[HIGH COURT OF AUSTRALIA.]

RICE . . . . . APPELLANT;
PLAINTIFF,

AND

HENLEY . . . . . RESPONDENT.
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

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SYDNEY, *Dec.* 1, 2.

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

Building Regulation—"Floors," meaning of—"Well-holes and similar openings"—Scaffolding and Lifts Act 1912 (*N.S.W.*) (*No.* 38 *of* 1912), *sec.* 8, *Second Schedule, regulation* 20.

Regulation 20 of the Regulations contained in the Second Schedule to the *Scaffolding and Lifts Act* 1912 requires "all well-holes and similar openings in floors to be effectively guarded."

Held, that the word "floors" means parts of buildings intended to be walked upon and in a stage of construction when an ordinary person would think that he might walk about on them safely without finding a trap.

Decision of the Supreme Court of New South Wales affirmed.

APPEAL from the Supreme Court of New South Wales.

An action was brought in the Supreme Court by Charles Rice against William J. Henley, in which by the fifth count of the declaration the plaintiff alleged that the defendant was a builder engaged in the erection of a building within the Metropolitan Police District of Sydney, and that the said building was above two stories high and the joists or girders had been laid, and yet the defendant did not have a temporary covering of close boards laid on the joists or girders directly above where men were

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working, and did not keep well-holes and similar openings in the floor effectively guarded, and that by reason of the premises the plaintiff, being lawfully on the third floor of the said building and engaged in work in connection therewith, fell from the said floor and was injured. The plaintiff claimed £500. To this count the defendant pleaded not guilty. The action was tried before *Sly* J. and a jury. The learned Judge ruled that there was no evidence to go to the jury on the fifth count, and entered judgment for the defendant on that count. The jury having found a verdict for the defendant on the other counts, the plaintiff moved for a new trial on the ground (*inter alia*) that the learned Judge was in error in his ruling and in entering a verdict for the defendant on the fifth count.

That motion having been dismissed by the Full Court, the plaintiff now appealed to the High Court.

The material facts sufficiently appear in the judgments hereunder.

Brissenden (with him *Pitt*), for the appellant.

Knox K.C. (with him *Alec Thomson*), for the respondent.

GRIFFITH C.J. The only question in this case is whether the evidence for the plaintiff established a case fit to be submitted to the jury showing that the accident that happened to him arose from a breach of the direction contained in regulation 20 of the Schedule to the *Scaffolding and Lifts Act* 1912: "All well-holes and similar openings in floors to be effectively guarded."

This regulation certainly applies to buildings in the course of erection. It is not necessary to consider whether it applies also to completed buildings, for the building in which the accident happened was one in course of erection. The internal construction of the building appears to have been of iron or steel. The external walls, which were of brick, were completed up to the third story and were in process of being raised higher. In the inside the girders and joists had been laid over a considerable portion of that story, but there is evidence that in one part, although the girders had been laid, there was a gap about 14 feet

wide where there were no joists, probably for the reason that in that space there was a crane. We all know that in the erection of large buildings a crane is usually erected within the external walls, and some space must be left open in the floors for its use. The evidence also shows that there was a scaffolding on the third story for the purpose of putting up the external brick wall, with planking upon it for supplying bricks and mortar to the workmen. It appears also that for the purpose of moving material about from one place to another on this story a barrow run had been constructed across the gap of 14 feet. This barrow run consisted of three planks, each a foot wide, laid side by side and firmly supported by pieces of wood laid transversely upon joists. While walking along that barrow run carrying a frame with the aid of another man, the plaintiff fell off to his left into the gap where there were no joists, and was injured.

The question is whether, on such evidence as that, we can say that the gap was a well-hole or similar opening within the meaning of the regulation. If the regulation applies to a case of that kind, it means, in effect, that in all similar cases where a barrow run or plank is put over an unfinished floor for the purpose of transporting material, there must be a guard rail. The question to be put to a jury in a case like this, after a proper definition of what is a well-hole or similar opening in a floor within the meaning of the regulation, is whether upon the evidence which they can accept there was such a well-hole or opening.

Without attempting to give a complete definition it seems to me that the governing word in the regulation is the word "floors." That is not a technical word. We all know what it means. A floor may be permanent or temporary, but in either case it must be something that can be fairly described as a floor, and the ordinary signification is an area apparently covered in. When there is such a floor, if there is a well-hole or similar opening in it, it must be effectively guarded. If in this case the whole of the girders and joists had been practically all covered in, so that an ordinary person would think that he might walk about safely without finding a trap, then I think the regulation would apply. The evidence in this case does not indicate any such condition. It merely indicates that the building was at

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that stage of construction when it was necessary to have at this particular story ways upon which materials might be transported over the girders, from one place to another. I do not think that anyone can fairly describe such intermittent ways or coverings as a floor. I have therefore come to the conclusion that in this case there was no floor, and that the openings could not be described as well-holes or similar openings in a floor.

I think, therefore, that the appeal fails.

ISAACS J. I agree. In interpreting an Act which is directed to guarding against accidents and to the preservation of human life I think one should endeavour to carry out the objects of the legislature as far as the language of the Act will reasonably permit. But in this case I think the language does not go so far as is necessary for the appellant's case. There is no doubt that the word "floor" is the key-note of this case. What does "floor" in that particular part of regulation 20 mean? Does it mean floor in the sense of a ground floor or a first floor; or does it mean the place where one ordinarily walks? I think it has the latter meaning. The word "floor" is used ambiguously in some parts of the Regulations. For instance, regulation 17 speaks of "the hoist-well in any building in course of erection . . . . upon all floors." There the words "upon all floors" mean "at every stage." Regulation 26 speaks of the location of a lift-well "upon the ground floor" of a building. Regulation 32 speaks of a lift being operated "from the floor," and of a lock being provided "upon every floor the lift serves." Regulation 33 provides that "the enclosure doors or gates of any lift shall be arranged to close and lock automatically when the car is 15 inches from any floor level."

In this particular regulation the word "in" is of importance, because the regulation speaks of openings "in" floors and not "on" floors. If the word "floor" in regulation 20 meant stage or story, an opening "in" a floor would equally apply to a window. Therefore I think the word floor means place to be walked upon, and an "opening in a floor" gives me the idea that the floor is the general thing and the opening is the exception—the opening is a break in the continuity of the floor.

That is not the state of things existing here.

I therefore think the appeal fails.

I would like to say that I do not express any opinion as to whether this regulation applies only to buildings in the course of erection or only to permanent floors. I observe that regulation 12, which is in the same Part of the Regulations, deals with the construction of lift boxes and might apply to buildings at all times. Nor do I wish to express any opinion as to whether the similarity of an opening to a well-hole must be in its use for something in the nature of a well. On a full examination of the Regulations I am clear that regulation 20 only applies where there is a floor in the sense of a place to be walked upon.

GAVAN DUFFY J. I agree that the word "floor" in regulation 20 means flooring, and not story. I think there was no evidence to go the jury on this cause of action, and that the learned Judge was right in withdrawing it from them.

Appeal dismissed with costs.

Solicitor, for the appellant, *John Howarth.*

Solicitors, for the respondent, *Read & Read.*

B. L.