Supreme Court of Washington, Department 2.
Ruth GARRATT, Appellant,
v.
Brian DAILEY, a Minor, by George S. Dalley, his Guardian ad Litem, Respondent.

HILL, Justice.

The liability of an infant for an alleged battery is presented to this court for the first time. Brian Dailey (age five years, nine months) was visiting with Naomi Garratt, an adult and a sister of the plaintiff, Ruth Garratt, likewise an adult, in the back yard of the plaintiff's home, on July 16, 1951. It is plaintiff's contention that she came out into the back yard to talk with Naomi and that, as she started to sit down in a wood and canvas lawn chair, Brian deliberately pulled it out from under her. The only one of the three persons present so testifying was Naomi Garratt. (Ruth Garratt, the plaintiff, did not testify as to how or why she fell.) The trial court, unwilling to accept this testimony, adopted instead Brian Dailey's version of what happened, and made the following findings:

'III. * * * that while Naomi Garratt and Brian Dailey were in the back yard the plaintiff, Ruth Garratt, came out of her house into the back yard. Some time subsequent thereto defendant, Brian Dailey, picked up a lightly built wood and canvas lawn chair which was then and there located in the back yard of the above described premises, moved it sideways a few feet and seated himself therein, at which time he discovered the plaintiff, Ruth Garratt, about to sit down at the place where the lawn chair had formerly been, at which time he hurriedly got up from the chair and attempted to move it toward Ruth Garratt to aid her in sitting down in the chair; that due to the defendant's small size and lack of dexterity he was unable to get the lawn chair under the plaintiff in time to prevent her from falling to the ground. That plaintiff fell to the ground and sustained a fracture of her hip, and other injuries and damages as hereinafter set forth.

'IV. That the preponderance of the evidence in this case establishes that when the defendant, Brian Dailey, moved the chair in question *he did not have any wilful or unlawful purpose* in doing so; that *he did not have any intent to injure the plaintiff, or any intent to bring about any unauthorized or offensive contact with her person* or any objects appurtenant thereto; that the circumstances which immediately preceded the fall of the plaintiff established that the defendant, *Brian Dailey, did not have purpose, intent or design to perform a prank or to effect an assault and battery upon the person of the plaintiff*.' (Italics ours, for a purpose hereinafter indicated.)

It is conceded that Ruth Garratt's fall resulted in a fractured hip and other painful and serious injuries. To obviate the necessity of a retrial in the event this court determines that she was entitled to a judgment against Brian Dailey, the amount of her damage was found to be $11,000. Plaintiff appeals from a judgment dismissing the action and asks for the entry of a judgment in that amount or a new trial.

The authorities generally, but with certain notable exceptions, see Bohlen, 'Liability in Tort of Infants and Insane Persons,' 23 Mich.L.Rev. 9, state that when a minor has committed a tort with force he is liable to be proceeded against as any other person would be.

In our analysis of the applicable law, we start with the basic premise that Brian, whether five or fifty-five, must have committed some wrongful act before he could be liable for appellant's injuries.

It is urged that Brian's action in moving the chair constituted a battery. A definition (not all-inclusive but sufficient for out purpose) of a battery is the in-

tentional infliction of a harmful bodily contact upon another. The rule that determines liability for battery is given in 1 Restatement, Torts, 29, § 13, as:

'An act which, directly or indirectly, is the legal cause of a harmful contact with another's person makes the actor liable to the other, if

'(a) the act is done with the intention of bringing about a harmful or offensive contact or an apprehension thereof to the other or a third person, and

'(b) the contact is not consented to by the other or the other's consent thereto is procured by fraud or duress, and

'(c) the contact is not otherwise privileged.'

We have in this case no question of consent or privilege. We therefore proceed to an immediate consideration of intent and its place in the law of battery. In the comment on clause (a), the Restatement says:

'*Character of actor's intention.* In order that an act may be done with the intention of bringing about a harmful or offensive contact or an apprehension thereof to a particular person, either the other or a third person, the act must be done for the purpose of causing the contact or apprehension or with knowledge on the part of the actor that such contact or apprehension is substantially certain to be produced.'

We have here the conceded volitional act of Brian, *i. e.*, the moving of a chair. Had the plaintiff proved to the satisfaction of the trial court that Brian moved the chair while she was in the act of sitting down, Brian's action would patently have been for the purpose or with the intent of causing the plaintiff's bodily contact with the ground, and she would be entitled to a judgment against him for the resulting damages.

