DEVELOPMENTS IN THE EVIDENTIARY RULES APPLICABLE TO PRODUCT LIABILITY CLAIMS: INTERVENING CAUSES

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In general, a party may not be charged with damages which he did not cause. "It is elemental that in order for one to be chargeable for cause to another, his negligence must have been the proximate cause of the injury sustained." Cain v. Georgia Power Co., 186 S.E. 229, 230 (Ga. App. 1936). On occasion a defendant defends itself by claiming an intervening third party caused the damage to the plaintiff. In such disputes, the defendant contends that it was not the proximate cause of what happened to the plaintiff.

The Georgia Court of Appeals, however, has intimated that this general rule may not apply to products liability cases based on strict liability. In order to understand why the rule may not apply, this paper will first discuss the general rule, and then will discuss why it may not apply in products liability cases.

I. THE GENERAL RULE AS TO INTERVENING CAUSES.

The statutory law pertaining to intervening causes is set out in two Georgia statutes:

> If the damage incurred by the plaintiff is only the imaginary or possible result of a tortious act or if other and contingent circumstances preponderate in causing the injury, such damage is too remote to be the basis of recovery against the wrongdoer.

O.C.G.A. § 51-12-8.

> Damages which are the legal and natural result of the act done, though contingent to some extent, are not too remote to be recovered. However, damages traceable to the act, but which are not its legal and natural consequence, are too remote and contingent to be recovered.

O.C.G.A. § 51-12-9.

The rule, as fleshed out in the case law, dates back to the beginning of Georgia jurisprudence. One oft-cited statement of the rule comes from a 1902 case, Southern Railway Co. v. Webb:

> While the general rule is that if, subsequently to an original wrongful or negligent act, a new cause has intervened, of itself sufficient to stand as the cause of the misfortune, the former must be considered as too remote, still if the character of the intervening act claimed to break the connection between the original wrongful act and the subsequent injury was such that its probable or natural consequences could reasonably have been anticipated, apprehended, or foreseen by the original wrong-doer, the causal connection is not broken, and the original wrong-doer is responsible for all of the consequences resulting from the intervening act.

Southern Railway Co. v. Webb, 116 Ga. 152, 42 S.E. 395, 59 LRA 109 (1902), quoted in Blakely v. Johnson, 140 S.E.2d 857, 220 Ga. 572, 574-75 (1965), Herren v. Abba Cab Co., 271 S.E.2d 11, 155 Ga. App. 443, 444 (1980), Brunswick Pulp & Paper Co. v. Dowling, 140 S.E.2d 912, 111 Ga. App. 123, 127 (1965), and Gulf Oil Corp. v. Stanfield, 99 S.E.2d 209, 213 Ga. 436, 439 (1957). See also Atlantic Coast Line R. Co. v. Daniels, 8 Ga. App. 775, 70 S.E. 203, 205; Cain v. Georgia Power Co., 186 S.E. 229, 230-231 (Ga. App. 1936).

> One relatively simply phrasing of the rule is:
> [I]n order to hold the defendant liable, it must be shown 'either that the act complained of was the sole occasion of the injury, or that it put in operation other causal forces, such as were the direct, natural, and probable consequences of the original act or that the intervening agency could have

> reasonably been anticipated or foreseen by the (defendant as the) original wrongdoer.' [Cits.]

Ga. Power Co. v. Kinard, 47 Ga. App. 483, 486, 170 S.E. 688 (1933). The rule is not affected by the motives of the intervening actor:

> In Jaggard on Torts, vol. 1, p. 72 et seq., the rule is thus stated: 'A person may be liable although the intervening agency was a conscious, responsible person. * * * It may be a wrongdoing third person. The intervening wrongdoer may be merely negligent or may act wilfully and maliciously. Thus, if the owner leaves a horse and cart standing in the street, and a third person strike [sic] the animal causing him to run away or otherwise do damage, the owner is liable.' As an illustration, the foregoing authority cites the case of Murdock v. Walker, 43 Ill. App. 590, in which it was held that a physician who makes a mistake in a prescription may be liable for damages consequent, although the druggist who filled it was also negligent."

