NEGLIGENCE — RESCUER DOCTRINE — LIABILITY OF A TORTFEASOR FOR INJURIES TO RESCUERS EXTENDED

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The case of *Corothers et al.* v. *Slobodian et al.*[1] created an opportunity, which the Supreme Court of Canada seized, to reiterate the well established "rescuer doctrine" and to add a new wrinkle.

The facts of *Corothers* v. *Slobodian* are not difficult. Mrs. Corothers was driving along a rural highway on the night of January 23, 1970. She was following a car driven by Mr. Hammerschmid. Travelling in the opposite direction was a car owned by the respondent Thomas Poupard but driven by his son, Neil Poupard. Neil Poupard was, however, driving on the wrong side of the road. He collided violently with the Hammerschmid vehicle. The Hammerschmid vehicle was stopped dead. The Poupard vehicle split apart, throwing dead bodies and debris upon the road. Mrs. Corothers managed to miss the wreckage. Her car was stopped when she ran over a dead body some 40-50 feet past the immediate scene of the accident. Mrs. Corothers left her car and began to attend to the injured Hammerschmid couple. After doing all she could on the scene Mrs. Corothers decided to try to get more help. She began to run along the highway. About 100 feet from the immediate scene she saw the headlights of an oncoming vehicle. She stopped and began to wave her arms. The oncoming vehicle was a semi-trailer truck owned by the respondent J. Kearns Transport Ltd. It was driven by Slobodian. Slobodian was driving slightly below the speed limit on a "wet road" with his lights on low beam. Upon seeing Mrs. Corothers Slobodian jammed on his brakes. He directed the truck towards the ditch. He did that because he suspected an accident had occurred ahead of him. When he braked he failed to use a hand lever affecting the trailer wheels. Because of that failure the trailer jack-knifed. The rear wheels of the trailer struck Mrs. Corothers and it is from her injuries that the action arose.

The trial court and the Saskatchewan Court of Appeal[2] found Neil Poupard and Slobodian *not* liable for Mrs. Corothers' injuries. Both courts felt Neil Poupard was clearly negligent in

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1. [1975] 2 S.C.R. 633.
2. (1973) 36 D.L.R. (3d) 597 (Sask. C.A.).

causing the accident but, as written by Woods J.A.:

> "She had left the scene of the accident ... The situation of peril created by Poupard had ended. The plaintiff was not then acting in danger nor anticipating any danger created by the acts of Poupard. The injury suffered arose from a new act or circumstance, which was not one that ought reasonably to have been foreseeable by Poupard."[3]

As regards Slobodian both courts found that, in the circumstances, driving at the speed he was, using only his low beam lights, and failing to use the hand lever were not negligent acts.

The Supreme Court of Canada unanimously agreed that Corothers was still in the process of being a rescuer. Therefore, Poupard was liable for any injuries to Mrs. Corothers. Ritchie J. expressly disagreed with Woods J.A. regarding the "situation of peril" having ended. Ritchie J. felt that so long as the Hammerschmid's were injured and helpless a situation of peril existed and the negligence of Poupard, and thus his obligation to Mrs. Corothers, continued "so long as she was engaged in her attempt at rescue"[4]. Ritchie J. then went on to find that Mrs. Corothers' injuries were caused solely by Poupard's negligence necessitating her rescue attempt.

On the question of Slobodian's negligence, Ritchie J., with Dickson, de Grandpré, Martland, and Judson J.J. concurring, agreed with the lower courts' finding of no liability. Ritchie J. felt that Slobodian's "error in judgment" could not be classified as an "actionable negligence"[5]. Pigeon J., with Laskin C.J.C., Beetz and Spence J.J. concurring, felt that Slobodian's acts did amount to an actionable negligence and that Slobodian had not satisfied Section 169(1) of the Saskatchewan *Vehicles Act*[6] so as to relieve himself and J. Kearns Transport Ltd. of at least equal liability with Poupard for Mrs. Corothers' injuries. Clearly the Supreme Court's split over Slobodian's liability is based entirely on different findings of fact.

The decision in *Corothers* v. *Slobodian* did not create a new doctrine. The "rescuer doctrine", which puts responsibility for a rescuer's injuries upon the wrongdoer who creates a situation necessitating a rescue, is a well established doctrine. In 1910 the Manitoba Court of Appeal in *Seymour* v. *Winnipeg Electric R.R. Co.*[7] decided that a rescuer could recover from the original wrongdoer for the injuries suffered in the rescue. Richards J.A. felt:

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3. *Ibid.*, p.600.
4. *Supra* n.1, p.642.
5. *Supra* n.1, p.648.
6. R.S.S. 1965, c.377.
7. 13 W.L.R. 566 (Man. C.A.).

