Kentucky Law Journal

Volume 36 | Issue 3 Article 6

1948

Evidence: Character Evidence in a Civil Trial

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EVIDENCE: CHARACTER EVIDENCE IN A CIVIL TRIAL.

The question frequently arises as to when and under what circumstances a person's character is admissible in evidence in the course of a trial. The type of character evidence permissible must, of course, concern the party's general reputation in the community in which he lives, as specific instances of conduct are not allowed because of the consequent entailment of collateral matters and confusion of the issues.[1]

Unlike criminal trials where reputation may play perhaps a major role in deciding the guilt or innocence of the accused, such evidence is generally excluded in civil cases because the personality of a party is of little assistance in deciding the real issues. Wigmore gives as reasons for its non-admission the lack of probative value and the consequent creation of undue prejudice, unfair surprise, and utter confusion in the minds of the jury.[2] It was stated as early as 1791 in a civil trial that the case, not the man, is in issue, and that "a very bad man may have a very righteous cause."[4] Such evidence was excluded in a recent Michigan case in which an action was brought for the specific performance of an oral contract to convey land, wherein the court said: "Much time was wasted to show Rozell A. Gardner's bad personal habits, and character, none of which has any material bearing on the issues in the case."[5] Whether or not in an action on a contract a party to the suit was stigmatized with a bad reputation would shed no light on the transaction in question. Instead it would place him in a very unfavorable position in the eyes of the jury who would more than likely concentrate on his previous bad conduct to the exclusion of the real merits of the case. It might also result in a parade of witnesses testifying to the good or bad reputation of the party involved, leaving the jury in a quandary as to the purpose for which the trial was called. Reasons advanced for its exclusion in an early Vermont decision were that it would " make trials intolerably long and tedious and greatly increase the expense and delay of litigation. It is a kind of evidence that might be easily manufactured and if in common use in the courts as likely to mislead as to guide aright."[6] Still another factor for its

[1] Tingle v Worthington, 215 Ala. 126, 110 So. 143 (1926), Clark v Eastern Mass. St. Ry., 254 Mass. 441, 150 N.E. 184 (1926) Hager v. Hager, 17 Tenn. App. 143, 66 S.W 2d 250, 255 (1934) Tarwater v. Donley County State Bank, —Texas Civ. App.— 277 S.W 176, 178-179 (1926).

Sharp v. Clapton, 218 Ala. 140, 117 So. 647, 648 (1928) Seybold v. Pierce, 171 Okla. 112, 44 P 2d 826, 827 (1935)

[3] I WIGMORE, EVIDENCE (3rd ed. 1940) sec. 64.

[4] Thompson v. Church, 1 Root (Conn.) 312 (1791)

[5] Gardner v. Gardner, 311 Mich. 615, 19 N.W 2d 118, 121 (1945).

[6] Wright v. McKee, 37 Vt. 161 (1864).

exclusion is the view that it is merely an opinion, and because of its consequent untrustworthiness, should be admitted only as a last resort.

Although this type of evidence is as a general rule not admitted, civil cases occur where it may be allowed. Virtually all states permit it if the character of the party is put in issue.[7] Actions of this kind include seduction, libel, slander, malicious prosecution, and similar cases in which character may be the very issue determining the right and the extent of recovery.[8]

An extension has been made by Georgia as to when character is put in issue. The Georgia Code provides that "The general character of the parties, and especially their conduct in other transactions, are irrelevant matter, unless the nature of the action involves such character and renders necessary or proper the investigation of such conduct."[9] Subsequent Georgia cases have allowed the introduction of general reputation where the party is charged with fraud or moral turpitude. Thus in an alimony action the court in that state held that the plaintiff's character was put in issue when the defendant testified that she had threatened to go out and act as a streetwalker and that if she had a baby she would name it after the defendant.[10] Generally however, the imputation of either fraud or moral turpitude will not place the character of the parties in issue, and so hold the better reasoned cases.[11]

Another category of civil cases where character evidence is sometimes permitted involves assault and battery. Here again there is a general breakdown and conflict as to when such matter is admissible. Where a general denial is entered as a defense, the reputation of the parties is everywhere excluded; but where self defense is pleaded or there is a question as to the aggressor, a further problem is posed.

Most states refuse to allow evidence of the defendant's character for peace and quiet, even though self defense is pleaded,[12] on the ground that having admitted the assault, the defendant's reputation is "irrelevant, immaterial, and no wise in issue."[13] Evidence that

Browning v Browning, 226 Mo. App. 322, 41 S.W 2d 860, 867 (1931), Keyes v. Keyes, 27 N.M. 215, 199 Pac. 361, 362 (1921) Skidmore v. Star Ins. Co. of America, 126 W Va. 307, 27 S.E. 2d 845, 850 (1943)

[8] I WIGMORE, EVIDENCE (3rd ed. 1940) sec. 75.

[9] GEORGIA CIVIL CODE (1933) sec. 38-202.

[10] Hogan v Hogan, 196 Ga. 822, 28 S.E. 2d 74 (1943)

[11] Adams v. Elseffer, 132 Mich. 100, 92 N.W 772, 773 (1902), Meador v. Hotel Grover, 193 Miss. 392, 9 So. 2d 782, 786 (1942), Horton v Tyree, 104 W Va. 238, 139 S.E. 737, 740 (1927).

[12] Fahey v. Crotty, 63 Mich. 383, 29 N.W 876 (1886), Haley v. Walker, 223 Mo. App. 183, 12 S.W 2d 759 (1928) Coruth v. Jones, 77 Vt. 441, 60 Atl. 814 (1905)

[13] Sipple v. Kehr, 176 Ky 698, 197 S.W 391 (1917).

the plaintiff was noted for quarrelsomeness is generally admissible where an answer of *son assault demesne* is filed because it

> " has an important bearing in determining whether or not the defendant, under his plea of self defense was justified in striking the first blow, which he confessed having done, for it is a material factor in determining whether the defendant made the assault in fear and under a reasonable belief that the plaintiff was about to attack him."[14]

The more liberal rule allows the defendant to show his good reputation for peace and quiet. So held the Indiana court in 1943 when it stated that "We can conceive of no reason why evidence which is held to be a fact in issue in a criminal case should be excluded in a civil case where the same fact is in issue."[15] The Kentucky court at the present time allows the introduction of the character of either party in an action for assault and battery where there is a question as to the aggressor,[16] as set out in the case of *Bartlett* v. *Vanover*[17]

It is believed that character evidence should not be admitted unless it will tend to shed light on the controversy in question. To allow the introduction of such matter in cases involving fraud or moral turpitude would be tantamount to giving more weight to prejudicial than to probative evidence. In cases of assault and battery where self defense is pleaded, the defendant should be permitted to introduce and show to the jury the character of the plaintiff *if* he knew of such reputation *prior* to the alleged assault. Here there would be probative value attached to the evidence to show the probability that the plaintiff, from his prior reputation for belligerence might attack the defendant, and that the defendant might reasonably expect an assault by the plaintiff. Finally, where there is a question as to the aggressor, the character of both parties —regardless of prior knowledge—is of such probative value as to outweigh any prejudice incident to the admission of such testimony

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[14] *Id.* at 701, 197 S.W at 392.

[15] Niemeyer v McCarty, 221 Ind. 688, 51 N.E. 2d 365, 369-370 (1943)

[16] Brown v. Simpson, 293 Ky. 755, 170 S.W 2d 345 (1943) Brown v. Crawford, 296 Ky. 249, 177 S.W 2d 1 (1943)

[17] 260 Ky. 839, 86 S.W 2d 1020 (1935).