Chapter 2

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Palsgraf v. Long Island Railroad Company

248 N.Y. 339, 162 N.E. 99 (1928)

Cardozo, Ch. J. Plaintiff was standing on a platform of defendant's railroad after buying a ticket to go to Rockaway Beach. A train stopped at the station, bound for another place. Two men ran forward to catch it. One of the men reached the platform of the car without mishap, though the train was already moving. The other man, carrying a package, jumped aboard the car, but seemed unsteady as if about to fall. A guard on the car, who had held the door open, reached forward to help him in, and another guard on the platform pushed him from behind. In this act, the package was dislodged, and fell upon the rails. It was a package of small size, about fifteen inches long, and was covered by newspaper. In fact, it contained fireworks, but there was nothing in its appearance to give notice of its contents. The fireworks—when they fell—exploded. The shock of the explosion threw down some scales at the other end of the platform, many feet away. The scales struck the plaintiff, causing injuries for which she sues.

The conduct of the defendant's guard, if a wrong in its relation to the holder of the package, was not a wrong in relation to the plaintiff, standing far away. Relatively to her it was not negligence at all. Nothing in the situation gave notice that the falling package had in it the potency of peril to persons thus removed. Negligence is not actionable unless it involves the invasion of a legally protected interest, the violation of a right.

The argument for the plaintiff is built upon the shifting meanings of such words as "wrong" and "wrongful," and shares their instability. What the plaintiff must show is "a wrong" to herself, i.e., a violation of her own right, and not merely a wrong to someone else, nor conduct "wrongful" because unsocial, but not "a wrong" to anyone. If no hazard was apparent to the eye of ordinary vigilance, an act innocent and harmless, at least to outward seeming, with reference to her, did not take to itself the quality of a tort because it happened to be a wrong, though apparently not one involving the risk of bodily insecurity, with reference to someone else.

Negligence, like risk, is thus a term of relation. Negligence, in the abstract, apart from things related, is surely not a tort, if indeed it is understandable at all. One who seeks redress at law does not make out a cause of action by showing without more that there has been damage to his person. If the harm is not willful, he must show that the act

as to him has possibilities of danger so many and apparent as to entitle him to be protected against the doing of it though the harm was unintended.

Andrews, J. (dissenting). The result we shall reach [in this case] depends upon our theory as to the nature of negligence. Is it a relative concept—the breach of some duty owing to a particular person or to particular persons? Or where there is an act which unreasonably threatens the safety of others, is the doer liable for all its proximate consequences, even where they result in injury to one who would generally be thought to outside the radius of danger?

Where there is an unreasonable act, and some right that may be affected there is negligence whether damage does or does not result. Should we drive down Broadway at a reckless speed, we are negligent whether we strike an approaching car or miss by an inch. The act is itself wrongful. It is a wrong not only to those who happen to be within the radius of danger but to all who might have been there—a wrong to the public at large.

Every one owes to the world at large the duty of refraining from those acts that may unreasonably threaten the safety of others. Such an act occurs. Not only is he wronged to whom harm might reasonably be expected to result, but he also who is in fact injured, even if he be outside what would generally be thought the danger zone.

[W]hen injuries result from our unlawful act we are liable for the consequences. It does not matter that they are unusual, unexpected, unforeseen and unforeseeable. But there is one limitation. The damages must be so connected with the negligence that the latter may be said to be the proximate cause of the former.

[In defining proximate cause, t]here are some hints that may help us. The proximate cause, involved as it may be with many other causes, must be, at least, something without which the event would not happen. The court must ask itself whether there was a natural and continuous sequence between cause and effect. Was the one a substantial factor in producing the other? Was there a direct connection between them, without too many intervening causes? Is the effect of cause on result not too attenuated? Is the cause likely, in the usual judgment of mankind, to produce the result? Or by the exercise of prudent foresight could the result be foreseen?

The act upon which the [current] defendant's liability rests is knocking an apparently harmless package onto the platform. The act was negligent. For its proximate consequences the defendant is liable. If its contents were broken, to the owner; if it fell upon and crushed a passenger's foot, then to him. If it exploded and injured one in the immediate vicinity, to him also. We are told by the appellant in his brief "it cannot be

denied that the explosion was the direct cause of the plaintiff's injuries." So it was a substantial factor in producing the result—there was a natural and continuous sequence—direct connection. The only intervening cause was that instead of blowing her to the ground the concussion smashed the weighing machine, which in turn fell upon her. There was no remoteness in time, little in space.

Under these circumstances I cannot say as a matter of law that the plaintiff's injuries were not the proximate result of the negligence.

