Chicago-Kent Law Review

Volume 38 | Issue 1 Article 6

April 1961

Negligence - Acts or Omissions Constituting Negligence - Whether Landowners and Occupiers Owe Firemen and Policemen the Duty of Reasonable Care

G. R. Lambert

NEGLIGENCE — ACTS OR OMISSIONS CONSTITUTING NEGLIGENCE — WHETHER LANDOWNERS AND OCCUPIERS OWE FIREMEN AND POLICEMEN THE DUTY OF REASONABLE CARE—The question of whether a landowner or occupier is liable to firemen for the negligent maintenance of his premises was re-examined[1] by the Illinois Supreme Court in the recent case of *Dini* v. *Naiditch*.[2] Therein, the defendant owners maintained a business on the ground floor of their four-story building and the defendant lessees operated a hotel on the upper three floors of the same building. Access to the hotel floors was by way of a wooden stairway which was supported by stringers that were nailed to the walls rather than recessed. Upon responding to the fire alarm radioed in by a police officer, several firemen proceeded up the stairway to enhance rescue operations. One fireman was on the second floor landing and two firemen were on the stairway between the second and third floors when the entire stairway collapsed without warning and fell into a heap at the first floor level. One fireman was killed and another fireman suffered permanent injuries. Wrongful death and personal injury actions were brought in the Superior Court of Cook County where it was alleged that the defendants were liable for the negligent maintenance of their premises in violation of certain fire safety ordinances. The evidence that the premises were in an unsafe condition prior to and at the time of the fire was extensive and the jury returned verdicts for the plaintiffs; however, the Superior Court of Cook County entered a judgment for the defendants notwithstanding the verdicts on the ground that there was no legal basis for liability. On direct appeal,[3] the Illinois Supreme Court in a four-to-three decision reversed the judgment and remanded the case with directions that the jury verdicts in favor of the plaintiffs be reinstated by the lower court. The *Gibson* v. *Leonard* case,[4] along with several Illinois Appellate court cases,[5] were expressly overruled, and the Illinois Supreme Court concluded that an action should lie against a landowner for failure to exercise reasonable care in the maintenance of his prop-

[1] The Illinois Supreme Court examined this question in the case of Gibson v. Leonard, 143 Ill. 182, 32 N. E. 182 (1892).

[2] 20 Ill. (2d) 406, 170 N. E. (2d) 881 (1960). Schaefer, C. J. and Klingbiel, J. wrote dissenting opinions. House, J. also dissented.

[3] Direct appeal to the Illinois Supreme Court is authorized by Ill. Rev. Stat. 1959, Vol. 2, Ch. 110, § 75, where the validity of a municipal ordinance is involved and the trial judge certifies that such an appeal is required in the public interest. Apparently, it was upon this ground that the Illinois Supreme Court had jurisdiction to review the present case; however, the majority opinion did not specify the grounds upon which the direct appeal was authorized and one of the dissenting judges denied that any valid grounds existed.

[4] 143 Ill. 182, 32 N. E. 182 (1892).

[5] Volluz v. East St. Louis Light & Power Co., 210 Ill. App. 565 (1918); Thrift v. Vandalia R. Co., 145 Ill. App. 414 (1908).

erty resulting in the injury or death of a fireman rightfully on the premises, fighting the fire at a place where he might reasonably be expected to be. As an additional basis of liability, it was held that the fire safety ordinances, being general in their terms, included firemen within their protection, and that the jury reasonably found that the defendants violated these ordinances and that such violations proximately caused the injury and death of the firemen.

In dealing with the liability of a landowner or occupier to one injured by conditions or activities on the premises, the law has traditionally applied a formula which designates unlawful entrants "trespassers" and lawful entrants "licensees" or "invitees",[6] and to each class, the landowner or occupant is held to a respective duty of care. As to lawful entrants, the first American case which recognized the licensee-invitee distinction was *Sweeney* v. *Old Colony & Newport R. Co.*[7] Therein, Chief Justice Bigelow held that a landowner was bound to keep his premises in a safe condition for those who entered by his *invitation,* but that the same obligation did not extend to those who entered by his mere *permission.*

Firemen and policemen in the performance of official duties enter private premises by public right; therefore, their entry is actually lawful, even though independent of any invitation or permission of the landowner.[8] Since a landowner owes an obligation to consider the safety of those lawfully on his land, the courts have been faced with the problem of categorizing firemen and policemen as licensees or invitees in order to determine the degree of care to which such public officials are entitled.

