Marquette Law Review

Volume 21
Issue 3 *April 1937*

Article 11

Torts - Proximate Cause - Liability of Telephone Company for Failure to Make Connection

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failure to proceed. *Carmical* v. *Broughton's Adm'x.*, 249 Ky. 749, 61 S.W. (2d) 612 (1933). But a sheriff, by showing that property is already in the possession of the debtor's assignee for benefit of creditors by virtue of replevin proceedings, is exonerated from liability. *Clark* v. *Lamoreux*, 70 Wis. 508, 36 N.W. 393 (1888). As to the adequacy of property seized on execution, an officer is not liable for making an inadequate levy of an execution, knowing that more property is available and an attachment is about to be issued, if the amount of the property levied on is such as a prudent or reasonable man would have deemed sufficient to satisfy the judgment. *Raume* v. *Winkelman*, 192 Minn. 1, 255 N.W. 81, 93 A.L.R. 313 (1934). A sheriff, using his discretion to decide as best he can, attaching more property than necessary due to honest mistake, is not liable to the debtor. *Costa* v. *Goldenberb*, 258 Mass. 226, 154 N.E. 579 (1927). But the sale of farm property on execution to the value of $10,000 sold for $25, to satisfy a judgment of $6.85 was so excessive as to be the basis of a suit. *Mason* v. *Wilks*, (Mo. App. 1921) 288 S.W. 936. In *State* ex rel. *Mann* v. *Brophy, supra*, on a showing that the sheriff, knowing that he could make a levy on a day peremptorily directed by the judgment creditor's attorney, failed to do so, and the debtor being thereafter declared a bankrupt, the sheriff was adjudged guilty of contempt, and in addition was required to pay the whole amount of the judgment debt to the judgment creditor. The court in the instant case declared that the facts did not warrant the impositon of such a harsh penalty, for while certain personal property may no longer be subject to execution, the plaintiff has actually suffered no loss, as she still has a lien on the judgment debtor's interest in real estate, as of the date of her judgment.

JOHN T. MCCARRIER.

TORTS—PROXIMATE CAUSE—LIABILITY OF TELEPHONE COMPANY FOR FAILURE TO MAKE CONNECTION.—The plaintiff's saw mill was threatened by fire and a call was made to the fire chief in the nearby village. The defendant's telephone operator refused to make the connection, claiming that the defendant was in default in his payments (allegedly an error on her part). The plaintiff sued for damages by fire under Section 180.19 of the Wisconsin Statutes (1935). The jury in the trial court found that the plaintiff sustained damages of $1500 because of the defendant's failure to give the plaintiff the connection as required by the statute. On appeal, *held*, judgment affirmed; from the evidence it could be reasonably inferred that had the defendant promptly complied with the request for the telephone connection, the property would have been saved by the fire department. *Boldig* v. *Urban Telephone Company*, (Wis. 1937) 271 N.W. 88.

Under Section 180.19 of the Wisconsin Statutes (1935) telephone and telegraph companies are held responsible for all damages occasioned by the negligence of their operators in transmitting or delivering messages. The Wisconsin court has several times ruled on the question of telegraph companies' failing to deliver messages promptly or correctly, but has heretofore never decided any case where a telephone company failed to make a connection. In the telegraph cases it has been held that where the plaintiff could show special injuries directly caused by the defendant's negligence in transmitting a telegram, the company is liable for all such damages. *Sherrerd* v. *Western Union Telegraph Company*, 146 Wis. 197, 131 N.W. 341 (1911); *Cutts* v. *Western Union Telegraph Company*, 71 Wis. 46, 36 N.W. 627 (1888). The court has emphasized that the limits of responsibility under this statute must be worked out through the formula

of proximate cause as in any other action grounded on negligence. *Fisher* v. *Western Union Telegraph Company,* 119 Wis. 146, 96 N.W. 545 (1903). The chain of causation between the conduct of the defendant's servant in denying the plaintiff the use of the company's facilities and the loss which the plaintiff sustained by the fire is indirect. Whether the conduct of the defendant's servant is to be considered a dominant factor as contributing to the plaintiff's loss or whether it has been too remote, is a question for the judge to decide before he permits the jury to consider the case. The courts in these cases have considered various factors in determining the chain of causation. In cases where the courts have held against the plaintiff under similar facts, they have emphasized such conditions as: the time it would take before the property was destroyed [how is this to be determined?], ability of the fire department to respond immediately, condition of the apparatus and the sufficiency of the water supply. *Volquardsen* v. *Iowa Telephone Company,* 148 Iowa 77, 126 N.W. 928 (1910); *Providence Washington Insurance Company* v. *Iowa Telephone Company,* 172 Iowa 597, 154 N.W. 874 (1915). In the latter case the court considered the type of fire and the condition of the barn in which the burning car was kept as matters of importance. The time of the year, the material of the building, its contents and the force of the wind have also been emphasized by some of the courts. *Lebanon, Louisville and Lexington Telephone Company* v. *Lanham Lumber Company,* 131 Ky. 718, 115 S.W. 824 (1909). The fact that an alarm bell at the fire station was not in working condition, that the water pressure was too weak and the hose defective were thought by the court to be matters of importance in *Southwestern Telegraph and Telephone Company* v. *Thomas,* (Tex. Civ. App. 1916) 185 S.W. 396. In the instant case, the court took into consideration the testimony of the members of the fire department as to how long it would have taken them to get to the fire (other courts have held such testimony to be too conjectural), the fact that the equipment was in good condition, and though it was shown that the wind was against the fire, the court nevertheless felt that the jury might well find that these were dominant factors in establishing the defendant's negligence as the "proximate cause" of the loss.

ELIZABETH C. LEIS.

WILLS—CONTRACTS AMONG DESCENDANTS—JURISDICTION OF COUNTY COURT.—The plaintiff, one of four sons and three daughters, heirs of the intestate's estate, signed a contract whereby he and his three sisters were to divide the personal property equally, and the other three brothers were to divide the real estate equally. A check for $8,917.86 was deposited in a bank for plaintiff's use, but he refused to accept it, because he had changed his mind. He wanted the contract altered so that he could get some of the land instead of money. The plaintiff applied for citation to issue requiring the administrators to render a full and final account. The court approved the distribution in compliance with the contract and ordered the release of the administrators and their bond. On appeal, *held,* order affirmed; a probate court has jurisdiction to distribute the assets of the estate in accordance with a contract made by the heirs. *In re Richardson's Estate,* (Wis. 1937) 271 N.W. 56.

The decision of the court was based on its interpretation of the Wisconsin statutes extending the jurisdiction of the probate court "to all matters relating to the settlement of the estates" of deceased persons. WIS. STAT. (1935) §§ 253.03, 318.06 (1, 2). It was deduced from these sections that the jurisdiction of the county courts was broad enough to include all interests of all persons, heirs or