Maddox Coffee Co. v. Collins, 167 S.E. 306, 308 (Ga. App. 1932).

The general rule, then, has three principle parts:

(1) The first actor is liable, even if another actor intervenes, for the natural consequences of his act;

(2) The first actor is liable, even if another actor intervenes, for foreseeable consequences, including foreseeable intervening acts; and

(3) The first actor is liable, even if another actor intervenes, unless the intervening act is the "preponderating" cause of the injury to the plaintiff.

A. The defendant is liable for all natural consequences of his acts.

In general, anyone acting negligently is liable for all ensuing consequences, even though intervening actors may factor into those consequences:

> The general rule of law is that -- "Whoever does an illegal or wrongful act is answerable for all the consequences that ensue in the ordinary and natural course of events, though those consequences be immediately and directly brought about by the intervening agency of others, provided these acts causing the damage were the necessary or legal and

> natural consequences of the original wrongful act." Addison on Torts (Wood's Ed.) § 12; Southern Ry. Co. v. Webb, 116 Ga. 152, 42 S.E. 395, 59 L.R.A. 109; Valdosta Street Ry. Co. v. Fenn, 11 Ga. App. 587, 75 S.E. 984.

Spires v. Goldberg, 106 S.E. 585, 587 (Ga. App. 1921). See also Georgia Power Co. v. Kinard, 170 S.E. 688, 690 (Ga. App. 1933).

The person acting negligently is liable so long as the injury occurring is "the natural and probable consequence of the negligence" (Douglas v. Smith, 578 F.2d 1169, 1176 (5th Cir. 1978)), "or, as otherwise stated, the wrong and the resulting damage must be known by common experience to be naturally and usually in sequence." Maddox Coffee Co. v. Collins, 167 S.E. 306, 308 (Ga. App. 1932), citing Mayor & Council of Macon v. Dykes, 103 Ga. 847, 31 S.E. 443, and "numerous citations."

The question of what proximately caused a particular injury is factually based, and "each case must depend for solution upon its own particular facts." McGinnis v. Shaw, 167 S.E. 533, 535 (Ga. App. 1933) (citations omitted). The fact that both the original act and the intervening act were necessary to the injury is irrelevant to the question of liability:

> The mere fact that the injury would not have been sustained had only one of the acts of negligence occurred will not of itself operate to define and limit the other act as constituting the proximate cause, for, if both acts of negligence contributed directly and concurrently in bringing about the injury, they together will constitute the proximate cause.

McGinnis v. Shaw, 167 S.E. 533, 535 (Ga. App. 1933) (citations omitted). See also McGinnis v. Shaw, 167 S.E. 533, 535 (Ga. App. 1933) ("where two concurrent causes naturally operate in causing an injury, there can be a recovery against both or either one of the responsible parties. . . . and this is true although the duty owed to the complainant by both parties defendant may or may not have been the same") (citations omitted).

B. The defendant is liable so long as he could foresee the consequences or the intervention that occurred.

A defendant is liable for all the foreseeable consequences of his actions:

> The rule that an intervening act may break the causal connection between an original act of negligence and injury to another is not applicable if the nature of such intervening act was such that it could have reasonably been anticipated or foreseen by the original wrongdoer. . . . It is not necessary that an original wrongdoer shall anticipate or foresee the details of a possible injury that may result from his negligence. It is sufficient if he should anticipate from the nature and character of the negligent act committed by him that injury might result as a natural and reasonable consequence of his negligence. ". . . It is sufficient, if, by exercise of reasonable care, the defendant might have foreseen that some injury would result from his act or omission, or that consequences of a generally injurious nature might have been expected."