Although firemen and policemen have been denied relief on the grounds of contributory negligence,[9] assumption of risk,[10] no breach of duty[11] or proximately caused injury,[12] most jurisdictions have recognized the rule that recovery should be denied because, absent a statute or ordinance, a member of a public fire or police department enters the prem-

[6] See Bohlen, Studies in the Law of Torts (Bobbs-Merrill Co., Indianapolis, 1926), p. 159.

[7] 10 Allen (Mass.) 368, 87 Am. Dec. 644 (1865).

[8] See Bohlen, op. cit., p. 162.

[9] Egan v. Werfel et al., 246 App. Div. 553, 282 N. Y. S. 834 (1935); Glander v. Milwaukee Electric Ry. & Light Co., 155 Wis. 381, 144 N. W. 972 (1914).

[10] McDaniel v. The m/s Lisholt et al., 155 F. Supp. 619 (1957); Suttie v. Sun Oil Co., 15 Pa. D. & C. 3 (1931). See also Baker v. Otis Elevator Co., 78 App. Div. 513, 79 N. Y. S. 663 (1903), where relief was denied for an unreasonable and unanticipated entry.

[11] Clark v. Boston & M. R., 78 N. H. 428, 101 A. 795 (1917).

[12] Ga. R. & Banking Co. et al. v. Konkle, 36 Ga. App. 569, 137 S. E. 113 (1927); Woods v. Miller et al., 30 App. Div. 232, 52 N. Y. S. 217 (1898).

ises as a mere *licensee by operation of law,* to whom the landowner owes no greater duty than to refrain from inflicting a wilful or wanton injury.[13]

Many courts have long considered this general rule, imposing no affirmative duty on the landowner or occupier to make the land safe for firemen and policemen, very harsh; therefore, it is not surprising that over the years various exceptions and distinctions have developed.

For example, it has become widely accepted that the landowner owes a licensee the duty (1) to refrain from active negligence when the presence of the licensee is known, and (2) to inform the licensee of any known concealed dangerous conditions when the opportunity to warn exists.[14] Firemen and policemen have recovered on the basis of active negligence in some cases,[15] and landowners and occupiers have been fre-

