Evidence-Inferance Upon Inferance

Follow this and additional works at: http://www.repository.law.indiana.edu/ilj

Part of the Evidence Commons

Recommended Citation

Available at: http://www.repository.law.indiana.edu/ilj/vol8/iss3/12
RECENT CASE NOTES

the maker thereof. It was held that the holder of said note was entitled to prove its claim against the indorser’s estate for the full amount, and to receive dividends until the forty percent balance was paid.\(^6\)

A similar case exists where a creditor holds as security the promise of third parties to pay the debt of a corporation in case said corporation does not pay it. In such situation it has been contended that the creditor must first exhaust his securities and deduct the proceeds thereof, and then file a claim against the insolvent corporation for the balance, but it was held that the creditor could prove his full claim.\(^7\) The court therein expressed the vital point which distinguishes between secured and unsecured creditors as follows, “In no sense is the promise property of the insolvent corporation which can inure to the benefit of its general creditors.”

The case of *McGrath v. Carnegie Trust Co. et al.*,\(^8\) which the Indiana Supreme Court aptly cited to support its decision herein, is directly in point. Therein a bank made a loan of $140,000.00 and took promissory notes therefor. The loan was made on condition that the proceeds be paid to a trustee and invested in stock, said stock then to be held as security by the bank making the loan. In fulfillment of that condition, the $140,000.00 was paid to a trust company which became insolvent after having failed to purchase the stock according to its agreement. The makers of the notes having paid the bank $16,000, it was contended that the bank would have to make a deduction from its claim of said amount. The highest court of New York\(^9\) held, however, that the bank’s share in the assets of the trust company should be computed on $140,000.00, the full amount of the trust deposit. It was declared that the contractual relationship between the bank and the trust company “had no concern with payments made by strangers.”

Applying these rules to the instant case, it is obvious that the proceeds of insurance on the life of S would in no way increase the assets of the insolvent corporation or inure to the benefit of its general creditors. The trust fund created by S in favor of the appellant was in no way a security furnished by the insolvent. The appellant was not a “secured creditor.” Since the corporation was insolvent, appellant’s claim would necessarily yield a dividend of something less than the amount of the debt. If the amount paid by a “stranger” is deducted from appellant’s claim, the appellant would thereby obviously have its rights diminished as against the true debtor. Granting, of course, that the appellant can in no event be permitted to recover more than the actual value of its claim, the result of the decision seems both logically and practically sound.

P. J. D.

---

**EVIDENCE—INFEREN CE UPON INFERENCE**—Plaintiff charged defendant with negligence whereby decedent received a fatal shock of electricity. Instruction No. 5 was as follows: “hence under the law of this state an inference cannot be raised from or based upon an inference. You

---


\(^7\) *Adams v. Vancouver Nat. Bank, et al.* (Wash. 1931), 2 Pac. (2d) 684.

\(^8\) 221 N. Y. 92, 116 N. E. 787 (1917).

cannot under the law infer that decedent was at the time of
his death in such a position as to make or form a grounded circuit thru
his body in the event his hand should come in contact with an electrical
current, and upon or from that inference infer that deceased at such time
came in contact with an electrical current which passed thru his body and
resulted in his death." Held, this instruction was not erroneous.¹

The principal case lays down the rule that an inference cannot be
based on an inference. Wigmore² strongly attacks such a rule. An
inference is a matter of logic; it is an act of reasoning; a fact is inferred
from the existence of other facts that are known; much of human knowl-
edge on all subjects is derived from this source.³ Wigmore says there
is no such rule prohibiting the basing of inference on inference, nor can
there be any such rule. "For example," he says, "on a charge of murder,
defendant's gun is found discharged; from this we infer that he discharged
it, and from this we infer that it was his bullet which struck and killed
decedent. Or, defendant is shown to have been sharpening a knife; from
this we argue that he had a design to use it on deceased, and from this
we argue that the fatal stab was the result of this design. From these
and innumerable daily instances we build up inference on inference, and
yet no court ever thought of forbidding it. All departments of reasoning,
all scientific work, every day life and every days trials, proceed upon such
data."

