MACPHERSON V. BUICK MOTOR CO.

217 NY. 382, 111 NE. 1060 (1916)

(Court of Appeals of New York)

CARDOZO, J. The defendant is a manufacturer of automobiles. It sold an automobile to a retail dealer. The retailer dealer resold to the plaintiff. While the plaintiff was in the car, it suddenly collapsed. He was thrown out and injured. One of the wheels was made of defective wood, and its spokes crumbled into fragments. The wheel was not made by the defendant; it was bought from another manufacturer. There is evidence, however, that its defects could have been discovered by reasonable inspection, and that inspection was omitted. There is no claim that the defendant knew of the defect and willfully concealed it. . . . The question to be determined is whether the defendant owed a duty of care and vigilance to anyone but the immediate purchaser.

The foundations of this branch of the law, at least in this state, were laid in Thomas v Winchester. A poison was falsely labeled. The sale was made to a druggist, who in turn sold to a customer. The customer recovered damages from the seller who affixed the label. "The defendant's negligence," it was said, "put human life in imminent danger." A poison falsely labeled is likely to injure anyone who gets it. Because the danger is to be foreseen, there is a duty to avoid injury. Cases were cited by way of illustration in which manufacturers were not subject to any duty irrespective of contract. The distinction was said to be that their conduct, though negligent, was not likely to result in injury to anyone except the purchaser. We are not required to say whether the chance of injury was always as remote as the distinction assumes. Some of the illustrations might be rejected today. The principle of the distinction is for present purposes the important thing.

Thomas v Winchester became quickly a landmark of the law. In the application of its principle there may at times have been uncertainty or even error. There has never in this state been doubt or disavowal of the principle itself. The chief cases are well known. Loop v. Litchficld was the case of a defect in a small balance wheel used on a circular saw. The manufacturer pointed out the defect to the buyer, who wished a cheap article and was ready to assume the risk. The risk can hardly have been an imminent one, for the wheel lasted five years before it broke. In the meanwhile the buyer had made a lease of the machinery. It was held that the manufacturer was not answerable to the lessee. . . Losee v. Clute, the case of the explosion of a steam boiler, must be confined to its special facts. It was put upon the ground that the risk of injury was too remote. The buyer in that case had not only accepted the boiler but had tested it. The manufacturer knew that his own test was not the final one. The finality of the test has a bearing on the measure of diligence owing to persons other than the purchaser....

These early cases suggest a narrow construction of the rule. Later cases, however, evince a more liberal spirit. First in importance is Devlin v. Smith. The defendant, a contractor, built a scaffold for a painter. The painter's servants were injured. The contractor was held liable. He knew that the scaffold, if improperly constructed, was a most dangerous trap. He knew that it was to be used by the workmen. He was building it for that very purpose. Building it for their use, he owed them a duty, irrespective of his

contract with their master, to build it with care.
. . . [Tlhe latest case in this court in which Thomas 'v Winchester was followed . . . is Statler v Ray Mfg. Co. The defendant manufactured a large coffee urn. It was installed in a restaurant. When heated, the urn exploded and injured the plaintiff. We held that the manufacturer was liable. We said that the urn ”was of such a character inherently that, when applied to the purposes for which it was designed, it was liable to become a source of great danger to many people if not carefully and properly constructed."

It may be that Devlin v. Smith and Statler have extended the rule of Thomas v. Winchester. If so, this court is committed to the extension. The defendant argues that things imminently dangerous to life are poisons, explosives, deadly weapons-things whose normal function it is to injure or destroy. But whatever the rule in Thomas v Winchester may once have been, it has no longer that restricted meaning. A scaffold . . . is not inherently a destructive instrument. It becomes destructive only if imperfectly constructed, A large coffee urn . . . may have within itself, if negligently made, the potency of danger, yet no one thinks of it as an implement whose normal function is destruction. . . . We have mentioned only cases in this court. But the rule has received a like extension in our courts of intermediate appeal.

We hold, then, that the principle of Thomas v. Winchester is not limited to poisons; explosives, and things of like nature, to things which in their normal operation are implements of destruction. If the nature of a thing is such that it is reasonably certain to place life and limb in peril when negligently made, it is then a thing of danger. Its nature gives warning of the consequences to be expected. If to the element of danger there is added knowledge that the thing will be used by persons other than the purchaser, and used without new tests, then, irrespective of contract, the manufacturer of this thing of danger is under duty to make it carefully. That is as far as we are required to go for the decision of this case. There must be knowledge of a danger, not merely possible, but probable. . . There must also be knowledge that in the usual course of events the danger will be shared by others than the buyer. Such knowledge may often be inferred from the nature of the transaction. But it is possible that even knowledge of the danger and of the use will not always be enough. The proximity or remoteness of the relation is a factor to be considered. . . . We are not required at this time to say that it is legitimate to go back to the manufacturer of the finished product and hold the manufacturers of the component parts [liable]. . . . We leave that question open. We shall have to deal with it when it arises. . . .
From this survey of the decisions, there thus emerges a definition of the duty of a manufacturer which enables us to measure this defendant’s liability. Beyond all question, the nature of an automobile gives warning of probable danger if its construction is defective. This automobile was designed to go fifty miles an hour. Unless its wheels were sound and strong, injury was almost certain. It was as much a thing of danger as a defective engine for a railroad. The defendant knew the danger. It knew also that the car would be used by persons other than the buyer. This was apparent from its size; there were seats for three persons. It was apparent also from the fact that the buyer was a dealer in cars, who bought to resell. The maker of this car supplied it for the use of purchasers from the dealer just as plainly as the contractor in

