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NEGLIGENCE - PROXIMATE CAUSE - INTERVENING ACT OF A CHILD

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NEGLIGENCE — PROXIMATE CAUSE — INTERVENING ACT OF A CHILD — Defendant's truck was overloaded with unslaked lime and a piece which fell off was picked up by the child plaintiff, who put the lime in a bucket of damp earth which he was carrying. In the resulting explosion plaintiff lost one eye and injured the other. *Held*, the intervening act of a person over whom the defendant had no control broke the chain of causation. *Leoni v. Reinhard*, 327 Pa. 391, 194 A. 490 (1937).

In examining the cases where the act of a child intervenes between the original wrongdoer and the injury, no uniform rule can be found. However, the general rule is usually said to be that it makes no difference that the intervening agent is a child.[1] Nevertheless, the cases do show that, in some respects, the act of a child will not be an effective intervening cause, although it would be if the act were done by an adult and the other facts were the same. In the first place, the difference might be based on the fact that the child's acts are not contributory negligence, though a similar act by an adult would be.[2] Then again, the fact that a child was the one who did the act might affect the fundamental problem as to whether the intervening act was foreseeable. This is especially true in the dynamite cap cases, where the courts say that it was foreseeable that a child would find these explosives and injure himself or another with them.[3] In such cases it might not be a "natural and probable con-

[1] 23 L. R. A. (N. S.) 249 (1910); 22 R. C. L. 140 (1918), stating that "The general rule seems to be that the fact that the person responsible for the intervening act is a child does not affect the case, but, if the act itself is an intervening efficient cause, it will break the casual connection between the defendant's negligence and the plaintiff's injury, even though it is the act of an irresponsible child." Fishburn v. Burlington & N. W. Ry., 127 Iowa 483, 103 N. W. 481 (1905); Otten v. Cowen, 1 N. Y. S. 430 (N. Y. City Ct. Gen. Term, 1888); Barnes v. J. C. Penney Co., 190 Wash. 633, 70 P. (2d) 311 (1937).

[2] Fishburn v. Burlington & N. W. Ry., 127 Iowa 483, 103 N. W. 481 (1905) (a child replaced a board in D's snow fence and later the board fell on the child).

[3] Fehres v. City of McKeesport, 318 Pa. 279, 178 A. 380 (1935) (D left dynamite caps in a park where the child discovered them); Sroka v. Halliday, 41 R. I.

sequence" that an adult would injure himself the same way.[4] Still another possible difference was brought out in an opinion comparing the act of the child to the cases where the intervening cause is wind, unrestrained animals, or other natural forces, because the child too was not able to exercise discretion.[5] Several other cases emphasize the fact that the child was or was not old enough to exercise discretion; [6] but then again, some cases explicitly disregard the element of the extent of the child's discretionary powers.[7] However, those courts which hold the defendant liable, although a child intervenes, usually base their decision on the fact that the results were foreseeable and natural and probable.[8] Similarly, those which hold the child's act was an effective, intervening cause explicitly say that the child's act did not naturally and probably flow from the defendant's original wrong.[9] In conclusion, it seems that here, as in other

322, 103 A. 799 (1918) (a bomb did not explode in a fireworks exhibit and the child discovered it a week later and set the bomb off); Binford v. Johnson, 82 Ind. 426, 42 Am. Rep. 508 (1882) (D left cartridges where his infant son found them).

[4] For example, in Sroka v. Halliday, 41 R. I. 322, 103 A. 799 (1918), an adult would have known what the bomb was and so would have been more careful in lighting it. Nor in Binford v. Johnson, 82 Ind. 426, 42 Am. Rep. 508 (1882), would a careful adult have hit the cartridges with a rock.

[5] Fishburn v. Burlington & N. W. Ry., 127 Iowa 483, 103 N. W. 481 (1905).

