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Damages

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In considering the cases which touched on the law of damages during the survey period, it appears that few, if any, novel questions were decided by the court, but some questions were clarified and others of wide application were re-emphasized.

Early v. South Carolina Public Service Authority[1] was an action by a landowner for damages to land and presented a question which is novel, at least in application, to this jurisdiction. Defendant, by the construction of a dam, had diverted fresh waters of the Santee River into the Cooper River, resulting in an invasion by saline water of the tributaries of the Santee River which bordered and traversed plaintiff's property. Over a period of years these abnormal tides overflowed plaintiff's fast land and, being strongly saline, damaged the land and vegetation thereon. The court held that the defendant, by bringing into play the laws of nature by the act of building the dam, was responsible for the damage done, and denied defendant's assertion that the intervening acts of nature insulated defendant from responsibility.

In *Johnson v. Life Insurance Company of Georgia*[2] the court had occasion to re-emphasize its holding that a trial Judge's discretion in granting a new trial *nisi* does not extend to conditioning the new trial on a remittance of the verdict for punitive damages in toto, unless a directed verdict for defendant as to punitive damages would have been proper. The action was for slander, and, since the statement imputed to defendant was slanderous *per se,* a directed verdict on the issue of punitive damages could not properly have been granted.

Several cases for fraudulent cancellation of insurance policies presented questions concerning what acts accompanying a cancellation would be sufficient to justify punitive damages. In *Harris v. United Insurance Company,*[3] the defendant company ceased collecting premiums at the home of insured as was its custom, and cancellation followed. There was evidence that the agent ceased making collections due to inconvenience to himself and, since no claim on the policy had been filed or was anticipated by either party, actual damages were allowed and punitive damages denied. An action for fraudulent cancellation of a sickness and life insurance policy was presented in

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1. 228 S.C. 392, 90 S.E. 2d 472 (1955).
2. 227 S.C. 351, 88 S.E. 2d 260 (1955).
3. 227 S.C. 593, 88 S.E. 2d 672 (1955).

Patterson v. Capital Life & Health Insurance Company.[4] A failure to pay claims under the policy resulted in the insured being unwilling or unable to pay premiums, and the company cancelled the policy. The court held that the failure of the company to pay its claim debt did not constitute a fraudulent act accompanying the cancellation, and the insured was limited to actual damages. In another action[5] for fraudulent breach of a sickness and death policy, the defendant had allegedly discontinued his custom of collecting premiums at insured's home after insured had asked for a claim blank, and cancellation for non-payment of premiums followed. Although the defendant denied the fact it ceased home collection of premiums, the court held this question was properly submitted to the jury and upheld the verdict of actual and punitive damages. Actual and punitive damages were also upheld in *Davis v. Bankers Life and Casualty Company,*[6] another action for fraudulent cancellation of hospital and sickness benefits policy. The premiums on the policy were current when the defendant company mailed to the insured a cancellation notice. The defendant contended that the cancellation notice was a clerical mistake, but there was some evidence that the agent of defendant knew of plaintiff's poor health. The court, in reaching its decision, did not find it necessary to designate the "fraudulent act", which accompanied the breach of the contract.

The often stated rule that a plaintiff must minimize his damage was held inapplicable in *Newman v. Brown.*[7] This was an action for damages to an automobile sustained in a collision. The court held that the duty to minimize damages applied only to damages one can prevent and not to damages already accrued, and specifically declined to decide whether or not it is necessary to plead reduction or mitigation of damages.

Ellen, et al. v. King, et al.[8] was an action for breach of a building contract by the owner against the contractor and his surety. The complaint listed numerous specifications, whereby the contract was breached, but did not specify the amount of damages attributed to each. On appeal from an order denying a motion to make the complaint more definite and certain, along with other motions, the court held that a statement of the total damage claimed was sufficient, and that it was not essential that the complaint state the amount claimed for each element of damage.

4. 228 S.C. 297, 89 S.E. 2d 723 (1955).
5. Hutcherson v. Pilgrim Health & Life Insurance Company, 227 S.C. 239, 87 S.E. 2d 685 (1955).
6. 227 S.C. 587, 88 S.E. 2d 685 (1955).
7. 228 S.C. 472, 90 S.E. 2d 648 (1955).
8. 227 S.C. 481, 88 S.E. 2d 598 (1955).