The plaintiff based her case on that theory, and the trial court held that she failed in her proof and accepted Brian's version of the facts rather than that given by the eyewitness who testified for the plaintiff. After the trial court determined that the plaintiff had not established her theory of a battery (*i. e.*, that Brian had pulled the chair out from under the plaintiff while she was in the act of sitting down), it then became concerned with whether a battery was established under the facts as it found them to be.

In this connection, we quote another portion of the comment on the 'Character of actor's intention,' relating to clause (a) of the rule from the Restatement heretofore set forth:

'It is not enough that the act itself is intentionally done and this, even though the actor realizes or should realize that it contains a very grave risk of bringing about the contact or apprehension. Such realization may make the actor's conduct negligent or even reckless but unless he realizes that to a substantial certainty, the contact or apprehension will result, the actor has not that intention which is necessary to make him liable under the rule stated in this section.'

A battery would be established if, in addition to plaintiff's fall, it was proved that, when Brian moved the chair, he knew with substantial certainty that the plaintiff would attempt to sit down where the chair had been. If Brian had any of the intents which the trial court found, in the italicized portions of the findings of fact quoted above, that he did not have, he would of course have had the knowledge to which we have referred. The mere absence of any intent to injure the plaintiff or to play a prank on her or to embarrass her, or to commit an assault and battery on her would not absolve him from liability if in fact he had such knowledge. Without such knowledge, there would be nothing wrongful about Brian's act in moving the chair and, there being no wrongful act, there would be no liability.

While a finding that Brian had no such knowledge can be inferred from the findings made, we believe that before the plaintiff's action in such a case should be dismissed there should be no question but that the trial court had passed upon that issue; hence, the case should be remanded for clarification of the findings to specifically cover the question of Brian's knowledge, because intent could be inferred therefrom. If the court finds that he had such knowledge the necessary intent will be established and the plaintiff will be entitled to recover, even though there was no purpose to injure or embarrass the plaintiff. Vosburg v. Putney, supra. If Brian did not have such knowledge, there was no wrongful act by him and the basic premise of liability on the theory of a battery was not established.

It will be noted that the law of battery as we have discussed it is the law applicable to adults, and no significance has been attached to the fact that Brian was a child less than six years of age when the alleged battery occurred. The only circumstance where Brian's age is of any consequence is in determining what he knew, and there his experience, capacity, and understanding are of course material.

From what has been said, it is clear that we find no merit in plaintiff's contention that we can direct the entry of a judgment for $11,000 in her favor on the record now before us.

Nor do we find any error in the record that warrants a new trial.

The cause is remanded for clarification, with instructions to make definite findings on the issue of whether Brian Dailey knew with substantial certainty that the plaintiff would attempt to sit down where the chair which he moved had been, and to change the judgment if the findings warrant it.

Remanded for clarification.

Supreme Court of Florida.
Betty Joyce SPIVEY and Dallas H. Spivey, her husband, Petitioners,
v.
Phillip BATTAGLIA, Respondent.

No. 40696.
Jan. 26, 1972.
Rehearing Denied March 29, 1972.

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Petitioner (plaintiff in the trial court) and respondent (defendant) were employees of Battaglia Fruit Co. on January 21, 1965. During the lunch hour several employees of Battaglia Fruit Co., including petitioner and respondent, were seated on a work table in the plant of the company. Respondent, in an effort to tease petitioner, whom he knew to be shy, intentionally put his arm around petitioner and pulled her head toward him. Immediately after this 'friendly unsolicited hug,' petitioner suffered a sharp pain in the back of her neck and ear, and sharp pains into the base of her skull. As a result, petitioner was paralyzed on the left side of her face and mouth.

An action was commenced in the Circuit Court of Orange County, Florida, wherein the petitioners, Mr. and Mrs. Spivey, brought suit against respondent for, (1) negligence, and (2) assault and battery. Respondent, Mr. Battaglia, filed his answer raising as a defense the claim that his 'friendly unsolicited hug' was an assault and battery as a matter of law and was barred by the running of the two-year statute of limitations on assault and battery. Respondent's motion for summary judgment was granted by the trial court on this basis. The district court affirmed on the authority of McDonald v. Ford, Supra.

