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# Damages

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defense supported by evidence which did not convince the jury, the verdict being guilty of second degree murder. On appeal the court of appeals determined that the record did not support a finding of a purpose to kill, but the issue of self-defense had been properly submitted to the jury and their verdict indicated that the defendant had not sustained his burden of proof on this issue. The court of appeals then proceeded to modify the degree of guilt from murder in the second degree to manslaughter in the first degree, affirmed the judgment as modified, and remanded to the common pleas court for sentence.

The writ of habeas corpus continues to be used in a desperate effort to secure release from imprisonment. Cases heretofore discussed under other issues provide illustrations of its use, both under the original jurisdictions of the courts of common pleas and the appellate courts. Recently efforts to secure release on the theory that the alleged incompetence of counsel has resulted in a denial of a fair trial have been unsuccessful.<sup>122</sup> *Kramer v. Alvis*<sup>123</sup> is another example of its unsuccessful use on the ground that petitioner was denied his constitutional right to counsel because of the alleged incompetence and ineptness of court appointed counsel. In this case, Kramer made his application to the court of common pleas where judgment granting the writ was entered despite the statutory provision<sup>124</sup> against allowance of the writ of habeas corpus where it appears that the court which rendered judgment had jurisdiction over the person and subject matter. The Supreme Court of Ohio has long held that the writ of habeas corpus is not a proper mode of redress where the trial court had jurisdiction of the crime and the person.<sup>125</sup>

MAURICE S. CULP

## DAMAGES

*Schroeder v. Cincinnati Street Railway Company*<sup>1</sup> was a suit for personal injuries. Prior to trial the plaintiff filed a motion to compel the defendant to file a report of the result of a physical examination of the plaintiff which was made by defendant's physician. The motion was

<sup>122</sup> *Beard v. Alvis*, 164 Ohio St. 488, 132 N.E.2d 96 (1956).

<sup>123</sup> 103 Ohio App. 324, 141 N.E.2d 489 (1956).

<sup>124</sup> OHIO REV. CODE § 2725.05. This statute was given literal application by the Supreme Court in *Yutze v. Copelan*, 109 Ohio St. 171, (1923).

<sup>125</sup> *Ex Parte Shaw*, 7 Ohio St. 80 (1857); *Ex Parte Van Hagan*, 25 Ohio St. 426 (1874). The opinion in *Ex parte Shaw* was outspoken in its condemnation of an alleged practice in parts of Ohio of using the writ of habeas corpus as a short and summary mode of reviewing as upon a writ of error, and annulling the sentences of courts, as "an abuse of the writ of habeas corpus which cannot be too soon corrected."

denied. A defendant has the right, before trial, to an examination of the plaintiff by a physician selected by the court upon the defendant's nomination in order to determine the extent and nature of the damage suffered by the plaintiff. Had the report been filed with the clerk of court, it would have been open to the plaintiff and to the public. There is no reason for plaintiff to be furnished this information. Furthermore, the examination should be "a reasonable private physical examination" as the plaintiff as well as the defendant may be interested in privacy in such a matter and interested in not having the results of the examination "memorialized in a court record."

*Miller v. Loy*<sup>2</sup> held, in a personal injury case, that failure to instruct the jury that mortality tables which had been submitted in evidence were not conclusive in determining the life expectancy of the plaintiff "was an error of omission and not prejudicial."

*DeTunno v. Shull*<sup>3</sup> was a suit by a father to recover for medical expenses incurred in providing treatment for his son as the result of injuries allegedly suffered in an automobile accident. The father testified as to the amount of the bills rendered to him. He also offered to submit the bills into evidence but these were not allowed. There was no testimony by professional witnesses as to the fact of the rendering of bills or the reasonableness thereof. This was assigned as error. The court held that "there was sufficient evidence aside from the bills themselves to go to the jury for their consideration upon this phase of plaintiff's claim. . . . To sustain plaintiff's claim, it is unnecessary to bolster it by introducing expert testimony tending to show the reasonable value of such services."<sup>4</sup> The court distinguished the personal injury claim from a claim to recover for professional services for which "expert testimony is requisite." On appeal, the Supreme Court of Ohio reversed because of the failure of the testimony to establish the reasonableness of the charges and the necessity for the medical services rendered but did not challenge the court of appeals proposition as stated above.<sup>5</sup>

In *Tradler v. Young*,<sup>6</sup> it was held that when a jury returned a verdict in excess of the damages requested by the plaintiff it was not error for the trial judge to grant a remittitur in the amount of the excess and enter judgment for the remainder. The court said: "We find no authority for the holding that a verdict in excess of the amount prayed

<sup>1</sup> 139 N.E.2d 129 (Ohio C.P. 1949).

<sup>2</sup> 101 Ohio App. 405, 140 N.E.2d 38 (1956).

<sup>3</sup> 144 N.E.2d 669 (Ohio Ct. App. 1956).

<sup>4</sup> *Id.* at 674.

<sup>5</sup> *DeTunno v. Shull*, 166 Ohio St. 365, 143 N.E.2d 301 (1957).

<sup>6</sup> 145 N.E.2d 456 (Ohio Ct. App. 1956).