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INJURIES FROM FLYING BASEBALLS TO SPECTATORS AT BALL GAMES

CARL ZOLLMANN

THE most casual visitor at any baseball park cannot but notice the wire screens behind the catcher's box and generally along the first and third base lines. To the great majority of customers these screens are nuisances since they obstruct their vision of the playing field. Certainly a baseball park in which all the seats were screened would lose patrons. If nothing else the possibility of retaining balls hit into the stands as souvenirs is attractive to many and would be eliminated by complete screening. On the other hand, if there were no screens whatever, others would not attend games for fear of bodily injury. The screening of a portion of the stands therefore is a compromise between conflicting demands.

The legal reason for this partial screening, however, is different from the practical considerations which have largely produced it. Baseball clubs cannot help but realize that baseballs occasionally inflict injury on spectators. When thrown or batted vigorously they are dangerous missiles and have broken bones not only of players but also of spectators. Tipped foul balls may be equally dangerous on account of the great speed which many pitchers possess. The liability of the baseball club for injuries thus occurring is an interesting legal question to the owners of ball parks, to its customers, and even to the players themselves.

One fact stands out prominently, the batter who deflects a pitched ball into the stands under present day baseball rules does not do it intentionally. The penalty is too great. The present rule, by which every foul is a strike unless there are two strikes on the batter, was passed to prevent intentional fouling. Formerly skilled batters would indeed intentionally foul strikes, partly with a view of tiring the pitcher, partly of obtaining a base on balls. That was in the days when a foul, unless caught by a member of the opposing team, was the same as if there had been no pitch at all. Such a practice would under present rules put the batter at a disadvantage with two strikes on him. It may therefore be fairly assumed that intentional fouling is now a figment of the imagination. The batter, on account of the assortment of speeds, curves and changes of pace possessed by the various pitchers, with a perfectly rounded bat cannot generally determine where the ball is to go. Frequently he is lucky to connect with it at all, especially after two strikes have been called on him. There have indeed been place hitters in the various leagues but of late years little or nothing has been heard of them.

Only one case has been found where it was sought to hold the batter responsible for the injury inflicted by a ball batted by him. A few years ago, a fourteen year old athletic high school girl attended an exhibition game in San Francisco between the San Francisco club and the Pittsburgh Pirates of the National League. She had taken an unprotected seat along the first base line. In the fourth inning the Pittsburgh first baseman, August R. Suhr, who has since broken the National League record for consecutive games played, hit a line foul which injured her severely. She sued for damages, joining the baseball club and Suhr as defendants. The California court dismissed the action as to both defendants.¹

The duties owed by a baseball club owner toward his customers are brought into strong relief by a Wisconsin case. The Wisconsin-Minnesota Light and Power Company operated a street car line between Eau Claire and Chippewa Falls. To encourage travel from both cities it maintained an amusement park midway between the two cities which contained a baseball diamond. A girl of twelve came to the park with her mother, brother, aunt and cousins. They found a table at which they ate a lunch which they had brought along with them. Thereafter the children strayed toward the baseball diamond. The mother followed them to a point 90 feet from the batter's box. Her daughter's dress needed attention and while she was giving such attention a foul ball struck the girl in the face. The jury awarded a verdict of \$2,000. The Wisconsin Supreme Court affirmed the judgment saying: "There can be no question but what it was the duty of the appellant to reasonably safeguard visitors to its park against dangers that might be reasonably foreseen. The ball game being played was played partially by professionals. The appellant might reasonably have foreseen that a foul ball would be batted so as to reach the highway along which visitors were invited to pass, only 90 feet distant from the batter's plate. The facts presented a case for the jury as to whether or not the defendant might reasonably have protected the public in this respect by changing the location of the baseball diamond, or by changing the location of their private highway, or by the use of wire netting or other guards."²

A different conclusion was reached by the Iowa Supreme Court in regard to the directors of a county agricultural society. The plaintiff was struck by a baseball while standing in the grandstand watching races which were then in progress. An agricultural society (unlike a professional baseball organization) is organized to advance agriculture and not to benefit financially those who are members of it. The court

¹ *Quinn v. Recreation Park Ass'n.*, 140 Cal. 418, 35 P. (2d) 602 (1934).

