Indiana Law Journal

Volume 6 | Issue 2 Article 9

11-1930

Negligence--Proximate Cause

NEGLIGENCE—PROXIMATE CAUSE—Plaintiff was riding as a guest in a car which was being driven south over a bridge at a speed of from fifteen to twenty-five miles per hour towards a switch crossing maintained by defendant about fifteen feet from the south end of the bridge. It was a dark and rainy night and electric lights on the bannisters of the bridge so "glared" and blinded the driver that he was unable to see defendant's train standing on the crossing until he was about twenty or twenty-five feet from it when he applied his brakes but could not avoid hitting the cars whereby plaintiff received the injuries complained of. The cars had been standing on the crossing for three minutes while defendant's employees were engaged in a necessary operation of the train. There was a verdict and judgment for plaintiff in the trial court from which defendant appeals. *Held,* reversed, with instructions to sustain appellant's motion for a new trial; Remy, J., dissenting. When automobile driver could not stop after lights made train visible, the blocking of the crossing was not the proximate cause of plaintiff's injuries. *Cleveland, C. C. & St. Louis Ry. Co. v. Gillespie,* App. Court of Indiana, June 27, 1930, 172 N. E. 131.

In ruling upon the question of proximate cause the court seems to have decided a point which it was not necessary to decide. There is a confusion of the questions of negligence with the question of proximate cause and contributory negligence.

The reported opinion is very unsatisfactory and is inconsistent in its discussion of the problems involved. In the beginning of the opinion the court says, "The allegations are not sufficient to allege a violation of section 2903." (Sec. 2903, Burns' 1926, imposes a fine for permitting or suffering a freight train or any car or engine thereof to remain standing across any public highway, or when it becomes necessary to stop such train across any public highway, for failure to leave a space of sixty feet across such highway.) It would seem to be unnecessary to decide whether or not defendant was guilty of a violation of the statute. But, after remarking upon principles of common law negligence and giving a resumé of the evidence, the court returns to this point, and, citing cases, apparently decides the point which was said not to be raised by the allegations.

Proceeding then to a discussion of the common law principles involved, the court defines proximate cause, holds as a matter of law, that the driver

was negligent and apparently decides that there was no negligence on the part of the defendant by saying, "The evidence presents a situation, as far as appellant is concerned, of furnishing a condition *unattended by negligence on its part,* by which the injury to appellee was caused by the subsequent independent act of Usher (the driver), and, in such case, the existence of the condition was not the proximate cause of appellee's injuries." If there was no negligence on the part of the defendant, and no violation of a statutory duty, the question of proximate cause was clearly not involved. The question of proximate cause necessarily does not arise in the absence of a breach of duty on the part of the defendant which could be the proximate cause of the plaintiff's injuries. If there is no breach of duty by the defendant there is consequently nothing upon which its liability can be predicated. Green, *Rationale of Proximate Cause,* Ch. 1, Sec. 3. If, however, it be found that there was negligence the question of proximate cause must then be determined. This question could not be disposed of by saying that the driver was guilty of contributory negligence. The negligence of the driver cannot be imputed to the plaintiff. *Baltimore & Ohio R. Co. v. Fanbion,* 170 N. E. 94 (Appellate Court of Indiana, Feb. 26, 1930), and where two causes combine to produce injuries, defendant is not relieved of liability because he is responsible for only one of such causes. *Sarber v. City of Indianapolis,* 126 N. E. 330.

The closing statement of the dissenting opinion of Mr. Justice Remy, "Whether, under the evidence in this case, the trainmen exercised reasonable or ordinary care in blocking the highway for three minutes without warning travelers on the highway was, in my opinion, a question of fact for the jury, likewise the question as to the proximate cause of appellee's injuries," seems to be a most accurate analysis of the problem involved.

S. J. S.