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132 Md. 427, 104 A. 39

Court of Appeals of Maryland.
MAYOR, ETC., OF **BALTIMORE**
v.
BASSETT.
No. 16.

April 3, 1918.

Appeal from Court of Common Pleas of Baltimore City; Morris A. Soper, Judge.

"To be officially reported."

Action by Elmira Bassett against the Mayor and City Council of Baltimore. Judgment for plaintiff, and defendants appeal. Affirmed.

West Headnotes

Municipal Corporations 268 ⚿755(1)
268k755(1) Most Cited Cases
If a city negligently fails to keep streets in reasonably safe condition for public travel, it is liable to persons acting without negligence who are injured thereby.

Municipal Corporations 268 ⚿791(2)
268k791(2) Most Cited Cases
Where a depression in pavement two or four inches deep and five feet in diameter existed for several months, at a point established by ordinance for stopping cars, negligence of the city officials in failing to keep the street in a reasonably safe condition is shown.

Municipal Corporations 268 ⚿806(2)
268k806(2) Most Cited Cases
Since pedestrians have rights in the streets equal to vehicles, they may assume that they will not be subjected to the nuisance of a depression in the street, though pedestrians cannot shut their eyes to obvious defects.

Municipal Corporations 268 ⚿821(25)
268k821(25) Most Cited Cases
Evidence held to present jury question as to pedestrian's negligence defeating recovery for injuries caused by falling in depression in street at point where she was about to board a car.

Trial 388 ⚿139.1(17)
388k139.1(17) Most Cited Cases
(Formerly 388k139(1))
The court is justified in directing a verdict, only when the testimony will not support any other verdict.

Argued before BOYD, C. J., and BRISCOE, THOMAS, PATTISON, STOCKBRIDGE, and CONSTABLE, JJ.

Edw. J. Colgan, Jr., Asst. City Sol., of Baltimore (S. S. Field, City Sol., of Baltimore, on the brief), for appellants.
William H. Lawrence, of Baltimore, for appellee.

CONSTABLE, J.
The appellee recovered a judgment against the appellant as a result of personal injuries suffered by her through the alleged negligence of the appellant in permitting one of its thoroughfares to be, and remain for a long time, in an unsafe and dangerous condition. At the trial below, the appellant offered three prayers, each seeking to withdraw the case from the consideration of the jury; two upon the ground that there was no legally sufficient evidence to entitle the plaintiff to recover, and one for the reason that the plaintiff was guilty of contributory negligence. It is only upon the theory that the court committed error in refusing one or all of these prayers that this appeal is prosecuted.

[1] [2] This court and others have so often and so consistently declared the rule of law as to when cases should be withdrawn from the consideration of the jury for want of legal evidence, that it is only necessary to repeat the rule: and that is, if

there be any evidence from which a rational conclusion may be drawn as opposed to the theory of the prayer, the weight and value of such evidence should be left for the consideration of the jury, and, before such a prayer can be granted, the court must assume the truth of all the evidence before the jury, tending to sustain the claim or defense, as the case may be, and of all inferences of fact fairly deducible from it. Jones v. Jones, 45 Md. 144; Balto. Elevator Co. v. Neal, 65 Md. 459, 5 Atl. 338; Moyer v. Justis, 112 Md. 220, 76 Atl. 496; Balto v. Leonard, 129 Md. 621, 99 Atl. 621.

[3] The duty of a municipality to keep its public streets and highways in a reasonably safe and proper condition for public travel is too well settled in this state, by numerous and recent decisions, to admit of any doubt; and if the municipality negligently fails to do so, and persons acting without negligence upon their part are injured, because of such negligence of the city, the municipality is liable in damages. Balto. v. Marriott, 9 Md. 160, 66 Am. Dec. 326; Hagerstown v. Klotz, 93 Md. 437, 49 Atl. 836, 54 L. R. A. 940, 86 Am. St. Rep. 437; Keen v. Havre de Grace, 93 Md. 34, 48 Atl. 444; Magaha v. Hagerstown, 95 Md. 70, 91 Atl. 832, 93 Am. St. Rep. 317; Annapolis v. Stallings, 125 Md. 346, 93 Atl. 974; Delmar v. Venables, 125 Md. 476, 94 Atl. 89; ***40**Gutowski v. Balto., 127 Md. 502, 96 Atl. 630; Burke v. Balto., 127 Md. 560, 96 Atl. 693; Hagerstown v. Crowl, 128 Md. 556, 97 Atl. 544; Biggs v. Balto., 129 Md. 684, 99 Atl. 860.

The testimony tends to show that the plaintiff, a woman of 75 years of age, attempted to board a street car at the southwest corner of North and Moreland avenues in Baltimore City, during the afternoon of March 5, 1917. She had been walking up Moreland avenue, and at the corner of that avenue and North avenue left the curb of the pavement and hailed a car. It had been raining the morning of, and the night before, the day of the accident. From the curb to the car line is a distance of 15 or 20 feet. And in a direct line from the corner to the entrance of a car standing to take on passengers, and about midway between the curb and the car, was a hole in the concrete or macadam street bed, described by the witnesses as of a bowl shape, and variously described by them as from 3 to 5 feet in diameter and hollowed out, at its greatest depth in the center from 2 to 4 inches. Several of the witnesses, in locating its position, testified that, in making the car, a person either had to jump over it or walk around it. And it was further testified that the hole had been there for at least a year. The plaintiff testified that after she left the curb, and while looking for automobiles both ways, she stepped into the hole and fell, breaking one of her arms in three places. She testified that she was not familiar with the point in question before the accident, and knew nothing of the hole in her path to the car until just as she was about to place her foot in it, and then she could not hold herself back; that, because of the rain, the earth in it was muddy and looked perfectly safe, like the rest of the street, and she did not know there was a hole there until she was falling.

[4] The chief contention of the appellant seems to be based upon the theory that the court below should not have allowed the case to go to the jury upon what it claims to have been no evidence of negligence whatsoever, when the only proof of such is based upon “the existence of such an insignificant defect.” We cannot agree with this argument. If the authorities, charged with the duty of using reasonable care in keeping the streets and highways in safe condition for the traveling public, likewise using due care, choose to permit a defect, such as described by the testimony in this case, to continue for months, then there is strong proof that they have negligently failed to perform their legal duties. The fact that an ordinance requires all street cars to stop on the near side of a cross street for receiving and discharging passengers should have called to the attention of

the authorities that holes, located as this one, were especial menaces to those compelled to avail themselves of the cars.

[5] We also are of the opinion that the question vel non of contributory negligence was one to be presented to the jury; for, since pedestrians have rights in the streets equal to vehicles, they are justified in assuming that they will not be subjected to the dangers of a nuisance, such as the testimony showed the city permitted to exist at a point where those about to take a car had to come into contact with it; but this presumption, of course, does not authorize one to shut his eyes to open and obvious dangers, and pay no attention, whatever, to the condition of the highway in which defects may, although they should not, exist. Balto. Trust Co. v. Helms, 84 Md. 515, 36 Atl. 119, 36 L. R. A. 215; Magaha v. Hagerstown, 95 Md. 62, 51 Atl. 832, 93 Am. St. Rep. 317; Knight v. Balto. City, 97 Md. 647, 55 Atl. 388.

[6] We think the testimony bearing upon this point is such as to cause reasonable men to differ, and therefore, under the rule, should have been submitted.

Finding no error in the rulings of the court, we will affirm the judgment.

Judgment affirmed, with costs to the appellee.

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