² *Wills v. Wisconsin-Minnesota Light & Power Co.*, 187 Wis. 626, 205 N.W. 556 (1925).

accordingly held that the directors were not responsible for mere "nonfeasance." It stated that "some knowledge of or participation in the wrongful act must be brought home to the party to be charged."³ This case therefore will afford small comfort to professional baseball clubs who fail to screen any portion of their stands and are brought into court by customers injured by flying balls.

If no screen at all subjects the baseball owner to liability a defective screen would seem to have at least the same result. It lures the customer into a false sense of security and instead of protecting him is instrumental in hurting him. This is brought out strongly in a Missouri case. On May 31, 1911, one Edling paid his way into the baseball park of the Kansas City Blues, a team belonging to the American Association. He seated himself behind the catcher's box between which and his seat there was a screen of chicken wire netting. A hole, which, according to his testimony, was almost a square foot in extent, had been worn into the netting. A foul tip passed through the hole with sufficient force to break his nose. The appellate court in affirming a judgment for Edling cited with satisfaction the sarcastic answer made by the plaintiff to the contention of the defendant that plaintiff should have caught or dodged the ball. This answer was as follows: "If the Kansas City Blues had kept their eyes on the ball with the accuracy defendant says plaintiff should have displayed, they would have attained a higher place in the race for the pennant."⁴

Even a screen in good condition is not an absolute protection to a customer who seats himself behind it. On Decoration day, 1925, a young man purchased a ticket at a Portland baseball park and seated himself 60 feet from the batter's box along the third base line and within six feet of the outer edge of a stout screen 150 feet wide and 40 feet high. By some unexplained and perhaps unexplainable combination of natural forces a foul ball perpetrated an unheard of curve around the edge of the screen and inflicted serious permanent injuries on him. He recovered \$3,000 in the court below. The Supreme Court of Oregon however disagreed with this result. The court very properly called this a most unusual and unexpected accident. The ball performed a miracle by the sharp inshoot which it took around the screen. No reasonable care on the part of the management could have foreseen such a result. Such an astounding curve might well excite the envy of any pitcher. The court therefore held that the management in constructing the screen and keeping it in good condition had per-

³ *Williams v. Dean*, 134 Iowa 206, 111 N.W. 931, 11 L.R.A. (N.S.) 410 (1907).

⁴ *Edling v. Kansas City Baseball & Exhibition Co.*, 181 Mo. App. 327, 168 S.W. 908 (1914).

formed its full duty and need not screen the entire stands nor provide "wings" for the side of the screen.⁵

In a Minnesota case a ladies' day visitor according to her own testimony (which was contradicted on this point by 13 other witnesses) was ten feet within the screen in the stands of Nicolet Park at Minneapolis. She claimed that the ball which struck her curved the ten feet around the screen. The Supreme Court said: "If plaintiff occupied the place she and her companion testified to, the defendant had performed its full duty for her protection, and there is no liability for the injury. It is inconceivable that a baseball, when fouled by a batter, could curve around the end of the screen in the manner this ball is said by her to have curved and reached her. No one claims that it glanced from striking any post or object after the time it touched the bat and before it struck plaintiff. The defendant was not an insurer against all perils, nor was it guilty of negligence in failing to guard against improbable dangers. Therefore, if the court had submitted the case to the jury solely upon plaintiff's claim, or if all the evidence had sustained her as to her position in the grand stand, a direction for judgment would have been unavoidable."⁶

If a customer who seats himself behind the screen is not absolutely protected it would follow that one who disdains the protection of such a contrivance and occupies one of the open seats takes his chances and cannot hold the management responsible if mishaps ensue. The Michigan Supreme Court has made a statement in this connection which has been frequently referred to by other courts. It reads: "It is knowledge common to all that in these games hard balls are thrown and batted with great swiftness; that they are liable to be muffed or batted or thrown outside the lines of the diamond; and visitors standing in positions that they may be reached by such balls have voluntarily placed themselves there with knowledge of the situation, and may be held to assume the risk."⁷

