Louisiana Law Review

Volume 17 | Number 4
June 1957

Torts - Escaping Prisoners - Duty of State to Third Persons

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The draftsmen of the Civil Code of 1808 clearly intended to reject the French doctrine of *la possession vaut titre*.[21] It might be argued that the draftsmen intended the prescription of three years to be the sole measure of protection afforded the good faith purchaser. However, while it is clear that this prescriptive period applies to the case where the good faith purchaser acquires the movable from one who has no title, it may be questioned whether this provision is intended to apply to the case where the good faith purchaser acquires the movable from a vendor who has a voidable title. Article 1881, which provides that contracts made through error, fraud, or other vice of consent are not null, but are voidable by the parties, has been interpreted to mean that a good faith third party purchaser is protected where his vendor has a voidable title.[22] The question might be raised whether to this extent the Louisiana Civil Code is consistent with the common law bona fide purchaser doctrine. However this may be, it is clear today that the common law bona fide purchaser doctrine is well entrenched in Louisiana law.

T. Wilson Landry

TORTS — ESCAPING PRISONERS — DUTY OF STATE TO THIRD PERSONS

In the first of two recent cases[1] a fifteen-year-old inmate had escaped from a state reformatory. Following his escape, he stole an automobile which he negligently drove onto a public sidewalk, injuring plaintiff. Plaintiff charged the state with negligence in allowing the escape; but defendant's exception of no cause of action was sustained by the district court. On appeal, *held*, affirmed. The institution's duty to restrain a convicted criminal is not based on the purpose of protecting the general public from all harms that might be inflicted by an escaping prisoner, and the injury received was not one against which the state had a duty to protect. The court bolstered its opinion by finding that the acts of defendant in permitting the escape were not the proximate cause of plaintiff's injury. *Green v. State*, 91 So.2d 153 (La. App. 1956).

21. This intention is evidenced by the fact that the draftsmen adopted the French Civil Code articles which immediately precede and follow the French article establishing this doctrine (Article 2279), but omitted the latter article.

22. Gonsoulin v. Sparrow, 150 La. 103, 90 So. 528 (1921), a case involving immovable property.

1. In both these cases the state allowed itself to be sued pursuant to LA. CONST. art. III, § 35.

In a second case decided on the same day by the same court, suit was brought against the state for an injury inflicted by a convict who had escaped from the state penitentiary at Angola. The convict gained access to narcotics and a pistol. He then fled into the nearby Tunica Hills, where he entered the home of plaintiff and, while under the influence of the narcotics, shot and wounded plaintiff. There is no wall between the prison at Angola and the adjoining Tunica Hills, which, because of its rugged terrain, is employed as a buffer area where normally escapees can be quickly apprehended with the aid of bloodhounds. Plaintiff brought suit against the state and alleged negligence on the part of the prison officials in permitting the escape and in allowing the prisoner access to the narcotics and firearm. The district court entered judgment for plaintiff. On appeal, *held*, affirmed. The prison officials were negligent in their conduct of the prison and in their control of the convict. This negligence was the direct and proximate cause of plaintiff's injury. *Webb v. State*, 91 So.2d 156 (La. App. 1956).

Frequently, the custodians of dangerous or incompetent persons are held liable for negligently permitting their charges to injure third parties.[2] A parent is liable at common law for the torts of his minor child when the parent's negligence makes the injury possible.[3] Those in charge of a person having a contagious disease owe a duty to each member of the community to prevent the spread of the disease.[4] Similarly, officials of mental institutions have been held liable for negligently allowing their insane charges access to society.[5] Because a school is the cus-

2. HARPER & JAMES, THE LAW OF TORTS § 18.7 (1956); RESTATEMENT, TORTS § 316 (1934).

3. Ryley v. Lafferty, 45 F.2d 641 (D. Idaho 1930) (parent failed to correct child's habit of bullying smaller children); Stewart v. Schwartz, 57 Ind. App. 249, 106 N.E. 719 (1914) (parent liable for failure to prevent child from stretching rope across highway); Holverson v. Noker, 60 Wis. 511, 19 N.W. 382 (1884) (parent liable when minor child scared horses on highway); 67 C.J.S., *Parent and Child* § 66 (1950).

