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Private Law: Torts

Wex S. Malone

tation of the payment by the contract to the completed portion or portions.[32]

The decision of the Fourth Circuit Court of Appeal in *Diesel Equipment Corp. v. Epstein*[33] has been affirmed by the Supreme Court[34] and will be reviewed next year.

TORTS

*Wex S. Malone**

The enlarged scope of the Symposium on the Work of the Louisiana Appellate Courts faces the reviewer with a choice of three approaches. First, in considering the several hundred torts decisions of the past year the reviewer could list and give a bare abstract of all the cases. This, I am sure, can be better done by the commercial digesters. Second, he can select for a little more detailed discussion those cases which he regards as "important" and ignore the remainder; or, finally, he can carve out of the mass of cases just a few areas that he regards as offering an unusual challenge. This highly limited approach makes possible a relatively full discussion within its narrow compass. This reviewer has chosen the last of these three alternatives. My choice was dictated almost entirely by personal preference and the feeling that I can be of more service in this way. The reader, however, will recognize that many important decisions that otherwise would deserve discussion have been ignored.

LIABILITY OF PROPRIETORS OF PUBLIC PLACES

Res Ipsa Loquitur

At times difficult duty problems lurk behind what appear to be simple matters of evidential proof. While Mrs. Pilie was proceeding down an aisle in a Baton Rouge National Food Store, two six-bottle cartons of Coca-Cola suddenly fell from a display

32. See 5 AUBRY ET RAU, DROIT CIVIL FRANCAIS, DU LOUAGE, n° 374 (6th ed. 1946).
33. 159 So. 2d 1 (La. App. 4th Cir. 1960).
34. 169 So. 2d 61 (La. 1964).
*Professor of Law, Louisiana State University.

stack and broke, with resulting nerve injury to her foot. Apart from testimony that she did not touch the bottles or display, Mrs. Pilie was unable to establish anything more than the occurrence of the fall and resulting injury. The case,[1] of course, invited a discussion of res ipsa loquitur. All the judges agreed that the only pertinent inquiry was whether negligence on the part of the management was the most plausible inference to be drawn from the occurrence, or whether, on the other hand, the accident could be attributed with equal plausibility to conditions or conduct for which the defendant was not responsible. This simple direct attack put the cards squarely on the table.

In cases such as this the court attacks the problem by attempting to envisage a series of plausible causes or explanations of the mishap. In Mrs. Pilie's case at least the following explanations of this accident would come to mind: (1) perhaps the bottles were improperly stacked; (2) perhaps some customer or other stranger tampered with the display and rendered it dangerous; (3) perhaps (as one Justice suggested) vibrations from nearby construction work rendered the pile of cartons unsafe; (4) perhaps one of the defendant's own employees had carelessly interfered with an originally safe arrangement of bottles.

If the court could logically conclude that the most plausible explanation was that the bottles were carelessly stacked or that some employee of the defendant jostled the arrangement or otherwise rendered it unsafe, an inference of defendant's negligence could be readily drawn. The majority of the court, however, observed that it could be surmised with equal plausibility that other customers or outsiders had disarranged the stack while proceeding through the aisles of the store. Hence the majority concluded that res ipsa loquitur was not available to plaintiff, and her case was dismissed.

The court's observation concerning the relative plausibility of the several competing inferences is hardly open to question. However, as the dissenting opinions pointed out, this does not dispose of the problem unless customer conduct is to be regarded by the court as a matter of no legal concern of the defendant operator. For this reason, an answer to the res ipsa loquitur problem cannot be reached without a preliminary inquiry into

1. Pilie v. National Food Stores, 245 La. 276, 158 So. 2d 162 (1963).

the nature of the proprietor's duty. If the operator of a merchandising concern engages in a type of business that encourages customers to handle and thus possibly to disorder goods on display so as to involve a danger to other customers, can he remain passively indifferent toward the foreseeable peril thus created for other and later customers? The accepted position is that the management owes a duty of reasonable periodic inspection of its premises in order to minimize dangers created by some of its patrons toward others.[2] For this reason the possibility that the stack of bottles might have been dangerously disordered by prior customers is not an inference that points the finger of responsibility away from the defendant. Instead, the prospect of customer misconduct constitutes a risk for which the proprietor may be made answerable.