United States v. Carroll Towing

United States Court of Appeals, Second Circuit

159 f.2d 169 (1947)

Hand, L., Circuit Judge. These appeals concern the sinking of the barge, "Anna C," on January 4, 1944, off Pier 51, North River. The Conners Marine Co., Inc., was the owner of the barge,… the Grace Line, Inc., was the charterer of the tug, "Carroll," of which the Carroll Towing Co., Inc., was the owner. …

The facts, as the judge found them, were as follows. [On June 20, 1943, the barge Anna C. was moored, along with several other barges, at a pier on the Norrh River. The tugboat Carroll was sent by Grace Line to move one of the barges. In so doing, the crew readjusted the lines holding the other barges, including the Anna C. Shortly thereafter, the Anna C. and five other barges broke away from the pier and were set adrift until the Anna C. collided with a tanker, whose propeller tore open her side. Since no bargee had been left to attend the barge, it was not observed that she was leaking, and she sank along with her cargo of flour. The question concerns the allocation of liability for the resulting loss.]

It appears from the foregoing review that there is no general rule to determine when the absence of a bargee or other attendant will make the owner of the barge liable for injuries to other vessels if she breaks away from her moorings. However, in any cases where he would be so liable for injuries to others obviously he must reduce his damages proportionately, if the injury is to his own barge. It becomes apparent why there can be no such general rule, when we consider the grounds for such liability. Since there are occasions when every vessel will break from her moorings, and since, if she does, she becomes a menace to those about her; the owner's duty, as in other similar situations, to provide against resulting injuries is a function of three variables: (1) the probability that she will break away; (2) the gravity of the resulting injury, if she does; and (3) the burden of adequate precautions. Possibly it serves to bring this notion into relief to state it in algebraic terms: if the probability be called P; the injury, L; and the burden, B; liability depends upon whether B is less than L multiplied by P: i.e., whether $B < PL$. Applied to the situation at bar, the likelihood that a barge will break from her fasts and the damage she will do, vary with time and place. For example, if a storm threatens, the danger is greater; so it is, if she is in a crowded harbor where moored barges are constantly being shifted about. On the other hand, the barge must not be the bargee's prison, even though he lives aboard; he must go ashore at times. At the locus in quo—especially during the short January days and in the full tide of war activity—barges were being constantly "drilled" in and out. Certainly it was not beyond reasonable expectation that, with the inevitable hustle and bustle, the work might not be done with adequate care. In such circumstances we hold that it was a fair requirement that the Conners Company should have a bargee aboard during the working hours of daylight.

Butterfield v. Forrester

11 East 60 (K.B., 1809)

This was an action on the case for obstructing a highway, by means of which obstruction the plaintiff [Butterfield], who was riding along the road, was thrown down with his horse, and injured, etc. At the trial before Bailey, J. at Derby, it appeared that the defendant [Forrester], for the purpose of making some repairs to his house, which was close by the roadside at one end of the town, had put up a pole across part of the road, a free passage being left by another branch or tree in the same direction. That the plaintiff left a public house not far distant from the place in question at 8 o'clock in the evening in August, when they were just beginning to light candles, but while there still was light enough to discern the obstruction at one hundred yards' distance; and the witness who proved this, said that if the plaintiff had not been riding very hard he might have observed and avoided it. The plaintiff, however, who was riding violently, did not observe it, but rode against it, and fell with his horse and was much hurt in consequence of the accident; and there was no evidence of his being intoxicated at the time. On this evidence, Bailey, J. directed the jury that if a person riding with reasonable and ordinary care could have seen and avoided the obstruction; and if they were satisfied that the plaintiff was riding along the street extremely hard, and without ordinary care, they should find a verdict for the defendant, which they accordingly did.

Lord Ellenbrough, C.J. A party is not to cast himself upon an obstruction, which had been made by the fault of another, and avail himself of it, if he does not himself use common and ordinary caution to be in the right. In case of persons riding upon what is considered to be the wrong side of the road that would not authorize another purposely to ride up against them. One person being in fault will not dispense with another's using ordinary care for himself. Two things must occur to support this action: an obstruction in the road by the fault of the defendant, and no want of ordinary care to avoid it on the part of the plaintiff.

Davies v. Mann

10 M. & W. 545 (Ex., 1842)

At the trial, before Erskine, J., it appeared that the plaintiff, having fettered the fore-feet of an ass belonging to him, turned it into a public highway, and at the same time in question the ass was grazing on the off side of a road about eight yards wide, when the defendant's wagon, with a team of three horses, coming down a slight descent, at what the witness termed a smartish pace, ran against the ass, knocked it down, and the wheels passing over it, it died soon after. The learned judge told the jury, that if they thought that the accident might have been avoided by the exercise of ordinary care on the part of the driver, to find for the plaintiff. The jury found their verdict for the plaintiff.

