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Article 12

Safe Place Statute: Extent of Liability of Owners and Employers for Structural Defects and Temporary Conditions

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Safe-Place Statute—Extent of Liability of Owners and Employers for Structural Defects and Temporary Conditions.—Plaintiff entered the public office building of the defendant about eleven A.M. to call at an office located on the second floor. On reaching the head of the stairs he inquired of an employee, who was mopping the hallway floor at the time, as to the location of the office. He then walked down the hallway in the proper direction, but after taking a step or two, he slipped and fell on that portion of the floor being scrubbed at the time, and was injured. The cleaning woman was using the usual amount of water and the usual amount of soap mixture required for mopping. She had not as yet reached the mopping-up process. Plaintiff testified that he had no notice of the presence of a slippery floor; the woman doing the mopping testified that "he stood there like if he wanted to know if he could, and I said he could go across." Plaintiff sought recovery under WIS. STAT. (1939) §§ 101.06, 101.07, commonly known as the safe-place statutes. The trial court refused defendant's motion for a directed verdict and submitted the questions as to the violations of the statutes to the jury, which returned a verdict for the plaintiff.

On appeal, *held,* reversed on the ground that the evidence was insufficient to raise a jury question. The safety required under the safe-place statute is not absolute safety, but rather such safety "as the nature of employment will reasonably permit." "Liability cannot be predicated of a wet or slippery floor while the act of cleaning is in process" even though the mopping of floors is an indispensable act in the maintenance of a public building. *Cronce* v. *Schuetz,* 1 N.W.(2d) 789 (Wis. 1942).

The pertinent statutory provisions provide that "Every employer shall furnish . . . a place of employment which shall be safe for employees therein and for frequenters thereof and shall furnish and use safety devices and safeguards, and shall adopt and use methods and processes reasonably adequate to render such employment and places of employment safe, and shall do everything reasonably necessary to protect the life, health, safety, and welfare of such employes and frequenters. Every employer and every owner of a place of employment or a public building now or hereafter constructed shall so construct, repair or maintain such place of employment or public building, . . . as to render the same safe." WIS. STAT. (1941) § 101.06. "No employer shall . . . fail or neglect to do every other thing reasonably necessary to protect the life, health, safety or welfare of such employes and frequenters; and no employer or owner, or other person shall hereafter construct or . . . maintain any place of employment, or public building, that is not safe . . . " WIS. STAT. (1941) § 101.07(1). Section 101.01(11) affords the norm by which the two previous cited statutes are to be controlled: "The term 'safe' or 'safety' as applied to an employment or a place of employment or a public building, shall mean such freedom from danger to the life, health, safety or welfare of employes or frequenters, or the public, or tenants, . . . as the nature of the employment, place of employment, or public building will reasonably permit." WIS. STAT.. (1941) § 101.01(11).

A distinction is made under the safe-place statute depending upon whether the party sought to be charged is an "owner" or an "employer." For example, in *Jaeger* v. *Evangelical Luth. Holy Ghost Con.,* 219 Wis. 209, 262 N.W. 585 (1935), it was held that plaintiff could not recover under the safe-place statute for injuries sustained while taking a chair from a stack which fell on her, even though the manner in which the chairs were piled was a condition negligently permitted to exist. It was held that the safe-place statute defines the "owner's" duty only in relation to the building and not temporary conditions

therein. The court pointed out that the facts would be a violation of the statute if an "employer" had been the defendant. For like reason a tenant was denied recovery against his landlord where the latter failed to remove from a landing temporary accumulations of snow, because the accumulations had "no relation to the design of the building or the materials of which it is composed." *Holcomb* v. *Szymczyk,* 186 Wis. 99, 202 N.W. 188 (1925). Even a permanent condition, in effect constituting a part of the structure, as a painted glass roof of a canopy, giving the appearance of a sheet steel roof, cannot be brought within the statutory imposition upon "owner" where a frequenter of the building is injured in the use thereof, unless it be designed for use by occupants or frequenters. *Palmer* v. *Janesville Improvement Co.,* 195 Wis. 607, 219 N.W. 437 (1928). Nevertheless, where the owner maintains a building having a structural defect, permanent or temporary in character, the statute may become applicable. In a case where stalls in a toilet room of a theater were maintained on different levels and a patron in entering from the lower level failed to see a step as she passed to the higher, despite good ceiling lights, it was held that inasmuch as expert architects disagreed upon the question whether the construction was a proper one in the absence of light in the step, it was for the jury to decide whether the construction was as safe as the nature of the place would reasonably permit. *Bunce* v. *Grand & Sixth Bldg., Inc.,* 206 Wis. 100, 238 N.W. 867, 206 Wis. 104, 238 N.W. 869 (1931). Again, it has been held that since a light in a passageway is installed for purposes of convenience and safety when the way is dark, the failure to turn it on when darkness prevails and the premises are in use constitutes at least a jury question as to whether or not it is a failure to maintain the premises in a safe condition. Light is more than a temporary condition and has a relation to the structure of the building. *Wilson* v. *Evangelical Lutheran Church,* 202 Wis. 111, 230 N.W. 708 (1930); *Heiden* v. *Milwaukee,* 226 Wis. 92, 275 N.W. 922, 114 A.L.R. 420 (1937); *Kinney* v. *Luebkeman,* 214 Wis. 1, 252 N.W. 282 (1934).