> "The trend of modern legal thought is toward holding that those who risk their safety in attempting to rescue others who are put in peril by the negligence of third persons are entitled to claim such compensation from such third persons for injuries they may receive in such attempts."[8]

Later, the United States also accepted the "rescuer doctrine". It was in *Wagner* v. *International Railway Co.*[9] where Cardozo J. stated the doctrine as adopted by the common law:

> "Danger invites rescue. The cry of distress is the summons to relief. The law does not ignore these reactions of the mind in tracing conduct to its consequences. It recognizes them as normal. It places their effects within the range of the natural and probable. The wrong that imperils life is a wrong to the imperilled victim; it is a wrong also to his rescuer... The risk of rescue, if only it be not wanton, is born of the occasion. The emergency begets the man. The wrongdoer may not have foreseen the coming of a deliverer. He is accountable as if he had."[10]

England did not adopt the "rescuer doctrine" until 1935 in *Haynes* v. *Harwood*[11]. The delay was due to the courts accepting voluntary assumption of risk and causation so as to deny the rescuer compensation.[12] The English courts' early reluctance to accept the doctrine is no longer present, as evidenced by the decision in *Chadwick* v. *British Transport Commission*[13] where Waller J. held that it was foreseeable that a rescuer would go into train wreckage to administer aid and may himself suffer mental shock that the negligent B.T.C. was liable for.

Corothers v. *Slobodian* did not mark the first time that the "rescuer doctrine" was accepted by the Supreme Court. The Court unanimously accepted the doctrine in the 1973 decision of *Horsly* v. *MacLaren*[14], but the majority denied a judgment for the rescuer on the facts of the case.

If the case of *Corothers* v. *Slobodian* did not create the "rescuer doctrine", or even become the first Supreme Court decision recognizing it, then what is its significance as a case? First, it is a unanimous reiteration of the doctrine and much more clearly stated than in *Horsly* v. *MacLaren*.

Second, and more importantly, *Corothers* v. *Slobodian* seems to add something new to the doctrine. A common sense view of "rescue" implies both "going to" the scene to give aid and also "going away" to get more help. However, the majority of cases seem to deal only with the "going to" situation. Examples consist of a rescuer injured when he tried to save the life of a child which was in the path of an oncoming train;[15] a person who

8. *Ibid*, p.568.
9. (1921) 133 N.E. 437 (N.Y.C.A.).
10. *Supra* n.9, p.437.
11. [1935] 1 K.B. 146.
12. Linden. *Canadian Negligence Law*, (1972) 287.
13. [1967] 2 All. E.R. 945 (K.B.D.).
14. [1972] S.C.R. 441.
15. *Seymour* v. *Winnipeg Electric R.R. Co.*, *supra* n.7.

fell from a railway trestle when looking for a companion thrown from a train due to the Railway's negligence;[16] a policeman injured while pushing a person out of the way of a runaway horse;[17] a doctor injured, when struck by a car, while trying to administer aid to a victim of the defendant's negligence;[18] a stationmaster killed while trying to push his two year old son out of the way of a train;[19] a bystander who was recruited, due to his size, to go into a train wreck to administer aid and suffered mental shock;[20] a rescuer who was injured when he stepped on a live wire knocked down by a negligent, but injured driver;[21] a man diving into the water to rescue another passenger who fell overboard.[22] *Corothers* v. *Slobodian* is a decision which recognizes that a person "going away" to get help can still be considered a rescuer and thus the responsibility of the wrongdoer. The Supreme Court felt that Mrs. Corothers leaving the scene was foreseeable and there was no *actus novus interveniens*, contrary to what the lower courts found. The Supreme Court seems to have recognized the common sense approach.

Looking at the decision in *Corothers* v. *Slobodian* one could presume that so long as Mrs. Corothers had an intent to get help for the injured Hammerschmids it would not matter where or how she was injured. If she was ten miles up the road and fell into a ditch then she should still recover from Poupard. However, one should not extend the Supreme Court's decision beyond what the Justices decided upon the facts of the case. de Grandpre J., with Martland J. concurring, left to another occasion the determination of the wrongdoer's liability should the factors of time and space be somewhat different from the facts in *Corothers* v. *Slobodian*. De Grandpré J. gives the example of "if Mrs. Corothers had been injured two miles further west when approaching the farm towards which she was heading."[23]

16. *Wagner* v. *International Railway Co.*, *supra* n.9.
17. *Haynes* v. *Harwood*, *supra* n.11.
18. *Chapman* v. *Hearse et al.* (1961), 106 C.L.R. 112 (Aust. H.C.).
19. *Videon* v. *British Transport Commission*, [1963] 2 All. E.R. 860 (C.A.).
20. *Chadwick* v. *British Transport Commission*, *supra* n.13.
21. *Jones* v. *Wabigan*, [1970] 1 O.R. 366 (C.A.).
22. *Horsly* v. *MacLaren*, *supra* n.14.
23. *Supra* n.1, p.637.

De Grandpre J. gave a clear warning that the decision in *Corothers* v. *Slobodian* can easily be limited to its facts and distinguished because of its facts. Care should be used not to accept it as a blanket protection for the rescuer leaving the scene. Although courts tend to be generous to the rescuer and give compensation so as to encourage this humanitarian form of action, there is obviously a point where foreseeability of the rescuer's acts ends. Where that point will be is not positive, and clearly there should not be an attempt to create rigidity in the law by establishing a cut off point in time and space. Each case should be based on its facts, but hopefully the courts will not use *Corothers* v. *Slobodian* as the outer limit. Rescue is too noble a cause to inhibit by creating such restrictive outer limits.