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Torts - Question of Proximate Cause

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NOTES AND COMMENTS

TORTS — QUESTION OF PROXIMATE CAUSE:—An unusual question of causation was presented in *St. Louis-San Francisco R. Co. v. Ginn*[1] decided by a five to three decision of the Oklahoma Supreme Court.

Plaintiff, a farmer, took his tractor and plowed a fire guard around his meadow in an attempt to minimize the damage from a fire spreading from the defendant railroad company's right of way. While taking the tractor to a place of safety, he ran over a root or branch which flew up striking his eye. The court held he could recover from the defendant for the injury.

The majority opinion said that since plaintiff was not at the place of his own volition and was not doing an act of his own choosing, that equitably he should not be required to bear the loss resulting from his personal injuries. They stated that under these circumstances the injury flowed directly from the fire and consequently the defendant's negligence was the proximate cause of the injury. The dissenting opinion was based on the idea of proximate cause being the natural and probable consequence of the negligence and stated that the majority opinion unduly extended the doctrine.

In this case the majority opinion recognized the split of judicial opinion which has long been a problem in determining the extent of proximate cause. It adopted as the better rule that of *Illinois Central R. Co. v. Siler*[2] in which a woman was burned to death while trying to protect her property from a fire negligently started by the defendant on its right of way. It was there held that since the injury wouldn't have occurred except for the railroad's negligence, and the only intervening cause was plaintiff's voluntary act to save property, which defendant might reasonably have foreseen, the fire was the proximate cause of the injury.

The court in this case refused to follow the case of *Seale v. Gulf*,[3] which held that the act of the person intervening to save property becomes the proximate cause of the injury and relieves the original wrongdoer of liability. In rejecting this theory the majority followed the action of an earlier Oklahoma decision, *Merritt v. Oklahoma Natural Gas Co.*[4] and apparently reaffirmed the position taken in *City of Altus v. Wise*[5] that any intervening cause must entirely supersede and be independent of the original negligence to become the proximate cause.

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[1] 264 P.2d 351 (1953).
[2] 229 Ill. 390, 82 NE 362 (1907).
[3] 65 Tex. 274, 57 Am. Rep. 602 (1886).
[4] 196 Okla. 379, 165 P.2d 342 (1946).
[5] 193 Okla. 288, 143 P.2d 128 (1943).

The position taken by the dissent, however, is not without support; an earlier Oklahoma decision, *Mathers v. Younger*,[6] based proximate cause on, "natural and continuous sequence, unbroken by independent cause, without which there would be no injury." This followed the reasoning of a still earlier Oklahoma case,[7] to the effect that an intervening act would break the causal connection unless it should have been anticipated. A recent Kansas decision[8] follows this line of thought by stressing the conjunction in natural *and* probable consequences in determining proximate cause.

In rejecting the defendant's contention that such an incident as we had here couldn't have been foreseen by any degree of care, the Oklahoma court undoubtedly felt that it was not necessary that the particular injury should have been foreseen, but only that some injury might have been foreseen. In effect the court used a form of estoppel based on plaintiff's being present because of the defendant's negligence. This is shown by the language saying, "Defendant should not be permitted to say plaintiff's act was voluntary and that the injuries received didn't flow directly from defendant's wrong."[9]

It would seem that, although the majority opinion was on solid ground in its reasoning, the conclusion they reached stretches the concept of proximate cause to the utmost. While the doctrine of proximate cause has been sporadically extended since the time of the famous Squib Case,[10] practicality and logic demand some limitation be placed on the liability which can accrue from an act such as occurred here. Judicial attempts to unravel the fabric of interwoven acts making up cause and effect and thus enlarge liability by means of the doctrine should be within some limitation. There has been reluctance, however, to place any such limitation on liability, and the principal case seems to be in line with the modern tendency toward extension of the doctrine of proximate cause wherever possible.

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[6] 177 Okla. 294, 58 P.2d 857 (1936).
[7] Chicago R.I.&P. R. Co. v. Moore, 360 Okla. 450, 129 P. 67 (1912).
[8] Shideler v. Habiger, 172 Kans. 718, 243 P.2d 211, (1952).
[9] St. Louis, etc. v. Ginn, supra.
[10] Scott v. Shepard, 2 W.B.1. 892.

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