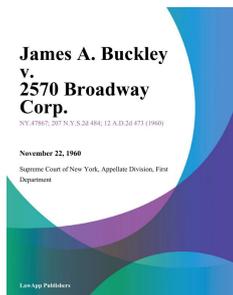


# BEAULD.COM Ebook and Manual Reference

## JAMES A BUCKLEY V 2570 BROADWAY CORP EBOOKS 2019



Author: Supreme Court of New York

Realese Date: Expected @@expectedReleaseDate@@

Judgment, entered on December 15, 1959, dismissing plaintiff's complaint on the merits and dismissing the cross complaints of defendants 2570 Broadway Corp. and the City of New York against defendant Central Petroleum Corp., unanimously reversed, on the law and on the facts, and a new trial ordered, with costs to abide the event. Plaintiff's claim of negligence is that he was caused to fall because of a hole in the sidewalk and a greasy condition on or about an oil intake valve in front of the premises of defendant 2570 Broadway Corp. We hold the court erroneously failed to charge in response to the inquiry of the jury that liability may be grounded on the bases alleged and established by the evidence if they substantially and proximately caused the occurrence although concurrently and to a lesser extent caused by the presence of snow. In addition, we conclude the plaintiff did not have a fair trial. During the progress of the trial there were interruptions and unnecessary criticisms of plaintiff's counsel to such an extent that in our opinion the calm, dispassionate and deliberate consideration of the facts by the jury was unduly impeded. We are mindful of the fact that a Trial Judge is not reduced to such constraint that he may not make remarks on occurrences during the trial. (Devlin v. New York City Ry. Co., 116 App. Div. 894.) The Trial Judge should, however, at all times maintain an impartial attitude and exercise a high degree of patience and forbearance. The development of the facts in the presence of a jury so far as is humanly possible should be uncomplicated by personalities and acrimony. (Kamen Soap Prods. Co. v. Prusansky u0026amp; Prusansky, 11 A.D.2d 676; Cohon u0026amp; Co. v. Pennsylvania Coal u0026amp; Coke Corp., 10 A.D.2d 667; Bowen v. Mahoney Coal Corp., 256 App. Div. 485; People v. Di Carlo, 242 App. Div. 328.)

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