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Torts--Negligence--Proximate Cause--When It Becomes a Question of Law for the Court (Routzahn v. Brown Hotel, 211 S.W.2d 848 (Ky. 1948))

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Hitherto, the New York courts had not extended the rule of single publication so as to apply it to books, but had restricted its application to newspapers and magazines. The decision in the present case so extends the rule and sweeps aside the reluctance shown by the courts in the past to erase the distinction which existed between magazines and newspapers on the one hand, and books on the other, in their treatment of the subject matter of libel actions. The logic underlying this former distinction is that newspapers and periodicals are generally discarded soon after their publication and are seldom read thereafter, so that the damage likely to be suffered therefrom is negligible. Books, however, are not designed to be read merely during the period immediately following their first publication. Some books retain their popularity for many years, so that one containing libelous statements would continue to damage the person so libeled as long as copies are sold. This reasoning, however persuasive, when followed seems to defeat the clear purpose of the statute of limitations, which is to outlaw stale claims and eliminate multiplicity of litigation. As a result of such reasoning, a book which had been published twenty years ago might become the basis of a libel action today, if perchance the publisher permitted a single copy to be sold to the public. On the other hand, the extended single publication rule gives to the statute of limitations the effect which the legislature seems to have intended.[9]

As a result of this decision, the present state of the law in New York is that a libel is reiterated only when an independent act, equivalent to a new publication in the trade sense, is committed. The mere continued dissemination of copies of the defamatory matter originally published is not a reiteration of the libel.

G. T. M.

TORTS—NEGLIGENCE—PROXIMATE CAUSE—WHEN IT BECOMES A QUESTION OF LAW FOR THE COURT.—Plaintiff, an elderly woman, emerged from a coffee shop through a revolving door opening upon a small vestibule. The floor of the vestibule slopes almost imperceptibly toward the sidewalk where it meets a stepdown of about six inches. After emerging from the revolving door and before stepping upon the sidewalk, the plaintiff fell and broke her hip. The floor was not slippery, nor did it contain any foreign substance which might have caused her fall. The court directed a verdict for the defendant because the plaintiff failed to show that the condition of

[9] Chase Securities Corp'n v. Donaldson, 325 U. S. 304, 89 L. ed. 1628 (1945). Here the court said that the purposes of the statute of limitation are "to spare the courts from litigation of stale claims, and the citizen from being put to his defense after memories have faded, witnesses have died or disappeared, and evidence has been lost."

the floor was the proximate cause of her fall. On appeal, plaintiff contended that the giving of a peremptory instruction, based on a failure to show proximate cause, constituted reversible error. *Held,* judgment affirmed. Determination of proximate cause of accident ordinarily rests with jury, but where reasonable men can reach only one logical determination of such questions from facts in evidence, directed verdict is proper. *Routzahn v. Brown Hotel,* 307 Ky. 548, 211 S. W. 2d 848 (1948).

In negligence actions the rule is frequently reiterated that the proximate cause of an injury must ordinarily be determined as a question of fact by the jury in view of the circumstances attending the injury.[1] Proximate cause may be inferred from circumstantial evidence, if substantial.[2] But it is obvious that whether it will be a question for the jury will depend on the circumstances of each case. Thus, where the facts of the particular case are controverted or of such character that different minds might reasonably draw different conclusions therefrom, a question of fact is presented properly determinable by the jury.[3] As the questions of negligence on the part of the defendant in an action for personal injuries is one of fact for the jury to determine under all the circumstances of the case and under proper instructions from the court, so also is the question whether there was negligence on the part of the plaintiff which was the proximate cause of the injury.[4] But where the facts are undisputed and are susceptible of only one inference, the question is one of law for the court and the court should withdraw the question from the jury.[5] Whether only one inference may be drawn necessarily must rest ultimately with the court.[6] Likewise, it is stated that it is for the court to determine whether or not the evidence supports any reasonable inference of a causal relation between an act of negligence and the injury complained of, in whole or in part;[7] and the court must reach its conclusion by determining whether the evidence reasonably justifies the submission to the jury of the question whether defendant's conduct was a substantial factor in producing plaintiff's injuries.[8] Where the evidence connecting defendant's negligence with plaintiff's injuries rests purely on speculation or conjecture, it is a question of law for the court and no case for

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[1] Comstock v. Wilson, 257 N. Y. 231, 177 N. E. 431 (1931); Maloney v. Kaplan, 233 N. Y. 426, 135 N. E. 838 (1922); United Mut. Fire Ins. Co. v. Jamestown Mut. Life Ins. Co., 242 App. Div. 420, 275 N. Y. Supp. 47 (4th Dep't 1934).

