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Municipal Corporations—Municipal Tort Liability

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THE COURT OF APPEALS, 1951 TERM

enabling act which authorized the bond issue.³¹ Although prior legislation³² had used the language "at any time after the expiration of 20 years," whereas this act used "at the expiration of 20 years," the Court found that no change of substance was intended and held for the city. In a strong dissent by Judge Dye, Conway and Froessel, JJ., concurring, it was contended that the question was more properly one of contract law. The dissenters, urging that there was no ambiguity in the instruments, argued that there should be no reformation in the absence of mutual mistake or fraud.

It is interesting to note that although most of the purposes for which municipalities are authorized to contract indebtedness contemplate capital improvements, there is at least one purpose authorized in this state which goes beyond that. Local Finance Law §10:00 authorizes municipalities to contract indebtedness for the payment of judgments.³³ One way in which such judgments may arise, obviously, is out of tort liability. Tort liability is elsewhere discussed and is not within the province of this subdivision; all that will be mentioned here, therefore, is a feature peculiar to municipalities.

Municipal Tort Liability

Under the common law citizens had no right to bring suit against a municipal corporation for alleged negligence in the performance of a governmental function.³⁴ Such a right was not and is not guaranteed by constitutional provision, but is statutory in origin.³⁵ As the Legislature might have withheld the right, it may in granting it impose such conditions as are deemed fit. This was the reasoning of the Court in deciding an appeal on constitutional grounds by a claimant allegedly injured by the negligence of the board of a school district, its agents and employees.³⁶ Section 50-e of the General Municipal Law requires as a condition precedent to the bringing of a tort action against a municipal corporation the service of a notice of claim upon the corporation within

31. L. 1907, Chap. 724.

32. L. 1906, Chap. 203, an earlier enabling act.

33. The maximum period for which such indebtedness may be contracted is ten years, LOCAL FINANCE LAW §11:00 (33). Municipalities are also authorized to pay a judgment by a budget note. LOCAL FINANCE LAW §29:00.

34. *Bailey v. City of New York*, 3 Hill 531 (N. Y. 1842).

35. COURT OF CLAIMS ACT §8; *Bernardine v. City of New York*, 294 N. Y. 361, 62 N. E. 2d 604 (1945).

36. *Brown v. Board of Trustees of Town of Hamptonburg, School District 4*, 303 N. Y. 484, 104 N. E. 2d 866 (1952).

90 days after the claim arises. At the discretion of the court, leave may be granted to serve this notice late in certain cases,³⁷ if application for such leave is made within a year and explains the reason for the delay.³⁸ Claims brought by infants may be afforded this additional time.³⁹ In the instant case, the claimant was an infant; but sixteen months elapsed after the injury before such leave was applied for. Upon its denial, plaintiff appealed, asserting that the statute deprived him of the equal protection of the laws.⁴⁰ Upon the reasoning outlined above, the statute was held constitutional by a unanimous decision.⁴¹

VIII. PROPERTY

A. Real Property

Adverse Possession

In New York, claim of title has been defined to mean an entry upon another's land without right and in hostility to the owner's title.¹ Good faith as an element in the definition had long been rejected.² The intent to claim land as one's own can be founded on either knowledge that it belongs to another, or upon a mistaken belief that it is already the claimant's.³ The intent can be proved by acts as well as words.⁴ Where the intent is professed to be expressed by acts, those acts must be of such a character as to inform the owner unequivocally of the hostile claim of the usurper.⁵ If

37. *Natoli v. Board of Education of City of Norwich*, 303 N. Y. 646, 101 N. E. 2d 761 (1951).

38. *Matter of McEwan v. City of New York*, 304 N. Y. 628, ___ N. E. 2d ___ (1952).

39. For a discussion of § 50-e as creating an exception to CIVIL PRACTICE ACT § 60, see Note, 1 BFLD. L. REV. 64 (1951).

40. U. S. CONST. AMEND. XIV; NEW YORK CONST. Art I, § 1.

41. See *Schmid v. Werner*, 303 N. Y. 754, 103 N. E. 2d 540 (1952) affirming 277 App. Div. 520, 100 N. Y. S. 2d 860 (1st Dep't 1950), for a discussion of the applicability of the notice requirement to an action against an individual *torfeasor* in municipality's employ when the action is based upon a tort committed in the course of employment.

1. *Smith v. Burtes*, 9 John. 174 (N. Y. 1812).

2. *Humbert v. Trinity Church*, 24 Wend. 587 (N. Y. 1840). This case settled the issue with finality, and was necessitated by the decision in *La Frambois v. Jackson*, 8 Cow. 589 (N. Y. 1826), which impliedly asserted that good faith was indispensable to the establishment of a claim of title.

3. *Belotti v. Bickhardt*, 228 N. Y. 296, 127 N. E. 239 (1920); *Barnes v. Light*, 116 N. Y. 34, 22 N. E. 441 (1889).

4. *Barnes v. Light*, *supra* n. 3.

5. *Monnot v. Murphy*, 267 N. Y. 240, 100 N. E. 749 (1913).