

is also an ineffective method of public protection compared to pure food laws and rigorous inspection of sources of food supply. *Valeri v. Pullman Co.*, 218 Fed. 519 (S.D. N.Y. 1914); *Kenney v. Wong Len*, 81 N.H. 427, 128 Atl. 343 (1925); 12 Corn L. Q. 535 (1927); 22 Ky. L. J. 452 (1930); 13 Minn. L. Rev. 265 (1929). These considerations hardly seem persuasive in view of the necessity of guarding public health and safety, and the tendency to place absolute liability on purveyors of food in general. *Friend v. Childs Dining Hall Co.*, 231 Mass. 65, 120 N.E. 407 (1918); *Kroger Grovery & Baking Co. v. Schneider*, 294 Ky. 261, 60 S.W. (2d) 594 (1933); 9 N.Y. Univ. L. Q. 360 (1932); 11 *id.* 300 (1932). It would seem that a restaurant keeper has at least as great an opportunity to discover and provide against deleterious foods as the retail seller of food, against whom a warranty is implied. *Smith v. Carlos*, 215 Mo. App. 488, 247 S.W. 468 (1923); 1 Williston, Sales (2d ed. 1924), § 242b; 75 Univ. Pa. L. Rev. 676 (1927). Negligence is often difficult to prove because the defect in the food was latent; nor does the doctrine of *res ipsa loquitur* afford full protection, the restaurant keeper very often being able to disprove negligence by showing a clean kitchen and care in the selection and preparation of food. See for applications of *res ipsa loquitur*: *Corin v. S. S. Kresge Co.*, 110 N.J.L. 378, 166 Atl. 291 (1933); *Clark Restaurant Co. v. Ran*, 41 Oh. App. 23, 179 N.E. 196 (1931). Whether or not the restaurant owner is negligent, it does not seem too harsh to impose liability on him as one of the risks incident to a business closely related to the public health and safety.

Torts—Liability to Parent for Nervous Shock Induced by Fear for Safety of Child—[Wisconsin].—Deceased, from the window of her home, saw defendant negligently run over and kill her small child. The shock and emotional disturbance which ensued caused her death. In a suit by deceased's administrator to recover for her death, it was held, that plaintiff may not recover, for defendant was under no duty to act so as not to subject the parent of the child to the risk of shock from seeing the child imperiled. *Waube v. Warrington*, 258 N.W. 497 (Wis. 1935).

Nervous shock involving physical consequences is today generally actionable whether the result of intentional or negligent conduct. *Rogers v. Williard*, 144 Ark. 587, 223 S.W. 15 (1920); *Great A. & P. Tea Co. v. Roch*, 160 Md. 189, 153 Atl. 22 (1931); *Wilkinson v. Downton*, [1897] 2 Q. B. 57; *Hambrook v. Stokes Bros.*, [1925] 1 K. B. 141; *contra*, *Alexander v. Pacholek*, 222 Mich. 157, 192 N.W. 652 (1923). But recovery is not so generally granted where the shock was induced by apprehension for the safety of another whom defendant had endangered. Liability does exist where the person imperiled was a member of plaintiff's immediate family and the imperiling conduct was intentional. *Jeppsen v. Jensen*, 47 Utah 536, 155 Pac. 429 (1916); *Lambert v. Brewster*, 97 W.Va. 124, 125 S.E. 244 (1924); *contra*, *Bucknam v. Great Northern R.R. Co.*, 76 Minn. 373, 79 N.W. 98 (1899). In the absence of intentional imperiling conduct, there is reluctance to impose liability. Thus, to establish a cause of action where the imperiling conduct was negligent, it has been held insufficient to show merely that the person endangered was of plaintiff's family. *Southern Ry. Co. v. Jackson*, 146 Ga. 243, 91 S.E. 28 (1916); *Cleveland, Cincinnati, Chicago & St. Louis Ry. v. Stewart*, 24 Ind. App. 374 (1900); *Nuckles v. Tenn. Elec. Power Co.*, 155 Tenn. 611, 299 S.W. 775 (1927). It must be shown, in addition, that plaintiff, too, was in peril of physical injury. *Spearman v. McCrary*, 4 Ala. App. 473, 58 So. 927 (1912); *Bowman v. Williams*, 164 Md. 397, 165 Atl. 182 (1933).