[2] Paine v. Gamble Stores, 202 Minn. 462, 279 N. W. 257 (1938).

[3] Stone v. Boston & A. R. Co., 171 Mass. 536, 51 N. E. 1 (1898).

[4] United States Exp. Co. v. Kraft, 161 Fed. 300 (C. C. A. 3d 1908).

[5] Beiser v. Cincinnati, N. O. & T. P. R. Co., 152 Ky. 522, 153 S. W. 742 (1913); Hoffman v. King, 160 N. Y. 618, 55 N. E. 401 (1899).

[6] O'Malley v. Eagan, 43 Wyo. 283, 2 P. 2d 1063 (1931).

[7] Mahoney v. Beatman, 110 Conn. 184, 147 Atl. 762 (1929).

[8] See note 7 *supra.*

the jury is presented.[9] While, ordinarily, the answers to these questions would naturally fall within the province of the jury, and when made in their verdict, would be regarded as binding, yet where the facts are fairly incontrovertible, the question of proximate cause is for the court.[10] In this regard, the question of proximate cause is not different from the question of negligence, or contributory negligence, in all of which, when the *facts* are conceded or found, the question is one of law.[11] The province of the jury is to find the *facts,* but once being found or conceded, it is the duty of the court to declare the law applicable to such *facts.*[12]

Therefore, in the present case, since the plaintiff failed to show a causal connection between the injury and the condition of the vestibule, the only remaining conclusion was that the accident was caused by plaintiff's own misstep and in such a case it is proper to take the question out of the hands of the jury and direct a verdict for the defendant.

J. J. L.

TREASURE-TROVE — LOST PROPERTY — MERGER OF TREASURE-TROVE INTO LOST PROPERTY.—The defendants were members of a church committee which had collected several bundles of rags. These rags were parcelled out to hired women to weave into rugs. The plaintiff was one of the women hired for this purpose, and in the bundle allocated to her she found $2,100 in $10 and $20 bills. Plaintiff turned this money over to the defendants and advertised in the local newspaper in an attempt to find the true owner. The money was never claimed and the plaintiff requested the defendants to return it to her. Upon the defendant's refusal this action was brought for the restoration of the money. The defendants counterclaimed alleging that the plaintiff had forfeited her rights to the money by failing to comply with a statute [1] that set up certain requirements [2]

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[9] Atchison, T. & S. F. R. R. v. Toops, 281 U. S. 351, 74 L. ed. 896 (1930); Kalinowski v. Joseph T. Ryerson & Son, 242 App. Div. 43, 272 N. Y. S. 759 (4th Dep't 1934).

[10] Goodlander Mill Co. v. Standard Oil Co., 63 Fed. 400 (C. C. A. 8th 1894).

[11] Traylen v. Citraro, 112 Cal. App. 172, 297 Pac. 649 (1931).

[12] Johnson v. Wofford Oil Co., 42 Ga. App. 647, 157 S. E. 349 (1933).

[1] The Wisconsin statute provides: "If any person shall find any money or goods of the value of three dollars or more and if the owner shall be unknown, such person shall, within five days after finding money give notice thereof in writing to the town clerk . . . ." WIS. STAT. § 170.07 (1945).

[2] The statute also provided a penalty for non-compliance: "If any finder of lost money or goods of the value of three dollars or upward shall neglect to give notice of same and otherwise to comply with the provisions of this chapter he shall be liable for the full value of such money or goods, one-half to use of town the other half to person who shall sue for the same . . . ." WIS. STAT. § 170.07 (1945).