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Damages

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the commission of the crime on trial. Also, evidence of flight, resistance to arrest, concealment, assumption of a false name and criminal conduct during flight for the purpose of financing further flight is admissible for the jury's consideration in determining whether there was a guilty connection with the crime charged.

In *State v. Spino*[25] the trial court had read to the jury the entire statute defining the crime in question including the penal clause. Following this, the court told the jury that they had nothing to do with the consequences to the defendant in case he were found guilty. The court of appeals held that a charge conforming to the requirements of Ohio General Code Section 13442-9 cured the error, if any, of the trial court in reading the penalty clause to the jury; and that such error, if any, was not prejudicial to the defendant.

Two courts of appeals' decisions dealt with the matter of supplemental charges to the jury after they had retired for deliberation. In *State v. Whitehead*[26] the trial court had answered with supplemental charges questions submitted by the jury foreman after the jury had been deliberating for some time. In *State v. Dean*[27] the trial court, in addition to admonishing the jury of the importance of their reaching a verdict after having deliberated for several hours, reread a portion of its general charge to the jury when the jury returned for further instructions. Both appellate decisions approved the conduct of the trial courts which had been predicated on Ohio General Code Section 11420-6 authorizing the giving of additional instructions when requested by the jury.[28]

MAURICE S. CULP

DAMAGES

In *Alexander Hamilton Institute v. Jubelt*[1] a correspondence school sought recovery for the entire contract price of a course. The defendant had agreed to pay for the entire course in monthly payments but after part-payment refused to pay any more and returned the materials he had received. The court stated the rule as follows: "A party to an executory contract, on refusing to proceed therewith, is liable only for damages resulting from the

[25] 90 Ohio App. 139, 104 N.E.2d 200 (1951).

[26] 91 Ohio App. 156, 107 N.E.2d 892 (1951).

[27] 90 Ohio App. 398, 106 N.E.2d 303 (1951).

[28] A somewhat similar problem was considered in State v. Griffin, 106 N.E.2d 668 (Ohio App. 1952) wherein it was determined that it was not prejudicial error for the court to send a copy of its charge to the jury room under Ohio General Code Section 13442-8.

breach and not for the contract price. The burden is on the plaintiff to establish the extent of damage."[2] This burden which the plaintiff has, includes, in effect, the necessity of proving the economy of not having to perform the remaining portion of the contract. This decision is in accord with the opinion of the Supreme Court of Ohio in *Allen, Heaton & McDonald, Inc. v. Castle Farm Amusement Co.*[3]

Sadler v. Bromberg[4] involved a recovery for defective installation of tile during construction of a house. The proper measure of damages was "the reasonable cost of material and labor required to restore this job so as to place it in the condition contemplated by the parties when they signed the contract, that is, such an amount as would be the reasonable cost of restoring the job"[5] and not the difference in the market value of the property immediately before and after the injury.

In *Midvale Coal Co. v. Cardox Corp.*[6] the defendant breached a contract to service certain equipment of the plaintiff; the equipment became defective; and, as a result thereof, an employee was injured. The Industrial Commission of Ohio paid for such injuries and under the merit system raised the the amount which the plaintiff was required to pay into the state fund. The plaintiff sued in breach of contract. In an earlier opinion in the same litigation,[7] the overruling of the defendant's demurrer was sustained. This appeal is from an award equal to the increased amount which the plaintiff was required to pay to the state fund. That increased amount was greater than the compensation paid the injured employee. Basing the decision squarely on *Hadley v. Baxendale*,[8] the court held that the plaintiff's liability under the Workmen's Compensation Act was within the contemplation of the parties when they entered the contract but only to the amount of the employee's compensation for the immediate injury. "It is certainly not natural and according to the usual course of things to have payments by an insurer on a single insurance claim increase the insurance premiums of the insured by substantially more than the amount of such payments."[9] The excess in the amount payable to the fund occurred because the Industrial Commission in making its computations under the merit system considered

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[1] 89 Ohio App. 480, 102 N.E.2d 741 (1951)

[2] *Id.* at 482, 102 N.E.2d at 743.

[3] 151 Ohio St. 522, 86 N.E.2d 782 (1949)

[4] 62 Ohio L. Abs. 73, 106 N.E.2d 306 (Ohio App. 1950).

[5] *Id.* at 75, 106 N.E.2d at 307

[6] 157 Ohio St. 526, 106 N.E.2d 556 (1952).

[7] Midvale Coal Co. v. Cardox Corp., 152 Ohio St. 437, 89 N.E.2d 673 (1949)

[8] 1 Ex. 341, 156 Eng. Rep. 145 (1854).

[9] Midvale Coal Co. v. Cardox Corp., 157 Ohio St. 526, 533, 106 N.E.2d 556, 560 (1952)

additional factors than the cost of the immediate injury. Judge Taft, in a concurring opinion, pointed out that no consideration was given to the amount of recovery that would be allowed in the event that the additional premiums were less than the amount paid on account of the injuries of the employee.

In *Davis v. Zucker*[10] a young woman sought recovery for injuries sustained as a result of being struck by an automobile. The court of appeals held that in calculating damages it was proper for the jury to take into consideration the fact that the plaintiff was required to postpone her contemplated marriage. The court felt that this was a manifestation of the general doctrine that: "Where a woman, who, prior to an injury . was eligible to marry and is so injured as a proximate result of such claimed negligence, so as to minimize or destroy her prospects of marriage . the jury should be instructed to consider such circumstances, in determining the plaintiff's damage."[11]

Smithhisler v. Dutter[12] was a suit by a husband for alienation of the affections of his wife. The question involved was: What is the legal requirement as to malice for the allowance of punitive damages? The usual standard for allowing punitive damages in Ohio is proof of fraud, express malice or insult. The supreme court in approving the instruction given by the trial judge said: "Where a person wrongfully, unlawfully and intentionally alienates the affections of a spouse for the purpose of having those affections bestowed upon himself such an act itself dispenses with the necessity of proving actual malice."[13] It should be noted that in this language the court had in mind the immediate facts of the present case in which a stranger to the marital relationship was the defendant. In some actions for alienation of affections, such as those caused by the actions of parents, it might well be argued that, unless the parents were actuated by express malice, no punitive damages should be awarded for the reason that the parents might have had the best of motives, however mistaken, in causing the alienation.

When a person has successfully defended a statutory replevin action and there has been no interference with his possessory interest, may that person recover for the unsuccessful plaintiff in the replevin action for: (1) money expended by his attorney in travel, (2) stenographic fees in connection with depositions, (3) attorney fees, (4) cost of a redelivery bond? *Dollar Savings & Trust Co. v. Sydah Vending Co.*[14] held that such recovery was en-

[10] 62 Ohio L. Abs. 81, 106 N.E.2d 169 (Ohio App. 1951).
[11] *Id.* at 84, 106 N.E.2d at 171.
[12] 157 Ohio St. 454, 105 N.E.2d 868 (1952).
[13] *Id.* at 462, 105 N.E.2d at 872.
[14] 91 Ohio App. 289, 108 N.E.2d 113 (1951).