NEW YORK LAW SCHOOL

NYLS Law Review

Volume 3 | Issue 1 Article 6

January 1957

Constitutional Law: LEGISLATURE HELD TO HAVE POWER TO CONFER UPON THE COURT OF CLAIMS EXCLUSIVE JURISDICTION TO DETERMINE CASES AGAINST STATE AGENCIES OR "AUTHORITIES" / PROCEDURE-CITY LAW REQUIRING WRITTEN NOTICE OF DEECTIVE SIDEWALK AS CONDITION PRECEDENT To BRINGING ACTION AGAINST THE CITY FOR DAMAGES UPHELD

NOTES

CONSTITUTIONAL LAW—LEGISLATURE HELD TO HAVE POWER TO CONFER UPON THE COURT OF CLAIMS EXCLUSIVE JURISDICTION TO DETERMINE CASES AGAINST STATE AGENCIES OR "AUTHORITIES".—The New York Court of Appeals, by a four to two decision,[1] has sustained the constitutionality of § 361-b of the Public Authorities Law[2] which gives the New York Court of Claims exclusive jurisdiction over all claims against the New York State Thruway Authority. The Court has thus held that the Constitutional article,[3] which made the Court of Claims a constitutional court of record[4] and conferred upon it jurisdiction in suits against the state, did not deprive the Legislature of its pre-existing authority to confer upon the Court of Claims exclusive jurisdiction to determine claims against State agencies or "Authorities."

This holding arose out of an action to recover damages for personal injuries resulting from the alleged negligence of the Thruway Authority. The action was brought in the New York Supreme Court, Albany County, at Special Term. The Thruway Authority appeared specially to contest the Court's jurisdiction. Prior to 1954 this was the proper Court.[5] In 1954, however, the Legislature conferred exclusive jurisdiction upon the Court of Claims to hear and determine all claims against the Thruway Authority for alleged torts or breaches of contract.[6] On the basis of this recent enactment, Special Term granted the Authority's motion for an order setting aside the service of summons and complaint and striking out the complaint because on its face the Supreme Court lacked jurisdiction over the subject matter of the action. The plaintiff appealed directly to the Court of Appeals on constitutional grounds.

Plaintiff contended that the Thruway Authority was an independent public corporation and that any requirement that the Court of Claims have exclusive jurisdiction over claims against such a corporation was not only an infringement upon the general jurisdiction of the Supreme Court over claims against private persons[7] and private corporations,[8] but also a violation of the constitutional provision limiting the Court of Claims' jurisdiction to claims against the state,[9] by enlarging such scope.

The majority held that the Authority is unquestionably an arm or agency of the State; as such, the Legislature could forbid the maintenance of any suit against it and limit such suits to any particular court. The agency relationship was unquestionable the majority maintained. This power to require suits to be brought in any particular court is part of the State's right as sovereign, to assert, to waive, or to condition at will, immunity from suit for itself and its agents.[10] The Court noted that

[1] Easley v. New York State Thruway Authority, 1 N. Y. 2d 374, 135 N. E. 2d 572 (1956).

[2] L. 1954, c. 517, § 9.

[3] N. Y. CONST. art. VI, § 23, eff. Jan. 1, 1950.

[4] The article specifically states: "The court of claims is continued and shall be a court of record." It is to be noted, however, that the Court of Claims was already a court of record. See JUDICIARY LAW, § 5; Manzi v. State, 23 N. Y. S. 2d 21 (1940); Buchalter v. State, 172 Misc. 420, 15 N. Y. S. 2d 244 (1939); Siegel v. State, 138 Misc. 474, 246 N. Y. S. 652 (1930).

[5] Strang v. State, 206 Misc. 734, 134 N. Y. S. 2d 871 (1954). See also Pantess v. Saratoga Springs Authority, 255 App. Div. 426, 8 N. Y. S. 2d 103 (3rd Dep't 1938).

[6] See note 2, *supra.*

[7] N. Y. CONST. art. VI, § 1 (1925).

[8] N. Y. CONST. art. 10, § 4 (1925).

