

PHILLIPS *v.* QUAPAW BATH HOUSE COMPANY.

4-7069

170 S. W. 2d 1001

Opinion delivered May 10, 1943.

NEGLIGENCE.—In appellant's action to recover damages to compensate injuries sustained when cut by a piece of rusty tin while passing through a door on appellee's premises, *held* that the finding that the piece of tin had not been in its position for a sufficient length of time for appellee, by the exercise of ordinary care, to have discovered it, was supported by substantial evidence.

Appeal from Garland Circuit Court; *Earl Witt*, Judge; affirmed.

*Jay M. Rowland*, for appellant.

*Martin, Wootton & Martin*, for appellee.

GRIFFIN SMITH, C. J. The judgment (a jury having been waived) absolved the Bath House Company of negligence, notwithstanding appellant's shoulder was slightly cut when she came into contact with a piece of rusty tin—which, as she expressed it, “. . . was sticking out the edge of the door.”

The court found that although in different circumstances presence of the tin would have constituted negligence, proof was lacking that it had been in a position to cause danger a sufficient length of time to have been discovered by the defendant in the exercise of ordinary care. We cannot say this holding is not supported by substantial evidence.

Affirmed.

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