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Torts: Inducing Breach of Contract

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with the order. *Washburn* v. *Skogg,* 204 Wis. 29, 233 N.W. 764 (1930); *Allison* v. *Wm. Doerflinger Co.,* 208 Wis. 206, 242 N.W. 558 (1932). But a finding for the employer where a frequenter fell down an unlighted steps of a slippery stairway cannot be upheld unless the evidence showed that the light was not turned off by affirmative conduct of the employer, and that failure to keep a light on at the bottom of the way was not necessary to maintain the stairway in a safely lighted condition, and unless it was requested that the jury find whether the slippery condition of the steps was such as deprived it of safe maintenance. The court pointed out that a slippery floor may well constitute a failure to maintain the structure in its original integrity. *Pettric* v. *Gridley Dairy Co.,* 202 Wis. 289, 232 N.W. 595 (1930). Apparently a distinction is to be drawn between the *Gridley* case and the principal case with respect to the slippery floor, in that the slipperiness in the *Gridley* case may have resulted from *leaving* the surface in a dangerous condition after cleaning it, as in the case of *Schroeder* v. *Great Atlantic & Pacific Tea Co.,* 220 Wis. 642, 265 N.W. 559 (1936), or from entire neglect to clean.

The provisions of § 101.06 impose liability on an employer when, knowing the effect of muriatic acid on supporting ropes of a suspended scaffolding, he neglected to inspect and test the rope frequently. *Builders Mut. Cas. Co.* v. *Industrial Commission,* 210 Wis. 311, 246 N.W. 313 (1933). But where a street-car motorman was injured, after changing trolleys at a terminal, by an automobile speeding through the lane between the standing street-car and a parked auto it was held that the defendant company could not be found guilty of violating the statute by not providing the motorman with a watchman to warn of the danger. The likelihood of danger was not considered sufficient to warrant such protection; the company had no right to obstruct the street and "to protect employees under such circumstances by stationing watchmen would multiply the risks and hazards of employment rather than diminish them." *Baker* v. *Janesville Traction Co.,* 204 Wis. 452, 234 N.W. 912 (1931).

It would seem that the duties imposed upon the "owner of a public building" and an "employer" under the safe-place statute are the same, except that an employer is liable not only for structural safety but also for temporary conditions not constituting a part of the structure, and for conditions existing at a place of employment independent of the presence of a building or structure.

ROBERT R. SCHEFFER.

Torts—Inducing Breach of Contract.—The plaintiff had a contract with farmers on a particular route to haul their milk to the defendant's creamery. The defendant sent a letter to the farmers doing business with the plaintiff, informing them that thereafter only milk picked up by its own trucks would be accepted at the creamery. The farmers continued to give milk to the plaintaiff until the defendant refused to accept milk from the plaintiff who, being unable to find anothe rmarket, was forced to discontinue his route. The plaintiff brings action for wrongfully procuring a breach of contract. The trial court gave a judgment of no cause of action notwithstanding the verdict in favor of the plaintiff.

Held, on appeal that the defendant's act of persuading a breach of contract, whether for the purpose of injuring the plaintiff or benefiting himself, was malicious and actionable. Its refusal to accept further deliveries from the plaintiff was wrongful because it was done for the unlawful purpose of causing a breach of the latter's contract with the farmers, which intent was manifested

in its letters to them. The defendant is liable although the proximate cause of the plaintiff's loss was his inability to find another market. *Wilkinson* v. *Powe,* 1 N.W. (2d) 539 (Mich. 1942).

In general, an action cannot be maintained for inducing a person to breach his contract with another. Cooley on Torts, 4th Ed. (1932) p. 360; *Hartman* v. *Green,* 190 So. 391 (La. 1939). The cases are numerous, however, which hold that if such an inducement be malicious, if it be made with knowledge of the contractual relations between the parties, and if it be without justification, an action in tort will lie. *Singer Sewing Machine Co.* v. *Lang,* 186 Wis. 530, 203 N.W. 399 (1925); *Remillard-Dandidi Co.* v. *Dandini,* 116 P. (2d) 641 (Cal. 1941); *Russell* v. *Bovard,* 153 Kan. 729, 113 P. (2d) 1064 (1941); *Minn. Wheat Growers' Co-op. Marketing Ass'n.* v. *Radke,* 163 Minn. 403, 204 N.W. 314 (1925); *Lewis* v. *Bloede,* 202 Fed. 7, 120 C.C.A. 335 (Md. 1912). The principal case, *Wilkinson* v. *Powe, supra,* is in accord with this ruling.