But this does not conclude the matter, for although the proprietor owes a duty of reasonable inspection to minimize the kind of danger discussed above, yet he is not an *insurer* against the possibility that some customer's tampering may make his premises dangerous. His duty is limited to "reasonable care." Even if we were to assume that the cases of bottles were in fact disarranged by another customer, we can still only conjecture when the disarrangement may have taken place. If a prior customer had dangerously molested the stack a day or two prior to the accident, it might not be difficult to conclude that a "reasonable" inspection by management would have revealed the danger and would have afforded a fair opportunity to correct it. But it is equally plausible to conclude that the disarrangement was made by a customer only a few hours, or only a few minutes before the display fell. Under this assumption the danger may not have been revealed by any process of "reasonable" inspection with which management can be charged.

The purpose of these rambling observations is to suggest that the problem of proof of negligence and causation can be undertaken only after the judge has satisfied himself not only as to the *nature* of the defendant's duty but likewise as to the *extent* of the protection the defendant must provide. If it is assumed that the storekeeper must take "reasonable" steps to guard against the prospect of customer misconduct, the question still remains what *are* such reasonable steps. Is it sufficient to

2. ALI RESTATEMENT, TORTS § 348 (1931); PROSSER, TORTS 315, 402 (3d ed. 1964).

require him to inspect for this danger only once a week? If so, the falling of a case of bottles previously disarranged by another customer tells us little or nothing concerning negligence by the proprietor. If, on the other hand, the court concludes that the requirement of reasonable care toward this kind of danger demands that the proprietor make several inspections each day, or even that he maintain a continuous process of inspection whenever conditions are congested, then the court could plausibly assume that inspections of the strict character thus required would probably have revealed the dangerous condition irrespective of when it was created. It seems to this writer, then, that the minority have assumed a rigorous duty of inspection against the risk of customer tampering, while the majority would apparently be satisfied with only occasional inspections (if, indeed, the majority intended to impose any duty of inspection at all with reference to prior customer misconduct).

Finally, Sanders, J., was impressed by the possibility that the cases of bottles might have been disordered by vibrations originating outside the store.[3] But does not the same question remain even under this assumption? If the proprietor knew, or should have known, of the likelihood of vibrations, was he not under a similar duty to inspect his wares reasonably and periodically to minimize this risk also? Of course, with respect to the risk of vibration, it must appear that the proprietor could have anticipated this type of danger, and proof of knowledge of the continued existence of vibrations would be essential. But once such knowledge is established, it seems to the writer that the problem is the same as was discussed above.

Contributory Negligence of Patron

Serious policy problems concerning the extent of the duty imposed by law upon proprietors of public premises have a similar habit of emerging from behind the scene whenever the problem ostensibly involved is that of the alleged contributory negligence of the patron or his assumption of risk. Under accepted torts theory an injured patron who was not reasonably alert for his own protection will be barred from recovery even against the proprietor who has negligently created or maintained a dangerous condition on business premises which he has thrown open to the public.

3. Pilie v. National Food Stores, 245 La. 276, 280, 158 So. 2d 162, 170 (1963).

Although the plight of the inattentive customer or patron is discussed by courts in terms of the affirmative defense of contributory negligence, it is clear that the outcome of cases of this kind clearly reflects the limited nature of the duty imposed upon the proprietor. A rigorous insistence by the courts upon freedom from contributory negligence on the part of the patron has the effect of reducing the proprietor's duty to an obligation of a very limited nature. As a result he is required only to inspect for and to correct those dangerous conditions which an alert patron could not discover for himself. In other words, the primary burden of protection is placed upon the patron rather than upon the proprietor. Furthermore, the more serious the defect becomes the more likely is it to be regarded as one that would be obvious to an alert patron and hence the better is the chance that the proprietor will escape liability by relying upon the contributory negligence of the business guest.

At one time courts openly announced that a proprietor of business premises could discharge the full measure of his duty to patrons either by making the premises reasonably safe, or by leaving them in their dangerous condition so long as the patron was afforded a fair warning of the danger.[4] Since reasonably obvious defects afford their own warning, the proprietor owed no further duty with respect to them. To put the matter bluntly, the proprietor need afford protection only when the patron could not with vigilance protect himself.

Perhaps the attitude described above fairly met the needs of a rural nineteenth century society when "business premises" were typified by the home-operated corner store where the customer expected little in the way of special preparation for his reception. With this we may contrast the complex urban society of today with its elaborate luxurious theaters and its gigantic chain stores equipped with every known alluring feature to attract a trusting public drawn from every walk of life. This society certainly demands something more of the proprietor than the indifferent observation that the patrons must carefully watch out for themselves.

