Indiana Law Journal

Volume 7 | Issue 7 Article 7

4-1932

Negligence-Res Ipsa Loquitur

NEGLIGENCE—RES IPSA LOQUITUR—APPLICATION OF THE DOCTRINE—Action to recover for the death of James Wilkins who had been employed by the appellant railroad company as a car inspector. The complaint alleges that the appellant was assembling two trains on the same track, that were bound in opposite directions, and that the cabooses of sand trains were coupled together. It was the duty of the said Wilkins, as car inspector, to inspect the brakes of all outgoing trains. While so engaged in testing the brakes of the east-bound train, and pursuant and under the direction of the proper signal from the engineer, the deceased stepped between the cabooses for the purpose of releasing the angle cock, preparatory to the brake test. While the deceased was engaged in the performance of this

---

[9] *Bowser v. Bowser* (1847), 27 Tenn. 23; *Smith v. Crosland* (1884), 106 Pa. 413.

[10] Tiffany on Landlord and Tenant, p. 496.

[11] *Bowser v. Bowser, supra,* note 9; *Smith v. Crosland, supra,* note 9.

[12] *Pierce v. Brown* (1852), 24 Vt. 165; *Mattis v. Robinson* (1871), 1 Neb. 3, in which the court cites and disapproves *Pierce v. Brown, supra; Niles v. Ransford* (1849), 1 Mich. 338, 51 Am. Dec. 95; *Stout v. Merrill* (1872), 35 Iowa 47. But see *McLeod v. Sharp* (1893), 53 Ill. App. 406; *Howard v. Jones* (1899), 123 Ala. 488, 26 So. 129.

[13] 35 Corpus Juris 1232, sec. 575.

[14] *Houston v. Farris* (1882), 71 Ala. 570.

task, the appellant made a flying switch of a cut of cars, and kicked them against the cars to the west of the cabooses with unnecessary violence and great force, and without any warning whatsoever to the deceased, who was thereby caught, crushed, and injured through the abdomen, causing his death. The appellant demurred on ground that the complaint did not state facts sufficient to constitute a cause of action. Overruled. Verdict for plaintiff. The appellant assigned error for overruling the demurrer. *Held*, no error, *res ipsa loquitur* applicable.[1]

The decision is unquestionably in accord with the great majority of cases upon this doctrine. The term *res ipsa loquitur* literally means "the thing speaks for itself." The court states the doctrine of *res ipsa loquitur* to be this: that where an accident happens resulting in injury to a person or his property, and it is made to appear that all the instrumentalities causing the accident were under the exclusive control and management of the defendant or his servants, and the accident is such as would not ordinarily occur if due care had been exercised by those who had control of such instrumentalities, and the duty to exercise such due care is owing to the injured party from the defendant, then those facts afford reasonable evidence in absence of explanation by the defendant, that the accident arose from the want of due care.[2]

The doctrine is predicated upon the superior knowledge of the defendant as to the cause of the injury under the peculiar circumstances involved, and his failure to explain. Since the plaintiff is in no position to show the particular circumstances, the defendant, possessing superior knowledge or means of informing as to the accident and its cause, should therefore be required to produce explanation.[3]

The application of the rule originates from the nature of the act done, and not from the relation existing between the parties to such act. Where the necessary facts appear, such as where the defendant has exclusive management and control over the instrumentality by which the injury was inflicted, etc., the rule may be invoked both where the parties stand in certain relationships to each other, such as master-servant, carrier-passenger; or where the parties stand in no relation to each other, as where one is lawfully in a place, as a passerby in the street, and is injured by the negligent conduct of another.[4]

---

[1] *Southern Ry. Co. v. Wilkins*, Appellate Court of Indiana, Nov. 19, 1931, 178 N. E. 454.

[2] *Knoefel v. Atkins* (1907), 40 Ind. App. 428, 81 N. E. 600; *Cleveland, etc. Ry. Co. v. Hadley* (1907), 170 Ind. 204, 84 N. E. 13; *City of Decatur v. Eady* (1917), 186 Ind. 205, 115 N. E. 577; *Pittsburgh, etc. Ry. Co. v. Hoffman* (1914), 57 Ind. App. 431, 107 N. E. 315; *Sweeney v. Erving* (1913), 228 U S. 233, 33 S. Ct. 416; *Plumb v. Richmond Light Co.* (1922), 233 N. Y. 285, 135 N. E. 504; *O'Neil v. Toomey* (1914), 218 Mass. 242, 105 N. E. 974; *McClure v. Hoopeston* (1922), 303 Ill. 89, 135 N. E. 43; *Jones v. Bland* (1921), 182 N. C. 70, 108 S. E. 344; *Connor v. Atchinson, etc. Ry. Co.* (1922), 189 Cal. 1, 207 Pac. 378; *Chenall v. Palmer Brick Co.* (1903), 147 Ky. 349, 144 S. W. 11; *Brawley v. Toronto Ry. Co.*, 46 Ont. L. Rep. 31, 6 British Rule Cas. 685.

