MondayMonday

The Rule of Abraham Lives On

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It could only happen in Brooklyn. Judah Abraham, a Bavarian merchant, met Sarah Sussman on his way to America in 1837. Six years later, Abraham Abraham was born. Though he wanted to be a violinist, Abraham had a knack for the dry goods business. At 14, he was working in a dry goods store in Newark (it must have been some store; his co-workers were guys by the name of Bloomingdale and Altman.) By 1865, he had opened his own store on Fulton Street in Brooklyn. Later, Abraham would form a mercantile partnership which became Abraham & Straus, occupying buildings covering some seven acres of downtown Brooklyn. At the turn of the century, Abraham was not only a civic leader and a nonsectarian philanthropist, but a friend to mayors (Gaynor) and Presidents (McKinley, Roosevelt and Taft) alike. He entertained at his beautiful home on St. Mark's Avenue or at his summer retreat in the Thousand Islands.

So, when the Court of Appeals in 1904 was faced with Josephine Kline's lawsuit against Abraham Abraham, it was not without context. Josephine worked as a shopgirl in Abraham & Straus' palatial store on Fulton Street. The store had a new marble stairway leading from the first floor to the basement, which was opened to the public around Christmas, 1897. Josephine, an Assistant Cashier, worked in the glove department at the top of the stairway. Twice each day, Josephine used the stairway to go to the Cashier's Office to turn in her money. She took her cashbox with her, tucked under one arm, and her receipt stamp, which she placed in her other hand.

In April 1898, with her hands too preoccupied to grasp the rail, Josephine walked down the stairway to the final landing, some five or six steps from the bottom. There, as she stepped off the landing to the next stair below, Josephine slipped, injuring the "rudimentary bones" at the end of her spinal column, *i.e.*, the coccyx.

At trial, witnesses attested to the fact that the marble steps were as "slippery as ice", as "smooth as glass" and were "highly polished." Defendants argued that while the marble was "smooth" it was not "polished." Moreover, that was a "customary finish in general use" in buildings where marble was used.

Plaintiff showed that numerous others had been injured by slipping on the stairway. Defendants countered, saying that there were only seven such accidents, while "thousands" of persons used their store everyday and those people had lots of accidents, maybe 500-600 per year. They wrote them all down in a book. While Defendants had been advised to put rubber treads upon the stairs, and the cost of doing so, "such treads had not, at the time of the accident, been adopted."

At the close of Plaintiff's case, Defendants moved for dismissal (contributory negligence; open and obvious; risk of employment; lack of negligence), which was denied, as it was at the close of the case as well.

In *Kline v. Abraham*, 178 N.Y. 377 (1904), the Court of Appeals reversed. Marble, it said, is in common use in the largest of buildings and marble is smooth. Consequently, "[a] person walking thereon is required to use care to avoid slipping." That same principle applied to polished hard wood floors too, "as in the case of may of our more expensive private residences". An employer could hardly be charged with negligence for giving a shopgirl marble stairs to walk upon, could he? Josephine knew the stairs and assumed the risk.

Which is how we get to Nereida Villa and her fall down the stairs in The Bronx. Ms. Villa slipped and fell down a flight of stairs, which defendants claimed were never "waxed", but were merely mopped and "polished periodically with a buffing machine and a liquid that dries instantly." *Villa v. Property Resources Corp.*, 2016 NY Slip Op 01565 (1st Dep't 3/3/16). Though Ms. Villa recalled that she saw the porter using the buffing machine earlier in the day and arose from her fall with her hands and pants wet with a "wax or ammonia," this was "conclusory." Just because a floor is slippery "by reason of its smoothness or polish" doesn't infer negligence without more, such as that it was negligently waxed.

"Not likely to be vacated," Justice Cardozo assured us, "is the verdict of quiescent years." Even when, we now know, that verdict is wrong. The Rule of Abraham lives on.