Hastings Law Journal

Volume 1 | Issue 1 Article 3

1-1949

Res Ipsa Loquitur

John McDonough

RES IPSA LOQUITUR

BY JOHN MCDONOUGH

One of the difficult problems that frequently arises in negligent cases is the matter of proving some specific act of negligence on the part of the defendant. In such a case where direct evidence is not available, the plaintiff might resort to a type of circumstantial evidence known as the doctrine of *Res Ipsa Loquitur*. It should be understood from the start that the doctrine does not dispense with the requirement that the party who alleges negligence must prove the fact, the doctrine relates only to the mode of proving negligence. The conditions usually stated as necessary for the application of the doctrine are: (1) the accident must be of a kind which ordinarily does not occur in the absence of someone's negligence, (2) it must be caused by an agency or instrumentality within the exclusive control of the defendant, (3) it must not have been due to any voluntary action or contribution on the part of the plaintiff[1]. Some courts have added a fourth requirement that the true explanation of the accident must be more readily accessible to the defendant than to the plaintiff.

Most states require only that the first three conditions be met to bring a case within the scope of the doctrine. In any case where these three conditions are not present the doctrine does not apply. The doctrine was not meant to be a rule of substantive law, but rather a rule bearing upon the proof of negligence. The conditions represent a logical pattern of evidence creating an inference of negligence. The first requirement deals with the character of the act, in that the accident must be such that in the light of ordinary experience it gives rise to an inference of negligence. The second requirement is for the purpose of fixing the responsibility for the accident on the defendant. If the defendant lacks this exclusive control, or if there is a division of responsibility, the courts will generally refuse to apply the doctrine. The third requirement is for the purpose of eliminating the possibility of contributory responsibility on the part of the plaintiff. The additional requirement that the defendant

1 - Prosser, Torts, Pg. 295.

knows of the cause of the accident while the plaintiff does not, while it is generally not considered as an essential requirement, is considered as a justification for the doctrine.

Once a case has been brought within the scope of the doctrine, it does not mean that the plaintiff has won his case. The effect given to the doctrine of Res Ipsa Loquitur varies from being one jurisdiction to another, but the least effect given is to prevent the plaintiff is being non suited. This means that the case must go to the jury for their determination as to whether the evidence is sufficient to sustain the proof of the defendant's negligence. When the plaintiff brings a case within the doctrine the defendant may then go forward with the proof, to explain the accident or to rebutt the inference of his negligence. The burden of proof is not shifted to the defendant, and he is not required to introduce rebutting evidence, failure to do so will not justify a directed verdict for the plaintiff. The defendant by failing to go forward with the proof merely runs the risk that the jury will believe the inference strong enough to decide the case against him. The jury is under no compulsion to decide the case in favor of either party, and generally their verdict will not be disturbed. In the early cases the doctrine of Res Ipsa Loquitur was most frequently applied to accidents involving common carriers. In those cases the courts combined with the doctrine the high degree of care owed by the carrier to his passengers, and as a consequence, in those cases, the court held that the failure of the defendant to offer rebuttal evidence was considered a sufficient reason to establish negligence of the carrier and its liability for the injury. This indicates that the burden of proof has been shifted to the defendant. These cases were thought to be the exceptional cases and not the general rule

Although the California courts appear to adopt the definition of Res Ipsa Loquitur as given by Dean Prosser,[2] nevertheless there has been an intentional liberalization in the application of the doctrine. However many California cases hold that the doctrine is justified because the defendant knows of the circumstances causing the injury while the plaintiff does not, and to this extent they have, by implication, made the

2 - Ybarra v Spangard 25 Cal. 2d 489.

additional requirement a part of the rule. One way in which California has modified the general rule is by their interpretation of what is meant by the instrumentality being within the exclusive control of the defendant. In Escola v Coca-Cola Bottling Co. 24 Cal. 2D 453, and more recently in Gordon v. Aztec Brewing Co. 33 Cal. 2d 514, the court said that this meant the right to control. The defendant must have the right to control at the time of the negligent act, and not necessarily at the time of the accident, provided the plaintiff is able to prove that the conditions of the instrumentality had not been changed after it left the possession of the defendant, and that all persons handling the instrumentality thereafter did so with due care. Both cases involved an exploding beverage bottle. The latter case involved a bottle of beer that had been manufactured and bottled by the defendant in San Diego, shipped by an independent trucking company to Los Angeles, stored in a wholesaler's warehouse for a short time, then delivered by the wholesaler's delivery service to the retailer where the bottle exploded in the retailer's hand while he was removing the bottle from the carton to put it in the cooler. The retailer recovered on the doctrine of Res Ipsa Loquitur.

In another situation where the California Rule and the general rule do not agree involves the effect given to the doctrine once a case has been brought within the rule. In Dierman v Providence Hospital, 31 Cal. 2D 290 where the doctrine had been pleaded and the jury returned a verdict for the defendant; the supreme court on appeal reversed the judgment of the lower court and directed a verdict for the plaintiff. The case involved an explosion of the anesthetic while the patient was unconscious. The Supreme Court laid considerable emphasis on the fact that the anesthetic had not been tested before the operation, nor had there been a test made of the anesthetic after the accident. In directing the verdict for the plaintiff the court said:

> "Evidence as to the condition of the nitrous oxide was either in the possession of or available to the defendants and was not in the possession of or available to the plaintiff . . . in a Res Ipsa Loquitur case where in addition to the prima facie showing of negligence, it is admitted or appears without dispute that the defendant has it in his power to produce substantial

evidence material to the issue of negligence but fails to do so, it must be presumed, that such evidence if produced would have been adverse to defendants, and under such circumstances the evidence is insufficient to support a verdict for the defendant and the plaintiff is entitled to a directed verdict."

As a consequence of this liberal view adopted by the courts the doctrine has been applied to a greater variety of cases. In their endeavor to keep the rule flexible the courts have not always been consistent.[3] A discussion of the rule is likely to be found in almost any case involving an unexplained accident, regardless of whether the doctrine is applicable or not.[4] The plaintiff's case in California has been made easier to the extent that the rule in regard to the defendant's control (Rule 2) over the instrumentality has been relaxed considerably. Furthermore once a case has been brought within the rule the Dierman Case would seem to hold that the defendant must go forward with the proof, if in fact it has not shifted to him the entire burden of proof.

3 - La Porte v Houston 33 Cal 2d 167.

4 - Carpenter, The Doctrine of Res Ipsa Loquitur in Cal 10 So. Cal L. Rev. 166.

5 - For a thorough discussion of Res Ipsa Loquitur in Cal. see the article by Prosser 37 Cal. Law Rev. 183 June 49.