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CONTRIBUTION AMONG JOINT TORT FEASORS.

CONTRIBUTION AMONG JOINT TORT FEASORS.—*Oakdale Borough, Appellant,* v. *Gamble,* 201 Pa. 289, 1902, Supreme Court of Pennsylvania, January 6, 1902.—A Borough was sued for personal injuries, and defended on the ground that the negligence was the negligence of an independent contractor. (*Painter* v. *Pittsburg,* 46 Pa. 213, 1863.) The so-called independent contractor on the first trial testified that he was such, but on the second trial apparently gave a somewhat different version. A verdict being recovered against the Borough, suit was brought against the contractor. A non-suit was entered. The lower court said: "Assuming that they were jointly liable for the tort, the verdict against the Borough bars its action against Gamble, because as between joint tort feasors there is no contribution." The Supreme Court affirmed *per curiam* upon the opinion of the court below.

If A is injured by the joint negligence of B and C, he may sue either or both, and if he prove his case may recover a judg-

ment against either or both. He can, however, have only one satisfaction. If either pay or he release either, his right against the other is gone. As a rule, the one so paying must stand the loss in toto, as there is said to be *no right of contribution between joint tort feasors.* A person injured under such circumstances has it in his power, therefore, if both wrong-doers are equally responsible financially, to elect arbitrarily which one shall be made to suffer and to exonerate completely the other whose tort may have contributed equally to the plaintiff's damage. If suit be brought against the wrong-doers separately he may try whichever case he pleases, and even after obtaining judgment in one case, insist upon trial of the other and by issuing execution in the case last tried, in effect satisfy the first judgment without payment of a penny by the defendant therein. If he sue the joint tort feasors jointly he may not without amendment (*Booth* v. *Dorsey*, 202 Pa. 381, 1902) accept a non-suit as against one and proceed against the other (*Higby* v. *Pennsylvania Railroad Company*, 209 Pa. 452, 1904). In the last case mentioned the Supreme Court refused to reverse a non-suit in favor of one tort feasor where a judgment had been entered against the other tort feasor, for fear that "the record would present the spectacle of a joint suit against two alleged joint tort feasors jointly liable to the plaintiffs for but one sum, and yet there would be different judgments for different amounts against these same joint defendants." While such a record might well be regarded as "anomalous," yet the same condition might well exist where separate suits had been brought against two joint tort feasors and different judgments obtained.

One injured by a joint tort may, however, after obtaining judgment against both tort feasors in a joint action, issue execution against either one at his option and make either one pay the whole debt, in which event, as a general rule, the one so paying can recover nothing from his co-defendant. The effect of this is to make the ultimate monetary liability of defendants in certain cases depend upon the caprice or fancy of the plaintiff.

Joint tort feasors are jointly and severally liable: *Dean* v. *Railroad Company*, 129 Pa. 520; *Bunting* v. *Hoggsett*, 139 Pa. 363; *Turton* v. *Electric Co.*, 185 Pa. 406 (1898).

This arbitrary power of the plaintiff is hedged about by the restriction that if he release one of the joint tort feasors, even though he expressly reserve the right as against the other, both wrong-doers are released: *Seither* v. *Philadelphia Traction Co.*, 125 Pa. 397 (1889); *Williams* v. *Lebar*, 141 Pa. 149 (1891).

It must affirmatively appear, however, that the person released *was* a joint tort feasor. *Thomas* v. *Railroad Co.,* 194 Pa. 511 (1900).

In England the doctrine that a release of one joint tort feasor expressly reserving the right against the others, nevertheless releases the others, has been repudiated, the Court saying that the release should be regarded in the light of a "covenant not to sue," which is only effective in favor of the person named in the release. *Duck* v. *Mayen,* 62 L. J. Q. B. 69 (1892); 2 Q. B. 511.[1]

In Pennsylvania the doctrine does not apply to independent trespassers. *Gallagher* v. *Kemmerer,* 144 Pa. 509 (1891).