The mere fact that an accident happens does not prove the place was unsafe, for unless it is shown that the place is not as free of danger as its nature will permit, a jury finding for the injured party will not be sustained. In the case of a verdict rendered for the plaintiff on allegations that the heel of her shoe caught in carpeting of a stairway, where no showing was made that the stairway was improperly constructed, carpeting was improperly laid, or that it could have been more securely laid, the court reversed a judgment for the plaintiff and dismissed the complaint. *Heckel* v. *Standard Gateway Theater,* 229 Wis. 80, 281 N.W. 640 (1938); see also *Schoonmaker* v. *Kaltenbach,* 236 Wis. 138, 294 N.W. 794 (1940). Similarly, where an operator of a store placed a rubber mat upon a ramp to secure frequenters against danger of slipperiness there was no violation of the statute simply because a frequenter caught her foot on the end of the rubber and fell. The mat being in good condition, and its thickness amounting to but one-third of an inch, the court considered that the defendant, was entitled to a directed verdict under the safe-place statute. *Erbe* v. *Maes,* 226 Wis. 484, 277 N.W. 111 (1938).

In the absence of a requirement of the Industrial Commission, signs warning frequenters of the presence of a stairway are not necessary to render a place safe. *Waterman* v. *Heinemann,* 229 Wis. 209, 282 N.W. 29 (1938). But failure to provide a proper railing around the top of an elevator shaft is readily viewed as lack of such construction "as the nature of the house and shaft would permit." *Waskow* v. *Robert L. Reisinger & Co.,* 180 Wis. 537, 193 N.W. 357 (1923). Too, injuries caused by failure to fasten a wooden board seat in the

nature of a bleacher, or to supply stringers at the back to prevent the seat from being displaced, are sufficient to sustain a verdict finding the place not as free from danger as the structure would reasonably permit. *Bent* v. *Jonet,* 213 Wis. 635, 252 N.W. 290 (1934). Furthermore, where an engineer and two building construction contractors testified that a certain bracket sustaining a fire extinguisher, against which a frequenter struck his head, would and could have been more safely constructed if the corners were rounded, the court sustained a verdict that the construction was not as free from danger as the nature of the place would reasonably permit. *Tomlin* v. *Chicago, M., St. P. & P. R. Co.,* 220 Wis. 325, 265 N.W. 72 (1936). Where one furnished another's employee with a place of employment and appreciated but failed to provide such employee with the usual form of protection against injuries, it was held a question for the jury to determine whether a place of reasonable safety was provided. *Kuske* v. *Miller Brothers Co.,* 227 Wis. 300, 277 N.W. 619 (1938).

Though an owner may be held liable for injuries caused by existing defects in structure and maintenance, the rule does not obtain if he has neither actual nor constructive notice of the fact of defect, e.g., where an injury was brought about by improper connections of wires to an elevator motor recently installed. *Kaczmarski* v. *Rosenberg Elevator Co.,* 216 Wis. 553, 257 N.W. 598 (1934); *Lundgren* v. *Gimbel Bros.,* 191 Wis. 521, 210 N.W. 678 (1926). Even though the owner is aware of a certain condition but there is no reason to anticipate an occurrence of injury he is not liable, as where a bowler broke his leg when he slipped and fell on a bowling alley, catching his foot in a two inch space between the floor and the bottom of the return trough of the bowling alley structure. *Sykes* v. *Bensinger Recreation Corporation,* 117 F.(2d) 964 (E.D. Wis. 1941).