[3] *Prest-o-Lite Co. v. Skeel* (1914), 182 Ind. 593, 106 N. E. 365; *Looney v. Prest-o-Lite* (1917), 65 Ind. App. 617, 117 N. E. 678; *Delaware, etc. Ry. Co. v. Dix* (1911), 188 Fed. 901, 110 C. C. A. 535.

[4] *Pittsburgh, etc. Ry. Co. v. Hoffman* (1914), 57 Ind. App. 431, 107 N. E. 315; *Delaware, etc. Ry. Co. v. Dix* (1911), 188 Fed. 901, 110 C. C. A. 535; *Wardman v. Hanlon* (1922), 280 Fed. 988, 52 App. Cas. D. C. 14; *Marceau v. Rutland* (1914),

Although relationship is not a requisite to the application of the doctrine of *res ipsa loquitur*, it makes it convenient to classify the factual situations under which the doctrine has been invoked into such relational categories.

First under the relation of master and servant the doctrine of *res ipsa loquitur* has been held applicable; where the deceased, a fireman on appellant's engine, was killed when the engine suddenly broke down and left the tracks.[5] Where the appellee, who was repairing the appellant's elevator, was injured by the falling of the elevator while it was under the control and management of the appellant.[6] Where the appellee was injured by the falling of a scaffold that had been built by the appellant, for the use of the appellee in repairing the appellant's hopper.[7] Where the appellant's train passing over a partly completed bridge at a rapid speed dropped a lump of coal from the tender, which struck the appellee, who was engaged in his duties as watchman below the tracks.[8] Where a defective brake failed to stop a switched car resulting in the injury of the switchman.[9] Where a brakeman in the employ of the appellant was injured in a collision due to the failure of the appellant's crew to comply with signals given.[10] Where an employe was injured by the explosion of a boiler.[11] Where an employee was injured by explosion of dynamite in a powder factory.[12]

Second under the relation of merchant and customer the doctrine has been applied where a druggist dispenses poison to a customer who asked for a harmless remedy, and as a result the person suffered injury.[13] Where the appellant supplied electricity to the homes in a city for lighting purposes, and the deceased was killed while adjusting an incandescent light, due to the fact that the wires to his home had been overcharged.[14] Where a customer fell through a trap door, that had been left open.[15] Also the doctrine has been applied in a few states in cases of sale and manufacture of articles, which in their natural form would be harmless, but due to some negligence were rendered injurious.[16]

Under the category of carrier and passenger there has been a wide application of the doctrine. *Res ipsa loquitur* was held to be applicable where a passenger in an elevator was injured by its fall.[17] There is a

---

211 N. Y. 203, 105 N. E. 206; *Rose v. Stephens Transp. Co.* (1882), 11 Fed. 438, 20 Blackf. 411; *McCray v. Galveston, etc. Ry. Co.* (1896), 89 Tex. 168, 34 S. W. 95; *Chiles v. Ft. Smith Comm. Co.* (1919), 139 Ark. 489, 216 S. W. 11; 20 R. C. L., p. 187.

[5] *B. & O. Southwestern R. R. Co. v. Hill* (1925), 84 Ind. App. 354, 148 N. E. 489.

[6] *Artificial Ice & Cold Storage Co. v. Waltz* (1927), 86 Ind. App. 826, 156 N. E. 534.

[7] *Talge Mahogany Co. v. Hackett* (1914), 55 Ind. App. 303, 103 N. E. 815.

[8] *Pittsburgh, etc. Ry. Co. v. Hoffman* (1914), 57 Ind. App. 431, 107 N. E. 315.

[9] *Pennsylvania R. R. Co. v. Hough* (1928), 88 Ind. App. 501, 161 N. E. 705.

[10] *Grand Rapids, etc. R. Co. v. Turner* (1918), 69 Ind. App. 101, 121 N. E. 295.

[11] *Harris v. Mangum* (1922), 183 N. C. 235, 111 S. E. 177.

[12] *Judson v. Giant Powder Co.* (1895), 107 Cal. 549, 40 Pac. 1020.

[13] *Knoefel v. Atkins* (1907), 40 Ind. App. 428, 81 N. E. 600; *Brown v. Marshall* (1882), 47 Mich. 576.

[14] *San Juan Light Co. v. Requena* (1911), 224 U. S. 89.

[15] *Gallagher v. Halpern* (1916), 159 N. Y. S. 160.

