28 N.W. 125

61 Mich. 355

CLINTON
v.
LANING and others.

Supreme Court of Michigan

May 6, 1886

Error to Genesee. [28 N.W. 126]

H.C. [61 Mich. 358] Riggs and Geer & Williams, for plaintiff.

[61 Mich. 357] Clarence Tinker and Long & Gold, for defendants and appellants.

[61 Mich. 358] CAMPBELL, C.J.

This action was brought by a father, in advanced years, to recover damages from the defendants for his loss by being compelled to support a grown-up son who, being given to drinking, became grossly drunk at defendant's tavern, and on his way home had his feet and a hand badly frozen, so as to render him to a great degree helpless. The young man possesses no estate, and is therefore dependent, and in law a pauper. The father is well off, and has taken care of his son in the liberal way in which prodigal children are apt to be treated.

Two main, and some subordinate, questions are presented by the record. It is claimed no right of action accrues under circumstances such as exist here until the father has been required, by legal process, to contribute in some fixed [61 Mich. 359] way to his son's support. It is also claimed that the verdict was allowed to be rendered on a wrong basis.

It is not seriously claimed that any action lies in this case out of the mere relation of parent and child. The son was not a minor, and the father was in no way injured by loss of his earnings, or deprived of any reliance for his own support. If an action lies at all, it is upon the ground that plaintiff has, in some way, been "injured in his property" by the casualty for which defendants are sought to be made responsible. The statutes do not make a father liable for his son's support to any extent after majority, unless he has become subject to the condition of a pauper, and liable to be a public burden. In such a case, if able to do so, the law makes him responsible to such an extent as may be determined on a proper investigation. As the ability here is admitted, and the need of support is also admitted, there can be no doubt that plaintiff, if refusing, would be compelled to make necessary provision. The only question that would arise in case of his refusal would be as to the terms and manner of his contribution. There is, no doubt, some difficulty in substituting a jury for the proper local authorities in getting at the proper estimate of expense. But we think the law does not require a father to attempt to turn over his son to the custody of the superintendents of the poor before he can be regarded as under a duty of maintenance. The law requires [28 N.W. 127.] the parent, if able, to maintain the son "in such manner as shall be approved by the directors of the poor of the township where such poor person may be." How.St. c. 41, ï¿½ 1. It is only on failure to do so that any order becomes necessary, as provided by the subsequent sections. [61 Mich. 360] We think that the voluntary assumption of this duty may fairly be regarded as performing a legal obligation, and that expenditures to a proper extent, within the limit which could be laid down by compulsion, are as valid charges as if they had been compelled, and may be considered on a similar footing.

But in making these outlays voluntarily, nothing can fairly be included as a payment by obligation beyond what might have been reasonably required in case of refusal. No one can claim to have been injured in his property by any outlay that he was not required to make. The object of the statute is to save the public from a burden which, in the language of the statute, would have injured them in property. If those outlays can be recovered which affection and liberality naturally prompt friends and relations to make, the verdict, in a case like this, would be made heavier in proportion to the ability of the

plaintiff to do without it, and not in proportion to what it takes to support one who is a public charge. If such a burden can be thrown upon defendants according to the liberal notions of a plaintiff, he will have no motive to economize, and his generosity will cease to be generous when exercised at the expense of another. The only loss to his property which is contemplated by law is such as the law imposes. This would be, in our opinion, such an amount as is necessary for the humane and comfortable support of a needy person, and no more. All beyond this, which affection may prompt, and which it is likely to furnish, must be regarded as a free-will offering, and not a legal duty. In the present case this line seems to have been disregarded. The conduct of the plaintiff does credit to him, but went very far beyond what any legal authority could have required of him. The jury cannot be allowed to become respectors of persons, and must stop short when all is allowed that decency and humanity require.

[61 Mich. 361] In the case before us another serious difficulty was presented. There was a double error in allowing the son's probabilities of life to be based on the standard applied to sound and healthy lives instead of upon his own actual condition and prospects. There was a further error in not limiting the period of support by the age of the father, upon whose death the responsibility would not fall on his estate. And it was a serious error to allow any questions of suffering, bodily or mental, of the son or of his parents, to be considered at all. The case does not differ at all in this respect from one brought by the superintendents of the poor, had they been compelled to bear the burden. Neither could it be proper to consider the liability of plaintiff to give a share of the damages to his attorney to aggravate the damages. How far this may have entered into the account, if at all, we have no means of knowing; but the legal costs are all that can be allowed against a defendant, and if a plaintiff begins a suit on shares, the defendant cannot be made responsible for it.

The judgment must be reversed, with costs, and a new trial granted.

(The other justices concurred.)