Atlanta Gas Light Co. v. Mills, 51 S.E.2d 705, 78 Ga. App. 690, 696 (1949), quoting from Mitchell v. Schofield's Sons Co., 16 Ga. App. 686, 690, 85 S.E. 978.

A defendant is liable when he can "foresee" either the consequences of his actions, or the intervention. First, a defendant can be liable for injuries he could foresee: "[a]lthough ordinarily an intervening cause breaks the chain of causation, a defendant may still be liable if the probable consequences could have been reasonably anticipated." Douglas v. Smith, 578 F.2d 1169, 1176 (5th Cir. 1978). Secondly, a defendant also is liable if he had "reasonable grounds for apprehending" the intervening action itself. Decker v. Gibson Products Co. of Albany, Inc., 505 F.Supp. 34, 37 (1980), (rev'd on other grounds, 679 F2d 212 (11th Cir. 1982) (referring to intervening criminal act).

The test of foreseeability is not whether "the precise manner in which the injury occurred could . . . have been predicted," but whether "there was sufficient likelihood of the occurrence of harm in some manner." Douglas v. Smith, 578 F.2d 1169, 1176 (5th Cir. 1978). See also Watkins v. Jacobs Pharmacy Co., 171 S.E. 830, 831 (Ga. App. 1933) ("'The test is: would ordinary prudence have suggested to the

person sought to be charged with negligence that his act or omission would probably result in injury to some one?' 22 R. C. L. 126"); Spires v. Goldberg, 106 S.E. 585, 587 (Ga. App. 1921) (defendant is liable if "the mischief is attributable to the original wrong as a result which reasonably might have been, or ought to have been, foreseen as probable. Southern Ry. Co. v. Webb, 116 Ga. 152, 42 S.E. 395, 59 L.R.A. 109; Valdosta Street Ry. Co. v. Fenn, 11 Ga. App. 587, 75 S.E. 984").

The fact that the defendant could have foreseen the consequences is deemed significant because, in tort actions, unlike in contract actions, damages "may be recovered, though contingent to some extent" (Kroger Co. v. Perpall, 125 S.E.2d 511, 105 Ga. App. 682, 686 (1962)):

> "[T]he damages are not limited or affected, so far as they are compensatory, by what was in fact in contemplation by the party in fault. He who is responsible for a negligent act must answer for all the injurious results which flow therefrom, by ordinary natural sequence, without the interposition of any other negligent act or overpowering force." Southwestern R. Co. v. Vellines, 14 Ga. App. 674, 683 (82 S.E. 166) quoting 1 Sutherland on Damages (3d ed.) §§ 93 and 16.

Id.

That a defendant is liable for all he could foresee has been deemed to be an integral portion of the rule of intervening causes; courts have held that a jury charge omitting that portion of the rule would be improper. See, e.g., Firestone Tire & Rubber Co. v. Pinyan, 270 S.E.2d 883, 155 Ga. App. 343 (1980) (refusing to reverse because the charge proffered by the defendant, and which the judge refused to give, stated the general rule but omitted the fact that the defendant was liable for all actions he could foresee).

Further, a jury instruction must define the extent of "foreseeability" that is required. In a 1981 case the Fifth Circuit reversed a case where the trial court's instruction had said "in essence that where an intervening cause is reasonably foreseeable by the defendant it will not serve to extinguish the defendant's responsibility

for his wrongful act." Corey v. Jones, 650 F.2d 803 (5th Cir., Unit B, 1981). The court explained that while that instruction "is correct, . . . it is not a comprehensive, all-inclusive statement of the Georgia law," because it omits "the additional theory that where it is foreseeable that the defendant's original wrongful act will by itself cause *some* injury or damage, his responsibility is not extinguished because another wrongful act or omission concurs with his act to produce a greater injury. It is not necessary that he anticipate the precise injury."

