Case Western Reserve Law Review

Volume 6 | Issue 3 Article 15

1955

Evidence

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abnormality in the child's family situation over which the child has no control. A result occurred, certainly not so serious, but in kind like the older practice of requiring that vital statistics records label an illegitimate child as such.

In *Marlin v. Board of Election of Cuyahoga County*[9] it was held that in the absence of specific allegations of fraud an elector could not use the injunctive process to prevent a candidate's name from being placed on the ballot where he had not availed himself of the protest process provided in Ohio Revised Code Section 3513.05.

The court in *Henie v. City of Euclid*[10] decided that when a property owner sought to require the issuance of a building permit it was proper to seek a mandatory injunction without complying with the administrative procedure provided by ordinance when plaintiff's action was based on the contention that the zoning ordinance was unconstitutional.

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EVIDENCE

Two actions for personal injuries, involving the rule of res ipsa loquitur, were reviewed by the supreme court and in each case it was held that before the rule can be applied against a defendant-manufacturer of the instrumentality causing the injury, there must be a showing that it could not have been mishandled or tampered with between the time of its leaving the custody of the defendant-manufacturer and the time of the occurrence causing the injury. In *Krupar v. Procter and Gamble Co.*,[1] plaintiff purchased a bar of soap from a retail grocer. While taking a bath, he suffered injury when scratched on his hip by a small piece of wire which was embedded in the partially consumed bar of soap. The evidence showed that the soap had been used by plaintiff, his wife and guests for a period of eight days after purchase from the retailer. The latter had some time previously purchased the soap from defendant-manufacturer in another city and had had it shipped to his warehouse for storage until needed. Reversing a judgment for plaintiff entered by the court of appeals, the supreme court rendered final judgment for defendant.

In *Koktavy v. United Fireworks Mfg., Co.*,[2] plaintiff recovered a judgment against defendant-manufacturer for injuries sustained by him resulting from the premature explosion of an aerial salute bomb which he had purchased from a retail jobber, who, in turn, had purchased it from

[9] 119 N.E.2d 84 (Ohio App. 1954).

[10] 118 N.E.2d 682 (Ohio App. 1954).

the defendant-manufacturer. The bomb had been out of the latter's custody, control and management for approximately two months and had been lying loose in the retail jobber's warehouse. No evidence was introduced by plaintiff as to non-access to the bomb by others or as to the condition of the warehouse. Moreover, after plaintiff had purchased the bomb, he transported it some forty miles in his automobile, stored it for five days in a building and then had fired it from a mortar — with which defendant had nothing to do — made of cast iron which was rusted and pitted. The court of common pleas directed a verdict for defendant and judgment was entered thereon. This was reversed by the court of appeals. The supreme court reversed the judgment of the court of appeals and affirmed that of common pleas court.

Another decision[3] has been added to the growing list which concerns privileged communications. An action for personal injury was instituted by a passenger of one of the Cleveland Transit System's busses involved in an accident. The operator of the bus obtained the name and address of the driver of the other vehicle which collided with the bus, and the license number thereof. Pursuant to custom, the operator turned over his information to the legal department of the Transit System. To obtain this information, plaintiff took the deposition of an assistant superintendent of the System's claim department, who refused to divulge the same and was committed for contempt. Approving several of its earlier decisions, the supreme court held that the witness was justified in refusing to disclose the information sought and discharged him from the custody of the sheriff. The most interesting feature of the case, however, is the dissenting opinion of Judge Hart in which he discusses at some length the previous decisions of the court touching this question.

Tully v. Mahoning Exp. Co.,[4] was an action for personal injury. Plaintiff recovered a judgment for $60,000.00. Three physicians called by plaintiff testified to his injuries and to his physical condition at the time of trial. Two of them testified that further treatment was necessary, but did not explain the nature, duration, or probable cost thereof. Over objection of defendant, plaintiff himself was permitted to give his opinion of such matters. The supreme court held this prejudicial error since plaintiff, a mere layman, did not possess the necessary learning, skill, or experience to enable him to give an opinion. The court plainly stated that only one who has expert knowledge of medicine or hospitalization could possibly testify within the range of probability on such subjects. However, the court, while re-

[1] 160 Ohio St. 489, 117 N.E.2d 7 (1954).
[2] 160 Ohio St. 461, 117 N.E.2d 16 (1954).
[3] *In re* Tichy, 161 Ohio St. 104, 118 N.E.2d 128 (1954).
[4] 161 Ohio St. 457, 119 N.E.2d 831 (1954).