In Ohio Building Safety Vault Co. v. Industrial Board,⁴ the court
points out that "certain well recognized authorities insist that the rule
that a presumption can never be based on a presumption or an inference
on an inference is never strictly followed." It has been stated that the
rule that an inference can never be based on an inference, if strictly
enforced, would never permit a criminal case to be adequately prosecuted.⁵

Wills on Circumstantial Evidence,⁶ suggests a solution of the problem.
Stated briefly, Wills suggests this rule: an inference in the chain of
inferences is based on a fact proved by direct evidence. While this rule
is acceptable, it is stretching the meaning of words to say that Wills' sug-
 gestion is the meaning of the rule that an inference cannot be based
on an inference. Several cases have adopted the rule suggested by Wills.

Before going into Indiana cases on the question, the very recent case
of Gears v. State⁷ should be noted. The Supreme Court in an opinion
by Treanor, J. gives an excellent discussion of circumstantial evidence
and the working of the mind. It may be argued that this case lends
support to the view that there is no rule against basing inference on
inference. In this case it was contended by defendant that to reach a
certain conclusion it would be necessary to base an inference on an infer-

¹ Altman v. Indianapolis Union Ry. Co., Appellate Court of Indiana, Decem-
ber 11, 1931, 178 N. E. 591.
² Wigmore, Evidence (2nd), Vol. 1, Ch. 4, Sec. 41, p. 258 (1923).
³ McCarty v. State (1904), 162 Ind. 218; Rex v. Burdette (1820), 4 Barn. &
Ald. 95, 161, 106 Eng. Repr. 873.
⁴ 277 Ill. 96, 111, 115 N. E. 149 (1917).
⁵ Rex v. Burdette (1820), 4 Barn. & Ald. 95, 161, 106 Engl. Repr. 873; Wig-
more, Evidence (2nd), Vol. 1, Ch. 4, Sec. 41, p. 258 (1923).
⁶ Am. Ed. 189 (1905).
⁷ 180 N. E. 585 (1932).
ence, which could not be done. In discussing this the court said that the particular conclusion could not be reached for the reason that it would be an unreasonable inference. The court said, "It is necessary that we leave to the sound judgment of the jury, some margin for logical grouping of facts for the purpose of drawing inferences of fact, and for the utilization of these inferences of fact with other facts as the basis of further inference of fact. After all the 'logic' or 'reason' which we should expect of the jury is largely a common sense evaluation of the probative force of all the evidence in the light of everyday experience and observation." Here, it seems, is a statement that inferences may be used in raising inferences.

As stated previously, however, there is no lack of authority to support the rule under discussion.8

Some other Indiana cases may be considered as of questionable authority. U. S. Cement Co. v. Whitted9 and Warner v. Marshall10 may be harmonized with the view that all reasonable inferences may be drawn, because an analysis of these cases reveals that the inferences sought to be raised were unreasonable. Warner v. Marshall also made a doubtful application of the rule against inference on inference. It applied this rule in order to keep from basing an inference on an inference which a witness had drawn. It may be contended that this is an improper application. The inference drawn by a witness from certain facts is not the inference of the court or jury. So long as the inference remains that of the witness, there is no inference of fact in the case for the simple reason that the witness is not the tribunal which finds facts and draws inferences. When the proper tribunal draws an inference, then there is an inference which may be subjected to the limitation of being incapable of supporting another inference. But until then, there is no inference in the factual set-up; such as the finding of fact by a witness is not a fact in the case for the simple reason that the court or jury finds the facts.

Though Indiana does not lack authority in support, there is some authority which would seem to repudiate the rule. These cases hold in more or less definite language that an inference may be based on an

