

ACT OF GOD.

After an exhaustive review of the various definitions of what is an "Act of God" as the phrase is used in legal terminology and as laid down in multitudinous decisions, text books, encyclopedias and the like, the writer of this article finally ran across the following which struck him as being the most comprehensive of the lot: "Any misadventure or casualty is said to be caused by the 'Act of God' when it happens by the direct, immediate and exclusive operation of the forces of nature, uncontrolled or uninfluenced by the power of man and without human intervention, and is of such a character that it could not be prevented or escaped from by any amount of foresight or prudence, appliances which the situation of the party might reasonably require him to use."¹

Considering this definition from every possible angle, it will not be found to be an impregnable criterion when applied as a test to hypothetical states of facts or to states of facts which have actually occurred, but it will and does go a long way towards reducing uncertainty to certainty and will, in the absence of an absolute test, prove to be reasonably safe and reliable.

As a mere abstraction, it may not appear to the reader as being particularly helpful in determining vexed "twilight" questions that arise under this phrase, but a careful analysis of it will reveal far more than would occur to him upon just a casual reading.

"Acts of God," as the term is used in its legal sense (I shall use it in no other sense in this article) and as it is used in the foregoing definition divide themselves naturally into four classes, which may be stated as follows:

(1) Any event occurring through the medium of the forces of nature which has never before occurred in the history of mankind.

1. New Brunswick Transfer Co. v. Tiers, 24 N. J. Law, 714.

(2) Any force of nature which though it may be of common occurrence on other parts of the earth's surface, has never before been known or expected to occur at some place where it does suddenly occur.

(3) Any force of nature which, though active to a certain degree at various intervals of time, suddenly or without warning assumes a severity theretofore unknown.

(4) Any force of nature which has been known to occur before within a particular area, but at such rare intervals as not to be reasonably expected at or within the time when it does occur.

It was with a great deal of hesitation that sudden sickness and death were omitted from the foregoing or as a fifth class, but, although there are many contrary decisions, sickness and death in themselves even though occurring unexpectedly are more in line with "ordinary" events than otherwise. Sickness and death, though brought about by most unusual circumstances, are after all merely effects produced by some cause, and, as a matter of fact, what we are examining when we analyze an "Act of God" is cause. True, a person may suddenly be laid low by a heart or heat stroke, apoplexy or what not, but are these not common occurrences and would it not be stretching the phrase somewhat to say that they were acts of God? We could no doubt think of cases where the cause of the sudden demise was an act of God, but in these cases the cause itself would fall naturally into one of the four classes of cases laid down above.

These four classes could, with a reasonable degree of safety be used as a major premise of a syllogism, applying the particular state of facts at hand as the minor premise. If the minor premise failed to conform to the major premise, of course, the conclusion that a particular state of facts used constituted an Act of God would not follow.

It will be noticed by the reader as he passes from the first to the fourth subdivision that it becomes increasingly difficult to determine just what state or states of facts will fall under

the particular class, no particular difficulty being found with the first two; they being of such rare occurrence as to suggest immediately some world-wide calamity or the like.

Under the first class would fall possibly a sudden shifting of the earth's axis, causing chaotic climatic conditions, a large heavenly body being brought suddenly to the surface of the earth and devastating a large area, and, in fact, most anything that would be contrary to established laws of nature.

Occurrences coming within the second subdivision are, like the first, easily recognized. Thus, an innocent looking mountain in a non-volcanic region suddenly blowing its top off and becoming an active volcano, zero weather in the torrid zone, earthquakes, a cyclone in a region where even mild thunder or windstorms are of rare happening and numerous other occurrences of like kind which can be left to the reader's imagination.

The third subdivision presents a slightly difficult problem as compared with the first and second and will necessarily involve a little more careful treatment. Examples of this class might well be illustrated by such events as an unprecedented flood in a river valley where the stream was accustomed to overflow its banks at certain periods of the year, a cyclone in a region where ordinary thunder and windstorms are fairly frequent in their visitations, a tidal wave where theretofore only the ordinary going and coming of the tide has occurred, and other like instances which must, however, be chosen with care.

With regard to the illustrations in the preceding paragraph, particularly the first one, it may at first be objected that it does not take into consideration the fact that time may be available within which an individual might be able to prepare for and ward off the injury to goods or chattels resulting by reason of such flood or other happening. This objection will be found to be without merit when the restrictive matter "suddenly or without warning" is taken for just what it implies. It will be noticed that they are incorporated in the disjunctive rather than in the conjunctive, and this because "suddenly"

is relative, whereas "without warning" is absolute. "Suddenly" then inferentially makes provision for reasonable time for avoidance of consequences and, if the occurrence were "without warning" it would necessarily mean that no time for avoidance intervened.

Now, when we come to consider the last division, we have a real problem on hand; one that has vexed the courts for a long time past and one which must be approached and handled with a large degree of caution. It cannot be disposed of in a few words, if at all. Having framed the definition in an endeavor to establish a fairly workable rule, one which the courts have been struggling to express, but have either stated too broadly or not broadly enough, it is in order to make an effort to apply it to facts.

Just what classes of facts will fall under this subdivision? The question might better be, "Excluding those coming under the first three subdivisions, just what classes of facts will not fall under this one? It is a heterogeneous mass indeed, anything from the death of an individual by lightning to a deluge might properly be included. It may even seem to overlap to some extent the preceding subdivision.

It has been made flexible and possesses the strange feature that what may be an act of God in one instance will not be so in another. This is true by reason of the phrase "at or within the time." To say of two effects brought about by the identical act or force of nature, one is an act of God and the other is not may sound like a paradox, but nevertheless such may be the case.

By way of illustration, in a certain southern city where there were moderately cold winters, an unusually severe cold spell caused some water mains to burst, great damage resulting to a number of the neighboring inhabitants. An action followed based upon negligence against the water company on these facts. The plaintiff proved that these unusually severe cold spells had occurred before but at periods ranging anywhere between twenty and thirty years apart. The defendant proved at the trial that the water mains were buried deep

enough and were of material strong enough to withstand ordinary cold weather such as generally prevailed in that vicinity. On these facts the defendant was awarded judgment. In an almost identical case further east in about the same latitude, the plaintiff recovered judgment, the Court holding in this case that it was not an act of God. Applying our premise, the writer is of the opinion that the latter decision was correct. In the same jurisdiction where the first case was tried, it was held that two wagon loads of potatoes destroyed by the same cold spell were destroyed by an act of God. Applying our premise here, we are forced to the conclusion that this decision was correct.

Now, assuming that the first decision were as the second, we would have one act of nature constituting an Act of God in the matter of the potatoes and not an Act of God in the cases of the water mains bursting, and this in the same jurisdiction which would not, under the circumstances, have been illogical. The reason is obvious; in both cases it is necessary to take into consideration the nature of the article and the length of time it would be exposed to the elements.

In conclusion, it may all be summed up thus: "What, under all the circumstances of the particular case involved, would have been anticipated by the reasonably prudent man?"

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