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Evidence-Inference upon an Inference

EVIDENCE: INFERENCE UPON AN INFERENCE.—Plaintiff, the beneficiary of a policy issued by appellee upon the life of one Leo J. Orey, brought suit to recover double indemnity for the death of the insured. Recovery was conditioned upon showing that "death had come as a direct result of bodily injury effected solely through external, violent, and accidental means . . . evidenced by a visible contusion or wound on the exterior of the body."

Deceased was a truck driver and was last seen driving his truck through a small village. Later he was seen on the ground in the rear of the truck. looking under it. After a short time, weaving and vomiting, he staggered into the village store and collapsed. He was suffering from a severe rupture

and soon died. Upon examination of the truck it was found to be stalled on the hill, rock under the back wheel; the self-starter would not start the motor, and the crank was inserted in the front end of the motor. There were footprints around the truck. Plaintiff having concluded this evidence, the judge instructed the jury to return a verdict for the defendant; appeal was taken from overruling of a motion for a new trial. *Orey v. Mutual Life Ins. Co. of N. Y.* (Ind. App. 1938), 15 N. E. (2d) 100.

The Appellate Court said that to make a case that by the conditions of the double indemnity clause it was necessary to infer (1) that decedent . . . cranked the motor and in so doing injured himself; and (2) that said injury . . . from cranking the motor was the result solely of external, violent and accidental means; it then held that to prove a cause of action an inference could not be drawn from an inference.

An inference is a permissable deduction from the evidence; it is a rational conclusion, founded upon common knowledge and experience, resulting from the application of ordinary principles of logic.[1] Of course the jury has the right to draw all reasonable inferences from the facts proved,[2] so long as the inferences are reasonable.[3] Had it not been for the dual conditions of the double indemnity clause the case might have been decided under this theory in the first instance, but the court did not choose to let the jury have this latitude.

An inference becomes a fact insofar as concerns its relations to the proposition to be proved; text-writers have so written[4] and our own court has said that "to assign an inference properly drawn a position inferior to an established fact would in effect nullify its probative force."[5]

With this in mind it would seem but logical that the court would permit an inference, having the probative force of an established fact, to be the basis for a subsequent inference. To the contrary though, our courts have not seen fit to carry out the premise to a logical end. A perusal of our cases shows this. However, until a short time ago the Appellate and Supreme courts entertained different views upon this issue.

While the Supreme Court was adhering to the general rule, the other court, under guise of the "exception to the rule" device, permitted an inference upon

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[1] Jones Commentaries on Evidence, (1926 ed.), Volume 1, Section 27, p. 54; Cogdell v. Wilmington & W. R. Co. (1903), 132 N. C. 852, 44 S. E. 618.

[2] Ensel v. Lumber Co. of New York et al (1913), 88 Ohio St. 269, 102 N. E. 955.

[3] Russell v. Scharge (1921), 76 Ind. App. 191, 130 N. E. 437; Pioneer Coal Co. v. Hardesty (1921), 77 Ind. App. 205, 133 N. E. 398; Speckelmier Fuel and Supply Co. v. Thomas et al (1924), 81 Ind. App. 604; 144 N. E. 566; Charters v. Miller (1924), 82 Ind. App. 535, 137 N. E. 67; Keenan Hotel Co. v. Funk (1931), 93 Ind. App. 677, 177 N. E. 364; as to what is a reasonable inference, see Lanzer v. Leheigh, etc., R. Co. (1900), 196 Pa. 610, 46 A. 937; Heh v. Consol. Gas Co. (1902), 201 Pa. 443, 50 A. 994; Carnard, etc. Co. v. Kelley (1903), 126 F. 610, 61 C. C. A. 532; Russell v. Scharge (1921), 76 App. 191, 130 N. E. 437.

[4] Jones Commentaries on Evidence, (1926 ed.), Volume 1, Sec. 364, p. 631, N. 12.

