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Torts - Trespass To land - Liability for Consequential Injuries

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is nonetheless held liable for the results of his negligence.[18] It would seem that this general rule that the defendant takes his victim as he finds him would be equally applicable in the instant type of case.

The general rule, also relied upon to some extent by the court in the instant case, that a defendant is not liable for physical injury resulting from a plaintiff's fear for a third person, has had its usual application in situations where the plaintiff is not within the zone of danger.[19] Seemingly, the reason for this rule is to enable the courts to deal with case where difficulties of proof militate against establishing the possibility of recovery. It would seem, however, that in a situation where the plaintiff is within the zone of danger and consequently could recover if he feared for himself, the mere fact that he feared for another should not preclude recovery. Since a person in a frightening situation does not have complete control over the direction his mind takes, there seems no good reason for penalizing him for not fearing for his own safety. No matter what mental gymnastics are undergone, the result reached is still the same; physical injury resulted from negligently caused fright.

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TORTS — TRESPASS TO LAND — LIABILITY FOR CONSEQUENTIAL INJURIES

Plaintiff brought an action in trespass *quare clausum fregit* for damages to real property and personal injuries occasioned by the trespass. Plaintiff was a tenant in possession of certain premises. Defendant drove a truck onto the premises and damaged the steps of plaintiff's home. Nine days later plaintiff was injured by falling while attempting to use the broken steps. In his petition, plaintiff made no allegation that defendant was negligent when he damaged the steps. The trial court granted defendant's motion to dismiss on the ground that this was a consequential injury for which recovery could not be had. On appeal

18. Patterson v. Steamship Jefferson Myers, 45 F.2d 162 (1930); Kalaf v. Assyd, 60 Ariz. 33, 130 P.2d 1036 (1942); Campbell v. Los Angeles Traction Co., 137 Cal. 565, 70 Pac. 624 (1902); Hahn v. Delaware, L. & W. R.R., 92 N.J.L. 277, 105 Atl. 459 (1918).

19. Southern R.R. v. Jackson, 146 Ga. 243, 91 S.E. 28 (1916); Cleveland, C.C. & St. L. R.R. v. Stewart, 24 Ind. App. 374, 56 N.E 917 (1900); Nuckles v Tennessee Electric Power Co., 155 Tenn. 611, 299 S.W. 775 (1927); Waube v. Warrington, 216 Wis. 603, 258 N.W. 497 (1935).

to the Court of Appeal of Florida, *held*, reversed.[1] There was insufficient evidence to rule as a matter of law that the injury was not, as alleged, a direct and proximate result of the trespass, and testimony must be taken to determine the truth of this allegation. "If the injury was, in fact, direct and immediate, it is a trespass; but on the other hand, if it is consequential or collateral it will be case." *Leonard v. Nat Harrison Associates, Inc.*, 122 So.2d 432 (Fla. App. 1960).

In certain situations it is preferable to bring an action in trespass rather than on a negligence theory of trespass on the case. In trespass it is unnecessary to show negligence toward the particular injury which is caused by the trespass,[2] and defendant does not have the defense of contributory negligence.[3] To support any action of trespass,[4] defendant's act must cause an injury by the direct application of force.[5] In trespass to land the direct injury required to establish the action is an injury to plaintiff's right of possession. This necessary direct injury is done and the action is established when defendant does an act which occasions a direct entry onto plaintiff's property.[6] On the other hand, if defendant's act does not occasion a direct entry, but the entry is an indirect or consequential result of that *act*, trespass will not lie.[7] Thus, when one hurls a ball onto the property in possession of another and breaks a window, the instant

1. On appeal, the defendant conceded that a trespass had been committed, and that plaintiff was entitled to at least nominal damages. This of itself necessitated a reversal by the appellate court, since the trial court had dismissed the entire suit.

2. St. Petersburg Coca Cola Bottling Co. v. Cuccinello, 44 So.2d 670 (Fla. App. 1950); Van Alstyne v. Rochester Tel. Corp., 163 Misc. 258, 296 N.Y. Supp. 726 (N.Y. City Ct. 1937); RESTATEMENT, TORTS § 380, comment c (1934).

3. St. Petersburg Coca Cola Bottling Co. v. Cuccinello, 44 So.2d 670 (Fla. App. 1950).

4. Although trespass may be characterized as intentional, it is not necessary that the actor intends to trespass; it is only necessary that the actor intends to enter the land which, in fact, is in the possession of another. RESTATEMENT, TORTS § 164 (1934). It is no defense that he thinks that he has the owner's consent, Jackson v. Pettrigrew, 133 Mo. App. 508, 133 S.W. 672 (1908), thinks that he is privileged to enter, Blatt v. McBarron, 161 Mass. 21, 36 N.E. 468 (1894), or that he owns the land, May v. Tappan, 23 Cal. 306 (1863); Ball & Bros. Lumber Co. v. Simms Lumber Co., 121 La. 627, 46 So. 674, 18 L.R.A.(N.S.) 244 (1908).

