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# Torts—Obstruction of Handrail Held to Be No Negligence

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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).

cause of the injury in the *Hovey* case. The danger there was not perceivable by use of plaintiff's "ordinary senses," whereas in the instant case the partially obstructed handrail by its obviousness offered warning of any potential danger, which is all the law demands.

*Duty Owing to Licensee*

In *Jesselson v. Moody*,[33] defendant's employee accommodated plaintiff by driving him in defendant's automobile to the airport, without the express direction of defendant. En route plaintiff incurred fatal injuries resulting from the employee's negligence. In a wrongful death action against the employer the Court held, plaintiff was a mere licensee, to whom defendant owed only the obligation of refraining from committing acts wantonly or wilfully injurious.[34]

The New Jersey courts have not recognized as sufficient for purposes of recovery in this type of action the fact that plaintiff was riding at the invitation of an employee;[35] rather, proof is required that plaintiff was an invitee of the owner.[36] Under New Jersey common law, the duty of the owner of a motor vehicle to a licensee is said to be analogous to that owed to a trespasser by a property owner.[37] In order for the doctrine of respondeat superior to justify recovery in these instances, the driver must not only be acting within the scope of his employment in driving the car, but must also be acting in furtherance of his master's business in transporting the guest.[38]

New York Vehicle and Traffic Law §59 covers this type of suit by stating that the owner of a motor vehicle shall be deemed liable for injury caused by anyone legally using the vehicle, whether in pursuit of the owner's business or otherwise. In addition New York Insurance Law§109 provides, *inter alia,* that all contracts of insurance are to include under the liability coverage any personal or property damage caused by the named insured or his permittee. Thus the two enactments considered together evince the New York legislative policy preference for a broader risk distribution[39] than was possible under common law auspices.

33. 309 N. Y. 148, 127 N. E. 2d 921 (1955).
34. *Struble v. Bell,* 126 N. J. L. 168, 17 A. 2d 800 (1941).
35. *Yanowitz v. Pinkham,* 111 N. J. L. 448, 168 Atl. 770 (1937).
36. Consent of the owner of an automobile may be express or implied in New York, in determining his liability for damages inflicted by his permittee. *Fuegel v. Coudert,* 244 N. Y. 393, 155 N. E. 686, *reargument denied,* 245 N. Y. 539, 157 N. E. 849 (1927).
37. *Cowan v. Kaminow,* 128 N. J. L. 398, 26 A. 2d 258 (1942). *Heinemann v. Jewish Agr. Soc.,* 178 Misc. 897, 37 N. Y. S. 2d 354; *aff'd,* 266 App. Div. 907, 43 N. Y. S. 2d 746 (4th Dep't 1942).
38. *Yanowitz v. Pinkham, supra* note 35.
39. Douglas, *Vicarious Liability and Administration of Risk,* 38 YALE L. J. 584, 720 (1929); Laski, *The Basis of Vicarious Liability,* 26 YALE L. J. 106 (1916).