

APPELLATE TERMS OF THE SUPREME COURT OF NEW YORK

Kahn v. Burette

85 N.Y.S. 1047 (App. Term 1904) · Decided January 7, 1904

SUMMARY

The court held that the plaintiff presented sufficient evidence to avoid dismissal of a negligence action arising from water damage allegedly originating in premises under the defendant's exclusive control. Applying res ipsa loquitur, the court concluded that the defendant was required to offer an explanation and reversed the judgment, ordering a new trial.

CASE DETAILS

COURT	Appellate Terms of the Supreme Court of New York
WRITING FOR THE COURT	Greenbaum, J.
JURISDICTION	New York
DECIDED	January 7, 1904
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiff appealed from a judgment for defendant entered after the lower court dismissed the complaint at the close of plaintiff's case.
STANDARD OF REVIEW	On appeal from a dismissal at the close of plaintiff's case, the facts were taken in the light most favorable to plaintiff and the proof was deemed sufficient if it supported the pleaded cause of action.
PRECEDENTIAL VALUE	Published state appellate opinion
PARTIES	Solomon Kahn v. Leonie Burette

TOPICS

- negligence
- evidence
- appellate procedure
- standard of review

PRACTICE AREAS

- Torts
- Evidence
- Appellate Procedure

QUESTIONS PRESENTED

- Whether the evidence that water causing damage came from premises under defendant's exclusive possession and control was sufficient to invoke res ipsa loquitur.

2. Whether the lower court erred by dismissing the complaint at the close of plaintiff's case rather than submitting the negligence issue to the jury.

HOLDINGS

1. Evidence that the injury was caused by water emanating from premises under defendant's exclusive management and control was sufficient to raise a presumption of negligence under res ipsa loquitur.
2. The complaint could not properly be dismissed at the close of plaintiff's case because the evidence and resulting presumption supplied facts sufficient to require submission of defendant's negligence to the jury.

KEY QUOTATIONS

"The defendant was therefore called upon to give some evidence by way of explanation relieving herself from the presumption of negligence which arose from proof of the injury resulting from water coming from the premises in defendant's exclusive possession and under her exclusive control." (85 N.Y.S. at 1047-48)

"In view of the presumption of negligence arising from the absence of any explanation on the part of defendant, the court was not justified in dismissing the complaint, thereby holding as matter of law that the plaintiff had failed to establish any facts to sustain his cause of action." (85 N.Y.S. at 1048)

FACTUAL BACKGROUND

Plaintiff found his loft and ceiling flooded, with water apparently coming from the loft occupied by defendant immediately above. Defendant's loft floor was wet, and the evidence showed that the area was under defendant's exclusive possession and control; a sink was located on defendant's floor, although a plumber had found it in good condition the day before. The lower court dismissed the complaint before defendant presented explanatory evidence.

PROCEDURAL HISTORY

Kahn brought an action to recover damages for injury to personal property allegedly caused by Burette's negligence. The Municipal Court dismissed the complaint on defendant's motion at the close of plaintiff's evidence and entered judgment for defendant. The Appellate Term reversed and ordered a new trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the judgment and order a new trial, with costs to appellant to abide the event.

CASES CITED

- Griffen v. Manice, 166 N.Y. 188, 193, 59 N.E. 925, 926, 52 L.R.A. 922, 82 Am. St. Rep. 630
- Greco v. Bernheimer, 17 Misc. Rep. 592, 40 N.Y. Supp. 677

- Simon Reigel Co. v. Gordon, etc., Co., 20 Misc. Rep. 598, 46 N.Y. Supp. 416
- Moore v. Goedel, 34 N.Y. 527, 532

OPINION

GREENBAUM, J.

GREENBAUM, J. This action was brought to recover damages to personal property from injuries caused by the defendant's negligence. The plaintiff testified that on reaching his place of business on the morning of September 13, 1901, he found the entire floor of his loft flooded, and the entire ceiling wet; that the water was coming through the ceiling from the loft occupied by defendant, immediately above his; that he went up to the defendant's loft, and on examination found the floor of that loft all wet; that the loft above defendant's was occupied by other parties, but that there was no "water coming from the ceiling in Mrs. Burette's [defendant's] place," and that there was a sink on the defendant's floor.

It appeared from the testimony of the plumber that the defendant's sink had* been examined the day before the injury, and found to be in good condition. The court below dismissed the complaint on motion of the defendant's attorney at the close of the plaintiff's case. _ The facts on this appeal must be taken most favorably for the plaintiff, and the proof will be deemed sufficient to show that the defendant was in exclusive possession of the loft immediately above the plaintiff's.

Under these circumstances, we do not think the court was justified in dismissing the plaintiff's complaint. The cause of the proven injury was traced to a place under the defendant's exclusive management and control.

The defendant was therefore called upon to give some evidence by way of explanation relieving herself from the presumption of negligence which arose from proof of the injury resulting from water coming from the premises in defendant's exclusive possession and under her exclusive control.

The facts appear to justify the application of the doctrine of *res ipsa loquitur*. On that subject the court in *Griffen v. Manice*, 166 N. Y. 188, 193, 59 N. E. 925, 926, 52 L. R. A. 922, 82 Am. St. Rep. 630, says: "The maxim is also in part based on the consideration that, where the management and control of the thing which has produced the injury is exclusively vested in the defendant, it is within his power to produce evidence of the actual cause that produced the accident, which the plaintiff is unable to *1048present.

Neither of these rules—that a fact may be proved by circumstantial evidence as well as by direct, and that, where the defendant has knowledge of a fact, but slight evidence is requisite to shift on him the burden of explanation—is confined to any particular class of cases, but they are general rules of evidence, applicable wherever issues of fact are to be determined, either in civil or

criminal actions.” Support will be found in the authorities for the application of this doctrine to cases of a similar character to the one at bar.

Greco v. Bernheimer, 17 Misc. Rep. 592, 40 N. Y. Supp. 677; Simon Reigel Co. v. Gordon, etc., Co., 20 Misc. Rep. 598, 46 N. Y. Supp. 416. In Moore v. Goedel, 34 N. Y. 527, the Court of Appeals, at page 532, says: “Had the defendant been in the exclusive possession of the loft in which the closet and wash basin from which the overflow came were located, it would probably have been sufficient prima facie to have proved the injury, and where the overflow occurred.” In view of the presumption of negligence arising from the absence of any explanation on the part of defendant, the court was not justified in dismissing the complaint, thereby holding as matter of law that the plaintiff had failed to establish any facts to sustain his cause of action.

Judgment must be reversed, and a new trial ordered, with costs to the appellant to abide the event. All concur.