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Negligence - Duty of Landlord Toward his Own Social Guest Injured on a Common Stairway

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NEGLIGENCE—DUTY OF LANDLORD TOWARD HIS OWN SOCIAL GUEST INJURED ON A COMMON STAIRWAY—Defendant was co-owner of an apartment house and occupied one of the apartments. Plaintiff, his invited social guest, was injured while descending the common stairway because of defendant's negligence in failing to provide adequate lighting. A directed verdict for the defendant was affirmed by the appellate division[1] on the ground that plaintiff as a social guest of the landowner was only a licensee. On appeal to the supreme court, *held*, reversed, three judges dissenting.[2] A social guest of the landlord is an invitee while on the common stairway and therefore may recover for injuries sustained due to negligent maintenance of the premises. *Taneian v. Meghrigian*, 15 N.J. 267, 104 A. (2d) 689 (1954).

It is well settled that a social guest of a landowner, even if expressly invited, is a mere licensee.[3] Although direct authority is lacking where the injury is sustained on a common passageway,[4] it seems clear that such a case comes within the purview of this general rule. Thus the principal case cannot be regarded as following prior authority but must be recognized as the first attempt to modify the social guest rule. The question is whether such a deflection from well-established principles is justified. The basis of the court's decision was that the landlord is already under the duty to maintain the stairway with due care for guests of the tenants who, to him, are invitees while on areas of common control;[5] the fact that the occupant visited by the guest happens to be the landlord

[1] 27 N.J. Super. 177, 99 A. (2d) 207 (1953).

[2] The dissent was based on the ground that plaintiff was guilty of contributory negligence.

[3] See 25 A.L.R. (2d) 598 (1952). In respect to defects in the premises, the landowner's only duty is to warn his licensee of traps. Laube v. Stevenson, 137 Conn. 469, 78 A. (2d) 693 (1951); 2 TORTS RESTATEMENT §342 (1934).

[4] Schmidt v. Langer, 336 Ill. App. 158, 83 N.E. (2d) 34 (1948), may be directly in point. It was not, however, clear whether the decision in that case was based on the guest's status as a licensee or the fact that the defendant was not negligent. Southcote v. Stanley, 1 H. & N. 247, 156 Eng. Rep. 1195 (1856), denied recovery to an innkeeper's social guest whose injury was caused by a defective front door. In Bartkowski v. Schrembs, 45 Ohio L. Abs. 597, 67 N.E. (2d) 922 (1944), although the injury was sustained on a private stairway, it is significant that the court also finds the plaintiff to be a licensee on the broader ground that he is a social visitor of the landlord's employee. This indicates that the same result would have been reached if the accident occurred on a common stairway.

[5] Gibson v. Hoppman, 108 Conn. 401, 143 A. 635 (1928); Schabel v. Onseyga Realty Co., 233 App. Div. 208, 251 N.Y.S. 280 (1931).

should not exclude the guest from such protection. Under the traditional view, however, the landlord owes such a duty to his tenants' guests only because it is implied as part of the consideration for which the tenant pays his rent.[6] There is no such business advantage from which it may be implied that the landlord assumes a similar duty to his own guests. A possible basis for the court's reasoning may be the theory that the plaintiff is using the stairway for the purposes for which it was thrown open.[7] But courts have rejected similar arguments in cases involving a charity solicitor[8] and a distributor of discount coupons.[9] Another course of reasoning is more persuasive. The court granted the plaintiff the protection afforded an invitee when on the common stairway while admitting that under the social guest doctrine she was a licensee when in the defendant's apartment itself.[10] This suggests that the social guest doctrine should be applied only to guests in the home and not to visitors on what may be called business premises.[11] Society having attached a sacred quality to the concept of the home, it can be argued that the social guest doctrine developed only because it would be inconsistent with this concept to impose on a person the burden of maintaining his home with due care for all who come to visit him. Though no court has specifically recognized this as the reason for the doctrine, a combination of several factors seem to support it. First, the overwhelming majority of cases in which the doctrine has been applied have concerned injuries on premises which are generally regarded as part of a home.[12] Secondly, a reason given by many courts for the social guest rule is that a guest can expect the premises to be maintained only with the same care with which the host maintains them for his own family;[13] this clearly seems to refer only to the host's duty in his own home. Third, the reluctance of the courts to impose the duty of due care on the homeowner can be seen in the strained logic used in several cases to relegate to the status of social guest a person who ostensibly appeared to be a business visitor entitled to invitee status.[14] Even if this theory is accepted and the plaintiff thereby removed from within the scope of the social guest doc-

