St. John's Law Review

Volume 15, April 1941, Number 2 Article 27

Traffic Infraction--Prima Facie Case of Unlawful Parking (People v. Rubin, 284 N.Y. 392 (1940))

St. John's Law Review

view which the Court of Appeals will take when the problem (involving torts of police officers) is ultimately presented, the result will be that the state will be held liable. The latter eventuality would seem to be the prospect in view of the prevailing trend away from the municipal immunity.[11] At any rate, plaintiffs in such cases as this are not altogether without hope of remedy. The Board of Estimate of the City of New York may, in its discretion, make an award for personal injuries or death caused by a police officer.[12]

L. D. V.

TRAFFIC INFRACTION—PRIMA FACIE CASE OF UNLAWFUL PARKING.—On fifteen different occasions an automobile, of which the defendant was the registered owner, was found by police officers to have been parked continuously for more than one hour in a congested, business or residential street of New York City. Each of these occurrences constituted a violation of a regulation adopted and promulgated by the police commissioner. The district attorney prosecuted these traffic infractions in the Magistrates' Court. The defendant, in per-

---

unnecessarily to blunt the beneficient [*sic*] purpose of the waiver by the State of its immunity."

[11] Duren v. City of Binghamton, 172 Misc. 580, 15 N. Y. S. (2d) 518 (1939), *aff'd*, 258 App. Div. 694, 18 N. Y. S. (2d) 518 (3d Dept. 1940).

[12] N. Y. CITY ADMIN. CODE § 93d—3.0. The history of this section is most interesting. New York City Local Law No. 13 of 1927 empowered the Board of Estimate and Apportionment in its discretion to "make an award to a person who has been or hereafter shall be injured by a police officer while such officer is engaged in arresting any person or in retaking any person who has escaped from legal custody or in executing any legal process." Until after the death had occurred in the case at bar, this law remained unchanged. It was held constitutional in *Matter of Evans* v. *Berry*, 262 N. Y. 61, 186 N. E. 203 (1933), in which the court said: "The fact that the statute applies to persons receiving injuries prior to its enactment is no objection to its validity." In 1934, by New York City Local Law No. 16, § 246-a of the Greater New York Charter prevailing at that time was adopted, and it extended the power of the Board of Estimate and Apportionment to include cases of death caused by police officers under the same circumstances as those set forth in Local Law No. 13 of 1927. Up to that time personal injuries exclusive of death had been covered by the statute. The 1934 amendment further extended the power of the Board to make awards in cases of death or injury caused by police officers while engaged in endeavoring to make arrests. However, it required a unanimous vote of the Board of Estimate as a condition to any award and in place of the words "in its discretion," it used the words "as a matter of grace and not as a matter of right." Except for a minor amendment to § 246-a of that Charter by New York City Local Law No. 7 of 1936, which is not material to the present discussion, the enactment remained unchanged until after the adoption of the latest Charter in 1936. The new Charter contains no provision dealing with this matter. But the Administrative Code of 1937 (Laws of 1937, c. 929), § 93d—3.0, as amended by New York City Local Law No. 30 of 1939, provides that the Board of Estimate, by a unanimous vote when the public interest will best be served, may make an award against the city or any agency (of the city) upon any claim certified by the comptroller to be equitable, but illegal or invalid.

son, offered no evidence, but he contended: that the prosecution had failed to establish a *prima facie* case against him; and that Section 435 of the Charter of the City of New York[1] was unconstitutional, *ergo* the police commissioner had no authority to regulate parking, and the magistrate acquired no jurisdiction. *Held,* that the defendant was guilty of the traffic infractions with which he was charged. *People* v. *Rubin,* 284 N. Y. 392, 31 N. E. (2d) 501 (1940).

In scholastic fashion the defendant argued that from the facts proved by the prosecution, *viz.,* that the defendant was the registered owner of an automobile which had been unlawfully parked, one could not infer that the defendant was a traffic infractor. Such an inference, asserted the defendant, rebuts itself because, if a man were the registered owner of two or more automobiles which were unlawfully parked simultaneously, since it is physically impossible for one man to operate more than one automobile at one time, it could not logically be inferred that the registered owner of two or more automobiles committed more than one of such traffic infractions simultaneously. The court pointed out that the evidence showed that the defendant owned only one automobile, therefore his reasoning did not apply to his own case. As the defendant offered no evidence to refute the inference which was raised against him, the inference prevailed.[2] A rebuttable presumption, similar to the rebuttable inference in question, exists in civil cases,[3] and such an inference has been utilized in the criminal law.[4]

