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EVIDENCE — NEGLIGENCE — RES IPSA LOQUITUR — DUTY OF OCCUPIER OF LAND TO USERS OF ADJOINING HIGHWAY — While seated in his car waiting for a traffic light to change, plaintiff was injured by the precipitation of debris caused by an explosion within the remaining walls of a building which defendant and his servants were razing. During the wrecking operations masses of bricks occasionally fell on a roped-off portion of the sidewalk under which ran two pipes through which gas was delivered to the building. After defendant's servants detected the escape of gas, the gas company removed the meters and plugged the pipes in the cellar. Gas continued to escape, and defendant was informed of its presence by his servants. Testimony indicated that defendant ignored the situation and made no effort to investigate or to abate the danger. *Held*, (1) defendant is liable for plaintiff's injuries on the theory that the occupier of land has a duty to users of the adjoining highway to keep the premises in a safe condition; (2) the evidence was legally sufficient to carry the case to the jury. *Frenkil v. Johnson*, 175 Md. 592, 3 A. (2d) 479 (1939).

After expressly stating the facts from which the jury could have found, and, presumably, did find, a breach of duty on defendant's part, the court proceeds to apply the doctrine of res ipsa loquitur [1] for the purpose of inferring the cause

[1] One of the leading cases in this country on the doctrine of res ipsa loquitur is Howser v. Cumberland & P. R. R., 80 Md. 146, 30 A. 906 (1894), in which is cited the classic quotation of the rule from Scott v. London & St. Katherine Docks Co., 3

of the explosion, the proof of which fact, the court indicates, is unnecessary to plaintiff's cause of action.[2] It seems that the court confuses the function of the doctrine; for it applies the doctrine to effect the inference that defendant's negligence was the proximate cause of the injury to plaintiff, whereas the true purpose of the rule is to effect the inference that defendant was negligent. Since there are facts present in the principal case clearly indicative of defendant's breach of the duty he owed to plaintiff, there is no reason for invoking the doctrine of res ipsa loquitur. The court's error, however, is not surprising in light of the loose way in which the rule is stated and the close relation between the element of causation and the applicability of the rule. Usually the doctrine reads that if certain things are true [3] "the proper and natural inference forthwith arising is that the injury complained of was caused by the defendant's negligence." [4] What that inference is depends here on whether emphasis is placed on the word "caused" or on the words "defendant's negligence." A much clearer way of stating the conclusion is that the proper and natural inference is that defendant was negligent. As for the relation between causation and the doctrine, it appears that unless there is a causal connection between defendant's conduct and the injury the doctrine will not apply.[5] This fact is one of the reasons for requiring the instrumentality to be in the exclusive control of de-

Hurl. & C. 596 at 601, 159 Eng. Rep. 665 (1865): "There must be reasonable evidence of negligence. But where the thing is shewn to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care."

[2] "Thus, it becomes immaterial for the plaintiff to prove the particular manner whereby the free illuminating gas exploded. In any aspect of the proof, the proximate and efficient cause of the explosion was the presence of free gas." Principal case, 175 Md. 592 at 602. And again: "Nor was it necessary, under the circumstances, for the plaintiff affirmatively to establish the specific generating cause which made effective for injury the neglect of the defendant in permitting to exist a known dangerous condition to third parties without the premises while the defendant proceeded with his work." 175 Md. at 608. The qualification "affirmatively" in the latter quotation is indicative of the court's permitting the generating cause to be inferred by the jury from the evidence under res ipsa loquitur, an admittedly unnecessary inference.

[3] The requisites of the rule may be found in the quotation in note 1, supra. See also 5 WIGMORE, EVIDENCE, 2d ed., § 2509 (1923); and Carpenter, "The Doctrine of Res Ipsa Loquitur," 1 UNIV. CHI. L. REV. 519 (1934). In the latter is a discussion of the various procedural weights given to res ipsa loquitur.

[4] Quoted from the principal case, 175 Md. at 606.

[5] ". . . where all the facts connected with the occurrence fail to point to the negligence of defendant as the proximate cause of the injury, but show a state of affairs where it could with equal reasonableness and consistency be inferred that the accident was due to a cause or causes other than the negligent act of defendant, as where there are several persons or causes which might have produced the injury, some of which were under the control or management . . . of the complaining party or of third persons, and the accident may have reasonably occurred by reason of acts for which defendant is not liable, the doctrine cannot be invoked." 45 C. J. 1213 (1919) and cases cited.

fendant or his servants before the doctrine can be applied.[6] Otherwise, an unjust inference of negligence could be made despite the great possibility that a third person might have caused the injury.[7] Nonetheless, the rule does not dispense with the general principle requiring plaintiff to prove that defendant's negligence was the proximate cause of the injury. Res ipsa loquitur is a rule of evidence pertaining solely to defendant's breach of duty.[8] If this truth be remembered, and the rule be stated more accurately, courts and lawyers alike will escape the confusion which involved the court in the principal case.

[6] See note 3, supra.

[7] In respect to the applicability of res ipsa loquitur, the court said in Strasburger v. Vogel, 103 Md. 85 at 91-92, 63 A. 202 (1906): "But when the plaintiff himself shows that the injury complained of must have resulted *either* from the negligence of the defendant *or* from an independent cause for the existence of which the defendant is in no way responsible, he cannot be permitted to recover until he excludes the independent cause as the efficient and proximate cause of the injury. . . ." See also Surry Lumber Co. v. Zissett, 150 Md. 494, 133 A. 458 (1926).

[8] See HARPER, TORTS, § 77 (1933); 5 WIGMORE, EVIDENCE, 2d ed. § 2509 (1923); 8 ENCYCLOPEDIA OF EVIDENCE 871 (1906).