The problem of apportioning responsibility for accidents between proprietor and customer is not an easy one under to-

4. This was the accepted position of the Restatement of Torts as originally written in 1931. ALI RESTATEMENT, TORTS § 343(c) (1931). As indicated hereafter, the Institute has now rejected this position.

day's elaborate conditions. Much can be said in favor of the situation of proprietor. The business host is not to be regarded as an insurer of the safety of his guests, and it should not be demanded of him that he provide and maintain utterly foolproof premises. He should not be obliged to shoulder the inordinate cost of providing a haven for sleepwalkers and he should be entitled to expect some measure of cooperation in terms of safety from those who enter his establishment. But at the same time should he not make provision for a certain amount of expectable heedlessness on the part of those whom he has indiscriminately invited en masse on to his premises? Are they not entitled to expect that a goodly provision has been made for their safety and that they are not expected to maintain an alert watchout for dangerous conditions that the proprietor himself could reasonably avoid? The problem here is to strike a balance.[5]

Courts in common law jurisdictions have sought to reconcile the conflicting interests in these cases by submitting the contributory negligence of the patron to the jury, which can usually be relied upon to give weight instinctively to the plaintiff's side of the ledger. Directed verdicts for defendants are rare in these cases.[6] Where, as in Louisiana, the issue of the patron's contributory negligence must be resolved by the judge alone, the judge should bear in mind that whenever he faces this issue he is in truth defining the extent of the defendant-proprietor's duty for the particular situation before him. Our Supreme Court in *Dixie Drive It Yourself System v. American Beverage Co.*[7] has already manifested its willingness to concede that some duties imposed upon defendants are designed to protect against the risk of the expectable heedlessness of other persons. This observation should be particularly appropriate to the duty of proprietors of business establishments: they should anticipate and prepare for a certain amount of expectable indifference on the part of those who enter their premises — this is one of the risks that calls the duty of reasonable preparation of business premises into being. The proper object of decision in these situations is to strike a fair balance between what should be ex-

5. See the excellent discussion in 2 HARPER & JAMES, TORTS § 27.13 (1956). Also, Keeton, *Personal Injuries Resulting from Open and Obvious Conditions*, 100 U. PA. L. REV. 629, 631-33 (1952).

6. Malone, *Contributory Negligence and the Landowner Cases*, 29 MINN. L. REV. 61 (1945).

7. 242 La. 471, 137 So. 2d 298 (1962), 23 LA. L. REV. 142 (1963); 23 LA. L. REV. 281, 288 (1963).

pected of the proprietor and what should be expected of the patron. The patron should not be arbitrarily disqualified whenever it is found that an alert customer could have avoided the dangerous condition for which the defendant is responsible.

Several Louisiana decisions from the courts of appeal tackled the problem of the contributory negligence of patrons during the past term. This writer was left with the impression that in most instances policy considerations of the kind discussed above were the motivating factors behind the decision that the patron was or was not guilty of contributory negligence. In some instances where the courts held that the plaintiff was barred by his own contributing fault it is fairly apparent that the alleged defect charged against the proprietor constituted a minor risk which the proprietor could fairly expect that any except the most foolhardly patron would avoid.[8] Although in these cases the premises were not utterly foolproof, they should not be expected to be so. Similarly, where the danger consisted of a transitory peril, such as rain water tracked into the store which caused a patron to slip and fall, the court denied recovery because of plaintiff's "contributory negligence."[9] The denial of liability could equally well have been justified by the observation that the proprietor had done all that could reasonably be expected of him with respect to rain continually tracked into his establishment; the remaining risk must be referred to the duty of customers who enter under such circumstances to anticipate such conditions and to avoid them.

Conversely, where the management of a self-service grocery store left boxes in the aisle of his establishment, the court refused to brand as contributory negligence the inadvertence of a customer who tripped over them and fell.[10] The imposition of liability upon the defendant despite the alleged misconduct of the patron could have been justified with equal ease by observing that a storekeeper is not permitted by law to clutter up his store aisles unnecessarily during business hours in the vain expectation that all his customers will maintain a careful watchout in

8. Magoni v. Wells, 154 So. 2d 524 (La. App. 4th Cir. 1963) (patron in restaurant fell when he failed to observe a step in the aisle of defendant's restaurant; no evidence of inadequate lighting; opinion properly emphasizes limited duty); Lester v. Texas & Pacific Ry., 155 So. 2d 465 (La. App. 1st Cir. 1963) (similar; step leading to station platform; no similar mishap for many years).

