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Torts—Statutory Liability Without Fault—Per Curiam

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route marker ("N.L. 13 L-R").[51] The Court held (5-2) that there was no negligence on the part of the state contributing to the accident.

The decision of the Court is confusing as to whether it is based upon the absence of negligence or the absence of causation. The Court held that had the driver paid attention to the physical characteristics of the road and the signs thereon she would have had "adequate" warning of the existence of the intersection. Inasmuch as the driver did not concern herself with these physical characteristics nor with the information the route marker was designed to convey, the majority felt that it could not be assumed that she would have paid more attention to a full "stop" sign had it been there.

The Court's reasoning on the question of causality appears faulty in that it seems to assume a factual conclusion inconsistent with negligence on the part of the state. If existing warnings were adequate, so as to require more caution on the part of the driver, then the state was under no duty to maintain a "stop" sign. And without negligence, a discussion of causality is irrelevant. Therefore it is submitted that the decision must rest entirely upon the absence of negligence.

The position of the dissent was that the physical characteristics of the intersection were an inadequate warning and the state therefore was negligent in removing the "stop" sign. As to causality, the dissent relied upon a presumption that a "stop" sign, had it been there, would have been obeyed.[52]

Statutory Liability Without Fault — Per Curiam

In *Smulczeski v. City Center of Music and Drama*,[53] the defendant was charged with violation of a city ordinance which provided, "Every portion of any special occupancy structure devoted to the use or accommodation of the public . . . shall be properly lighted during every performance . . ." Plaintiff allegedly tripped on a stairway because an overhead light was out. On appeal a lower court verdict for the defendant was reversed on the ground that the instructions to the jury contained an erroneous charge upon a material point. The Court held that the defendant was not entitled to notice of its violation and that a charge contrary to this was not cured by a subsequent charge instructing the jury that the duty imposed on the defendant by the ordinance was absolute.

The *per curiam* opinion appears inconsistent, both internally and with respect to precedent. The traditional New York doctrine is that violation of a local ordinance is only some evidence, to be considered along with other evidence, on the

51. See N. Y. COURT OF CLAIMS ACT §8.
52. Lahr v. Tirrill, 247 N.Y. 112, 8 N.E.2d 298 (1937); Lee v. City Brewing Corp., 279 N.Y. 380, 18 N.E.2d 628 (1939).
53. 3 N.Y.2d 498, 169 N.Y.S.2d 1 (1957).

question of defendant's negligence.[54] (Violation of a statute, however, may in itself give rise to liability, either "a liability created by a statute or a liability for negligence for which the statute creates a new standard or norm", the latter known as negligence per se.[55]) The Court stated this rule but also spoke of the ordinance as imposing an "absolute duty", and its refusal to allow the defendant any notice of the defective lighting seems inconsistent with a mere evidence-of-negligence effect of the ordinance. Previous decisions have considered notice, actual or constructive, essential to liability in cases involving violation of an ordinance[56] and even a statute.[57] Thus the present case seems to involve a departure from the New York rule that violation of an ordinance may be only evidence of negligence.

Duty of Property Owner to Licensee

A social guest, who is on another's premises pursuant to an invitation, is not in law an invitee but rather a licensee to whom the possessor owes no duty of inspection and affirmative care to make the premises safe for his visit.[58] The same rule applies where the social guest is an infant.[59] There is an obligation, however, on the part of the possessor, to disclose to the licensee any concealed dangerous defects.[60]

The above principles were again approved by the Court of Appeals in *Krause v. Alper,*[61] which was a suit by the father of a boy who was injured while playing basketball with the defendants' son on the defendants' premises. Since the wooden doorstop, over which the infant had tripped, was in plain sight, there was no "hidden pitfall" which could have imposed the duty of disclosure on the defendants.

Duty of Employer to Provide Safe Premises for Employees

In *Zucchelli v. City Construction Co.*[62] thirteen injured employees of the R. E. Carrick Co. (subcontractor) brought an action against the 981 Madison

54. Teller v. Prospect Heights Hospital, 280 N.Y. 456, 21 N.E.2d 504 (1939); Carlock v. Westchester Lighting Co., 268 N.Y. 345, 197 N.E. 306 (1935); Fluker v. Ziegele Brewing Co., 201 N.Y. 40, 93 N.E. 1112 (1911). *But see* Silverman v. Konig, 170 N.Y. Supp. 368 (Sup.Ct. 1918).

55. Schmidt v. Merchant's Despatch Trans. Co., 270 N.Y. 287, 303, 200 N.E. 804, 829 (1936). See also Martin v. Herzog, 228 N.Y. 164, 126 N.E. 814 (1920).

56. Carlock v. Westchester Lighting Co., *supra* note 54; cf. 1 SHEARMAN AND REDFIELD, NEGLIGENCE §21 (rev. ed. 1941).

57. Altz v. Leiberson, 233 N.Y. 16, 134 N.E. 703 (1922); Schaeffer v. Caldwell, 273 App. Div. 263, 78 N.Y.S.2d 652 (4th Dep't 1948).

58. Wilder v. Ayers, 2 A.D.2d 354, 156 N.Y.S.2d 85 (1st Dep't 1956),*aff'd* 3 N.Y.2d 725, 163 N.Y.S.2d 966 (1957); PROSSER, TORTS §77 (2d ed., 1955).

59. Droge v. Czarniechi, 285 App. Div. 1052, 139 N.Y.S.2d 314 (2d Dep't 1955), *aff'd* 2 N.Y.2d 897, 161 N.Y.S.2d 149 (1957).

60. Bernal v. Baptist Fresh Air Home Society, 275 App. Div. 88, 96, 87 N.Y.S.2d 458, 465 (1st Dep't 1949), *aff'd* 300 N.Y. 486, 88 N.E. 2d 720 (1949).

61. 4 N.Y.2d 518, 176 N.Y.S.2d 349 (1958).

62. 4 N.Y.2d 52, 172 N.Y.S.2d 139 (1958).