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Torts—Maintenance Of Abandoned House In State Of Disrepair Not Basis For Absolute Liability

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for similar exemptions in a case where a corporation is formed specifically for providing residential facilities for these types of organizations) does not preclude an exemption under the statute in question and failure to claim these exemptions in prior years does not estop St. Lukes from a later claim for exemption.[29] On these bases, the court ultimately concludes that supplying living accommodations to hospital personnel and their families is a purpose reasonably incident to the major purpose of the hospital entitling St. Lukes to partial exemption.

The most important aspect of the instant case is the decision that a "free hospital" is one that does not charge for its services. The statute states that a "free public hospital" is entitled to property exemptions even though portions are used for non-hospital purposes, provided the income is applied to the support of the hospital. Today in New York there are few if any hospitals which do not charge for their services. Most hospitals charge at cost or, even above cost as in the case of private patients. As a result of this case, today's hospitals must be labeled as merely hospitals "within the statute." This means that they are only entitled to exemptions on property actually used for hospital purposes. The instant case has figuratively eliminated the words "free public hospital" from the statute. The elimination of the special exemption for free public hospitals, places hospitals in the same category as other charitable organizations under the statute. In the early ninteenth and twentieth centuries, hospitals were private enterprises and needed these special exemptions because they had no means of support except charitable contributions and many patients could not afford medical care. These conditions are not prevalent today. In many cases, state and local authorities provide financial support for these organizations. The development of social and public concern for these institutions has, in part eliminated the pressing need for private funds. Medical insurance plans, such as Blue Cross and Blue Shield, make it easier for patients to pay medical expenses. Contemplated federal government medical care for the aged, should also ease the patient's inability to pay. Thus the special exemption geared to the needs of the nineteenth century, has become outmoded in the light of present day social and insurance developments and has been justifiably eliminated.

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TORTS

MAINTENANCE OF ABANDONED HOUSE IN STATE OF DISREPAIR NOT BASIS FOR ABSOLUTE LIABILITY

Infant plaintiff entered defendant's abandoned house to retrieve his baseball glove thrown through an open window by other boys, fell from an open window and was injured. The house was scheduled for demolition and had been

29. See Cruger v. Dougherty, 43 N.Y. 107 (1870).

vacant for a period of more than sixty days prior to the accident. Evidence showed that once inside the house, and upon reaching the second floor where the glove had been thrown, the infant plaintiff sat upon the sill of the window to avoid being struck by chunks of plaster falling from the ceiling. Defendant's employee who had charge of the premises testified that when the house was vacated, the doors and windows were locked and the premises secured and that he inspected the premises almost daily; that after trespassing children had broken the doors and windows they were boarded; that on the day of the accident, his inspection revealed that the house was secured. A police officer testified that on the day of the accident the house was open at door and window. Trial in Supreme Court resulted in jury verdict and judgment for plaintiffs. The Appellate Division affirmed by a divided court and defendant appealed to the Court of Appeals, where judgment was reversed by a 4-3 decision and new trial ordered. *Held*, no duty to a trespasser for injuries sustained by reason of maintaining a vacant house in absence of proof that the house was so rotted and decayed as to have been in imminent danger of collapse and thus a trap or an inherently dangerous structure. Sections of the Administrative Code of the City of New York and the Multiple Dwelling Law, providing that "any vacant building unguarded or open at door or window shall be deemed dangerous" and thus a public nuisance, do not create absolute liability for violation, but define, in the interest of the general public, the degree of care to be exercised. Failure of the trial court to instruct the jury to find for defendant if it appeared that defendant secured the premises and made almost daily inspections was error. *Beauchamp v. New York City Housing Authority*, 12 N.Y.2d 400, 240 N.Y.S.2d 15, 190 N.E.2d 412 (1963).

An abandoned dwelling in imminent danger of collapse, in light of the Administrative Code of the City of New York[1] and the Multiple Dwelling Law,[2] has been held to amount to an inherently dangerous instrumentality constituting a public nuisance, rendering the owner thereof primarily liable to trespassing infants.[3] Notwithstanding negligence, maintaining such a dangerous instrumentality, and the failure of the city to abate it, is a violation of a mandatory duty.[4] Violation of a statute designed for the safety and protection of the public and individuals amounts to liabilty per se to persons injured as a result of the violation.[5] Although there is no attractive nuisance doctrine in New York, as such, a landowner has a duty to trespassing children or bare

1. N.Y.C. Administrative Code § C 26-193.0.

2. N.Y. Mult. Dwell. Law § 309.

3. Runkel v. Homelsky, 286 App. Div. 1101, 145 N.Y.S.2d 729 (2d Dep't), *aff'd*, 3 N.Y.2d 857, 145 N.E.2d 23, 166 N.Y.S.2d 307 (1955); Runkel v. City of New York, 282 App. Div. 173, 123 N.Y.S.2d 485 (2d Dep't 1953).

4. Runkel v. City of New York, 282 App. Div. 173, 177, 123 N.Y.S.2d 485, 489 (2d Dep't 1953); N.Y.C. Administrative Code §§ 564-15.0, 564-17.0, C 26-193.0, C 26-194.0 to -198.0, C 26-201.0; N.Y. Mult. Dwell. Law § 309.