The question presented for our determination is whether petitioner's action could be maintained on the negligence count, or whether respondent's conduct amounted to an assault and battery as a matter of law, which would bar the suit under the two-year statute (which had run).

In McDonald the incident complained of occurred in the early morning hours in a home owned by the defendant. While the plaintiff was looking through some records, the defendant came up behind her, laughingly embraced her and, though she resisted, kissed her hard. As the defendant was hurting the plaintiff continued to his embrace, the plaintiff continued to struggle violently and the defendant continued to laugh and pursue his love-making attempts. In the process, plaintiff struck her face hard upon an object that she was unable to identify specifically. With those facts before it, the district court held that what actually occurred was an assault and battery, and not negligence. The court quoted with approval from the Court of Appeals of Ohio in Williams v. Pressman, 113 N.E.2d 395, at 396 (Ohio App.1953):

'. . . an assault and battery is not negligence, for such action is intentional, while negligence connotes an unintentional act.'

The intent with which such a tort liability as assault is concerned is not necessarily a hostile intent, or a desire to do harm. Where the defendant would believe that a particular result was substantially certain to follow, he will be held in the eyes of the law as though he had intended it. It would thus be an assault (intentional). However, the knowledge and appreciation of a Risk, short of substantial certainty, is not the equivalent of intent. Thus, the distinction between intent and negligence boils down to a matter of degree. 'Apparently the line has been drawn by the courts at the point where the known danger ceases to be only a foreseeable risk which a reasonable man would avoid (negligence), and becomes a substantial certainty to the actor.' In the latter case, the intent is legally implied and becomes and assault rather than unintentional negligence.

The distinction between the unsolicited kisses in McDonald, supra, and the unsolicited hug in the present case turns upon this question of intent. In McDonald, the court, finding an assault and battery, necessarily had to find initially that the results of the defendant's acts were 'intentional.' This is a rational conclusion in view of the struggling involved there. In the instant case, the DCA must have found the same intent. But we cannot agree with that finding in these circumstances. It cannot be said that a reasonable man in this defendant's position would believe that the bizarre results herein were 'substantially certain' to follow. This is an unreasonable conclusion and is a misapplication of the rule in McDonald. This does not mean that he does not become liable for such unanticipated results, however. The settled law is that a defendant becomes liable for reasonably foreseeable consequences, though the exact results and damages were not contemplated.

Acts that might be considered prudent in one case might be negligent in another. Negligence is a relative term and its existence must depend in each case upon the particular circumstances which surrounded the parties at the time and place of the events upon which the controversy is based.

The trial judge committed error when he granted summary final judgment in favor of the defendant. The cause should have been submitted to the jury with appropriate instructions regarding the elements of negligence. Accordingly, certiorari is granted; the decision of the district court is hereby quashed and the cause is remanded with directions to reverse the summary final judgment.

It is so ordered.

Cole v Turner

1704

At Nisi Prius, upon evidence in trespass for assault and battery, Holt C.J. declared, 1. That the least touching of another in anger is a battery. 2. If two or more meet in a narrow passage, and without any violence or design of harm, the one touches the other gently, it is no battery. 3. If any of them use violence against the other, to force his way in a rude inordinate manner, it is a battery; or any struggle about the passage, to that degree as may do hurt, is a battery. Vid. Bro. Tresp. 236. 7 E. 4,26. 22 Ass. 60. 3 H. 4, 9.

Note; It was in action of battery by husband and wife, for a battery upon the husband and wife, ad dampnum ipsorum; and though the plaintiff had a verdict, yet the Chief Justice said, he should never have judgment. And judgment was after arrested above upon that exception.

Court of Appeals of Indiana.
Mable WALLACE, Appellant–Plaintiff,
v.
Harriet ROSEN and Indianapolis Public Schools, Appellees–Defendants.

No. 49A02–0106–CV–419.
March 22, 2002.

Mable Wallace appeals the jury verdict in favor of Indianapolis Public Schools (IPS) and Harriet Rosen, a teacher for IPS. On appeal, Wallace raises the following issues:

> I. Whether the trial court erred in refusing to give her tendered jury instruction regarding battery.

We affirm.

FACTS AND PROCEDURAL HISTORY

In 1994, Rosen was a teacher at Northwest High School in Indianapolis. On April 22, 1994, the high school had a fire drill while classes were in session. The drill was not previously announced to the teachers and occurred just one week after a fire was extinguished in a bathroom near Rosen's classroom.

