Indiana Law Journal

Volume 22 | Issue 3 Article 10

Spring 1947

Relevancy of Plaintiff's War Record in Personal Injury Action

RELEVANCY OF PLAINTIFF'S WAR RECORD IN PERSONAL INJURY ACTION

In a personal injury action, plaintiff was permitted to testify, over objection, that he was in battle three times; handled heavy projectiles; and although wounded once he had fully recovered before the automobile accident. Held: Admissible to show the strength and health of the plaintiff at the time of the accident, and to meet any possible contention that his condition afterward was the result of his military service. *In re New England Transp. Co. et al.*, 69 N.E.(2d) 479 (Mass. 1946).

The principal case can be defended under the general proposition that the question of relevancy of testimony is largely within the discretion of the trial judge.[1] Ordinarily, on the question of damages, the plaintiff in a personal injury suit may show the state of his health prior to the injury.[2] However, evidence of prior military service, in the absence of any contention that it contributed to P's injuries, or that he was already disabled at that time seems unjustifiable.[3]

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7. Teis v. Smuggler Min. Co. 158 Fed. 260 (C.C.A. 8th, 1907); Benedict Pineapple Co. v. Atlantic C.L.R.R., 55 Fla. 514, 46 So. 732 (1908).

1. Western Produce Co., Inc. v. Folliard, 93 F.(2d) 588 (C.C.A. 5th, 1937); New England Trust Co. v. Farr, 57 F.(2d) 103 (C.C.A. 1932), cert. denied, 287 U.S. 612 (1932); Pacific S.S. Co. v. Holt, 77 F.(2d) 192 (C.C.A. 9th, 1935); Feichter v. Swift, 77 Ind. App. 427,430, 132 N.E. 662,663 (1921) (by implication).

2. Davis v. Smitherman, 209 Ala. 244, 96 So. 208 (1923); Louisville, N.A. & C. Ry. v. Wood, 113 Ind. 544,551, 14 N.E. 572,577 (1887) (by implication); Bush v. Kansas City Public Service Co., 350 Mo. 876, 169 S.W.(2d) 331 (1943); Shackleford v. Commercial Motor Freight, Inc. 65 N.E.(2d) 879 (Ohio 1945).

3. Where such charges are made, of course, the question properly is placed in issue, and the material may be introduced in rebuttal. E.G., Western Produce Co., Inc. v. Folliard, 93 F.(2d) 588 (C.C.A. 5th, 1937).
For other cases holding comparable evidence to be objectionable see Vicksburg, S. & P. Ry. v. Godwin, 14 F.(2d) 114 (C.C.A. 5th, 1926) (plaintiff's honorable discharge held improper to show

Every precaution should be taken to prevent the original introduction of such material. And where its use has been permitted, the results should be carefully examined upon appeal, to ensure that the judgment has not been influenced thereby.