[6] Loftus v. Dehail, 133 Cal. 214, 65 P. 379 (1901) (a child in a fit of anger pushed P into an excavation made by D; the court said the children were old enough to appreciate the danger involved); Vallency v. Rigello, 91 N. J. L. 307, 102 A. 348 (1917) (this was another explosion case in which the court said the jury could find no intervening effective cause if the child was too young to understand what he was doing); Sroka v. Halliday, 41 R. I. 322, 103 A. 799 (1918).

[7] Lombardi v. Wallad, 98 Conn. 510, 120 A. 291 (1923) (a rather stupid child took a burning brand from the fire D made and touched off a girl's dress so that the dress caught fire and the girl was burned to death; D was still held liable).

[8] Binford v. Johnson, 82 Ind. 426, 42 Am. Rep. 508 (1882); Lombardi v. Wallad, 98 Conn. 510, 120 A. 291 (1923); Vallency v. Rigello, 91 N. J. L. 307, 102 A. 348 (1917); Fehres v. City of McKeesport, 318 Pa. 279, 178 A. 380 (1935); Maskaliunas v. Chicago & Western Ind. Ry., 318 Ill. 142, 149 N. E. 23 (1925) (D failed to build the proper fence along its tracks and the child came on the tracks and tried to hop a train).

[9] O'Connor v. Brucker, 117 Ga. 451, 43 S. E. 731 (1903) (D left open the door to a house under construction and P was injured when another child went in this door and opened a window above which fell out on P); Noonan v. Sheridan, 230 Ky. 162 at 165, 18 S. W. (2d) 976 (1929) (there was no evidence to show D had any "reason to anticipate or foresee that these boys would push this lineoleum over"); Marsh v. Giles, 211 Pa. 17, 60 A. 315 (1905) (D leaned a heavy stone against a pole; children, while playing with the pole, moved it so that the rock fell and injured them); Beet v. City of Brooklyn, 10 App. Div. 382, 42 N. Y. S. 1009 (1896) (here a pile of lime was left near a sidewalk by D's construction job and P put some of the lime in water and was hurt by the resulting explosion; the case was not sent to a jury; the court said that the two intervening forces were the child taking away the lime and the effect of the water and that these were unforeseen intervening causes); Stefanowski v. Chain Belt Co., 129 Wis. 484, 109 N. W. 532 (1906) (P, a child, rigged up his own invention with a piece of wire to protect himself from a defective machine

situations where the issue is whether there is proximate cause, the problem cannot be decided by any of the numerous definitions of proximate cause, but must be determined by the facts of each case.[10]

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of his employer, defendant; the wire caught on a drill and jerked off P's fingers; held, that the act of P was neither probable nor within reasonable anticipation so it broke the causal chain; this is an especially good case because, although one's sympathies are all for P, his invention was rather unique so that it was surely unforeseeable and not "natural and probable").

[10] 45 C. J. 900 (1928). It is for this reason that the facts have been given in all the cases given in the notes. Other cases not before mentioned holding child's act to be a good, effective intervening cause that breaks the causal chain: Stephenson v. Corder, 71 Kan. 475, 80 P. 938 (1905) (D left a team of horses hitched to a fence and the child in flipping the fence hit one horse on its nose, causing the horse to break away from its defective halter and injure P); Berman v. Schultz, 40 Misc. 212, 81 N. Y. S. 647 (1903) (D left his truck parked on a hill and some boys released the brakes, letting the truck go down the hill where it hit P's wagon); Tutein v. Hurley, 98 Mass. 211, 93 Am. Dec. 154 (1867) (D negligently left hoisting shears unfastened and some boys, while playing with them, loosened the shears so that they fell and were destroyed). Holding child's act did not cut off the causal chain: United States Natural Gas Co. v. Hicks, 134 Ky. 12, 119 S. W. 166 (1909) (D negligently left a leaking gas tank in a box near a highway and the child threw a lighted match into this box).

For a recent article on a related field, see Eldredge, "Culpable Intervention as a Superseding Cause," 86 UNIV. PA. L. REV. 121 (1937). The Pennsylvania court used the "substantial factor" test for causation in the recent case of Shipley v. City of Pittsburgh, 321 Pa. 494, 184 A. 671 (1936).