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Torts--Assumption of Risk (Anderson v. Kansas City Baseball Club, 231 S.W.2d 170 (Mo. 1950))

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Where deleterious foreign matter does not constitute a component part of the food product a plaintiff cannot rely on a breach of the statute but may proceed on the theory of common law negligence.[8] Proof that the deleterious matter was in the food at the time of its delivery to the injured consumer and that the food was undisturbed in the same container in which it left the processor constitutes a prima facie case of negligence.[9] Also, where the food has been distributed to the consumer from a bulk package by an intermediary party, proof that such intermediary was not negligent constitutes a prima facie case against the producer.[10] In either case such proof if not rebutted would warrant the finder of facts in inferring negligence.[11]

It is submitted, therefore, that the drawing of such inference might be a real basis for the decision in the *Alphin* case, particularly since it was shown that the wire was completely concealed from the restaurant. The court in basing its decision on a breach of Section 200 ran counter to the grain of decisional law on the subject. The *Piazza* case is in accord with the precedent cases as to the application of the statute. Further, as the plaintiff failed to prove negligence and as there was no basis for inferring it, the judgment was rightly given to the defendant.

TORTS—ASSUMPTION OF RISK.—Plaintiff purchased a ticket for an unreserved seat in the defendant's baseball park. Upon entering the stadium, plaintiff seated herself in the screened portion of the stands. Told to move because all those seats were reserved, she inquired of the usher whether the unscreened section was safe. Reassured, she complied. Struck by a foul ball, plaintiff brought an action to recover for injuries sustained. The complaint was dismissed as a matter of law. *Held,* judgment affirmed. After providing screened sections, there remains the hazard that balls fouled into the unscreened portions may cause injury to patrons. Such danger is inherent in the game and obvious to all. Plaintiff's lack of knowledge could not alter this fact, nor is this hazard that type of an unreasonable risk to patrons which imposes upon the operator a duty to warn. *Anderson v. Kansas City Baseball Club,* 231 S. W. 2d 170 (Mo. 1950).

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[8] Bertha Chysky v. Drake Brothers Co., 235 N. Y. 468, 139 N. E. 576 (1923).

[9] Miller v. National Bread Co., 247 App. Div. 88, 286 N. Y. Supp. 908 (4th Dep't 1936); Cohen v. Dugan Brothers, Inc. *et al.,* 132 Misc. 896, 230 N. Y. Supp. 743 (Sup. Ct. 1928).

[10] Steinberg *et al.* v. Bloom *et al.,* 5 N. Y. S. 2d 774 (Sup. Ct. 1938); Ritchie v. Sheffield Farms Co., 129 Misc. 765, 222 N. Y. Supp. 724 (N. Y. Munic. Ct. 1927).

[11] See note 9 *supra.*

The duty of an operator of a place of public amusement to his patron is the same as that of any possessor of land to his business invitee.[1] Reasonable care must be taken by the operator to protect against injury which could have been reasonably foreseen and warning of hidden perils must be given to the unsuspecting patron.[2] Nevertheless, the invitee at a public exhibition assumes the risk of an obvious danger or one that is a matter of common knowledge.[3] Therefore, the degree of the duty required is conditioned and adapted to the character of the exhibition and the general notoriety it has achieved.

Application of these general principles to the injured baseball spectator cases has resulted in firmly established rules of law which clearly define the duty of a baseball exhibitor to his patrons. The proprietor of a baseball park must provide screened seats directly behind home plate [4] and screened exits for those desiring such accommodations.[5] This accomplished, an owner discharges his duty of maintaining adequate safeguards against wayward balls.[6] The spectator choosing an unprotected seat, whether he is a rabid fan or a novice,[7] assumes the risk of being struck; [8] whereas the operator is not required to warn of a hazard so openly apparent.[9]

Courts have not yet established comparable rules to govern liability for injury occurring at other sports exhibitions. Assumption

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[1] Hudson v. Kansas City Baseball Club, Inc., 349 Mo. 1215, 164 S. W. 2d 318 (1942); RESTATEMENT, TORTS § 343 (1934); see Note, 142 A. L. R. 858 (1942).

[2] See note 1 *supra.*

[3] See note 1 *supra.*

[4] *Compare* Curtis v. Portland Baseball Club, 130 Ore. 93, 279 Pac. 277 (1929) (150 feet of screening held sufficient as a matter of law), *with* Wells v. Minneapolis Baseball & Athletic Ass'n, 122 Minn. 327, 142 N. W. 706 (1913) (whether 65 feet of screening provided proper protection ruled question of fact for jury).

[5] Olds v. St. Louis Nat. Baseball Club, 233 Mo. App. 897, 104 S. W. 2d 746 (1937).

