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Torts—Liability of State to Users of Highways

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THE COURT OF APPEALS, 1953 TERM

prima facie case requiring a jury verdict.⁵ It was pointed out that the issue of negligence and causation originally had been left to the jury by the trial court on a proper charge,⁶ and thus a reversal on the law by the Appellate Division of a verdict against defendant was unwarranted. On this basis, the case should be remanded for a new trial.

Without denying or underestimating the potential strength of the "emergency doctrine" in New York, or its relative merits and/or infirmities, its application by the majority in the instant case appears doubtful.

Liability of the State to Users of Highways

By provision of the Court of Claims Act,⁷ the State, when the negligence of its officers and employees acting in their official capacity results in the infliction of personal injuries, effects a waiver of immunity from, and assumption of liability, consents to have its liability determined in accordance with rules of law applicable to individuals, and submits to the jurisdiction of the Court of Claims to hear and determine claims of liability.⁸ By this legislation, that which was once an unenforceable moral obligation has been transformed into an actionable legal right, the rule of *respondet superior* being applicable to the State.

In a proceeding against the State, *Canepa v. State*,⁹ the facts indicated that a state highway had been recently altered, repaired, and a sharp rising curve constructed in order to facilitate an approach to an overhead crossing. Before alteration, the road had been fairly straight. Two ordinary reflectorized "slow" signs had been placed at the east and west approaches respectively. The car involved in the accident failed to pass safely around the

5. See RESTATEMENT, TORTS § 286. "The violation of a legislative enactment by doing a prohibited act . . . , makes the actor liable for an invasion of another . . . if . . . (d) the violation is the legal cause of the invasion . . ." See also 5 AM. JUR., Automobiles § 171. Where the situation of peril arises because of the driver's own negligence, the emergency rule cannot be invoked in his behalf. *Sterling v. Senchack*, 252 App. Div. 894, 300 N. Y. Supp. 297 (2d Dep't 1937).

A charge that violation of Vehicle & Traffic Law § 81 (15) (carrying more than three adult persons in the front seat of a non-commercial vehicle) was prima facie evidence of negligence, but its probative force might be overcome by proof that the violation was not the proximate cause of the accident, was proper.

6. See *Sterling v. Senchack*, *supra* note 7; *Wood v. Pergament*, 267 App. Div. 875, 46 N. Y. S. 2d 433 (2d Dep't 1944).

7. COURT OF CLAIMS ACT § 8.

8. *Jackson v. State*, 261 N. Y. 134, 184 N. E. 135 (1933). See also, *Smith v. State*, 227 N. Y. 405, 125 N. E. 841 (1920), which suggested that § 12 (a) (now § 8) be written into law, the court being of the opinion that in the absence of this specific statutory enactment the immunity of the State as to its liability had not been hitherto waived by the then Court of Claims Act, (L. 1920, c. 922 § 12).

9. 306 N. Y. 212, 117 N. E. 2d 550 (1954).

curve and plunged through a guard rail near the entrance to the overpass. The Court of Claims found that the State had been negligent in that it failed to give adequate and timely warning of an existing uncommon highway danger. Reversed by the Appellate Division, the finding was reinstated by the Court of Appeals.

There is no question today concerning the compulsory duty of the State to maintain its highways in a reasonably safe condition.¹⁰ Its liability is not predicated merely on the existence of physical defects or dangers,¹¹ but also on its duty reasonably to forewarn highway users of any defect or danger.¹² The Legislature, in the creation of a State Traffic Commission, has provided that ". . . it shall be its duty to regulate the type, location, erection, maintenance . . . of all traffic control signals . . . on or along any state highway . . ." ¹³ [Emphasis added.] A failure by the Commission to observe the legislative mandate will subject the State to liability.¹⁴

Liability of State to Users of Land It Possesses

Generally, the liability of a possessor of land for bodily harm to others, who enter for a public or private purpose, caused by natural or artificial conditions thereon is predicated upon several conditions, *viz.*, an awareness that others are upon his land or are likely to enter in the exercise of their privilege, and of the condition of risk not reasonably discoverable by those on the land, as well as a failure to rectify such condition or provide adequate warning of the risk involved.¹⁵

LeRoux v. State,¹⁶ is illustrative of the point that the State bears the same duty as any private person to protect those who rightfully enter upon its land. Plaintiff fell into an abandoned well on State property maintained by the Conservation Depart-

10. *Doughlin v. State*, 277 N.Y. 558, 13 N.E. 2d 472 (1938).

11. *Ibid.* State held liable for damages to automobile caused by rocks falling from adjacent slopes; *Barna v. State*, 267 App. Div. 261, 45 N. Y. S. 2d 513 (3rd Dep't 1943), *aff'd*, 293 N. Y. 877, 59 N. E. 2d 784 (1944), where State was held liable for death of decedent, evidence having been introduced to show that the guard rails were "rotted" and "wobbly" at a point where decedent's car crashed through.

12. *Van de Walker v. State*, 278 N.Y. 454, 17 N.E. 2d 128 (1938). State held liable for damages resulting from an accident where it failed to re-erect a warning sign which had been obliterated prior to the accident in suit. *Ziehm v. State*, 270 App. Div. 876, 61 N. Y. S. 2d 99 (4th Dep't 1946) (failure to remove "dead end" sign where road had been joined to heavily traveled highway).

13. VEHICLE & TRAFFIC LAW Art. 7, §95 (a).

14. *Foley v. State*, 294 N.Y. 279, 62 N.E. 2d 71 (1945) (improperly functioning signal).

15. RESTATEMENT, TORTS § 345.

16. 307 N. Y. 397, 121 N.E. 2d 386 (1954).