5. STREET, FOUNDATIONS OF LEGAL LIABILITY 2 (1906) ("In the field of trespass liability is based solely upon the fact that damage is directly done by force."); PROSSER, TORTS 56 (2d ed. 1955).

6. Investment Securities Corp. v. Cole, 57 Ga. App. 97, 100, 194 S.E. 411, 413 (1937), *aff'd*, 186 Ga. 809, 199 S.E. 126 (1938) ("The gist of such an action of trespass is the injury done to possession of the property."); Mawson v. Vess Beverage Co., 173 S.W.2d 606 (Mo. App. 1943); Thrasher v. Hodge, 86 Mont. 218, 283 Pac. 219 (1929); Steinfeld v. Morris, 16 N.Y.S.2d 155, 258 App. Div. 228 (1939).

7. HARPER & JAMES, TORTS § 1.3 (1956); STREET, TORTS 62 (1955).

the ball crosses the property line, the trespass is established. On the other hand, if one builds a baseball diamond for the neighborhood children and one of these children hits a ball onto another's property, there is no trespass committed by the builder of the diamond, even though he may have created an unreasonable risk toward the other's property. The entry of the ball onto the other's property is an indirect or consequential result of the act of building the diamond.

Having established a trespassory entry, the trespassory object may cause injury by directly applying force to the thing injured, or the force expended by the object may create a dangerous condition which exists after the trespass has ceased and the dangerous condition may be the cause of the injury. Thus, when defendant hurls a ball onto another's property, when the ball penetrates the close the trespass is established. When the ball strikes the window there is a direct physical injury occasioned by the trespassory object. When the glass falls to rest upon the floor and the possessor comes to investigate and cuts his foot on the glass, there is an indirect or consequential injury caused by the trespassory entry. Care must be taken to distinguish between the indirect or consequential results of an *act* which does not support an action of trespass and the indirect or consequential results of a *trespassory entry*. The courts use the same terminology when dealing with both of these closely related problems.

When the trespass is established, plaintiff may recover at least nominal damages for the wrongful entry onto his property.[8] In addition, the trespasser is strictly liable for the injuries caused by a direct application of force.[9] Once a trespassory invasion is established, most courts allow recovery under the strict liability of trespass for some of the injuries which are not occasioned by the direct application of force, but arise as an indirect or consequential result of it.[10] The courts have termed

8. Lee v. Stewart, 218 N.C. 287, 10 S.E.2d 804 (1940); Schumpert v. Moore, 24 Tenn. App. 695, 149 S.W.2d 471 (1940).

9. See RESTATEMENT, TORTS § 380 (1934). Ure v. United States, 93 F. Supp. 779 (D.C. Ore. 1950), *aff'd sub nom.*, White v. United States, 193 F.2d 505 (9th Cir. 1952), *rev'd*, Ure v. United States, 225 F.2d 709 (9th Cir. 1955). The decision was reversed on the theory that the Federal Torts Claims Act may be invoked on a "negligent or wrongful act or omission," but the absolute liability of trespass caused by extrahazardous activity is not grounds for recovery against the United States.

10. In Van Alstyne v. Rochester Tele. Corp., 163 Misc. 258, 296 N.Y. Supp. 726, 729 (N.Y. City Ct. 1937), in allowing recovery for dogs which were poisoned by lead dropped by a telephone linesman while repairing a cable, the court stated:

these recoverable consequential injuries "proximate," "natural," and "necessary consequences" of the trespass.[11] Thus the problem arises as to how to distinguish between those consequential injuries which are recoverable, hence within the protected risk of the strict liability of trespass, and those which are too remote for recovery under trespass.

In the instant case, since the original force had terminated nine days previously, the personal injury was clearly a *consequential* result of the defendant's trespassory entry and subsequent direct injury to the steps.[12] The plaintiff alleged no negligence in the injury to the steps. He may have been unable to prove negligence, or more probably, he did not allege it in order to avoid giving defendant the defense of contributory negligence. In any event, plaintiff alleged that the personal injury was a direct and proximate result of the trespass and based his cause of action on the theory that the consequential injury of the trespassory entry was recoverable under the strict liability of trespass. The trial court ruled as a matter of law that the plaintiff's personal injury was remote; "the effect of the direct invasion was broken," and the recovery, if any, should lie in trespass on the case.[13] Thus, the court of appeal had to decide whether to allow recovery for any consequential injuries of a trespass, and, if so, whether the personal injury in the instant case was too remote for recovery as a matter of law. Since the trespass was clearly established in the instant case, and the personal injury was clearly a consequential result of that trespass, it would seem

"It does not matter that the plaintiff here seeks recovery, not for direct damage to his soil or to vegetation or structures, but for consequential damages. Recovery does not depend upon directness of the damage. *The test is whether there was a direct invasion.*" (Emphasis added.)

