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Agency—Respondeat Superior; Jury Question

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was performed. Thus, when an administrative act is negligently performed the doctrine of respondeat superior becomes operative to attach liability to the hospital.[8] In the instant case the physician was not utilizing independent judgment but was performing a mere administrative, as opposed to a medical, act. His function was no more than to report his findings of fact to his superiors; he was a regular employee of the defendant corporation and worked on defendant's premises in an office equipped by defendant.

Respondeat Superior; Jury Question

Cadicamo v. Long Island College Hospital was an action by a father as administrator of the estate of a day old infant against the hospital for pain and suffering and wrongful death. The infant burned to death after a nurse placed an unguarded light bulb within three inches of its blanket in order to raise the infant's temperature, which was subnormal. The Court, unanimously reversing both the trial court and the Appellate Division,[9] stated that it was a jury question whether the attending nurse's being called away from her vigil over the child, to perform administrative duties, constituted sufficient grounds on which to impute liability to the hospital.[10] In addition, the Court indicated that placing the unguarded light bulb in such "dangerous proximity" to the helpless infant, who could not be expected to lie motionless, coupled with the lack of supervision by the nurse, would justify a jury finding of liability.

The New York rule regarding this type of action is that while a hospital authority will not incur liability for medical treatment by doctors or nurses, provided that reasonable care had been exercised in their selection, it will be liable for any of their negligent acts or omissions not directly concerned with medical treatment, so long as such acts were performed in the capacity of servants of the authority.[11] Liability is not occasioned by the status of the person performing the negligent act, but by the nature of the act being performed.[12] In the instant case, the Court concedes that the act of placing the light bulb so dangerously near the infant was a medical act. This conclusion was all but forced on the Court by an earlier case[13] where the decision of a nurse not to remove a hot water bottle from a patient's feet was held to be a professional (medical) decision. The Court

8. *Sheehan v. North Country Community Hospital,* 273 N. Y. 163, 7 N. E. 2d 28 (1937).

9. 283 App. Div. 953, 130 N. Y. S. 2d 889 (2d Dep't (1954).

10. *Cadicamo v. Long Island College Hosp.,* 308 N. Y. 196, 124 N. E. 2d 279 (1954).

11. CLERK & LUNDSELL, TORTS (6th Ed.) 274.

12. *Dillon v. Rockaway Beach Hospital,* 284 N. Y. 176, 30 N. E. 2d 373 (1940).

13. *Sutherland v. New York Polyclinic Medical School & Hospital,* 273 App. Div. 29, 75 N. Y. S. 2d 135 (1947); *aff'd,* 298 N. Y. 682, 82 N. E. 2d 583 (1948); *re-argument denied* 298 N. Y. 794, 83 N. E. 2d 477 (1948).

distinguished the earlier case in that it was the administrative act which took the nurse away from her station of vigil which was the proximate cause of the injury. The same rationale was employed in the *Santose* case,[14] where a nurse was required as part of her duties to answer the telephone. During her brief absence from the "labor room" a patient was overcome by a rare psychosis (which sometimes accompanies labor during child birth), and committed suicide by jumping out of a window. The question of the hospital's negligence is not maintaining adequate supervision or barring the windows was submitted to the jury.

In that case the plaintiff's intestate was an adult woman apparently "of sound mind and body," and the hazard of this sort of mental derangement under these conditions was rather remote; yet the question of the hospital's negligence was submitted to the jury. In the instant case a helpless day old infant was placed in a position of "obvious danger" from which it could not extricate itself; i.e., the hazard of injury was patently foreseeable. The question of negligence here was a fortiori for the jury.

Special Employee

In *Stone v. Bigley Bros.*,[15] defendant contracted with the Bethlehem Steel Company to transport steel from a dock to a bridge construction site. All unloading at this site was to done by Bethlehem. The day plaintiff was injured, defendant carried steel to the bridge site on its own truck, which was driven by its own employee. The steel was fastened on the truck with chains which were part of the truck's equipment. At the bridge site, a Bethlehem employee took over direction of the unloading. The usual practice at this point was for Bethlehem employees to fasten Bethlehem's chains around the steel, and have Bethlehem's crane hook and place strain on them; only then would defendant's truck driver unfasten its chains. On this occasion, however, defendant's truck driver unfastened one of its chains without waiting for the Bethlehem crane to put a strain on the steel, with the result that some steel fell off the truck and injured plaintiff, a Bethlehem employee. The issue on appeal was whether defendant's truck driver was, as a matter of law, a special employee of Bethlehem at the time of his negligent conduct since Bethlehem was in charge of the unloading. The Court of Appeals refused to find the driver a special employee of Bethlehem as a matter of law, holding that it would not be unreasonable for a jury to "conclude that even though this loosening of the truck's chains was part of the unloading preparations, nevertheless, in another sense it was part of the truck driver's duty." The dissent argued that the driver was a special employee of Bethlehem, that under the contract

14. *Santose v. Unity Hospital*, 301 N. Y. 153, 93 N. E. 2d 574 (1950).
15. 309 N. Y. 132, 127 N. E. 2d 913 (1955).