[13] Pennebaker et al. v. San Joaquin Light & Power Co., 158 Cal. 579, 112 P. 459 (1910); Lunt v. Post Printing & Publishing Co., 48 Colo. 316, 110 P. 203 (1910); Baxley v. Williams Const. Co. et al., 98 Ga. App. 662, 106 S. E. (2d) 799 (1958); Todd v. Armour & Co., 44 Ga. App. 609, 162 S. E. 394 (1932); Pincock v. McCoy, 48 Ida. 227, 281 P. 371 (1929); Casey v. Adams, 234 Ill. 350, 84 N. E. 933 (1908); Gibson v. Leonard, 143 Ill. 182, 32 N. E. 182 (1892); Volluz v. East St. Louis Light & Power Co., 210 Ill. App. 565 (1918); Thrift v. Vandalia R. Co., 145 Ill. App. 414 (1908); Eckels et al. v. Maher, 137 Ill. App. 45 (1907); Woodruff v. Bowen, 136 Ind. 431, 34 N. E. 1113 (1893); Steinwedel v. Hilbert et al., 149 Md. 121, 131 A. 44 (1925); Carroll v. Hemenway et al., 315 Mass. 45, 51 N. E. (2d) 952 (1943); Aldworth v. F. W. Woolworth Co., 295 Mass. 344, 3 N. E. (2d) 1008 (1936); Wynn v. Sullivan, 294 Mass. 562, 3 N. E. (2d) 236 (1936); Brennan v. Keene, 237 Mass. 556, 130 N. E. 82 (1921); Creeden v. Boston & M. R., 193 Mass. 280, 79 N. E. 344 (1906); Berry v. Boston Elevated Ry. Co., 188 Mass. 536, 74 N. E. 933 (1905); Mulcrone v. Wagner, 212 Minn. 478, 4 N. W. (2d) 97 (1942). 141 A. L. R. 580; Hamilton v. Minneapolis Desk Mfg. Co., 78 Minn. 3, 80 N. W. 693 (1899); Wax v. Co-Operative Refinery Ass'n et al., 154 Neb. 805, 49 N. W. (2d) 707 (1951); Fentress v. Co-Operative Refinery Ass'n et al., 149 Neb. 355, 31 N. W. (2d) 225 (1948); Trouton v. New Omaha Thomson-Houston Electric Light Co., 77 Neb. 821, 110 N. W. 569 (1906); New Omaha Thomson-Houston Electric Co. v. Anderson, 73 Neb. 84, 102 N. W. 89 (1905); New Omaha Thomson-Houston Electric Co. v. Bendson, 73 Neb. 49, 102 N. W. 96 (1905); Eckes v. Stetler et al., 98 App. Div. 76, 90 N. Y. S. 473 (1904); Kithcart v. Feldman et al., 89 Okla. 276, 215 P. 419 (1923); Drake v. Fenton, 237 Pa. 8, 85 A. 14 (1912); Beehler v. Daniels et al., 18 R. I. 563, 29 A. 6 (1894); Burroughs Adding Mach. Co. v. Fryar, 132 Tenn. 612, 179 S. W. 127 (1915). See annotations in 13 A. L. R. 637 and 141 A. L. R. 584. See also annotations in 61 A. L. R. 1028.

[14] Prosser, Law of Torts (West Publishing Co., St. Paul, 1955), 2d Ed., p. 445. See also In Restatement, Law of Torts (1934), Vol. 2, §§ 341-342, pp. 929-938.

[15] Poole v. Central of Ga. Ry. Co., 23 Ga. App. 285, 97 S. E. 886 (1919); Ryan v. Chicago & N. W. Ry. Co., 315 Ill. App. 65, 42 N. E. (2d) 128 (1942); Bandosz v. Daigger & Co., 255 Ill. App. 494 (1930); Ahern v. Boston Elevated Ry. Co., 210 Mass. 506, 97 N. E. 72 (1912); Ingalls v. Adams Exp. Co., 44 Minn. 128, 46 N. W. 325 (1890); Cameron v. Kenyon-Connell Commercial Co. et al., 22 Mont. 312, 56 P. 358 (1899); Lamb et al. v. Sebach, 52 Ohio App. 362, 3 N. E. (2d) 686 (1935); Texas Cities Gas Co. v. Dickens et al., 156 S. W. (2d) 1010 (1941); Andrews v. York, 192 S. W. 338 (1917); Houston Belt & Terminal Ry. Co. et al. v. Johansen, 107 Tex. 336, 179 S. W. 853 (1915); Boyd v. Texas & P. Ry. Co., 141 S. W. 1076 (1911); Houston Belt & Terminal Ry. Co. et al. v. O'Leary, 136 S. W. 601 (1911); Bradburn v. Whatcom County Ry. & Light Co., 45 Wash. 582, 88 P. 1020 (1907). It is interesting to note the extent some of the Texas cases have gone in applying the active negligence exception.

quently liable for their failure to warn of hidden dangers or unusual hazards.[16] The failure to warn exception was considered in many cases, but firemen and policemen were denied relief because a warning was given,[17] the danger was obvious,[18] the defendant was unaware of the condition,[19] the defendant had no duty to warn,[20] or the exception did not extend to structural defects.[21]

The majority rule was avoided in one instance on the proposition that a policeman entering at the express request of the occupant is an invitee;[22] however, several courts have expressly refused to attach the invitee status to firemen under similar circumstances.[23] It has been only under unique situations that the courts have predicated landowner liability on the ground that the firemen and policemen were invitees,[24] or business visitors.[25] Although the Tennessee Supreme Court held the deceased fire-