[6] Reardon v. Shimelman, 102 Conn. 383, 128 A. 705 (1925).

[7] This is the theory of Dean Prosser. See Prosser, "Business Visitors and Invitees," 26 MINN. L. REV. 573 at 601 (1942).

[8] Jones v. Asa G. Candler, 22 Ga. App. 717, 97 S.E. 112 (1918).

[9] Stacy v. Shapiro, 212 App. Div. 723, 209 N.Y.S. 305 (1925).

[10] Principal case at 281.

[11] A common stairway falls within the business premises classification in that the courts have imposed the duty of due care on the landlord because of the business relationship existing between the landlord and his tenants.

[12] See 25 A.L.R. (2d) 598 (1952). Goldberg v. Straus, (Fla. 1950) 45 S. (2d) 883 (front lawn); Sanders v. Brown, 73 Ariz. 116, 238 P. (2d) 941 (1951) (driveway).

[13] Morril v. Morril, 104 N.J.L. 557, 142 A. 337 (1928); Biggs v. Bear, 320 Ill. App. 597, 51 N.E. (2d) 799 (1943).

[14] In Colbert v. Ricker, 314 Mass. 138, 49 N.E. (2d) 459 (1943), H and W were husband and wife. At W's invitation P came to their home to transact business with H. For injuries sustained due to negligent maintenance of the premises, P sued W, the registered owner of the house. Recovery was denied on the ground that P was only a social guest of W. See also Sanders v. Brown, note 12 supra.

trine, the problem still remains as to what status the plaintiff should be awarded. It has been contended that a social visitor confers a real benefit on the landowner and therefore should always be considered an invitee.[15] Another possibility is by analogy to *Meiers v. Fred Koch Brewery*,[16] in which case a fireman was injured in a driveway commonly used for business purposes. The court decided that since the fireman was not on the premises solely for his own purposes, he was more than a licensee, and at least when on business premises should be granted the protection of an invitee.[17] The same reasoning could be applied to the social guest injured on the common stairway, which is part of the landlord's business premises. It should also be noted that the negligence in the instant case was predicated on the violation of a statutory duty.[18] A basis for recovery in the instant case could be found in the dicta of some cases applying similar statutes, this dicta being to the effect that anyone lawfully on the premises would be in the class which the legislature intended to protect.[19] Regardless of the technical legal reasoning, the result of the instant case is justified in that it grants protection to a rightful user of the premises without increasing the burden on the landowner, who already had the general duty to maintain this part of the premises with due care.

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[15] McCarthy, "The Liability of a Possessor of Land in Missouri to Persons Injured While on the Land," 1 Mo. L. REV. 45 at 58 (1936).

[16] 229 N.Y. 10, 127 N.E. 491 (1920).

[17] See Bohlen, "The Duty of a Landowner Towards Those Entering His Premises of Their Own Right," 69 UNIV. PA. L. REV. 142 (1921).

[18] N.J. Rev. Stat. (1937) §55:5-15. For common law and statutory duty to keep common passageways well lighted, see 25 A.L.R. (2d) 496 (1952).

[19] Gibson v. Hoppman, note 5 supra; Roth v. Protos, 120 N.J.L. 502, 1 A. (2d) 10 (1938).