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Negligence - Res Ipsa Loquitur - Doctine Applied Although Damage Causing Instrumentality Within the Exclusive Control of Defendant at the Time of the Damage

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NEGLIGENCE — RES IPSA LOQUITUR — DOCTRINE APPLIED ALTHOUGH DAMAGE CAUSING INSTRUMENTALITY WITHIN THE EXCLUSIVE CONTROL OF DEFENDANT AT THE TIME OF THE DAMAGE — Seven months after defendant had installed a washbowl in a bathroom in plaintiff's house, the house was damaged by water when one of the pipes became disconnected from a

faucet. During the two weeks immediately prior to the damage the house was unoccupied, but inspections were made every two or three days by plaintiff's employee. Plaintiff sued defendant to recover for the damage caused by defendant's alleged negligence in connecting the water pipe to the washbowl. In a trial to the court, the evidence tended to eliminate other possible causes of the disconnection, such as rough use or manufacturing fault. The trial judge gave judgment for the plaintiff, relying upon the doctrine of *res ipsa loquitur.* On appeal, *held,* affirmed. Proof of defendant's control of the damage causing instrumentality at the time of the alleged negligence will suffice to invoke the doctrine of *res ipsa loquitur* if the plaintiff reasonably eliminates other possible intervening causes of the damage. *Rinkel v. Lee's Plumbing & Heating Co.,* 99 N.W. 2d 779 (Minn. 1959).

The doctrine of *res ipsa loquitur* as a rule of evidence[1] permits an inference[2] of negligence which ordinarily places on the defendant the burden of explaining the injury and rebutting the inference. Application of the doctrine is usually restricted to cases in which the defendant at the time of damage is in the exclusive control of the instrumentality causing the injury.[3] However, in the principal case the court applied the doctrine although defendant had not been in control of the disconnected pipe for more than seven months. Reasoning from its assumption that the question of when the doctrine should be invoked is actually a question of how justice would be most practically and fairly administered,[4] the court held the doctrine applicable if defendant was in exclusive control of the pipe at the time of the alleged negligence.[5]

The application of the doctrine of *res ipsa loquitur* is justified when all the usual prerequisites[6] are present because logic and common experience then indicate that defendant is negligent. The burden of rebutting the

1 See PROSSER, TORTS §42 (2d ed. 1955); 9 WIGMORE, EVIDENCE §2509 (3d ed. 1940).

2 A minority of courts hold that the doctrine shifts the burden of going forward with evidence; two or three regard it as shifting the burden of proof. See generally PROSSER, TORTS §43 (2d ed. 1955); Prosser, *The Procedural Effect of Res Ipsa Loquitur,* 20 MINN. L. REV. 241 (1936).

3 See PROSSER, TORTS §42 (2d ed. 1955); 9 WIGMORE, EVIDENCE §2509 (3d ed. (1940).

4 Principal case at 782.

5 The court cites as precedent: Peterson v. Minnesota Power & Light Co., 207 Minn. 387, 291 N.W. 705 (1940) (injury following fifteen days of normal use after installation of stove by defendant, defendant also in control of the electric power which might have caused the injury); Saunders v. Walker, 229 La. 426, 86 So.2d 89 (1956) (damage four months after repair of an air conditioning unit). See also Ryan v. Zweck-Wollenberg Co., 266 Wis. 630, 64 N.W.2d 226 (1954) (injury involving sealed unit in refrigerator nearly three years after purchase). *But compare* Bluett v. Eli Skating Club, 133 Conn. 99, 48 A.2d 557 (1946) (plaintiff injured while roller skating a few minutes after skate adjusted by defendant).

6 In addition to the exclusive control requirement it is usually said that the injury must be a kind which does not ordinarily occur unless someone was negligent, and that the injury must not be due to any voluntary act of plaintiff. See generally PROSSER, TORTS §42 (2d ed. 1955); 9 WIGMORE, EVIDENCE §2509 (3d ed. 1940).

inference is not unduly onerous since the defendant usually has better access to the evidence than does plaintiff.[7] But the relaxation of the prerequisite of exclusive control evidenced by the principal case does in two respects bear upon the fairness of the doctrine. First, the inference of negligence is weaker since the longer defendant has been out of control of the instrumentality, the greater is the possibility that some agency other than defendant caused the injury. Second, the more remote in time and distance defendant is at the time of the damage, the less likely he is to have access to evidence which might rebut the inference of negligence, either by proving that he was not negligent[8] or by showing that some other force caused the damage.[9] Thus, the application of *res ipsa loquitur* in a case like the principal one may have the practical effect of imposing strict liability on a defendant, for it puts upon him a virtually impossible burden of rebuttal.

Some writers have recognized this close relationship between *res ipsa loquitur* and strict liability.[10] When the doctrine is extended to cover cases in which defendant is not in exclusive control at the time of the damage, it becomes less a rule of evidence and more a substantive rule of law. The resulting strict liability can sometimes be justified, as in the "exploding bottle" cases,[11] where the bottler must realize that a certain number of bottles will explode and is in effect taking that risk when he intentionally puts the bottle in commerce.[12] In the instant case there seems to be no good reason for extending the doctrine of *res ipsa loquitur.* Plaintiff rather than defendant had the exclusive right of inspection and access to the facts at the time and place of the damage. If it is conceded that neither party is in a position to explain the incident, there appears to be little reason to shift the loss to defendant who may well be innocent, and who is in no better position to insure against or bear the loss than is plaintiff.

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[7] See MCCORMICK, EVIDENCE §309 (1954); 9 WIGMORE, EVIDENCE §2509 (3d ed. 1940) (stating that the justice of the rule consists in the circumstance that the evidence is accessible to defendant). *But see* PROSSER, TORTS §42 (2d ed. 1955); 2 HARPER AND JAMES, THE LAW OF TORTS §19.9 (1956).

[8] See, *e.g.,* Dunning v. Kentucky Utilities Co., 270 Ky. 44, 109 S.W.2d 6 (1937); Oliver v. Union Transfer Co., 17 Tenn. App. 694, 71 S.W.2d 478 (1934). The difficulty in trying to prove a broad "negative" (lack of negligence) by testimony that he was careful is illustrated by defendant's attempt in the principal case, at 782, 783. PROSSER, TORTS §43 n.23 (2d ed. 1955), states, "As the defendant's evidence approaches definite proof that the defect could not be present, it is all the more clearly rebutted by the fact that the defect is there." See also 2 HARPER AND JAMES, THE LAW OF TORTS §§19.11, 19.12 (1956).

[9] See, *e.g.,* Tyreco Refining Co. v. Cook, 110 S.W.2d 219 (Tex. Civ. App. 1937).

[10] 2 HARPER AND JAMES, THE LAW OF TORTS §§19.5, 19.12 (1956).

[11] See, *e.g.,* Johnson v. Coca-Cola Bottling Co., 235 Minn. 471, 51 N.W.2d 573 (1952); Stolle v. Anheuser-Busch, 307 Mo. 520, 271 S.W. 497 (1925). *But see* Loebig's Guardian v. Coca-Cola Bottling Co., 259 Ky. 124, 81 S.W.2d 910 (1935).

[12] For a case in which the court considers this policy aspect in applying the doctrine of *res ipsa loquitur,* see Stolle v. Anheuser-Busch, *supra* note 11. *But compare* Loebig's Guardian v. Coca-Cola Bottling Co., *supra* note 11.