LIABILITY OF OCCUPIER—CHILD LICENSEE—KNOWLEDGE

The decision of the English Court of Appeal in *Bates* v. *Stone Parish Council*[1] focuses attention on a branch of the law of negligence which has given the courts a great deal of trouble—that of liability in tort to children. The decision also involves an interesting example of what the Courts will consider as "knowledge" on the part of an occupier in regard to children who may be on the premises as licensees. Children do not form any class separate from invitees, licensees, or trespassers; they must be reckoned under one or another of these. Therefore, in respect to occupiers, a child differs from an adult only in that a stricter degree of care is required, for what is reasonably safe for an adult may not be so for a child.

The Court of Appeal decided unanimously in the *Bates* case that the infant plaintiff was a licensee on the defendant's premises, and further, that he was a licensee in regard to a slide on which the accident occurred. There can be little doubt that the court was right in so classifying him. The matter thus resolves itself to a question of what duty is owed by an occupier to a licensee. The rule has been stated: The occupier must warn a licensee of any concealed danger of which the occupier knows.

The additional words "or ought to have known" have been used in conflicting cases, but were rejected by Greer L. J. in *Ellis* v. *Fulham Borough Council*[2] which was a "playground case" similar to the *Bates* case. This question has been canvassed more thoroughly by Denning L. J. in *Hawkins* v. *Couldson and Purley Urban District Council.*[3] Without going further into this controversial subject, one can be satisfied that for the present case, where the injury complained of resulted from a "static" condition of the premises, actual knowledge was required of the defendant council before it could be held liable to the plaintiff as a licensee.

The accident to the plaintiff occurred in 1950. In 1934 a boy had fallen from the same slide and as a result the council had installed a rail to prevent further accidents. The facts of the 1934 mishap and the steps taken to remedy the defect were recorded in the minutes of the defendant council. It appeared that at some time during the sixteen years which had elapsed between the two accidents the rail had in some way been displaced, and the condition of the slide at the time of the later accident was the same as it had been in 1934.

All the learned Lords Justices agreed that the defendant council had knowledge of the dangerous condition of the slide. Somervell L. J. stated:

> The accident [1934] and the action taken as a result of it is fully recoded in the minutes. In these circumstances, I would have thought that the defendants knew or must be taken to know of the accident of 1934.[4]

Birkett L. J., although admitting "the point is not free from difficulty", stated:

> The knowledge of the council as recorded in its official minutes of twenty years ago must be regarded, I think, as knowledge of the council when dealing with the same subject-matter today.[5]

Romer L. J. fixes knowledge upon the defendants in a somewhat different fashion:

> . . . the defendants cannot be acquitted of knowing the dangerous quality of the aperture in the chute through which the plaintiff fell. The mere fact that the minutes of a parish council contain an entry which had been minuted many years before does not necessarily fix the council with knowledge of the subject-matter of the entry. In the present case, however, two gentlemen who were members of the council when the accident in 1934 occurred were still members in 1950 . . .[6]

With respect, it is difficult to appreciate how knowledge of the dangerous condition of the slide could be imputed to the defendant council. True, the facts of the accidents in 1934 had been recorded, but so had the remedial steps taken after the accident. Thus it would appear that although the defendants may be taken to have known of the danger resulting in the accident in 1934, and of the accident itself, they should also be taken to have knowledge that the slide had been repaired. Therefore, to the best of their knowledge, the slide was no longer dangerous; the council minutes evidenced that it had been repaired. It is therefore respectfully suggested that the Court of Appeal imposed too high a duty upon the defendants in this particular case.

The tragedy which occurred in the *Bates* case illustrates the problems which may arise, and have arisen, concerning children's playgrounds. There may be a diversity of remedies; different types of playgrounds for varying age groups and increased supervision over playgrounds are two which immediately suggest themselves. To impose upon municipalities and other organizations heavy duties such as that imposed in the *Bates* case would be, in the words of Romer L. J.:

> . . . disadvantageous in the extreme to the public and to children in general . . . for the prospect of being sued for heavy damages insurable, perhaps, but only at considerable cost) would in all probability result in the disappearance altogether of amenities which many local authorities and private persons voluntarily provide for the entertainment and amusement of children.

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[1][1954] 3 All E.R. 38; [1954] 1 W.L.R. 1249.
[2][1938] 1 K.B. 212; [1937] 3 All E.R. 454 (C.A.).
[3][1954] 1 Q.B. 319; [1954] 1 All E.R. 97 (C.A.).
[4]*Supra*, note 1, at p. 42 and p. 1254 respectively.
[5]*Ibid*, at p. 45 and p. 1259 respectively.
[6]*Ibid*, at p. 49 and p. 1263 respectively.
[7]*Ibid*, at p. 49 and p. 1264 respectively.