It was held in this state that the same rule applies to joint debtors, *i.e.,* that a release of one released all, and this principle was laid down in a case where a receipt in full was given to one of several co-debtors upon the payment of an amount less than that due. *Milliken* v. *Brown,* 1 Rawle, 391 (1829), (Todd, J., dissenting), in which the syllabus reads as follows:

"A receipt, not under seal, to one of several joint debtors for his proportion of the debt discharges the rest."

Both the propositions advanced in this case were speedily overruled, and it was decided not only that the acceptance of a less sum in payment of a greater is not a satisfaction. *Spruneberger* v. *Dentler,* 4 Watts, 126 (1835); *Rising* v. *Patterson,* 5 Whart., 316 (1839); *Kidder* v. *Kidder,* 33 Pa. 268 (1859); *Hosler* v. *Hursh,* 151 Pa. 415 (1892); *Cumber* v. *Wane,* 1 Smith's Leading Cases (8th ed.), pp. 646, 647, 652; *Water Co.* v. *Mt. Holly Springs Boro,* 10 Pa. Super. 166 (1899). See a criticism of the rule by Mr. Justice Mitchell in *Ebert* v. *Johns,* 206 Pa. 395 (1903).

But also that the release of one joint debtor does not discharge the others *unless such was the intention. Burke* v. *Noble,* 48 Pa. 168 (1864); *Greenwald* v. *Castor,* 86 Pa. 45 (1878).

The leading case on the proposition that there is no contribution between joint tort feasors is *Merryweather* v. *Nixon,* 8 Term Reports, 186 (1799), where Lord Kenyon held that "if A recover in tort against two defendants and levy the whole of the damages on one, that one cannot recover a moiety against the other for his contribution."

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[1] In Gilbert v. Finch, 61 L. R. A., 807, the Court of Errors and Appeals of New York held that settlement with one of several joint tort feasors, expressly reserving the right to pursue the others, is not technically a release which will discharge the other tort feasors from liability.

Thus the proprietor of a newspaper was denied recovery against the editor who wrote a criminal libel. *Colborn* v. *Patmore,* 1 Cr. M. and R. 73.

A promise to indemnify the proprietor was held void. *Arnold* v. *Clifford,* 2 Sumner 238.

And one embezzler was denied contribution from the other. *Miller* v. *Fenton,* 11 Paige 18.

And though the degrees of guilt are different, the true criterion of damages is the whole injury, not the respective guilt or innocence of the respective wrong-doers. *Clear* v. *Newsam,* 1 Ex. 131; 16 L. J. Ex. 296.

There is no contribution between joint tort feasors in Pennsylvania. *North Penn Railroad Company* v. *Mahoney,* 57 Pa. 187 (1868).

"To state the case briefly, it was an attempt on the part of one wrong-doer to enforce contribution from the others, who participated in the wrong. This, under all the authorities, cannot be done." *Boyer* v. *Bolender,* 129 Pa. 327, 328 (1889).

A plaintiff asking for contribution from a joint tort feasor, unlike the plaintiff in *Wright* v. *Pipe Line Co.,* 101 Pa. 204 (1882), cannot make out his case in chief without the aid of the so-called "illegal transaction," and hence falls under the ban of the maxims: "*Ex turpi causa actio non oritur,*" "who comes into equity must come with clean hands," "*in pari delicto melior est conditio defendentis,*" "who does iniquity shall not have equity." *Hershey* v. *Weiting,* 50 Pa. 244 (1865).

"It is not the province of the law to help a rogue out of his toils. The rule is to leave the parties where it finds them, giving no relief and no countenance to contracts made in violation of statutes." *Winton* v. *Freeman,* 102 Pa. 366 (1883).