[9] See note 3, *supra.*

[10] COURT OF CLAIMS ACT § 8; See also Borchard, *Government Liability in Tort,* 34 YALE L. J. 1 (1924); Borchard, *Governmental Responsibility in Tort,* 36 YALE L. J. 1

while the Court of Claims is a constitutional Court with "jurisdiction to hear and determine claims against the state or by the state against the claimant or between conflicting claimants as the legislature may provide,"[11] its jurisdiction is not constitutionally limited to claims directly against the State, and the Legislature could widen its jurisdiction to include claims against a state agency or "Authority."

One basis for this decision is the very practical principle that Legislatures are presumed to know what statutes are on its books and the intent of constitutional amendments it has approved.[12] In addition to granting the Court of Claims jurisdiction over the Thruway Authority, the Legislature, in 1939, gave the same Court jurisdiction over the Saratoga Springs Authority[13] and, in 1955, over the Jones Beach State Parkway.[14] All of these acts would be rendered invalid by the strict interpretation of the constitutional article urged by the plaintiff. The majority found no suggestion in any of the constitutional convention material that its purpose was to limit the jurisdiction of the Court of Claims only to lawsuits brought directly against the State. Thus, it affirmed the lower Court's judgment.

Judge Van Voorhis, speaking for the dissent, found the Thruway Authority to be an independent entity. This status, he felt, made the Court of Claims incompetent to entertain exclusively claims against the Authority since such action conflicted with the constitutional limitation of the Court of Claims to suits against the State. The dissent distinguished situations where the State delegates a governmental power to an independent entity other than those where the State exercises the governmental function itself by employing an agent. The dissent maintained that the Thruway belongs to the former classification along with cities, villages, and the like. Having been legislatively assigned to that category, the Authority should not be able to share that privileged position reserved exclusively to State agencies.

The history of the Court of Claims has not been the smooth one of an ordinary court.[15] Neither the common law nor the Constitution gave an inherent right to sue the State without Legislative consent.[16] The State, however, has freely assumed the mantle of responsibility for its wrongs. During the early days in New York, the Legislature approved private claims directly by appropriations. This practice was later prohibited by Constitutional amendment.[17] The Board of Audit, which included the Comptroller, Secretary of State and State Treasurer, inherited the function of auditing private claims,[18] while claims originating out of the original State Canal System

(1926); Note, *Suits Against Government Officers and the Sovereign Immunity Doctrine,* 59 HARV. L. REV. 1060 (1946).

[11] See note 3, *supra.* The jurisdiction to determine claims "between conflicting claimants" previously meant that such claims would be adjudicated only incidentally to a claim that a party had against the State and even then, as between the parties other than the State, the jurisdiction of the Court of Claims could only be permissive. See Seglin Constr. Co. v. State, 249 App. Div. 476, 293 N. Y. S. 205 (3rd Dep't 1937); Columbia Machine Works v. Long Island R. R. Co., 267 App. Div. 582, 47 N. Y. S. 2d 383 (1st Dep't 1944).

[12] In re Fay, 291 N. Y. 198, 207, 52 N. E. 2d 97, 98 (1943).

[13] N. Y. PUBLIC AUTH. L. § 1306-a (1939).

[14] N. Y. PUBLIC AUTH. L. § 163-a (1955).

[15] Glavin, *The Court of Claims—Its History, Jurisdiction and Practice,* 21 N. Y. S. B. A. BULL. 357 (1949); MacDonald, *Substantive Liability of the State of New York, Adjective Law in the Court of Claims,* 2 N. Y. S. B. A. BULL. 235 (1929); Note, *Court of Claims, Binding Character of Judgment Against the State,* 17 CORNELL L. Q. 254 (1932); 6 ABBOTT'S N. Y. DIG. 2d 161 (1954).

[16] See note 11, *supra.*

[17] Pertinent section under present Constitution is: N. Y. CONST. art. III, § 19.