9. Burns v. Child's Properties, Inc., 156 So. 2d 610 (La. App. 3d Cir. 1963).

10. Provost v. Great Atlantic & Pacific Tea Co., 154 So. 2d 597 (La. App. 3d Cir. 1963).

order to avoid the results of his own carelessness. Similarly a patron of a swimming pool recovered for injuries suffered when she fell on a slick concrete surface near the only exit to the pool.[11] It was shown that the attendants had knowledge of similar accidents at this place in the past. It also appeared that rubber mats were available and were used at other areas near the pool and that the danger of slipping could have been minimized by roughing the concrete surface. The majority opinion refused to disqualify the plaintiff because of her own negligence in not watching her step despite the fact that she was aware of the danger. There was a sharp dissenting opinion by Hood, J.

A few decisions seem to betray a more mechanical approach and to regard any carelessness by the customer as an automatic bar to his recovery. In *Kramer v. Etie*[12] defendant, who had installed a coin-operated phonograph in a restaurant, undertook to repair the machine and, while working, left a large metal box of tools in the aisle where a waitress tripped over it and fell. Here the negligence of the defendant was inexcusable, and the inattention of the plaintiff who was encumbered with a tray of hot coffee is the type of inadvertence that defendant might well have anticipated. Perhaps the finding of the court that she was precluded from recovery by reason of her own contributory negligence was influenced by the fact that defendant was not the proprietor of the establishment, although it is doubtful that this should be a matter of any importance in view of the obvious indifference of defendant toward the safety of others.

Efforts to Coerce Payment of Debt — A Contrast of Tort Theories

Unfortunately, Louisiana is the only remaining American jurisdiction where the malicious inducement of a breach of contract is not regarded as an actionable wrong.[13] This writer suggests that the impelling urge to afford some relief in the more

11. Richard v. General Fire & Cas. Co., 155 So. 2d 676 (La. App. 3d Cir. 1963).

12. 155 So. 2d 478 (La. App. 3d Cir. 1963).

13. Cust v. Item Co., 200 La. 515, 8 So. 2d 361 (1942). This reluctance to recognize inducement as a tort places Louisiana outside the current of authority in both civil law and common law jurisdictions. It probably arose as the result of an overly literal interpretation of dicta from an earier decision denying a cause of action for alienation of a wife's affections. Moulin v. Monteleon, 165 La. 169, 115 So. 447 (1927).

aggravated situations of this kind may have prompted an allowance of recovery by the Court of Appeal for the Third Circuit last year in *Pack v. Wise.*[14] The court, deprived under our jurisprudence of any resort to the wrong of inducement of breach, fell back upon the ill-defined torts of violation of privacy and the infliction of extreme emotional distress. Pack, the plaintiff, was a bank employee who had undertaken on the side to publish a commercial shoppers' guide, and he made contact with the defendant, a printer, looking toward its release. Shortly thereafter the enterprise was transferred to a corporation in which plaintiff held initially forty percent and later twenty percent of the stock. The company faced serious financial difficulties and the defendant became very apprehensive about payment of his accumulated printing charges. Whether or not plaintiff was personally liable for the corporation's debt to defendant was a matter of *bona fide* serious dispute between them. Defendant approached the bank-employer (of which he was a valued customer) and sought its assistance in persuading plaintiff to pay. Plaintiff denied to the bank that he was personally involved in any way. The employer notified defendant of the plaintiff's explanation, but at the same time it urged plaintiff to attempt an amicable settlement of the dispute. Thereafter, plaintiff, through his attorney, wrote defendant ordering him to cease communicating with his employer and he threatened to initiate suit. Defendant handed the letter to the bank in protest and a conference was held which resulted in plaintiff's dismissal on the ground that he had adopted coercive measures rather than attempting a friendly setlement of the disagreement. This led to the present suit which was based indiscriminately on violation of privacy and the infliction of intense emotional disturbance.