[16] Scottish Rite Supreme Council v. Jacobs, 266 F. (2d) 675 (1959); Shypulski v. Waldorf Paper Products Co., 232 Minn. 394, 45 N. W. (2d) 549 (1951); Schwab v. Rubel Corp. et al., 286 N. Y. 525, 37 N. E. (2d) 234 (1941); Jenkins et al. v. 313-321 W. 37th St. Corp. et al., 284 N. Y. 397, 31 N. E. (2d) 503 (1940); James v. Cities Service Oil Co., 66 Ohio App. 87, 31 N. E. (2d) 872 (1939); Lamb et al. v. Sebach, 52 Ohio App. 362, 3 N. E. (2d) 686 (1935); Mason Tire & Rubber Co. v. Lansinger, 108 Ohio St. 377, 140 N. E. 770 (1923). See annotation in 55 A. L. R. (2d) 525. See also Smith v. Twin State Gas & Electric Co., 83 N. H. 452, 144 A. 57 (1928), 61 A. L. R. 1015; Campbell et al. v. Pure Oil Co., 15 N. J. Misc. R. 723, 194 A. 873 (1937); City of Youngstown v. Cities Service Oil Co., 66 Ohio App. 97, 31 N. E. (2d) 876 (1940).

[17] Wax v. Co-Operative Refinery Ass'n. et al., 154 Neb. 805, 49 N. W. (2d) 707 (1951); Duane v. Pa. R. Co., 310 Pa. 334, 165 A. 231 (1933).

[18] Todd v. Armour & Co., 44 Ga. App. 609, 162 S. E. 394 (1932); Wax v. Co-Operative Refinery Ass'n et al., 154 Neb. 805, 49 N. W. (2d) 707 (1951); Davy v. Greenlaw et al., 101 N. H. 134, 135 A. (2d) 900 (1957); Gannon v. Royal Properties, 285 App. Div. 131, 136 N. Y. S. (2d) 129 (1954); Buckeye Cotton Oil Co. v. Campagna, 146 Tenn. 389, 242 S. W. 646 (1922).

[19] Litch v. White et al., 160 Cal. 497, 117 P. 515 (1911); Duane v. Pa. R. Co., 310 Pa. 334, 165 A. 231 (1933).

[20] Trouton v. New Omaha Thomson-Houston Electric Light Co., 77 Neb. 821, 110 N. W. 569 (1906); New Omaha Thomson-Houston Electric Co. v. Anderson, 73 Neb. 84, 102 N. W. 89 (1905); New Omaha Thomson-Houston Electric Co. v. Bendson, 73 Neb. 49, 102 N. W. 96 (1905).

[21] Nastasio v. Cinnamon, 295 S. W. (2d) 117 (1956); Anderson v. Cinnamon, 365 Mo. 304, 282 S. W. (2d) 445 (1955), 55 A. L. R. (2d) 516. In the second case it was stated that there was no duty to warn licensees of structural conditions due to age and natural deterioration or *to improper construction* because such conditions are capable of being observed and ascertained.

[22] Learoyd v. Godfrey, 138 Mass. 315 (1885).

[23] Lunt v. Post Printing & Publishing Co., 48 Colo. 316, 110 P. 203 (1910); Roberts v. Rosenblatt et al., 146 Conn. 110, 148 A. (2d) 142 (1959); Baxley v. Williams Const. Co. et al., 98 Ga. App. 662, 106 S. E. (2d) 799 (1958); Smith v. Twin State Gas & Electric Co., 83 N. H. 452, 144 A. 57 (1928). These courts have justified this rule on the basis that the response is made to a call to duty rather than to an invitation.

[24] Clinkscales v. Mundkoski et al., 183 Okla. 12, 79 P. (2d) 562 (1938); St. Louis-San Francisco Ry. Co. et al. v. Williams, 176 Okla. 465, 56 P. (2d) 815 (1936).

[25] Zuercher v. Northern Jobbing Co., 243 Minn. 166, 66 N. W. (2d) 892 (1954).

man was an invitee in *Buckeye Cotton Oil Co.* v. *Campagna*,[26] recovery was denied because his death was the result of a patent defect.

