(26

IN THE HIGH COURT OF AUSTRALIA

BLAKE

V.

SILMAN'S STORES PTY. LTD.

REASONS FOR JUDGMENT

Judgment delivered at MELBOURNE

on TUESDAY, 16TH MAY 1967.

A. C. Brooks, Government Printer, Melbourne

C.5072/66

BLAKE

v.

SILMAN'S STORES PTY. LTD.

ORDER

Appeal dismissed with costs.

BLAKE

v.

SILMAN'S STORES PTY. LTD.

JUDGMENT
(ORAL)

JUDGMENT OF THE COURT
DELIVERED BY BARWICK C.J.

CORAM : KITTO J.
TAYLOR J.
WINDEYER J.
OWEN J.

BLAKE

v.

SILMAN'S STORES PTY. LTD.

In this case the learned trial judge, in charging the jury, asked them to answer a series of questions, which included the following :

"Question 1 : Did the plaintiff fall in consequence of her slipping on some substance which was on the stairs?

Question 2 : Was the presence of the substance on the stairs an unusual danger?

Question 3 : Was it an unusual danger of which the defendant knew or ought to have known?

Question 4 : Did the defendant fail to take reasonable care to prevent injury to the plaintiff from the danger?

The jury answered each of them in the affirmative.

However, the defendant, the now respondent, pursuant to leave reserved to it, moved for judgment notwithstanding the verdict upon the ground that there was no material before the jury upon which they could have answered the third question in the affirmative. His Honour, having heard argument on both sides, acceded to this motion and entered judgment for the defendant.

The appellant contends that his Honour was in error in taking this course and submits that there was evidence before them which would justify the jury's conclusion. The relevant evidence is in an extremely small compass and has been fully canvassed before us by counsel. As well, the discussion by counsel for the appellant has ranged over a number of reported cases and the basic principles, as to which there really is no dispute in this case, to be applied in considering a claim such as the present.

However, the Court has reached a clear conclusion upon the precise matter raised in the appeal, namely, whether evidence was adduced by the plaintiff upon which the jury could conclude that the respondent knew or ought to have known of the existence of an unusual danger in the form of a slippery substance upon the main staircase in the respondent's shop. We are of opinion that there was no such evidence. There was no evidence that the respondent knew at any relevant time of the existence of the slippery substance upon the stairs. Nor was there any evidence as to when or by whom that substance was deposited upon the step of the staircase, or as to the interval of time which elapsed between its deposition and the plaintiff's stepping and slipping upon it. No interval of time was therefore established during which the respondent might become aware of the presence of the slippery material and during which any countervailing step might have been taken by it. That being so, the jury were not entitled to say that the respondent knew or ought to have known of the danger constituted by the presence of the slippery substance on the staircase.

We are clearly of opinion that the learned trial judge was not in error in entering judgment for the defendant. Consequently, this appeal will be dismissed with costs.