[18] L. 1876, c. 444.

were handled by Canal Appraisers.[19] In 1883, both the Board of Audit and the Canal Apprasiers were abolished and the first Board of Claims was created. It possessed jurisdiction to hear, audit and determine all private claims against the State, except those required by law to be audited by other State officers.[20] Through the years, the name was changed from Board of Claims to Court of Claims and back again to Board of Claims, etc.[21] The function of the Court was variously controlled, the Legislature even at one time legislated its judges out of office.[22] The present Court of Claims Act was enacted in 1939.[23] Effective January, 1950, the Court of Claims was made a constitutional Court with fixed powers[24] with jurisdiction limited to claims against the State. The Legislature has attempted to continue its control over this Court and, as the case at bar shows, has been successful in some respects.

The Thruway Authority, "a body corporate and politic constituting a public corporation,"[25] was created by special act of the Legislature[26] and the product of a special committee appointed by Governor Dewey in 1950.[27] Its unique feature is its eventual self-liquidation.[28] It is, in one sense, an entity independent of the State. It has power to sue and be sued in courts[29] as though a natural person.[30] However, the State is not liable for its torts under the doctrine of *respondeat superior*.[31] In another sense, it is an agency of the State having its board members appointed by the Governor,[32] its purposes for the benefit of the State,[33] its functions governmental,[34] its real property held in the name of the State,[35] and its properties eventually reverting to the State.[36] The instant case has decided that such Authority falls under the exclusive jurisdiction of the Court of Claims just as any other direct state agency through the Thruway has a legal split personality. The Legislature has thus established a corporate creature with the powers, but not the responsibilities, of independent corporate entities. It is the opinion of the instant majority that such was the intention of the Legislature and that such action was constitutional.

PROCEDURE—CITY LAW REQUIRING WRITTEN NOTICE OF DEFECTIVE SIDEWALK AS CONDITION PRECEDENT TO BRINGING ACTION AGAINST THE CITY FOR DAMAGES UPHELD.—The New York Court of Appeals, six judges taking part in the decision, unanimously affirmed without opinion a ruling by the Appellate Division, Third Department, that a city

[19] L. 1870, c. 321.
[20] L. 1883, c. 205.
[21] L. 1897, c. 36; L. 1911, c. 856; L. 1915, cc. 1, 100; L. 1920, c. 922.
[22] People ex rel. Swift v. Luce, 204 N. Y. 478, 97 N. E. 850 (1912).
[23] L. 1939, c. 860.
[24] See note 3, *supra*.
[25] PUBLIC AUTH. L. § 352 (1950).
[26] L. 1950, c. 143, §§ 350-375, adding tit. 9 to art. 2 of PUBLIC AUTH. L.
[27] See FIRST ANNUAL REPORT OF THE NEW YORK THRUWAY AUTHORITY 1-10 (1951); THIRD ANNUAL REPORT OF THE NEW YORK STATE AUTHORITY 30-32 (1953).
[28] THIRD ANNUAL REPORT OF THE NEW YORK STATE AUTHORITY 31 (1953).
[29] PUBLIC AUTH. L. § 354(2) (1950).
[30] ". . . all corporations shall have the right to sue and shall be subject to be sued in all courts in like cases as natural persons." N. Y. CONST. art. X, § 4 (1938).
[31] Pantess v. Saratoga Springs Authority, 255 App. Div. 426, 8 N. Y. S. 2d 103 (3d Dep't 1938).
[32] PUBLIC AUTH. L. § 352 (1950).
[33] *Id.* at § 353 (1950).
[34] *Ibid.*
[35] *Id.* at § 354(4) (1950).
[36] See note 32, *supra*.

law may require that the city be given written notice of a defective sidewalk prior to the happening of an accident resulting therefrom, as a condition precedent to an action against the city for damages.[1]

Plaintiff brought an action against the City of Schenectady to recover damages for personal injuries sustained when she fell on a defective sidewalk. Her husband sought to recover damages for the medical expenses he had paid on her behalf and for the loss of her services. The complaint was filed as soon as the accident had occurred and alleged written notice by the plaintiff of their claims on the city, in accordance with the Second Class Cities Law § 244. This law provides for either written or constructive notice of the defect as a condition precedent to the maintenance of the suit.[2] However, a local city law amended the Second Class Cities Law § 244 in its application to the City of Schenectady so as to eliminate the provision permitting an action predicated on constructive notice for personal injuries sustained as a result of a defective sidewalk, and provided instead that the action could not be maintained unless written notice of the alleged defective condition had been given to the city at least twenty-four hours prior to the happening of the accident.[3] It was conceded that no such notice had been given and hence if the local law was valid the plaintiff could not succeed.