"This was an attempt by plaintiff to set up his own turpitude to defeat his own debt. If the law sanctions this we would be ashamed to sit here and administer it. Fortunately it does not." *Allebach* v. *Hunsicker,* 132 Pa. 351 (1890).[2]

While these observations were made in cases involving fraud, it has been assumed that the rule prohibiting contribution amongst joint tort feasors extends to cases of negligence. Thus in *Turton* v. *Powelton Electric Company,* 185 Pa. 408 (1898), (which was afterwards said in *Weist* v. *Traction Co.,* 200 Pa. 152, 1901, *not* to be the case of a joint tort), the Court said:

"Inasmuch as joint tort feasors are jointly and severally

[2] See also Boyer v. Bolender, 129 Pa. 234 (1889).

liable for injuries caused by their torts, and *as between themselves no right of contribution exists,* the appellant company has no standing to complain of the action of the court in directing a verdict in favor of his co-defendant."

And in *Oakdale Borough* v. *Gamble,* 201 Pa. 289 (1902), the principal case, the Court said:

"Assuming that they were jointly liable for the tort the verdict against the Borough bars this action against Campbell, because *as between joint tort feasors there is no contribution.*"

In view of these cases and the general assumption that the rule extends to negligent wrongs, it is curious to note that one of the early instances of contribution in this Commonwealth was a case of damages for personal injuries.

In *Horbach* v. *Elder,* 18 Pa. 33 (1851), five persons were engaged in running a line of stages along a road, for designated parts of which, stages, horses and drivers were to be provided by each at his exclusive expense, and with the exclusive control of the same. Through the carelessness of one of the drivers the stage was overturned, and several of the passengers injured. A judgment was recovered against the one who employed the driver, and he was held entitled to recover from one of the other proprietors his proper share of the amount so paid.

"The right of contribution exists in equity," says the Court; "when all are equally bound, and are equally relieved; all therefore should contribute toward a benefit done to all."

It was argued by the plaintiff that the tort might have been waived, and the suit by the passenger brought in *assumpsit,* upon the implied promise to carry safely, but the Court lays the most stress upon the fact that the five proprietors were in effect *partners.*

Another case in which one negligent joint tort feasor was allowed contribution was *Armstrong County* v. *Clarion County,* 66 Pa. 218 (1870), where two counties jointly maintained a bridge across a creek, a person was injured on the bridge and recovered a judgment against Armstrong County, which in its turn was allowed to recover half from the other county. *Pearson* v. *Skelton,* 1 M. and W. 504, was cited by the Court, where one stage-coach proprietor had been sued for the negligence of a driver, and damages had been recovered against him. And it was held that the rule forbidding contribution "does not apply to a case where the party seeking contribution was a joint tort feasor only by inference of law, but is confined to cases where it must be presumed that the party knew he was committing an unlawful act."

Story on Partnership, Section 220, says that the rule should

not be extended to cases where the party is acting under the supposition of the entire innocence and propriety of the act, and the tort is merely one by construction or inference of law.

In *Adamson* v. *Jarvis*, 4 Bing. 66, Lord Chief Justice Best, after referring to the case of two sheriffs of Middlesex where one had paid the damages in an action for an escape and was allowed to recover from the other for contribution, said that the rule that wrong-doers cannot have redress or contribution against each other is confined to cases where the person seeking redress must be presumed to have known that he was doing an unlawful act.

In *Betts* v. *Gibbons*, 2 Ad. and El. 29, it is said: "This case bears no analogy to those in which an indemnity is claimed from acts obviously unlawful like breaches of peace, nor to cases in which the conduct of the parties is in contravention to public policy. It is a mere interference with a particular contract. The defendant requests the plaintiff to do an act which is at the time equivocal. . . . Here there is nothing clearly illegal, . . . and the defendant is therefore liable." . .

Contribution has been said to be "bottomed and fixed on general principles of natural justice and does not spring from contract." *Deering* v. *Earle of Winchelse*, 1 Cox 318.

Recent examples of its application in this state are found in *Shillito* v. *Shillito*, 160 Pa. 167 (1894); *Haverford* v. *Fire Association*, 180 Pa. 522 (1897).