Louisiana imposes a vicarious liability on parents, holding them liable for the torts of their children regardless of any fault of the parent. LA. CIVIL CODE art. 2318 (1870); Sutton v. Champagne, 141 La. 469, 75 So. 209 (1917) (parent held liable when minor son negligently killed plaintiff's child with a rifle received from a third playmate).

France places a legal presumption against the parent which can be rebutted by showing he was free from fault in allowing his child to inflict tortious injury. FRENCH CIVIL CODE art. 1384; AMOS & WALTON, INTRODUCTION TO FRENCH LAW (1935); PLANIOL ET RIPERT, DROIT CIVIL FRANÇAIS § 631 (1952).

4. Smith v. Baker, 20 Fed. 709 (S.D.N.Y. 1884) (child with whooping cough); Missouri K. & T. Ry. v. Wood, 95 Tex. 223, 66 S.W. 449, 56 L.R.A. 592, 93 Am. St. Rep. 834 (1902) (delirious smallpox patient).

5. Jones Co. v. State, 122 Me. 214, 119 Atl. 577 (1923) (pyromaniac neg-

todian of its students while they are in attendance, the school may be held liable for the tortious injury of one student by another when the school carelessly maintains unsupervised conditions which enhance the possibility that such tortious conduct will occur.[6] Prison officials are held to a duty to afford reasonable protection to one prisoner against injury by another prisoner;[7] this duty arises because the prisoner is forced into a group known to be dangerous and yet he is divested of means to protect himself.[8] But any legal duty of the custodians of prisoners to protect the general public has generally been denied, the courts usually applying the proximate cause concept that the prisoner's tortious act constitutes an independent intervening cause.[9]

In the instant cases the court was confronted with the policy question of whether the state is to be held liable for injuries inflicted by escapees from penal institutions.[10] Since the public benefit demands the performance of large scale dangerous activities of a nature which only government can undertake, the courts have been reluctant to impose liability on the government

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ligently released burned plaintiff's land); St. George v. State, 203 Misc. 340, 118 N.Y.S.2d 596 (Ct. Cl. 1943) (failure to protect visitor to asylum from dangerous inmate). Louisiana, however, departs from the recent common law jurisprudence in that no cause of action is allowed for negligence in the discretionary acts of such officials. Cappel v. Pierson, 132 So. 391 (La. App. 1931) ("defendant being vested with discretionary authority or powers of a quasi judicial nature in releasing inmates of the institution, his good faith cannot be questioned").

6. Charonnet v. San Francisco School District, 56 Cal. App.2d 246, 133 P.2d 643 (1943) (leg of one pupil broken by another where only one teacher was assigned to supervise the school yard where 150 boys were playing many games); McLeod v. Grant County School District No. 128, 43 Wash.2d 316, 255 P.2d 360 (1953) (rape of a pupil by fellow pupils in a darkened secluded room of gymnasium); 78 C.J.S., *Schools*, § 321 (1952).

7. St. Julian v. State, 82 So.2d 85 (La. App. 1955) (plaintiff's son killed by paranoid who was put in same cell with him); Honeycutt v. Bass, 187 So. 848 (La. App. 1939) (plaintiff put in "run-around" with belligerent drunk); Hixon v. Cupp, 5 Okla. 545, 49 Pac. 927 (1897) (official liable for "dangerous court"). *But see* Flaherty v. State, 269 N.Y. 342, 73 N.E.2d 543 (1947) (the state was held not negligent in failing to prevent a reformatory inmate from pouring acid on his cottage-mate at night).

