

Torts: Casual Connection Between Automobile Collision and Injury Suffered During Immediately Subsequent Events

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Repository Citation

Richard Hoffman, *Torts: Casual Connection Between Automobile Collision and Injury Suffered During Immediately Subsequent Events*, 31 Marq. L. Rev. 303 (1948).

Available at: <http://scholarship.law.marquette.edu/mulr/vol31/iss4/9>

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Torts—Causal Connection Between Automobile Collision and Injury Suffered During Immediately Subsequent Events.—The plaintiff was a guest in a car owned and operated by her husband and insured by the defendant. In the early evening the car was passing a farm, and cows were crossing the highway from the pasture into the barn. The automobile struck one of the cows, stunning it and knocking it down upon the highway. The front end of the automobile was damaged but neither occupant was injured. Immediately following the accident the plaintiff left the car with the intention of going to the farmhouse to inform the family of the accident. The plaintiff returned to the car without having reached the farmhouse, and it was then that she sustained the injury of which complaint was made. The injured cow regained consciousness, rose to its feet, rushed from the scene, and in so doing ran into the plaintiff causing her considerable injury. Plaintiff sued defendant insurance company, alleging that her injuries were the direct result of the negligent act of her husband in failing properly to drive the automobile in which they were riding. *Held*: That plaintiff's husband was negligent in failing to keep a proper lookout, that such negligence was the proximate cause of the collision with the cow, and that such negligence was also the proximate cause of the injuries sustained by the plaintiff. *Brown v. Travelers' Indemnity Company, 28 N.W. (2d) 306 (Wisconsin, 1947).*

This case makes quite clear the trend in the Wisconsin Supreme Court with regard to the definition of proximate cause where there is a question of superceding cause. It should be an excellent case, both for citation and reference, because of its peculiar fact situation. Two cases were cited by the court in support of the holding: *Hatch v. Smail*¹ and *Kramer v. Chicago, M., St.P. & P. R. Co.*² In neither of those cases was the one seeking damages quite so far removed from the first event in the sequence leading to the injuries. But in both the injuries occurred while the plaintiff was attempting to correct a situation created by the negligence. In *Hatch v. Smail*³ the plaintiff was helping to right a car in which he and the negligent party had been riding, and which had overturned due to the latter's negligence. In *Kramer v. Chicago, M., St.P. & P. R. Co.*⁴ the plaintiff was attempting to apply the brakes on a railroad car which had been negligently placed in motion by the defendant. Both cases stressed the following quoted principle:

"An intervening act of a human being or animal which is a normal response to the stimulus of a situation created by the actor's negligent conduct, is not a superceding cause of

¹ *Hatch v. Smail*, 249 Wis. 183, 23 N.W. (2d) 460 (1945).

² *Kramer v. Chicago, M., St. P. & P. R. Co.*, 226 Wis. 118, 176 N.W. 113 (1937).

³ Fn. 1, *supra*.

⁴ Fn. 2, *supra*.

harm to another which the actor's conduct is a substantial factor in bringing about."⁵

But in both of those cases it was the plaintiff's actions which were held to be a reasonable response to the stimulus of the negligently created situation. In the principle case, however, the plaintiff was not the author of the act which immediately caused the injury. It was the action of a cow which the defendant insisted was a superceding cause.⁶

The court stated:⁷

"The cow was badly injured in the accident and her act, upon regaining consciousness, of running into and attacking the plaintiff was a normal response of an injured animal."

It is here that the decision gathers strength. The action of the cow is apparently an intervening force and one that is not necessarily foreseeable. Tort law places liability when, although the act and its specific results were unforeseeable, there is a direct causal sequence.⁸ Here legal cause was found, though the attack of the cow was unforeseeable, because the negligence of the plaintiff's husband directly created the condition or stimulus to which the cow reacted in a natural and normal manner.

The above paragraph demonstrates the confusion which the use of the words "superceding cause" and "intervening force" so often creates, for to the average observer a cow suddenly jumping to its feet and rushing from the scene would be clearly a new and separate cause for harm or injury. But in reality it is not a "superceding cause" in a legal sense at all. For the defendant's insured, at the time of the accident, clearly set in motion a force for potential injury, the same as if he had, by his negligence, ignited the fuse of a delayed action explosive. The fact that time intervened is immaterial.

Though at first glance the Wisconsin Supreme Court seems to be taking a bold and radical stand on the problem of intervening cause, in point of fact it is doing no such thing. This decision rests squarely on safe and settled principles of direct causation. Where the plaintiff's injury falls in the class of foreseeable harms covered by the duty of care the tortfeasor may be made to respond in damages for all the results, foreseeable or not, which flow directly from his negligent act.⁹

⁵ Restatement of the Law of Torts, Sec. 443.

⁶ To apply the rule in the same way as it is used in the Hatch Case and the Kramer Case would be to say that, had the cow sustained further injury by running into the plaintiff, the owner of the cow would be entitled to additional damages.

⁷ *Brown v. Travelers' Indemnity Co.*, 28 N.W. (2d) 306 (1947) at p. 307.

⁸ Prosser, *Handbook of the Law of Torts*, West Publishing Co. (Hornbook Series, 1947).

⁹ These principles are set out fully in *Osborne v. Montgomery*, 203 Wis. 223, 234 N.W. 372 (1931).

In an article by Thomas G. Godfrey¹⁰ it is pointed out that the decision in *Hatch v. Smail*¹¹ is in direct accord with the principles stated in the Restatement of the Law of Torts. It might be added here that the court in the principal case looked to the same source to support its decision.

In the Restatement of the Law of Torts it is said that one of the tests for discovering whether or not the conduct of the negligent party was in fact a "substantial cause" of the harm done is, "Whether the actor's conduct has created a force or series of forces which are in continuous and active operation up to the time of the harm, or has created a situation harmless unless acted upon by other forces for which the actor is not responsible."¹² This excerpt is quoted by the court in *Hatch v. Smail*¹³ but not in the principal case. However, the facts of the principal case may be said to fit nicely within it. The actor, by injuring the cow, created a force which, though its effect was not felt immediately, clearly continued in "active operation up to the time of the harm." Thus the facts, measured by the rule of the Restatement of the Law of Torts, demonstrate that the negligence of the plaintiff's husband was a substantial cause of the injury suffered by the plaintiff.

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¹⁰ 1947 Wisconsin Law Review (March) at p. 261.

¹¹ Fn. 1, *supra*.

¹² Restatement of the Law of Torts, Sec. 433 (c).

¹³ *Ibid.* Also see Restatement of the Law of Torts, Sec. 433 (c).