LIABILITY FOR A DANGEROUS LIFT.

Haseldine v. C. A. Daw & Son and Others.[1]

Is a lift to be regarded as a carriage so far as concerns liability for its maintenance and control? This was one of the questions considered in *Haseldine v. C. A. Daw & Son and Others* and answered in the affirmative.

The plaintiff had been injured in an accident caused by the breaking of the cylinder gland of a hydraulic lift in a block of flats. The flats were owned by Daw who was also the occupier of the parts not in the actual occupation of the tenants. The maintenance of the lift was provided for by a contract with a firm of lift engineers, which, however, only undertook to make a regular monthly visit for inspection, adjustment and lubrication including the repacking of the cylinder glands. The contract did not provide for the replacement or renewal of worn parts. An employee of the engineers had attended on the day before the accident and repacked the gland, the breaking of which was found to be the cause of the accident. It was found as a fact that the accident was not due to improper working by the liftman but to inadequate arrangements for overhaul and replacement of worn parts, and that the immediate cause of the accident was the failure of the engineers' servant to repack the gland with reasonable care and skill.

The obvious line of approach to the question of Daw's liability was to inquire (1) into what category of entrant does the plaintiff fall; (2) what is the standard of duty owed by the occupier to such an entrant; (3) has the occupier been guilty of a breach of that duty. Upon the basis of this reasoning the plaintiff could not have succeeded against Daw. For it was indubitable that he was only a licensee (he had come to the flats to visit a tenant),[2] and the standard of duty owed by an occupier to a licensee is merely to warn against traps of which he actually knows. Here it was not established that Daw was aware that the lift in its then condition constituted a trap to those using it. Incidentally, the learned Judge said that if the plaintiff had been an invitee he would have been entitled to insist upon the occupier exercising reasonable care to make the premises reasonably safe.[3] This statement of the duty owed by an occupier to an invitee is a departure from the classic formulation of Willes J. in *Indermaur v. Dames*,[4] and illustrates the confusion which still exists in this branch of the law.

Nevertheless the plaintiff succeeded—on the ground that the issue, on its proper classification, did not turn on the liability to a licensee of an occupier of dangerous premises but on the liability to a gratuitous passenger of an occupier of a dangerous vehicle. "There appears to me," said Hilbery J.,[5] "to be no true distinction to be drawn between the position of a person who, as the owner and the occupier of the moving vehicle, undertakes the carriage of a passenger in the horizontal plane and that of one who, as the owner and occupier of a lift, undertakes to convey persons in the vertical plane." The next step was to ascertain what is the measure

1. [1941] 1 All E.R. 525.
2. Cf. *Fairman v. Perpetual Investment Society*, [1923] A.C. 74.
3. at p. 535.
4. [1866] L.R. 1 C P. 274.
5. at p. 532.

of duty owed by the occupier of a vehicle to a gratuitous passenger. It was held that it is to take reasonable care to supply a reasonably safe vehicle. It was conceded that the occupier must operate the vehicle with reasonable care; it necessarily followed, said the learned Judge, that the duty "must extend to the employment of reasonable care in and about the condition of the vehicle."[6]

The assimilation of the lift with the vehicle does seem a startling and perhaps an artificial conclusion. For a lift is as much a part of a building, and therefore a fixture, as a staircase, even though it moves within the limits of its supporting shell. Would it not be more natural to regard it, from the standpoint of the law of torts as from that of the law of property, as a part of the premises rather than as a self-sufficient means of conveyance, such as is a vehicle? If we refuse to do so what shall we say of the escalator? It is, like the lift, a means of transporting passengers on the vertical plane, yet the Court in *Hardy v. Central London Railway*,[7] when dealing with the case of a child injured by the mechanism of an escalator, does not seem to have considered the possibility of regarding the escalator as a vehicle.

Another doubt which arises when considering the instant case is whether it is a legitimate extension to impose upon the person in control of a vehicle the duty not only of operating it with reasonable care but of exercising reasonable care to make it reasonably safe for the gratuitous passenger. I loan my car to a friend. The books say that I am only under a duty to warn him of any defects of which I actually know, If, instead, I turn myself into a chauffeur and volunteer to drive him to his destination, it seems that I am under the additional obligation of having to rectify or give warning of defects of which I might, with careful examination, have become aware. The distinction seems repugnant to common sense but appears settled by authority. Thus in Stallybrass on Salmond one finds this reference to a gratuitous contract of carriage:[8] "Such a contract imposes a duty of reasonable care in the performance of it, and this duty will extend to ascertaining the safe condition of the premises on which the contract is to be performed." It must be mentioned, however, that the cases cited in support of this proposition are not conclusive.[9]

Perhaps the distinction can be justified on the ground that the gratuitous bailee has the opportunity of examining the car before using it, whereas the person who is offered a free ride has not, as a rule, but has to rely on the diligence of the occupier in keeping it in good repair. Besides, it can be argued that, whilst admitting that this distinction is irrational, it would be just as irrational to distinguish between the duty owed by the driver of a vehicle with regard to its operation and that owed by him with regard to its condition. And rejection of the one irrational distinction must necessarily involve adoption of the other. Having to choose between the lesser of two evils the law prefers to reject the latter distinction, that is, that between the duty of the driver of a vehicle with

6. at p. 533.
7. [1920] 3 K.B. 459.
8. Salmond on the *Law of Torts*, 9th ed., p. 523.
9. Thus in *Moffat v. Bateman*, 6 Moo. P.C. (N.S.) 380, on appeal from the Supreme Court of Victoria, the Privy Council held that a gratuitous passenger, like a gratuitous bailee, could only recover in respect of injuries caused by a defect in the carriage, if he could show gross negligence in the owner and occupier thereof.

respect to its control and that with respect to its condition. For in our modern complex civilization where the opportunities of causing great mischief through careless conduct are enormously increased, current notions of public policy favour an extension of the field of liability.

A second point of interest which fell to be determined in this case was whether the firm of lift engineers was liable to the plaintiff for the negligent repacking of the cylinder gland. Hilbery J. held that it was, under the rule in *Donoghue v. Stevenson*.[10] "Where repairs." he said, "are done to an article which will be dangerous to its users unless the repairs are done with reasonable skill and care and where such repairs are done in circumstances where, after they are done, no intermediate examination can reasonably be anticipated between the completion of the repairs and the use of the article, the repairer owes a duty to the user, and the user, though he has no immediate contract with the repairer, can enforce the liability on the part of the repairer to do his work with reasonable skill and care."[11] This case, together with three other recent cases, namely *Buckner v. Ashby*,[12] *Herschthal v. Stewart*,[13] and *Stennett v. Hancock*,[14] seems to have finally determined that no reasonable possibility of intermediate examination in Lord Atkin's statement of the rule in *Donoghue v. Stevenson*[15] has come to mean "circumstances in which they (the defendants) did not and could not have reasonably anticipated that there would be any such intermediate examination as would be likely to reveal a defect such as existed in the article."[16] Mr. P. Landon appears to be engaged in a vain attempt to turn back the clock when he argues that *Earl v. Lubbock*[17] is still binding authority for the proposition that "a stranger to the contract of repair cannot sue the negligent repairer."[18]

—N.L.

10. [1932] A.C. 562.
11. at p. 538.
12. [1940] 57 T.L.R. 238.
13. [1940] 1 K.B. 155.
14. [1939] 2 All E.R. 578.
15. [1932] A.C. 562, at p. 599.
16. *Per* Tucker J. in *Herschthal v. Stewart*, *supra*, at p. 172.
17. 57 L.Q.R., at p. 182.
18. [1905] 1 K.B. 253.