Recent Foreign Cases

Max Radin

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A decision of the Cour de Cassation of the highest interest and importance was handed down on February 21, 1927. (D. P. 1927. 1. 97. Jandheur v. Les Galleries Belfortaises.) By article 1384—1, of the French Civil Code there is a presumption of fault against the "responsible custodian" of an inanimate thing for all damage done by that thing. In this case an automobile truck of the defendant company ran down and injured the plaintiff. The defense was that section 1384 was inapplicable since the truck was being driven by a chauffeur and that it was necessary to plead and prove negligence of the chauffeur under the general tort-sections—sections 1382-1383—in order to recover. The court below sustained the defense. The Cour de Cassation reverses the judgment. The presumption of 1384 applies. The company is liable unless it can prove a completely extraneous cause of the accident or act of God—force majeure, cas fortuit, cause étrangère.

The decision, brief as all French decisions, is admirably commented on in a long note by M. Ripert of the University of Paris. The decision reaffirms the previous decision of the Court (D. P. 1925. 1.5 with M. Ripert's note) and adds a limitation to the general rule there stated. The presumption attaches only in the case of things in themselves dangerous which therefore require supervision. There is no question in France that an automobile is such a dangerous object.

An excellent note of M. Capitant on the fluctuations of French law on this subject is to be found in Dalloz Heb. 1927, section 21. The decision solves difficulties for French law which are as yet imperfectly met in the United States by motor vehicle statutes of varying tenor and confused interpretation. The doctrine of dangerous objects has been generally rejected in the United States, to the great prejudice of our law and our corporeal safety. It may be well to note that the effect given to section 1384 is done under a statute which, when it was passed (in 1804), certainly had in view only animals as things in themselves dangerous.

It may be worth while to note in this case the effect of decisions on France. The previous case (D. P. 1925. 1.5) was widely discussed. In more than twelve subordinate jurisdictions it was disregarded; in as many it was followed. But it is highly significant that those which disregarded it did so under the pretext that the
highest court had not been explicit. The present decision is explicit enough and will doubtless have the effect of settling the law. No cour d'appel is likely to ignore it. And, says M. Ripert, if any did, a decision of the united chambers of the Cour de Cassation would force compliance.

In 1912, the French Code qualified its famous prohibition against filiation proceedings, by permitting suits for maintenance of a bastard upon a written admission of paternity. The framers of the statute hoped that women would be less likely to resort to abortion, if there was a legal possibility of securing support for their children. The concern in France over depopulation was, of course, an important factor.

Apparently, the effect was quite the opposite. The new statute gave a motive to the putative father to advise and abet the abortion, a motive which he previously did not have. The case of Jacquemard v. Deneuplanche, and Rouyer v. Léon (D. P. 1927. 2. 81) may have a salutary effect in checking this, by permitting such advice, if in the form of a letter, to be treated as a written admission of paternity and to form the basis of filiation proceedings.

ITALIAN CASES

The case of Società Marittima v. Vitale, (decided, June 9, 1927, Giur. Ital. 1927, I, 1, 808.) raises the question of concurrent actions in contract and tort in the case of a common carrier. The point is that the carrier had bound himself by contract to perform a duty which it would have been a tort to violate. The contractual action was barred by limitation, but the tort-action was not. It was held that the tort-action might be prosecuted. The court apparently regards it as coexisting with or, at any rate, revived after the bar of the contract action.

The note approves of the result, but doubts the reasoning. In common law jurisdictions, the limitation in contract actions is normally longer than in tort. It may, therefore, be questioned whether by assuming a contractual obligation not to commit a tort, a common law court would permit an extension of the usual limitation.

The Italian court does not discuss the general questions that arise here—are the obligations completely independent and concurrent or is one absorbed by the other, in whole or in part? Is there an election and is the obligee bound by his election? If the measure of damage is different, can the obligee cumulate them? The
French case of Berillon v. Lavaulx (D. P. 1. 1. 105) has a vigorous note by M. Josserand on these questions. Again, in a case decided April 29, 1927, Mancini v. Calcagniti (Ital. 1927, I, 1, 732) it was decided that a minor who concealed his age was not thereby deprived of his power to rescind on the ground of infancy. The Italian Code (section 1305) based on the Roman Law (Cod. Iust. 2, 32, 2, erroneously quoted as 2, 13, 2, 3 in the report) has the rule that the minor cannot rescind if he has been guilty of fraud, errantibus non fallentibus iura subveniunt. But the court holds that the fraud must be something more than a mere concealment of age, even though as in the case before them, the transaction was entered into at a distance from the minor’s home and he was very near majority.

As is well known the rule at the Common Law is the same as far as the defense of infancy is concerned. If, however, the infant is not content with the bar to an action against him, but seeks of his own motion to set aside the transaction in equity, he is usually held to be estopped. The latter rule is, however, not quite so general or so well established as one should gather from 1 Williston on Contracts, section 245. It is quite true that most of the cases contra fail to note the difference between the defense of infancy at law and an equitable bill for relief on the ground of infancy.

In the Italian case, there is no question of a distinction between law and equity. The action is for a restitution in integrum—i.e., a bill for rescission. Under the special circumstances indicated, such a bill would not lie in common law jurisdictions.

In connection with this case, we may briefly note that in the case of Barcellona v. Butera, decided June 14, 1927 (Giur. 1927, I, 11, 876), the question of rescission for fraud in an ordinary contract was again discussed. It was held that simple falsehood was “dolus bonus” and not a reason for rescission, especially in the case of the assignment of a share in a company which seemed to the court a speculative piece of property. The term dolus bonus is quoted as though it were found in the Roman sources, D. 4, 4, 16, 4; 29, 6, 3. It is, however, wholly unknown to the Roman law. D. 4, 4, 16, 4 is a quotation of Paul that buyers and sellers have a natural privilege of outwitting each other, and 29, 6, 3, is from Papinian, holding that a husband may by soothing speech, maritali sermone, prevent a prejudicial change in his wife’s will without being criminally charged with improper interference in the making of a will.

The dolus bonus may be assimilated to the “dealer’s talk” of our older cases—an expression gradually coming into disuse, and in-
volving a privilege which is being more and more restricted. The real question which the court does not discuss is whether there was a reasonable reliance on the “simple falsehood.” That, after all, is a more sensible fashion of dealing with it. In that case, however, it may be well that the privilege of “dealer’s talk” and Paul’s natural privilege of circumvention are based on everyday business experience.

Max Radin.

Berkeley, California.