

[HIGH COURT OF AUSTRALIA.]

SCOTT APPELLANT ;
PLAINTIFF,

AND

BUCKNELL RESPONDENT.
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF
NEW SOUTH WALES.

*Negligence—Master and servant—Risk undertaken in pursuance of contract—Mis- H. C. OF A.
direction—New trial.* 1918.

SYDNEY,
Dec. 5.

Griffith C.J.,
Barton,
Gavan Duffy
and Rich JJ.

In an action for negligently supplying the plaintiff with a vicious horse for use by the plaintiff in the course of his duties as a servant of the defendant, the evidence disclosed that the plaintiff had undertaken to break the horse in. The jury found a verdict for the plaintiff. The Full Court of New South Wales ordered a new trial, holding that the plaintiff could not recover if at the time of the accident he was using the horse in pursuance of his agreement to break it in, and that the jury should have been directed accordingly.

Held, that a new trial was properly ordered.

Leave to appeal from the decision of the Supreme Court of New South Wales refused.

APPLICATION for leave to appeal.

Herbert Gordon Scott was employed by Hugh William Bucknell as a station hand to perform certain duties on the latter's station, which necessitated Scott's riding a horse. Scott agreed with Bucknell to break in a particular horse for him. Subsequently Scott, while engaged riding the horse in the course of his duties as a station hand, was thrown by the horse and injured by the fall. In an action

H. C. OF A. brought in the Supreme Court of New South Wales by Scott against
1918. Bucknell for negligently supplying the plaintiff with a vicious and
unsafe horse and directing him to ride the same, the jury found a
verdict for the plaintiff. The Full Court (*Cullen C.J., Pring and
Ferguson JJ.*) subsequently set aside the verdict and ordered a new
trial on the ground that the jury should have been directed to deter-
mine whether there was in force, at the time of the accident, a
contract between Scott and Bucknell to break in the horse, and
whether the use by Scott of the horse at that time was referable
to his agreement to break the horse in, and that if they determined
those questions in the affirmative Scott could not recover.

From this decision Scott now applied for leave to appeal to the
High Court.

Lloyd, for the applicant, contended that, having regard to the
conduct of the case at the trial, the direction of the learned trial
Judge was adequate as to whether or not the plaintiff had under-
taken the risk.

During argument the COURT intimated its opinion that the decision
from which leave to appeal was sought was correct.

PER CURIAM. Leave to appeal will be refused.

Leave to appeal refused.

Solicitor for the applicant, *A. B. F. Zlotkowski*, Moree, by *M. A.
H. Fitzhardinge*.

C. A. W.