Where the owner fails to give notice and warn frequenters of existing dangers on the premises, as failure to warn of danger of electrocution from overhead wires in dangerous proximity to the ground over which a derrick placed on a truck was being moved, the premises are clearly brought within the rule of the statute. *Sandeen* v. *Willow River Power Co.,* 214 Wis. 166, 252 N.W. 706 (1934); the same holds true as regards an employer's failure toward frequenters, especially if no barrier is erected across a traveled path. *Powers* v. *Cherney Construction Co.,* 223 Wis. 586, 270 N.W. 41 (1937). And, even though a danger on the owner's premises is such as not to become an actuality until placed on the probable line of certain operations, the duty to warn and reasonably guard against the same remains. *Neitzke* v. *Kraft-Phenix Dairies, Inc.,* 214 Wis. 441, 253 N.W. 579 (1934); *Criswell* v. *Seaman Body Corp.,* 233 Wis. 606, 290 N.W. 177 (1940).

Employers' liability cannot be said to differ from that of owners except as indicated in *Jaeger* v. *Evangelical Luth. Holy Ghost Cong., supra.* Accordingly it has been held that a jury finding for a frequenter should be sustained if the design of construction causing the dangerous condition could have been remedied. *Sweitzer* v. *Fox,* 226 Wis. 26, 275 N.W. 546 (1937). In that case the court said that there was warrant for the jury's verdict inasmuch as the defect was remedied subsequent to the accident. Though this statement is not a departure from the rule of evidence denying a party opportunity to show change in the condition of a place after an accident has occurred, the dissenting opinion in *Sykes* v. *Bensinger Recreation Corp., supra,* seems to base its argument upon the fact of such a subsequent showing.

The court will uphold a verdict adverse to the employer for failure to provide a hand-rail subsequent to a ruling by the Industrial Commission that such railings be installed, if the danger could have been avoided by complying

with the order. *Washburn* v. *Skogg,* 204 Wis. 29, 233 N.W. 764 (1930); *Allison* v. *Wm. Doerflinger Co.,* 208 Wis. 206, 242 N.W. 558 (1932). But a finding for the employer where a frequenter fell down an unlighted steps of a slippery stairway cannot be upheld unless the evidence showed that the light was not turned off by affirmative conduct of the employer, and that failure to keep a light on at the bottom of the way was not necessary to maintain the stairway in a safely lighted condition, and unless it was requested that the jury find whether the slippery condition of the steps was such as deprived it of safe maintenance. The court pointed out that a slippery floor may well constitute a failure to maintain the structure in its original integrity. *Pettric* v. *Gridley Dairy Co.,* 202 Wis. 289, 232 N.W. 595 (1930). Apparently a distinction is to be drawn between the *Gridley* case and the principal case with respect to the slippery floor, in that the slipperiness in the *Gridley* case may have resulted from *leaving* the surface in a dangerous condition after cleaning it, as in the case of *Schroeder* v. *Great Atlantic & Pacific Tea Co.,* 220 Wis. 642, 265 N.W. 559 (1936), or from entire neglect to clean.

The provisions of § 101.06 impose liability on an employer when, knowing the effect of muriatic acid on supporting ropes of a suspended scaffolding, he neglected to inspect and test the rope frequently. *Builders Mut. Cas. Co.* v. *Industrial Commission,* 210 Wis. 311, 246 N.W. 313 (1933). But where a street-car motorman was injured, after changing trolleys at a terminal, by an automobile speeding through the lane between the standing street-car and a parked auto it was held that the defendant company could not be found guilty of violating the statute by not providing the motorman with a watchman to warn of the danger. The likelihood of danger was not considered sufficient to warrant such protection; the company had no right to obstruct the street and "to protect employees under such circumstances by stationing watchmen would multiply the risks and hazards of employment rather than diminish them." *Baker* v. *Janesville Traction Co.,* 204 Wis. 452, 234 N.W. 912 (1931).

It would seem that the duties imposed upon the "owner of a public building" and an "employer" under the safe-place statute are the same, except that an employer is liable not only for structural safety but also for temporary conditions not constituting a part of the structure, and for conditions existing at a place of employment independent of the presence of a building or structure.

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Torts—Inducing Breach of Contract.—The plaintiff had a contract with farmers on a particular route to haul their milk to the defendant's creamery. The defendant sent a letter to the farmers doing business with the plaintiff, informing them that thereafter only milk picked up by its own trucks would be accepted at the creamery. The farmers continued to give milk to the plaintaiff until the defendant refused to accept milk from the plaintiff who, being unable to find anothe rmarket, was forced to discontinue his route. The plaintiff brings action for wrongfully procuring a breach of contract. The trial court gave a judgment of no cause of action notwithstanding the verdict in favor of the plaintiff.

Held, on appeal that the defendant's act of persuading a breach of contract, whether for the purpose of injuring the plaintiff or benefiting himself, was malicious and actionable. Its refusal to accept further deliveries from the plaintiff was wrongful because it was done for the unlawful purpose of causing a breach of the latter's contract with the farmers, which intent was manifested