Waters and Water Courses - Insufficiency of Supply - Liabilities to Individuals

John Faller

Follow this and additional works at: http://scholarship.law.marquette.edu/mulr

Part of the Law Commons

Repository Citation
John Faller, Waters and Water Courses - Insufficiency of Supply - Liabilities to Individuals, 17 Marq. L. Rev. 234 (1933).
Available at: http://scholarship.law.marquette.edu/mulr/vol17/iss3/12

This Article is brought to you for free and open access by the Journals at Marquette Law Scholarly Commons. It has been accepted for inclusion in Marquette Law Review by an authorized administrator of Marquette Law Scholarly Commons. For more information, please contact megan.obrien@marquette.edu.
are not rural in character, yet it might well be contended that they are not suitable for inclusion within village boundaries. Reconciling the St. Francis and Chenequa cases is rather difficult, although it is true that in the St. Francis case the court claims that the Chenequa residents had "a common interest which induced in a natural way communication and exchange between them for a community purpose," a condition of neighborly dependence presumably absent in the St. Francis district.

Inasmuch as the trial judge in the one case denied and in the other granted the application for incorporation, the only plausible basis for reconciling the two cases is upon the general judicial unwillingness to disturb the findings of fact of a trial judge, unless such findings are against the clear preponderance of the evidence or a mistake has been made in applying the law. It is generally conceded that specific findings of fact are accorded great weight on appeal due to the superior advantages of the trial court in seeing and observing the witnesses. ticknor v. Sinclair, 187 Wis. 71, 203 N.W. 927 (1925); In re Oswald's Will, 172 Wis. 345, 178 N.W. 462 (1920); Huntington v. Burdeau, 149 Wis. 263, 135 N.W. 845 (1912). They are practically conclusive unless the clear weight or decided preponderance of evidence is the other way; findings must quite clearly appear to be wrong after all reasonable doubts are resolved in their favor. 3 Bryant, Wisconsin Pleading and Practice (2nd ed.) p. 355, § 502. Except for this judicial unwillingness to reverse trial courts' findings of fact, it is difficult to understand why a rambling summer colony, with its planeless landing fields, "high steep hills" and five acres per capita was permitted incorporation as a village while another area with all of the attributes of a village such as clusters of houses, improved streets, street lights, and municipal public service facilities was denied such incorporation.

Robert W. Hansen

Waters and Water Courses—Insufficiency of Supply—Liabilities to Individuals.—A water company under a franchise granted by the city, owned and operated the water distribution system in the city. A Stock Yards Company owned improved property in the city. This property was destroyed by fire, when the pressure on the hydrants fell below that required by a provision of the franchise, requiring "sufficient pressure for the extinguishing fires at any point in the city." Action by the Stock Company against the Water Company for damages for the breach of the contract. Held, that the Water Company was liable for breach. Kentucky Utilities Co. v. Farmers' Co-op. Stock Yards Co., (Ky. 1932), 54 S.W. (2d) 364.

This recent decision is a re-affirmation of an established Kentucky doctrine. However, while it is upheld in Kentucky, and two other states, the general rule followed by the remainder of the jurisdictions, state and federal, is that there is no liability upon a water company for injuries sustained, in the absence of an express contract, for failure to maintain sufficient pressure, in an action by an individual. German Alliance Insurance Co. v. Home Water Supply Co., 226 U.S. 220, (1912); Luning Mineral Products Co. v. East Bay Water Co., 70 Cal. App. 94, 232 Pac. 721, (1924); City of Galena v. Galena Water Co., 229 Ill. 128, 82 N.E. 421 (1907); Hall v. Passaic Water Co., 83 N.J.L. 771, 85 A. 349 (1912); Becker v. Keokuk Waterworks, 79 Iowa 419, 44 N.W. 694 (1890). This view is taken in this type of case by the common law, and is reenacted in the statutes of the Public Service Acts in the various states, Cf. Sec. 196.58, Wisconsin Statutes (1931), requiring reasonably adequate service. They merely continue the
existing contractual obligations of a company to a city, and do not include liability to an individual. *Trustees of Jennie de Pauw Memorial Methodist Episcopal Church v. New Albany Waterworks*, 193 Ind. 368, 140 N.E. 540, (1923).

Florida, in *Mugge v. Tampa Waterworks Co.*, 52 Fla. 371, 42 So. 81, (1906); North Carolina, in *Gorrell v. Greensboro Water Supply Co.*, 124 N.C. 328, 32 S.E. 720, (1899); and Kentucky, in *Kenton Water Co. v. Glenn*, 141 Ky. 529, 133 S.W. 573 (1911) are the only states that follow the rule that there is liability on the part of the water company to the individual. The courts in these states seem to follow the reasoning that one may sue on a contract made for his benefit by another. The majority rule is supported on the theory that there is no privity of contract between the individual and the company.

Wisconsin follows the general rule, the Supreme Court stating that there is no liability as against a water company, under contract with a city to furnish water for the water works system, for fire losses due to the lack of sufficient water. *Concordia Fire Insurance Co. v. Simmons Co.*, 167 Wis. 541, 168 N.W. 199 (1918); *Highway Trailor Co. v. Janesville Electric Co.*, 178 Wis. 340, 190 N.W. 110 (1922); *Britton v. Green Bay and Fort Howard Waterworks Co.*, 81 Wis. 48, 51 N.W. 84 (1892).

*JOHN FALLER*