

COURT OF CIVIL APPEALS OF TEXAS

S.H. Kress & Co. v. Dyer

49 S.W.2d 986 (Tex. Civ. App. 1932) · Decided May 5, 1932

SUMMARY

Mrs. Amelia Dyer sued S.H. Kress & Co. for injuries sustained after slipping on an allegedly slick and improperly oiled store floor. The court held that the evidence supported the jury’s findings that Kress was negligent and that the \$3,800 damages award was not excessive. The court also rejected Kress’s claim that a reference to casualty insurance required a mistrial and affirmed the judgment.

CASE DETAILS

COURT	Court of Civil Appeals of Texas
WRITING FOR THE COURT	Gallagher
JURISDICTION	Texas
DECIDED	May 5, 1932
DISPOSITION	affirmed
PROCEDURAL POSTURE	S.H. Kress & Co. appealed from a judgment entered on a jury verdict awarding M. S. Dyer and Mrs. Amelia Dyer \$3,800 for injuries Mrs. Dyer sustained in a fall in Kress's store.
STANDARD OF REVIEW	The court reviewed the evidence supporting the jury's negligence finding for legal sufficiency and against-the-great-weight-and-preponderance challenges, reviewed the denial of a mistrial and new trial for reversible error, and determined whether the damages were grossly excessive.
PRECEDENTIAL VALUE	Published state intermediate appellate opinion
PARTIES	S.H. Kress & Co. v. M. S. Dyer, Mrs. Amelia Dyer

TOPICS

- premises liability
- negligence
- personal injury
- evidence
- appellate procedure

PRACTICE AREAS

- premises liability
- negligence
- personal injury
- evidence
- appellate procedure

QUESTIONS PRESENTED

1. Whether the evidence supported a finding that Kress negligently maintained its store floor in a slick and slippery condition and knew or should have known of that condition.
2. Whether the trial court erred by refusing to discharge the jury and declare a mistrial after a witness referred to the Maryland Casualty Company during cross-examination.
3. Whether the \$3,800 damages award was grossly excessive and resulted from passion or prejudice.
4. Whether Kress waived its pleaded contention that any substance on the floor was placed there by an unknown person and could not have been discovered through ordinary care by failing to request submission of that issue.

HOLDINGS

1. A retailer owes a customer who enters its store by implied invitation a duty to maintain the store floor in a reasonably safe condition for walking, and a dangerous condition arising from the manner in which the retailer or its employees maintain the floor constitutes a breach of that duty.
2. The evidence amply sustained the jury's finding that Kress negligently maintained the floor and knew or, through ordinary care, should have known that it was slick and slippery; the trial court therefore properly refused a peremptory instruction.
3. A cross-examination question directed to discovering a witness's employment, interest, or bias is permissible even when the witness's answer unexpectedly refers to a casualty insurer; where the question was proper and there was no showing of intentional misconduct, the reference did not require a mistrial or new trial.
4. The \$3,800 award was not grossly excessive and did not conclusively demonstrate that the jury acted from passion or prejudice.
5. Kress waived its pleaded issue that any substance on the floor was placed there by an unknown person and could not have been discovered through ordinary care because it failed to request submission of that issue to the jury.

KEY QUOTATIONS

“Appellant owed Mrs. Dyer, a customer in its store, upon implied invitation to inspect and purchase its wares, the duty to maintain the floor thereof in a reasonably safe condition for walking to and fro thereon.” (987)

“The right to require an adverse witness to disclose on cross-examination any facts which tend to show interest or bias on his part is well established and is deemed valuable.” (989)

“The amount of damages to be awarded in a particular case of personal injury is primarily a matter for the jury.” (991)

FACTUAL BACKGROUND

Mrs. Amelia Dyer entered S.H. Kress & Co.'s Waco store to shop and slipped and fell on the floor. Witnesses testified that the floor was regularly oiled, had an overoiled and slippery condition, and contained a large oil spot

where Mrs. Dyer fell; her dress also had grease spots. She sustained substantial bruising and continuing pain and disability, while Kress presented contrary medical testimony attributing her condition to other causes.

PROCEDURAL HISTORY

The jury found that the store floor was slick and slippery because of negligent maintenance, that Kress knew or should have known of the condition, and that the condition proximately caused Mrs. Dyer's injuries. The trial court entered judgment for the appellees for \$3,800, denied Kress's motion for new trial, and Kress appealed, challenging the sufficiency of the evidence, the handling of a reference to casualty insurance, and the amount of damages. The Court of Civil Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Blake v. Great Atlantic Pacific Tea Co., 266 Mass. 12, 164 N.E. 486
- Judson v. American Ry. Express Co., 242 Mass. 269, 136 N.E. 103
- John Gerber Co. v. Smith, 150 Tenn. 255, 263 S.W. 974
- Tack v. Ruffo, 263 Mass. 487, 161 N.E. 587
- Blease v. Webber, 232 Mass. 165, 122 N.E. 192
- Mattox v. Lambright, 31 Ga. App. 441, 120 S.E. 685
- Scott v. Kline's, Inc. (Mo. App.), 284 S.W. 831
- F. W. Woolworth Co. v. Wood, 32 Ga. App. 575, 124 S.E. 110
- Langley v. F. W. Woolworth Co., 47 R.I. 165, 131 A. 194
- Markman v. Fred P. Bell Stores Co., 285 Pa. 378, 132 A. 178, 43 A.L.R. 862
- Great Atlantic Pacific Tea Co. v. Logan (Tex. Civ. App.), 33 S.W.2d 470
- San Angelo Water, Light & Power Co. v. Baugh (Tex. Civ. App.), 270 S.W. 1101
- Ferguson Seed Farms v. McMillan (Tex. Com. App.), 18 S.W.2d 595, 63 A.L.R. 1009
- D. H. Truck Line v. Lavalley, 7 S.W.2d 661
- Hedger v. Davis, 236 Ky. 432, 33 S.W.2d 310
- Texas & Pacific Railway Co. v. Perkins (Tex. Civ. App.), 284 S.W. 683
- Humble Pipe Line Co. v. Spivey (Tex. Civ. App.), 13 S.W.2d 481
- Ineeda Laundry v. Newton (Tex. Civ. App.), 33 S.W.2d 208
- Texas & Pacific Railway Co. v. Thompson (Tex. Civ. App.), 286 S.W. 536
- El Paso Printing Co. v. Glick (Tex. Civ. App.), 246 S.W. 1076