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NEGLIGENCE-PROOF OF CAUSATION

Walter Dean

University of Michigan Law School

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NEGLIGENCE—PROOF OF CAUSATION—Decedent, a passenger on defendant's railroad was bound for X Terminal. The car doors were open and a trainman called out, "X Terminal, next," but the train stopped in the dark at point Y before reaching the announced destination to allow another train to pass. Decedent's body was found near point Y. Suit was brought by decedent's widow under the state "wrongful death" statutes. The lower court held that the plaintiff's failure to show that decedent left the train at point Y was a fatal gap in the causal chain, and gave judgment for the defendant notwithstanding the verdict. *Held*, reversed with directions to enter judgment on the jury verdict. Plaintiff may rely on circumstantial evidence to prove the causal connection between defendant's wrongful act and decedent's injury. *Williams v. Reading Co.*, (3d Cir. 1949) 175 F. (2d) 32.

The fact that the defendant has been guilty of negligence and that the plaintiff has sustained injuries will not make the defendant liable for the injuries sustained unless they were occasioned by the defendant's negligence. A reasonably close causal connection—the relation of cause and effect—must be established.¹ The burden is on the plaintiff to show not that it is more possible but that it is more probable² that the harm resulted in consequence of defendant's acts.³ But causation may be found as an inference from evidentiary facts⁴ as well as by direct proof⁵ even though the inference is not a necessary one.⁶ From

¹ PROSSER, TORTS, §30, p. 177 (1941).

² *Price v. N.Y. Central R.R. Co.*, 92 N.J.L. 429, 105 A. 187 (1918).

³ "The burden is on plaintiff to show that it is more probable that the harm resulted in consequence of something for which the defendant was responsible than in consequence of something for which he was not." *Alling v. Northwestern Bell Tel. Co.*, 156 Minn. 60 at 63, 194 N.W. 313 (1923).

⁴ *Emery v. Tilo Roofing Co.*, 89 N.H. 165, 195 A. 409 (1937); *Stollery v. Cicero & P. St. Ry. Co.*, 243 Ill. 290, 90 N.E. 709 (1910).

⁵ *Texas & N.O.R. Co. v. Ewing*, (Tex. Civ. App.) 46 S.W. (2d) 398 (1932).

⁶ *Settle v. St. Louis & S.F. Ry. Co.*, 127 Mo. 336, 30 S.W. (2d) 125 (1895).

a showing that causes calculated to produce a certain result were in operation at a given time, it is a permissible inference that such result actually followed,⁷ and plaintiff need not negative entirely the possibility that defendant's conduct was not the cause.⁸ This is not to say, however, that plaintiff's case may be established by basing one inference upon another.⁹ Thus where defendant's negligence, if any, must be inferred from the circumstances under which the injury occurred and direct proof of such circumstances is lacking, recovery is denied.¹⁰ But where plaintiff can definitely establish the conduct constituting defendant's negligence, as was done in the principal case,¹¹ the courts are more inclined to hold that he need show only that the injury was the more probable result of defendant's negligence than any other possible cause.¹² With the aid of the presumption that decedent was exercising due care when killed,¹³ and viewing the evidence most favorably to plaintiff on his appeal from a judgment notwithstanding the verdict, it is submitted that the court in the instant case properly held that there was sufficient evidence to justify the jury's finding that the act complained of was the cause in fact of defendant's injury.

Walter Dean

⁷ *Maravas v. American Equitable Assur. Corp. of N.Y.*, 82 N.H. 533, 136 A. 364 (1927).

⁸ *Cornbrooks v. Terminal Barber Shops, Inc.*, 282 N.Y. 217, 26 N.E. (2d) 25; *Gates v. Boston & M. R.R.*, 255 Mass. 297, 151 N.E. 320 (1926).

⁹ *Tabor v. Kansas City Bolt & Nut Co.*, (Mo. App.) 274 S.W. 911 (1925); *Benedick v. Potts*, 88 Md. 52, 40 A. 1067 (1898).

¹⁰ *Siemer v. Chesapeake & O. Ry. Co.*, 180 Ky. 111, 201 S.W. 469 (1918); *Alling v. Northwestern Bell Tel. Co.*, supra, note 3; *Hughes v. Cinn., N.O. & T.P.R. Co.*, 91 Ky. 526, 16 S.W. 275 (1891).

¹¹ On the duty of a carrier to give proper notice of arrival at its stations so as not to mislead passengers as to the location of the train see *Phila. and Reading Ry. Co. v. Edelstein*, 1 *Monaghan (Pa.)* 205, 16 A. 847 (1889); *Phila., W. & B. R. Co. v. McCormick*, 124 Pa. 427, 16 A. 848 (1889); also annotations 58 A.L.R. 1091 (1929).

¹² *Buesching v. St. Louis Gaslight Co.*, 73 Mo. 219, 39 Am. Rep. 503 (1880); *Voelker v. Hill-O'Meara Constr. Co.*, 153 Mo. App. 1, 131 S.W. 907 (1910); *Harmon v. Richardson*, 88 N.H. 312, 188 A. 468 (1936); *Kludzinski v. Great Northern Ry. Co.*, 130 Minn. 222, 153 N.W. 529 (1915).

¹³ 25 C.J.S., *Death* §80 (1941); *Simon v. Phila. Rapid Transit Co.*, 306 Pa. 466, 160 A. 111 (1932); *Michener v. Lewis*, 314 Pa. 156, 170 A. 272 (1934).