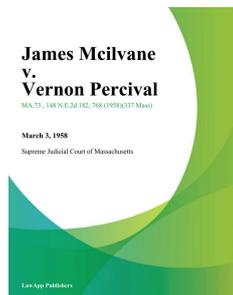


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JAMES MCILVANE V VERNON PERCIVAL EBOOKS 2019



Author: Supreme Judicial Court of Massachusetts

Realese Date: Expected @@expectedReleaseDate@@

Order dismissing report affirmed. This action of tort for personal injuries was brought in the Municipal Court of the City of Boston. It could have been found (a) that the plaintiff fell in the defendant's pool room when his foot caught in a long, dark crack, about one half inch wide, and one half inch deep, between uneven, chipped or worn boards on a wooden floor; (b) that the condition had existed unchanged for as much as five months prior to the injury; (c) that the plaintiff had seen the condition ten or twelve times before the injury, and was in the pool room four or five days each week; and (d) that at the time he did not think of the crack because he was concentrating on a pool shot. The trial Judge refused to rule that there was no evidence to warrant a finding for the plaintiff and found for the plaintiff. The defendant appealed from the dismissal by the Appellate Division of a report. Findings were warranted (a) that the defendant had failed to keep the premises in a reasonably safe condition for the use of business invitees and that the defect was not trivial (see Hillis v. Sears, Roebuck u0026amp; Co. 284 Mass. 320, 321; Shrigley v. Boston Symphony Orchestra, Inc. 287 Mass. 300, 303; Shwartz v. Feinberg, 306 Mass. 331, 332-333; Di Nolo v. Gilchrist Co. 332 Mass. 391, 392-393; compare Pastrick v. S. S. Kresge Co. 288 Mass. 194, 196, and cases cited); and (b) that the defect had existed long enough (see Gallagher v. Stop u0026amp; Shop, Inc. 332 Mass. 560, 563-564; compare Kelleher v. Dini's, Inc. 331 Mass. 217, 219; Chastain v. Hotel Commander, Inc. 336 Mass. 603, 605), for the defendant to have notice of it. The plaintiff's knowledge of the defect was merely evidence of contributory negligence and did not require a finding of contributory negligence as a matter of law. Spencer v. Bartfield, 334 Mass. 667, 668. Compare O'Neil v. W. T. Grant Co. 335 Mass. 234, 235.

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