Only in recent years, have a number of courts shown a tendency to avoid the strictness of the traditional licensee-invitee formula by questioning its applicability to firemen and policemen. In holding that a police officer was not a mere licensee, the court in the case of *Ryan* v. *Chicago & N. W. Ry. Co.* stated: "A rule of law which holds one thus upon the land of another as a mere licensee is like putting 'new wine into old bottles.' The complex and difficult questions of right arising out of our modern civilization cannot be decided by a worn out formula based on feudal customs which have passed away."[27] Subsequently, several courts have announced the rule that firemen and policemen have a status *sui generis,* because any rule flatly categorizing firemen and policemen with invitees and licensees disregards the basic fact that firemen and policemen enter private premises without invitation or license of the landowner.[28] A Connecticut court refused to label a fireman a licensee, but it held his status was akin to that of a licensee.[29]

Another distinction has been made which has permitted a few courts, in a limited factual situation, to impose upon the landowner the duty of reasonable care for the protection of lawful entrants. Although this distinction has been called the New York rule, it was apparently an extension of an old Massachusetts decision.[30] In *Meiers* v. *Koch Brewery*,[31] the New York Court of Appeals in a four-to-three decision limited its decision in favor of the plaintiff to the precise facts before it—to the case of one not a licensee, who entered business property as of right over a way prepared as a means of access for those entitled to enter and was injured by the negligence of the landowner, who failed to keep that way in a reasonably safe condition for those using it as it was intended to be

[26] 146 Tenn. 389, 242 S. W. 646 (1922).

[27] 315 Ill. App. 65 at 75, 42 N. E. (2d) 128 at 132 (1942). This decision was treated in 28 Cornell L. Q. 232, where the author submitted that the holding in the Ryan case was an undesirable extension of liability.

[28] Shypulski v. Waldorf Paper Products Co., 232 Minn. 394, 45 N. W. (2d) 549 (1951); Anderson v. Cinnamon, 365 Mo. 304, 282 S. W. (2d) 445 (1955), 55 A. L. R. (2d) 516; Krauth v. Geller, 31 N. J. 270, 157 A. (2d) 129 (1960); Beedenbender v. Midtown Properties, 2 App. Div. (2d) 276, 164 N. Y. S. (2d) 276 (1957).

[29] Roberts v. Rosenblatt et al., 146 Conn. 110, 148 A. (2d) 142 (1959).

[30] Learoyd v. Godfrey, 138 Mass. 315 (1885). Although the court gave the policeman the status of an invitee on the assumption he was invited by the occupant, the court held it was the duty of the defendant to keep the approach to his premises in a safe condition.

[31] 229 N. Y. 10, 127 N. E. 491 (1920), 13 A. L. R. 633. This case was recently discussed in 25 Albany L. Rev. 105.

used.[32] Subsequent New York decisions have denied that the Meiers case made firemen and policemen invitees,[33] or that such public officials are necessarily entitled to the duty of care owed invitees.[34] Apparently, up to the time of the present case, the New York rule had been accepted in only one other jurisdiction.[35]

Courts have also been able in some cases to hold landowners liable for the injuries suffered by firemen and policemen on the grounds that a statute or municipal ordinance had been violated. Apparently the first such case was *Parker* v. *Barnard*.[36] Therein, a police officer entered the building for inspection purposes and fell down an unguarded elevator well, and it was held the plaintiff could recover since the statute was intended to provide protection for all persons who were in buildings in the lawful performance of their duties. Subsequent cases have also held that firemen and policemen were within that class of persons protected by legislation specific[37] or general[38] in its terms. One ordinance specifically conferred upon the family and relatives an additional right of action for the death of a fireman, but such right did not extend to the executor or administrator of the deceased fireman's estate.[39] However, the majority of jurisdictions have denied liability where a statute or ordinance was involved because such legislation was not enacted for the benefit of firemen and policemen,[40] or the defendant had violated no common law[41]

[32] The theory of the decision is that the firemen might assume that a driveway, prepared by the defendant for the use of those having business with him, was safe; that the driveway was adapted and designed to be used as the plaintiff fireman was using it; and that the fireman was not a licensee or trespasser, but was rightfully on the premises, and a duty of reasonable care was owing to him. See 13 A. L. R. 641.