On the day the alarm sounded, Wallace was at the high school delivering homework to her daughter Lalaya. Because Wallace was recovering from foot surgery and Lalaya's class was on the second floor, Lalaya's boyfriend Eric Fuqua accompanied Wallace up the stairs. Wallace and Fuqua were near the top of the staircase when they saw Lalaya and began to speak with her. Jamie Arnold, a student who knew Lalaya and her mother, joined the conversation. The alarm then sounded and students began filing down the stairs while Wallace took a step or two up the stairs to the second floor landing.

In response to the alarm, Rosen escorted her class to the designated stairway and noticed three or four people talking together at the top of the stairway and blocking the students' exit. Rosen did not recognize any of the individuals but approached "telling everybody to move it." *Transcript* at 35. Wallace, with her back to Rosen, was unable to hear Rosen over the noise of the alarm and Rosen had to touch her on the back to get her attention. *Id.* at 259. Rosen then told Wallace, "you've got to get moving because this is a fire drill." *Id.* 259.

At trial, Wallace testified that Rosen pushed her down the stairs. *Id.* at 128. Rosen denied pushing Wallace and testified that Wallace had not fallen, but rather had made her way down the stairs unassisted and without losing her balance. *Id.* at 265–66.

At the close of the trial, Wallace tendered an instruction concerning civil battery. Over Wallace's objection, the court refused to read the instruction to the jury. IPS and Rosen tendered an instruction concerning the defense of incurred risk on the basis that Wallace had continued up the stairs after hearing the alarm, had stopped at the landing to talk, and had blocked the students' exit. Over Wallace's objection, the court gave the incurred risk instruction. The jury found in favor of IPS and Rosen, and Wallace now appeals.

DISCUSSION AND DECISION

I. Battery Instruction

Wallace first argues that it was error for the trial court to refuse to give the jury the following tendered instruction pertaining to battery:

> A battery is the knowing or intentional touching of one person by another in a rude, insolent, or angry manner.

Any touching, however slight, may constitute an assault and battery.

Also, a battery may be recklessly committed where one acts in reckless disregard of the consequences, and the fact the person does not intend that the act shall result in an injury is immaterial.

The Indiana Pattern Jury Instruction for the intentional tort of civil battery is as follows: "A battery is the knowing or intentional touching of a person against [his] [her] will in a rude, insolent, or angry manner." 2 *Indiana Pattern Jury Instructions (Civil)* 31.03 (2d ed. Revised 2001) Battery is an intentional tort. *Boruff v. Jesseph*, 576 N.E.2d 1297, 1300 (Ind.Ct.App.1991). In discussing intent, Professors Prosser and Keeton made the following comments:

In a loose and general sense, the meaning of 'intent' is easy to grasp. As Holmes observed, even a dog knows the difference between being tripped over and being kicked. This is also the key distinction between two major divisions of legal liability—negligence and intentional torts....

[I]t is correct to tell the jury that, relying on circumstantial evidence, they may infer that the actor's state of mind was the same as a reasonable person's state of mind would have been. Thus, ... the defendant on a bicycle who rides down a person in full view on a sidewalk where there is ample room to pass may learn that the factfinder (judge or jury) is unwilling to credit the statement, "I didn't mean to do it."

On the other hand, the mere knowledge and appreciation of a risk—something short of substantial certainty—is not intent. The defendant who acts in the belief or consciousness that the act is causing an appreciable risk of harm to another may be negligent, and if the risk is great the conduct may be characterized as reckless or wanton, but it is not an intentional wrong. In such cases the distinction between intent and negligence obviously is a matter of degree. The line has to be drawn by the courts at the point where the known danger ceases to be only a foreseeable risk which a reasonable person would avoid, and becomes in the mind of the actor a substantial certainty.

The intent with which tort liability is concerned is not necessarily a hostile intent, or a desire to do any harm. Rather it is an intent to bring about a result which will invade the interests of another in a way that the law forbids. The defendant may be liable although intending nothing more than a good-natured practical joke, or honestly believing that the act would not injure the plaintiff, or even though seeking the plaintiff's own good.

