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Article 12

Negligence: Landlord May Not Create Trap on Premises and Induce Tenant to Use It to His Injury: Limits of Simple Tool Doctrine

George J. Uhlar

'That every driver on overtaking any vehicle shall pass on the left side thereof, and the driver overtaken shall with as much speed as possible, upon the signal of the oncoming driver, drive to the right of the center of the road so as to allow a free passage on the left, and if necessary, because of the condition of the road, stop long enough for the other party to pass.' This statute says nothing about signals when passing or turning left on the highway.

The court goes on the theory that the driver behind can see what is ahead of him and knows that unless he gives a signal of his intention to pass that the party ahead has a right to turn to the left. The court also says that a traffic officer[4] should know the rules of the road and that he knows that if he gives warning of his intention to pass the machine ahead that the driver is required by law to give him half of the road. They base their decision on the case of *Suren* v. *Zuege*, which holds that, 'A police officer driving a motorcycle at a speed of forty to fifty miles an hour in pursuit of a fleeing automobile, without signaling his approach and intention to pass a vehicle ahead, is guilty as a matter of law, of contributory negligence, precluding a recovery for injuries sustained in a collision with such vehicle as it turned to the left.'

In regard to overruling the above case, the court has this to say; "To announce a rule in this case different from that in the Suren Case would make our law a mere matter of speculation on the part of trial judges. Innumerable cases would arise where the trial judge would be at a loss to know whether the situation was covered by the Suren Case or by this one. It is quite plain that these two cases should be in harmony."

AL WATSON '28

Negligence: Landlord May Not Create Trap on Premises and Induce Tenant to Use It to His Injury: Limits of Simple Tool Doctrine.

That the owner may not make a trap or snare on his premises, and so induce his tenant to use it as to cause him injury, appears to be well established in the recent case of *Woodruff* v. *Ellenbecker*.[1]

This case is an action for injuries received by the plaintiff by reason of the cover of a box, used for the deposit of rubbish, falling upon said plaintiff and injuring her seriously. The said box was about two and one-half feet high and was set against a shed in the rear of a cottage on the defendant's premises.

The plaintiff was the defendant's tenant and the box was necessarily used for the deposit of rubbish. On top of the box was a cover with hinges, and this cover when opened would rest against the side of the shed and when closed, pitched downward.

The plaintiff, prior to her injury, had occupied the premises of the

[4] Section 85.16 sub (3) Statutes of 1925.

"Police officers shall be exempt from the speed limitations and other regulations of highway traffic while actually in pursuit of a criminal or attempting to apprehend a person who is violating any other provision of this chapter; . . .

[1] 215 N.W. 816 Wis. Decided Nov. 8, 1927.

defendant for about eight years. She had used this box during that time. During all that time, the cover when raised, leaned back against the shed to such an extent that it would stay open. Some time prior to the accident, the cover became in need of repair and was repaired by the defendant. In making such repairs the defendant placed the hinges further back toward the shed so that the cover when raised would fall back on the box unless very carefully adjusted. When the repairs were made the plaintiff was away from home and didn't know of such repairs, and when raising the cover of the box as she had heretofore done, the cover fell back on her and injured her. The allegations of the complaint charge that the repairs were negligently made, and that the defendant failed to notify the plaintiff of the change in the construction.

The lower court dismissed the complaint on the ground that one is never obliged to give warning of what is perfectly obvious and it is obvious that if you lift up that cover it is going to fall down unless you hold it or prop it up. Also, that one is bound to see and perceive what is entirely manifest on observation and that one making repairs is not bound to assume that any one is not going to look what they are doing, and hence cannot be guilty of negligence.

The Supreme Court in reversing the judgment of the lower court, states that such court obviously overlooked the fact that even though such contrivance was simple by reason of the manner in which it was made, and used by the plaintiff over a long period of time, the cover would stay up when raised, and that after the repairs were made the cover was so changed that it would fall down unless held up.

The plaintiff, having had no warning of the change in construction, it was not readily obvious to her that the change had been made, and it was natural for her to assume that the cover would stay up as it had in years gone by. The most simple contrivance may constitute a dangerous trap or snare to the person using it, not because of its simplicity, but because of hidden danger therein.[2]

Licensees and invitees on the premises of the owner are entitled to protection against an ordinary simple contrivance, if by reason of its construction and location, it conceals a defect or danger.[3]

It has also been held that, where a flagman has usually been maintained at a crossing, his withdrawal without notice to the public may in and of itself constitute a want of ordinary care, because "the traveler might in this way be lured into danger, when, if there had been no flagman kept there, he would not have looked for such a signal, but would have looked and listened for other signs of an approaching train."[4]

The principles in the cases stated are applicable to this case. The plaintiff had been using this box for a long period of time, when it was so constructed that the cover would stay up without being fastened,

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[2] *Raether* v. *Mentor*, 142 Wis. 238.

[3] *Brinilson* v. *Chicago and N.W.R.C.* 144 Wis. 614. *Zetley* v. *Jame Realty Co.* 185 Wis. 205. *Lehman* v. *Amsterdam Coffee Co.* 146 W. 213.

[4] *Burns* v. *North Chicago Rolling Mills Co.* 65 Wis. 312. *Gundlach* v. *Chicago and N.W.R. Co.* 172 Wis. 438.

and then the landlord, without her knowledge and without any warning to her, changed the condition of the cover so that it would not stay up as before. The plaintiff had been lured into a danger that was not necessarily obvious to her.

This case is distinguished from what is known as the "pinch-bar[5] case," and the "step-ladder case."[6] In those cases the plaintiffs had used the mentioned instrumentalities and were injured. The court points out that in those cases neither of the plaintiffs were lured into using the contrivances, and such instrumentalities were being used for the first time, and a simple inspection would have disclosed the defects, and it would not be natural for the plaintiffs to assume that such contrivances were safe. The question of negligence and contributory negligence under the facts, presented a jury question.

GEORGE J. UHLAR

Workman's Compensation: Municipal Corporation: What Constitutes Premises of Employer.[1]

Caravella, a Milwaukee street cleaner, while on his way to work and actually traversing a street on which he would have worked later during the day, was struck and killed by an automobile. His widow, Frances Caravella, brought this action to recover compensation for the death of her husband.

The Court held: that the death of an employee, while on his way to work on the employer's premises, but not growing out of the services incidental to his employment, is not compensable under the Workmen's Compensation Act.

A master is liable for the injuries to his employee occurring within the scope of his employment and while the employee is under the actual and constructive control of the employer.[2] The relation of Master and Servant must be in existence at the time of injury or death, although the duty to protect the servant is not "necessarily confined to the precise period during which services are actively rendered."[3]

The relation of Master and Servant may also exist by custom.[4]

It had been customary for the deceased to go to work much earlier than was necessary, and on his way to work he often picked up refuse from the street and collected it in a pile which he would move after reporting for work. If these had been the circumstances on the morning when the accident occurred, it is likely that the court would have been justified in allowing compensation for the death, because it would have occurred on the premises of the employer and during the rendering of "service growing out of and incidental to his employment."[5] On this particular morning, however, deceased was on the street as

[5] *Holt* v. *C. M. and St. P. R. Co.* 94 Wis. 596.

[6] *Borden* v. *Daisy Roller Mill Co.* 98 Wis. 407.

[1] *Caravella* v. *City of Milwaukee,* 215 N.W. 911; —Wis. —.

[2] 171 Ala. 188.

[3] 184 S.W. 159.

[4] 140 Wis. 440.

[5] 163 Wis. 31; 102.03 (2) Statutes.