

Torts - Negligence - Degree of Care Required of Operators of Elevators and Escalators

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the court's unwillingness to aid an officious intermeddler. One who provides food for a starving person, thereby performing a duty which should have been performed by another, is not an officious intermeddler. Hope, *Officiousness* (1930) 15 CORN. L. Q. 205, 238. The doctrine of subrogation should be applied where it will prevent unjust enrichment. Note (1926) 39 HARV. L. REV. 381.

The principal case, in addition to holding that the wife's right to reimbursement may be exercised by her guardian if she becomes insane, continues the husband's obligation of support after the wife is committed to an institution. On the latter point the authorities are in conflict. In Wisconsin the husband's duty of support ends when the wife is committed to an asylum, even though the husband has been instrumental in obtaining such commitment. His duty is regarded as fully performed if he has not refused to support his wife in the matrimonial home. *Richardson v. Stuesser*, 125 Wis. 66, 103 N.W. 26, 69 L.R.A. 829 (1905). In Nebraska it has been held that a husband is subjected to double taxation if he must support his wife in an insane asylum, and accordingly he has been held not liable for such support. *Baldwin v. Douglas County*, 37 Neb. 283, 55 N.W. 875, 20 L.R.A. 850 (1893).

JUNE C. HEALY.

Torts—Negligence—Degree of Care Required of Operators of Elevators and Escalators.—The plaintiff alleged that an escalator on which she was riding in the defendant's store became out of order, vibrated violently, pushed her from side to side and threw her upon her back, causing injuries. The defendant contended that its duty to the plaintiff was merely that owed to a business guest, requiring it to keep its premises in a reasonably safe condition. The plaintiff insisted that the defendant was under a duty to exercise the highest practical degree of care for the safety of passengers using the store's escalators. *Held*, that operators of elevators and escalators are under the same duty as that which is required of common carriers and must exercise the highest degree of care for the safety of their passengers. *Heffernan v. Mandel Bros. Inc.*, 297 Ill. App. 272, 17 N.E. (2d) 523 (1938).

The highest degree of care must be exercised by common carriers. They are liable for the slightest neglect against which human care and foresight might have guarded. *Treadwell v. Whittier*, 80 Cal. 574, 22 Pac. 266, 5 L.R.A. 498 (1889); *Ferguson v. Truax*, 136 Wis. 637, 118 N.W. 251 (1908); *Wanzer v. Chippewa Valley E. R. Co.*, 108 Wis. 319, 84 N.W. 423 (1900).

The majority of cases hold that the law makes no distinction between an undertaking to carry passengers in buildings by means of elevators and undertaking to carry them upon streets, highways or railroads. The same obligation to exercise the highest degree of care and skill applies in each case. *Walsh v. Cullen*, 235 Ill. 91, 85 N.E. 223 (1908). This has been required where elevators have been used in buildings for business purposes, *Springer v. Ford*, 189 Ill. 430, 59 N.E. 953 (1901); or for use of tenants in office building, *Hartford Deposit Co. v. Sollitt*, 172 Ill. 222, 50 N.E. 178, 64 Am. St. Rep. 35 (1898); or in an apartment house, *Hodges v. Percival*, 132 Ill. 53, 23 N.E. 423 (1890); or in a department store, *Steiskal v. Marshall Field & Co.*, 238 Ill. 32, 87 N.E. 117 (1908). Wisconsin requires the highest degree of care that human skill and foresight could suggest. *Dibbert v. Metropolitan Investment Co.*, 158 Wis. 69, 147 N.W. 3 (1914); *Dehnel v. Smith*, 200 Wis. 292, 227 N.W. 274 (1929); *Oberndorfer v. Pabst*, 100 Wis. 505, 76 N.W. 338 (1898).

The minority view on the degree of care required in elevator cases is that the instrumentality must be in a reasonably safe condition for the customer's use. A New York court reasoned that since buildings have other things just as dangerous, such as boilers and open hatchways, and only reasonable care is required for them, no exception should be made with regard to elevators, since all of the dangerous instrumentalities are within the same building. *Griffin v. Manice*, 166 N.Y. 188, 198, 59 N.E. 925, 52 L.R.A. 922, 82 Am. St. Rep. 630 (1901). Other courts have reasoned that an elevator is not, like a common carrier, a servant of the public, but that the relations and duties of an elevator operator are with a limited number of persons who have contracted with him for the use of his premises and others who have business with his tenants. *Seaver v. Bradley*, 179 Mass. 329, 60 N.E. 795, 88 Am. St. Rep. 384 (1901); *Burgess v. Stowe*, 134 Mich. 204, 210, 96 N.W. 29 (1903).

The jurisdictions which require the highest degree of care in the operation of elevators seem to follow the same rule in regard to escalators, reasoning that there is no difference in principle between the operation of an elevator and an escalator. Both are installed for the same purpose and the only difference is in the method of operation. The elevator runs in a perpendicular fashion and the escalator at an angle of approximately 45 degrees. Both are intended for the benefit of customers and to induce the customers to visit the establishment of the owners, the owners profiting from the installation and operation of each. *McBride v. May Department Stores*, 124 Ohio St. 264, 178 N.E. 12 (1931); *Petrie v. Kaufman & Baer Co.*, 291 Pa. 211, 139 Atl. 878 (1927).

Jurisdictions following the minority rule as to elevators apply a like rule as to escalators, *i.e.*, the operator must use reasonable care to keep in a reasonably safe condition for customer's use. *Richter v. L. Bamberger & Co.*, 11 N.J. Misc. 229, 165 Atl. 289 (1933). One court reasoned that if the highest degree of care were required for escalators, there would be in the same building one degree of care for one mode of elevation and another degree of care for another, that is, if the plaintiff elected to use the stairs, a degree of care would be required different from that required if she used the escalator or elevator. The court could see no reason for these different degrees of care. *Stratton v. Newberry Co.*, 117 Conn. 522, 169 Atl. 56 (1933).

JOSEPH ZILBER.

Torts—Res Ipsa Loquitur—Intervention of a Third Party.—Action for damages, arising out of the alleged negligent operation of the defendant's power plant, was brought by a meat packing company. The plaintiff operated two electric compressors for the manufacture of ice. The electric power, supplied by the defendant power company, failed. When the current was restored, the motors of the two compressors began to burn. The preponderance of evidence indicated that the fire was caused by the delivery, to the electric motors, of a "single phase current" rather than a "three phase current." The "single phasing" was caused by the collision of an automobile with one of the defendant company's poles. The defendant obtained a judgment on a directed verdict.

The plaintiff appealed, claiming that under the doctrine of *res ipsa loquitur* it was entitled to a full and complete explanation of the cause of the fire, but that no such explanation had been offered. Judgment *held*, reversed and the cause remanded for a new trial, but only on the ground that there had been a sufficient conflict of evidence to prevent a directed verdict. The federal court refused to apply the doctrine of *res ipsa loquitur* because the intervention of a third party