

# Negligence--Hospitals--Circumstantial Evidence Constituting a Prima Facie Case (Dillon v. Rockaway Beach Hospital & Dispensary, 284 N.Y. 176 (1940))

St. John's Law Review

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

---

### Recommended Citation

St. John's Law Review (1941) "Negligence--Hospitals--Circumstantial Evidence Constituting a Prima Facie Case (Dillon v. Rockaway Beach Hospital & Dispensary, 284 N.Y. 176 (1940))," *St. John's Law Review*: Vol. 15 : No. 2 , Article 24.  
Available at: <https://scholarship.law.stjohns.edu/lawreview/vol15/iss2/24>

This Recent Development in New York Law is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact [lasalar@stjohns.edu](mailto:lasalar@stjohns.edu).

gaining agreement frustrates the aim of the statute to secure industrial peace through collective bargaining.<sup>16</sup> Administrative agencies dealing with labor relations before the enactment of the National Labor Relations Act had adopted the settled practice of treating the signing of a written contract as the final step in the bargaining process.<sup>17</sup> Congress, by incorporating in the National Labor Relations Act the collective bargaining requirements of the earlier statutes,<sup>18</sup> included as a part thereof the signed agreement.<sup>19</sup>

B. B.

NEGLIGENCE—HOSPITALS—CIRCUMSTANTIAL EVIDENCE CONSTITUTING A PRIMA FACIE CASE.—Plaintiff was admitted to defendant hospital one morning at 8:00 A. M. to undergo an operation. At about 5:30 P. M., a hospital attendant hung an electric light lamp, having a reflector on top of the bedstead at the foot of the bed. Plaintiff was taken to the operating room at about 8:00 P. M., and at that time the lamp was still hanging on the end of the bed. For purposes of the operation, he was given a spinal anesthetic which "deadened" his body from about the middle thereof to the end of his feet. When one hour later he was brought back to his room by two attendants, he was put into bed and covered with a sheet and spread. At about midnight plaintiff felt a burning sensation in his feet and complained to the nurse who, upon lifting the bed clothes, found the electric light lamp. His foot was severely burned, and he now seeks to recover damages for his injury. Defendant contends that plaintiff has failed to state a *prima facie* case as it contains no proof (a) that the burn was caused by the lamp and (b) that the lamp was placed in a position to burn his foot as a result of the negligence of any person for whose act or omission defendant is liable. The Appellate Division affirmed a judgment of the trial term dismissing the complaint. *Held*, reversed, and new trial granted. *Dillon v. Rockaway Beach Hospital & Dispensary*, 284 N. Y. 176, 30 N. E. (2d) 373 (1940).

A hospital, whether charitable or private, is immune from liability for the negligence of its doctors or nurses with respect to any matter relating to a patient's medical care and attention.<sup>1</sup> This exemption

---

<sup>16</sup> See notes 14, 15, *supra*.

<sup>17</sup> *N. L. R. B. v. Highland Park Mfg. Co.*, 110 F. (2d) 632, 638 (C. C. A. 4th, 1940).

<sup>18</sup> See note 17, *supra*.

<sup>19</sup> See notes 14, 17, *supra*.

<sup>1</sup> *CLERK AND LINDSELL, TORTS* (9th ed.) 274 ("The law appears to be that while a hospital authority may not be liable for medical treatment by doctors or nurses, provided reasonable care has been exercised in their selection it will be liable for any of their negligent acts or omissions not directly concerned with medical treatment but in respect to which the doctors and nurses could be considered as servants of the authority").

is granted because of the nature of the hospital's undertaking to its patients, merely to supply independent contractors who will heal or attempt to heal on their own responsibility.<sup>2</sup> In the present case, however, no immunity has been claimed, for the act is of a kind performed by a servant, and it is undisputed that such acts render the hospital liable.<sup>3</sup> The liability depends not so much upon the title of the individual whose act or omission causes the injury as upon the character of the act itself.<sup>4</sup>

On plaintiff's appeal from dismissal at close of his case, he must receive the advantage of every inference properly deducible from facts presented which must be deemed true.<sup>5</sup> The facts alleged may be established by direct or circumstantial evidence or both.<sup>6</sup> With this in mind, the facts alleged have proven that the burn was caused by the lamp. Plaintiff had no burn when put into bed after the operation, and while in bed felt a burning sensation. The lamp was then removed from the vicinity of his foot; the heat pain abated, and a severe burn was noticed. It was also proven that the burn was of a kind which could be caused by the lamp in question. Such a chain of evidence must be deemed sufficient to permit the jury to infer that the lamp caused the injury. To hold otherwise and to determine as a matter of law that the foregoing evidence is insufficient would impose an unduly stringent standard greatly in excess of the requirements of reasonable proof.<sup>7</sup> The right of the jury to reason from established facts to a conclusion has been too long established to require citation of authority.

