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Torts—Instructions to Jury

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of the complaint,[48] *held* that unless the plaintiff could show that some peculiar danger existed on the path, the defendant was under no duty to illuminate it.[49]

In the absence of a statute imposing such a duty upon an owner of a camp, resort must be had to the common law. At common law, however, no duty exists to provide artificial lighting for stairways, halls, or other ways used in common apartment buildings, in the absence of a defective condition or unusual hazards to be exposed by such light.[50] This applies not only as between visitors and landlords, but also as between tenants and landlords.[51] A paying camper is not unlike a tenant, nor the commonly used path unlike a hallway in an apartment building.

In addition to the absence of a duty and the resultant absence of its breach, the Court pointed out that one who camps in the woods assumes the incidental risks thereof.[52] Floodlights illuminating the whole area would destroy the very reason for camping in the woods, namely the desire to live primitively and close to nature. Although plaintiff's contributory negligence was not considered, the Court could have easily found him contributorily negligent as a matter of law.[53]

Instructions to Jury

Plaintiff, an employee of a subcontractor, fell from a scaffolding while attempting to help two other workmen to adjust the planks. At the time of the accident the scaffolding had been partially dismantled, and was only two boards wide. The plaintiff in his own testimony admitted that he noticed the condition of the scaffolding before going up. He brought an action both against the general contractor and the City of Rochester which employed it. The Court of Appeals, reversing the Appellate Division,[54] *held* that an instruction to the jury which in effect was a direction to bring in a verdict for the plaintiff unless the general contractor had "warned the plaintiff that the scaffolding was being taken down and must not be used" was erroneous, and that the jury should also have been

48. *Kimbar v. Estis*, 1 App. Div. 2d 151, 148 N. Y. S. 2d 569 (1st Dep't 1956).
49. *Kimbar v. Estis*, 1 N. Y. 2d 399, 135 N. E. 2d 708 (1956).
50. *Landes v. Barone*, 307 N. Y. 867, 122 N. E. 2d 750 (1954); *Boyce v. 228th & Carpenter Ave. Holding Co.*, 295 N. Y. 575, 64 N. E. 2d 282 (1945).
51. *Hirschler v. Briacliff Management Corp.*, 300 N. Y. 680, 91 N. E. 2d 331 (1950).
52. *Cf. Murphy v. Steeplechase Amusement Co.*, 250 N. Y. 479, 166 N. E. 173 (1929); *Lobsenz v. Rubinstein*, 258 App. Div. 164, 15 N. Y. S. 2d 848 (2d Dep't 1939), *aff'd*, 283 N. Y. 600, 28 N. E. 2d 22 (1940).
53. Tacitly there seemed to be a finding of contributory negligence; the plaintiff had spent three successive summers at this camp and was undoubtedly familiar with its surroundings; also, the impact if he were walking would not probably be enough to break his nose. See *Kimbar v. Estis*, 1 App. Div. 2d 151 at 152, 148 N. Y. S. 2d 569 at 570 (1st Dep't 1956).
54. *Cosby v. City of Rochester*, 286 App. Div. 1063, 146 N. Y. S. 2d 112 (4th Dep't 1956).

instructed that the condition of the scaffolding could have constituted adequate warning.[55]

It is a general rule that an employer is under a duty to exercise reasonable care to provide his employees with a safe place to work, and such duty extends to the employees of a subcontractor.[56] Such duty of reasonable care includes the giving of a notice or warning where the person under a duty to give it knows or by the exercise of reasonable care could discover the dangerous condition,[57] but there is no duty to warn where the dangerous condition is obvious.[58]

It is not quite clear from the decision in the instant case whether the Court felt that the jury could find that there was no duty to give a warning, or that the condition of the scaffolding was so obvious that anyone attempting to use it would be guilty of contributory negligence. Either finding would completely preclude any recovery.

Duty to Warn of Road Hazards

The plaintiff was injured in an accident occuring upon a county highway immediately after leaving a state highway. A sign on the state road indicated a cut-off, but gave no warning of the dangerous condition on the county highway. The Court of Appeals, reversing the Appellate Division,[59] *held* that the road signs were adequate and therefore the State could not be held liable.[60] The Court noted that there is no requirement that old signs conform to the new Manual of Uniform Traffic Control Devices,[61] provided they are otherwise adequate to warn of the danger.

The State has a duty to warn of the hazards existing on highways maintained by it;[62] in the instant case the hazard was found to exist on the county highway. The case of *Barna v. State*[63] should not be read as extending such duty to hazards not on state highways. In that case the accident happened on a bridge which,

55. *Cosby v. City of Rochester*, 1 N. Y. 2d 396, 135 N. E. 2d 706 (1956).
56. *Costa v. Colonial Ice Co.*, —Misc.—, 124 N. Y. S. 2d 103 (Sup. Ct. 1953); *Semanchuk v. Fifth Ave. & 37th Street Corp.*, 290 N. Y. 412, 49 N. E. 2d 307 (1942).
57. *Haeferli v. Woodrich Engineering Co.*, 255 N. Y. 442, 175 N. E. 123 (1931).
58. *McLeon v. Studebaker Bros. Co. of New York*, 221 N. Y. 475, 117 N. E. 951 (1915).
59. *McDevitt v. State*, 286 App. Div. 665, 146 N. Y. S. 2d 317 (3d Dep't 1955).
60. *McDevitt v. State*, 1 N. Y. 2d 540, 136 N. E. 2d 845 (1956).
61. 1948 N. Y. OFFICIAL COMPILATION OF CODES RULES AND REGULATIONS 4th OFF. CUM. SUPP. 1127 [E]xisting signals and markings now in place on or along the state highway maintained by the state, may be continued in use until no longer serviceable, at which time they may be replaced by signs, signals or markings conforming to the standards set forth in the manual.
62. *Canepa v. State*, 306 N. Y. 272, 117 N. E. 2d 550 (1954).
63. 293 N. Y. 877, 59 N. E. 2d 784 (1944).