sas courts seem to have passed on the status of such government officials. The problem as to policemen arose in Oklahoma in *St. Louis-San Francisco Ry. Co. v. Williams*[34] and in *Kithcart v. Feldman*.[35] In the former case a night policeman, whose custom was to inspect the night freight trains of defendant railroad company on their arrival, was held an invitee,[36] but there had been a special request made to the mayor and chief of police by the chief special officer of defendant railroad company that he continue this custom. In the latter case, however, the court held that a policeman entering defendant's premises for the purpose of making an arrest was a mere licensee.[37]

S. J. B.

TORTS—FIRST INJURY AS PROXIMATE CAUSE OF SUBSEQUENT INJURY—CONTRIBUTORY NEGLIGENCE—[District of Columbia].—The plaintiff, in the case of *S. S. Kresge v. Kenney*,[1] sustained a fractured pubis bone from a fall occasioned by the negligence of the defendant company. Ten months later, while able to move around the house only with the assistance of her family, and according to the testimony of her physician, in a very weak state, the plaintiff got out of her bed alone to get a drink of water. In so doing she fell again and fractured the bone in the same place. The court declared, as a matter of law, that the original negligence was not the cause of the injuries sustained by the second fall, which was chiefly caused by her own contributory negligence.

In an effort to prove her contentions the plaintiff cited various cases in which an injured person was allowed to recover for the effects of a second injury which had taken place during the period of recovery from the first.[2] Answering these authorities the court pointed out that "each case must rest largely upon its own facts, since there are usually such variations in the facts of others as to make them not persuasive."[3] The fact which differentiated the case under discussion from those cited was the imprudence of the plaintiff in attempting to do something which she should have known was outside her physical powers.

In the case of *Hartnett v. Tripp*[4] the plaintiff was injured the second time when the crutch he was using slipped from beneath him. The use of

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would cause danger of injury to the person or property of the other, a duty arises to use ordinary care and skill to avoid such danger."

34. 56 P. (2d) 815 (Okla. 1936).
35. 215 Pac. 419 (Okla. 1923).
36. St. Louis-San Francisco Ry. Co. v. Williams, supra, note 34 at p. 816.
37. Kithcart v. Feldman, supra, note 35 at p. 420.

1. 4 U. S. Law Week 30 (D. C. App., 1936).
2. Hartnett v. Tripp, 231 Mass. 382, 121 N. E. 17 (1918); Smith v. Northern Pac. R. R. Co., 79 Wash. 448, 140 Pac. 685 (1914); Hoseth v. Preston Mill Co., 49 Wash. 682, 96 Pac. 423 (1908); Papic v. Freund, 181 S. W. 1161 (Mo. App., 1916); Wagner v. Mettendorf, 232 N. Y. 481, 134 N. E. 539 (1922); Brown v. Beck, 63 Cal. App. 686, 220 Pac. 14 (1923).
3. S. S. Kresge Co. v. Kenney, at p. 30.
4. Hartnett v. Tripp, supra, note 2.

a crutch, said the court, was a usual and proper incident of recovery, and is often recommended by physicians as a means of strengthening the weakened member. In *Smith v. Northern Pac. R. Co.*[5] concerned with a similar set of facts, the court said, "If a person receives an injury through the negligent act of another and the injury in afterwards aggravated and a recovery retarded through some accident not the result of want of ordinary care on the part of the injured person, he may recover for the entire injury sustained, as the law regards the probability of such aggravation as a sequence and natural result likely to flow from the original injury."[6] A Missouri case,[7] in a similar situation, has a dictum which agrees with this reasoning, and cases in other jurisdictions are harmonious.[8]

Although the majority of minds would probably agree that the use of a crutch as an aid in recovery is not imprudent, perhaps not all would agree that going for a carriage ride during convalescence, and subjecting oneself to all the elements of possible danger therein, would be prudent. A Missouri court, however, in *Conner v. City of Nevada*[9] came to the conclusion that such would not be negligence, and although it was not necessary for the decision in the case the court declared that "if she (plaintiff) was guilty of no negligence * * * and an accident happened to her in which the result was more serious because of her then condition than it would have been if she had not already been afflicted, such more serious result in reality becomes the result of the first accident."[10] Two other cases where the results of the second injury were more remote from the original negligence than in the typical crutch case are *Brown v. Beck*[11] and *Stahl v. Southern Michigan R. Co.*[12] In the first the administrators of the plaintiff recovered for his death by congestive pneumonia on the ground that in exercising with crutches he fell and was forced to lie quietly in bed for a longer time than would ordinarily have been necessary and as a result congestive pneumonia developed. The second case allowed recovery for a second injury which was caused when a suit-case plaintiff was packing fell against her leg which was weak from the previous injury.

