TORTS

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There were few major developments in the law of torts during the period reported on with the exception of the startling decision of the Court of Appeals in *Brown v. Georgia-Tennessee Coaches, Inc.*[1] and the enactment by the General Assembly of the Uniform Act Regulating Traffic on the Highway. However, many of the old rules were assaulted and the appellate courts repelled or approved these assaults by adding to or taking from the old principles without effecting structural changes.

In the *Brown* case, the Court of Appeals held that a wife has a cause of action for loss of consortium due to a negligent injury to her husband. The effect of this decision was to create, or perhaps to recognize for the first time in the history of Georgia's jurisprudence, such a cause of action.

Although the scope of this article is reportorial rather than critical, it may well be said that the impact of this decision upon the insurance industry was tremendous, and doubtless many an attorney who had advised clients upon the non-existence of such a cause of action was seriously concerned. The Supreme Court denied the writ of certiorari and the decision stands.

The comparative negligence rule, always a target for plaintiffs in error was not neglected during the period reported on. In *Willis v. Jones*[2] it was held that a charge which instructed the jury that a plaintiff would be barred from recovery if guilty of the failure to exercise ordinary care before his duty to discover and avoid the negligence of the defendant arose, was erroneous. While this principle is not novel, the opinion in the case presents a clear and yet succinct statement of the comparative negligence rule as it has been applied in Georgia, leading the reader through the labyrinth of prior decisions with ease.

In *Brooks v. Arnold*[3] the Court of Appeals held that the survivors of a tenant who occupied an apartment knowing that there was only one way of egress from it, and who was killed when she jumped from a window to avoid a fire which blocked the stairway, had no cause of action, since the tenant could have by the exercise of ordinary care avoided the consequences to herself of the defendant's negligence. Presumably, the remedy available to the

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1. 88 Ga. App. 519, 77 S.E.2d 24 (1953).
2. 89 Ga. App. 824, 81 S.E.2d 517 (1954).
3. 89 Ga. App. 782, 81 S.E.2d 289 (1954).

tenant was to move out; requiring that the tenant exercise this remedy would seem to enlarge somewhat the duties heretofore required of tenants as a prerequisite to suit against landlords.

In *La Hoste v. Yaarab Mounted Patrol, Inc.*[4] it was held that plaintiff had assumed the risk of riding a dangerous horse when in response to the request of a fellow member of the defendant organization he mounted the horse for the first time and it immediately reared; assurances were given the plaintiff that the horse would not rear again, and he held his seat. The court found that plaintiff should have anticipated the danger in riding the horse in that the horse's act in rearing when first mounted put him on notice.

In *Jackson v Martin*[5] the Court of Appeals reaffirmed the principle that an injury caused by an unexplained act of a defendant is not actionable in the absence of proof of some act of negligence. This is in conformity with the rule expressed in *Minkovitz v. Fine.*[6]

The controversial last clear chance doctrine was recognized in the case of *Casteel v. Anderson*[7] when it was held that the trial court's failure to give a requested charge on this doctrine, by name, was reversible error. Here, however, the rule seems to have been recognized as being intended to operate in exculpation of a plaintiff who has put himself in a position of peril, discoverable by the defendant in time to avoid injury. This is not exactly the rule as recognized in the leading case of *Smith v. American Oil Company*[8], but neither is it in conflict therewith. See also *Brooks v. Wofford*[9].

In the case of *Crosby v. Lee*[10] the Court of Appeals held that an allegedly defamatory letter circulated among the members of a church was privileged, and that an action for wilful defamation would not lie regardless of the contents of such letter.

An interesting case on assumption of risk is that of *Beasley v. Elder*[11] wherein it was held that a guest assumed the risk of injury when he stepped out of his host's automobile which was stopped on a highway with its motor running but without lights to push the automobile off the highway, and who was injured when a taxi cab approaching from the rear ran into the guest and pinned him between the two automobiles.

4. 89 Ga. App. 397, 79 S.E.2d 570 (1953).
5. 89 Ga. App. 344, 79 S.E.2d 406 (1953).
6. 67 Ga. App. 176, 19 S.E.2d 561 (1942).
7. 89 Ga. App. 68, 78 S.E.2d 831 (1953).
8. 77 Ga. App. 463, 49 S.E.2d 90 (1948).
9. 88 Ga. App. 731, 77 S.E.2d 563 (1953).
10. 88 Ga. App. 475, 76 S.E.2d 856 (1953).
11. 88 Ga. App. 419, 76 S.E.2d 849 (1953).

In *Garnto v. Henson*[12] and in *Reed v. Burt*[13] the principle of the decision in *Stapleton v. Stapleton*[14] that an employer may be liable to the minor child of his employee for injuries negligently caused by the employee, was followed and extended. In the *Garnto* case a plaintiff's wife was allowed to sue her husband's principle for the act of the husband, and in *Reed v. Burt* a passenger was allowed to sue a taxi cab company for injury received by the negligent operation of the cab by company's driver who was also the plaintiff's husband.

In *Carter v. Bishop*[15] the Supreme Court held that an employee driving a motor vehicle left the scope of his authority when he, without the consent of and against the specific instructions of his employer, engaged a substitute driver; the court held the employer not liable for the negligence of the substitute driver unless the act of the servant in employing the substitute driver was ratified by the employer.

In *Brown v. Transcontinental Gas Pipe Line Corp.*[16] the Supreme Court reversed a decision of the trial court upon the ground that the trial judge had, without prior consent of the parties to the cause, made a personal inspection of the alleged nuisance complained of, and it was ordered that the case be heard upon the evidence introduced by the parties, unless an inspection by the trial court be consented to by both parties. The court pointed out that a trial judge may permit the jury to view the premises with or without the consent of the parties whenever in his discretion a view of the premises would enable the jury to better understand the evidence, but apparently withheld from the trial judge the right so to make an inspection on his own behalf.

The General Assembly did not enact any statute making a major change in the tort law of the state with the exception of the Uniform Act Regulating Traffic on the Highway.[17] This statute substantially changes the provisions of section 68 of the Georgia Code, and in so many details as to make it impracticable for discussion here, but its importance cannot be over emphasized.

12. 88 Ga. App. 320, 76 S.E.2d 636 (1953).
13. 89 Ga. App. 46, 78 S.E.2d 539 (1953).
14. 85 Ga. App. 728, 70 S.E.2d 156 (1952).
15. 209 Ga. 919, 76 S.E.2d 784 (1953).
16. 210 Ga. 580, 82 S.E.2d 12 (1954).
17. Ga. Laws Nov.-Dec. Sess. 1953, p. 556.