there is only a strong possibility or a probability that benefit will be received by the plaintiff.

It is submitted that the arguments are sufficient to justify the general approval of a remedy in tort for negligence which interferes with the rights of third persons, given proximate cause and reasonable grounds for anticipating the harm. Many cases hold that it gives rise to a property right. It logically follows that since there may be recovery for torts which are committed intentionally or negligently against other types of property recovery should be similarly extended to contracts. If the property element is left out, however, as Mr. Justice Holmes thought best,[42] and if the attention of the courts is focused upon the third party's contract, the result should depend upon the foreseeability of harm.

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[36] An English case which follows the dictum of Hadley v. Baxendale is Cointat v Myham & Son, (1913) 2 K. B. 220. Hadley v Baxendale is cited at 222 along with The Argentino.

[37] Interference with wills is covered by the article by Dean Evans, *Torts to Expectancies in Decedents' Estates* (1944) 93 U. OF PA. L. REV. 187.

[38] Bohannon v Wachovia Bank & Trust Co., 210 N. C. 679, 188 S. E. 390 (1936) *see* Lewis v Corbin, 195 Mass. 520, 81 N. E. 248, 249-250 (1907)

[39] Morton v Petitt, 124 Ohio St. 241, 177 N. E. 591 (1931).

[40] Dulin v Bailey 172 N. C. 608, 90 S. E. 689 (1916).

[41] Daugherty v Daugherty, 152 Ky 732, 154 S. W 9 (1913).

[42] Robins Dry Dock & Repair Co. v Flint, 275 U. S. 303, 308 (1927)