8. RESTATEMENT, TORTS § 320 (1934).

9. Thomas v. Sloss-Sheffield Steel and Coal Co., 144 Ala. 188, 39 So. 715 (1905) (leased convict shot a guard in escaping); Henderson v. Dade Coal Co., 100 Ga. 568, 28 S.E. 251, 40 L.R.A. 95 (1897) (leased convict escaped and raped plaintiff); Williams v. State, 308 N.Y. 548, 127 N.E.2d 545 (1955) (man died of fright when forced to drive escaping convict); Moss v. Bowers, 216 N.C. 546, 5 S.E.2d 826 (1939) (sheriff turned care of jail over to his daughter, inmate "made love" to her and she released him and gave him a gun — no recovery when he shot a storekeeper); State *ex rel.* Davis Trust Co. v. Sims, 130 W.Va. 623, 46 S.E.2d 90 (1947) (plaintiff recovered under a statute allowing recovery for moral obligations of the state).

10. See Comment, *Proximate Cause in Louisiana*, 16 LOUISIANA LAW REVIEW 391, 394 (1956): "As a matter of policy liability cannot be imposed indis-

for the careless performance of these functions.[11] In determining whether a defendant is to be held liable for the careless injury of a plaintiff, courts ordinarily engage in a consideration of the duty owed by defendant to plaintiff, or a consideration of the doctrine of proximate cause. The basic question of policy remains the same whichever of these two approaches the court may choose to explain its decision.[12] In the *Green* case the court decided the policy question in favor of the state. Though part of the decision was cast in terms of proximate cause, the court expressed its conclusion by stating that a penal institution owes no duty to protect the general public against injury by an escapee. In reaching this decision the court reasoned that "a convicted person may be as dangerous on the day of his legal release as he was on the first day that he was confined; thus the state should be no more responsible for his misconduct during the period of escape than after his release."[13] It would appear that the court's decision was based upon an inquiry into the purposes of penal institutions. While penal institutions serve several purposes, only those which the court feels are most relevant to the question of liability are weighed in reaching a decision. The considerations influencing the court may be seen by contrasting penal institutions with insane asylums,[14] which, as previously seen, have been held liable for negligently permitting their charges access to society. In penal institutions the inmates are being punished and corrected, but they will be released on a designated day regardless of the effectiveness of the correction.[15] However, in an asylum the inmates are confined until

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criminately for all consequences that follow a wrongdoing." That is, an initial negligence, for this "would result in almost infinite liability for wrongful acts."

11. Indian Towing Co. v. United States, 350 U.S. 61 (1955). (barge ran aground when lighthouse not properly attended); Dalehite v. United States, 346 U.S. 15 (1953) (reversed allowance of recovery for government's negligence in handling the explosives in Texas City disaster); Brooks v. United States, 337 U.S. 49 (1949). (servicemen may recover for injuries received not incidental to their service); National Mfg. Co. v. United States, 210 F.2d 263 (8th Cir. 1954) (negligent weather forecast); Bulloch v. United States, 133 F. Supp. 885 (D.C. Utah 1955) (injury to sheep by nuclear activity); Williams v. United States, 115 F. Supp. 386 (D.C. Fla. 1953) (experiment activity; defense secret); Bartholomae Corp. v. United States, 135 F. Supp. 651 (D.C. Cal. 1955) (injury to ranch house 150 miles from Nevada proving grounds).

12. See GREEN, RATIONALE OF PROXIMATE CAUSE 132-77 (1927).

13. Green v. State, 91 So.2d 153, 155 (La. App. 1954).

14. A similar contrast was made in Williams v. State, 308 N.Y. 548, 127 N.E.2d 545 (1955).

15. For a comprehensive discussion showing that prisoners are *more* dangerous to society at the date of their legal release than on the day they were confined *because of* their stay in prison, see SUTHERLAND, PRINCIPLES OF CRIMINOLOGY c. 22 (1947).

such time as they are deemed fit to return to society. Thus in regard to the purposive protection of the general public, there is a decisive distinction between insane asylums and penal institutions.

