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Torts—Parent and Child—Liability of Parent to Child for Personal Injury

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it being improbable that such an exchange would be resorted to in such a transaction. But in a private transfer, where the possibility of fraud and adverse interest of the agent is greatly increased, a duty to inquire might more reasonably be imposed. It is unlikely, however, that most courts would demand inquiry on account of similarity of surnames alone, as this would necessitate added expense, delay, and trouble for the corporation. Where awareness of a marital relation is present, positive knowledge of suspicious factors in the transaction actually exists. Consequently, inquiry may reasonably be demanded, or the corporation charged with the consequences of its omission.

W. N.

TORTS—PARENT AND CHILD—LIABILITY OF PARENT TO CHILD FOR PERSONAL INJURY—[Missouri].—In an action by a minor adopted child against its foster parent for personal injuries wilfully and maliciously inflicted, the Kansas City Court of Appeals denied liability on the ground that a minor child cannot sue its parent for personal injuries.¹ The court repudiated *dicta* to the opposite effect in *Dix v. Martin*,² which indicated that the child could recover for injuries caused by wicked and excessive punishment.

This decision is supported by the great weight of authority in other jurisdictions.³ Civil liability of the parent to the child,⁴ or child to parent,⁵ for personal injuries negligently⁶ or intentionally⁷ inflicted is refused on the ground of public policy. The courts seek to discourage any acts which might break the domestic tranquillity⁸ and to give the parent the right to discipline the child free from fear of civil liability.⁹ Furthermore, criminal liability is regarded as a sufficient restraint to protect the child.¹⁰ Civil immunity is granted anyone who stands in *loco parentis* to the child.¹¹ The existence of this relation depends upon whether the parties intended to assume its obligations and is usually a question of fact for the jury.¹²

Nebraska, the only state which refuses to follow the broad majority rule, holds that a parent may be liable for injuries caused by punishment that

1. *Cook v. Cook* (Mo. App. 1939) 124 S. W. (2d) 675.

2. (1913) 171 Mo. App. 266, 157 S. W. 133, 136.

3. Note (1923) 31 A. L. R. 1157; Note (1925) 42 A. L. R. 1363.

4. *Ibid.*

5. *Duffy v. Duffy* (1935) 117 Pa. Super. 500, 178 Atl. 165; *Schneider v. Schneider* (1930) 160 Md. 18, 152 Atl. 498, 72 A. L. R. 449.

6. *Matarese v. Materese* (1925) 47 R. I. 131, 131 Atl. 198, 42 A. L. R. 1360.

7. *Roller v. Roller* (1905) 37 Wash. 242, 79 Pac. 788.

8. *Wick v. Wick* (1927) 192 Wis. 260, 212 N. W. 787; *Small v. Morrison* (1923) 185 N. C. 577, 118 S. E. 12, 31 A. L. R. 1135; *Roller v. Roller* (1905) 37 Wash. 242, 79 Pac. 788.

9. *Matarese v. Matarese* (1925) 47 R. I. 131, 131 Atl. 198, 42 A. L. R. 1360; *Wick v. Wick* (1927) 192 Wis. 260, 212 N. W. 787.

10. *Hewelette v. George* (1891) 68 Miss. 703, 9 So. 885, 13 L. R. A. 682.

11. *Fortinberry v. Holmes* (1907) 89 Miss. 373, 42 So. 799.

12. *Capek v. Kropik* (1889) 129 Ill. 509, 21 N. E. 836; *Martens v. Martens* (1933) 11 N. J. Misc. 705, 167 Atl. 227.

is immoderate and unreasonable.¹³ This was thought, on the basis of *Dix v. Martin*, to be the Missouri rule.¹⁴ Indiana formerly held¹⁵ that, where the injuries were inflicted *malo animo* and the acts were abhorrent to the family relation, an action would lie. It has repudiated this view.¹⁶ In *Wells v. Wells*,¹⁷ the same court that decided *Dix v. Martin* and the instant case allowed a parent to recover against a minor child declaring the public policy of the state to be settled by *Dix v. Martin*. The instant case appears inconsistent with that decision.

Legal writers have expressed the opinion that the broad general rule should be limited in its application to instances in which the reasons on which it is based apply. It has been suggested that the parent be granted a qualified privilege in respect to parental discipline and control and to the conduct of the domestic establishment.¹⁸ He would be liable, not for mere errors of judgment, but for injuries caused by acts manifestly outside the parental relation or in excess of his authority. Thus the child would be allowed to recover damages where it is admitted, by the criminal law at least, that he was wronged.

W. B. W.

TRADE REGULATION—ROBINSON-PATMAN ACT—BROKERAGE FEES—[Federal].—A purchasing agency furnished marketing information and other purchasing services to over 300 subscribing wholesalers for a monthly stipend. The agency also made purchases for its subscribers at their request, passing on to them the brokerage commissions collected from sellers.¹ Brokerage commissions thus received by 86 per cent of the subscribers amounted to less than the amount paid by them for the services under the contract with the purchasing agency. The facilities of the agency enabled sellers to find buyers without employing brokers to reach these customers. The Federal Trade Commission issued an order² to the subscribing buyers, the purchasing agency, and the sellers to desist from payment or receipt of brokerage fees in violation of Section 2(c) of the Robinson-Patman Act.³

13. *Clasen v. Pruhs* (1903) 69 Neb. 278, 95 N. W. 640, 5 Ann. Cas. 112.

14. *Note* (1923) 31 A. L. R. 1157, 1161.

15. *Treschman v. Treschman* (1901) 28 Ind. App. 206, 61 N. E. 961, 963.

16. *Smith v. Smith* (1924) 81 Ind. App. 566, 142 N. E. 128.

17. (1932) 48 S. W. (2d) 109.

18. *Reeves, Domestic Relations* (4th ed. 1888) 357; *McCurdy, Torts Between Persons in Domestic Relations* (1930) 43 Harv. L. R. 1030, 1079.

1. Buyers sometimes named the seller from whom they preferred to purchase, sometimes not. Sellers shipped and billed orders directly to buyers, and buyers paid directly to sellers, who sent commissions to the purchasing agent.

2. (1937) 106 C. C. H. Trade Reg. Serv. par. 9058.

3. " * * * it shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive compensation, or any allowance or discount in lieu thereof, *except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in be-*