The Appellate Division in this case, in a three to two decision, held that the only question was one of local legislative power and that it was immaterial whether or not the local law enacted was reasonable. Citing Article 9 of § 12 of the New York State Constitution,[4] the court held that the legislature had the constitutional power to delegate to second class cities the right to supersede the provisions of the Second Class Cities Law. Article 9 § 12, the court held, "conferred broad powers on the Legislature to enact city home rule legislation . . . nothing in it attempts to preserve the doctrine of constructive notice in sidewalk cases . . . its exercise with regard to second class cities was not repugnant to the Constitution, and it was not inconsistent with the Second Class Cities Law because . . . that statute specifically permitted the supersession of any of its provisions by local laws".[5]

The vigorous dissenting opinion of the Appellate Division reasoned that the local law changed the fundamental law for the liability of torts by imposing a condition precedent to liability before there was any claim.

A similar law enacted by a Third Class City was, under the same facts, held to

[1] Fullerton v. City of Schenectady, 309 N. Y. 701, 128 N. E. 2d 413 (1955); affirming 285 App. Div. 545, 138 N. Y. S. 2d 916 (3rd Dep't 1955); *cert. denied,* 350 U. S. 980, 76 S. Ct. 468, 100 L. Ed. 350 (1956).

[2] New York Second Class Cities Law, § 244, provides that no action shall be maintained against a city for damages sustained by reason of a defective sidewalk unless written notice of the defect was given to the Commissioner of Public Works and there was a failure to repair thereafter or "in the absence of such notice, unless it appears that such defective . . . condition existed for so long a period that the same should have been discovered and remedied in the exercise of reasonable care and diligence".

[3] City of Schenectady, 6 Local Laws 1935, 234.

[4] N. Y. CONST., art. 9, § 12: "Every city shall have the power to adopt and amend local laws not inconsistent with this Constitution and laws of the State, and whether or not such local laws relate to its property, affairs or government, in respect to the following subjects: . . . the transaction of its business, the incurring of its obligation, the presentation, ascertainment and discharge of claims against it, the acquisition, care, management and use of its streets and property".

[5] See note 1, *supra.*

be "constitutional and not subversive of any fundamental law of the state".[6] Likewise, another statute requiring prior written notice of the unsafe condition, plus notice of intent to claim damages within one month of injury was upheld, non-compliance with the first provision barring any action.[7]

The instant case in effect overrules *Haywood* v. *City of Schenectady*,[8] a similar sidewalk case decided under the same statutes, which held that the local law[9] was invalid as inconsistent with the constructive notice provisions of § 244 of the Second Class Cities Law,[10] and that no provision in § 244 "purports to relieve the city of the duty of proper care of the streets, or of the duty of keeping them reasonably safe for use by the public."[11] It had been further maintained in the *Haywood* case that § 244 contained "no provision which relieves the city of the consequences of its own negligence".[12]

The majority of the judges of the Appellate Division in the instant case, while agreeing with the dissenting opinion that the local law was an "attempt to bar tort actions under the guise of a procedural requirement . . . putting an impossible burden on deserving litigants",[13] held nevertheless that it was too late to so urge. The majority opinion maintained that the local law of the City of Schenectady was valid, enacted under due legislative power.

[6] MacMullen v. City of Middletown, 187 N. Y. 37, 79 N. E. 863 (1907).

[7] Ellis v. City of Geneva, 259 App. Div. 502, 20 N. Y. S. 2d 21 (4th Dep't 1940), *aff'd* 288 N. Y. 478, 41 N. E. 2d 174 (1942).

[8] Haywood v. City of Schenectady, 251 App. Div. 607, 297 N. Y. S. 736 (3rd Dep't 1937).

[9] See note 3, *supra*.

[10] See note 2, *supra*.

[11] See note 8, *supra*.

[12] *Ibid*.

[13] See note 1, *supra*.