---

8Indiana cases which have stated that an inference cannot be based on an inference are: Morgan Construction Co. v. Dulin (1916), 184 Ind. 652, 109 N. E. 960; Alexander v. Capitol Lumber Co. (1914), 181 Ind. 527, 105 N. E. 45; Dowell v. State (1914), 181 Ind. 68, 101 N. E. 315 (the only real doubt here was whether the witness told the truth); Warner v. Marshall (1900), 166 Ind. 88, 117-18, 76 N. E. 582; Young v. Montgomery (1903), 161 Ind. 68, 67 N. E. 954; Bimna v. State (1879), 66 Ind. 428; U. S. Cement Co. v. Whitted (1900), 46 Ind. App. 105, 90 N. E. 481; Pittsburg, C. O. & St. L. R. Co. v. Vance (1915), 68 Ind. App. 1, 108 N. E. 155. Some other cases which have stated the same rule are: U. S. v. Ross (1875), 92 U. S. 281; Manning v. Ins. Co. (1879), 160 U. S. 693; State v. Kelly (1904), 77 Conn. 266, 58 Atl. 705; Revere v. People (1806), 224 Ill. 170, 79 N. E. 574; Philip v. Travelers Ins. Co. (1921), 288 Mo. 175, 231 S. W. 947; People v. Rasoecos (1912), 208 N. Y. 243, 99 N. E. 557; Fadden v. McKinney (1914), 37 Vt. 316, 39 Atl. 351. See also Jones, Evidence in Civil Cases (3rd), Sec. 104, p. 135 (1924); Chamberlain, Modern Law of Evidence, Vol 2, Sec. 1029, p. 1223 (1911); 10 R. C. L. 870, Sec. 13; 10 Ann. Cas. 1994.

946 Ind. App. 105, 90 N. E. 481 (1910).

10166 Ind. 88, 117-18, 76 N. E. 582 (1906).
inference. While *Hinshaw v. State*\(^{11}\) states as a general rule that an inference cannot be based on an inference, it states as an exception to the general rule that an inference may be the basis of another inference provided the first inference has the basis of a proved fact. With such an exception, little, if anything, is left of the rule; this is Wigmore’s view, also. He states that this case has repudiated the rule. An analysis of the exception would seem to bear this out. According to the exception whenever direct evidence of some fact is brought into the case the inferences therefrom may become the basis of other inferences. In the absence of any facts there is no source from which to infer. In requiring the existence of a proved fact before inferences may be built on inferences the exception follows logically. The first fact will always have to be proved by direct evidence, because, until then, there is nothing from which inferences may be drawn.

The recent Pennsylvania case of *Commonwealth v. Santos*\(^{12}\) is a case deserving of attention. This was a homicide case. Defendant contended that deceased committed suicide, and offered evidence that shortly before the day of her death deceased declared her intention of shooting accused and then herself. The higher court held this evidence admissible, saying “* * * the evidence in question is admissible because suicidal intent, like any other purpose, is a mental condition, which can manifest itself, primarily, only thru some act or word of the person in question; hence relevant acts or words may be proved as the basis of an inference that the state of mind, or intention, in question did in fact exist, from which fact, and others in the case,\(^{13}\) the conclusion may be drawn that the design contended for had been carried into execution.” Briefly, the court holds mental state might be inferred, and that another fact might be inferred therefrom.

The rule deducible from the latter group of Indiana cases discussed,\(^{14}\) is that an inference properly drawn may become the basis of other inferences. Stated thus, it would seem that this rule should be embraced within the rule that all reasonable inferences from the evidence may be drawn. Therefore, no special rule on the basing of an inference on an inference is needed. The broader rule of “all reasonable inferences” should include the basing of inference on inference when reasonable.

A proper interpretation to be put on the cases which have stated as law that an inference cannot be raised from an inference would seem to be that suggested by Wigmore: “the judicial utterances that sanction the fallacious and impractical limitation, ordinarily put forward without authority, must be taken as valid only for the particular evidentiary facts therein relied upon.”

S. K.

---

\(^{11}\) 147 Ind. 334, 363, 47 N. E. 157 (1896). See also to the same effect, *Cleveland, C., O & St. L. R. Co. v. Starks* (1915), 58 Ind. App. 341, 363, 106 N. E. 646; *Indiana Creek Coal Co. v. Calvert* (1918), 68 Ind. App. 474, 120 N. E. 709; *Public Savings Ins. Co. v. Greenwald* (1918), 68 Ind. App. 609, 624, 121 N. E. 47; *Scottish Insurance Co. v. Linkenholt* (1919), 70 Ind. App. 324, 121 N. B. 373.

\(^{12}\) 275 Pa. 515, 119 Atl. 596 (1923).

\(^{13}\) Wigmore, Evidence, (2nd) Vol. 3, Ch. 56, Sec. 1726, p. 700 (1923).

\(^{14}\) Supra, note 11.