

Ruppert v. Brooklyn Heights R. Co.

Decision Date: 12 October 1897

Citation: 154 N.Y. 90 , 47 N.E. 971 

Parties: RUPPERT v. BROOKYLN HEIGHTS R. CO.

Court: New York Court of Appeals Court of Appeals

Case Analysis

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Legal issue Is circumstantial evidence sufficient to establish negligence when the evidence equally supports an inference of non-negligence?

Headnote

5 Get Started

TORT LAW. NEGLIGENCE. The case examines whether a railroad company was negligent in allegedly leaving a paving stone on a public street, which caused a fatal accident, and whether the evidence presented was sufficient to attribute responsibility to the defendant solely based on circumstantial evidence.

TORT LAW. BURDEN OF PROOF IN NEGLIGENCE. The court addressed the principle that when evidence of negligence is equally consistent with absence as with existence of negligence, the issue should not be submitted to the jury, ultimately leading to the reversal of the initial verdict against the defendant.

Key Paragraphs

Highlight key paragraphs

"...In order to prove a fact by circumstances, there should be positive proof of the facts from which the inference or conclusion is to be drawn.,The circumstances themselves must be shown, and not left to rest in conjecture; and, when shown, it must appear that the inference sought is the only one which can fairly and reasonably be drawn from these facts.,The plaintiff must fail if the evidence does not show that the injury was the result of some cause for which the defendant is responsible..."

Key Phrases Brooklyn Heights Railroad Company. Negligence in obstructing highway. Circumstantial evidence. Granite paving blocks. Judgment reversed.

154 N.Y. 90

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RUPPERT

v.BROOKLYN HEIGHTS R. CO.

Court of Appeals of New York.**Oct. 12, 1897.**

Appeal from supreme court, general term, Second department.

Action by Mathias **Ruppert**, administrator of Joseph **Ruppert**, deceased, against the **Brooklyn Heights Railroad** Company. From a judgment of the general term (34 N. Y. Supp. 1147) affirming a judgment in favor of plaintiff, defendant appeals. Reversed.

Bartlett, Martin, and Vann, JJ., dissenting. *90

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Thomas S. Moore, for appellant. *91

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Henry A. Monfort, for respondent.

O'BRIEN, J.

The plaintiff's son and intestate, who was about 22 years old, was killed on the 7th of August, 1893, while driving a team hitched to a loaded wagon, through Grand street, which is occupied by the tracks of the defendant's **railroad**. The deceased was driving the team, seated upon an elevated spring seat in the front part of the wagon, and when turning off from the **railroad** track one of the front ^{*92} wheels of the wagon came in contact with a paving stone in the street near the track, producing a jolt of the wagon, which threw the deceased to the ground, when one of the hind wheels passed over his body, resulting in his death. The presence of this stone in the street is assumed to have been the cause of the accident, and the judgment in this case rests upon no other ground than that the defendant negligently placed or left this stone in the street. There is no question in the case with respect to the defendant's right to have its tracks in the street, nor as to the manner of operating the **railroad**. The simple issue of fact was whether the defendant had negligently placed or left an obstruction in the highway, which was the proximate cause of the injury. This question was submitted to the jury, and a verdict was found for the plaintiff. The only question presented by this appeal is whether there was any evidence to warrant a finding of negligence against the defendant. The plaintiff's witnesses described the stone which came in contact with the wheel of the wagon as a granite paving block of light color, about one foot long, five or six inches wide, and about the same thickness. The complaint alleges that the injury occurred in consequence of the negligence of the

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defendant in obstructing the highway with one of the granite paving blocks. There can be no doubt upon the evidence that the defendant was engaged in repaving the street between the rails about the time of the accident, and that the stone for that purpose was carted over Grand street, at the point where the accident happened, in the defendant's carts, by the defendant's servants. But it is equally clear upon the evidence that the defendant used no granite blocks for that purpose, but only cobblestones and Belgian paving blocks of a dark blue color. The granite blocks cost \$75 per 1,000, while the Belgian blocks cost but \$11 per 1,000; and the evidence in the case on the part of the defendant is quite clear, and substantially uncontradicted, that it did not use any of the more expensive stone to pave between the rails. *93 It is also quite clear upon all the proofs that for some months before the accident the city, or private individuals, or contractors for the city, had been engaged in paving streets in the vicinity of the place where the accident occurred with granite paving blocks similar to the one which came in contact with the wagon wheel, and that such blocks had been conveyed over this street in carts. There was no direct evidence in the case as to where this particular paving block came from, or as to how it came to be in the street, or the parties who left it there. No one had seen it drop from the defendant's carts, or had otherwise traced it to the defendant.

