

# 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

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