Devlin v. Smith supplied the scaffold for use by the servants of the owner. The dealer was indeed the one person of whom it might be said with some approach to certainty that by him the car would not be used. Yet the defendant would have us say that he was the one person whom it was under a legal duty to protect. The law does not lead us to so inconsequent a conclusion. Precedents drawn from the days of travel by stage coach do not fit the conditions of travel today. The principle that the danger must be imminent does not change, but the things subject to the principle do change. They are whatever the needs of life in a developing civilization require them to be. In reaching this conclusion, we do not ignore the decisions to the contrary in other jurisdictions. . . . Some of them, at first sight inconsistent with our conclusion may be reconciled upon the ground that the negligence was too remote, and that another cause had intervened. But even when they cannot be reconciled the difference is rather in the application of the principle than in the principle itself. ... The English courts. . . agree with ours in holding that one who invites another to make use of an appliance is bound to the exercise of reasonable care.

. . . That at bottom is the underlying principle of Devlin v. Smith. The contractor who builds the scaffold invites the owner's workmen to use it. The manufacturer who sells the automobile to the retail dealer invites the dealer's customers to use it. . . .

. . . We may find an analogy in the law which measures the liability of landlords. If A leases to B a tumbledown house he [A] is not liable, in the absence of fraud, to B's guests who enter it and are injured. This is because B is then under duty to repair it. . . . But if A leases a building to be used by the lessee at once as a place of public entertainment, the rule is different. There injury to persons other than the lessee is foreseen, and the foresight of the consequences involves the creation of a duty (Junkennann v. Tilyou R. Co. and cases there cited).

In this view of the defendant's liability there is nothing inconsistent with the theory of liability on which the case was tried. . . . The judgment should be affirmed with costs.

Helen Palsgraf, Respondent,

v

The Long Island Railroad Company, Appellant.

Court of Appeals of New York

Decided May 29, 1928

248 NY 339

[*340] OPINION OF THE COURT

CARDOZO, Ch. J.

Plaintiff was standing on a platform of defendant's railroad after buying a ticket to go to Rockaway Beach. A train stopped at the station, bound for another place. Two men ran forward to catch it. One of the men reached the platform of the car without mishap, though the train was already moving. The other

man, carrying a package, jumped aboard the car, but seemed unsteady as if about to fall. A guard on the car, who had held the door open, reached forward to help [*341] him in, and another guard on the platform pushed him from behind. In this act, the package was dislodged, and fell upon the rails. It was a package of small size, about fifteen inches long, and was covered by a newspaper. In fact it contained fireworks, but there was nothing in its appearance to give notice of its contents. The fireworks when they fell exploded. The shock of the explosion threw down some scales at the other end of the platform, many feet away. The scales struck the plaintiff, causing injuries for which she sues.

The conduct of the defendant's guard, if a wrong in its relation to the holder of the package, was not a wrong in its relation to the plaintiff, standing far away. Relatively to her it was not negligence at all. Nothing in the situation gave notice that the falling package had in it the potency of peril to persons thus removed. Negligence is not actionable unless it involves the invasion of a legally protected interest, the violation of a right. "Proof of negligence in the air, so to speak, will not do" (Pollock, Torts [11th ed.], p. 455; *Martin v. Herzog,* 228 N. Y. 164, 170; cf. Salmond, Torts [6th ed.], p. 24). "Negligence is the absence of care, according to the circumstances" (WILLES, J., in *Vaughan v. Taff Vale Ry. Co.,* 5 H. & N. 679, 688; 1 Beven, Negligence [4th ed.], 7; *Paul v. Consol. Fireworks Co.,* 212 N. Y. 117; *Adams v. Bullock,* 227 N. Y. 208, 211; *Parrott v. Wells-Fargo Co.,* 15 Wall. [U. S.] 524). The plaintiff as she stood upon the platform of the station might claim to be protected against intentional invasion of her bodily security. Such invasion is not charged. She might claim to be protected against unintentional invasion by conduct involving in the thought of reasonable men an unreasonable hazard that such invasion would ensue. These, from the point of view of the law, were the bounds of her immunity, with perhaps some rare exceptions, survivals for the most part of ancient forms of liability, where conduct is held to be at the peril of the actor ([*342]*Sullivan v. Dunham,* 161 N. Y. 290). If no hazard was apparent to the eye of ordinary vigilance, an act innocent and harmless, at least to outward seeming, with reference to her, did not take to itself the quality of a tort because it happened to be a wrong, though apparently not one involving the risk of bodily insecurity, with reference to some one else. "In every instance, before negligence can be predicated of a given act, back of the act must be sought and found a duty to the individual complaining, the observance of which would have averted or avoided the injury" (McSHERRY, C. J., in *W. Va. Central R. Co. v. State,* 96 Md. 652, 666; cf. *Norfolk & Western Ry. Co. v. Wood,* 99 Va. 156, 158, 159; *Hughes v. Boston & Maine R. R. Co.,* 71 N. H. 279, 284; *U. S. Express Co. v. Everest,* 72 Kan. 517; *Emry v. Roanoke Nav. Co.,* 111 N. C. 94, 95; *Vaughan v. Transit Dev. Co.,* 222 N. Y. 79; *Losee v. Clute,* 51 N. Y. 494; *DiCaprio v. N. Y. C. R. R. Co.,* 231 N. Y. 94; 1 Shearman & Redfield on Negligence, § 8, and cases cited; Cooley on Torts [3d ed.], p. 1411; Jaggard on Torts, vol. 2, p. 826; Wharton, Negligence, § 24; Bohlen, Studies in the Law of Torts, p. 601). "The ideas of negligence and duty are strictly correlative" (BOWEN, L. J., in *Thomas v. Quartermaine,* 18 Q. B. D. 685, 694). The plaintiff sues in her own right for a wrong personal to her, and not as the vicarious beneficiary of a breach of duty to another.