The court allowed recovery, and it included damages for loss of the plaintiff's job, as well as for injury to his dignity and personality. Apparently the loss of position was regarded as an element of parasitic damage growing out of the invasion of plaintiff's dignitary interests, although this was not discussed in the opinion. If this surmise is correct, the case marks a dramatic reversal of the tendency prevalent everywhere until fairly recent years to regard violations of dignity and privacy them-

14. Pack v. Wise, 155 So. 2d 909 (La. App. 3d Cir. 1963), *cert. denied*, 157 So. 2d 231 (La. 1963), 24 LA. L. REV. 953 (1964).

selves as merely parasitic damages that arise as a result of the commission of some other and better recognized tort, such as assault, battery, imprisonment, trespass, or (where the tort is recognized) the inducement of breach of contract.[15]

In discussing the case in terms of the theories of privacy and emotional distress, it is well to bear in mind that in cases of this kind the two approaches are almost indistinguishable and the boundary of neither theory is well defined. Privacy emphasizes open disclosure and excessive publication of plaintiff's name, his likeness or his intimate personal affairs. In its inception the theory was restricted to publications by way of mass media such as newspaper and advertising.[16] It is doubtful that excessive publicity was the gist of Pack's complaint. The bank employee was not concerned with the breadth of publication to which he was exposed. His true complaint was over the fact that information was divulged to a single person who was in a position to inflict upon him an economic loss — the termination of his contract of employment. This suggests that the true nature of the complaint was inducing breach of contract or loss of the economic security of his situation. Any dignitary interest in being free from public observation appears to be purely incidental to Pack's complaint.

Closely allied to privacy is the tort of intentional infliction of emotional disturbance. Typical of situations involving this tort are insults and grossly indecent social behavior that seriously offends the sensibilities. The Restatement of Torts, after

15. "Notwithstanding its early recognition in the assault cases, the law has been slow to accept the interest in peace of mind as entitled to independent legal protection, even as against intentional invasions. It is not until comparatively recent years that there has been any general admission that the infliction of mental distress, standing alone, may serve as the basis of an action, apart from any other tort. In this respect, the law is clearly in a process of growth, the ultimate limits of which cannot as yet be determined." PROSSER, TORTS 41-42 (3d ed. 1964).

It was not until 1948 that the Restatement of Torts was revised so to recognize emotional distress as an independent tort. Compare ALI RESTATEMENT, TORTS § 46 (1931) and the amended version (1948 Supp.).

Accounts of the resort to other independent wrongs as a means of allowing recovery for insult and outrage include, Prosser, *Insult and Outrage*, 44 CALIF. L. REV. 40 (1956); Wade, *Tort Liability for Abusive and Insulting Language*, 4 VAND. L. REV. 63 (1951). Louisiana was one of the first states to recognize the new tort without resort to subterfuge. Nickerson v. Hodges, 146 La. 735, 84 So. 37 (1920).

16. PROSSER, TORTS 835 (3d ed. 1964); see particularly cases cited in note 83 refusing to recognize as a violation of privacy a disclosure of plaintiff's indebtedness to his employer or other individuals in private. To be contrasted with the above are publications in newspapers or notices posted in public places, which are generally actionable.

considerable vacillation, has defined this tort as requiring of necessity the element of "outrageousness" that deeply harms the sensibilities of another.[17] Insults that fail to demonstrate the characteristic of extreme and outrageous misconduct are not generally actionable. In light of the above observation on emotional disturbance, the court's continued insistence that Wise's conduct was in no way malicious or prompted by evil motives becomes all the more confusing. Under such circumstances his behavior certainly was not extreme or outrageous, and hence it did not qualify for the theory advanced by the court.

It can be readily conceded that violations of privacy and inflictions of emotional disturbance have been employed by courts both in Louisiana and elsewhere as vehicles to support decisions awarding damages for abusive collection tactics.[18] In most of these cases, however, extremely harsh and insulting methods were resorted to, or the existence of the claimed indebtednss was given extensive and unnecessary publicity. Furthermore, in most cases of this kind the suit was against a professional loan agency or installment seller and the practice that was condemned could be regarded as a well-defined current tactic of extreme character which the courts sought to discourage. Always the predominant element in the collection cases has been the humiliation or other injury to his sensibilities suffered by the alleged debtor.

The opinion in the *Pack* case emphasizes that there was no intention to hold arbitrarily that a creditor subjects himself to

17. RESTATEMENT, TORTS SECOND, Tentative Draft No. 1, § 46 (adopted 1957): "(1) One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress and for bodily harm resulting from it."