5. Weiner v. Leroco Realty Corp., 279 N.Y. 127, 17 N.E.2d 796 (1938).

licensees to at least refrain from affirmative acts of negligence.[6] There is a greater duty upon a landowner to protect children from danger than in the case of adults.[7] Further, the fact that the dangerous instrumentality is situated adjacent to an area where children are likely to be, such as a public playground, is relevant in the determination of liability to trespassing children.[8] Maintaining an inherently dangerous instrumentality without exercising a high degree of care is equivalent to a willful, wanton or intentional act.[9] The fact that the landowner is a city is of no relevance; the sovereign immunity of governmental functions no longer exists,[10] and the test is "whether an individual or private corporation, assuming that he or it were obligated to discharge the governmental duty involved, would be liable to the injured person for a breach of that duty."[11]

The instant facts closely parallel those of the *Runkel* case. The infant plaintiff in *Runkel* was injured when the building in which he was trespassing collapsed upon him; there, the same statutory provisions applied as here. In the instant case, the infant plaintiff was injured by falling from an open window to which he retreated in order to avoid being injured by the plaster falling from the ceiling of the building in which he was trespassing. On this factual difference, the majority opinion distinguished the instant case from *Runkel*:

> . . . While there can be no doubt that the vacant house was in a state of disrepair, there is no proof in the record to show that it was so rotted and decayed as to have been in imminent danger of collapse and thus a trap or an inherently dangerous structure.[12]

Further, the majority expressly stated that the statutory provisions involved do not create absolute liability, citing as authority, none other than the *Runkel* case:

> . . . The *Runkel* determination . . . did no more than hold that the aforementioned statutory provisions defined, in the interest of the general public, the degree of care to be exercised under specified circumstances: it did not decide that their violation created a liability per se.[13]

Chief Judge Desmond differed in his dissent and asserted that *Runkel* decided that the statutory provisions involved imposed upon landowners absolute liability, and that *Runkel* completely controlled the instant case. According

6. See Morse v. Buffalo Tank Corp., 280 N.Y. 110, 19 N.E.2d 981 (1939); Mayer v. Temple Properties, 307 N.Y. 559, 122 N.E.2d 909 (1954).

7. DiBiase v. Ewart & Lake, 228 App. Div. 407, 240 N.Y. Supp. 132 (4th Dep't 1930), *aff'd*, 255 N.Y. 620, 175 N.E. 339 (1931).

8. See Collentine v. City of New York, 279 N.Y. 119, 17 N.E.2d 792 (1938) (10-yr.-old plaintiff playing on rooftop of barricaded building adjacent to playground).

9. Mayer v. Temple Properties, 307 N.Y. 559, 122 N.E.2d 909 (1954).

10. Dunham v. Village of Canisteo, 303 N.Y. 498, 104 N.E.2d 872 (1952); Steitz v. City of Beacon, 295 N.Y. 51, 64 N.E.2d 704 (1945).

11. Runkel v. City of New York, 282 App. Div. 173, 178, 123 N.Y.S.2d 485, 490 (2d Dep't 1953).

12. Instant case at 405, 190 N.E.2d at 415, 240 N.Y.S.2d at 20.

13. Instant case at 406, 190 N.E.2d at 416, 240 N.Y.S.2d at 21.

to the majority, the duty imposed, namely the requisite degree of care necessary to relieve the instant defendant from liability, would be fulfilled if the jury found that the house had been secured upon its becoming vacant, that frequent inspections had been made of the premises, and resecurement had been effected when items amiss were ascertained. The fact that the house was actually in violation of the statute at the time of the accident would, under such circumstances, have no bearing upon liability.[14]

A careful reading of the *Runkel* decision, expressly stated in terms of mandatory duty regardless of negligence, does not easily admit of the concepts of reasonableness and degree of care. In the instant case, the Court has, in effect, substantially modified if not overruled the *Runkel* decision. The statutory provisions involved here, admittedly designed for individual and public safety, are of the tenor which historically have imposed strict liability.[15] Even assuming *Runkel* to admit of varying degrees of care, the previously noted policy of the Court to exact a high degree of care where trespassing children are involved, especially where the landowner is on notice that children are or will likely be in close proximity to the dangerous instrumentality,[16] would seem to warrant a recovery on the instant facts since the ten-year-old infant plaintiff had been playing at a playground adjacent to the abandoned house. Further, the distinction drawn by the majority between a building in imminent danger of collapse and a building in a state of disrepair seems at best unrealistic both in light of the statutory mandate and the facts. It stretches the imagination to find substantial difference between a collapsing building and a collapsing ceiling as injury-precipitating agents: one seems as inherently dangerous as the other. In view of the availability of insurance protection to landowners, the nature of the risks involved in maintaining dilapidated structures on one's property, and the manifest intent of such socially desirable statutory enactments as are herein involved, the position of the dissent seems highly preferable.

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MALPRACTICE—CAUSE OF ACTION ACCRUES ONLY AT END OF TREATMENT WHICH INCLUDES WRONGFUL ACTS OR OMISSIONS

Infant plaintiff on October 10, 1956, was taken to defendant city's hospital for treatment of severe burns. Following initial treatment and dressing of wounds the infant, by reason of the hospital personnel's negligence, suffered permanent brain damage at the hosptital on the night he was admitted. In addition to the first act of negligence, the child was the victim of neglect amounting to malpractice on three later occasions, the last of which occurred

14. Instant case at 408, 190 N.E.2d at 417, 240 N.Y.S.2d at 22.
15. See Weiner v. Leroco Realty Corp., 279 N.Y. 127, 17 N.E.2d 796 (1938).
16. See DiBiase v. Ewart & Lake, 228 App. Div. 407, 240 N.Y. Supp. 132 (4th Dep't 1930) *aff'd*, 255 N.Y. 620, 175 N.E. 339 (1931); Collentine v. City of New York, 279 N.Y. 119, 17 N.E.2d 792 (1938); Mayer v. Temple Properties, 307 N.Y. 559, 122 N.E.2d 909 (1954).