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## Druggists-Sale of Poisons-Proximate Cause

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DRUGGISTS—SALE OF POISONS—PROXIMATE CAUSE—The deceased sent his 8-year-old son to the drug store of the appellant with the instructions to obtain for him a bottle of carbolic acid in which he said he wished to wash his feet. The child obtained the acid from a clerk of the appellant and delivered it to the deceased who drank it and died. The appellee is the administratrix of the deceased and sues to recover for his death on the ground that the appellant was negligent in selling the acid to the son. She bases her claim on the assumption that the druggist was negligent in the sale to the child and that the death proximately resulted from such negligence. The lower court gave judgment for her for \$5000 and the appellant appealed. *Held*: Reversed. The sale of the carbolic acid to the child was not the proximate cause of the death of the deceased and hence no cause of action lies against the appellant. *Riesbeck Drug Co. v. Wray*, Appellate Court of Indiana, April 2, 1930, 170 N. E. 862.

The law imposes upon a druggist the duty to conduct his business in a manner so as to avoid acts in their nature dangerous to the lives of others and druggists who perform this duty in such a manner as to cause injury to others must respond in damages. *Knoefel v. Atkins*, 40 Ind. App. 428, 81 N. E. 600. The legislature may regulate the sale of poisons, and failure to comply with such statutes constitutes negligence *per se*. *Goodwin v. Rowe*, 67 Ore. 1. Some states have by statute prohibited the sale of poisons to minors. See Nebraska Criminal Code, sec. 42. Indiana has no statute prohibiting the sale of carbolic acid to minors. Even though there be no statute prohibiting the sale of poisons to minors yet there is a general rule of law which demands that a druggist shall exercise in every case that degree of care which the circumstances of the case demand and for a failure to use such care he may be held liable under a general negligence test, for any injury proximately resulting. There is then some duty on a druggist dealing in dangerous drugs, irrespective of statute.

There being a duty to use reasonable care in such sales it was for the jury to decide whether or not there had been a breach of that duty. The jury in the instant case might easily have found that such a sale to an eight-year-old child constituted a breach of this duty. Even admitting,

however, that the druggist was guilty of a breach of duty, in order to hold him liable, it must be further shown that his breach of duty proximately resulted in the injury complained of, namely, the death. *McKibban v. Baxter*, 79 Nebr. 577.

According to the generally accepted theory of proximate cause the defendant's act must be the cause in fact or the *causa sine qua non* of the injury. *Westfield Gas, etc., v. Hinshaw*, 22 Ind. App. 499, 53 N. E. 1069. The sale of the acid here must have been the cause in fact of the death. There was, however, an intervening cause, that being the suicide. The suicide was an independent criminal act. It is well recognized that an independent criminal act will break the chain of causation. The suicide was such an intervening act as could not reasonably have been anticipated here as the result of a sale of carboic acid to the child, hence the suicide broke the chain of causation.

There is another view of the question of proximate cause which has the support of some very respectable authority. This view is a modern development and is rapidly gaining ground. According to this view the defendant's conduct is the legal cause of the plaintiff's injury when it subjects the injured party to a hazard against which the law affords protection. *Grenn's Rationale of Proximate Cause* (1927) 142. This analysis raises the question, *What is the purpose of the rule of law that discourages the sale of poisons to very young children?* The answer is, of course, that the purpose of such a rule of law is to protect the children themselves from injury that would result to them if they were freely permitted to purchase and handle poisons. This rule is not contemplated to protect adults into whose hands the poisons might come as a result of a sale to children. Thus the rule of law here did not protect against the particular hazard encountered, namely, the suicide of the deceased.

Under either analysis presented the court can be supported in its holding that the injury to the appellee did not proximately result from a breach of duty by the appellant.

T. H. F.