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Theaters and Shows - Res Ipsa Loquitur - Sufficiency of Pleadings

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by holding the lessor in each case liable for the loss the parties should have contemplated, i.e., the value of the thing given in exchange, the court properly allowed the claim for drilling expenses in the *Riggs* case, and with consistency denied it here.

The foregoing analysis should not be affected by the fact that oil is found. Although a lessee evicted from a portion of the property will lose a proportionate part of the production, is he entitled to a refund of a like part of the cost of drilling? Certainly, if a lessee, having paid a cash bonus for the privilege of drilling, fails to find oil, and is subsequently evicted, it cannot be said that the eviction occasioned his loss of drilling expenses; the loss would have been the same had he not been evicted. If we suppose that such a lessee is successful in finding oil and is then evicted, it appears that the only loss he will suffer because of the eviction depends upon a contingency—the future production of oil. Thus, any loss from eviction other than the thing given in exchange for the privilege of drilling would depend upon an uncertain event, and because of its speculative character, it cannot be supposed that it was within the contemplation of the parties.

J. T. B.

THEATERS AND SHOWS—RES IPSA LOQUITUR—SUFFICIENCY OF PLEADINGS—Plaintiff, while proceeding up a flight of stairs to the exit of defendant's theater, caught her foot between the floor carpet and the steps, and was thrown against a seat and injured. Plaintiff alleged in her petition that the carpet was not firmly attached and that it bulged from the riser. She also alleged that the defect had existed for some time, but that she was unable to state truthfully for exactly how long. She stated further that the circumstances surrounding the accident were peculiarly under the control of the defendant, and since ushers used the stairway regularly, defendant either knew or should have known of the defect. The district court sustained defendant's exception of no cause of action. On appeal to the court of appeal, *held,* the facts alleged constitute a prima facie case of negligence, and the burden of exculpating himself from blame devolves upon defendant. *Bentz v. Saenger-Ehrlich Enterprises, Inc.,* 197 So. 659 (La. App. 1940).

Although the question arose with respect to the sufficiency

of the pleadings, yet the sufficiency here must be determined by inquiring whether or not plaintiff could recover if she were to succeed in establishing every allegation by evidence. For this reason, the problem in its last analysis was one of whether or not the doctrine of res ipsa loquitur is applicable. In order for the doctrine of res ipsa loquitur to be available, three requirements must be met: (1) the injury must be of a kind that ordinarily does not occur when due care has been exercised; (2) defendant must be in exclusive control of the situation and primarily responsible for the condition giving rise to the injury; and (3) defendant, rather than plaintiff, must be the party in possession of the facts necessary to explain the accident. If the question in the instant case were one of defective construction or design of the theater or its equipment, or a state of disrepair brought about by the ravages of time, the case would be clear. The mere happening of the accident would justify a strong inference of negligence. For example, the doctrine has been applied where a theater balcony collapsed;[1] where a shade from an electric chandelier fell from the ceiling;[2] and where an electric fan crashed down upon a patron.[3] These cases fall clearly within the requirements of the rule.

However, in the case of casual defects, such as obstacles on floors or stairways in a public place of business, or conditions of disrepair which might be attributable to the act of some third person, the doctrine of res ipsa loquitur is not applicable. Thus, its benefit has been denied where plaintiff stumbled over a brick on defendant railway's platform,[4] and where he stumbled on a banana peel on defendant's premises.[5] So, too, where the injury might well have resulted from any one of several causes, the plaintiff by a fair preponderance of evidence must exclude all sources of injury which could not reasonably be attributed to defendant. Where plaintiff was injured from a falling piece of iron and there were numerous third persons whose carelessness might have caused the accident,[6] the doctrine of res ipsa loquitur

1. Lyman v. Knickerbocker Theatre Co., 55 App. D.C. 323, 5 F. (2d) 538 (1925).

2. Goldstein v. Levy, 74 Misc. 463, 132 N.Y. Supp. 373 (Sup. Ct. 1911).

3. Haun v. Talley, 40 Cal. App. 585, 181 Pac. 81 (1919). Still other examples are Carlson v. Swenson, 197 Ill. App. 414 (1916), in which a falling radiator struck a passerby who was reading posters in the theater lobby; and Fox v. Bronx Amusement Co., 9 Ohio App. 426 (1918), where the injury was due to a theater seat breaking during a performance.

4. Meridian Terminal Co. v. Stewart, 143 Miss. 523, 108 So. 496 (1926).

5. Yazoo & M.V. Ry. v. Hawkins, 159 Miss. 775, 132 So. 742 (1931).

6. Trim v. Fore River Ship Building Co., 211 Mass. 593, 98 N.E. 591 (1912).

was held not applicable. The same conclusion was reached in another case where the injury was caused by a missile falling from a building under construction and where it was possible that there was another cause besides defendant's negligence.[7]

The present case probably stretches the doctrine of res ipsa loquitur to its outer limits, but it appears justifiable because of the fact that the owner of a theater, which must be operated in virtual darkness, owes his patrons the duty of a very frequent and thorough inspection of his premises. Furthermore, this particular defect can most reasonably be attributed to a faulty laying of the carpet, or at least to the fact that ordinary usage over a period of time gave rise to its dangerous condition.

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7. Prest-O-Lite Co. v. Skeel, 182 Ind. 593, 106 N.E. 365 (1914).