Why should not a joint feasor be entitled to contribution? An answer is given in *Peck* v. *Ellis*, 2 Johnson (N. Y.) 131 (1815), where the chancellor said:

"The civil law would not allow any action for contribution between defendants condemned in damages for a joint offence or cause of action arising *ex delicto*. The defendant on whom the whole was levied had no remedy over. The law would not recognize any rights or obligations of co-partnership in an *association for mischief*."

This "association of mischief" might be likened to what the Roman jurist called "Societas Leonina" in allusion to the fabled huting partnership between the lion and other beasts. *Cooper* v. *Tappan*, 9 Wis. 367.

The chancellor, in *Peck* v. *Ellis*, goes on to say: "The French law is more indulgent and gives an action to one co-trespasser who has paid the whole debt. (This is also the law of Germany.) I doubt much the wisdom of this indulgence. Public policy speaks loudly against it. There would be no safety to property if a large combination of trespassers were entitled to assistance of courts of justice in the apportionment

of damages. The knowledge that each individual is responsible for the whole constitutes the great check."

This reasoning, however, only applies to cases where the transaction is actually illegal or void, or where the fraud is so great that on moral grounds the Courts will not entertain a suit for the relief of the malfeasors. *Power* v. *Hoeg,* 19 W. R. 916 (1866).

Nor does the rule extend to a case in which there is any *bona fide* doubt whether in point of law the act was authorized. *Betts* v. *Gibbons,* 2 A. and E. 257.

Where the joint author of a *quasi delict* whose acts or omissions are not tainted with fraud or moral delinquency whereby they partake of the nature of a *delict,* has paid the entire judgment for which he is jointly and severally liable, he has by the law of Scotland, a right of recourse against his co-delinquents. *Palmer* v. *Wick Steam Shipping Company* (1894), A. C. 318; 6 R. 245; 71 L. T., 163 H. L. (Sc.)

In that case, the appellant, a stevedore, was engaged in discharging pig iron from the respondent's ship when one of his workmen was killed by the fall of a block, part of the ship's tackle. The family of the deceased brought actions, which were conjoined, against the respondent, alleging against the former, the supplying of weak tackles, and against the latter recklessness and negligence in the use of the same. The jury found both defenders liable and assessed the damages at six hundred pounds. The Court applied the verdict by a decree against the appellant and respondents jointly and severally for the full amount of the damages and costs. The respondents paid both demands and took an assignation of the decrees. The appellant refused to pay his moiety on the ground that he and the respondents being joint wrong-doers, the respondents had no claim of relief. It was held that the appellant was liable. Lord Halsbury said:

"The difficulty which has arisen is, I think, one of words. The word '*tort*' in English law is not always used with strict logical precision. The same act may sometimes be treated as a breach of contract and sometimes as a tort. But '*tort*' in its strictest sense, as it seems to me, ought to exclude the right of contribution, which would imply a *presumed contract to subscribe toward the commission of a wrong.* It seems to me, therefore, that the distinction between classes of torts or quasi-delicts and delicts proper, is reasonable and just, though I doubt whether in dealing with an English case one would be at liberty to adopt such a distinction, but I think that in England the transmutation of a cause of action into a judgment

would not prevent the application of the principle of *Merryweather* v. *Nixon.*"

Betts v. *Gibbons*, 2 A. and E., 57, 29 E. C. L. 29, was a case in which a carrier by command of the shipper who promised to indemnify him, refused to deliver goods to the owner. It was held that he could recover indemnity. Denman, C. J., said:

"The case of *Merryweather* v. *Nixon*, 8 T. R. 186, seems to me to have been strained beyond what the decision will bear. The general rule is that between wrong-doers there is neither indemnity nor contribution; the exception is where the act is not clearly illegal in itself."