But this reluctance is not universal; recovery has been allowed in cases of negligent imperiling conduct even though the plaintiff was out of the range of physical danger. *Gulf, C. & S. F. Ry. Co. v. Coopwood*, 96 S.W. 102 (Tex. Civ. App. 1906); *Hambrook v. Stokes Bros.*, [1925] 1 K. B. 141 (Under the facts of this case it is possible to contend that the parent, herself, was in physical danger; under such an interpretation the result of this case is consistent with that of the principal case); cf. *Cohn v. Ansonia Realty Co.*, 162 App. Div. 794, 148 N.Y.S. 39 (1914). Moreover, the distinction between negligent and intentional imperiling acts has been criticised: although defendant's conduct may be either intentional or negligent to the person endangered, it is always inadvertent to the onlooker. Hallen, *Damages from Physical Injuries Resulting from Fright or Shock*, 19 Va. L. Rev. 253 (1933); Cooley, *The Law of Torts* (Throckmorton's ed. 1930), 32; Harper, *The Law of Torts* (1933), § 67. Analogy is afforded by the rescue cases where one who negligently places X in danger is held liable to Y, injured while attempting a rescue. *Eckert v. Long Island Ry. Co.*, 43 N.Y. 502 (1871); *Wagner v. In'l. Ry. Co.*, 232 N.Y. 176, 133 N.E. 437 (1921). It is said that rescue is foreseeable because danger invites rescue, and it is no less foreseeable that parents will suffer severe shock from seeing their children endangered. 23 Mich. L. Rev. 674 (1925).

Although the desire to limit liability for negligence somewhere is expressed in terms of "duty" and "proximate cause," these formulae alone hardly furnish analytic methods for determining where to draw the line in a close case. Green, *The Duty Problem in Negligence Cases*, 28 Col. L. Rev. 1014 (1928), 29 Col. L. Rev. 255 (1929). The principal case demonstrates this. The court applies the test of duty formulated in *Palsgraf v. Long Island R. Co.*, 248 N.Y. 339, 162 N.E. 99 (1928): "The risk reasonably to be perceived defines the duty to be obeyed, and risk imports relation; it is risk to another or to others within the range of apprehension." The court in the instant case concludes that nervous disturbances to a parent witnessing negligent harm to her child are consequences "so unusual and extraordinary, viewed after the event, that a user of the highway may be said not to subject others to an unreasonable risk of them by the careless management of his vehicle." But at least one court thought this to be a foreseeable risk. *Hambrook v. Stokes Bros.*, [1925] 1 K. B. 141. It would seem that this risk is almost equally as "foreseeable" as it is "unforeseeable," so that it can hardly be said that the foreseeability test compels one conclusion rather than another. If any decision is to be reached, it will, of necessity, be on considerations of social policy as to the desirability of imposing liability in this situation.

The contention of the court in the principal case, that to allow recovery for such injury where plaintiff was not in physical peril would open the door to speculative suits and dishonest claims, proves too much, for it would prevent liability for nervous shock in any situation. Cf. *Mitchell v. Rochester R. Co.*, 151 N.Y. 107, 45 N.E. 354 (1896); *Ewing v. Pittsburg C. & St. L. Ry. Co.*, 147 Pa. 40, 23 Atl. 340 (1892). See Green, "Fright" Cases, 27 Ill. L. Rev. 761 (1933); Goodrich, *Emotional Disturbance as Legal Damage*, 20 Mich. L. Rev. 497 (1922).

