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Torts—Violation of Local Traffic Ordinance—Evidence of Negligence

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according to its own circumstances, and a decrease in the probative value of the testimony in question or a clearer showing that it was used to incite the prejudice of the jury, could easily result in reversal.

Violation Of Local Traffic Ordinance—Evidence Of Negligence

New York City traffic regulations[62] establish a right of way in favor of pedestrians over automobile drivers at crossings not protected by a police officer or a traffic light. In *Taggart v. Vogel*,[63] plaintiff was struck by defendant's automobile while crossing at such an intersection. The Court of Appeals held (6-1) that the refusal of the trial judge to charge these regulations and his instructions to apply the same standard of care to both parties amounted to reversable error. The Court stated that the above regulations increased the responsibility of drivers, and a violation amounted to some evidence of negligence.

The effect which the Court gives to local traffic regulations in this case tacitly reaffirms the established principle that although the violation of a local ordinance will not amount to negligance per se,[64] it is relevant as amounting to some evidence of negligence on the part of the violator.[65]

Negligence—Question Of Fact

In *Levine v. City of New York*,[66] the Court was faced with the problem of determining whether the referee or the Appellate Division[67] made the appropriate findings of fact.[68] It held in agreement with the referee that it was more probable than not that the defendant was negligent. Judgment was therefore entered in favor of the plaintiff on the reinstated referee's report. This conclusion, because it involves only a factual appraisal, leaves no room for comment.[69]

Negligence—Incidental Injuries

Zipprich v. Smith Trucking Company and *Creaser v. Smith Trucking Company*,[70] personal injury actions arising out of the same accident, were tried

62. NEW YORK CITY TRAFFIC REGULATIONS §77.
63. 3 N.Y.2d 58, 163 N.Y.S.2d 674 (1957).
64. Fluker v. Ziegele Brewing Co., 201 N.Y. 40, 93 N.E. 1112 (1911).
65. Carlock v. Westchester Lighting Co., 268 N.Y. 345, 197 N.E. 306 (1935).
66. 2 N.Y.2d 246, 159 N.Y.S.2d 193 (1957).
67. 1 A.D.2d 661, 147 N.Y.S.2d 684 (1st Dep't 1955).
68. Section 605 of the Civil Practice Act compels the Court of Appeals to review findings of fact when the Appellate Division finds new facts in modifying or reversing the trial court.
69. For an interesting discussion of this case on a prior appeal, 309 N.Y. 88, 127 N.E.2d 825 (1955), see 5 BUFFALO L. REV. 240 (1956), wherein the writer asserts that the Court strained to allow recovery under the guise of the invitee theory when really applying the attractive nuisance doctrine which is not acceptable in the New York courts.
70. 2 N.Y.2d 177, 157 N.Y.S.2d 966 (1956).