W. PAGE KEETON et al., PROSSER AND KEETON ON THE LAW OF TORTS, § 8, at 33, 36–37 (5th ed. 1984) (footnotes omitted).

Wallace, Lalaya, and Fuqua testified that Rosen touched Wallace on the back causing her to fall down the stairs and injure herself. For battery to be an appropriate instruction, the evidence had to support an inference not only that Rosen intentionally touched Wallace, but that she did so in a rude, insolent, or angry manner, i.e., that she intended to invade Wallace's interests in a way that the law forbids.

Professors Prosser and Keeton also made the following observations about the intentional tort of battery and the character of the defendant's action:

[I]n a crowded world, a certain amount of personal contact is inevitable and must be accepted. *Absent expression to the contrary, consent is assumed to all those ordinary contacts which are customary and reasonably necessary to the common intercourse of life, such as a tap on the shoulder to attract atten-*

tion, a friendly grasp of the arm, or a casual jostling to make a passage....

The time and place, and the circumstances under which the act is done, will necessarily affect its unpermitted character, and so will the relations between the parties. A stranger is not to be expected to tolerate liberties which would be allowed by an intimate friend. But unless the defendant has special reason to believe that more or less will be permitted by the individual plaintiff, the test is what would be offensive to an ordinary person not unduly sensitive as to personal dignity.

KEETON et al., § 9, at 42 (emphasis added).

During the trial, Wallace gave the following testimony concerning the manner in which Rosen touched her:

Q [Rosen] took both hands and placed them on your shoulder blades?

A Not across my shoulder. She had her finger tips [sic] and my shoulder, and turned me around like, and moving it [sic].

Q Which way did she turn you?

A She turned me—I was going up when she turned me. She turned me towards the stairwells.

Q So, you're standing here, hands come on, you're turned. Are you turned this way towards the wall? Or this way towards the open stairs?

A Towards the open stairs.

Q And, in fact, your testimony is that she took her hands, both of them, placed them on your shoulders or approximately here.

A Um-hum. (affirmative response).

Q Turned you 180 degrees around?

A She didn't force turn me. But she put her hands there, and turned me and told me to move it.

Q And she did so 180 degrees?

A Not to 180 degrees, no.

Q Half that?

A Yeah, half that.

Q Okay, about 90. So now you're like this. Now where is Ms. Rosen?

A She's still standing up there.

...

Q What happened next, Ms. Wallace?

A That's when I slipped. I turned around—when she turned me around, that's when I slipped. Because one of my—my left foot that I had the surgical [sic] on, that's when I slipped.

Transcript at 126–28.

Viewed most favorably to the trial court's decision refusing the tendered instruction, the foregoing evidence indicates that Rosen placed her fingertips on Wallace's shoulder and turned her 90° toward the exit in the midst of a fire drill. The conditions on the stairway of Northwest High School during the fire drill were an example of Professors Prosser and Keeton's "crowded world." Individuals standing in the middle of a stairway during the fire drill could expect that a certain amount of personal contact would be

inevitable. Rosen had a responsibility to her students to keep them moving in an orderly fashion down the stairs and out the door. Under these circumstances, Rosen's touching of Wallace's shoulder or back with her fingertips to get her attention over the noise of the alarm cannot be said to be a rude, insolent, or angry touching. Wallace has failed to show that the trial court abused its discretion in refusing the battery instruction.

Affirmed.

Supreme Court of Texas.
Emmit E. FISHER, Petitioner,
v.
CARROUSEL MOTOR HOTEL, INC., et al., Respondents.

Dec. 27, 1967.

This is a suit for an alleged assault and battery. The plaintiff Fisher was a mathematician with the Data Processing Division of the Manned Spacecraft Center, an agency of the National Aeronautics and Space Agency, commonly called NASA, near Houston. The defendants were the Carrousel Motor Hotel, Inc., located in Houston, the Brass Ring Club, which is located in the Carrousel, and Robert W. Flynn, who as an employee of the Carrousel was the manager of the Brass Ring Club. Flynn died before the trial, and the suit proceeded as to the Carrousel and the Brass Ring. Trial was to a jury which found for the plaintiff Fisher. The trial court rendered judgment for the defendants notwithstanding the verdict. The Court of Civil Appeals affirmed. The questions before this Court are whether there was evidence that an actionable battery was committed.

