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Torts—Liability of State to Users of Highways

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Liability of the State to Users of Highways

In *Applebee v. State of New York*,[22] plaintiffs as administratrices sued for injuries sustained by their decedent husbands in a collision between the latter and a third driver who failed to stop at an intersection leading to a state highway. They alleged that the State's failure to maintain a stop sign as required by law[23] constituted negligence, that its presence would have averted the collision and that its absence was the proximate cause of the injuries. The Court reversed the Appellate Division[24] and dismissed the claims on the ground that the negligence of the third driver was the sole and proximate cause cause of the accident.

The State through the Traffic Commission has an affirmative duty to erect signs warning of dangerous conditions, and failure to do so may be the basis of liability.[25] It has been held, however, that such a breach of duty alone will not result in liability to the State if the breach did not proximately cause the injury.[26] In cases where the State is the first negligent actor, but where it appears that an intervening act of negligence superseded the original negligence to the extent that it alone produced the injury, the State is relieved of liability.[27]

No State liability resulted in the instant case since the absence of the stop sign did not proximately cause the accident; the Court reasoned that the driver of the car would have acted in the same manner regardless of the presence or absence of the sign.[28] The dissent went off on this point, arguing that the presence of the sign would have caused the driver to stop before entering the intersection.

22. 308 N. Y. 502, 127 N. E. 2d 289 (1955).
23. See N. Y. VEHICLE & TRAFFIC LAW §§95-a, 95-d.
24. 284 App. Div. 532, 132 N. Y. S. 2d 519 (4th Dep't 1955).
25. N. Y. COURT OF CLAIMS ACT §8 effects a waiver of State immunity, and the State assumes liability determined in accordance with the rules of law applicable to individuals for the tortious acts of its servants acting in their official capacity. *Jackson v. State of N. Y.*, *261 N. Y.*, 134, 184 N. E. 135 (1933). The Legislature has provided that "it shall be its duty to regulate the type . . . erection, maintenance of all traffic control signals . . . on or along any state highway . . ." N. Y. VEHICLE & TRAFFIC LAW §95-a; *Foley v. State of N. Y.*, 294 N. Y. 275, 62 N. E. 2d 71 (1945) (defective signal); *Van de Walker v. State of N. Y.*, 278 N. Y. 454, 17 N. E. 2d 128 (1938) (State held liable where an obliterated warning sign had not been re-erected prior to the accident); *Ziehm v. State of N. Y.*, 270 App. Div. 876, 61 N. Y. S. 2d 99 (4th Dep't 1946) (State held liable for not erecting sign which would have avoided the accidents).
26. *Nuss v. State of New York*, 301 N. Y. 768, 95 N. E. 2d 822 (1950); *Eastman v. State of New York*, 303 N. Y. 691, 103 N. E. 2d 56 (1951).
27. *Foley v. State of New York*, note 25 *supra*, held that the acts of both drivers were not superceding acts of negligence sufficient to relieve the State from liability.
28. This case is to be distinguished from those in which the danger was concealed, rather than patent. *Murphy v. DeRevere*, 304 N. Y. 922, 110 N. E. 2d 740 (1953); *Eastman v. State of New York*, note 26 *supra*; *Nuss v. State of New York*, note 26 *supra*. In the Eastman decision it was held that the absence of the stop sign caused the accident, since it was difficult to tell which driver should stop at the intersection.

The application of the proximate cause doctrine appears sound, although the Court ignores the argument that foreseeability of an intervening agency does not relieve the first negligent actor from liability,[29] apparently on the ground of public policy.

Obstruction of Handrail Held to Be No Negligence

Under somewhat unique facts the majority of the Court denied recovery to plaintiff who sustained serious injury resulting from falling down three steps in defendant's store.[30] The negligence complained of was that the defendant so placed a vending machine as to partially obstruct the handrail on the stairway. Plaintiff contended that the presence of the rail was an implied invitation to grasp it, and her inability to do so caused her fall. Without citing any authority the majority held, the placing of the vending machine was not negligence, nor was there an implied invitation to use this partially obstructed railing when three other stair lanes equipped with handrails were open for plaintiff's use.

In *Hall v. Holland,* [31] a recent Florida decision, the Court announced the rule that the owner of property is bound to use reasonable care as to an invitee by inspecting the premises and by either making them safe or providing adequate warning to his visitors of the existence of a dangerous condition. However, "the owner can assume that the invitee will perceive that which will be obvious to an invitee on ordinary use of the invitee's senses," therefore vitiating the necessity of warning as to the obvious dangers.

The dissenting opinion in the instant case asserted that it was well within the province of the jury to find that the placing of the vending machine in such a position created a "potential danger" to the patron of defendant's store, which justified recovery. As authority for the proposition that a handrail not extending the full length of the stairway was a "dangerous" condition they cited *Hovey v. State,*[32] where plaintiff was descending a flight of stairs which were not illuminated and utilized the handrail to guide her descent. Analogous to the instant situation, the handrail did not extend the full length of the stairway, which caused the plaintiff's fall.

It is difficult to accept the reasoning of the dissenters, since it was the latency of the danger occasioned by the lack of illumination which was the proximate

29. In *Carlock v. Westchester Lighting Co.,* 268 N. Y. 345, 197 N. E. 306 (1935), it was held that the consequences brought about by a foreseeable intervening independent force does not break the chain of causation so as to relieve the primary actor from liability.

30. *Aucock v. Neisner Brothers,* 308 N. Y. 41, 123 N. E. 2d 630 (1954).

31. 47 So. 2d 889 (1950).

32. 261 App. Div. 759, 27 N. Y. S. 2d 195 (3d Dep't), *aff'd* 287 N. Y. 663, 39 N. E. 2d 287 (1941).