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Article 11

Negligence: Res Ipsa Loquitor: Common Carriers

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The legislatures have designated what type of investment may be made by guardians and those legally charged with the administration of trust funds. The statutes are specific. (See sec. 231.32, Wis. Stat., 1933). If the guardian follows the course laid down by the statutes he is protected against any future responsibility for loss arising out of the investment which he may select. In the instant case the guardian had elected a course other than that prescribed by the statutes and in so doing he lost the protection which the legislature had attempted to provide; see, 20 Pa. Stats. Ch. 801; *In re Taylor's Estate,* supra; *U. S. F. & G. Co.* v. *Taggart,* (Tex Civ. App., 1917) 194 S.W. 482. The guardian may not follow the "statutory course" and if he uses good faith and due care and prudence working for the best pecuniary interests of his ward, he will not be responsible for any loss arising out of the transaction, *Lamar* v. *Micon,* 112 U.S. 452, 5 Sup. Ct. 221, 28 L.Ed. 751 (1884); *Corcoran* v. *Kostrometinoff,* supra. *(The transaction has been an investment.)*

The strict application of the letter of the law doubtlessly places the loss on the guardian. Due care on his part in depositing the funds for a certain period is rendered ineffective where he fails to bring himself within the statute or cannot show he was seeking an investment when the loss is incurred.

C. A. R.

NEGLIGENCE—RES IPSA LOQUITOR—COMMON CARRIERS—The plaintiff, a passenger in a bus, operated by the defendant, a common carrier, was injured when the bus struck the rear of an automobile being operated by a third person. The plaintiff was thrown from her seat to the floor of the bus. The complaint set forth general allegations of negligence. At the trial the plaintiff introduced no specific facts to show fault on the part of the bus driver or any other employee of the defendant. The trial court did take notice of an Ohio statute which provided that no person should drive any motor vehicle at a greater rate of speed than would permit him to stop within the assured clear distance ahead. (Cf. sec. 85.32, .40, Wis. Stats., 1933). The trial court permitted the case to go to a jury and the jury found a verdict for the plaintiff. Judgment was entered on the verdict. *Held,* on appeal, the record failed to support the verdict. The mere happening on an injury to a passenger without a showing of a definite breach of duty by the carrier is insufficient in law to constitute a ground of actionable negligence. *Hall* v. *Custom Motor Coach, Inc.,* (Ohio, 1934) 189 N.E. 505.

It is conceded that a common carrier owes its passengers the highest degree of care consistent with the transaction of its business. *Scales* v. *Boynton Cab Co.,* 198 Wis. 293, 223 N.W. 836, 69 A.L.R. 379 (1929). The carrier's responsibility, however, is not absolute. There must be something in the record to support a finding of fault. The doctrine of *res ipsa loquitur* may be invoked to help the plaintiff-passenger in some situations where it would be difficult for him to know definitely what the carrier's employees had failed to do or to discover what they had done improperly. This is particularly true in collision cases, and the doctrine is generally applied where the collision occurs between two vehicles operated and directed by the same defendant carrier, *North Chi. St. Ry. Co.* v. *Cotton,* 140 Ill. 486, 29 N.E. 899 (1892). The carrier is expected to explain how the collision occured because his employees have been in a better position than the plaintiff to have seen what happened. In the instant case one of the vehicles was not operated by anyone employed by the defendant. This is a typical situation in the bus cases. Whether a plaintiff in such a case should be in a position to make out a prima facie case by showing merely the happening of the collision,

and the relationship between himself and the defendant, is a matter of policy upon which the courts are not in accord. In the instant case the court decided against the plaintiff. Perhaps in most jurisdictions the decision would be for the plaintiff on this question. *Robinson* v. *McAllister,* 216 Cal. 312, 13 P. (2d.) 926 (1932). The problem of pleading is tied to the problem of proof. General allegations of negligence will be sufficient if the passenger does not have to show anything by way of specific facts as evidence of fault to get to the jury. *Guaranty Casualty Co.* v. *Am. Milling Co.,* 169 Wis. 426, 172 N.W. 148 (1919); *Klien* v. *Butian,* 169 Wis. 385, 172 N.W. 736, 5 A.L.R. 1237 (1920). It has been held in some cases that plaintiffs may show for example, that the bus was being driven at a high rate of speed, or without proper lights, where the complaint had set out negligence in general terms, *Omaha & C. B. St. Ry. Co.* v. *McKeesnan,* 250 Fed. 386, 162 C.C.A. 456 (1928); *Carnahan* v. *Motor Trans. Co.,* 65 Cal. App. 402, 424 P. 143 (1924).

Which is the better way of handling these cases is for the court in each jurisdiction to decide for itself. Because of the relationship between the parties, the public nature of the defendant's calling, the difficulties facing the plaintiff in building up a case, and the position of the carrier's employees who ought to know what happened, it would seem that these are cases where the courts should compel the defendant to satisfy the jury that the accident occured through no fault of its employees.

P. G. Y.

TORTS—FALSE IMPRISONMENT—OFFICERS' RIGHT TO DETAIN NON-RESIDENT DRIVERS FOR INVESTIGATION.—A non-resident while driving his car was stopped by police officers, who believed that the car was a stolen one. Having determined that it was not the car reported as stolen, the officers took the driver into custody when he could not produce licenses as required in the state where he was arrested. The driver contended that the law in the state of his residence did not require such license. After an investigation which took a substantial time, the truth of the driver's contention was ascertained and he was released. An action for false imprisonment was commenced on the theory that the detention was unlawful *ab initio. Held,* On appeal, that the circumstances (suspicion of a felony) existing at the time of the arrest was sufficient justification for the detention. *Pine et al* v. *Okzewski et al.* (N.J., 1934) 170 Atl. 825.

There is interesting *dicta* in the instant case tending to justify the detention, not because there was suspicion of a felony but because there was suspicion of a misdemeanor (see points 6 to 11, incl., pp. 828 to 830). Reasonable grounds for suspecting a misdemeanor is no defense to a false imprisonment action when in fact no misdemeanor was committed. *Stewart* v. *Freeley,* 118 Iowa 524, 92 N.W. 670 (1902), (vagrancy); *Daniels et. al.* v. *Millstead,* 221 Ala. 353, 128 So. 447 (1930), (failure to have hunting license); *Martin* v. *Golden,* 180 Mass. 549, 62 N.E. 977 (1902), (vagrancy); *Tillman* v. *Beard,* 121 Mich. 480, 80 N.W. 248, 46 L.R.A. 215 (1899), (no vendor's license).

The Wisconsin court, in a case involving failure to have proper license plates on a car, has held that if it reasonably appears to the officer that a misdemeanor is being committed he does not have to justify the arrest by showing a misdemeanor is in fact being committed. *Bursack* v. *Davis,* 199 Wis. 115, 225 N.W. 738 (1929). In the instant case the statutes, (Comp. St. N.J. Supp. 135-49 et seq.), giving the officer power to arrest drivers for failure to have in their possession the required licenses, were construed to permit the officer to detain a non-