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CAUSATION OF SUICIDE ACTIONABLE UNDER NEW YORK WRONGFUL DEATH STATUTE

When an action is brought under a wrongful death statute, grounded on the suicide of plaintiff's intestate, the courts generally consider that suicide constitutes an intervening force which breaks the causal link between the wrongful act and the death.[1] However, where the wrongful act produces such rage or frenzy, or suicide is committed in response to an uncontrollable impulse, the act is considered, by some courts, to be within the line of causation and defendant's act is held to be the proximate cause of death.[2] In *Cauverien v. DeMetz*,[3] the Court seized upon the latter rationale to overrule defendant's demurrer to a complaint brought under New York's wrongful death statute.[4] The complaint alleged as one cause of action that defendant's malicious and intentional conversion of a diamond consigned to him by the decedent induced in the plaintiff's intestate an irresistible impulse to take his own life.[5]

The "irresistible impulse" rule relied upon by the plaintiff was initially formulated in *Daniels v. New York, N.H. & H.R.R.*,[6] and has since been endorsed by several authorities in the field of tort law.[7] In the *Daniels* case the decedent received a blow on the head, together with other injuries, when struck by a train of the defendant corporation while crossing its tracks. The Court refused to find a sufficient causal relation between defendant's negligence and decedent's suicide, which occurred more than a year after the accident. However, it did set forth the aforementioned "irresistible impulse" rule in a clear manner.[8]

In *Salsedo v. Palmer*,[9] a Federal court, in applying the New York wrongful death statute, failed to apply the *Daniels* rule. Here, the decedent was apprehended in connection with a crime of which he was entirely innocent. For a period of two months he was interrogated, physically assaulted and

1. Scheffer v. Washington City, V.M.&G.S. Ry., 105 U.S. 249 (1882); Salsedo v. Palmer, 278 Fed. 92 (2d Cir. 1921).
2. Daniels v. New York, N.H. & H. Ry., 183 Mass. 393, 67 N.E. 424 (1903); Elliott v. Stone Baking Co., 49 Ga. 515, 176 S.E. 112 (1934).
3. — Misc. 2d —, 188 N.Y.S.2d 627 (Sup. Ct. 1959).
4. N.Y. Dec. Est. Law § 130 provides:
"The executor or administrator duly appointed in this state, or in any other state, territory or district of the United States, or in any foreign country, of a decedent who has left him surviving a husband, wife, or next of kin, may maintain an action to recover damages for a wrongful act, neglect or default, by which the decedent's death was caused, against a natural person who, or a corporation which, would have been liable to an action in favor of the decedent by reason thereof if death had not ensued. . . ."
5. Supra note 3.
6. 183 Mass. 393, 67 N.E. 424 (1903).
7. Prosser, Torts 273, 274 (2d ed. 1955); Restatement, Torts § 455 (1934).
8. Daniels v. New York, N.H. & H. Ry., supra note 2 at 400:
". . . we are of the opinion that the liability of a defendant for a death by suicide exists only when the death is the result of uncontrollable impulse, or is accomplished in delirium or frenzy caused by the collision, and without conscious volition to produce death, having knowledge of the physical nature and consequences of the act."
9. Supra note 1.

mentally tortured, after which he became despondent and took his own life by leaping from the fourteenth floor of a building. The majority of the Court sustained defendant's demurrer, saying that the original wrongful act became injurious only because of the intervention of the independent act of decedent's own suicide. This, it said, was the proximate cause of death and not defendant's wrongful act.

There was early recognition in the courts that confusion would result in settling upon a philosophical rationale of causation. Lord Bacon foresaw the difficulty and, thus, promulgated his maxim: "It were infinite for the law to consider the causes of causes, and their impulsions one of another: therefore it contenteth itself with the immediate cause, and judgeth of acts by that, without looking to any further degree."[10] The courts have since used terms other than "immediate cause," but essentially they are referring to the same degree of causation.[11] It is now well settled, in actions for wrongful death, that the act complained of must be the proximate cause of the death.[12]

Although the courts speak in terms of "proximate cause" in the wrongful death area, this is not a decisive test to use in solving the problem of whether the defendant is liable for a death caused by suicide. The term "proximate cause" is, after all, merely a limitation which the courts have felt compelled, as a practical matter, to place upon defendant's liability.[13] "Liability for damages caused by wrong ceases at a point dictated by public policy and common sense."[14] Therefore, public policy and common sense should determine the imposition of liability rather than a hazy definition of "proximate cause".

In *Stephenson v. State*,[15] the defendant committed rape upon the deceased, and some hours later she took her own life by swallowing poison. The ensuing homicide conviction was upheld on the theory that defendant's act caused the deceased to become distracted and mentally irresponsible and that suicide was the natural and probable consequence of such an unlawful act.

In *Stevens v. Steadman*,[16] the defendant had written deceased a letter asking him to resign his position as an officer of a corporation. As a result of this letter decedent took his own life. In an action for wrongful death the Court sustained a demurrer to the complaint on the ground that the defendant's act was not the "proximate cause" of death.

In a comparison of these two cases one difference is quite apparent—the nature of the defendant's act. It appears that this element is, and should be, a vital factor in determining defendant's liability in this area. There should at least be a distinction drawn between negligent and intentionally wrongful acts.

10. 1 Bacon, Maxims 1.
11. McLaughlin, Proximate Cause, 39 Harv. L. Rev. 149 (1925).
12. Shapiro v. Tchemowitz, 3 Misc.2d 617, 155 N.Y.S.2d 1011 (Sup. Ct. 1956); Scheffer v. Washington City, V.M. & G.S. Ry., supra note 1; Seifter v. Brooklyn Heights Ry., 169 N.Y. 254, 62 N.E. 349 (1901).
13. Note, 2 Vand. L. Rev. 330 (1949).
14. Bird v. St. Paul F. & M. Ins. Co., 224 N.Y. 47, 120 N.E. 86 (1918).
15. 205 Ind. 141, 179 N.E. 633 (1932).
16. 140 Ga. 680, 79 S.E. 564 (1913).

