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## Torts--Concurrent Causes

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statement of legislative intent with respect to this question. In the later case of *Crawford v. Parsons*, 141 W. Va. 752, 92 S.E.2d 913 (1956), the constitutionality of the new amendment was upheld against an attack which charged that the law was arbitrary and capricious legislation, and that it deprived one of his common law right to sue a negligent tortfeasor. In light of the amendment and the *Crawford* decision it would seem that an employee in West Virginia now enjoys the same immunity as his employer when the employer is covered by the *Act*.

Even though an employee is not held liable for his ordinary negligence on the job under the present West Virginia law, it is not intended that a worker's duty not to injure his co-worker be extinguished or in any way lessened. The statute contemplates only ordinary negligence, and gross, wanton or malicious actions are still the proper subjects of an action at law for damages.

In 1 SCHNEIDER, WORKMEN'S COMPENSATION § 3 (3d ed. 1941), it is said that the general purpose of Workmen's Compensation statutes is to remove the burden of industrial accidents from the employee and place such expense back in the industry as a cost of the goods produced. A further purpose is to permit the injured employee to avoid the tangles of litigation and to acquire compensation as rapidly as possible, as well as immediate medical attention. See also, *Mains v. Harris Co.*, 119 W.Va. 730, 197 S.E. 10 (1938). The present West Virginia law would seem to more effectively accomplish the above stated purpose, since now a worker must look to the statute for compensation and cannot sue his co-worker for damages. The rule adopted by the Alaska court makes it possible, in some cases, to charge the negligent worker with the expense of these accidents, as was done in the principal case. The present West Virginia statute presents what appears to be the more practical view with respect to this question and in theory is contra to the holding of the principle case.

W. E. M.

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TORTS—CONCURRENT CAUSES.—Combined actions were brought for the wrongful deaths of passengers in an airplane manufactured by *D*. The widows of the deceased passengers alleged improper construction as negligence. The trial court charged the jury that where an injury may result from one of several causes, for only one of which *D* is responsible, the burden rests with *P* to individuate

that one as the proximate cause of the injury, and to exclude all other causes fairly suggested by the evidence to which it would be equally reasonable to attribute the accident. *Held*, reversing the trial court, that in an action for death of passengers in an airplane manufactured by *D*, *P* had the burden of proving that lack of care on the part of the manufacturer was a cause of the accident, and recovery did not depend on proof that its conduct was the only cause. *Kendrick v. Piper Aircraft Corp.*, 265 F.2d 482 (3d Cir. 1959).

In considering the principal case, it is difficult to justify the decision of the lower court. The weight of authority in the United States seems to support the conclusion reached by the court of appeals. *United States v. First Sec. Bank of Utah*, 208 F.2d 424 (10th Cir. 1953); *American Creosote Works v. Harp*, 215 Miss. 5, 60 So.2d 514 (1952); *Menth v. Breeze Corp.*, 4 N. J. 428, 73 A.2d 183 (1950). Of course a basic precept of tort law is that the purported negligence claimed by *P* must be the proximate cause of the injury suffered by him. However, the proximate cause need not be the sole cause, but it is sufficient if such negligence, concurring with other efficient causes, proximately caused the injury. *Inland Power & Light Co. v. Grieger*, 91 F.2d 811 (9th Cir. 1937).

The situation in the principal case is more difficult because of the entrance of concurrent or intervening negligence. These two terms have been a continual topic of discussion and confusion to lawyers and writers alike. Unfortunately these words have been used interchangeably to such an extent that many have lost sight of their original meaning. The court in *Carr v. St. Louis Auto Supply Co.*, 293 Mo. 562, 239 S.W. 827 (1922), defines concurrent negligence as arising when the injury is proximately caused by the concurrent wrongful acts or omissions of two or more persons acting independently. On the other hand, intervening negligence may be defined as resulting from "the act of an independent agency which destroys the casual connection between the negligent act of *D* and the wrongful injury." *Davenport v. McClellan*, 88 N.J.L. 653, 96 Atl. 921 (1916). In such a case, damages are not recoverable from the original wrongdoer because his act is not the proximate cause of the injury. In the case in question, *D* alleged as an intervening cause the negligent operation of the plane by its pilot. Since the case was sent back to the lower court because of a faulty instruction, it is difficult to determine whether the appellate court felt an intervening cause was present. However, from the previous history of the case and the language of the court in reaching its conclusion,

it does seem that either such a cause was present, or there was no actionable negligence by *D*.

If *D* here were in fact negligent, it could not escape the consequences of its conduct because the act of a third person may have contributed to the injury. "The general rule is that whoever acts negligently is answerable for all the consequences that may ensue in the ordinary course of events, even though such consequences are immediately and directly brought about by an intervening cause, if such intervening cause was set in motion by the original wrongdoer." 38 AM. JUR. NEGLIGENCE § 69 (1941). See also *The G. R. Booth*, 171 U. S. 450 (1898); *Hunt-Forbes Constr. Co. v. Jordan's Adm'x.*, 250 Ky. 455, 63 S.W.2d 501 (1933). However, assuming that *D* was negligent, it would not be liable if the intervening act of a third person was unforeseeable by an ordinary prudent *D*. Then such act would be said to insulate the original negligent act of *D* and free him of liability. The act of the third person, in this case the pilot, would then be called a superceding act, as it would be unanticipated by one in *D*'s position. *Hall v. Coble Dairies*, 234 N. C. 206, 67 S.E.2d 63 (1951).