[33] Beedenbender v. Midtown Properties, 2 App. Div. (2d) 276, 164 N. Y. S. (2d) 276 (1957).

[34] Maloney v. Hearst Hotels Corp., 274 N. Y. 106, 8 N. E. (2d) 296 (1937).

[35] Taylor v. Palmetto Theater Co., 204 S. C. 1, 28 S. E. (2d) 538 (1943).

[36] 135 Mass. 116, 46 Am. Rep. 450 (1883).

[37] Racine v. Morris et al., 201 N. Y. 240, 94 N. E. 864 (1911).

[38] Rathbun v. White et al., 157 Cal. 248, 107 P. 309 (1910); Bandosz v. Daigger & Co., 255 Ill. App. 494 (1930); Cameron v. Kenyon-Connell Commercial Co. et al., 22 Mont. 312, 56 P. 358 (1899); Maloney v. Hearst Hotels Corp., 274 N. Y. 106, 8 N. E. (2d) 296 (1937); Carlock v. Westchester Lighting Co., 268 N. Y. 345, 197 N. E. 306 (1935); Drake v. Fenton, 237 Pa. 8, 85 A. 14 (1912).

[39] Cramer v. Nuccetelli, 2 Misc. (2d) 508, 151 N. Y. S. (2d) 544 (1956).

[40] Gibson v. Leonard, 143 Ill. 182, 32 N. E. 182 (1892); Thrift v. Vandalia R. Co., 145 Ill. App. 414 (1908); Woodruff v. Bowen, 136 Ind. 431, 34 N. E. 1113 (1893); Hamilton v. Minneapolis Desk Mfg. Co., 78 Minn. 3, 80 N. W. 693 (1899); Wax v. Co-Operative Refinery Ass'n et al., 154 Neb. 805, 49 N. W. (2d) 707 (1951); Kelly v. Muhs Co., 71 N. J. L. 358, 59 A. 23 (1904).

[41] Litch v. White et al., 160 Cal. 497, 117 P. 515 (1911); Carroll v. Hemenway et al., 315 Mass. 45, 51 N. E. (2d) 952 (1943); Wynn v. Sullivan, 294 Mass. 562, 3 N. E. (2d) 236 (1936); New Omaha Thomson-Houston Electric Co. v. Anderson, 73 Neb. 84, 102 N. W. 89 (1905); New Omaha Thomson-Houston Electric Co. v. Bendson, 73 Neb. 49, 102 N. W. 96 (1905); Beehler v. Daniels et al., 19 R. I. 49, 31 A. 582 (1895).

or statutory duty.[42] It is interesting to note that subsequent Massachusetts cases have expressly overruled the Parker case on this particular point.[43]

Before the present case, the Illinois law on the subject of landowner-occupier liability to firemen and policemen injured on private premises was limited to five cases denying relief[44] and two cases granting recovery.[45] The Illinois Supreme Court announced in the Gibson case what was to become the majority rule; namely, that, absent a statute or municipal ordinance, a member of a public fire department entering the premises in an emergency in the discharge of his duty is a mere licensee, to whom no duty is owed, except to refrain from willful or affirmative acts which are injurious. In addition, it was held that firemen were not entitled to the benefit of an ordinance which was in express terms intended for the protection of factory employees. The applicability of this general rule was extended to policemen in *Eckels et al.* v. *Maher*[46] and in *Casey* v. *Adams.*[47] The Illinois Appellate courts in *Thrift* v. *Vandalia R. Co.*[48] and *Volluz* v. *East St. Louis Light & Power Co.*[49] followed the previous decisions; however, an attempt was made in the Thrift case to distinguish it on the ground that the alleged ordinance was general in its terms. The court stated: "An ordinance which could properly be construed to impose upon a railroad company the duty to anticipate the presence of persons, even peace officers in the performance of their official duties, upon its private right of way necessarily at rare intervals and at unexpected times and places, and to exercise continuous vigilance to avoid injuring them, would be manifestly unreasonable, and seriously interfere with the practical operation of railroads."[50] But in granting relief in *Bandosz* v. *Daigger & Co.*,[51] the Illinois Appellate Court felt that firemen should receive the benefit of legislation stated in general terms, as their duties

[42] Aldworth v. F. W. Woolworth Co., 295 Mass. 344, 3 N. E. (2d) 1008 (1936); Davy v. Greenlaw et al., 101 N. H. 134, 135 A. (2d) 900 (1957).