The plaintiff Fisher had been invited by Ampex Corporation and Defense Electronics to a one day's meeting regarding telemetry equipment at the Carrousel. The invitation included a luncheon. The guests were asked to reply by telephone whether they could attend the luncheon, and Fisher called in his acceptance. After the morning session, the group of 25 or 30 guests adjourned to the Brass Ring Club for lunch. The luncheon was buffet style, and Fisher stood in line with others and just ahead of a graduate student of Rice University who testified at the trial. As Fisher was about to be served, he was approached by Flynn, who snatched the plate from Fisher's hand and shouted that he, a Negro, could not be served in the club. Fisher testified that he was not actually touched, and did not testify that he suffered fear or apprehension of physical injury; but he did testify that he was highly embarrassed and hurt by Flynn's conduct in the presence of his associates.

The jury found that Flynn 'forceably dispossessed plaintiff of his dinner plate' and 'shouted in a loud and offensive manner' that Fisher could not be served there, thus subjecting Fisher to humiliation and indignity. It was stipulated that Flynn was an employee of the Carrousel Hotel and, as such, managed the Brass Ring Club. The jury also found that Flynn acted maliciously and awarded Fisher $400 actual damages for his humiliation and indignity and $500 exemplary damages for Flynn's malicious conduct.

The Court of Civil Appeals held that there was no assault because there was no physical contact and no evidence of fear or apprehension of physical contact. However, it has long been settled that there can be a battery without an assault, and that actual physical contact is not necessary to constitute a battery, so long as there is contact with clothing or an object closely identified with the body. 1 Harper & James, The Law of Torts 216 (1956); Restatement of Torts 2d, ss 18 and 19. In Prosser, Law of Torts 32 (3d Ed. 1964), it is said:

'The interest in freedom from intentional and unpermitted contacts with the plaintiff's person is protected by an action for the tort commonly called battery. The protection extends to any part of the body, or to anything which is attached to it and practically identified with it. Thus contact with the plaintiff's clothing, or with a cane, a paper, or any other object held in his hand will be sufficient; * * * The plaintiff's interest in the integrity of his person includes all those things which are in contact or connected with it.'

Under the facts of this case, we have no difficulty in holding that the intentional grabbing of plaintiff's plate constituted a battery. The intentional snatching of an

object from one's hand is as clearly an offensive invasion of his person as would be an actual contact with the body. ‘To constitute an assault and battery, it is not necessary to touch the plaintiff's body or even his clothing; knocking or snatching anything from plaintiff's hand or touching anything connected with his person, when, done is an offensive manner, is sufficient.’

Such holding is not unique to the jurisprudence of this State. In S. H. Kress & Co. v. Brashier, 50 S.W.2d 922 (Tex.Civ.App.1932, no writ), the defendant was held to have committed a battery by snatching a book from the plaintiff's hand. The jury findings in that case were that the defendant ‘dispossessed plaintiff of the book’ and caused her to suffer ‘humiliation and indignity.’

The rationale for holding an offensive contact with such an object to be a battery is explained in 1 Restatement of Torts 2d s 18 (Comment p. 31) as follows:

'Since the essence of the plaintiff's grievance consists in the offense to the dignity involved in the unpermitted and intentional invasion of the inviolability of his person and not in any physical harm done to his body, it is not necessary that the plaintiff's actual body be disturbed. Unpermitted and intentional contacts with anything so connected with the body as to be customarily regarded as part of the other's person and therefore as partaking of its inviolability is actionable as an offensive contact with his person. There are some things such as clothing or a cane or, indeed, anything directly grasped by the hand which are so intimately connected with one's body as to be universally regarded as part of the person.'

We hold, therefore, that the forceful dispossession of plaintiff Fisher's plate in an offensive manner was sufficient to constitute a battery, and the trial court erred in granting judgment notwithstanding the verdict on the issue of actual damages.

Damages for mental suffering are recoverable without the necessity for showing actual physical injury in a case of willful battery because the basis of that action is the unpermitted and intentional invasion of the plaintiff's person and not the actual harm done to the plaintiff's body. Restatement of Torts 2d s 18. Personal indignity is the essence of an action for battery; and consequently the defendant is liable not only for contacts which do actual physical harm, but also for those which are offensive and insulting. Prosser, supra; Wilson v. Orr, 210 Ala. 93, 97 So. 123 (1923). We hold, therefore, that plaintiff was entitled to actual damages for mental suffering due to the willful battery, even in the absence of any physical injury.

The judgments of the courts below are reversed, and judgment is here rendered for the plaintiff for $900 with interest from the date of the trial court's judgment, and for costs of this suit.