11. Walker v. Ingram, 251 Ala. 395, 396, 37 So.2d 685, 686 (1948) ("when a trespass to property is committed under circumstances of insult or contumely, mental suffering may be compensated for, when it is a proximate consequence."); Herzog v. Grosso, 41 Cal.2d 219, 225, 259 P.2d 429, 433 (1953) ("Once a cause of action for trespass or nuisance is established, an occupant of land may recover damages for annoyance and discomfort that would naturally ensue therefrom."); Hughett v. Caldwell County, 313 Ky. 85, 90, 230 S.W.2d 92, 96, 21 A.L.R.2d 373, 378 (1950) ("trespasser is responsible in damages for all consequences flowing from his trespass which are the natural and proximate result of his conduct"); Curtis v. Fruin-Colnon Contracting Co., 253 S.W.2d 158, 161 (Mo. App. 1952) ("defendant is responsible for damages to plaintiff's property naturally and necessarily resulting from the trespass").

12. 1 CHITTY, PLEADINGS 126 (8th Amer. ed. 1840): "An injury is considered as *immediate* when the act complained *of itself*, and not merely a *consequence* of that act, occasions the injury."

13. It is not clear from the opinion whether the trial court meant that there could be no recovery for consequential injuries of a trespass or that this particular consequential injury was too remote for recovery under the action of trespass.

that the appellate court, in reversing, recognized that some consequential injuries are recoverable, under the strict liability theory. In disposing of the case, the court stated, "If the injury was, in fact direct and immediate, it is a trespass; but on the other hand, if it is consequential or collateral it will be case." Although this language appears to be a reiteration of the test for trespass-case distinction, since the trespass was clearly established in the instant case, this language would seem to be directed toward the problem of determining *which* consequential injuries are recoverable under trespass. The court is apparently saying that if the consequential injury is a direct and immediate result of the trespass, it is within the protected risk of the strict liability of trespass. Viewed in this fashion, it would seem that underlying this language is the same concept which other courts have expressed as proximate, natural, and necessary results of a trespass.

On the basis of the decisions in this area, there seem to be five major factors which motivate the courts to classify a consequential injury as a natural or proximate result of the trespass, and hence within the protected risk of the strict liability of trespass. (1) Intent of the trespasser. If the trespasser intends harm, the courts do not hesitate to extend the recovery for consequential injury to extreme lengths.[14] However, if the trespasser merely intends the act which occasions the trespass, the courts tend to be much more restrictive in the consequential injuries for which they allow recovery.[15] (2) Whether the landowner could have avoided the damages. The landowner should not be required to prepare himself in advance against the threat of danger from a trespasser,[16] but once an injury occurs, he may be required to use reasonable care to prevent further injury.[17] Thus, if the trespasser removes a fence, he is liable for the escape of cattle.[18] However, he is not liable when the owner sees the fence being destroyed and makes no reasonable effort to prevent

14. When defendant raided plaintiff's plantation and carried away some of the slaves and frightened the others away, recovery was allowed for wood stacked on the bank of a river which was carried away in a flood because the slaves were not present to move it, for crops lost for lack of attention, for crops destroyed because cattle broke down the fence, and loss of services of the slaves. McAfee v. Crofford, 54 U.S. (13 How.) 447 (1851). See generally Bauer, *Degree of Moral Fault as Affecting Liability*, 81 U. PA. L. REV. 586 (1933); RESTATEMENT, TORTS § 163, comment *e* (1934).

15. PROSSER, TORTS 338-39 (2d ed. 1955). See generally Harper, *Liability Without Fault and Proximate Cause*, 30 MICH. L. REV. 1001 (1932).

16. 25 C.J.S., *Damages* § 33 (1955).

