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Torts

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TORTS

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The South Carolina Torts cases decided by the courts during the period of this review will be discussed under five headings. None involved any new or changed principle of law, but the Supreme Court reiterated that in South Carolina it is libellous *per se* to call a white person a Negro and stated unequivocally that a cause of action for invasion of privacy is recognized in this state.

Right of Privacy

In *Meetze v. Associated Press*[1] the Court weighed the interest of the public in news items against the right of the plaintiff to maintain her privacy. They found the fact that the 12 year old plaintiff gave birth to a normal baby, born in wedlock, to be of sufficient news interest to warrant the defendant's publication of the facts over the protest of the plaintiff and her husband. This conclusion was supported by the fact that the vital statistics as to the birth and mother's age were required by law to be recorded as a public record. Although the Court was critical of the conduct of the defendant in obtaining its information, it could not find the publication of it an *unwarranted* invasion of plaintiff's right. For a thorough discussion of the case see 9 S. C. L. Q. 636.

Defamation

In *Bowen v. Independent Publishing Co.*[2] the Court reiterated its earlier holdings that it is libel *per se* in South Carolina to write of a white person that she is a Negro. What the implications of the *Segregation Cases* might be in such a situation is discussed, as well as other facets of the problem, in a case note in 7 S. C. L. Q. 472. It is regretted that the Court did not make reference to this excellent article in its citation of authorities.

In *Rogers v. Florence Printing Co.*[3] it was held that plaintiff's allegation that defendant had orally acknowledged that

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1. 230 S. C. 330, 95 S. E. 2d 606 (1956).
2. 230 S. C. 509, 96 S. E. 2d 564 (1957).
3. 230 S. C. 304, 95 S. E. 2d 616 (1956).

the libellous story it had published was of and concerning plaintiff, did not state a cause of action for slander and, therefore, there was no improper joining of an action for slander with the action for libel.

Joint Tort Feasor

Fleming v. Arkansas Fuel Oil Co.[4] stated the well established rule that: " . . . where different persons owe the same duty, and their acts naturally tend to the same breach of that duty, the wrong may be regarded as joint, and both may be held liable."[5] Plaintiff had joined three defendants, all wholesalers or jobbers of kerosene who had handled the liquid which plaintiff purchased from a retail grocery. Plaintiff's intestate had died as a result of an explosion when she used the liquid in a kerosene stove.

Negligence

In *Barnett v. C. & W. C. Ry. Co.*[6] and *Scott v. Sou. Ry. Co.*,[7] the Court held that the evidence of negligence was sufficient to go to the respective juries and refused to upset their verdicts for the plaintiffs. In the former case the defendant appellant contended the trial court should have directed a verdict for defendant railroad because of the evidence of gross negligence by plaintiff truck driver in the crossing accident. In the latter case the defendant appellant contended the trial court erred in refusing to direct a verdict for defendant when its train ran down plaintiff's car, which had stalled in a hole at a railroad crossing, after failing to heed the signals of plaintiff's wife who was some 175 steps up the track from the crossing waving a flashlight. The Court also overruled defendant's contention that the last clear chance doctrine was not applicable.

In *Scott v. Meek*[8] the Court reversed the granting of an involuntary non-suit after finding there was evidence to go to the jury on the issue of defendant's negligence resulting in an auto collision with plaintiff's auto while plaintiff was traversing a dual lane highway.

4. 231 S. C. 42, 97 S. E. 2d 76 (1957).
5. *Id.* p. 78.
6. 230 S. C. 525, 96 S. E. 2d 555 (1957).
7. 231 S. C. 28, 97 S. E. 2d 73 (1957).
8. 230 S. C. 310, 95 S. E. 2d 619 (1956).

Howle v. Woods[9] affirmed a judgment for the defendant involved in an auto accident when plaintiff turned left without giving a signal while defendant was passing without having sounded his horn. The issue of whose negligence was the proximate cause of the damages of plaintiff was for the jury.

In *Farrell v. Weinard*[10] the Court of Appeals for the Fourth Circuit affirmed the District Court's direction of a verdict for the defendant and denied plaintiff's contention that the last clear chance doctrine was applicable under the facts of this case because there was nothing to justify a conclusion "that the defendant saw or should have seen the plaintiff in a position of danger in time to avoid the accident."[11] Defendant was driving at night in the left lane of a dual lane highway preparatory to turning left when he saw the car ahead swerve suddenly to avoid plaintiff who, intoxicated, was standing in the center of the dual lane strip but facing to defendant's right. Defendant veered to the left to allow more room for plaintiff, but a moment later plaintiff turned about and ran in front of defendant in an effort to reach the median strip between the dual lanes where his "buddy", who was calling him, was standing.

In *Bruin v. Tribble*[12] the Court of Appeals reversed the judgment for the defendant entered by the trial court after a verdict for the plaintiff by the jury. It was held that plaintiff's contributory negligence and the application of the last clear chance doctrine were properly questions for the jury. The plaintiff was an elderly woman crossing the street at an intersection at night when struck down by defendant's slow moving truck. The Court found there were no circumstances to prevent either party from seeing the other and that the plaintiff may have relied on the fact that the defendant saw her crossing and would so manage his truck as to avoid injuring her.

In *Shaw v. A. C. L. Railroad Co.*[13] the Court of Appeals affirmed the District Court's direction of verdicts for both defendant railroads in an action for the wrongful death of plaintiff's testate who was the conductor of defendant South-

9. 231 S. C. 75, 97 S. E. 2d 205 (1957).
10. 241 F. 2d 562 (4th Cir. 1957).
11. *Id.* p. 565.
12. 238 F. 2d 12 (4th Cir. 1956).
13. 238 F. 2d 525 (4th Cir. 1956).

ern Railway Company's train which had stopped at a small wayside station while named defendant's express passenger train passed on parallel tracks. Testate had attempted to cross the tracks in front of the oncoming express train although he was aware of its approach. The Court found that testate's action was obvious contributory negligence in going upon the tracks in the face of the oncoming A. C. L. train. It also found that even though the application of the Federal Employer's Liability Act prevents the employee's contributory negligence from operating as a complete bar to his recovery against his employer, in this instance, " . . . it must be held that his death was not due to the great speed of the train but to his own voluntary act."[14]

On petition for a writ of certiorari, the United States Supreme Court in a *per curiam* opinion[15] denied the writ as to the defendant A. C. L. Railroad, but granted it, reversed and remanded for trial the cause against the defendant employer, Southern Railway Company.

Malicious Interference with Contract

The Court of Appeals held that no cause of action existed at common law for malicious interference by an employer with a contract between a union and his employees. In *Friendly Society and Engravers and Sketchmakers v. Calico Engraving Co.*[16] the union sought to recover $100,000 damages allegedly caused by the defendant's activities in persuading its employees to leave the union after the latter had been certified by the National Labor Relations Board as the sole bargaining agent. The Court pointed out that the National Labor Relations Act as amended by the Labor Management Relations Act provides exclusive remedies for the violation of the rights protected by those acts.

14. *Id.* p. 528.
15. 77 S. Ct. 680 (1957).
16. 238 F. 2d 521 (1956).