*are entitled to the residuary estate in equal shares but so that their respective interests are defeasible upon the happening of any of the events mentioned in the will except so far as any such share may in the meantime have been lawfully appropriated by way of advance under the power contained in the will in that behalf. Costs of all parties of the appeal to be paid out of the estate.*

Solicitor, for the appellants, *Septimus A. Ralph.*

Solicitors, for the respondents, *Ford, Aspinwall & De Gruchy,* for *Cuthbert, Morrow & Must,* Ballarat; *George Shaw.*

B. L.

---

[HIGH COURT OF AUSTRALIA.]

HANNON . . . . . APPELLANT;
PLAINTIFF,

AND

McLARTY . . . . . RESPONDENT.
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF VICTORIA.



MELBOURNE, *Sept.* 8.

Griffith C.J., Isaacs, Gavan Duffy, Powers and Rich JJ.

*Nuisance—Negligence—Highway—Wheat left on highway—Horses injured by eating wheat.*

The defendant left a waggon loaded with bags of wheat, unattended and unprotected except by a dog, on the side of a country road three chains wide. The plaintiff's horses were by his direction turned out of his yard on to the road to find their way unattended, as they were accustomed to do, to a paddock seven miles away. The horses tore open some of the bags and ate

H. C. OF A. 1914.

HANNON v. MCLARTY.

so much of the wheat that some of them died and others were injured. In an action in a County Court based on public nuisance and on negligence, the Judge found that wheat was so strong an allurement for horses that they would break through anything possible of being broken through to get at it, and that it was customary in country districts to leave waggon-loads of wheat on the roadside unprotected, and he gave judgment for the plaintiff, but on appeal the Supreme Court reversed that decision and gave judgment for the defendant.

*Held*, that special leave to appeal to the High Court should be refused.

Special leave to appeal from *Hannon* v. *McLarty*, (1914) V.L.R., 526; 36 A.L.T., 62, refused.

MOTION for special leave to appeal.

An action was bought in the County Court at Swan Hill, Victoria, by John Hannon seeking to recover £209 damages for injuries sustained by the plaintiff's horses. The particulars of demand set out that the defendant wrongfully left wheat unprotected on a certain public highway whereby a public nuisance was caused, and that four horses belonging to the plaintiff, which were lawfully on such highway, were killed and others were damaged by eating such wheat, and, alternatively, that the plaintiff claimed damages against the defendant for leaving the wheat unprotected.

The evidence established that from 9 p.m. until midnight on 12th February 1914 the defendant left a waggon loaded with bags of wheat on the side of a country road three chains wide, the wheat being unattended and unprotected except by a dog which was tied to the waggon; that on the same day between 4 p.m. and 5 p.m. the plaintiff's team of horses were by his direction let out from his yard on to the road to find their way unattended, as they were accustomed to do, to a paddock seven miles distant and beyond the spot where the waggon was; and that the horses tore open some of the bags and ate so much of the wheat that four of them died and the others were rendered unfit for work.

The learned County Court Judge found (*inter alia*) that wheat was most attractive to horses and constituted an allurement so strong that they would break through anything possible of being broken through to get at it; that the defendant knew of this allurement; that the dog was not a reasonable protection for

keeping horses from the wheat; that in country districts it is the custom among farmers to leave waggon-loads of wheat unprotected on the roadside; that the plaintiff himself had done so; and that the plaintiff did not know that the particular waggon-load of wheat was on the road, and that the risk of its being there was not one which the plaintiff as a reasonable man was bound to foresee and guard against. The learned Judge gave judgment for the plaintiff for £160.

On appeal to the Full Court of the Supreme Court the decision was reversed and judgment was entered for the defendant—the Court holding, as to the claim based on nuisance, that the horses were trespassing on the highway, that the leaving the waggon loaded with wheat on the roadside did not constitute a nuisance and that, even if it did, the nuisance was in no sense the cause of the loss to the plaintiff; and, as to the claim based on negligence, that the defendant was not negligent in not contemplating and, by anticipation, preventing the results which happened: *Hannon* v. *McLarty* (1).

The plaintiff now moved for special leave to appeal from that decision.

*S. R. Lewis*, for the plaintiff. Upon the evidence and findings the wheat left on the road was a public nuisance in that it was a danger to horses passing along the road: *McIntyre* v. *Hams* (2); *Garrett on Nuisances*, 2nd ed., p. 40. It is in the same category as a poisoned bait. The plaintiff owed no duty to the defendant to prevent his horses from straying. The leaving the wheat unattended is *primâ facie* evidence of negligence, and as the learned County Court Judge found that the defendant was guilty of negligence the Full Court, upon principle, should not have disturbed his finding.

GRIFFITH C.J. No general question of law arises in this case. At most the question is whether any inference of negligence can be drawn from the facts in evidence. For myself I should like to add that I think the decision is manifestly right.

ISAACS J. concurred.

(1) (1914) V.L.R., 526; 36 A.L.T., 62. (2) (1911) S.A.L.R., 16.

H. C. OF A. 1914.

HANNON v. McLARTY.

GAVAN DUFFY J. I agree that this is not a case for special leave. So far as the matter has been argued I am disposed to think that the decision of the Full Court is right.

POWERS J. concurred.

RICH J. concurred.

*Special leave to appeal refused.*

Solicitors, for the plaintiff, *Plante & Henty* for *J. R. Town*, Swan Hill.

B. L.

---

[HIGH COURT OF AUSTRALIA.]

MORAN & CATO PROPRIETARY LIMITED . APPELLANTS; DEFENDANTS,

AND

CANTLON . . . . . RESPONDENT. INFORMANT,

ON APPEAL FROM THE SUPREME COURT OF VICTORIA.

H. C. OF A. 1914.

MELBOURNE, *Oct.* 19, 20.

Griffith C.J., Isaacs and Powers JJ.

*Trading Stamps—"Issue" on sale of goods—Coupons entitling purchaser to obtain other goods free—Promise by manufacturer or original vendor—Distribution by retailer—Trading Stamps Act* 1901 (*Vict.*) (*No.* 1750), *secs.* 2, 3.*

* The *Trading Stamps Act* 1901 by sec. 2 provides that "'Trader' means any person firm or company carrying on any business who issues trading stamps to customers. 'Trading stamp' includes any stamp coupon cover package document means or device supplied by any trading stamp company or issued by any trader which entitles the holder thereof to demand and receive from any trading stamp company or from any person firm or company other than the said trader any money or goods. 'Trading stamp company' means and includes any person firm or company who supplies any trading stamps to any trader and undertakes to redeem the same or that the same will be redeemed by giving or delivering to the holder thereof any money or goods."

Sec. 3 provides that "(1) No person shall on the sale of any goods issue any trading stamps," and imposes a penalty on a person doing so.