C. The original tortfeasor is liable unless the intervening act is the preponderating cause of the injury.

An intervening act breaks the chain of causation only when that act is the "preponderating cause" of the injury. Brimberry v. Savannah, F. & W. Ry. Co., 3 S.E. 274, 276, 78 Ga. 641 (1887). See also Gulf Oil Corp. v. Stanfield, 99 S.E.2d 209, 213 Ga. 436, 440 (1957), citing Mayor & Co. of Macon v. Dykes, 103 Ga. 847, 848, 31 S.E. 443; Southern Transportation Co. v. Harper, 118 Ga. 672, 45 S.E. 458; Postal Telegraph-Cable Co. v. Kelly, 134 Ga. 218, 67 S.E. 803; Williams v. Grier, 196 Ga. 327, 26 S.E.2d 698; Harper v. Fulton Bag & Cotton Mills, 21 Ga. App. 322, 94 S.E. 286; Higginbotham v. Rome Ry. & Light Co., 23 Ga. App. 753, 755, 99 S.E. 638; Gillespie v. Andrews, 27 Ga. App. 509, 510, 108 S.E. 906; Georgia Ry. & Power Co. v. Bryans, 35 Ga. App. 713, 134 S.E. 787; Artope v. Central of Ga. Ry. Co., 38 Ga. App. 91, 143 S.E. 127; Morrison v. Columbus Transportation Co., 39 Ga. App. 708, 710, 148 S.E. 276; Kleinberg v. Lyons, 39 Ga. App. 774, 776, 148 S.E. 535; City of Atlanta v. Guice, 41 Ga. App. 146, 148, 152 S.E. 144; Cain v. State, 55 Ga. App. 376, 381, 190 S.E. 371; Wilson v. Capital Auto Co., 59 Ga. App. 834, 2 S.E.2d 147; Wright v. Southern Ry. Co., 62 Ga. App. 316, 320, 7 S.E.2d 793; Seymour v. City of Elberton, 67 Ga. App. 426, 433, 20 S.E.2d 767; Southeastern Stages v. Abdella, 75 Ga. App. 38, 41 S.E.2d 799; Irwin v.

Georgia Power & Light Co., 84 Ga. App. 665, 67 S.E.2d 151; Peggy Ann of Georgia, Inc. v. Scoggins, 86 Ga. App. 109, 115, 71 S.E.2d 89.

The intervening act must be "an independent, illegal act of a third person producing the injury, and without which it would not have occurred." Decker v. Gibson Products Co. of Albany, Inc., 505 F.Supp. 34, 37 (M.D. Ga. 1980) (referring specifically to intervening criminal acts). "The mere fact that the plaintiff's injuries would not have been sustained had only one of the acts of negligence occurred will not of itself operate to limit the other act as constituting the proximate cause." Atlanta Gas Light Co. v. Mills, 51 S.E.2d 705, 78 Ga. App. 690, 696 (1949).

In trying to determine which acts were "predominating" causes, early courts drew a distinction between "'an immobile, inefficient condition, innocuous in itself as a motive power for harm, and an efficient operating proximate cause, without whose intervention and instrumentality as *sine qua non*, damage was impossible.'" Cain v. Georgia Power Co., 186 S.E. 229, 231 (Ga. App. 1936), quoting Powers v. Standard Oil Co., 98 N.J.Law, 730, 119 A. 273, 274. The efficient cause was defined as "'the force or operating factor, without which the accident could not have happened,'" an act "'active, operative, and containing within itself the possibility of potentiality for harm.'" Id.

The Cain court gave an example: "a truck, stationary at the curb, though illegally parked, can not be the proximate cause of the accident to a child who ran from behind it in front of another automobile, but was only an obstruction to the vision, which imposed upon the child and the driver of the other automobile an added duty to exercise care." Id. An instrumentality was deemed "an innocuous, immobile instrumentality" only if that fact were "manifest." Id.