[16] *Lamb v. Boyles* (1926), 192 N. C. 542, 135 S. E. 464; *Rosenswaike v. Interborough Transit Co.* (1919), 175 N. Y. 828.

[17] *Springer v. Ford* (1901), 189 Ill. 430, 59 N. E. 953.

large group of cases that apply the doctrine of *res ipsa loquitur* in cases where a passenger on a common carrier is injured by machinery, appliances, and other instrumentalities that are within the exclusive control and management of the carrier.[18]

Aside from the above cases where there was some relation between the parties, the doctrine has been applied in cases where there is no relationship between the parties, as where one who is lawfully in a public street is injured by falling objects, obstructoins, openings, etc., that are wholly within the control of the defendant. The following cases are examples of such applications: where a passerby fell into an open coal hole on defendant's sidewalk.[19] Where a pedestrian was injured by objects falling upon him from adjoining property such as an electric sign;[20] portion of a wall of building;[22] snow and ice from roof;[23] objects of merchandise, such as barrels;[24] and where a traveler in the street stepped on fallen high voltage wires of the defendant's lines and was injured, the doctrine was held to be applicable.[25]

A. C. J.

NEGOTIABLE INSTRUMENTS—FILLING BLANKS—COGNOVIT NOTE—On or about August 24, 1927, in pursuance of carrying out a contract of sale of real estate located in the city of South Bend, Indiana, defendants gave to plaintiff, both parties residents of Indiana, a note as part payment of the purchase price. This note had the following clause with the blanks indicated: "————hereby authorizes any Attorney at Law to appear in any Court of Record in the United States, after the above obligation becomes due, and waive the issuing and service of process and confess a judgment against ——— in favor of the holder." Plaintiff sues on this note. By statute in Indiana the enforcement of a cognovit note is a misdemeanor. *Held*, the note is not a cognovit note.[1]

This decision turns in part upon the recent cognovit note statutes.[2]

---

[18] *Union Traction Co. v. Berry* (1919), 188 Ind. 514, 121 N. E. 655; *Feldman v. Chicago Rys. Co.* (1919), 289 Ill. 25, 124 N. E. 334; *Mansfield Public Utility Co. v. Grogg* (1921), 103 Ohio 418, 132 N. E. 481; *Williamson v. Salt Lake & O. R. Co.* (1918), 52 Utah 84, 172 Pac. 630; *Hughes v. Atlantic City & S. R. Co.* (1914), 85 N. J. L. 212, 89 Atl. 769; *Norfolk, etc. Ry. Co. v. Birchett* (1918), 252 Fed. 512.

[19] *Gillis v. Cambridge Gaslight Co.* (1909), 202 Mass. 222, 88 N. E. 779.

[20] *Excelsior Elec. Co. v. Sweet* (1894), 57 N. J. L. 224, 30 Atl. 553.

[21] *Scheller v. Silbermintz* (1906), 98 N. Y. S. 230, 50 Misc. 175; *Kearner v. C. S. Tourner Co.* (1910), 31 R. I. 203, 76 Atl. 833.

[22] *Kearney v. London, B. & S. C. R. Co.* (1870), L. R. 5 Q. B. 411, 19 Eng. Rul. Cas. 1; *Brown v. Bryant* (1911), 166 Mich. 18, 131 N. W. 577; *McNamara v. Boston & M. R. Co.* (1909), 202 Mass. 491, 89 N. E. 131; *Connolly v. Des Moines Invest. Co.* (1905), 130 Iowa 633, 105 N. W. 400; *Hughes v. Harbor, etc. Savings Assoc.* (1909), 115 N. Y. S. 320.

[23] *Shephard v. Creamer* (1894), 160 Mass. 496, 36 N. E. 475.

[24] *Byrne v. Boadle* (1863), 2 H. & C. 722, 159 Eng. Repr. 299; *Lowner v. New York, etc. R. Co.* (1900), 175 Mass. 166, 55 N. E. 805.

[25] *Snyder v. Wheeling Electrical Co.* (1897), 43 W. Va. 661, 28 S. E. 733.

[1] *Fodor v. Pott*, Appellate Court of Indiana, Dec. 9, 1931, 178 N. E. 695.

[2] Acts 1927, page 656; Sec. 640, 3 Burns 1929 Supplement: "Any negotiable instrument, or other written contract to pay money, which contains any provision or stipulation giving to any person or power of attorney, or authority as attorney, for the maker, or any indorser, or assignor, or other person liable thereon, and in the name of such maker, indorser, assignor, or other obligor to appear in any court, whether of record or inferior, or to waive the issuance or personal service of process in any action to enforce payment of the money, or any part claimed to be due