[43] Carroll v. Hemenway et al., 315 Mass. 45, 51 N. E. (2d) 952 (1943); Aldworth v. F. W. Woolworth Co., 295 Mass. 344, 3 N. E. (2d) 1008 (1936); Wynn v. Sullivan, 294 Mass. 562, 3 N. E. (2d) 236 (1936).

[44] Casey v. Adams, 234 Ill. 350, 84 N. E. 933 (1908); Gibson v. Leonard, 143 Ill. 182, 32 N. E. 182 (1892); Volluz v. East St. Louis Light & Power Co., 210 Ill. App. 565 (1918); Thrift v. Vandalia R. Co., 145 Ill. App. 414 (1908); Eckels et al. v. Maher, 137 Ill. App. 45 (1907).

[45] Ryan v. Chicago & N. W. Ry. Co., 315 Ill. App. 65, 42 N. E. (2d) 128 (1942); Bandosz v. Daigger & Co., 255 Ill. App. 494 (1930).

[46] 137 Ill. App. 45 (1907).

[47] 234 Ill. 350, 84 N. E. 933 (1908).

[48] 145 Ill. App. 414 (1908).

[49] 210 Ill. App. 565 (1918).

[50] 145 Ill. App. 414 at 416.

[51] 255 Ill. App. 494 (1930). Therein, it was held that whether the defendant's violation of the ordinance and statute constituted wanton and willful conduct was a question of fact for the jury.

require them to go into places of danger which should not be increased by the presence of unlawful quantities of volatile combustibles. Recovery was also granted in the Ryan case where the distinction was made between active negligence and negligence resulting from the actual condition of the premises. As previously noted, it was in this case that the court criticized the traditional licensee-invitee formula. Therefore, it is not surprising that in the instant case the Illinois Supreme Court relied to some extent upon the Ryan and Bandosz decisions in abandoning the licensee-invitee formula and in extending the protection of ordinances, being in general terms, to firemen and policemen.

The factual situation in the present case enabled the Illinois Supreme Court to place great reliance upon the New York rule requiring landowners and occupiers to keep that portion of the premises normally used as a means of access in a safe condition for all persons lawfully entering thereon. The Illinois Supreme Court stated that: ". . . we would agree with the court in the Meiers case, and with its adherents, that an action should lie against a landowner for failure to exercise reasonable care in the maintenance of his property resulting in the injury or death of a fireman rightfully on the premises, fighting the fire *at a place where he might reasonably be expected to be.*"[52] Query, can a fireman or policeman reasonably be expected to be at a place that is not customarily used as a means of egress and ingress? The language of the Illinois Supreme Court could have been limited to the precise factual situation presented, but it would seem that the language used might have left the door open for a liberalization in the future of the limited New York rule. It seems ironic that the court which promulgated the strict majority rule should render a decision which might possibly be used in the future to further a trend aimed at avoiding the harshness of its original pronouncement.

G. R. LAMBERT

SUBROGATION—ASSIGNMENT OR BENEFIT OF SECURITY OR INCUMBRANCE —WHETHER A SUBSEQUENT LENDER IS SUBROGATED TO RIGHTS OF ORIGINAL CONDITIONAL VENDOR AS AGAINST AN INTERVENING CHATTEL MORTGAGEE— In the recent case of *Western United Dairy Company* v. *Continental Mortgage Company*[1] a reviewing court of Illinois was presented for the first time with the question of whether the doctrine of conventional subrogation was applicable to a series of transactions involving personal property rather than realty. The plaintiff therein obtained and recorded a

[52] 20 Ill. (2d) 406 at 416-417, 170 N. E. (2d) 881 at 886. Italics added. For a treatment of the present case, see 49 Ill. B. J. 594.

[1] 28 Ill. App. 2d 132, 170 N. E. 2d 650 (1960).