Godson now moved for a new trial, on the ground of misdirection. The act of the plaintiff in turning the donkey into the public highway was an illegal one, and, as the injury arose principally from that act, the plaintiff is not entitled to compensation for that injury which, but for his own unlawful act would never have occurred. The principle focus of law is, that where an accident is the result of faults on both sides, neither party can maintain an action. Thus, in *Butterfield v. Forrester*, 11 East 60, it was held that one who is injured by an obstruction on a highway, against which he fell, cannot maintain an action, if it appears that he was riding with great violence and want of ordinary care, without which he might have seen and avoided the obstruction.

Lord Abinger, C.B. [A]s the defendant might, by proper care, have avoided injuring the animal, and did not, he is liable for the consequence of his negligence, though the animal may have been improperly there.

Parke, B. [T]he negligence which is to preclude a plaintiff from recovering in an action of this nature, must be such as that he could, by ordinary care, have avoided the consequences of the defendant's negligence. [A]lthough the ass may have been wrongly there, still the defendant was bound to go along the road at such a pace as would be likely to prevent mischief. Were this not so, a man might justify the driving over goods left on a public highway, or even over a man lying asleep there, or the purposely running against a carriage going on the wrong side of the road.

Haft v. Lone Palm Hotel

3 Cal.3d 756, 478 P.2d 465 (1970)

Tobriner, J. On June 26, 1961 Mr. And Mrs. Haft, and their five-year-old son, Mark, traveled to Palm Springs and stayed at the Lone Palm Hotel, operated by defendants. The Lone Palm Hotel is a 90-unit motel, with rooms on both sides of a six-lane through street, Indian Avenue. The motel office, a restaurant and a swimming pool are located on the east side of Indian Avenue. On the west side are rooms, a swimming pool, and a wading pool. The Hafts were given a room on the west side and it was in the west pool that father and son drowned.

At trial, Mrs. Haft testified that although she could not say that her husband and son were "real swimmers" they both could dog-paddle and tread water well enough to get around the pool.

No one witnessed the actual drownings of the two Hafts.

Although no direct evidence revealed the manner in which the drownings occurred, the evidence did establish, without conflict, that while defendants had furnished the lounging space, wading pool and swimming pool essential for their guests' recreation, the motel failed to provide *any of the major safety measures required by law* for pools available for the use of the public. [emphasis in original] Thus, the record shows that, with defendants' knowledge, no lifeguard was present at the pool and no sign advising guests of this fact was posted. No sign warned that children were not to use the pool without an adult in attendance. No telephone numbers of the nearest ambulance, hospital, fire or police rescue services, physician and pool operator were posted in the pool area. In short, when measured against state safety standards, it would be difficult to find a pool that was more dangerous than the attractive facility which the Lone Palm offered its guests, and in which Mr. Haft and Mark drowned.

In failing to satisfy all of these mandatory safety requirements, which were clearly designed to protect the class of persons of which the victims were members, defendants were unquestionably negligent as a matter of law.

Defendants suggest that since their pool falls into the category of pools in which the statutory obligation would be satisfied by the posting of an adequate sign, the consequences of their failure to meet the statutory demands ought to be limited to harm caused by the non-erection of the warning notice. The language of the statute makes clear, however, that the underlying requirement of this statute is the provision of "lifeguard service," and we believe that the legislative intent would be nullified if a pool owner were permitted to avoid this important requirement by pointing to the fact that he *failed* to comply with the statutory substitute as well. [emphasis in original]

[D]efendants attempt to avoid liability by contending that since the decedents were the only people in the pool area, the absence of a lifeguard must have been obvious; if the

absence of a lifeguard was obvious, the argument continues, defendants' failure to post a sign notifying decedents of this absence could be of no significance. Defendants thus conclude that this negligence was not a "proximate cause" of the resulting injury….

Although there is some superficial persuasiveness in such a position, the main strength of the argument derives not from its own merit, but, instead, from the difficulty of proof facing an injured party attempting to counter this position.

Although the paucity of evidence on causation is normally one of the burdens that must be shouldered by a plaintiff in proving his case, the evidentiary void in the instant action results primarily from defendants' failure to provide a lifeguard to observe occurrences within the pool area. The main purpose of the lifeguard requirement is undoubtedly to aid those in danger, but an attentive guard does serve the subsidiary function of witnessing those accidents that do occur. The absence of a lifeguard in the instant case thus not only stripped decedents of a significant degree of protection to which they were entitled, but also deprived the present plaintiffs of a means of definitively establishing the facts leading to the drownings.

Clearly, the failure to provide a lifeguard greatly enhanced the chances of the occurrence of the instant drownings. In proving (1) that defendants were negligent in this respect, and (2) that the available facts, at the very least, strongly suggest that a competent lifeguard, exercising reasonable care, would have prevented the deaths, plaintiffs have gone as far as they possibly can under the circumstances in proving the requisite causal link between defendants' negligence and the accidents. To require plaintiffs to establish "proximate cause" to a greater certainty than they have in the instant case, would permit the defendants to gain the advantage of the lack of proof inherent in the lifeguard-less situation which they have created.