The malice necessary for the maintenance of action in such cases is not actual malice or ill will, but rather the intentional doing of an act without justification or excuse. *Meason* v. *Ralston Purina Co.,* 107 P. (2d) 224 (Ariz. 1940). Thus it is of no consequence whether the motive of the one who induced the breach was to gratify spite by doing harm to another or to benefit himself. *Sorenson* v. *Chevrolet Motor Co.,* 171 Minn. 260, 214 N.W. 754 (1927). In a case where the plaintiff and the defendant submitted competitive bids to furnish 5 Black No. 1 for ink, the plaintiff's sample having the highest rating and the lowest price, and the ink maker who tested all samples submitted advised the Bureau of Engraving and Printing to reject all bids on that type of ink, to order correspondingly larger quantities of No. 7 Hard Black, and to accept the defendant's bid on that type of black, the court held that since the defendant had a contract with the ink maker to produce No. 7 Hard Black according to a process formulated by the ink maker and to pay him for the use of such process as long as it was found to be commercially advantageous, the jury might find that the ink maker's motive in rejecting the plaintiff's bid was to benefit himself, and that such motive was induced by the acts of the defendant. The court said that the word "malicious" did not necessarily mean personal ill will, "but merely a wrongful purpose to injure, or to gain some advantage at the plaintiff's expense." It is to be noted that the action in this case was for malicious prevention of entrance into a contract rather than malicious interference with an already existing contract. *Lewis* v. *Bloede, supra.* In *Wade* v. *Culp,* 23 N.E. (2d) 615 (Ind. 1939) the court held that action for maliciously inducing breach of contract as based on the intentional interference without justification rather than on the intent to injure.

In the minority by far are cases such as *Caskie* v. *Philodelphia Rapid Transit Co.,* 344 Pa. 33, 5 A. (2d) 368 (1939) which hold that malice necessarily implies a wanton disregard for the rights of another; and that there can be no recovery in an action of this type against one who is seeking simply to enforce what he regards as his own rights. The court in the *Caskie* case defined malice as "that spirit of evil which sometimes grips individuals and nations and motivates those who delight in doing harm to others." A similar decision was reached in *United States* v. *Newbury Mfg. Co.,* 36 F. Supp. 602 (Mass. 1941) where the plaintiff was not permitted to recover in the absence of fraud or deceit. Fraud or other tortious act was also held necessary to maintain the action in *Guida* v. *Pontrelli,* 186 N.Y. Supp. 147, 114 Misc. Rep. 181 (1921) and *Turner* v. *Fulcher,* 165 N.Y. Supp. 282 (1917).

In tort actions for wrongfully inducing a breach of contract the question arises frequently whether, if the means used to procure the breach are lawful, the motive of the party in so acting as to cause the breach would make the act unlawful. In *Wilkinson* v. *Powe, supra,* the court said that the defendant's refusal to accept further deliveries of milk by the plaintiff was wrongful because it was done to accomplish an unlawful purpose, i.e., to bring about a breach of contract. In *Chambers* v. *Baldwin,* 91 Ky. 121, 15 S.W. 57 (1891) it was held that an act lawful in itself cannot become actionable because done maliciously. The same principle was upheld in *Boulier* v. *Macauley,* 15 S.W. 60 (Ky. 1891) where the plaintiff was not allowed to recover in an action against a theatrical manager who induced an actress to break her engagement at the plaintiff's theater and to perform at his own, the court holding that whether a legal wrong has been done or not depended on the nature and quality of the act and not upon the motive of the person in doing it. This last case is particularly interesting due to the similarity of its fact situation with the celebrated English case of *Lumley* v. *Gye,* 2 El. & Bl. 216 in which case the defendant persuaded a singer to refuse to execute her contract with the plaintiff, a theater manager, and recovery was allowed. It is on the ruling of this case that most of the English and American cases allowing recovery are based. The rule as to motive is made even more extensive in *Jackson* v. *Morgan,* 49 Ind. App. 376, 94 N.E. 1021 (1911) which holds the procuring of a breach of contract not actionable even though done with malice, ill will, or intent to injure the other party unless force, threats, intimidation, or some other unlawful means are used. Where stockholders could lawfully influence directors of a corporation with respect to the amount to be paid to the plaintiff for services rendered they could not be held liable for influencing the directors to reduce the amount to be paid to the plaintiff although acting with malicious motive. "Malicious motives make a bad act worse, but they cannot make that a wrong which in its own essence is lawful." *Petit* v. *Cuneo,* 290 Ill. App. 16, 7 N.E. (2d) 774 (1937).

