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Torts -- Trespass to Land -- Unintentional and Non-Negligent Entry as a Defense

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In *Flake v. Greensboro News Co.*,[15] the Supreme Court of North Carolina recognized the right of privacy. But there is no indication in that case as to how the court would hold if confronted with facts similar to those in the *Gouldman-Taber Pontiac* case.

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Torts—Trespass to Land—Unintential and Non-Negligent Entry as a Defense

The early English common law imposed liability for trespass upon one whose act directly brought about an invasion of land in the possession of another. It mattered not that the invasion was intended, was the result of reckless or negligent conduct, occurred in the course of extrahazardous activity, or was a pure accident; nor did it matter that no harm resulted. All that seems to have been required was that the actor did the act which in fact caused the entry.[1]

It has been stated by eminent authority that, "The law on this subject is undergoing a process of change. Among the more important tendencies is the limitation of liability to invasions which are intended, or negligent, or the result of abnormally dangerous activity."[2]

Smith v. Pate[3] presented the North Carolina Supreme Court, for apparently only the second time in its history, the question of whether unintentional and non-negligent entry to land constitutes trespass. The defendant driver's automobile crashed into the plaintiff's building; the plaintiff sued for trespass to land, without alleging negligence; and the defendant pleaded unavoidable accident. The trial court struck the defense, but the supreme court held this to be error on the ground that unavoidable accident is a valid defense if pleaded.

The first North Carolina case on the subject, *Newsom v. Anderson*,[4] followed the early common law rule. There, the defendant, "without design or carelessness," cut down a tree on his own land, the top of the tree falling on plaintiff's land. Plaintiff prevailed in his subsequent suit for trespass, the court holding that design or carelessness were not essential ingredients of trespass.

In *Smith v. Pate*, the court attempted to distinguish the earlier case

[15] 212 N.C. 780, 195 S.E. 55 (1938) (By mistake the plaintiff's picture was used for advertising purposes, and, in the absence of allegations and proof of special damages, the plaintiff was allowed to recover only nominal damages. This has been North Carolina's only case concerning the right of privacy).

[1] RESTATEMENT, TORTS § 166, comment *b* (1934).
[2] PROSSER, TORTS § 13 (2d ed. 1955).
[3] 246 N.C. 63, 97 S.E.2d 457 (1957).
[4] 24 N.C. 42 (1841). In Dougherty v. Stepp, 18 N.C. 371 (1835), it was said that "every unauthorized, and therefore unlawful, entry into the close of another is a trespass." This was dictum since the question of accidental entry was not involved.

on the ground that unavoidable accident or sudden emergency had not been shown, but that the damage had resulted from negligence. However, the words of the court in the earlier case were, "There was no evidence to show that the tree was felled by design or carelessness." In fact, the trial court had charged that intent or carelessness in felling the tree would have to be shown; and for this error in the charge, the defendant's judgment below was reversed. The conclusion seems inescapable that both cases involved unintentional and non-negligent entry, yet different results were reached.[5]

However, the present position of the court, taken in *Smith v. Pate*, brings North Carolina in accord with what purports to be the weight of authority on this point.[6]

WILTON RANKIN

Trade Regulation—State Fair Trade Acts—Trading Stamps

Fair trade laws, enacted in all states except Missouri, Texas, and Vermont,[1] permit vertical price fixing[2] contracts between a manufacturer and a wholesaler or a retailer which establish a fixed resale price of the manufacturer's product. The acts provide that as soon as one such contract is entered into with a distributor within a state, all other distributors on the same level of competition who receive notice of the contract are bound by it, even though they are non-signers.[3]

For the purpose of preventing evasion of the resale price maintenance contracts, twenty states and territories[4] have specifically prohibited

[5] For an example of another state recently changing from the early common law to the modern trend, *compare* Louisville Ry. v. Sweeney, 157 Ky. 620, 163 S.W. 739 (1914); Consolidated Fuel Co. v. Stevens, 223 Ky. 192, 3 S.W.2d 203 (1927) *with* Jewell v. Dell, 284 S.W.2d 92 (Ky. 1955); Randall v. Shelton, 293 S.W.2d 559 (Ky. 1956).

[6] RESTATEMENT, TORTS § 166 (1934). "Except where the actor is engaged in an extrahazardous activity, an unintentional and non-negligent entry on land in the possession of another, or causing a thing or third person to enter the land, does not subject the actor to liability to the possessor, even though the entry causes harm to the possessor or to a thing or third person in whose security the third person has a legally protected interest."

This Note is not concerned with trespass to person, but it should be pointed out that unavoidable accident is also a defense to trespass to person. RESTATEMENT, TORTS §§ 18, 21, 35 (1934).

[1] A complete compilation of fair trade laws may be found in 2 CCH TRADE REG. REP. (10th ed.) ¶ 10000-15585 (1956).

[2] Both horizontal and vertical price fixing were originally prohibited by the Sherman Anti-Trust Act, 26 STAT. 209 (1890), 15 U.S.C. §§ 1-7 (Supp. IV 1957), but vertical price fixing was later exempted from the Sherman Act by the Miller-Tydings Act, 50 STAT. 693 (1937), 15 U.S.C. § 1 (Supp. IV 1957) and the McGuire Act, 66 STAT. 632, 15 U.S.C. § 45 (1952).

[3] However, some parts of the acts, and generally the non-signer provisions, have been held unconstitutional in Arkansas, Colorado, Florida, Georgia, Indiana, Kentucky, Michigan, Nebraska, New Mexico, Oregon, South Carolina, and Utah. See Note, 31 N.C.L. REV. 509 (1953).

[4] Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho,