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ASSAULT AND BATTERY-ABUSIVE LANGUAGE AND THREATS - FRIGHT CAUSING MISCARRIAGE

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RECENT DECISIONS

ASSAULT AND BATTERY — ABUSIVE LANGUAGE AND THREATS — FRIGHT CAUSING MISCARRIAGE — Upon the plaintiff's refusal to pay anything on her account with the defendant corporation, the collecting agent of the latter, knowing that the plaintiff was far advanced in pregnancy, called her a "dead-beat" and threatened to have her arrested. In a civil action for wiful trespass to the person, the plaintiff alleged that fright caused by the defendant's conduct resulted in illness and a miscarriage. *Held*, that there was a cause of action stated, even though there was no physical violence. *Kirby v. Jules Chain Stores Corp.*, 210 N. C. 808, 188 S. E. 625 (1936).

It is well established that fright and nervous shock, unaccompanied by physical injuries, are not in themselves sufficient to form the basis of an action for damages,[1] but when physical injuries follow as a natural consequence of the fright, even though there is no physical impact, it is believed that a majority of the jurisdictions now permit recovery and the tendency is in this direction.[2] The cases often distinguish between negligent and wilful acts, and courts which deny recovery in the negligence cases permit recovery if the defendant's act is a wilful wrong.[3] The court in the instant case is justified, both upon authority and principle, in following the modern and more logical view that physical impact is not essential before there can be recovery.[4] There is a body of authority to the effect that where the conduct constitutes an admitted tort, the defendant is liable for all the proximate results of his act.[5] The difficulty in the instant case arises out of the fact that the defendant's conduct fell short of a technical assault, since it is generally held that mere words cannot constitute

[1] Railroad Co. v. Dalton, 65 Kan. 661, 70 P. 645 (1902); Herrick v. Evening Express Pub. Co., 120 Me. 138, 113 A. 16, 23 A. L. R. 358 (1921).

[2] Hallen, "Damages for Physical Injuries Resulting from Fright or Shock," 19 VA. L. REV. 253 (1933); Sundquist v. Madison R. Co., 197 Wis. 83, 221 N. W. 392 (1928); Great A. & P. Tea Co. v. Roch, 160 Md. 189, 153 A. 22 (1931); Hambrook v. Stokes Bros., [1925] 1 K. B. 141. There is, however, a large body of cases contra, denying recovery and clinging to the old rule which requires some physical impact accompanying the fright. See Mitchell v. Rochester Ry., 151 N. Y. 107, 45 N. E. 354, 34 L. R. A. 781, 56 Am. St. Rep. 604 (1896); Kentucky Traction & Terminal Co. v. Roman's Guardian, 232 Ky. 285, 23 S. W. (2d) 272 (1929).

[3] Johnson v. Sampson, 167 Minn. 203, 208 N. W. 814 (1925); Jeppsen v. Jensen, 47 Utah 536, 155 P. 429 (1916). Also see the note in 21 MICH. L. REV. 713 (1923). In the case of Spade v. Lynn R. Co., 168 Mass. 285 at 290, 47 N. E. 88 (1897), in which recovery was denied when the bodily injury was caused by fright from the negligence of the defendant the court said: "this decision does not reach those classes of actions where an intention to cause mental distress or to hurt the feelings are shown. . . ."

[4] For an excellent article in which the absurdity of a contrary position is pointed out, see Throckmorton, "Damages for Fright," 34 HARV. L. REV. 260 (1921).

[5] Engle v. Simmons, 148 Ala. 92, 41 So. 1023, 7 L. R. A. (N. S.) 96, 121 Am. St. Rep. 59, 12 Ann. Cas. 740 (1906) (trespass); Garrison v. Sun Pub. Assn., 207 N. Y. 1, 100 N. E. 430 (1912) (slander). Contra, White v. Sander, 167 Mass. 296, 47 N. E. 90 (1897) (trespass).

an assault.[6] In spite of this, however, in an English case [7] where the defendant made threats and false statements for the purpose of frightening the plaintiff, recovery was allowed for the physical consequences reasonably following from such threats. In this country recovery has also been allowed where physical illness results from fright caused by threats sent by letter.[8] Cases involving this precise point are rare, however, and very few decisions favor recovery where the words were not in themselves actionable. It is obvious that mere words can easily start a train of events leading to physical injury, and if a case is made out, the fact that spoken words were the cause of the injury should not preclude recovery. Where threats and abusive words are spoken to the plaintiff wilfully, and with an intention to cause fright, there is no reason why the rules of tort liability should not be flexible enough to grant redress for physical injuries caused by fright.

[6] 63 C. J. 891 (1933) and cases therein cited.
[7] Janvier v. Sweeney and Barker, [1919] 2 K. B. 316.
[8] Grimes v. Gates, 47 Vt. 594 (1873).