Although it had previously been adjudicated a constitutional delegation of legislative power,[5] the defendant averred that Section 345 of the Charter of the City of New York authorized the police commissioner to regulate *traffic,* but not *parking.* The court decided, however, that the power to regulate traffic necessarily includes the power to regulate parking,[6] hence the police commissioner was empowered to regulate parking by implication.[7] The defendant urged that the sec-

---

[1] N. Y. CITY CHARTER § 435 ("The police department and force shall have the power and it shall be their duty to . . . regulate, direct, control and restrict the movement of vehicular and pedestrian traffic for the facilitation of traffic and the convenience of the public as well as the proper protection of human life and health . . . The commissioner shall make such rules and regulations for the conduct of pedestrian and vehicular traffic in the use of the public streets, squares and avenues as he may deem necessary . . . The violation of such rules and regulations shall be triable by a city magistrate and punishable by not more than thirty days' imprisonment or by a fine of not more than fifty dollars, or both.").

[2] People v. Dyle, 21 N. Y. 578 (1860).

[3] Ferris v. Sterling, 214 N. Y. 249, 108 N. E. 406 (1915); Piwowarski v. Cornwell, 273 N. Y. 226, 7 N. E. (2d) 111 (1937).

[4] Commonwealth v. Ober, 286 Mass. 25, 189 N. E. 601 (1934); People v. Kayne, 286 Mich. 571, 282 N. W. 248 (1938); People v. Marchetti, 154 Misc. 147, 276 N. Y. Supp. 708 (1934).

[5] Cherubino v. Meenan, 253 N. Y. 462, 171 N. E. 708 (1930).

[6] People v. Lewis, 167 Misc. 139, 3 N. Y. S. (2d) 508 (1938).

[7] N. Y. VEHICLE AND TRAFFIC LAW Art. VI (entitled in part: "Provisions Applying to Highway Traffic . . ."); N. Y. VEHICLE AND TRAFFIC LAW § 86 ("Parking . . ." is part of the title, and § 86 is within art. VI).

tion in question was unconstitutional, nevertheless, for it deprived him of a trial by jury.[8] In this respect the Federal Constitution does not apply to trials in the state courts.[9] The court by relating the New York Constitution to the Vehicle and Traffic Law and the Penal Law, clearly demonstrated that the defendant had not suffered any substantial impairment of his constitutional rights.[10]

A. C. H.

UNEMPLOYMENT INSURANCE — BENEFITS — DISTINCTION BETWEEN AN EMPLOYEE AND AN INDEPENDENT CONTRACTOR.—This is a proceeding in the matter of the claim of Margaret Morton against the Spirella Co., Inc. for unemployment insurance benefits under the Unemployment Insurance Law.[1] Respondent manufactures and sells made-to-order ladies' undergarments. Claimant was engaged as a corsétière pursuant to a written contract which in part provided as follows: the company agreed to grant an exclusive sales territory to claimant, to give her the benefit of the company's training in corsetry and salesmanship; to furnish her with the company's products at the prices published in the company's wholesale price list, etc. By the express terms of the contract, claimant was obligated to pursue respon-

---

[8] U. S. CONST. Art. III, § 2 (". . . trial of all crimes shall be by jury."); N. Y. CONST. Art. VI, § 18 ("Trial by jury in all cases in which it has heretofore been guaranteed by constitutional provisions shall remain inviolate forever; . . .").

[9] Eilenberker v. Plymouth County, 134 U. S. 31, 10 Sup. Ct. 424 (1890).

[10] N. Y. CONST. Art. VI, § 18 ("Courts of Special Sessions and inferior local courts of similar character shall have such jurisdiction of offenses of the grade of misdemeanors as may be prescribed by law, and the legislature may authorize them to try such offenses without a jury."); N. Y. VEHICLE AND TRAFFIC LAW § 2(29) (". . . no jury trial shall be allowed for traffic infractions."); N. Y. PENAL LAW § 2(6) (". . . traffic infractions . . . are not crimes."); Matter of Cooley v. Wilder, 234 App. Div. 256, 255 N. Y. Supp. 218 (4th Dept. 1932).

[1] N. Y. LABOR LAW § 502.

"Definitions. As used in this article:

1. 'Employment', except where the context shows otherwise, means any employment under any contract of hire, express or implied, written or oral, including all contracts entered into by helpers and assistants of employees, whether paid by employer or employee, if employed with the knowledge actual or constructive of the employer, in which all or the greater part of the work is to be performed within this state. . . . But for the purposes of this article, 'employment' shall not include:
   (1) Employment as a farm laborer;
   (2) Employment by an employer of his spouse or minor child.
   . . .
2. 'Employee' means any person, including aliens and minors, employed for hire by an employer in an employment subject to this article, except any person whose wages exceed three thousand dollars in any calendar year." (L. 1935, c. 468.)