There is a conflict of authority as regards the effect of knowledge on the part of the alleged wrongdoer of the contractual relations between the parties. In *Twitchell* v. *Nelson,* 131 Minn. 375, 155 N.W. 621 (1915) where the plaintiff had leased a well from which she had been selling spring water and the persons to whom she had leased the well transferred the property and business to the defendants, the court held that the law will presume bad faith where there is knowledge on the part of the wrongdoer of the contract with which he interferes; that such knowledge need not be actual notice of the facts but a sufficient knowledge of the facts which if followed by inquiry would have led to a disclosure of the contract relations. A decision directly to the contrary is reached in *Horth* v. *American Aggregates Corporation,* 35 N.E. (2d) 592 (Ohio 1940) where the plaintiff was not allowed to recover, the court holding that malicious inducement could not be inferred merely from the fact that the defendant knew that the identical property was the subject matter of a previous contract and that both contracts could not be performed. It would seem, therefore, that knowledge alone of the contract is not sufficient to show malicious inducement. This is substantiated by a Minnesota case which held that sections 26 and 27 of the Co-operative Marketing Act (Chapter 264, Laws of 1923) which attempted to prevent all dealing between members of a co-operative marketing association and outsiders in respect to products contracted for by the association was an infringement of the liberty of contract guaranteed by the state and federal Constitutions, inasmuch as it made the conduct of the outsiders unlawful simply because they knew the product was already under

contract even though they were guilty of no legal malice. *Minnesota Wheat Growers' Co-op. Marketing Ass'n.* v. *Radke, supra.*

Whether the act of interfering in the contractual relations of another is justified is ordinarily a question for the jury. *Meason* v. *Ralston, Purina Co., supra.* It is quite generally found that inducing a breach by a competitor in order to further his own economic advantage is no justification. *Imperial Ice Co.* v. *Rossier,* 112 P. (2d) 631 (Cal. 1941); *Sorenson* v. *Chevrolet Motor Co., supra; Klauder* v. *Cregar,* 327 Pa. 1, 192 Atl. 667 (1937). *Schonwald* v. *Ragains,* 32 Okla. 223, 122 Pac. 203 (1912) holds, however, that interfering with the contractual relations of another is not unlawful if the persuasion is done with the honest intent of bettering one's own business and not for the primary purpose of wrongfully injuring one's competitor.

Acting in the exercise of an equal or superior right has been held to be justification for procuring a breach of contract. *Knapp* v. *Penfield,* 256 N.Y. Supp. 41, 143 Misc. 132 (1932); *National Life and Accident Ins. Co.* v. *Wallace,* 162 Okla. 174, 21 P. (2d) 492 (1933). In *Gunnels* v. *Atlanta Bar Ass'n.,* 191 Ga. 366, 12 S.E. (2d) 602 (1940) where the plaintiff had been lending money at grossly usurious rates of interest and the Bar Ass'n. had sent letters and cards to his customers advising them to violate their contracts and to file suit against the plaintiff it was held that it was not wrongful to induce repudiation of an illegal contract. Informing the mother superior of a parochial school that the father of one of the pupils attending was afflicted with a contagious disease was held to be a justifiable act as against the plaintiff's contention that it was a malicious interference with the contractual rights of the plaintiff for instruction, board, and lodging at the school. Here the defendant "did neither more nor less than any mother who had the welfare of her own child at heart and was interested in the convent school by reason of her own child's attendance there, would have done under similar circumstances." *Legris* v. *Marcotte,* 129 Ill. App. 67 (1906).