The decision of the *Webb* case holding the state liable for injury inflicted by the escaping convict is not inconsistent with the position of the court in the *Green* case: in the *Webb* case special circumstances were present which set plaintiff Webb apart from the "general public." The state's use of the Tunica Hills as a buffer area to maintain the security of the prison specially exposed the group of people having their homes in that region to the danger of injury by escaping convicts.[16] It is a well-recognized principle of law that a danger imposed upon another gives rise to a corresponding duty on the part of the imposer to protect the exposed person against the risk of injury arising from that danger. An example of the operation of this principle was previously seen in regard to a prison's duty to protect an inmate against injury by a fellow-inmate. Whether plaintiff Webb and the other residents of Tunica Hills were subjected to danger sufficient to set them apart from the "general public" and to give rise to a duty on the part of the prison to protect them against injury from escaping convicts, is a matter which must rest in the judgment of the court. It would appear that if the prison carelessly permits a convict to escape into the Tunica Hills that the state should be liable for injuries inflicted upon residents of that region. It is to be noted, however, that the court's decision in the *Webb* case was not predicated solely upon these circumstances. The culpability of the prison and the danger imposed upon the residents of Tunica Hills was increased by the fact that the prison allowed the escaping convict access to the narcotics and firearm. Upon these combined factors, the court found that a duty was owed to plaintiff Webb for the breach of which she was entitled to recovery. The court expressed no opinion as to what the decision might have been had some factor of this combination not been present. Though the *Webb* case is one of the first American decisions to allow recovery for injury caused by an escapee from a penal institution,[17] the step which this case takes in the expansion of the law is a small one due to the pecu-

16. During the year this prisoner escaped, 1953, there were 102 convicts that tried to leave Angola by Warden Sigler's count. Webb v. State, 91 So.2d 156 (La. App. 1956).

17. One English case allowed recovery when an inmate with a particularly bad escape record escaped from a "low security" reformatory, stole a car from

liarity of the local situation and the aggravating factors involved.

Philip E. Henderson

VALUATION OF STOCK IN CLOSELY HELD CORPORATIONS FOR FEDERAL ESTATE TAXES

Petitioner brought action in the Tax Court to reduce the federal estate tax due on certain closely held corporate stock, valued at $600.00 per share by the Commissioner in a deficiency determination. From the Tax Court's valuation of $375.00 per share, petitioner appealed on the grounds that insufficient weight had been given to the testimony of his expert witnesses whose valuations were from $150.00 to $225.00 per share, and on the grounds that the court had excluded evidence of a $200.00 per share estate tax valuation of stock in the same corporation, which had been made within seven months of the valuation under litigation. On appeal, *held,* affirmed. The Tax Court is not bound by expert testimony where there is substantial evidence in the record to support its finding. A prior valuation of the same stock for one taxpayer is not binding for another and is of little probative force unless reached after a thorough investigation. *Fitts Estate v. Commissioner of Internal Revenue,* 237 F.2d 729 (1st Cir. 1956).

For federal estate tax purposes the value[1] of stock in a closely held corporation is interpreted by the Treasury Regulations to mean the fair market value of the stock at the valuation date. Fair market value is defined as "the price at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell" and is to be determined only after a consideration of "all relevant facts and elements of value as of the applicable valuation date."[2] The relevant facts to be considered are set forth clearly in both the

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the plaintiff who lived nearby, and damaged it in the get-away. Greenwell v. Prison Commissioner, 101 L.J. News 486 (1951), 68 L.Q. REV. 18 (1951).

Also, as explained in note 9 *supra*, the *Sims* case allowed recovery on a moral duty basis.

1. In the valuation of property to be included in the gross estate both the 1954 Internal Revenue Code and the 1939 Code use the term "value," not the term "fair market value." INT. REV. CODE OF 1954, § 2031; INT. REV. CODE OF 1939, § 811.

2. U.S. Treas. Reg. 105, § 81.10(a) (1942).