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## NEGLIGENCE-GAS-DUTY TO INSPECT ABANDONED PIPES

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NEGLIGENCE—GAS—DUTY TO INSPECT ABANDONED PIPES—Three persons were asphyxiated in a house in which they were sleeping when pressure caused by the settling of the house broke a gas pipe underneath. The house had no foundation but was supported by posts. Gas service had been discontinued eighteen years before, and the meter was removed at that time. The gas, however, had not been shut off at the curb but was allowed by the company to remain in the pipes beneath the house. The defendant gas company had made no inspection since the service had been discontinued. The plaintiffs, representatives of the deceased persons, brought actions, consolidated for trial, alleging that the defendant gas company

was negligent in failing to inspect, maintain, remove and shut off the gas pipes. On appeal from a judgment dismissing the complaints, *held*, affirmed, three judges dissenting. Failure to shut off the gas at the street curb is not negligent per se, and a gas company is not under a duty to inspect premises beneath which pipes are laid unless it knows that there is possible danger. *Shaw v. Wisconsin Power & Light Co.*, 256 Wis. 176, 40 N.W. (2d) 498 (1949).

Because gas is such an inherently dangerous agency, a company furnishing this service, while not an insurer, is generally held to a higher standard of care than most economic enterprises. The company must take all reasonable precautions suggested by experience and the known danger of the instrumentality.<sup>1</sup> This necessitates a reasonable system of inspection and maintenance. In the ordinary case, however, a company is not under a duty to inspect pipes on private premises and is not liable for accidents caused by a defective condition of which it had no knowledge.<sup>2</sup> Furthermore, all courts agree that failure to shut off gas at the curb when a customer has discontinued this service is not negligent per se. According to almost all authority, however, where the company continues to store its gas in the unused pipe, the law imposes a duty to inspect, maintain, and repair the pipe as long as it is so used.<sup>3</sup> In the principal case the majority of the court held, however, that there is no duty on the part of a gas company to inspect the premises for a possible dangerous condition, even where the service has been permanently discontinued, because a person cannot be charged with negligence unless he has knowledge of the facts out of which the duty arises. Performance of such a duty, the court said, would be a practical impossibility because it would necessitate frequent inspection of all structures in which gas is used.<sup>4</sup> On the

<sup>1</sup> 38 C.J.S., Gas §42a (1943); 24 AM. JUR., Gas Companies §§22, 24 (1939); 12 R.C.L., Gas §46 (1916).

<sup>2</sup> 38 C.J.S., Gas §§42b, 42d (1943); 12 R.C.L., §47 (1916).

<sup>3</sup> "We do not mean to be understood as holding that whenever the service of an owner or tenant is temporarily discontinued it immediately becomes the duty of the company to shut off the gas at the curb or to disconnect the service pipe at the main; but when, as here, the service is permanently and unconditionally terminated, the property owner having therefore no further interest in or benefit from the maintenance of the supply of gas in the pipe, the gas company has no legal right to store it there, especially for an indefinite number of years as in the present instance. While its failure under such circumstances to cut the service off at the street may not in itself constitute negligence, there is imposed upon it the duty to exercise a high degree of care and to inspect, maintain and keep the service pipe in repair as long as it is so used, and for failure to observe this duty it must be held responsible for any resulting injury to innocent persons or their property." *Goodman & Theise v. Scranton Spring-Brook Water Service Co.*, 352 Pa. 488 at 494, 43 A. (2d) 111 (1945). See also 38 C.J.S., Gas §42d (1939); *Koelsch v. Philadelphia Co.*, 152 Pa. 355, 25 A. 522 (1893); *Castner v. Tacoma Gas & Fuel Co.*, 123 Wash. 236, 212 P. 283 (1923). *Contra*, *Reid v. Westchester Lighting Co.*, 236 N.Y. 322, 140 N.E. 712 (1923) where, on similar facts the court, reversing the supreme court, appellate division, found for the defendant gas company. However, the case can be partially explained on the ground of failure of proof that the deceased had died of asphyxiation. Also, the plaintiff's main argument was that the gas company was negligent in not turning the gas off at the curb rather than in failing to inspect the premises.

<sup>4</sup> *Canfield v. West Virginia Central Gas Co.*, 80 W.Va. 731, 93 S.E. 815 (1917) was cited in the majority opinion as authority for the proposition that failure to turn off the gas at the curb was not negligent per se. However, this case states on page 736, with reference to the duty to inspect abandoned pipes: "A gas company is bound to inspect for discovery of leaks due to defects in materials, deterioration of pipes and valves, displacement or dislocation by accident, the weather and the like, because it knows these things often occur."

other hand, the dissenting judges maintained that the gas company, having elected to store its gas in the service pipe instead of shutting it off at the curb, assumed the duty to inspect the pipe at reasonable intervals. They limited this duty, however, to cases where the gas service has been permanently discontinued, thus avoiding the unnecessary conclusion of the majority that to impose such a duty on these facts would force the gas company to inspect all premises on which gas is being used. The rule stated by the minority as to the duty to inspect certainly seems more sound on grounds both of policy and of precedent.<sup>5</sup> In view of the fact that an inspection even the day before the accident would not have disclosed the danger,<sup>6</sup> the court could have decided that failure to inspect was not the proximate cause of the deaths. Certainly this would have been a more desirable rationale than the formulation of a rule that a gas company is under no duty to inspect and maintain pipes which are no longer used to supply the service but are allowed to contain gas.

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<sup>5</sup> See note 3, *supra*.

<sup>6</sup> Principal case at 499.