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Negligence--Liability of State Road Commission for Personal Injuries Arising Out of Failure to Repair Highways

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facts to each subscriber to stock, or procure a ratification of the transaction by vote of the stockholders of the completely established corporation, or the promoters may themselves subscribe for all the shares contemplated to be issued as a part of the promotion scheme.¹¹ —C. L. W.

NEGLIGENCE—LIABILITY OF STATE ROAD COMMISSION FOR PERSONAL INJURIES ARISING OUT OF FAILURE TO REPAIR HIGHWAYS.—In her declaration in trespass on the case, P alleged that she was injured by reason of the negligent leaving of an obstruction in a road by the county court, which had control and supervision of said road. *Held*: A good cause of action is stated. *Clayton v. Roane County Court*, 123 S. E. 189 (W. Va. 1924).

In the course of the opinion, the court said, "If the proof shows that the road was under the exclusive jurisdiction and authority of the state road commission at the time of the accident, we cannot on this certification, answer the question certified as to whether the state road commission would be liable . . ." The writer will endeavor to supply the answer. The liability of the county court for such personal injuries is purely statutory and did not exist at common law. *Parsons v. County Court*, 92 W. Va. 490, 115 S. E. 473. The reason is that the county court is a quasi-public corporation, whose duties are imposed by law as agents of the public. *Watkins v. County Court*, 30 W. Va. 657 at 660, 5 S. E. 654. And a suit against a state agency is, in effect, a suit against the state. *Barber v. Spencer State Hospital*, 121 S. E. 497 (W. Va. 1924). So there must be a statute rendering county courts liable expressly as corporations. *Watkins v. County Court, supra*. County courts may sue and be sued as corporations. W. Va. Code, c. 39, § 1. Evidently such clause was not enough to impose a liability for personal injuries and the legislature made more specific enactments, rendering the county courts liable for injuries caused by reason of any *county-district* road's being out of repair. W. Va. Code, c. 43, § 167. The county court is under a duty to maintain county-district roads *until* such time as the state road commission, by order entered of record, takes them over, after which they are to remain under the exclusive jurisdiction and control of the state

¹¹ *Old Dominion Copper Co., v. Bigelow, supra*; 14 CORPUS JURIS, Corporations, § 342.

road commission. W. Va. Code, c. 43, § 64. And when a county-district road is so taken over, it becomes designated as a "State Route" road. W. Va. Code, c. 43, § 4. The above considerations seem to show conclusively that after the state road commission has taken over a county-district road; by order entered of record, the county court is no longer liable for personal injuries caused by reason of such road's being out of repair. Two reasons lead to this conclusion: (1) the road is no longer under the control of the county court and the latter is no longer bound to maintain it; (2) the road is no longer a county-district road, and therefore does not come within the wording of the statute imposing the liability in question. W. Va. Code, c. 43, *supra*. If the county court is no longer liable, is the state road commission? Apparently the commission is in the same position as the county court, as a quasi-public corporation, being an agent of the state and created a corporation by it, with power to sue and be sued. W. Va. Code, c. 43, § 1. Therefore, as in the case of the county court, it would not be liable for personal injuries, in the absence of a specific provision imposing such liability. W. Va. Code, c. 43 *supra*, *Watkins v. County Court, supra*. For the above reasons. it is believed that the question left unanswered by the supreme court must be answered in the negative. The result is, that if one is injured by reason of the state road commission's failure to keep in repair a road which it has taken over from the county court, he is left without a remedy. Since the commission is charged with the duty of repair and has control of the road which it takes over, it should incur such liability. The writer believes that this weakness in the state road law should be a matter for consideration at the next session of the legislature in order to carry out the obvious purpose and intent of the law.

—R. T. D.

INSURANCE — CONCEALMENT — DUTY OF INSURED TO REVEAL MATERIAL FACTS NOT COVERED BY QUESTIONS ASKED.—K on June 21, 1920 filed application for insurance with D Insurance Company. When examined by the D Company's doctor, K was not asked if she had cancer, and K, though knowing at the time that she had cancer failed to mention this fact. The insurance policy was issued. K. on January 20, 1921, seven months after the policy was issued, died of cancer. When policy was presented by P, the