II. THE QUESTION OF PROXIMATE CAUSE GENERALLY IS AN ISSUE FOR THE JURY.

Generally the question of whether an intervening cause broke the chain of causation is a jury question: "'except in plain and indisputable cases, what negligence, as well as whose negligence, constitutes the proximate cause of an injury is for determination by the jury under proper instructions from the court.'" Atlanta Gas Light Co. v. Mills, 51 S.E.2d 705, 78 Ga. App. 690, 696 (1949), quoting Callahan v. Cofield, 7 S.E.2d 592, 61 Ga. App. 780.

The issue of intervening cause is not a summary judgment issue unless "it *clearly and palpably* appears from the petition that the negligence charged against the defendant was not the proximate and effective cause of the injury, that the court may upon general demurrer as a matter of law so determine." Watkins v. Jacobs Pharmacy Co., 171 S.E. 830, 831 (Ga. App. 1933). See also Georgia Power Co. v. Womble, 256 S.E.2d 640, 150 Ga. App. 28, 33 (1979) (issue should be decided as a matter of law only in "plain and indisputable cases"), citing Southern R. Co. v. Elliott, 93 Ga. App. 370, 373, 91 S.E.2d 775, and Blakely v. Johnson, 220 Ga. 572, 574, 140 S.E.2d 857; DeKalb County Hosp. Auth. v. Theofanidis, 278 S.E.2d 712, 157 Ga. App. 811, 812-13 (1981) (evidence must "plainly, palpably and indisputably show a lack of proximate cause"); Kells v. Northside Realty Assocs., 274 S.E.2d 66, 156 Ga. App. 164, 165 (1980) (issue may be decided as a matter of law only where evidence demonstrates "clearly and palpably" that "defendant's acts were not the proximate cause of the injury"); Herren v. Abba Cab Co., 271 S.E.2d 11, 155 Ga. App. 443, 445 (1980), quoting Powers v. Pate, 107 Ga. App. 25, 27, 129 S.E.2d 193 (1962) ("'Questions of negligence, diligence, contributory negligence, and proximate cause are peculiarly matters for the jury, and a court should not take the place of the jury in solving them, except in plain and indisputable cases'"); Crankshaw v. Piedmont Driving Club, Inc., 156 S.E.2d 208, 115 Ga. App. 820, 820 (1967) ("the question of proximate cause is one for a jury except in palpably clear and indisputable cases); Maddox Coffee Co. v. Collins, 167 S.E. 306, 308 (Ga. App. 1932) ("Ordinarily such a question comes peculiarly within

the province of the jury, and it is well established that only in clear cases will this court on demurrer resolve such questions as a matter of law").

III. THE RULE OF INTERVENING CAUSES MAY NOT APPLY IN PRODUCTS LIABILITY CASES.

The question of intervening causes becomes particularly complicated in cases in which the plaintiff alleges strict liability, such as most products liability cases. The Court of Appeals has hinted that intervening proximate cause may be irrelevant in strict liability cases. Firestone Tire & Rubber Co. v. Pinyan, 270 S.E.2d 883, 155 Ga. App. 343 (1980). Firestone appealed on the grounds that the trial court had refused to give a jury charge Firestone had requested. The court held that the trial court was correct to refuse to give the charge, because it: "did not include a statement that in order for the intervening act to constitute the proximate cause of the injury so as to relieve Firestone from liability for the defective manufacture of the tire the intervening act of the third party must have been one that Firestone had no duty to anticipate. Absent this qualification, a charge on intervening efficient cause is incomplete and imperfect." Id.

> The Court began its analysis with the following statement, however: **Assuming without deciding that the theory of intervening proximate cause is even applicable to a strict liability case where the liability is not predicated on negligence and foreseeability**, this enumeration is not a viable one. . . .

Firestone Tire & Rubber Co. v. Pinyan, 270 S.E.2d 883, 155 Ga. App. 343 (1980) (emphasis added). Later in the opinion, the court reiterated its concern that the entire doctrine might not apply in strict liability cases:

> Therefore, **even assuming that the doctrine of intervening proximate cause is applicable to strict liability litigation,** we find no error in refusing to give this imperfect and incomplete charge on that theory.

