[HIGH COURT OF AUSTRALIA.]

EDWARDS . . . . . APPELLANT;
PLAINTIFF,

AND

THE MUNICIPAL TRAMWAYS TRUST . . RESPONDENT.
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF SOUTH AUSTRALIA.

H. C. OF A. 1921.

MELBOURNE, *Feb.* 22, 23; *Mar.* 7.

Knox C.J., Gavan Duffy and Starke JJ.

Negligence—Tram-car accident—Evidence—Stopping of tram-car—Intention to alight.

Practice—High Court—Costs—Appeal removed for hearing to another place—Costs occasioned by hearing in another place—Time for application.

The plaintiff brought an action against the defendant to recover damages for injuries sustained by her in alighting from the defendant's tram-car, which injuries were alleged to have been caused by the negligence of the defendant's servants. The plaintiff's story was that the tram-car had stopped at an ordinary stopping-place, that she proceeded to alight, and that while she was alighting the car was suddenly started, whereby she was thrown to the ground and injured. The jury found a verdict for the plaintiff.

Held, that, the car having admittedly stopped to allow passengers to alight, it was for the jury to say whether in the circumstances the plaintiff was justified in assuming that the car would not be started until she had alighted.

Held, also, that there was sufficient evidence to support the jury's finding.

An application that the extra costs caused by the hearing of an appeal from the Supreme Court of a State at the seat of Government of another State be borne by the party on whose application the change of place of hearing is directed should be made upon the application for such change of place.

Decision of the Supreme Court of South Australia reversed.

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APPEAL from the Supreme Court of South Australia.

An action was brought in the Supreme Court by Alice May Edwards against the Municipal Tramways Trust of South Australia to recover damages for injuries received owing to the alleged negligence of the defendant. By her statement of claim the plaintiff alleged that a tram-car of the defendant in which she was a passenger having stopped at an ordinary stopping place, she proceeded to alight, and that while she was doing so the conductor and motorman, or one of them, suddenly and negligently started the car or permitted it to move before she had time to alight, whereby she was thrown to the ground and dragged along by the car. The defendant by its defence denied the negligence alleged, and said that the tram-car having stopped at the stopping place, after it had started again the plaintiff got up from her seat in the tram and, in breach of a by-law, got off the tram-car while it was in motion, and that the accident was caused by the negligence of the plaintiff in getting off the car while it was in motion and not otherwise. The action was heard before *Buchanan* J. and a jury, and the jury, after hearing the evidence, found a verdict for the plaintiff for £1,250. Judgment was accordingly given for the plaintiff for that sum with costs.

An order *nisi* was then obtained by the defendant, calling upon the plaintiff to show cause why the verdict and judgment should not be set aside and a new trial had, or alternatively why judgment should not be entered for the defendant on the grounds that the verdict was against the evidence and the weight of the evidence and that the verdict was one which the jury, on a reasonable view of the evidence, could not properly find. The Full Court allowed the appeal on the ground that there was no evidence of negligence to go to the jury, and ordered the verdict and judgment for the plaintiff to be set aside and judgment to be entered for the defendant.

From that decision the plaintiff now appealed to the High Court.

The evidence, so far as it is material, is stated in the judgment hereunder.

C. T. Hargrave, jun. (with him *N. J. Hargrave*), for the appellant. The decision of the Full Court was based on a wrong application of the

principle stated in *Wing* v. *London General Omnibus Co.* (1), that the doctrine of *res ipsa loquitur* only applies where the direct cause of the accident is within the sole control and management of the defendant. In that case the only evidence given was of the happening of the accident. Here there is positive evidence which, if believed, shows negligence on the part of the defendant's servants. The tram-car having stopped at an ordinary stopping-place, there is evidence that the plaintiff rose from her seat, which was the proper notice that she desired to alight. [Counsel was stopped.]

Villeneuve Smith K.C. (with him *O'Halloran*), for the respondent. There was no evidence of negligence fit to be submitted to the jury. There was not merely a conflict of evidence on the question of negligence, but the evidence for the plaintiff and that for the defendant were on different planes—that for the defendant establishing certain facts with regard to times and measurements which were inconsistent with the plaintiff's story (*Aitken* v. *McMeckan* (2); *Prentice* v. *Victorian Railways Commissioners* (3)). There was such a preponderance of evidence in favour of the defendant's version of what occurred that the jury could not reasonably find a verdict for the plaintiff. If the appeal is successful, the costs awarded to the appellant should not be increased by the extra costs occasioned by the removal of the hearing of the appeal to Melbourne.

Cur. adv. vult.

Mar. 7.

THE COURT delivered the following written judgment:—

The plaintiff, Alice May Edwards, sustained serious injury in a tramway accident, and brought an action in the Supreme Court of South Australia alleging that these injuries were caused by the negligence of the defendant, the Municipal Tramways Trust, or its servants.

The plaintiff was a passenger on a tram-car proceeding from Adelaide to Unley, and her destination was Gilles Street on that route. As the car approached Gilles Street another passenger, who

(1) (1909) 2 K.B., 652. (2) (1895) A.C., 310.
(3) 18 C.L.R., 526, at p. 533.

