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Negligence - Duty of Care - Effect of Time Lapse on Manufacturer's Duty

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NEGLIGENCE—DUTY OF CARE—EFFECT OF TIME LAPSE ON MANUFACTURERS' DUTY—Plaintiff suffered injuries when the fly wheel on a truck he was driving gave way, causing the truck to crash. He brought an action in damages against defendant, manufacturer of the truck, alleging defective design and manufacture of the fly wheel. The truck had been safely used for at least five years prior to the accident and had been driven 200,000 to 400,000 miles during that period. On defendant's motion for directed verdict, *held,* granted. There is no evidence whatever that the defendant failed to exercise reasonable care. Also, use of the truck for five years results in a conclusive denial that the truck involved an unreasonable risk of bodily harm when delivered by defendant. *Solomon v. White Motor Company,* (W.D. Pa. 1957) 153 F. Supp. 917.

The lapse of time between manufacture of an article and an accident is always an important factor to be considered on the questions of negligence of a manufacturer,[1] proximate cause,[2] and the applicability of res ipsa loquitur.[3] The validity of the court's statement, in the principal

1 Okker v. Chrome Furniture Mfg. Corp., 26 N.J. Super. 295, 97 A. (2d) 699 (1953); Hale v. Depaoli, 33 Cal. (2d) 228, 201 P. (2d) 1 (1948).

2 Wear and tear caused by use and the elements over a long period may be an intervening cause. International Derrick & Equipment Co. v. Croix, (5th Cir. 1957) 241 F. (2d) 216; Fredericks v. American Export Lines, (2d Cir. 1955) 227 F. (2d) 450, cert. den. 350 U.S. 989; Hale v. Depaoli, note 1 supra.

3 Oklahoma Tire & Supply Co. v. Williams, (8th Cir. 1950) 181 F. (2d) 675; Reed & Barton Corp. v. Maas, (1st Cir. 1934) 73 F. (2d) 359.

case, however, that the use of a chattel for a long period of time results in a conclusive denial that the article was "imminently dangerous" or involved an "unreasonable risk" of bodily harm, may be open to some doubt. This proposition that passage of time will insulate a manufacturer is not of recent origin. It was at least strongly suggested by Judge Cardozo in his famous opinion in *MacPherson v. Buick Motor Company*[4] extending liability of manufacturers beyond privity of contract. In the period between that holding in 1916 and the mid-1940's a number of decisions purported to terminate a manufacturer's duty because the passage of time established the article as not "imminently dangerous."[5] A closer examination of these cases, however, makes it clear that the time element was seldom, if ever, the controlling factor. In several of them, as in the principal case, the court found no evidence of a lack of reasonable care by the defendant.[6] Where this is true, any statement as to the effect of time is superfluous and cannot be deemed indicative of the court's conclusion if faced with a showing of negligence. In others, especially the older cases, it is clear that the articles in question were of such a character that the court was not willing to include them within the "imminently dangerous" category absent the time factor.[7] Therefore, the courts' observations as to the importance of time lapse can hardly be viewed as more than a make-weight argument. It is possible that in a few cases the courts decided for the defendant in situations involving an otherwise "imminently dangerous" article and negligent conduct on the defendant's part.[8] Even in these few cases, however, it is far from definite that the court actually found a lack of due care. Therefore, in spite of the broad language used in some of these earlier cases, it seems that the passage of time has never been an established defense for the negligent manufacturer. But regardless of

4 217 N.Y. 382, 111 N.E. 1050 (1916).

5 See Miller v. Davis & Averill, 137 N.J. L. 671, 61 A. (2d) 253 (1948); Schindley v. Allen-Sherman-Hoff Co., (6th Cir. 1946) 157 F. (2d) 102; Gorman v. Murphy Diesel Co., 42 Del. 149, 29 A. (2d) 145 (1942); Dillingham v. Chevrolet Motor Co., (W.D. Okla. 1936) 17 F. Supp. 615; Lynch v. International Harvester Co., (10th Cir. 1932) 60 F. (2d) 223; Ford Motor Co. v. Wolber, (7th Cir. 1929) 32 F. (2d) 18; Osheroff v. Rhodes-Burford Co., 203 Ky. 408, 262 S.W. 583 (1924); Field v. Empire Case Goods Co., 179 App. Div. 253, 166 N.Y.S. 509 (1917). But see Reed & Barton Corp. v. Maas, note 3 supra; Lill v. Murphy Door Bed Co. of Chicago, 290 Ill. App. 328, 8 N.E. (2d) 714 (1937). Both these latter cases allowed plaintiff to recover despite a long time lapse.

