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TORTS

NEGLIGENCE FAILURE TO STOP ESCALATOR

Action for the injuries sustained by a six year old boy who lost his balance and fell to the bottom of escalator in defendant's store. Held: defendant's failure to stop escalator with reasonable prompt-ness constituted negligence.¹

There is no general duty to aid a person who is in peril.² A relationship between the parties, however, may impose a duty³ The relation may be created by an economic advantage to the defendant.⁴ Thus a carrier must give reasonable assistance to a passenger in peril,⁵ an employer must aid an employee injured in the course of employment,⁶ and a ship must help a seaman who has fallen overboard.⁷ Similarly, there is a duty to assist an invitee or business guest in time of peril, even though the initial injury was not caused by defendant's negligence.⁸ In the instant case, the store had the exclusive means of stopping the escalator and extricating the plaintiff.⁹

¹L. S. Ayres & Co. v. Hicks, 34 N.E. (2d) 177 (Ind. App. 1941).
²Allen v. Nixon, 111 Ga. 460, 36 S.E. 810 (1900); Hurley v. Edding-field, 166 Ind. 416, 59 N.E. 1058 (1901); Osterlind v. Hill, 263 Mass. 73, 160 N.E. 301 (1938); Bohlen, Moral Duty to Aid Others as a Basis of Tort Liability (1908) 56 U. OF PA. L. REV. 217, 316 passim.
³HARPER, TORTS (1933) 199.
⁶Cushman v. Cloverland Coal & Mining Co., 170 Ind. 402, 84 N.E. 759 (1908); Hunicke v. Meramec Quarry Co., 262 Mo. 560, 172 S.W. 43 (1914).
⁹"A passenger by placing himself in charge of company is confined by very necessity to the confines of the conveyance, being in effect imprisoned there, and he must look to the carrier to aid him when he is in peril. This duty exists irrespective of whether conveyance is a common carrier or not." Bohlen, Moral Duty to Aid Others as a Basis of Tort Liability (1908) 56 U. OF PA. L. REV. 219, 229. Cases holding escalators common carriers: Heffernon v. Mandel Bros., 297 Ill. App. 272, 17 N.E. (2d) 528 (1938), Mc-
The court's meticulous determination of the exact moment at which the defendant's negligence began, creates the difficult problem of measuring the damages. The court predicated liability solely upon the aggravation of the injury. Failure to instruct jury as to severability of damages forms the basis of the dissent.10

The question of apportionment is primarily one of feasibility and practical convenience in splitting the total harm into separate parts.11 Apportionment is usually permitted where part of the damage is attributable to an innocent cause.12 A distinction is made between injury resulting from defendant's reasonable conduct, and injuries aggravated by the defendant's negligence.13

Similar to the principal case are those where plaintiff's negligence played no part in bringing about an impact or accident, but aggravated the ensuing injury.14 In Connecticut, the court refused to make any division, and awarded the plaintiff the entire amount.15 In Iowa16 and Kansas,17 damages were apportioned. The better view


10 L. S. Ayres Co. v. Hicks, 34 N.E. (2d) 177, 188 (Ind. App. 1941) (trial court instructions, "In determining the amount of damages which you award plaintiff, it is proper to consider every phase of his injuries . . .").


14 Mahoney v. Beatman, 110 Conn. 184, 147 Atl. 762 (1929); Green, Mahoney v. Beatman: A Study in Proximate Cause (1930) 39 YALE L.J. 532.

15 Mahoney v. Beatman, 110 Conn. 184, 147 Atl. 762 (1929) (plaintiff's excessive speed in driving was not responsible for the collision, but greatly increased damages resulting from it). But see HARPER, TORTS (1938) 299-300; Note (1938) 22 MINN. L. REV. 410.

16 Wright v. Ill. & Miss. Tel. Co., 20 Iowa 195, (1866) (plaintiff's damages from a runaway enhanced by negligent failure to have more than one helper).

17 O'Keefe v. Kansas City Western R.R., 87 Kan. 322, 124 Pac. 416 (1912) (plaintiff's injuries from fall increased by prior intoxication, which did not contribute to fall). See Smithwich v. Hall & Upson Co., 59 Conn. 261, 263, 21 Atl. 24, 25 (1890) (act or omission that merely increased extent of loss may affect amount of damages in a given case).
reduces the plaintiff's recovery to the extent his injuries have been aggravated by his own antecedent negligence.\(^{19}\)

In the principal case, there are obvious difficulties in apportioning physical and mental suffering and medical expense. Such difficulties are not insuperable. They are no greater than apportionment upon the basis of potential damage from one cause, which reduces the loss inflicted by another.\(^{10}\) Each apportionment case, however, must turn on its own particular facts.

Logue and consistency in the principal case demand an apportionment of damages. A correct instruction as to damages might have resulted in a smaller verdict. A retrial should have been granted on the issue of damages.\(^{20}\)

**TRADE REGULATION**

**GENERAL MOTORS ACCEPTANCE CORPORATION AND THE SHERMAN ACT**

Four affiliated General Motors Corporations and seventeen individuals were prosecuted, under Section 1 of the Sherman Anti-Trust Act, for conspiring to restrain interstate trade and commerce in General Motors automobiles. The alleged purpose of the conspiracy was to compel General Motors dealers to use General Motors Acceptance Corporation financing in their purchases and sales of automobiles. The purpose was stated to have been accomplished by cancelling the franchises of dealers who refused to use the financing, by favoring dealers who used the finance service, in the matter of deliveries of automobiles and other appropriate means. A jury in the District Court acquitted the individual defendants and found the four corporate defendants guilty. Judgment entered upon verdict fining each corporate defendant $5000. Held, affirmed on appeal.\(^1\)

The defendants contended that, since they were affiliated non-competing corporations, any restraint by them of the interstate commerce in their own automobiles was not prohibited by the Sherman Act.\(^2\) The title to the automobiles usually passes to the dealers before shipment and the commerce which was restrained was the commerce

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\(^{20}\) Kummer Motor Bus & Taxi Co. v. Mech. Lumber Co., 175 Ark. 750, 300 S.W. 399; May Dept't Stores Co. v. Bell, 61 F. (2d) 83 (C.C.A. 8th, 1932) (issues of retrial limited to damages).

\(^1\) United States v. General Motors Corp., 121 F. (2d) 376 (C.C.A. 7th, 1941), cert. dened, 10 U.S.L. WEEK 3113.