Firestone Tire & Rubber Co. v. Pinyan, 270 S.E.2d 883, 155 Ga. App. 343 (1980) (emphasis added).

The Court apparently believed that the doctrine might not apply for two reasons:

(1) The court suggested that where a manufacturer argues that it did not cause an injury at all, it cannot also claim that an intervening action protected it from liability:

> As we understand Firestone's contentions concerning the injuries, its defense to liability was not predicated upon Firestone's being merely a remote actor in the chain of causation which eventually lead to the injuries. Rather, its defense was that there was no defect in the tire at all or that the acts of third parties were the sole proximate cause of the injuries. . . . According to its defense it was never in the chain of causation which resulted in those injuries at all -- under its evidence the injuries occurred totally in the absence of any wrongful conduct on the part of Firestone. . . . [T]his defense does not raise the issue of intervening proximate cause -- which assumes cause in fact exists but denies liability based upon the unforeseeability of the subsequent intervening acts of third persons which preponderate in causing the injuries.

Firestone Tire & Rubber Co. v. Pinyan, 270 S.E.2d 883, 155 Ga. App. 343 (1980).

(2) A tortfeasor has to accept responsibility for his actions where the intervening act or the injury was foreseeable to him. The theory of strict liability is that a decision is made, in advance, to hold manufacturers liable for the consequences of defects in their products. Hence, "foreseeability" is irrelevant. For that reason, the court was doubtful whether the doctrine would apply "to a strict liability case where the liability is not predicated on negligence and foreseeability." Firestone Tire & Rubber Co. v. Pinyan, 270 S.E.2d 883, 155 Ga. App. 343 (1980).

IV. EXAMPLES WHERE THE COURT SAID THAT AN INTERVENING CAUSE BROKE THE CHAIN OF CAUSATION.

The following are summaries of some cases in which the courts have found that an intervening cause broke the chain of causation, so that the original actor was not liable:

(1) Gulf Oil illegally erected a pole. Johnson parked a car in front of the pole. The plaintiff's daughter was sitting in Johnson's parked car when a truck, being driven at an excessive speed, hit the parked car into the pole. The plaintiff's daughter was thrown through the window of the truck and killed. The plaintiff sued Gulf Oil, Johnson and the truck driver. The court concluded that "[s]uch consequences could not reasonably have been anticipated by Gulf Oil Corporation, and its participation in the plaintiff's damages are too remote to be the basis of any recovery." Gulf Oil Corp. v. Stanfield, 99 S.E.2d 209, 212, 213 Ga. 436, 439 (1957).

(2) Northside Realty arranged a tenancy between the plaintiff and an extremely "unsatisfactory tenant." Northside's "interest in earning its fee for the sale of the property" was deemed too remote to be a cause of the damage done by the tenant. Kells v. Northside Realty Assocs., 274 S.E.2d 66, 156 Ga. App. 164, 165 (1980).

(3) A passenger was trampled by his fellow passengers when a steamboat was negligently struck against the pier of a drawbridge. The court found the consequence was not one that could have been "reasonably anticipated." Southern Transportation Co. v. Harper, 118 Ga. 672, 45 S.E. 458, cited in Blakely v. Johnson, 140 S.E.2d 857, 220 Ga. 572, 576 (1965) (upholding summary judgment to two defendants).

(4) In order to draw in business, employees of a local Gulf Oil station "blew whistles and shouted and otherwise made loud noises." Distracted, the driver of a passing car struck the car in front of him. The Court held that the result was not reasonably foreseeable to Gulf Oil Corporation and the owner of the local station. Blakely v. Johnson, 140 S.E.2d 857, 858-60, 220 Ga. 572, 576 (1965).

