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Agency—Special Employee

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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).

when the driver brought the truck to its destination the carrier's function ended, and "the circumstance that the chains were loosened by the driver of the truck is irrelevant."

An employer is liable for the torts of his employees committed in the course of their employment by him.[16] A general employee of one employer, however, may become a special employee of another, and thereby render the former employer free from any tort liability.[17] A general employee does not become a special employee unless his first employer surrenders, and his later one assumes, the power to command the employee as to the details as well as to the ultimate result of his work.[18] In the absence of proof that the general employer has surrendered control completely, it must be presumed that his control continued.[19] Generally, whether control has been surrendered will be determined according to the peculiar facts and circumstances of each case.[20]

ADMINISTRATIVE LAW

Civil Service, Veterans Preference

After World War II, the New York State Constitution provided that a disabled veteran, as to civil service lists, should be entitled to preference and should be appointed or promoted before any other appointments or promotions were made, without regard to his or her standing on any list from which such appointment or promotion was to be made.[1] In furtherance of this constitutional policy, the statutes of New York provided that any person whose name was on any eligible list should retain his rights and status while in military service; that if such person's name was reached while he was in military service he would be placed on a special eligible list which would have a preference to all subsequent lists; that for purposes of seniority, training and experience credit such person should "be deemed to have been appointed on the earliest date upon which any eligible, who was the lower on such original eligible list was appointed."[2] In *McQuillan v. Schechter*[3] the court, to protect the rights of veterans, extended its

16. *McNamara v. Leipzig*, 227 N. Y. 291, 125 N. E. 244 (1919); *Irwin v. Klein*, 271 N. Y. 477, 3 N. E.2d 601 (1936).
17. *Braxton v. Mendelson*, 233 N. Y. 122, 135 N. E. 198 (1922).
18. *Wawrzonek v. Central Hudson Gas & Electric Corp.*, 276 N. Y. 412, 12 N. E. 2d 525 (1938); *Irwin v. Klein, supra*, note 16.
19. *Delisa v. Arthur F. Schmidt Inc.*, 285 N. Y. 314, 34 N E. 2d 336 (1941); *Wawrzonek v. Central Hudson Gas & Electric Corp., supra*, note 19; *Irwin v. Klein, supra*, note 16; *Bartolomeo v. Charles Bennett Contracting Co.*, 245 N. Y. 66, 156 N. E. 98 (1927).
20. *Irwin v. Klein, supra*, note 16; *Braxton v. Mendelson, supra*, note 17.

1. N. Y. CONST. art. V, §6.
2. N. Y. MILITARY LAW §243(7).
3. 309 N. Y. 15, 127 N. E. 2d 731 (1955).