From the public interest point of view, the law should attach responsibility for more remote consequences when defendant's act is criminal, or consciously wrongful, than when it is merely negligent, since society attempts to discourage such intentional or criminal acts.

Suicide as a result of a deranged mental condition is certainly not a risk which defendant incurs by negligently injuring another.[17] In practically every case where the injuries resulting from the negligence of a third person produce in the injured person a state of mind which leads to his suicide, the negligent defendant is not civilly responsible for the suicide.[18] Several of these cases adopted the *Daniel's* limitation to the above rule, but in only one case was this limitation a basis for the decision.[19]

The impact of public policy on the causal relation between the act of the defendant and the suicide is quite clearly shown in areas where defendant's liability is controlled by workmen's compensation statutes and civil damage acts. In a leading case arising under a workmen's compensation statute the Court said it was immaterial whether the harm was the "natural and probable result of the employment".[20] The only question was whether the harm actually arose out of the employment. In *Sinclair's* case,[21] the Court allowed a recovery under the Massachusetts Workmen's Compensation Act where the decedent, after having received a spinal injury in the course of his employment, starved himself to death. In this area the desire of the legislature to compensate, to some extent, the injured employee, has allowed the courts to extend liability to more remote consequences.

Another area where liability for death by suicide has been extended beyond the normal rules of causation is where the suicide arises under a civil damage act (i.e. Dram Shop Acts).[22] In the several states that have enacted this type of legislation the vendor of intoxicating liquor is held liable for injuries resulting from such intoxication.[23] In a case arising under one of these statutes it is unnecessary to inquire whether the suicide was the natural, reasonable or probable consequence of the defendant's act. All that has to be shown is: (1) the liquor sold by the defendant caused decedent's intoxication; (2) and the intoxi-

17. Green, Rationale of Proximate Cause 38 (1927).

18. Scheffer v. Washington City, V.M. & G.S. Ry., supra note 1; Brown v. American Steel & Wire Co., 43 Ind. App. 560, 88 N.E. 80 (1909); Long v. Omaha & C.B. Street Ry., 108 Neb. 342, 187 N.W. 930 (1922).

19. Elliott v. Stone Baking Co., supra note 2.

20. In re Sponaski, 220 Mass. 526, 108 N.E. 466 (1915).

21. 248 Mass. 414, 143 N.E. 330 (1924).

22. See, N.Y. Civ. Rts. Law § 16; Ill. Rev. Stat. c. 43 § 135 (1934) provides: "Every husband, wife, child, parent, guardian, employer or other person, who shall be injured, in person or property, or means of support, by an intoxicated person, habitual or otherwise, of any person, shall have a right of action in his or her own name, severally or jointly, against any person or persons who shall, by selling or giving alcoholic liquor, have caused the intoxication, in whole or in part, of such person. . . ."

23. Garrigan v. Kennedy, 19 S.D. 11, 101 N.W. 1081 (1904); Lawson v. Eggleston, 28 App. Div. 52, 52 N.Y. Supp. 181 (4th Dep't 1898), aff'd 164 N.Y. 600, 59 N.E. 1124 (1900); Neu v. Mckechnie, 95 N.Y. 632 (1884).

cation caused him to commit suicide.[24] In this area we see the courts extending liability beyond the normal rules of causation to enforce the legislature's desire to discourage this type of activity.

It would appear from a study of the cases in this area that the courts, realizing that "proximate cause" was an inadequate test in determining defendant's liability, limited its effect in certain cases by adopting the "irresistible impulse" test of the *Daniels* case to serve as an escape hatch from harsh and unjust results. However, the latter test is inadequate also, because of the practical difficulty of determining the victim's state of mind at the time of the suicide. Therefore, it seems that courts, instead of wrestling with the nebulous concepts of "proximate cause" and "irresistible impulse", would contribute much toward clarifying this area of law by acknowledging the fact that suicide is a remote consequence, to which liability should attach only where public policy and common sense dictates that liability should attach. This would require a clear pronouncement by the courts of the type of acts that would allow liability to be imposed for the remote consequence of suicide. It seems that this should be limited to acts which are intentionally wrongful or criminal. This does not preclude the courts from finding suicide too remote a consequence for certain criminal or intentionally wrongful acts. It merely limits the imposition of liability to this narrowed area. Under this analysis the Court was apparently correct in the instant case in overruling defendant's demurrer since the act of conversion is an intentionally wrongful act. However, the courts should recognize a more practical basis of liability instead of subjecting plaintiffs to the difficult task of proving such things as irresistible impulse."

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ADMISSIBILITY OF A PLEA OF GUILTY TO A TRAFFIC INFRACTION IN A CIVIL SUIT BASED ON THE SAME FACTS

> "... A traffic infraction is not a crime, and the penalty or punishment imposed therefore shall not be deemed for any purpose a penal or criminal penalty or punishment, and shall not affect or impair the credibility as a witness, or otherwise, of any person convicted therefore."[1]

Since *Schindler v. Royal Insurance Co.*,[2] New York courts have permitted the admission of a prior criminal conviction, when logically relevant in a civil suit as *prima facie* evidence of the facts upon which it is based. However, traffic infractions, not being classified as crimes in New York, have been the

24. See, Anno. 11 A.L.R.2d 751, 765.

1. New York Vehicle & Traffic Law, § 2(29). It must be pointed out that some traffic violations are not infractions but come under the heading of misdemeanors or felonies.

2. 258 N.Y. 310, 179 N.E. 711 (1932).