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The argument for the plaintiff is built upon the shifting meanings of such words as "wrong" and "wrongful," and shares their instability. What the plaintiff must [*344] show is "a wrong" to herself, i. e., a violation of her own right, and not merely a wrong to some one else, nor conduct "wrongful" because unsocial, but not "a wrong" to any one. We are told that one who drives at reckless speed through a crowded city street is guilty of a negligent act and, therefore, of a wrongful one irrespective of the consequences. Negligent the act is, and wrongful in the sense that it is unsocial, but wrongful and unsocial in relation to other travelers, only because the eye of vigilance perceives the risk of damage. If the same act were to be committed on a speedway or a race course, it would lose its wrongful quality. The risk reasonably to be perceived defines the duty to be obeyed, and risk imports relation; it is risk to another or to others within the range of apprehension (Seavey, Negligence, Subjective or Objective, 41 H. L. Rv. 6; *Boronkay v. Robinson & Carpenter,* 247 N. Y. 365).

...

Some acts, such as shooting, are so imminently dangerous to any one who may come within reach of the missile, however unexpectedly, as to impose a duty of prevision not far from that of an insurer. Even today, and much oftener in earlier stages of the law, one acts sometimes at one's peril (Jeremiah Smith, Tort and Absolute Liability, 30 H. L. Rv. 328; Street, Foundations of Legal Liability, vol. 1, pp. 77, 78). Under this head, it may be, fall certain cases of what is known as transferred intent, an act willfully dangerous to A resulting by misadventure in injury to B *(Talmage v. Smith,* 101 Mich. 370, 374) [*345] These cases aside, wrong is defined in terms of the natural or probable, at least when unintentional *(Parrot v. Wells-Fargo Co. [The Nitro-Glycerine Case]*, 15 Wall. [U. S.] 524). The range of reasonable apprehension is at times a question for the court, and at times, if varying inferences are possible, a question for the jury. Here, by concession, there was nothing in the situation to suggest to the most cautious mind that the parcel wrapped in newspaper would spread wreckage through the station. If the guard had thrown it down knowingly and willfully, he would not have threatened the plaintiff's safety, so far as appearances could warn him. His conduct would not have involved, even then, an unreasonable probability of invasion of her bodily security. Liability can be no greater where the act is inadvertent.

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The consequences to be followed must first be rooted in a wrong. The judgment of the Appellate Division and that of the Trial Term should be reversed, and the complaint dismissed, with costs in all courts.

ANDREWS, J. (dissenting).

Assisting a passenger to board a train, the defendant's servant negligently knocked a package from his arms. It fell between the platform and the cars. Of its contents the servant knew and could know

nothing. A violent explosion followed. The concussion broke some scales standing a considerable distance away. In falling they injured the plaintiff, an intending passenger.

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Where there is the unreasonable act, and some right that may be affected there is negligence whether damage does or does not result. That is immaterial. Should we drive down Broadway at a reckless speed, we are negligent whether we strike an approaching car or miss it by an inch.

...

The proposition is this. Every one owes to the world at large the duty of refraining from those acts that may unreasonably threaten the safety of others. Such an act occurs. Not only is he wronged to whom harm might reasonably be expected to result, but he also who is in fact injured, even if he be outside what would generally be thought the danger zone. There needs be duty due the one complaining but this is not a duty to a particular individual because as to him harm might be expected. Harm to some one being the natural result of the act, not only that one alone, but all those in fact injured may complain. We have never, I think, held otherwise. Indeed in the *Di Caprio* case we said that a breach of a [*351] general ordinance defining the degree of care to be exercised in one's calling is evidence of negligence as to every one. We did not limit this statement to those who might be expected to be exposed to danger. Unreasonable risk being taken, its consequences are not confined to those who might probably be hurt.