Accordingly it is well settled by the decisions of numerous courts that baseball customers in a partially screened park who occupy open seats and are injured by flying balls during a game assume the risk and cannot recover damages for the injuries which they suffer. Cash customers have therefore been denied recovery in Missouri,⁸ Washington⁹ and New York¹⁰ and the same result has been reached as

⁵ Curtis v. Portland Baseball Club, 130 Ore. 93, 279 Pac. 277 (1929).

⁶ Wells v. Minneapolis Baseball & Athletic Ass'n., 142 N.W. 706, 122 Minn. 327, 46 L.R.A. (n.s.) 606, Ann. Cas. 1914D, 922 (1913).

⁷ Blakeley v. White Star Line, 154 Mich. 635, 118 N.W. 482, 19 L.R.A. (n.s.) 722, 129 Am. St. Rep. 496 (1908).

⁸ Crane v. Kansas City Baseball & Exhibition Co., 168 Mo. App. 301, 153 S.W. 1076 (1913).

⁹ Kavafian v. Seattle Baseball Club Ass'n., 105 Wash. 219, 181 Pac. 679 (1919) reversing 105 Wash. 215, 177 P. 776 (1919).

¹⁰ Adonnino v. Mount Morris, 12 N.Y.S. 2d 658, 661, 171 Misc. 383 (1939).

to a "ladies day" visitor in Minnesota.¹¹ When the injury happens is immaterial. In the Washington case the customer had entered the park while the game was in progress. He was hit on the knee immediately after he reached his seat. A customer who chooses an unscreened bleacher seat though he could have, at a greater price, obtained a screened grand stand seat takes his chances.¹²

On occasions of important games when there are more prospective customers than there are seats patrons frequently are willing and anxious to pay large sums for mere standing room and gladly occupy any sort of a seat without regard to the protection that may be afforded. Under such circumstances the screened seats may all be occupied and only unscreened seats may be available. Such a situation may create an interesting legal problem. Another Minnesota case clearly illustrates the matter. One Brisson on just such a day bought a grand stand ticket but could not find a seat in the grand stand. He was directed toward temporary seats erected along the third base line in foul territory. No screens were supplied for such temporary seats though a portion of the grand stand was screened. During the sixth inning a foul ball struck the ground in front of Brisson and rebounded on his head. He had seen ball games before but his experience was limited. The court held that the management is not bound to supply screened seats for all who may possibly apply therefor, but exercised due care when it supplied such screens for the most dangerous part of the grand stand and for those who may reasonably be expected to desire protected seats, and that it need not supply protected seats for unusual crowds. In closing its opinion the court said: "No adult of reasonable intelligence, even with the limited experience of the plaintiff, could fail to realize that he would be injured if he was struck by a thrown or batted ball, such as is used in league games of the character of which he was observing, nor could he fail to realize that foul balls were likely to be directed toward where he was sitting. No one of ordinary intelligence could see many innings of an ordinary league game without coming to a full realization that batters cannot, and do not, control the direction of the ball which they strike, and that foul tips or liners may go in an entirely unexpected direction. He could not hear the bat strike the ball many times without realizing that the ball was a hard object. Even the sound of the contact of the ball with the gloves or mitts of the players would soon apprise him of that. It is our opinion that the plaintiff, notwithstanding his alleged limited experi-

¹¹ *Wells v. Minneapolis Baseball & Athletic Ass'n.*, 122 Minn. 327, 142 N.W. 706, 46 L.R.A. (N.S.) 606, Ann. Cas. 1914D, 922 (1913).

