Supreme Judicial Court of Massachusetts, Essex.

McGUIRE

v.

ALMY.

May 26, 1937.

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QUA, Justice.

This is an action of tort for assault and battery.   The only question of law reported is whether the judge should have directed a verdict for the defendant.

The following facts are established by the plaintiff’s own evidence: In August, 1930, the plaintiff was employed to take care of the defendant. The plaintiff was a registered nurse and was a graduate of a training school for nurses. The defendant was an insane person. Before the plaintiff was hired she learned that the defendant was a “mental case and was in good physical condition,” and that for some time two nurses had been taking care of her. The plaintiff was on “24 hour duty.” The plaintiff slept in the room next to the defendant’s room. Except when the plaintiff was with the defendant, the plaintiff kept the defendant locked in the defendant’s room. There was a wire grating over the outside of the window of that room. During the period of “fourteen months or so” while the plaintiff cared for the defendant, the defendant “had a few odd spells,” when she showed some hostility to the plaintiff and said that “she would like to try and do something to her.” The defendant had been violent at times and had broken dishes “and things like that,” and on one or two occasions the plaintiff had to have help to subdue the defendant.

On April 19, 1932, the defendant, while locked in her room, had a violent attack. The plaintiff heard a crashing of furniture and then knew that the defendant was ugly, violent and dangerous. The defendant told the plaintiff and a Miss Maroney, “the maid,” who was with the plaintiff in the adjoining room, that if they came into the defendant’s room, she would kill them. The plaintiff and Miss Maroney looked into the defendant’s room, “saw what the defendant had done,” and “thought it best to take the broken stuff away before she did any harm to herself with it.” They sent for a Mr. Emerton, the defendant’sbrother-in-law. When he arrived the defendant was in the middle of her room about ten feet from the door, holding upraised the leg of a low-boy as if she were going to strike. The plaintiff stepped into the room and walked toward the defendant, while Mr. Emerton and Miss Maroney remained in the doorway. As the plaintiff approached the defendant and tried to take hold of the defendant’s hand which held the leg, the defendant struck the plaintiff’s head with it, causing the injuries for which the action was brought.

The extent to which an insane person is liable for torts has not been fully defined in this Commonwealth. . . .

Turning to authorities elsewhere, we find that courts in this country almost invariably say in the broadest terms that an insane person is liable for his torts. As a rule no distinction is made between those torts which would ordinarily be classed as intentional and those which would ordinarily be classed as negligent, nor do the courts discuss the effect of different kinds of insanity or of varying degrees of capacity as bearing upon the ability of the defendant to understand the particular act in question or to make a reasoned decision with respect to it, although it is sometimes said that an insane person is not liable for torts requiring malice of which he is incapable. Defamation and malicious prosecution are the torts more commonly mentioned in this connection. . . . These decisions are rested more upon grounds of public policy and upon what might be called a popular view of the requirements of essential justice than upon any attempt to apply logically the underlying principles of civil liability to the special instance of the mentally deranged. Thus it is said that a rule imposing liability tends to make more watchful those persons who have charge of the defendant and who may be supposed to have some interest in preserving his property; that as an insane person must pay for his support, if he is financially able, so he ought also to pay for the damage which he does; that an insane person with abundant wealth ought not to continue in unimpaired enjoyment of the comfort which it brings while his victim bears the burden unaided; and there is also a suggestion that courts are loath to introduce into the great body of civil litigation the difficulties in determining mental capacity which it has been found impossible to avoid in the criminal field.

The rule established in these cases has been criticized severely by certain eminent text writers both in this country and in England, principally on the ground that it is an archaic survival of the rigid and formal mediaeval conception of liability for acts done, without regard to fault, as opposed to what is said to be the general modern theory that liability in tort should rest upon fault. Notwithstanding these criticisms, we think that as a practical matter, there is strong force in the reasons underlying these decisions. They are consistent with the general statements found in the cases dealing with the liability of infants for torts, . . . including a few cases in which the child was so young as to render his capacity for fault comparable to that of many insane persons . . . . Fault is by no means at the present day a universal prerequisite to liability, and the theory that it should be such has been obliged very recently to yield at several points to what have been thought to be paramount considerations of public good. Finally, it would be difficult not to recognize the persuasive weight of so much authority so widely extended.

But the present occasion does not require us either to accept or to reject the prevailing doctrine in its entirety. For this case it is enough to say that where an insane person by his act does intentional damage to the person or property of another he is liable for that damage in the same circumstances in which a normal person would be liable. This means that in so far as a particular intent would be necessary in order to render a normal person liable, the insane person, in order to be liable, must have been capable of entertaining that same intent and must have entertained it in fact. But the law will not inquire further into his peculiar mental condition with a view to excusing him if it should appear that delusion or other consequence of his affliction has caused him to entertain that intent or that a normal person would not have entertained it.

We do not suggest that this is necessarily a logical stopping point. If public policy demands that a mentally affected person be subject[ed] to the external standard for intentional wrongs, it may well be that public policy also demands that he should be subjected to the external standard for wrongs which are commonly classified as negligent, in accordance with what now seems to be the prevailing view. We stop here for the present, because we are not required to go further in order to decide this case, because of deference to the difficulty of the subject, because full and adequate discussion is lacking in most of the cases decided up to the present time, and because by far the greater number of those cases, however broad their statement of the principle, are in fact cases of intentional rather than of negligent injury.

Coming now to the application of the rule to the facts of this case, it is apparent that the jury could find that the defendant was capable of entertaining and that she did entertain an intent to strike and to injure the plaintiff and that she acted upon that intent. *See* American Law Institute Restatement, Torts, §§ 13, [14](http://www.westlaw.com/Find/Default.wl?rs=dfa1.0&vr=2.0&DB=0101589&FindType=Y&SerialNum=0294735454). We think this was enough.

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Judgment for the plaintiff on the verdict.