6 Miller v. Davis & Averill, note 5 supra (crane pulled loose from ceiling rail); Dillingham v. Chevrolet Motor Co., note 5 supra (car brakes allegedly locked); Ford Motor Co. v. Wolber, note 5 supra (tractor tipped over backwards).

7 Dillingham v. Chevrolet Motor Co., note 5 supra; Osheroff v. Rhodes-Burford Co., note 5 supra (porch swing); Field v. Empire Case Goods Co., note 5 supra (wooden bed).

8 Schindley v. Allen-Sherman-Hoff Co., note 5 supra (stopping device on fire gate failed to catch). It is not certain that the court would ever have included the fire gate within the category of "imminently dangerous" articles. Gorman v. Murphy Diesel Co., note 5 supra (diesel engine exploded after 16 months and three owners); Lynch v. International Harvester Co., note 5 supra (covering over revolving cylinder on threshing machine used for five years gave way when plaintiff stepped on it).

what the state of the law may once have been, cases in recent years strongly indicate a doctrine that time alone can protect a manufacturer is not the law today. With the exception of the principal decision, there are apparently no cases within the last decade expressing such a doctrine. Conversely during that period there have been a number of direct holdings that the passage of time is not a factor in determining the "imminently" or "unreasonably" dangerous character of an article and is immaterial when negligence is proved.[9] There are several possible reasons for the non-acceptance or gradual deterioration of the concept of passage of time as an insulative factor. Since 1916, the kind of articles included within the "imminently dangerous" category has been greatly expanded,[10] not only leaving little room for the use of time lapse as a make-weight but probably pushing the entire concept of manufacturer's liability closer to a straight negligence analysis, in which time is immaterial except as it bears on foreseeability. Some courts have gone so far as to declare that all articles are now things of danger and that ordinary negligence rules are applicable.[11] Equally significant is the evolution of the language used in expressing the *MacPherson* rule. In that case, Cardozo used the phrases "imminently dangerous" and "reasonably certain to cause bodily harm" interchangeably. The initial tendency of the courts was to express the rule as covering "imminently dangerous" articles.[12] This language carries a strong connotation of immediacy. In more recent years, however, the courts have shifted toward the use of "reasonably certain"[13] or similar expressions, such as the *Restatement's* "unreasonable risk."[14] While these phrases are intended to express the same rule, they do not display the same characteristic of imminency and tend to de-emphasize time as a factor. It seems safe to conclude that the value of passage of time as an insulative factor was always conjectural. The principal case to the contrary, it is doubtful if it has any value today.

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[9] International Derrick & Equipment Co. v. Croix, note 2 supra; Hewitt v. General Tire and Rubber Company, 3 Utah (2d) 354, 284 P. (2d) 471 (1955); Fredericks v. American Export Lines, note 2 supra; Kuhr Bros. v. Spahos, 89 Ga. App. 885, 81 S.E. (2d) 491 (1954); Okker v. Chrome Furniture Mfg. Corp., note 1 supra; Beadles v. Servel, Inc., 344 Ill. App. 133, 100 N.E. (2d) 405 (1951).

[10] See James, "Products Liability," 34 TEX. L. REV. 44 (1955); 164 A. L. R. 559 (1946).

[11] Carter v. Yardley & Co., 319 Mass. 92, 64 N.E. (2d) 693 (1946); 164 A. L. R. 559 (1946).

[12] Reed & Barton Corp. v. Maas, note 3 supra; Lynch v. International Harvester Co., note 5 supra; Osheroff v. Rhodes-Burford Co., note 5 supra.

[13] Hale v. Depaoli, note 1 supra.

[14] 2 TORTS RESTATEMENT §365 (1934). See James, "Products Liability," 34 TEX. L. REV. 44 (1955).