[5] Indian Creek Coal & Mining Co. v. Calvert (1918), 68 Ind. App. 474, 120 N. E. 709; Scottish Union & National Ins. Co. v. Linkenbelt & Co. (1919), 70 Ind. App. 324, 121 N. E. 373; "The jury had the right to consider any fact as proved that could rightly and reasonably be inferred" Dickinson Coal Co. v. Liddil (1911), 49 Ind. App. 40, 94 N. E. 411.

an inference. Its theory was that "a fact in the nature of an inference might itself be taken as the basis of a new inference, intermediate or final, provided that the first inference had the required basis of a proved fact."[6] Wigmore wrote that this case repudiated the "fallacious rule" in Indiana.[7] Though it is debatable that this broad conclusion should be drawn, an analysis of the holding tends to substantiate his view, and to show that the "exception" really obliterates the rule. The court required only a "proved fact" at the beginning of the line of inferences; this requisite harkens back to the fundamental, i. e., that the jury can draw a reasonable inference from a fact proved by the evidence.

Really all the Appellate bench was doing when it established the "exception" was giving an inference the probative value assigned it, i. e., the weight of a fact; it followed that another inference could be based thereon. A more liberal decision permitted inference upon inference where there was but a "collection of circumstantial facts" as the basis of the first inference.[8] However, in 1931 the Appellate court, ignoring several "proved" facts, adhered to the general rule in a short opinion.[9] Later cases did not allude to the "exception" device at all.[10]

It seems that the true reason for the use of the general rule is that it is a convenient means to dispose of evidence deemed too remote or uncertain to prove the ultimate fact at issue.[11] But to adopt this method will not aid in attaining the desired result.

A solution in accord with modern authorities[12] has been outlined by our Appellate Court.[13] When inferences are claimed, the court would have a duty as a matter of law to determine whether there was a sufficient relation of the fact to be proved to the facts or collection of circumstantial facts shown; if this was found, then the case would be given the jury to draw whatever inferences it deemed reasonable.[14] This plan would allow the court to retain its reason behind the present use of the general rule, i. e., the exclusion of inferences upon uncertain or speculative evidence,[15] and yet insure elasticity conducive to justice in particular cases.

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6 Hinshaw v. State (1896), 147 Ind. 334, 47 N. E. 157.

7 Wigmore on Evidence, (2nd ed. 1923), Vol. 1, Sec. 41, p. 260, N. 4.

8 Cleveland, etc., R. Co. v. Starks (1914), 58 Ind. App. 341, 356, 106 N. E. 646.

9 Ward Bros. Co., Inc. v. Zimmerman, Admnx., (1931), 94 Ind. App. 130, 180 N. E. 25, citing also Warner v. Marshall (1905), 166 Ind. 88, 75 N. E. 582; Spahn v. Stark, Treas. (1926), 197 Ind. 299, 150 N. E. 787 (not on point); Hudson v. State (1926), 198 Ind. 422, 154 N. E. 7.

10 Altman v. Indianapolis Union Ry. Co. (1931), 95 App. 199, 178 N. E. 691, noted in 8 Ind. L. J. 204; (case exemplifies attempt of counsel to clothe a conjectural speculation with raiment of the inference; writer in 8 Ind L. J. 204 fails to point out expert medical testimony as to condition of decedent).

11 Johnson v. State (1927), 199 Ind. 73, 155 N. E. 196.

12 Paiva v. Calif. Coor. Co. (1926), 75 Cal. App. 323, 242, p. 887; Sliwowski v. N. Y., N. H. and H. R. Co. (1920), 94 Conn. 303, 108 A. 805; Welsch v. Frusch Light & Pwr. Co. (1923), 197 Iowa 1012, 193 N. W. 427; Duncan v. Tidwell (1915), 48 Okla. 382, 150, P. 112.

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Let us turn to the case at bar. Defendant got an instructed verdict. To have made the plaintiff's case it was held necessary to infer first that Orey . . . cranked the motor and in so doing injured himself. Now a prior medical examination did not disclose that Orey suffered from a hernia, nor did he complain of such a condition prior to the morning of the occurrence of the injury. Moreover, the truck was stalled, starter stuck, and crank inserted in the motor. An undertaker testified as to the presence of scratches between Orey's abdomen and knees. Certainly this chain of circumstantial facts is sufficient to base a reasonable inference opinion that there was a relation between the circumstances and the injury, and had there not been the dogmatic rule that an inference could not be based upon an inference, it would have been but just to submit to the jury the case for its opinion. And had it found that the injury did arise from cranking or attempting to crank the motor, and did not occur through other means, it would have been quite difficult to say that their verdict was an unmerited one.

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