

[HIGH COURT OF AUSTRALIA.]

CAMPBELL . . . . . APPELLANT ;

PLAINTIFF,

AND

WEBSTER ROMETCH LIMITED . . . . . RESPONDENTS.

DEFENDANTS,

ON APPEAL FROM THE SUPREME COURT OF  
TASMANIA.

Practice—High Court—Appeal from Supreme Court of State—Mistrial—New Trial.

H. C. OF A.  
1918.  
HOBART,  
Feb. 19, 20.

In an action to recover damages for personal injuries alleged to have been sustained by the plaintiff by reason of the negligence of the defendants, the jury found a verdict for the defendants. The Full Court of the Supreme Court of Tasmania refused an application by the plaintiff for a new trial.

On appeal, the High Court, being of opinion that there had been a mistrial, directed a new trial to be had.

Barton,  
Gavan Duffy,  
and Rich JJ.

Decision of the Supreme Court of Tasmania reversed.

APPEALS from the Supreme Court of Tasmania.

An action was brought in the Supreme Court in its Local Courts Act Jurisdiction by Gordon Beresford Campbell, an infant, by his next friend Adela Maria Campbell, against Webster Rometch Ltd., claiming damages for injuries sustained in an accident to a motor omnibus belonging to the defendants in which the plaintiff was a passenger. The action was tried before *Nicholls* C.J. and a jury. At the close of the evidence, counsel for the plaintiff asked for a direction that the jury should find for the plaintiff. This was refused. The jury returned a verdict for the defendants. The plaintiff moved for a new trial. The motion was heard by

H. C. OF A. *Nicholls* C.J., who dismissed it. The plaintiff appealed to the Full  
1918.  
CAMPBELL  
v.  
WEBSTER  
ROMETCH  
LTD.  
—

Court, first, from the order dismissing the motion for a new trial and, secondly, from the refusal of the learned Chief Justice to direct the jury, and by the second appeal he asked for a new trial. The Full Court having dismissed both appeals, the plaintiff now appealed in each case to the High Court, and the appeals were heard together.

*L. L. Dobson* (with him *G. M. Johnstone*), for the appellant.

*C. S. Page*, for the respondents.

The judgment of the COURT, which was delivered by BARTON J., was as follows :—

This is a case which, owing to causes the responsibility for which I do not wish to allocate in any particular way, has resulted in the Full Court upholding a verdict which cannot be supported, and it is a case which went to the jury in such a way that it was scarcely reasonable to expect them to arrive at a proper conclusion according to well known principles of law. I am distinctly of opinion that there has been a mistrial, that it was not in any sense a trial of the issues between the parties, and that the ends of justice have so been subverted.

We are all of opinion that the first appeal should be dismissed without costs, and that the second appeal should be allowed and a new trial ordered. The costs of the second appeal and of the proceedings in the Supreme Court should abide the event of the new trial.

*Order accordingly.*

Solicitors for the appellant, *Crisp & Crisp*.

Solicitors for the respondents, *Page, Hodgman & Seager*.

B. L.