Indiana Law Journal

Volume 22 | Issue 3 Article 16

Spring 1947

Independent Intervening Cause

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P was riding in an automobile driven by D when it overturned. No one was injured, and the passengers of the car immediately set about to right the car. While assisting, P cut his wrist on broken window glass, for which injury he brought suit. D was found negligent in operating the automobile and liable for P's injuries. Held: Affirmed, P's act was the normal response to the stimulus of the situation created by D's negligence and not a superseding cause which would relieve D of liability. *Hatch v. Smail,* 23 N.W. (2d) 460 (Wis. 1946).

In the principal case, D claimed that his negligence was not the proximate cause of the injury,[1] but that P's voluntary act in helping to right the car was an independent intervening force which cut off the chain of causation from D's negligence, and set in movement a new chain.[2] But the chain

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4. 11 Fed. Reg. 13038 (Nov. 2, 1946). Rooms are to be classified as transient hotel, residential hotel, rooming house and motor court. Only those classed as transient hotel and motor court room are eligible for decontrol .

5. Wilfully raising rent without first qualifying may be criminal violation of the Emergency Price Control Act, 50 U.S.C.A. (App.) §901 et seq. ( ). Wilton v. U.S., 156 F.(2d) 433 (C.C.A. 4th 1946).

1. In determining proximate cause, the "substantial factor" test has been stressed in Indiana in recent years, Swanson v. Slagel, 212 Ind. 394, 8 N.E.(2d) 993 (1937); the courts often speak in terms of "material contribution", "direct cause" or "efficient cause", Earl v. Porter, 112 Ind. App. 71, 40 N.E.(2d) 381 (1942; Cousins v. Glassburn, 216 Ind. 431, 24 N.E.(2d) 1013 (1940); Columbia Creosoting Co. v. Beard, 52 Ind. App. 260, 99 N.E. 823 (1912); See Harper, "Development in the Law of Torts" (1946) .21 Ind. L.J. 447,453. Foreseeability is an essential element of proximate cause in Indiana, see Dalton Foundries v. Jeffries, 114 Ind. App. 271,283, 51 N.E.(2d) 13,18 (1943); For a discussion of the use of foreseeability in determining proximate cause, see Harper, supra at 455.

2. An intervening cause is one not produced by prior negligence, but independent of it, which interrupts the course of events so as to produce a result different from the one that could have

of causation is not broken where his negligent conduct creates a situation calculated to invite or induce the intervention of some subsequent cause as a normal response.[3] Normal reactions not operating as superseding causes have been held to include the attempt to avert harm,[4] the impulse to assist others in emergencies,[5] as well as the instinct toward preservation of person or property, including escape from peril caused by D's negligence.[6] The test to determine whe-

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been anticipated and is itself the natural and logical cause of the harm, see 38 Am. Jur. 22; Tabor v. Continental Baking Co., 110 Ind. App. 633,643, 38 N.E.(2d) 257,261 (1941); City of Indianapolis v. Willis, 208 Ind. 607, 194 N.E. 343 (1935) (taxi driver's negligence in driving into canal at street end on rainy, foggy night was not a sufficient intervening cause of passenger's death to preclude recovery from city for its negligent failure to erect barricades or warnings).

3. Restatement, "Torts" (1934) §§443,445; Milwaukee & St. Paul Ry. v. Kellogg, 94 U.S. 469 (1876); Littell v. Argus Production C., 78 F.(2d) 955 (C.C.A. 10th, 1935); Brown v. New York Cent. Ry., 53 F.(2d) 490 (E.D. Mich., 1931), aff'd. 63 F.(2d) 657 (C.C.A. 6th, 1933), cert. denied 290 U.S. 634 (1933), (P's voluntary act in climbing up railroad car to reach brake wheel when automatic coupling failed was not an independent intervening force which would relieve D of liability for providing faulty equipment); Pitcairn v. Whiteside, 109 Ind. App. 693, 34 N.E. (2d) 943 (1941); Kramer v. Chicago, M., St. P. & P. Ry., 226 Wis. 118, 276 N.W. 113 (1937).

4. Hedgecock v. Orlosky, 220 Ind. 390, 44 N.E.(2d(93 (1942) (attempting to avert further harm by unlocking car bumpers); Superior Oil Co. v. Richmond, 172 Miss. 407, 159 So. 850 (1935) (act of another in throwing electric switch to stop oil pump and avert harm from burning oil, did not supersede negligence of oil company's servant in permitting storage tank to overflow. "Natural and ordinary thing for one to do . . . would be to attempt to prevent the threatened harm.") Wilson v. Northern Pacific Ry., 30 N.D. 456, 153 N.W. 429 (1915).

