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Recent Case Note

RECENT CASE NOTE

PRACTICE—THE SCOPE OF THE ACTION OF TRESPASS

In *Pearl Assurance Co. v. The National Insurance Agency,* 150 Pa. Super. 265, 28 A. (2d) 334, reheard in 151 Pa. Super., 146, 30 A. (2d) 333 (1943), it was held that an action of trespass would lie by an insurance company to recover the amount of premiums on policies received by the defendant as its agent, even though there was no obligation on the part of the defendant to pay to the insurance company the identical specie or currency received by him.

As a result of this decision, the scope of the action of trespass in Pennsylvania has been extended. In *Life Association v. Catlin,* 2 Walker 338, decided in 1879, the Pennsylvania Supreme Court held that trover would not lie to recover the amount of premiums on life insurance policies received by the defendant as agent for the plaintiff. The Court, speaking through Trunkey, P. J., said, "The action of trover is only maintainable for specific property; it will lie for so many pieces of gold or silver, and in that case the defendant can redeem himself by tendering to the plaintiff the same specific pieces."

Since that decision the problem had not arisen in the appellate courts until 1927, when the Superior Court followed the doctrine of the *Catlin* case in *Cherry v. Paller,* 91 Pa. Super. 417. In that case the court held that neither trover nor any other form of trespass would lie for an alleged conversion of money received by the defendant as authorized agent for collection of rents for his principal, the plaintiff, since the former was under no duty to return the identical money.

Between the time of the decision in the *Catlin* case (1879) and the decision in the *Paller* (1927) and the instant case (1943), however, the Acts of May 25, 1887, P. L. 271 and May 18, 1917, P. L. 241 (repealed but substantially re-enacted by the Penal Code of 1939, P. L. 872, sec. 834) were passed. It is upon the interpretation and application of these two acts that the Superior Court bases its decision in the *Pearl* case.

The Act of 1887, P. L. 271, abolished the distinctions between the different actions arising *ex contractu* and also those arising *ex delicto* and provided for one form of action for each, assumpsit and trespass. In the present case, Keller, P. J. in his opinion said, as to the effect of the Act of 1887, "Any civil wrong, delict or tort, whether or not it could have been included with the former action of trespass, trover or trespass on the case is made remediable by the Act of 1887 in an action of 'trespass'."

By the Act of 1917, P. L. 241, it was a misdemeanor to withhold or convert funds received and held for another and belonging to another. Of this act the Court said, "Commonly known as fraudulent conversion, it is not confined to cases of conversion following a supposititious finding, or trover, and hence, is not limited to cases where the duty rested on the defendant to deliver to the owner the identical property, coin, bank notes etc., which he received."

On the basis of these statutes, the Court reasoned that the act of the defendant was a public wrong and being such, it was also a civil wrong, tort or delict against the plaintiff, whose particular interest was designed to be protected by the Act of 1917. And being a tort or delict under the Act of 1887, damages could be recovered in an action of "trespass". In so concluding, the Court expressly overruled the *Paller* case.

In the final analysis, the decision of the court amounts to a recognition of the substantive rights of the parties rather than an adherence to any procedural technicality. And this is rightly so. Whether a party is entitled to judicial relief should not depend upon the form of the action brought, but whether in substantive law he is wronged and deserving of recovery. It would entirely defeat the purpose of the Court's position as an administrator of justice, if a wrongdoer were protected simply because there was no technical action available to the person clearly wronged, or the improper form of action was brought. Our conception of morals and social justice will not permit the wrongdoer to go unpunished and hide behind "technical apron strings".

This concept has been incorporated in Recommendation 15 of the Procedural Rules Committee. Rule 3001 entitled "Civil Action for Damages" provides, "(a) Actions formerly brought in assumpsit or trespass shall hereafter be brought in a single form of action at law to be called a 'civil action for damages'." The purpose of this rule is not to alter the substantive rights and liabilities of parties but it is apparently to do away with an injustice that may arise from errors or omissions in form, as well as to provide a uniform system for civil actions. In the April, 1943 issue of the Pennsylvania Bar Association Quarterly, the Hon. Charles E. Kenworthey, a member of the Procedural Rules Committee, stated, ". . . the object of the tentative draft is to provide a uniform system for 'any civil action or proceeding at law or in equity' which includes ejectment, replevin, mandamus, quo warranto, etc. which are now dealt with separately."

Whether or not the rule proposed by the Committee includes all actions as stated by Judge Kenworthey is not shown by the language of the rule. And, whether or not the rule should be so extended is not to be discussed here. What is significant is the move to place less emphasis upon the form of action

and to give a greater consideration to the substantive rights of the parties. Thus, the adoption of the proposed rule will eliminate such problems as that involved in the *Pearl* case and the merits of the case will be the primary basis of recovery.

S. S. M.