In *Jacobs* v. *Pollard*, 57 American Decisions, 106 (Mass.), 1852, the Court said:

"It is only where a person knows, or must be presumed to know, that his act is unlawful, that the law will refuse to aid him in seeking an indemnity or contribution. It is the unlawful intention to violate another's rights, or a willful ignorance and disregard of those rights, which deprives a party of his legal remedy in such cases. It has, therefore, been held that the rule of the law that wrong-doers cannot have redress or contribution against each other is confined to those cases where the person claiming redress or contribution knew, or must be presumed to have known, that the act for which he has been mulcted in damages was unlawful. Lord Kenyon, in the leading case of Merryweather v. Nixon, 8 T. R., 186, suggests this distinction, which the recent cases have more fully developed, and the rule is now always held subject to the limitation above stated: Betts v. Gibbons, 2 Ad. & El. 57, 65; Pearson v. Skelton, I Mee & W., 504; Adamson v. Jarvis, 4 Bing, 72; Wooley v. Batte, 2 Car. & P. 417; Humphrys v. Pratt, 2 Dow & C., 288; 2 Saund. Pl. & Ev., 2nd ed., 413, 414; Coventry v. Barton, 17 Johns, 142 (8 Am. Dec. 376); Avery v. Halsey, 14 Pick. 174. See also Battersey's case, Winch, 48."

In *Bailey* v. *Bussing*, 28 Conn. 455, the owner of a coach who had been held liable for the negligence of the driver, sued him for contribution. It would seem that the plaintiff was entitled to full indemnity. Mr. Justice Ellsworth, after reviewing the English cases, says:

"The reason assigned in the books for denying contribution among trespassers is that no right of action can be based on a violation of law, that is, where the act is known to be such or apparently of that character. A guilty trespasser, it is said, cannot be allowed to appeal to the law for an indemnity, for he has placed himself without its pale by condemning it, and must ask in vain for its interposition in his behalf. If, however, he was innocent of an illegal purpose, ignorant of the nature of the act, which was apparently correct and proper, the rule will change with its reason, and he may then have an indemnity, or as the case may be, a contribution, as a servant yielding obedience to the command of his master, or an agent to his principal, in what appears to be right, an assistant rendering aid to a sheriff in the execution of process, or common carriers, to whom is committed and who innocently carry away, property

which has been stolen from the owner. The form of action, then, is not the criterion. We must look further. We must look for personal participation, personal culpability, personal knowledge. If we do not find these circumstances but only perceive a liability in the eye of the law, growing out of a mere relation to the nerpetrator of the wrong, the maxim of the law tnat there is no contribution among wrongdoers is not to be applied. Indeed, we think this maxim too much broken in upon at this day to be called with propriety a rule of law, so many are the exceptions to it, as in the cases of master and servant, principal and agent, partners, joint operators, carriers, and the like."

See *Smith* v. *Foran,* 43 Conn. 244; *Grand Trunk Railroad Co.* v. *Lathem,* 63 Maine 177.

In *Baird* v. *Steel Works,* 12 Philadelphia 255 (1877), Judge Hare said:

"It is an established principle that one of several tort feasors is not entitled to an indemnity from the others against the consequence of the wrong in which all have shared. The rule does not permit of an exception where the alleged malfeasance is wilful, and both parties are equally in default."

A judgment creditor who points out goods to the sheriff as those of the debtor is liable to indemnify the sheriff for damages recovered by the real owner. *Humphreys* v. *Pratt,* 2 Dow. Cl. 288.

To the same effect is *Lowell* v. *Boston, etc., R. Corp.* 23 Pick. (Mass.), 32; 34 Am. Dec. 33, where the Court said:

"In respect to offenses in which is involved any moral delinquency or turpitude, all parties are deemed equally guilty, and Courts will not inquire into their relative guilt. But where the offense is merely *malum prohibitum,* and is in no respect immoral it is not against the policy of the law to inquire into the relative delinquency of the parties, and to administer justice between them, although both parties are wrong-doers."