Where a contract to buy automobile whistles was unenforceable because of uncertainty as to price and because the corporation was not bound to manufacture any whistles, a third person would not be justified in maliciously preventing performance of the contract since the corporation was willing to perform. *Aalfo Co., Inc.* v. *Kinney,* 105 N.J. 345, 144 Atl. 715 (1929). The fact that a contract is not enforceable against a buyer under the statute of frauds was held to be no justification for interference causing a breach of contract in *Cumberland Glass Mfg. Co.* v. *DeWitt,* 120 Md. 381, 87 Atl. 927 (1913). In *Little* v. *Childress,* 12 S.W. (2d) 648 (Tex. 1929) the plaintiff was not allowed to recover against defendant for inducing the breach of a contract which did not comply with the statute of frauds. It is to be noted, however, that the statute made contracts not complying with its terms *void,* rather han merely unenforceable.

An interesting case on the question of inducing breach of contract is that of *Philadelphia Record Co.* v. *Leapold,* 40 F. Supp. 346 (S.D., N.Y. 1941) where the plaintiff, a newspaper, had a daily puzzle contest for the purpose of increasing its circulation and the defendant sold answers to the puzzles. The court held here that a contractual relationship existed between the plaintiff and the entrants in the contest, that the solicitation and sale of answers by the defendant was an inducement to a breach of contract by the entrants, and that such wrong was actionable although the contestants were under no duty to perform the contract with the plaintiff.

Where the defendant manufactured and sold, for the purpose of advertising the plaintiff's motion pictures, inferior and inaccurate advertising material fail-

ing to contain the plaintiff's name as producer as required by contracts with the exhibitors who brought such advertising material from the defendant, an injunction was granted on the theory that the manufacturing and distributing of the inferior material for the purpose of being used in a manner which violated exhibitors' contracts was a direct inducement of breach. *Paramount Pictures* v. *Leader Press,* 106 F. (2d) 229 (C.C.A. 1939).

One question raised in the principle case of *Wilkinson* v. *Powe, supra,* is not answered satisfactorily by the court, nor does there seem to be any decision directly in point. In that case the plaintiff actually breached the contract, yet was allowed to recover against defendant for inducing the farmers to breach their contracts with the plaintiff. In all other cases cited, as in *Knickerbocker Ice Co.* v. *Gardiner Dairy Co.,* 107 Md. 556, 69 Atl. 405 (1908) cited in the principal case as having almost analogous facts, the actual breach was not by the party bringing the action. The language of *Aalfo Co., Inc.* v. *Kinney, supra,* might be extended to fit the situation, where the court says that the act of third persons in maliciously and without legal justification preventing performance of a contract by a party who was willing to perform would make such third persons liable in damages to either contracting party that suffers injury as the direct result of such act. In *Wilkinson* v. *Powe* the plaintiff suffered injury as the direct result of the defendant's act in being forced to breach his contract with the farmers.

JOAN MOONAN.

Torts—The Theory of "Subsequent Negligence."—Plaintiff, while crossing a street at an intersection which was regulated by traffic lights, was struck by the left fender of defendant's auto. The street runs east and west and plaintiff was crossing from north to south on the east side of the intersection. Plaintiff used the crosswalk and looked at the traffic lights before crossing. The light was in plaintiff's favor so plaintiff started to cross. Plaintiff proceeded across the street without any further observation of traffic or traffic lights. While plaintiff was crossing, the traffic light changed. When in about the center of the street, defendant's auto, coming from the west, struck plaintiff. The lower court instructed the jury that if the light changed while plaintiff was crossing the street, she continued to have right to pass to the other side of the street before defendant could start his car in such a way and to such an extent as to collide with her. The jury returned a verdict for plaintiff and judgment was rendered accordingly.

On appeal, *held,* judgment reversed, the trial court's instructions being erroneous in that they suspended the duty of plaintiff to use reasonable care after starting across street. Plaintiff, in an attempt to have judgment affirmed, argued that defendant was guilty of subsequent negligence. In refuting plaintiff's attempt to apply the doctrine of subsequent negligence, the Michign Supreme Court spoke as follows: "To apply the theory of subsequent negligence, the plaintiff's negligence must have come to rest and defendant must have discovered such negligence in time and with the ability to avoid the accident and have failed to do so." *Sloan* v. *Ambrose,* 1 N.W. (2d) 505 (Mich. 1942).

The theory of subsequent negligence provides for recovery on the part of the plaintiff, if, after placing himself in a position of peril, the plaintiff's negligence comes to rest and the defendant discovers such negligence in time and with ability to avoid injury to plaintiff and fails to do so.