The jury was permitted to find that the defendant was responsible for the obstruction solely upon circumstantial evidence. The circumstances were that the defendant was engaged in paving between the rails, and was obliged to convey the materials for that purpose. It was absolutely necessary in this case to prove two facts before the defendant could be adjudged liable for the result of the accident. These facts were: (1) That the defendant, or its servants, produced the obstruction by allowing the stone to fall from the carts, or by placing it there, or leaving it there; (2) the mere fact that it dropped from some of the carts in use by the defendant for drawing the paving stones would not, standing alone, make out the case. The plaintiff was also bound to show that this resulted from careless or improper loading, or some other careless or negligent act of the defendant's servants, since it had a perfect right to use the highway for the purpose of conveying the stones to the point where they were used. It is entirely true that a material fact in a civil or criminal action may be established by circumstantial evidence, but the circumstances must be such as to lead fairly and reasonably to the conclusion sought to be established, and to exclude any other hypothesis fairly and reasonably. It has been said that circumstantial evidence consists in reasoning from facts which are known or proved, in order to establish such as are conjectured to exist, but the process is fatally vicious if the circumstance from which we seek to deduce the conclusion *94 depends itself upon conjecture. *People v. Kennedy*, 32 N. Y. 141. In order to 94 prove a fact by circumstances, there should be positive proof of the facts from which the

inference or conclusion is to be drawn. The circumstances themselves must be shown, and not left to rest in conjecture; and, when shown, it must appear that the inference sought is the only one which can fairly and reasonably be drawn from these facts. *People v. Harris*, 136 N. Y. 429, 33 N. E. 65. The only circumstance which the plaintiff proved in this case was that the defendant, about the time of this accident, was engaged in drawing paving stones over this street; and the inference which is sought to be drawn from that circumstance is that this granite paving block dropped into the highway from one of the carts through the negligence of the defendant's servants. But it appears that, while the defendant was so engaged in moving the paving stone, it was not using or moving any stone of this character, and that other parties were. Hence the reasoning process is defective, since it is at least as reasonable to suppose that the stone in question was left in the street by the careless act of the parties who were using and moving this kind of stone as by the defendant, who was not. This hypothesis was, of course, much more reasonable; and so the question arises whether a verdict based entirely upon such circumstantial evidence should be permitted to stand. It is a settled principle in the law of negligence, which, it has been said should never be lost sight of, that when the plaintiff's evidence is equally consistent with the absence as with the existence of negligence, the case should not be submitted to the jury, since, in such a case, the evidence fails to establish the essential fact. *Baulec v. Railroad Co.*, 59 N. Y. 357. The jury could, no doubt, have attributed the

presence of the stone in the street to the careless act of the other parties who were using granite paving stones with as much reason as they have attributed it to the act of the defendant. The circumstances *95 would clearly warrant that inference quite as clearly as the other, but the verdict imputes that fault to the defendant, against the legal rule which governs the determination of facts upon circumstantial evidence. The case is one, we think, where it appears that the primary cause of the injury proceeded from one of two sources, or was produced by one of two agencies, for one of which the defendant might be responsible, but not for the other. The plaintiff must fail if the evidence does not show that the injury was the result of some cause for which the defendant is responsible. If, upon the testimony, it is just as probable that the injury resulted from the act of the other parties engaged in paving as from that of the defendant, the plaintiff cannot recover. *Searles v. Railway Co.*, 101 N. Y. 661, 5 N. E. 66. The testimony in this case subjects the judgment to the operation of this rule, and so, we think, it must be reversed, and a new trial granted; costs to abide the event.

Judgment reversed.

ANDREWS, C. J., and GRAY and HAIGHT, JJ., concur. BARTLETT, MARTIN, and VANN, JJ., dissent.