¹² *Cater v. Cincinnati Exhibition Co.*, 1 S.E. 2d 131, 215 N.C. 64 (1939).

ence, must be held to have assumed the risk of the hazards to which he was exposed."¹³

What is true of an inexperienced spectator occupying temporary seats certainly is doubly true of experienced spectators occupying permanent but unprotected seats. That they may have asked for protected seats will not make any difference where there are none such left in the part of the stands desired by the customer. In San Francisco at Recreation Park a fourteen year old athletic and mentally alert high school girl, herself an amateur baseball player, attended a game after attending games regularly for two seasons about two times each week. The grand stand contained an unusually large number of screened seats along the first base line. She asked for such a seat. The usher however conducted her to an unscreened seat nearby. All the seats behind this particular screen were occupied though seats behind the screen which was near the batter's box were still available. She was injured by a foul ball during the fourth inning. She failed to recover in an action brought against the management and the player who had batted this particular foul.¹⁴

The injuries inflicted on spectators by flying baseballs are not necessarily confined to foul balls. Frequently the most rabid fans gather in the bleachers just as the most fervent grand opera lovers frequently gather in the galleries. These bleachers, as every baseball fan knows, are between the foul lines but at such a distance from the home plate that only "home runs" will ordinarily land among the bleacherites. Such stands usually have a low wire screen in front not so much for the protection of the spectators but for the purpose of making the ball rebound into the playing field and thus provide the spectators with the added thrill of seeing the batter run fast in an attempt to stretch a two base hit into a three bagger or a three base hit into a home run. No case involving an injury to a "sun god" during a game has been discovered. However such an event has taken place during batting practice. In 1930 the bleachers in the park of the New Orleans Baseball and Amusement Company were 158 feet from home plate. A portion of the grand stand was screened in the regulation manner. The bleachers had no other protection than a screen five feet high. One Lorino entered the bleachers before the game and while batting practice was going on. While he was looking about for a good seat he was struck on the side of the head by a line drive and two of his jaw bones were broken. The court applied the ordinary rule already discussed and held that Lorino assumed the risk by choosing a bleacher

¹³ *Brisson v. Minneapolis Baseball Ass'n.*, 185 Minn. 507, 240 N.W. 903 (1932).

¹⁴ *Quinn v. Recreation Park Ass'n.*, 140 Cal. 418, 35 P. (2d) 602. (1934).

seat while protected seats were available. If anything he was negligent in not watching for the ball while batting practice was in progress.¹⁵

Observant baseball enthusiasts may have noticed that batting practice is generally restricted to one batter at a time. While a number of balls may be in use only one batter is usually allowed to swing a bat at any particular time. There is good reason for such restriction. This is brought out in an Ohio case. On July 30, 1921, the Cincinnati National League Club played a double header with the New York Giants. During the intermission groups of players engaged in batting practice on the diamond along the sidelines. A wire screen protected part of the stand. A young girl occupied a reserved but unprotected seat in the grand stand. She was struck on the side of her face by a ball thrown along the sidelines and deflected by the batter. The court held that the general rule already discussed should not be extended to this particular case. A spectator cannot be held as a matter of law to assume the risk of every batting or throwing of balls permitted by the management no matter how near the grand stand, no matter how many groups are engaged and no matter whether the batting or throwing is a part of the game itself. The management had the duty to make its premises reasonably safe for spectators by having balls thrown and batted under circumstances and at a place where it would be reasonably possible for spectators to protect themselves. During the course of the game only one ball would ever be in motion and spectators can and do watch it. During a practice such as occurred in this case they cannot follow the maneuvers of all the groups. The playing during a game is confined mostly to the diamond and to those portions of the field away from the grand stand. The batter always intends to bat away from the home plate. The playing for the most part is directed away from the spectator rather than towards him. The throwing toward the spectator by the pitcher, from the bases and from the outfield, is from a distance considerably removed from the grand stand so that the danger during a game is not as great as from a batting practice such as occurred in this case. Accordingly, a judgment for the plaintiff was affirmed.¹⁶

¹⁵ *Lorino v. New Orleans Baseball and Amusement Co.*, 16 La. 95, 133 So. 408 (1931).

¹⁶ *Cincinnati Baseball Club v. Eno*, 112 Ohio St. 175, 147 N.E. 86 (1925).