There is another view which merits attention in considering this problem; it is the aspect of the case dealt with by the circuit court. When there is concurrent negligence, and the injury would not have occurred in the absence of either negligent act, the wrongful conduct of each is deemed the proximate cause of the injury. *United States v. First Sec. Bank*, *supra*. This is true although the parties may have acted independently of each other. *Hall v. Coble Dairies*, *supra*. In such a situation both are answerable, jointly or severally, to the same extent they would be if the total negligence were theirs alone. Each act is the proximate cause provided it is the natural and probable cause of the injury. *United States v. First Sec. Bank*, *supra*. For a general discussion of this subject, see 38 AM. JUR. NEGLIGENCE § 64 (1941).

While no factual situation identical to the principal case could be found in West Virginia, the court approaches a case having a similar set of facts in a somewhat different manner. In *Webb v. Sessler*, 135 W. Va. 341, 63 S.E.2d 65 (1950), the decedent was killed while sitting in his legally parked automobile. It was struck by a negligently operated airplane attempting to land at an airport, which was built too close to the highway in violation of a statute. The Supreme Court of Appeals of West Virginia held that the

proximate cause was the last negligent act contributing thereto which was the cause of the injury. Thus the first negligent act, the violation of the statute, was insulated by the second, the pilot's negligence, which became the superceding cause of the injury. This theory was cited with approval by the court in *Hartley v. Crede*, 140 W. Va. 133, 82 S.E.2d 672 (1954), where it was held that the negligence of a driver of a motor vehicle which swerved to avoid hitting an auto parked in the road, thereby striking *P*, was the only proximate cause of the injury. From these cases it would appear that West Virginia is contra to the weight of authority.

However, the West Virginia court has not been consistent in its holdings in this type of case. In the *Webb* case, *supra*, it was held that with the occurrence of the second negligent act, the first such act becomes a mere condition upon which the second negligence acts. On the other hand, *Snyder v. Philadelphia Co.*, 54 W. Va. 149, 46 S.E. 366 (1903), stated that the first act remains the proximate cause of the injury, the second act being only a condition upon which the first negligence acts. In this case *D* was negligent in blowing off a gas well; *P*'s horse threw him when a defective rein broke, the latter being the concurring cause of the injury. While this is the oldest West Virginia case dealing with the problem, it has not been expressly overruled.

To add to this inconsistency, West Virginia has expounded a third view in *Wilson v. Edwards*, 138 W. Va. 613, 77 S.E.2d 164 (1953). There the first negligent party illegally parked his truck; the second negligent driver hit the vehicle, injuring *P* who was in the parked truck. The court held that the acts constitute concurrent negligence, and both drivers were held liable as joint tort-feasors since their independent acts united in causing a single injury. This case was followed in *Roush v. Johnson*, 139 W. Va. 607, 80 S.E.2d 857 (1954), where the court stated that such a conclusion does not overrule the decision of the *Webb* case, *supra*, but rather is distinguishable from it. Thus in West Virginia there are cases which have followed the weight of authority.

While the West Virginia decisions on this subject are far from being consistent, their apparent inconsistencies may be explained by the different factual situations involved. Whatever the reason, it poses a problem which remains unsettled in West Virginia. Although it is impossible to ascertain with any certainty which of the cited decisions the court may follow in the future, it would seem

that the most logical path is the one expounded by the principal case, i.e. that there may be more than one cause of an injury, and in such a case, the various wrongdoers may be jointly or severally held for their negligence.

In conclusion, it would seem that the decision of the principal case is correct and follows the weight of authority in the United States. There certainly may be concurrent causes of an injury, and, depending on various factors, one or both of the negligent parties may be held liable for their wrongful acts. In cases similar to the principal case, the West Virginia court has followed three trends of thought with little consistency, leaving much confusion in this area.

F. L. D., Jr.

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TORT—FATHER'S ACTION AGAINST AN UNEMANCIPATED SON FOR LOSS OF SERVICES OF ANOTHER UNEMANCIPATED SON.—*B* was injured in an automobile accident while riding in a car driven by his brother, *D*. The father of the two unemancipated boys brought this action against *D* to recover for loss of services and medical expenses incurred by *B*. In a companion action *B*, by his father as guardian ad litem, seeks to recover damages for personal injuries from *D* and the driver of the other car involved in the accident. *D* moved to dismiss the complaint upon the grounds that an action by a father against his unemancipated son is contrary to public policy. *Held*, the father could maintain this derivative action, regardless of whether the claim was covered by liability insurance. *Becker v. Rieck*, 188 N.Y.S.2d 724 (1959).

This case presents an unusual situation, one in which the court was faced with an almost complete lack of precedent upon which to base its decision. Thus it is necessary to draw conclusions in this factual situation by analyzing the cases in the field of family immunity in tort actions, to determine if such immunity should be applied to cases similar to the one under discussion.

At common law, spouses were not permitted to sue each other for torts. Since most states have removed these common law disabilities by the passage of married women's property acts, it has been advocated that this removes all disabilities of married women, and they should therefore be able to sue and be sued by their spouses for torts. However, such is not the case, and the majority of states, including West Virginia, have interpreted such acts as not permitting suits between spouses for torts. *Lubowitz v. Taines*, 293