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Damages

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DAMAGES

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During the period of this survey, the South Carolina Supreme Court handed down a number of decisions touching on the subject of damages. With one exception, these cases reaffirm established principles of law in this State. The exception is the case of *Jackson v. Banks Construction Company.*[1]

The *Jackson* case involved personal injuries sustained in an automobile accident. The plaintiff in a previous action, against another defendant growing out of another automobile accident, had recovered $29,000.00 for severe and permanent injuries. The defendant in the instant case attempted by proper allegation to introduce evidence of the previous action and the amount of the recovery therein. On motion of the plaintiff, the lower court struck from the answer references to the previous action and the amount of the recovery. On appeal; the Supreme Court held that the allegations as to the previous injury of the plaintiff were relevant, and that the Court was not required to dissect the paragraph of the answer so as to separate those allegations germaine to the issues from those that were not, and that the lower court would have been justified in refusing the motion to strike, but that the latter question was not raised on the appeal. The Court further held that the defendant was entitled to show fully the nature and extent of the injuries received by the plaintiff in the previous accident, but that the amount recovered by the plaintiff in a previous action was irrelevant. This appears to be a point of first impression in South Carolina, and in deciding this question, the Court cites decisions of the Appellate Courts of Massachusetts and Texas.

In *Scott v. Southern Railway Company,*[2] the Court held that a verdict of $1,640.00 for damages to the plaintiff's automobile was not excessive. The Court further held that the plaintiff was entitled to recover for the loss of use of his automobile at the rate of $5.00 per day, that being the rental value of an automobile in this area, although the automobile

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1. 229 S. C. 461, 93 S. E. 2d 604 (1956).
2. 231 S. C. 28, 97 S. E. 2d 73 (1957).

was furnished to the plaintiff without charge by a third party.

In another railway crossing case, *Barnett v. Charleston and Western Carolina Railway Company*,[3] the defendant moved to strike the plaintiff's testimony that he had paid $986.00 for the repairs to his truck, because the defendant had no opportunity to cross-examine the man who made the repairs, and because there was no evidence to show what the truck was worth before or after it was damaged. In sustaining the judgment in favor of the plaintiff, the Court quoted from *Coleman v. Levkoff*,[4] as follows:

> 'In any view of the measure of damages, the cost of repairing the injured machine was directly relevant. The condition of the machine after the injury, from the viewpoint of what would be required to repair it, was a matter clearly within the scope of the inquiry.'

Further citing the *Coleman* case, the Court said:

> 'The general rule is that the owner of personal property injured by the negligence of another, is entitled to recover the difference between the market value of the property immediately before the injury and its market value immediately after the injury. * * * But it is the duty of the owner of property injured by the negligence of another to use all reasonable effort to minimize the damage. * * * If in the discharge of that duty the owner has the property repaired and restored to a condition in which its market value equals or exceeds the market value before the injury, the measure of damages in that case is the reasonable cost of restoring the property to its previous condition, together with the value of the use of the property during the time reasonably required to repair it.'

The case of *Bessinger v. deLoach*[5] was an action by a patient against a dentist for malpractices in which the lower court directed a verdict for the defendant. The evidence developed a controversy between the defendant dentist and the physician who subsequently treated the plaintiff. The dentist and his witnesses contended that the treatment by the physician aggravated the plaintiff's condition. In remanding the case for a new trial, the Court said:

3. 230 S. C. 525, 96 S. E. 2d 555 (1957).
4. 128 S. C. 487, 122 S. E. 875, 876 (1924).
5. 230 S. C. 1, 94 S. E. 2d 3 (1956).

> The following principle may come into play upon re-trial: 'The general rule is that if an injured person uses ordinary care in selecting a physician for treatment of his injury, the law regards the aggravation of the injury resulting from the negligent act of the physician as a part of the immediate and direct damages which naturally flow from the original in injury.'

The case of *Taylor v. United States Casualty Company*[6] involved an action for breach of contract of automobile liability insurance. The Court held:

> We do not agree with appellant's (defendant's) conclusion that an absence of proof of fraudulent act accompanying the breach of contract entitled appellant to a directed verdict. Such failure of proof affected only respondent's right to punitive damages. * * * And whatever error there may have been on the part of the trial judge in submitting the issue of punitive damages to the jury was rendered harmless by the verdict which was for actual damages only.

The case of *Butler v. Schilletter*[7] was an action by a purchaser for specific performance of a contract to sell real estate and for damages. The defendant moved to require the plaintiff to elect whether to proceed on the equity side of the court in specific performance, or on the law side of the court for damages. The Court denied the motion and held that while general damages could not be recovered in an action in specific performance, special damages could be recovered, and quoted *Taylor v. Highland Park Corporation*[8] as follows:

> 'A Court of Equity when it acquires jurisdiction in a claim made for specific performance, can retain jurisdiction and adjudicate all of the legal rights of the parties to the suit in conformity with justice, equity, and good conscience.'

Two cases decided during the period of the survey involved breach of warranty. *Cannon v. Pulliam Motor Company, et al.*[9] involved a breach of manufacturer's automobile parts warranty. *Spartanburg Hotel Corporation v. Alexander Smith, Inc.*[10] involved the breach of an express oral warranty

6. 229 S. C. 230, 92 S. E. 2d 647 (1956).
7. 230 S. C. 552, 96 S. E. 2d 661 (1957).
8. 210 S. C. 254, 42 S. E. 2d 335, 339 (1947).
9. 230 S. C. 131, 94 S. E. 2d 397 (1956).
10. 231 S. C. 1, 97 S. E. 2d 199 (1957).

as to the quality and fitness of carpeting sold to the hotel. In both cases, the Court followed the established rule that the proper measure of damages for breach of warranty is the difference between the actual value of the product in its defective condition at the time of sale and its value if it had been as warranted. The Court further held in the automobile case, that there were no circumstances warranting the recovery of special damages. In the carpet case, the Court held that interest should not be allowed because the damages recoverable for breach of warranty were unliquidated and were not ascertainable by mere computation.

The case of *United States Rubber Company v. White Tire Company, Inc. et al.*[11] involved the determination, in a receivership proceeding, of damages for breach of a contract for lease of real estate. The Court reaffirmed the established rule as to the measure of damages, saying:

> The measure of such damages is the amount that she would have received as rent for the remainder of the term had there been no default, less such amount as she may receive from the new tenant, for it was her duty to minimize her damages.

11. 231 S. C. 84, 97 S. E. 2d 403 (1956).