In Pennsylvania there is a primary obligation upon the owner of property to pave his sidewalks and a secondary obligation on the part of the municipality to see that the sidewalks are paved. Prior to *Dutton* v. *Lansdowne Borough,* 198 Pa. 563 (1901), (reversing 10 Pa. Superior 204), it had been the settled practice to join both the city and the property owner in an action of damages for failure to keep the sidewalks in safe repair. Of course, the property owner was primarily liable and could be sued, and if responsible was held without joining the city. *Mintzer* v. *Hogg,* 192 Pa. 144 (1899).

Often, however, the city was sued without joining the property owner. In *Brookville* v. *Arthurs,* 130 Pa. 501 (1890), a borough that had been held liable for an accident upon the property of the paved street, sued the property owner, and was

denied recovery below, but the Supreme Court reversed. It was urged that the suit was in effect for a contribution between joint tort feasors, but this contention was negatived, the Court saying that the suit was brought "to recover from the defendant the amount which the plaintiff was compelled to pay in consequence of his (defendant's) neglect to do what he should have done and expressly promised to do." [3] This right of recovery by the municipality under such circumstances is the settled law of the State, and by notifying the property owner, the judgment in the action against the city is made conclusive against the property owner. *Reading* v. *Reiner,* 167 Pa. 41 (1895); *Brookville* v. *Arthurs,* 152 Pa. 334 (1893).

It is not, however, regarded as a contribution because the whole amount is recovered and the action is brought in trespass, whereas *assumpsit* would lie for contribution. It is in the nature of an action by one secondarily liable, or liable for supervision only, to recover from one who neglects a duty for which he is primarily responsible.

Likened to these cases is the case of *Philadelphia Co.* v. *Central Traction Co.,* 165 Pa. 456 (1895), where a natural gas company was allowed recovery against a street railway company whose negligent excavation caused an explosion for which the natural gas company had been held liable in damages. It was formerly held that a passenger injured by a carrier's and another's concurrent negligence could not recover as for a joint tort. *Thorogood* v. *Bryan,* 8 C. B. 115 (65 E. C. L. 114); *Lockhart* v. *Lichtenthaler,* 46 Pa. 151 (1863); *Phila. and R. Co.* v. *Boyer,* 97 Pa. 91 (1881)

The following cases are to the opposite effect: *Bunting* v. *Hoggsett,* 139 Pa. 363 (1891); *Dean* v. *R. R. Co.,* 129 Pa. 520 (1889); *Downey* v. *Traction Co.,* 161 Pa. (1894).

The law as to joint torts in this state has, however, been revolutionized not only by *Dutton* v. *Lansdowne Borough,*

[3] For other cases where indemnity was recovered from the person primarily responsible see: Brooklyn v. Brooklyn City R. Co., 47 N. Y. 487. 7 Am. Rep. 460; Chesapeake &c. Canal Co. v. Allegany County. 57 Md. 201; Chicago v. Robbins, 2 Black (U. S.) 418. 4 Wall (U. S.) 657; Gridley v. Bloomington, 68 Ill. 47; Portland v. Richardson. 54 Me. 46, 89 Am. Dec. 720; Milford v. Holbrook, 9 Allen (Mass.) 17. 85 Am. Dec. 735; Lowell v. Boston &c. R. Corp. 23 Pick (Mass.) 24, 34 Am. Dec. 33; Gray v. Boston Gas Light Co. 114 Mass. 140, 19 Am. Rep. 324; Churchill v. Holt, 127 Mass., 165 34 Am. Rep. 355; Campbell v. Somerville, 114 Mass, 334; Minneapolis Mills Co., Wheeler. 31 Minn. 121; Newbury v. Connecticut &c. Rivers R. Co. 25 Vt. 377; Nashua Iron &c. Co. v. Worcester &c. Railroad Co. 62 N. H. 159.

Recovery was denied in the following cases: Spalding v. Oaks, 42 Vt. 343; Silvers v. Nerdlinger, 30 Ind. 53; Churchill v. Holt, 131 Mass. 67, 41 Am. Rep. 191.

