New Jersey Court of Errors and Appeals

HELEN GARLAND, Appellee,	)	
vs.	)	Action at Law.
THE FURST STORE, a corporation, Appellant.	)	On Appeal.

BRIEF FOR APPELLEE.

The Supreme Court by an opinion per curiam, upheld the verdict rendered in favor of the appellee (hereinafter called the plaintiff) in an action against the appellant (hereinafter called the defendant(, the owner of a department store for injuries sustained by the plaintiff through the negligent maintenance of a slippery concrete floor on its premises. The plaintiff was present on an invitation for the purpose of making purchases, and her business brought her to the basement used as a shoe department, the floor of which was, according to testimony, **very slippery**. Carpet runners were placed on the floor at various points where travel was contemplatd (p. 15, line

30 to 40; p. 16, line 18). No such runner was laid to the stamp counter where the plaintiff was invited to go, and while approaching which she was injured (p. 16 line 24). It was shown that the floor in fact was very slippery (p. 17 line 4; p. 18 line 10); in which condition it had been openly maintained by the defendant for many years.

The defendant's evidence was that the floor was "no more slippery than any ordinary floor" (p. 30 line 15); that the care of the floor was entrusted to scrubwomen (p. 31 line 25); the Treasurer of the defendant, the only representative sworn, admitted that the floor was perfectly smooth and that he had no knowledge of the character of the material used by the cleaners (p. 38 line 25 to 30; p. 40 line 37 to 40). Upon his statement that the floor at the time of the trial was in the same condition as at the time of the accident, and upon the application of the defendant therefore, and against the objection of the plaintiff, a motion was granted for an inspection of the scene of the injury by the jury (pp. 42 and 43).

1.

The refusal to nonsuit and to direct a verdict for defendant was proper on the evidence, independent of the inspection by the jury.

The evidence from which the jury was entitled to draw warrantable inferences showed.

First: The plaintiff's presence by invitation;

Second: A very slippery condition of the floor;

Third: The maintenance in that condition for many years;

Fourth: The use of the carpet runners affording safe travel on only portions of the floor;

Fifth: The absence of such frictive material on the flooring proximate to this stamp counter over which the plaintiff was invited to travel; and

Sixth: The failure to direct and superintend the use of proper floor dressing and cleansing material.

On such proof the defendant was prima facia liable.

Schnatterer vs. Bamberger, 81 N. J.Law, 558,
Phillips vs. Library Company, 55 N. J., Law 307;

In the Schnatterer case it was held that a storekeeper is liable where the negligent condition has existed for such a length of time as to charge him with notice thereof.

The liability of the defendant resulted from the circumstances of invitation, and the proof was sufficient to show that at the time of such invitation the premises were unfit for safe use.

There was positive evidence that for three or four years previous to the accident the floor in question was maintained in such a highly polished condition as to be capable of use for a "slidingpond" (p. 9 line 15) from which a failure to exercise proper care might be found by the jury.

The real facts of negligence do not have to be established to require submission to the jury.

Brooman vs. N. J. Street Railway Co., 70 N. J. Law, 818.

The possibility of a rational inference of negligence is sufficient.

Bliss vs. Bergen Co. Traction Co., 64 N. J. Law 604;

McCoy vs. Millville Traction Co., 83 N. J. Law, 508.

The purpose for which runners were used on some portions of the floor was shown (p. 38, line 13), while the object of their use elsewhere was not stated.

The jury without an inspection of the place had the right to infer that they were used for the promotion of safe passage about the building; that the omission of such runners or other frictive covering in the path leading to the stamp counter was negligence; and further that their employment, where used, was in recognition of the danger created by the lubricity of the floor surface.

Apellant ultimately rests on the argument that it used reasonable care in the construction and maintenance of this floor, and even if it were slippery it had no notice of that fact prior to the time that the plaintiff fell in which to have remedied its condition. The answer is found in the testimony that the floor was very slippery not only at the time of the injury and for years before but was maintained in the same condition for almost two years after, awaiting the trial.

At the time of the motion to nonsuit and to direct a verdict, the only question was that of the weight of the evidence, and each motion was properly denied.

2.

The statute constitutes the jury's observations evidence in the case.

Section 30 of the Evidence Act, page 2229, authorizes an inspection of premises by either the jury or appointed witnesses in respect of an 'injury from or to which the action shall be brought'' when it shall appear to the Court or Judge that such inspection ''would aid in ascertaining the truth of any matter in dispute between the parties.''

Any information sanctioned by law as an ''aid in ascertaining the truth of a matter in dispute'' in essentially evidence. The resultant embarassment of the unsuccessful party on his appeal does not detract from the commendable object of the statute, which is to develop the truth of the controversy in the most practical way at the trial.

A multitude of forensic incidents are incapable of reproduction on the record, e. g., appearance and manner of witnesses, inflections and gestures of Judge during charge, steadiness or tremor of handwriting used as exhibits, etc., the impossibility of showing which on appeal is one of the well-understood vicissitudes of him who would overturn a verdict.

The defendant himself applied for the inspection against the objection of the plaintiff (pp. 42, 43.)

The section referred to authorizes an inspection by the jury, **or by witnesses named by the Court.** The defendant insisted upon the alternative of a jury inspection. Had he chosen an inspection by witnesses he would have obviated all his present difficulties, the same difficulties by the way, which would now beset the plaintiff had the verdict been against her. Whatever objection might have been available to him had the jury's inspection been ordered of the Court's motion or on the plaintiff's application, it cannot be heard to complain of the unfortunate conse-

quences of its own election.

The effect of observations by a jury on the inspection of premises is exhaustively discussed in the note of People vs. Thorne, 42 L. R. A., p. 368. But it is submitted that the New Jersey statute is sui generis, and self-expositive of its objects and consequences.

3.

The judgement of the Supreme Court should be affirmed.

Respectfully submitted,

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Of Counsel.