The Reporter's Comments to this section are of particular interest:

"d. *Extreme and outrageous conduct.* The cases thus far decided have found liability only where the defendant's conduct has been extreme and outrageous. It has not been enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by 'malice', or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort. Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, 'Outrageous!'"

18. See the many cases of this type discussed at length in both the majority and dissenting opinions throughout the *Pack* decision. See also Prosser's discussion of these cases in PROSSER, TORTS 49-50 (3d ed. 1964). In each instance the "outrageous" character of defendant's conduct is obvious.

tort liability whenever he seeks the cooperation of his debtor's employer in attempting to collect. Instead, the court announced that it must seek to determine in each instance whether the creditor's conduct exceeded the bounds of "reasonableness." But however much the flexibility of this term may commend it for general usage, it must be emphasized that the interests of the plaintiff injured in the insult cases is merely his claim to peace of mind or privacy. Although an approach to a debtor's employer may, upon due consideration by the court, be found to be "unreasonable," this alone would be far short of condemning the conduct as "outrageous" or "extreme."

Finally, we can profitably speculate on the outcome of this dispute if it could have been tried on a theory of inducing breach of contract (contrary to the prevailing denial of such a tort in Louisiana). If the approach of the Restatement of Torts is followed, it will be found that an actionable tort is committed by a defendant who purposefully induces a third person to terminate a contract or other advantageous economic expectancy which the plaintiff has with reference to such person, unless the defendant's conduct is *privileged.* Privilege, the key to the entire inquiry, is determined by the balancing of several factors listed in section 767 of the Restatement of Torts. These are:

(a) The nature of the defendant's conduct,

(b) The nature of the expectancy with which his conduct interferes,

(c) The relations between the parties,

(d) The interests sought to be advanced by the defendant,

(e) The social interest in protecting the expectancy on the one hand, and the defendant's freedom of action on the other.

Without pursuing the inquiry into inducement much further, it is noteworthy that, as to factor (a), defendant Wise did not expressly demand that Pack's employment be terminated, although he obviously hoped that an implied threat of withdrawing his patronage from the bank would induce a threat of dismissal that would prompt the plaintiff to accede to Wise's demands. As to (b), it can be noted that Pack's employment contract was subject to termination by the bank. His dismissal,

then, did not constitute a *breach* of contract, but, rather was the termination of a factually advantageous expectancy (but even this expectancy will receive protection against inducement if other factors strongly suggest that a privilege be denied).[19] As to (c), Wise bore no relation to the bank such as counsellor or stockholder that would support the propriety of his conduct. Finally, as to (d), Wise was prompted, not by ill will, but by the desire to protect his own financial interests in connection with an entirely collateral matter.

The purpose of the above digression is to suggest that the true problem in *Pack v. Wise* revolves naturally and plausibly around the considerations that determine when there has been an actionable inducement of breach of contract. The court's resort to the term "reasonableness" acquires a meaningful significance when it is referred to the balancing of factors under this tort. Since the tort of inducing breach of contract is not recognized in Louisiana, the court did the best it could with what was at hand. It may be feared, however, that its choice of the theories of privacy or insult as applied to the facts can prove unfortunate and may open a Pandora's box of troubles.

SECURITY DEVICES

*Joseph Dainow**

SURETYSHIP

In view of the great responsibility of personal sureties, one would expect them to be more careful and exact in stating the scope of their undertaking. Fortunately for them, the *stricti*

19. "[T]he overwhelming majority of the cases have held that interference with employments or other contracts terminable at will is actionable, since until it is terminated the contract is a subsisting relation, of value to the plaintiff, and presumably to continue in effect. The possibility of termination does, however, bear upon the issue of the damages sustained, and it must be taken into account in determining the defendant's privilege to interfere. So much more is allowed in the way of interference to further the defendant's own legitimate interests where the contract is subject to such termination, that contracts terminable at will might very well be placed in an intermediate classification of their own, half way between contracts for a definite term and the mere expectancy of prospective advantage. The courts, however, do not appear to have recognized them as a separate group; and to avoid too much repetition, it seems desirable to consider them with other contracts, with the recognition that they receive much more limited protection." PROSSER, TORTS 956-57 (3d ed. 1964).

*Professor of Law, Louisiana State University.