Supra, but by *Wiest* v. *Traction Co.*, 200 Pa. 148 (1901), where a person injured by falling over girders in the street sued the contractor, the Traction Co., and the city on the theory that it was the duty of all three to have kept the place free from obsruction, but it was said that there was no joint tort.[4] *Wiest* v. *Traction Co.*, is said to be in conflict with previous decisions. 13 P. and L. Dig. of Decisions, 21848, citing *Durkin* v. *Co.*, 171 Pa. 193; *Laverty* v. *Vanarsdale*, 65 Pa. 507; *Fillman* v. *Ryon*, 168 Pa. 484 (1895).

In *Wiest* v. *Traction Company*, 200 Pa. 152 (1901), it is said:

"But if no *concert of action* is shown, and therefore no joint tort, and the case is one of separate tort or torts, upon the part of several defendants, the action is not sustained, and there should be no verdict against any one."

The usual right of amendment is recognized. *Roland* v. *Philadelphia*, 202 Pa. 50 (1902); *Booth* v. *Dorsey*, 202 Pa. 381 (1902).

Prior to these recent tort cases it had been supposed that wherever it was the duty of two or more persons to do or refrain from doing any act or acts, and some one is injured by the breach of such duty, recovery could be had against both, as for a joint tort, the inquiry being, "Would plaintiff's injury have happened but for the negligence of both defendants?"

The measure of the duty of the different defendants need not have been the same; one might be, as in the carrier cases, an insurer of safety, and the other only bound to use ordinary care. Nor need the act or omission have been the same, provided that the defendants together contributed directly to the accident, which would not have occurred if either had exercised due care.

Now, however, there must be "concert of action." Taken literally, this would seem to exclude the possibility of joint tort except in conspiracy cases, malicious and wilful injuries, and cases against partners or joint owners. It would also seem to require the overruling of *Bunting* v. *Hoggsett*, 139 Pa. 363, and a return to the doctrine of *Thorogood* v. *Bryan*, 8 C. B. 115 (65 Ech. 114), although that case itself has been overruled in England. The *Bernina Mills* v. *Armstrong*, 12 Prob. and D. 58.

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[4] An interesting inquiry might arise if the plaintiff, in such a case should give a release to one of the defendants, reserving all his rights against the others. Would the others be releasd?
See Thomas v. Railroad Co., 194 Pa. 511 (1900).

We do not apprehend, however, that the doctrine will be pushed that far. The inquiry, therefore, as to the advisability of permitting contribution among joint tort feasors is not yet of merely academic interest. It is submitted that the fact that both defendants have been guilty of something which the law loosely calls a "tort" should not deprive both defendants of all rights *inter sese,* unless the delict involve moral turpitude or possibly its legal equivalent, the breach of some penal law. A mere *quasi-delict,* such as participation in carelessness, should not so far place one beyond the pale as to permit the injured person to arbitrarily take the law in his own hands, and by choosing which wrong-doer to sue, make his caprice the measure of each defendant's ultimate liability. Where a person participates in a fraud or a conspiracy, it can properly be said that "it is not the province of the law to help a rogue out of his toils." But where the *delict* or *quasi-delict* is a mere unintentional or unconscious breach of legal duty involving neither intent nor malice, it imposes a great and unnecessary hardship upon one defendant to make him bear the whole loss, even though it might never have happened at all, save for the concurrent negligence of another. It is not enough to say that in such a case, after paying, the plaintiff in an action for contribution would be obliged to confess that his own negligence contributed to and helped to cause the injury. Nor is it an answer that close cases may often arise involving the *degree of carelessness* of several joint tort feasors. The principle of *Horback* v. *Elder,* 18 Pa. 33 (1851), and *Armstrong* v. *Clarion,* 66 Pa. 218 (1870) should be extended, not only to partners and to joint owners, but to all mere negligent *quasi-delicts,* where, several being liable, one pays in full, the right of contribution should exist.

Ira Jewell Williams.