More formidable is the question of the boundaries of liability once recovery is allowed. Is a stranger to the person injured to recover? See *Smith v. Johnson*, referred to in *Wilkinson v. Downton*, [1897] 2 Q. B. 57, 67; *Hambrook v. Stokes Bros.*, [1925] 1 K. B. 141, 157; *Currie v. Wardrop*, [1927] A.C. 538; or is recovery to be limited to the parent-child or family relationship? Cf. Restatement, Torts (1924), § 313. Is recovery to be limited only to those who perceived the accident; or will liability extend also to

those who learned of it in some other manner? See *Hambrook v. Stokes Bros.*, [1925] 1 K. B. 141, 152; German Supreme Court, Sept. 21, 1931, 133 *Entscheidungen des Reichsgerichts in Zivilsachen* 273. Inability to see a definite stopping place may perhaps justify a court in refusing to recognize any liability for nervous shock caused by apprehension for the safety of another. But once it is conceded, as the court does in the principal case, that a parent may recover for such shock if he was also imperiled, it seems rather arbitrary to exclude recovery merely because plaintiff was in no physical danger, although the conduct of defendant is the same, and the danger of shock to the parent is as great.

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**Unfair Competition—Broadcasting News Reports—[Federal].**—Defendant, radio station, broadcast news reports by reading from newspapers after their general publication without stating the source of the news. The Associated Press, of which the newspapers were members, sought to enjoin the defendant's use of such news until twenty-four hours after publication. *Held*, injunction denied; complainant had no property right in the news after publication; nor did defendant's acts amount to unfair competition since defendant did not compete in disseminating of news for profit. *Associated Press v. KVOB*, 9 F. Supp. 279 (D.C. Wash. 1934).

The traditional concept of unfair competition included only that narrow field of cases in which the defendant had attempted to pass off his goods on the buying public as those of the plaintiff. See *Hanover Milling Co. v. Metcalf*, 240 U.S. 403, 412 (1915). In the news piracy cases, deception of the public or a breach of contract or trust by defendant have been considered unnecessary since *International News Service v. Associated Press*, 248 U.S. 215 (1918); see *Gilmore v. Sammons*, 269 S.W. 861 (Tex. Civ. App. 1925). In recent cases, radio stations have been enjoined from broadcasting news gathered from complainant's newspaper after general publication. *New Orleans Times-Picayune v. Ohalt*, N. Y. Times, June 30, 1933, 15 (New Orleans Civil Dist. Ct.); *Associated Press v. Sioux Falls Broadcasting Co.*, U.S. Dist. Ct., S.D., Mar. 14, 1933; see 4 Air L. Rev. 323 (1933). The broad concept of unfair competition expressed in these cases seems to be that no one shall be allowed to appropriate to his own profit the product of his competitor's effort and expense. 17 Mich. L. Rev. 490 (1919); *cf.* the German cases discussed in Caldwell, *Piracy of Broadcast Programs*, 30 Col. L. Rev. 1087, 1104, 1106 (1930). But the courts have been loath to subscribe to that broad doctrine in cases in which the thing appropriated by defendant was not news. Where the defendant had appropriated dress designs, courts have refused an injunction, limiting the *International News* case to its particular facts. *Cheney Bros. v. Doris Silk Corp.*, 35 F. (2d) 279 (C.C.A. 2d 1929), cert. denied 281 U. S. 728 (1930); see *Margolis v. National Bellas Hess Co.*, 139 Misc. 738, 249 N.Y.S. 175 (1931); *cf.* *Montegut v. Hickson*, 178 App. Div. 94, 164 N.Y.S. 858 (1917); see 31 Col. L. Rev. 477 (1931). Likewise, where a competitor appropriated plaintiff's scheme, device, plan or system, the courts have been reluctant to find unfair competition, unless there was some element of passing off or breach of contract or trust. *Fonotipia v. Bradley*, 171 Fed. 951 (D.C. N.Y. 1909); *Steiff v. Bing*, 215 Fed. 204 (D.C. N.Y. 1914); *Meccano v. Wagner*, 234 Fed. 912 (D.C. Ohio 1916); *Fed. Electric Co. v. Flexlume Corp.*, 33 F. (2d) 412 (C.C.A. 7th 1929); *Natl. Tel. Directory Co. v. Dawson Mfg. Co.*, 214 Mo. 683, 263 S.W. 483 (1924); *Crump v. Lindsay*, 107 S.E. 679 (Va. 1921); but see *Meyer v. Hurwitz*, 5 F. (2d) 370 (1925), *affd.* 10 F. (2d) 1019 (1926); Haines, *Efforts to Define*