TORTS—HUMANITARIAN DOCTRINE—POSITION OF PERIL—[Missouri].—Plaintiff was standing between two parked automobiles. Defendant drove past the parked cars and backed into the parking space in front of the first car. In so doing the defendant pushed back the first parked car and crushed the plaintiff between the first and second parked cars. *Held*, that there was evidence that the plaintiff was in a position of peril at the time the defendant began to back his car into the parking space, and especially at the time the defendant started to push the first parked car backward toward the plaintiff.[1] The dissenting opinion, however, stated that the plaintiff was not in a position of peril, but only in a place where he might possibly be injured if the defendant were negligent.

Plaintiff's basic contention under the humanitarian doctrine[2] is that he was in a position of peril.[3] But the facts of this case indicate that the *same* negligent act both gave rise to the peril and caused the injury. Is the application of the humanitarian doctrine proper in such a case? The Missouri Supreme Court in *State ex rel. Vulgamott v. Trimble*[4] laid down the rule that there must have been an opportunity for the defendant to avert the injury by the exercise of ordinary care. It is obvious that, when the same act is both a cause of the peril and causes the injury, there can be no sufficient intervening time in which the defendant could act to avert the injury. Certain later cases, however, allowed recovery under the humanitarian doctrine in that very situation.[5] Despite those cases the supreme court in *Ridge v. Jones*[6] reverted to its position in the *Vulgamott* case by refusing to apply the humanitarian doctrine on the ground that the plaintiff was not in a position of peril until defendant acted negligently, after which defendant could have done nothing to avert the injury.

The court in *Ridge v. Jones* distinguished those cases allowing recovery by saying that in the latter the plaintiffs were "in imminent peril if such act was committed; not necessarily, perhaps that *injury* was *certain* to follow the negligent act, but that *peril* was certain and imminent."[7] It is suggested that this distinction between certain peril and certain injury is difficult of application and that any distinction on that basis does not seem to be borne out by the factual situations of the cases.[8] In the *Ridge* case

1. Duckworth v. Dent (Mo. App. 1939) 135 S. W. (2d) 28.

2. For a discussion of the Missouri humanitarian doctrine, see Gaines, The Humanitarian Doctrine in Missouri (1935) 20 ST. LOUIS LAW REVIEW 113; McCleary, The Bases of the Humanitarian Doctrine Reexamined (1940) 5 Mo. L. Rev. 91.

3. State ex rel. Vulgamott v. Trimble (1923) 300 Mo. 92, 253 S. W. 1014; Gaines, supra note 2, at 122.

4. (1923) 300 Mo. 92, 253 S. W. 1014.

5. Bobos v. Krey Packing Co. (1927) 317 Mo. 108, 296 S. W. 157; Weed v. American Car & Foundry Co. (1929) 322 Mo. 137, 14 S. W. (2d) 652; Huckleberry v. Missouri Pac. R. R. (1930) 324 Mo. 1025, 26 S. W. (2d) 980; Menard v. Goltra (1931) 328 Mo. 368, 40 S. W. (2d) 1053.

6. (1934) 335 Mo. 219, 71 S. W. (2d) 713.

7. (1934) 335 Mo. 219, 225, 71 S. W. (2d) 713, 715.

8. Note the similarity betwen some of the fact situations distinguished: *e. g.*, in the Bobos case, plaintiff was injured due to the negligent starting of a truck while he was climbing on it with his hand on the hand rail; in the

as well as the others, once the defendant acted negligently peril was certain and imminent.

The dissenting opinion in the instant case cites *Ridge v. Jones* as the controlling authority for denying recovery under the humanitarian doctrine.[9] It bases its conclusion on the ground that the fact situations in the two cases are similar in nature. The majority of the court, though seemingly not certain as to where the position of peril began,[10] finds the facts so different from the facts in the *Ridge* case as to warrant holding that case no authority for refusing to apply the humanitarian doctrine.[11] This conflict in the court illustrates once more the difficulty of the Missouri courts in defining the position of peril, a fundamental task in delimiting the applicability of the humanitarian doctrine.[12]

A. M. E.

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TRUSTS—NO-CONTEST CLAUSE—EFFECT OF PROBABLE CAUSE—CONTEST BY BENEFICIARY AS ADMINISTRATRIX—[Missouri].—Settlor by deed created a trust under which he was the life beneficiary, the defendant and others to be beneficiaries after his death. The deed provided that any beneficiary who contested its validity would forfeit his rights.[1] Upon the death of the settlor-life beneficiary, defendant, dissatisfied with her share as beneficiary, obtained appointment as administratrix of settlor's estate[2] and asked the probate court to discover the estate assets. The trust deed was contested by the administratrix so that the corpus of the trust might be declared assets of the estate; but the trust deed was upheld.[3] Trustees requested

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Ridge case, plaintiff was injured due to the negligent starting of an automobile while he had his hand on the handle after getting out of the car.

9. Duckworth v. Dent (Mo. App. 1939) 135 S. W. (2d) 28, 39. Ridge v. Jones has been cited for the rule that peril means something more than a possibility that injury may result. Kirkham v. Jenkins Music Co. (1937) 340 Mo. 911, 916, 104 S. W. (2d) 234, 236; Edwards v. Terminal R. R. Ass'n of St. Louis (1937) 341 Mo. 235, 238, 108 S. W. (2d) 140, 141. The minority certified the case to the Supreme Court because of the alleged conflict with the Ridge case.

10. The court holds that plaintiff was in a position of peril "especially at the time the defendant started to shove the empty car backward." Duckworth v. Dent (Mo. App. 1939) 135 S. W. (2d) 28, 36. *Quaere*, as to whether qualifying the position of peril by the use of the word "especially" confuses the issue.

11. Duckworth v. Dent (Mo. App. 1939) 135 S. W. (2d) 28, 36.

12. Note the separate dissents of Ellison, C. J., and Gantt, J., Frank, J., concurring, in Perkins v. Terminal R. R. Ass'n of St. Louis (1937) 340 Mo. 868, 886, 896, 102 S. W. (2d) 915, 924, 930, as to whether plaintiff in that case was in a position of peril.

1. Rossi v. Davis (Mo. 1939) 133 S. W. (2d) 363, 373, " 'Should *any of the parties* of the third part (of whom Mrs. Davis was one) * * * institute *any* action or proceedings *of any kind* in any court *at any time* for the purpose of setting aside this instrument, *on any ground whatsoever*, and be unsuccessful therein * * *.' " (Italics supplied.)

2. R. S. Mo. (1929) sec. 63.

3. Davis v. Rossi (1930) 326 Mo. 911, 34 S. W. (2d) 8.