

Municipal Corporations--Negligence--Failure to Maintain Fire Department and Equipment (Steitz v. City of Beacon, 295 N.Y. 51 (1945))

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The final contention of the defendant was that the city law imposed penalties for non-willful as well as willful violations, whereas the state law only penalized willful violations, and that therefore the local law was unconstitutional. But the defendant was convicted of a willful violation. Thus the question of a non-willful violation is not involved in this case, and the court will not anticipate a question of constitutionality unless it is necessary to the proper rendition of judgment in the case.⁵

E. W.

MUNICIPAL CORPORATIONS—NEGLIGENCE—FAILURE TO MAINTAIN FIRE DEPARTMENT AND EQUIPMENT.—A fire broke out in plaintiff's building, which destroyed his property. An action was brought by him for damages suffered as a result of this fire. Plaintiff alleged that the city negligently failed to keep in repair the pressure and flow regulating valve located near plaintiff's property and that by reason of such negligence an insufficient supply of water was provided to combat effectively the fire in question. Plaintiff based his right of action on the city charter which provided that the city "may construct and operate a system of waterworks . . . and it shall maintain fire, police, school, and poor departments." *Held*, for defendant. The complaint failed to state facts sufficient to constitute a cause of action. *Steitz v. City of Beacon*, 295 N. Y. 51, 64 N. E. (2d) 704 (1945).

The majority opinion in this case reasoned that although the defendant's sovereign immunity was waived by Section 8 of the Court of Claims Act, its liability, like that of an individual or a corporation, was predicated on the circumstances alleged in the complaint. Accordingly, there would be no cause of action against an individual because of failure to protect property from destruction by fire which was started by another unless a duty to quench the fire or indemnify the loss had been assumed by agreement or imposed by statute. There was no such agreement in this instance, the liability rested solely on the city charter defining its power of government, which has been interpreted as not to protect the personal interest of the individual but for the benefit of the community as a whole. "If the plaintiff is to prevail, one who negligently omits to supply sufficient pressure to extinguish a fire started by another assumes an obligation to pay the ensuing damage, though the whole city is laid low. A promisor will not be deemed to have had in mind the assumption of a risk so overwhelming for any trivial reward."¹ An intention to allow the people of the city to recover for fire damages to their property for any omis-

⁵ *Burton v. United States*, 196 U. S. 283, 295, 25 Sup. Ct. 243 (1905).

¹ *Moch Co. v. Rensselaer Water Co.*, 247 N. Y. 160, 166, 159 N. E. 896, 898 (1928).

sion in keeping hydrants, valves, or pipes in repair, would have to be stated in unequivocal language.² The language of the legislature found in the city charter connotes nothing more than a creation of departments of municipal government, the grant of essential powers of government and directions as to their exercise. The individual interest is protected only in its submersion in the protection afforded him as a member of the public.³

The dissenting opinion argued that the complaint did state facts sufficient to constitute a cause of action, insofar as it alleged that the city after installing fire fighting equipment permitted it to fall into disrepair and disuse. When a government neglects the performance of a duty imposed upon it for the sole purpose of protecting the interests of the plaintiff and persons similarly situated, it is liable for the injuries caused by such neglect.⁴ The freedom from liability of a city for its failure to furnish adequate fire protection was heretofore based upon governmental immunity from liability in performing a governmental function,⁵ and since this immunity was removed by statute, the city was liable for its negligent acts committed while engaged in a governmental function. This argument would be convincing except that in order to predicate liability, there must be a duty owing to the individual plaintiff which was violated by the city. Here the charter created a benefit for the inhabitants and only a general duty to the city as a society, but did not create a duty owing to the plaintiff as an individual.

M. K. B.

² *Springfield Fire & Marine Ins. Co. v. Village of Keeseville*, 148 N. Y. 46, 42 N. E. 405 (1895).

³ RESTATEMENT, TORTS (1934) § 288.

⁴ *Foley v. State of New York*, 294 N. Y. 275, 62 N. E. (2d) 69 (1945).

⁵ *Maxmilian v. Mayor*, 62 N. Y. 160 (1875).