The proof was also sufficient to permit the jury to find that the injury was caused by defendant's servants. Plaintiff is not required to offer evidence positively excluding every other possible cause of the accident.<sup>8</sup> It is enough that he show facts and conditions from which the negligence of the defendant and the causation of the accident by that negligence may be reasonably inferred.<sup>9</sup> It is not enough that the defendant, in an effort to break the chain of causation, should prove that plaintiff's injury might have resulted from other possible causes. The existence of remote possibilities that factors other than the negligence of the defendant may have caused the accident does not require a holding that plaintiff has failed to make out a *prima facie* case.<sup>10</sup> Circumstantial evidence is sufficient if it supports the inference of

<sup>2</sup> Steinert v. Brunswick Home, 172 Misc. 787, 16 N. Y. S. (2d) 83 (1939).

<sup>3</sup> Sheehan v. North Country Community Hospital, 273 N. Y. 163, 7 N. E. (2d) 28 (1937).

<sup>4</sup> Phillips v. Buffalo General Hospital, 239 N. Y. 188, 146 N. E. 199 (1924).

<sup>5</sup> Feiber v. Copeland, 232 App. Div. 504, 250 N. Y. Supp. 429 (1st Dept. 1931); Wechsler v. United Produce Dealers Ass'n, 126 Misc. 563, 214 N. Y. Supp. 136 (1926).

<sup>6</sup> Faulkinbury v. Shaw, 183 Ark. 1019, 39 S. W. (2d) 708 (1931).

<sup>7</sup> 1 WIGMORE, EVIDENCE (3d ed. 1940) § 41.

<sup>8</sup> Rosenberg v. Schwartz, 260 N. Y. 162, 183 N. E. 282 (1932).

<sup>9</sup> Martin v. Herzog, 228 N. Y. 164, 126 N. E. 814 (1920).

<sup>10</sup> Cornbrooks v. Terminal Barber Shops, Inc., 282 N. Y. 217, 26 N. E. (2d) 25 (1940).

causation or of negligence even though it does not negative the existence of remote possibilities.<sup>11</sup>

R. E. B.

PRIVATE CORPORATIONS—DECLARATION OF DIVIDENDS—SOURCE—GOOD-WILL—UNREALIZED APPRECIATION.—Plaintiff, as Trustee in Bankruptcy of the Bush Terminal Company, brings this action against former directors of the corporation to recover on its behalf the amount of cash dividends declared and distributed during the years 1928–1932 aggregating \$3,639,058.06. The defendant directors are sought to be held personally liable under Section 58<sup>1</sup> of the Stock Corporation Law, as it existed when the dividends here involved were declared and paid. Plaintiff claims: that, although the company's books showed a surplus at the times of the declarations and payments, there was in fact no surplus; and that the capital was actually impaired by the full amount of each of the dividends declared in violation of Section 58. In 1902 defendant Irving T. Bush controlled the Bush Company, Ltd. which was engaged in a going terminal enterprise on the Brooklyn waterfront. This company owned warehouses, piers and railroad facilities. During this year the Bush Terminal Company was formed, and Mr. Bush entered into a contract with the newly formed company; pursuant to which it issued to Mr. Bush \$2,000,000 in bonds and \$3,000,000 in par value common stock and received, in addition to certain services of Mr. Bush, a large tract of industrially improved land contiguous to that owned by the Bush Com-

---

<sup>11</sup> *Ingersoll v. Liberty Bank of Buffalo*, 278 N. Y. 1, 14 N. E. (2d) 828 (1938).

<sup>1</sup> N. Y. STOCK CORP. LAW § 58, as it existed during the period involved here provided as follows: "DIVIDENDS. No stock corporation shall declare or pay any dividend which shall impair its capital or capital stock nor while its capital or capital stock is impaired, . . . unless the *value* of the assets remaining after the payment of such dividend . . . shall be at least equal to the aggregate amount of its debts and liabilities including capital or capital stock as the case may be. In case any such dividend shall be paid . . . the directors in whose administration the same shall have been declared or made, except those who may have caused their dissent therefrom to be entered upon the minutes of the meetings of directors at the time or who were not present when such action was taken shall be liable jointly and severally to such corporation and to the creditors thereof to the full amount of any loss sustained by such corporation or by its creditors respectively by reason of such dividend. . . ." Under this statute, good faith on the part of directors in declaring such dividends was no defense to an action for their recovery. *Quintal v. Greenstein*, 142 Misc. 854, 256 N. Y. Supp. 462, *aff'd*, 236 App. Div. 719, 257 N. Y. Supp. 1034 (1st Dept. 1932). By N. Y. Laws 1939, c. 364, §§ 1, 2, § 58 was amended so as to provide a defense to those directors "who affirmatively show that they had reasonable grounds to believe, and did believe, that such dividend . . . would not impair the capital of such corporation." This amendment was expressly made inapplicable to dividends declared and paid prior to its enactment, hence it does not affect the instant case.