17. RESTATEMENT, TORTS § 918 (1934).

18. Damron v. Roach, 4 Humph. (23 Tenn.) 134 (1843).

the cattle from escaping.[19] Although contributory negligence is generally said not to be a defense to trespass,[20] assumption of risk does constitute a defense.[21] This should mean nothing more than that the risk protected does not include those consequential injuries of which the landowner is fully apprised, and could avoid by reasonable care. Consequently if a landowner discovers a dangerous condition created by a trespasser and unreasonably exposes himself or his property to danger, there should be no liability placed upon the trespasser for this damage. (3) Intervening forces. Forces over which the trespasser has no control may intervene as a cause of the damage. But if the trespasser creates a risk that these forces might intervene, he should be liable for the resulting harm.[22] Thus, one who wrongfully removes a fence creates a risk that animals might enter to damage the crops of the landowner.[23] However, it cannot be said that the trespasser will be liable for damage done by all forces operating on the dangerous condition he created. The owner of a train which was negligently wrecked upon the plaintiff's property was not held liable for damage caused by spectators who were attracted to the property.[24] (4) Time and distance. It appears that the facts of each case must be considered to determine if the chain of causation is broken by extreme distance or periods of time. Where the landowner is unable to prevent or avoid the damage, considerable lengths of time may be allowed between the trespass and the resulting harm.[25] But where the landowner can avoid the consequences, only a reasonable time should be allowed. (5) The strangeness of the resulting injury. The act of

19. RESTATEMENT, TORTS § 918, Illustration 5 (1934).

20. St. Petersburg Coca Cola Bottling Co. v. Cuccinello, 44 So.2d 670 (Fla. App. 1950).

21. RESTATEMENT, TORTS § 893 (1934). See PROSSER, TORTS § 55, at 303 (2d ed. 1955).

22. See PROSSER, TORTS § 49 (2d ed. 1955).

23. Garrett v. Sewell, 108 Ala. 521, 18 So. 737 (1895); Mecartney v. Smith, 62 Pac. 540 (Kan. App. 1900) (one who destroys a building exposes the landowner and his property to inclement weather).

24. Scholes v. North London R.R., 21 L.T.R.(N.S.) 835 (C.P. 1870) (It is interesting to note, however, that in this case, he was held liable for damage caused during the removal of the train).

25. When defendant removed gravel from a dam, recovery was allowed when the dam was washed away three weeks later in a flood. Dickinson v. Boyle, 34 Mass. 78 (1835). When defendant trespassed by allowing lead to fall on plaintiff's property, recovery was allowed for a dog who ate the lead and was poisoned two weeks later, and for another dog who ate the lead about a month later. Van Alstyne v. Rochester Tel. Corp., 163 Misc. 258, 296 N.Y. Supp. 726 (N.Y. City Ct. 1937). Defendant trespassed by cutting several feet into plaintiff's property to build a road. This removal of dirt caused the land on plaintiff's property to slip and slide. Recovery was allowed for the erosion which continued over a period of several months. Defendant attempted to prevent further damage, but failed. Whitehead v. Zeiller, 265 S.W.2d 689 (Tex. Civ. App. 1954).

trespass may start a chain of events which may result in strange and unusual injuries. A farmer's cow escaped, entered a neighbor's barn, and fell through the floor into a cistern. Later the neighbor entered the barn and fell through the broken floor and was seriously injured. No recovery was allowed by the court on the ground that the injury was not such as would usually and probably result from the escape and subsequent trespass of defendant's cow.[26]

It is submitted that on the basis of the above analysis, the court reached an appropriate result in the instant case, although the language used seems to be unduly confusing. The trial court noted that nine days in which plaintiff could use and observe the broken steps had elapsed and held that this broke the effect of the direct invasion. At first blush, nine days seems to be a long time between the termination of the trespass and the resulting direct consequential injury. However, courts have allowed recovery in cases where the resulting injury occurred several weeks after the termination of the trespass.[27] Apparently, it was felt that the trial court should not have ruled as a matter of law on this point without the introduction of further testimony. However, if this was the only exit to plaintiff's home, and it was not possible to have the steps repaired, then the knowledge of the danger might not preclude recovery. Since evidence which would enable the court to consider this and other factual situations which might exist did not appear in the record, it seems that the court was not willing to affirm until these possibilities were explored.

Charley J. Schrader, Jr.

WORKMEN'S COMPENSATION — PSYCHOSIS RESULTING FROM DAILY ASSEMBLY LINE PRESSURES

Plaintiff brought suit to recover workmen's compensation for a psychosis resulting from emotional pressures encountered in daily assembly line work. The defendant denied that a mental disorder precipitated solely by usual mental stimulus constituted a compensable disability, due to the lack of any single event causing plaintiff's breakdown. The referee entered an award

26. Hollenbeck v. Johnson, 79 Hun. 499, 29 N.Y. Supp. 945 (Sup. Ct. 1894).
27. See note 24 *supra*.