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TORTS — TEMPORARY INSANITY AS A DEFENSE — While operating a bus owned by the corporate defendant the individual defendant suddenly became insane and lost control of the bus which struck a parked ice truck owned by the plaintiff McKay, and upon which the plaintiff Sforza was chopping ice. These actions were brought to recover for property damage and personal injuries thereby incurred. *Held*, in spite of the temporary insanity the individual

defendant was legally responsible for the negligence, which is imputable also to the corporate defendant. *Sforza v. Green Bus Lines, Inc., et al; McKay v. Same,* (Munic. Ct. City of New York, 1934) 268 N. Y. S. 446.

The rule which holds insane persons liable for their torts seems to be a persistence of the doctrine of *Weaver v. Ward* which held the person responsible for the act that inflicted the injury liable irrespective of his lack of moral blame.[1] While the facts given in the principal case do not clearly indicate the mental condition of the individual defendant at the time of the accident, it seems apparent, from the fact that he lost control of the bus, that his condition was such as to render him unable to control his acts. If so, it seems arguable that he was not responsible for the act inflicting the injury, that he was no more a juridical cause than would be an inanimate object,[2] and so even by the doctrine of *Weaver v. Ward* should not have been held liable. Such a determination would find support in the cases. Persons who have fainted[3] or become unconscious while driving have been excused of liability,[4] providing of course that they could not have foreseen the condition. It has even been held that one who fell asleep while driving was not liable, though how it could be proven in such a case that the defendant could not have foreseen that he was falling asleep seems difficult to perceive.[5] Moreover, in the instant case, the act of the defendant was one which, in the case of a sane person, would have been termed negligence. While the cases uniformly hold that such insane persons as are "capable of taking precautions, and of being influenced by . . . motives" [6] are liable for their intentional torts,[7] their liability for torts negligently inflicted is by no means so

[1] Bohlen, "Liability in Tort of Infants and Insane Persons," 23 MICH. L. REV. 9 (1924).

[2] WHARTON, NEGLIGENCE, 2d ed., sec. 88 (1877). AM. L. INST. TORT RESTATEMENT No. 1, sec. 7, p. 15 (1925), states that, "To create liability . . . [for a battery] the bodily harm must be caused by an act of the one whose liability is in question." And in the comment following, "The word 'act' is used . . . as meaning an exertion of the will manifested in the external world. . . . Merely instinctive physical reactions, such as . . . the convulsive movements of an epileptic or other muscular contractions of one's body while one is unconscious and one's will is in abeyance, are not acts."

[3] Cohen v. Petty, (App. D. C. 1933) 65 F. (2d) 820; Armstrong v. Cook, 250 Mich. 180, 229 N. W. 433 (1930).

[4] Slattery v. Haley, [1923] 3 Dom. L. Rep. 156 (1922).

[5] Bushnell v. Bushnell, 103 Conn. 583, 131 Atl. 432, 44 A. L. R. 785 (1925). Nor is one who suddenly becomes unconscious guilty of contributory negligence. Magee v. Jones County, 161 Iowa 296, 142 N. W. 957, 48 L. R. A. (N. S.) 141 (1913).

[6] HOLMES, COMMON LAW 109 (1881). After stating the general rule that fault is the test of liability in tort, he continues: "Insanity is a more difficult matter to deal with, and no general rule can be laid down about it. There is no doubt that in many cases a man may be insane, and yet perfectly capable of taking precautions, and of being influenced by the motives, which the circumstances demand. But if insanity of a pronounced type exists, manifestly incapacitating the sufferer from complying with the rule he has broken, good sense would require it to be admitted as an excuse."

[7] 1 COOLEY ON TORTS, 4th ed., sec. 65 (1932); 51 A. L. R. 833 (1927); 21

clearly indicated.[8] One of the strongest policy arguments in favor of imposing liability in these cases (i.e., that where one of two innocent persons must suffer loss, it is more just that the estate of him who inflicts the injury should bear the burden)[9] also loses weight in the principal case, for if any recovery is allowed it is undoubtedly the corporate employer of the individual defendant who will have to pay.[10] *Per contra*, however, it may be said that the prostitution of the defense of temporary insanity which has followed its recognition in criminal cases may well make a court reluctant to deny an injured plaintiff recovery on that ground.

W. L. H.

Ann. Cas. 1352 (1911); Seals v. Snow, 123 Kan. 88, 254 Pac. 348 (1927) (death); Moore v. Horne, 153 N. C. 413, 69 S. E. 409 (1910) (assault); Avery v. Wilson, (C. C. W. D. N. C. 1884) 20 Fed. 856 (infringement of patent right); Young v. Young, 141 Ky. 76, 132 S. W. 155 (1910) (death); McIntyre v. Sholty, 121 Ill. 660, 13 N. E. 239, 2 Am. St. Rep. 140 (1887) (good statement of the reason for the rule).

[8] AM. L. INST., TORT RESTATEMENT No. 4, p. 29 (1929). In a caveat to sec. 167 it is stated: "There is not sufficient authority to make it possible to state whether insane persons are or are not required to conform to the standard of behavior which society demands of sane persons for the protection of the interests of others."

Williams v. Hays, 143 N. Y. 442, 38 N. E. 449, 26 L. R. A. 153, 42 Am. St. Rep. 743 (1894), imposing liability for that which in a sane person would have been negligence, was reversed on appeal, 157 N. Y. 541, 52 N. E. 589, 43 L. R. A. 253, 68 Am. St. Rep. 797 (1899), on the ground that to impose liability in such a case would be to carry the law of negligence to an unreasonable point. See also Bohlen, "Liability in Tort of Infants and Insane Persons," 23 MICH. L. REV. 9 (1924).

[9] 1 COOLEY ON TORTS, 4th ed., 188 (1932).

[10] 6 LABITT, MASTER AND SERVANT, 2d ed., sec. 2224 (1913).