5. Brugh v. Bigelow, 310 Mich. 74, 16 N.W.(2d) 668 (1944) (passersby should be anticipated to relieve dire necessity resulting from accidents, as rescue is usual response in such circumstances); Wagner v. International Ry., 232 N.Y. 176, 133 N.E. 437 (1921), 19 A.L.R. 1,4 (1922) |the land-mark case presenting Cardozo's "rescue" doctrine): Restatement, "Torts" (1934) §472.

6. Littell v. Argus Production Co., 78 F.(2d) 955 (C.C.A. 10th, 1935) (farmer's voluntary act in pulling cable to free cultivator from entanglement was not independent intervening cause relieving D of liability for injuries resulting to P and machine from negligent burying of oil derrick anchors); Chicago Great Western Ry., v. Machie, 60 F.(2d) 384 (C.C.A. 8th, 1932) (P's voluntary conduct in attempting to free horse which had been caused to stumble due to D's negligent maintenance of railroad crossing was not an independent intervening force, and D was liable for P's injuries received in trying to free it); Churchman v. Sonoma County, 59 Cal. App.(2d) 801, 140 P.(2d) 81 (1943) (P's act in extricating himself from partially overturned car did not break chain of causation created by D's negligent failure to properly maintain roadways). See also Handelun v. Burlington,

ther there was a continuous succession of events leading proximately from fault to injury is whether P's act was a normal response to the stimulus of a dangerous situation created by the fault of D.[7]

The theory followed in cases allowing recovery in situations similar to that of the principal case is that the defendant's force is really continuing in active operation by means of the force it stimulates into activity. Where P was induced to act by the negligent calling of a railway station and was thereby injured, the negligence of the railway company, and not P's voluntary conduct, was held to be the proximate cause as it set in motion the chain of events leading up to the injury.[8] D's negligence was also held to be the proximate cause of the injuries where D hit the back of a truck, and P, a passer-by, in attempting to help, got between the two cars and was crushed when another car hit the rear truck. P's intervening act was held to be a normal reaction to the stimulus of the situation created by D's negligence and did not break the chain of causation.[9] In another case, P's act in extricating himself from a partially overturned car was held not to break the chain of causation created by D's negligent failure to properly maintain the roadways, and the county was held for P's injuries. P's getting out of the car was a reaction that could be expected and causation continued.[10] In these cases, as in the principal one, the

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C.R. & N. Ry., 72 Iowa 709, 32 N.W. 4 (1887); Scott v. Shepherd, 2 Black. W. 892 (C.P. 1772) (the squib case). When placed in a position of peril, not created by one's own negligence, one has a right to make a choice of means to be used to avoid the peril, and is not held to a strict accountability for taking an unwise course, Zoludow v. Keeshin Motor Express, 109 Ind. App. 575, 34 N.E.(2d) 980 (1941).

7. Anti-Mite Engineering Co. v. Peerman, 113 Ind. App. 280, 46 N.E.(2d) 262 (1942); Riesbeck Drug Co. v. Wray, 111 Ind. App. 467, 39 N.E.(2d) 776 (1941); New York Central Ry. v. Brown, 63 F.(2d) 657, (C.C.A. 6th, 1933), cert. denied 290 U.S. 634 (1933).

8. Cincinnati, Hamilton & Indianapolis Ry. v. Worthington, 30 Ind. App. 663, 65 N.E. 557 (1902). Cf. International-Great Northern Ry. v. Lowry, 132 Tex. 272, 121 S.W.(2d) 585 (1938) (negligence of conductor in failing to notify train to stop at certain point held not the legal cause of injuries of brakeman who jumped from train to make repairs, as it was not such a natural and probable consequence of negligence as could have been anticipated).

9. Rovinski v. Rowe, 131 F.(2d) 687 (C.C.A. 6th, 1942).

10. Churchman v. Sonoma County, 59 Cal. App.(2d) 801, 140 P.(2d) 81 (1943). Recovery here can also be explained on the perilous position doctrine that being put in a dangerous position invites

defendants' liability continued, as plaintiffs' acts were normal responses to the stimuli of the dangerous situations created by fault of the particular defandant and not independent intervening forces.

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escape. The issue of sudden peril is ordinarily for the determination of the jury, Hedgecock v. Orlosky, 220 Ind. 390, 44 N.E.(2d) 93 (1942).