(5) A construction worker was killed when he fell into a hole where a grate had been removed. The construction worker's wife alleged that the hall through which the worker had been walking was insufficiently lighted, although the construction worker had known that. The court found that because the defendant had not made the hole, the consequence of the insufficient lighting was not reasonably foreseeable to the defendant. Brunswick Pulp & Paper Co. v. Dowling, 140 S.E.2d 912, 111 Ga. App. 123, 127 (1965)

(6) The plaintiff was dining with friends at the Piedmont Driving Club. One of the friends became nauseated when "she noticed a peculiar odor emanating from the shrimp dish" she had ordered. The friend "excused herself and proceeded toward the rest room," and shortly afterwards the plaintiff went "to give aid and comfort" to her sick friend. As the plaintiff entered the rest room, she slipped on the floor where her friend had just vomited. The court held that the fact that the defendant had sole "unwholesome, deleterious food" was not sufficiently related to the plaintiff's injury to allow the defendant to be charged with it. Crankshaw v. Piedmont Driving Club, Inc., 156 S.E.2d 208, 115 Ga. App. 820, 820 (1967).

V. EXAMPLES WHERE THE COURT SAID THAT AN INTERVENING CAUSE DID NOT BREAK THE CHAIN OF CAUSATION.

The following are summaries of some cases in which the courts have found that an intervening cause did not break the chain of causation, meaning that the original actor was still liable:

(1) The most famous such case is the ancient squib case, the case that resulted when a lighted squib was tossed into a crowded market. The squib hit one vendor's stand. The first vendor picked up the squib and tossed it onto another vendor's stand. The second vendor then tossed the squib and hit the plaintiff. The squib exploded in the plaintiff's face, and put out one of the plaintiff's eyes. The person who originally tossed the squib into the market was held liable to the plaintiff.

(2) Analogizing to the squib case, the Georgia Court of Appeals held that, where a defendant gun seller sold a gun to a minor, the gun seller could be held liable for injuries the plaintiff incurred from a gunshot wound. The plaintiff had not been shot by the minor to whom the gun was sold, but by the minor's friend, to whom the minor had loaned the gun. Even so, the court held that the defendants had given the gun its "mischievous faculty" when they first sold it to the minor in violation of the penal statute. That "mischievous faculty" remained in the pistol even after it left the hands of the original minor who purchased it. Spires v. Goldberg, 106 S.E. 585, 587-588 (Ga. App. 1921).

(3) By way of example rather than holding, one court explained that: "[I]f the picket on duty sleeps, and the enemy slips by him and destroys the camp, is not the negligence of the sentinel the proximate cause of the injury to those whom he is engaged in guarding?" Glawson v. Southern Bell Telephone & Tel. Co., 71 S.E. 747, Ga. App. (1911).

(4) The Court of Appeals gave these two examples: (a) "if the owner leaves a horse and cart standing in the street, and a third person strike the animal causing him to run away or otherwise do damage, the owner is liable" (quoting Jaggard on Torts, vol. 1, p. 72 et seq.); (b) "a physician who makes a mistake in a prescription may be liable for damages consequent, although the druggist who filled it was also negligent" (citing Murdock v. Walker, 43 Ill. App. 590). Maddox Coffee Co. v. Collins, 167 S.E. 306, 308 (Ga. App. 1932).

(5) A manufacturer left glass in coffee grounds. The plaintiff ate the coffee instead of drinking it. Because the plaintiff ate the coffee rather than brewed and drank it, he was injured by the glass in it. The court held that the question of whether the plaintiff's eating the coffee was reasonably foreseeable to the manufacturer was a jury question. Maddox Coffee Co. v. Collins, 167 S.E. 306, 308 (Ga. App. 1932).

(6) A police officer turned on his emergency lights, but neglected to turn on his emergency siren, before he took off in pursuit of a taxi. While in pursuit, the police car hit the plaintiff's car. The taxi company was held responsible for the injuries caused by the police officer. Herren v. Abba Cab Co., 271 S.E.2d 11, 155 Ga. App. 443, 444 (1980).

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