Another group of cases[13] related to this subject are those in which the original injury has been aggravated by the physician treating the case.

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5. Smith v. Northern Pac. R. R. Co., 79 Wash. 448, 140 Pac. 685 (1914).
6. Ibid., p. 687.
7. See Papic v. Freund, 181 S. W. 1161 (Mo. App., 1916).
8. Cases in note 2, and Hyvonen v. Hector Iron Co., 103 Minn. 331, 115 N. W. 167 (1908); Keonse v. Standard Steel Works Co., 221 Mo. App. 1231, 300 S. W. 531 (1927); Campbell v. Brown, 267 N. W. 877 (Mich., 1936); O'Keefe v. K. C. Western R. R. Co., 87 Kan. 322, 124 Pac. 416 (1912).
9. 188 Mo. 148, 86 S. W. 256 (1905).
10. Ibid., p. 260.
11. 63 Cal. App. 686, 220 Pac. 14 (1923).
12. 24 Mich. 350, 178 N. W. 710 (1920).
13. Hughes v. Maryland Casualty Co., 76 S. W. (2d) 1101 (Mo. App., 1934); Staehlin v. Hochdoerfer, 235 S. W. 1060 (Mo., 1921); Smith v. K. C. R. Co., 208 Mo. App. 139, 232 S. W. 261 (1921); Keown v. Young 129 Kan. 563, 283 Pac. 511 (1930); Smith v. Mo. Kan. and Texas R. R. Co., 76 Okla. 303, 185 Pac. 70 (1919); Rohmer v. Anderson, 189 Ill. App. 274 (1914).

Although cases of this sort are primarily concerned with negligent intervening third parties, they incidentally bear on the contributory negligence of the plaintiff. For if the plaintiff has been negligent in securing a capable physician he is prevented from recovering.

The majority rule, therefore, is that where the second injury is caused in part by the negligence or imprudence of the plaintiff there can be no recovery for the second injury. Where there has been no negligence or imprudence recovery may be had. But the question as to what is negligence or imprudence still exists, and must be determined by the facts in each case. In the principal case the plaintiff was definitely imprudent. In the case of *Conner v. City of Nevada*[14] two thoughtful persons might have reached different conclusions as to the prudence of the plaintiff. While in the typical crutch case there is little question that, assuming careful manipulation, the use of crutches is not negligence.

By way of caution it should be added that where the first injury has healed as much as it is going to heal, but has left a permanent affliction, such as a short leg, a subsequent injury resulting in part from the first injury is independent of the first and no damages can be obtained from the first tort feasor.[15] As for example, where a person with a game leg caused by the negligence of the first wrong-doer cannot recover from that person for a subsequent injury by being struck by an automobile because of an inability to dodge quickly.

B. W. T.

TORTS—NEGLIGENCE—ATTRACTIVE NUISANCE DOCTRINE—[Tennessee].—The defendant company owned a town with a drainage culvert and a connecting drainage ditch. During an "unusually heavy rain" the plaintiff's young child, playing near the drainage ditch, stepped off the side, was drawn in by the suction near the mouth of the culvert, and was drowned. Plaintiff maintains that defendant's drainage system at this place was "inadequate, insufficient, unfit and unsafe" and that the construction of the culvert was especially dangerous and attractive to young children. *Held;* even if this were a case of attractive nuisance the defendant would not be liable under the doctrine if the object was of such a character that it would be impractical to guard against it.[1]

This case is in line with the rule adhered to in all jurisdictions following the attractive nuisance doctrine, namely, that if the practicability of the object would be destroyed by the precautions which would be necessary to prevent injury to children attracted by it, the defendant will be relieved of liability.[2] The widely quoted case of *Peters v. Bowman* sums up very clearly

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14. Supra, note 9.

15. Powers v. Kansas City, 18 S. W. (2d) 545 (Mo., 1929); Croak v. Croak 33 S. W. (2d) 998 (Mo., 1931); but see Sec. 460 Restatement, *Torts* (apparently in conflict).

1. McCay v. Du Pont Rayon Co., 96 S. W. (2d) 177 (Tenn., 1936).

2. Missouri has so held in a number of cases. Carey et al. v. Kansas City, 187 Mo. 715, 86 S. W. 438 (1905) (reservoir in park); Overholt v.