[6] Cates v. Cincinnati Exhibition Co. *et al.*, 215 N. C. 64, 1 S. E. 2d 131 (1939); Hull v. Oklahoma City Baseball Co. *et al.*, 196 Okla. 40, 163 P. 2d 982 (1945); Keys *et al.* v. Alamo City Baseball Co., 150 S. W. 2d 368 (Tex. 1941). *But cf.* Edling v. Kansas City Baseball & Exhibition Co., 181 Mo. App. 327, 168 S. W. 908 (1914) (operator held liable when ball passed through hole in netting and struck plaintiff).

[7] Ratcliff v. San Diego Baseball Club of the Pacific Coast League, 27 Cal. App. 2d 733, 81 P. 2d 625 (1938).

[8] Lorino v. New Orleans Baseball & Amusement Co., 16 La. App. 95, 133 So. 408 (1931) (during pre-game practice); Blackhall v. Capitol District Baseball Ass'n, 154 Misc. 640, 278 N. Y. Supp. 649 (City Ct. 1935), *aff'd*, Blackhall v. Albany Baseball & Amusement Co., 157 Misc. 801, 285 N. Y. Supp. 695 (County Ct. 1936) (while walking to unprotected seats); Hummel v. Columbus Baseball Club, Inc., 71 Ohio App. 321, 49 N. E. 2d 773 (1943) (at a night game as well as day).

[9] Hunt v. Thomasville Baseball Co., 80 Ga. App. 572, 56 S. E. 2d 828 (1949).

of risk by the patron at wrestling,[10] football,[11] and auto racing[12] events is considered a question for the jury. Injuries resulting from attendance at an ice hockey match, however, have occasioned a variance of opinion: the New York view, as in the baseball cases, is that a spectator choosing an unprotected seat assumes the risk of being struck by a flying puck as a matter of law;[13] other jurisdictions allow the jury to decide whether the operator has discharged his duty to invitees.[14] A recent ruling is indicative of the trend to be followed in future decisions pertaining to these sports activities. The court, in effect, said that when hockey has reached a plane of popularity rivalling baseball, the rules established for the latter sport should prevail.[15]

It is submitted that the law in this field is dictated by public policy. Rulings result from a conflict of two desires: adequate protection for the spectator; and limitation of liability upon the owner, in order for him to provide this form of entertainment unhampered by oppressive regulations.[16] The holdings in the baseball cases indicate that liability in many factual situations will be determined as a matter of law. If other athletic exhibitions, through the media of attendance and television, can succeed to the national recognition accorded to baseball, it is opined that courts will adopt the same rationale which is applied to that sport.[17]

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[10] Dusckiewicz v. Carter, 115 Vt. 122, 52 A. 2d 788 (1947) (ringside spectator hit by wrestler thrown from ring). *But cf.* Wiersma v. City of Long Beach, 41 Cal. App. 2d 8, 106 P. 2d 45 (1940) (no liability of owner as matter of law when wrestler jumped from ring and struck plaintiff with chair, such assault being beyond the scope of the wrestler's employment).

[11] Ingerson *et al.* v. Shattuck School, 185 Minn. 16, 239 N. W. 667 (1931) (plaintiff, familiar with game, stood close to sidelines and was injured when a player was thrown offside).

[12] Murphy v. Jarvis Chevrolet Co. *et al.*, 310 Ill. App. 534, 34 N. E. 2d 872 (1941) (spectator at soap box derby hit by runaway auto); *cf.* Arnold v. New York, 163 App. Div. 253, 148 N. Y. Supp. 479 (3d Dep't 1914) (racing car skidded off track and struck invitee standing at rail).

[13] Ingersoll v. Onondaga Hockey Club, 245 App. Div. 137, 281 N. Y. Supp. 505 (3d Dep't 1935); Hammel v. Madison Square Garden Corp., 156 Misc. 311, 279 N. Y. Supp. 815 (Sup. Ct. 1935).

[14] Shurman v. Fresno Ice Rink, Inc., 91 Cal. App. 2d 469, 205 P. 2d 77 (1949); Tite v. Omaha Coliseum Corporation *et al.*, 144 Neb. 22, 12 N. W. 2d 90 (1943).

[15] Modec v. City of Eveleth, 224 Minn. 556, 29 N. W. 2d 453 (1947).

[16] *See* Grimes v. American League Baseball Co., 78 S. W. 2d 520, 523 (Mo. 1935).

[17] *Query:* Recognizing the recent popularization of wrestling by television, should the possibility of a wrestler being thrown out of the ring be any less a matter of common knowledge than that of a baseball being fouled into the stands?