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also wished to alight there, rang the bell for the car to stop. The plaintiff, according to her evidence, rose to get out as soon as the bell rang, and proceeded towards a gangway in the centre of the car. The car had stopped when she reached the gangway. The conductor was at this time standing in the gangway, with his back to the plaintiff, holding the bell-cord, which he had held from the moment when the car stopped, and looking towards the rear of the car apparently to see that all was clear before he gave the signal to start again. The conductor, according to the plaintiff, moved slightly to one side; and she asserted that she thought he did so to allow her to alight. The plaintiff passed between the conductor and the rear end of the car. She said:—"I stepped out on to the step. I got on to the step. Whilst doing so the bell rang, and as I stepped off the car started. I fell. I was caught and dragged by the car." And in this manner the plaintiff asserted that her injuries were sustained. Some corroborative evidence was called in support of the plaintiff's version of the facts. The defendant, on the other hand, called evidence to show that the plaintiff must have been in a position of safety behind the conductor on the gangway when the car started, and that she got on to the step of the car for the purpose of alighting whilst the car was in motion. The learned Judge who presided at the trial charged the jury in a manner that was not unfavourable to the defendant, but a verdict was found for the plaintiff and judgment entered accordingly. An appeal was taken to the Supreme Court of South Australia in Full Court, which set aside the judgment for the plaintiff and entered judgment for the defendant. And from this judgment of the Full Court an appeal has been brought to this Court.

The learned Judges of the Supreme Court were of the opinion that it was the duty of the plaintiff to make the conductor aware that she wished to alight before he pulled the bell-cord as a signal to restart the car, and that the plaintiff had failed in this duty. But, according to the admitted facts, the car had stopped for passengers to alight by reason of a signal given by one of the passengers on the car. And, in our opinion, it was for the jury to say whether in the circumstances the plaintiff was justified in assuming that the car would not be started until she had alighted. The credibility of the plaintiff

and the inferences to be drawn from her version of the facts are matters for the jury, and beyond the functions of a Court of appeal.

The learned counsel for the Tramways Trust insisted before us that the verdict was against the evidence and the weight of evidence. A passage from *Middleton* v. *Melbourne Tramway and Omnibus Co.* (1) is very appropriate to this case. "It is not for a Court of appeal to say whether the verdict was right or wrong in the sense that the Court itself would or would not have given it. The real question is whether it was such a verdict as reasonable men *might* have given. If it is, we have no right to say that they have ignored the duty cast upon them. There was a considerable body of evidence before the jury on both sides, and while there does not appear to have been much contest as to veracity, the question largely turned upon the credence which the jury would give to this witness or that on the score of reliability. As to positions and distances the estimates were very various, and the extreme ones probably mere guesses. There was ample cross-examination, and the jury had the fullest opportunity of arriving at a just selection of the evidence upon which it was safe to place reliance. That is an opportunity denied alike to the learned Judges of the Supreme Court and to ourselves." There is ample evidence, in our opinion, to justify the verdict of the jury.

The appeal must be allowed, the judgment of the Supreme Court dated 24th August 1920 set aside, and the judgment of the Supreme Court dated 20th May 1920 restored. The plaintiff must also have her costs before the Supreme Court in Full Court and of the appeal to this Court. We were asked to deprive the plaintiff of the extra cost occasioned by this appeal being heard in Melbourne, but the application should have been made when the order was obtained for the hearing in Melbourne, and at that time the Municipal Tramways Trust offered no objection to the appeal being so heard. We decline to make the order sought.

Appeal allowed. Judgment of the Supreme Court dated 24th August 1920 set aside, and judgment of the Supreme Court dated 20th

(1) 16 C.L.R., 572, at p. 579.

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May 1920 *restored. The plaintiff to have from the defendant her costs before the Supreme Court in Full Court and of the appeal to this Court.*

Solicitor for the appellant, *N. J. Hargrave.*
Solicitor for the respondent, *T. S. O'Halloran.*

B. L.

[HIGH COURT OF AUSTRALIA.]

MURRAY . . . . . APPELLANT;

AND

THE FEDERAL COMMISSIONER OF TAXATION . . . . . RESPONDENT.

H. C. OF A. 1921. MELBOURNE, *Feb.* 15; *Mar.* 2. Knox C.J., Higgins, Gavan Duffy, Rich and Starke JJ.

Income Tax—Assessment—Income "derived from sources within Australia"—Dividends—Company—Foreign company—Profits derived from Australia—Shareholder resident outside Australia—Power of Commonwealth Parliament—The Constitution (63 & 64 *Vict. c.* 12), *sec.* 51 (II.)—*Income Tax Assessment Act* 1915-1916 (*No.* 34 *of* 1915—*No.* 39 *of* 1916), *secs.* 10, 14.

W. M., who was resident and domiciled in England, held shares in certain companies incorporated in England, where the central management and control were. He also held shares in a company incorporated in Queensland, where the management and control were. All these companies carried on business in Australia, and derived their main income from sources in Australia. By reason of the incomes so derived the companies were enabled to declare dividends, and these dividends were payable and paid to W. M. in England.

Held, that the Parliament of the Commonwealth had power to tax the dividends so received, and that the executor of W. M. was liable under the *Income Tax Assessment Act* 1915-1916 to income tax in respect of so much of