[HIGH COURT OF AUSTRALIA.]

DICKSON . . . . . APPELLANT;
PLAINTIFF,

AND

THE COMMISSIONER FOR RAILWAYS (QUEENSLAND) . . . . . RESPONDENT.
DEFENDANT.

ON APPEAL FROM THE SUPREME COURT OF QUEENSLAND.

H. C. OF A. 1922.

BRISBANE, *June* 20, 24.

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

Negligence—Railway—Carriage door unfastened—Closing of carriage door—Injury to passenger—Rules for guidance of employees—Breach of rules—Evidence of negligence.

In an action by the plaintiff to recover damages from the defendant for injuries sustained by her through her hand being crushed in the side door of the defendant's railway carriage in which she was a passenger,

Held, that from the omission of the defendant's servants to securely fasten the door before the train was started, the jury might reasonably infer negligence causing the injuries, which were brought about by the attempt of one of those servants to securely fasten the door after the train was in motion.

Metropolitan Railway Co. v. *Jackson*, (1877) 3 App. Cas., 193; *Drury* v. *North-Eastern Railway Co.*, (1901) 2 K.B., 322, and *Taylor* v. *Great Southern and Western Railway Co.*, (1909) 2 I.R., 330, distinguished.

In re Polemis and Furness, Withy & Co., (1921) 3 K.B., 560, followed.

Held, also, that a regulation issued by the defendant for the guidance of his servants, directing that care must be taken that the side doors of railway carriages are fastened before starting trains and that when closing doors care must be taken to avoid injury to passengers, was evidence to go to the jury that it was a reasonable and proper precaution to fasten the door of the carriage in which the plaintiff was when injured.

Decision of the Supreme Court of Queensland: *Dickson* v. *Commissioner for Railways*, (1922) S.R. (Qd.), 176, reversed.

H. C. OF A. 1922.

DICKSON v. COMMISSIONER FOR RAILWAYS (QD.).

APPEAL from the Supreme Court of Queensland.

An action was brought by Charlotte Dickson, in the District Court at Brisbane, against the Commissioner of Railways (Qd.) to recover damages for injuries sustained by the plaintiff, while a passenger on the defendant's railway, owing to the negligence of the defendant's servants. At the hearing the evidence was to the effect that the plaintiff entered a railway carriage, closed the side door but did not fasten it, and then seated herself. Shortly after, the train, being then in motion, gave a lurch or jerk, causing the plaintiff to swing sideways towards the door; she put out her right hand to steady herself, and at that moment a porter, without giving any warning, opened the door and slammed it, crushing the plaintiff's fingers between the door and the door-frame. One of the defendant's regulations (which were set out in a book of rules for the guidance of defendant's employees, issued under the *Railways Act* 1914 (Qd.) and approved by the Governor in Council) provided that care must be taken that side doors were fastened before starting the train and that when closing doors care must be taken to avoid injury to passengers. During the trial the defendant moved for a nonsuit or judgment; the motion was adjourned and the findings of the jury obtained. The jury found that the defendant had been guilty of negligence (a) in failing to take care that the side door of the carriage was fastened before starting the train, and (b) in failing to take care when closing the door to avoid injury to passengers; that the plaintiff was injured by such negligence, and was not guilty of contributory negligence. They assessed damages at £200. On the adjourned motion for a nonsuit or judgment for the defendant the District Court Judge ordered that, notwithstanding the findings of the jury, judgment be entered for the defendant—his Honor being of opinion that, even if there was evidence of negligence in the failure to take care that the door was fastened before the train started, such negligence was not the cause of the accident, and that there was no evidence to support the finding of negligence with respect to the closing of the door by the porter.

On appeal to the Full Court of the Supreme Court the judgment

of the District Court was affirmed: *Dickson* v. *Commissioner for Railways* (1).

The plaintiff now, by special leave, appealed to the High Court from the decision of the Supreme Court.

Stumm K.C. and *Watson*, for the appellant. This case is clearly distinguishable from the cases relied on in the Courts below (*Metropolitan Railway Co.* v. *Jackson* (2); *Bullner* v. *London, Chatham and Dover Railway Co.* (3); *Drury* v. *North-Eastern Railway Co.* (4); *Taylor* v. *Great Southern and Western Railway Co.* (5)); for in each of those cases some act was voluntarily done by the person injured, but in this case there was no such act. Even if the porter's act in opening and closing the door, in the manner and at the time he did it, was not in itself in the circumstances negligent, the failure to fasten the door before starting the train amounted to negligence and necessitated the act which caused the injuries to the plaintiff—such injury thus being directly connected with the omission of a reasonable precaution in the first instance. The defendant's own regulation was evidence which the jury could take into consideration as to what were reasonable precautions to be taken to safeguard passengers, and find that the non-compliance with the regulation was negligence. On the law and the evidence the jury's findings were justified.

Hart, for the respondent. The findings of the jury were not supported by the evidence. No cause of action was established by the plaintiff (see the cases already cited). The failure to carry out the regulation was not negligence. The directions in the regulation operate merely as between the defendant and his servants, and do not affect the defendant's liability with regard to third parties. At most, it is an expression of the precautions against accident which are desired by him to be taken by his servants; the non-observance of such directions is not, in the case of injury to a passenger, sufficient to justify a jury in finding negligence against the defendant. The failure to fasten the door was not the direct cause

(1) (1922) S.R. (Qd.), 176.
(2) (1877) 3 App. Cas., 193.
(3) (1885) 1 T.L.R., 534.
(4) (1901) 2 K.B., 322.
(5) (1909) 2 I.R., 330.

H. C. OF A. 1922.

DICKSON v. COMMISSIONER FOR RAILWAYS (QD.).

of the injuries, and there was no evidence that the manner of opening and closing the door—the act which caused the injuries—was careless.

Stumm K.C., in reply. Failure to see that carriage doors are properly fastened is evidence to go to a jury of negligence (*Gee* v. *Metropolitan Railway Co.* (1)).

Cur. adv. vult.

June 24.

THE COURT delivered the following written judgment:—The plaintiff, whilst a passenger on the defendant's railways, sustained injuries which resulted in the loss of part of the first finger of her right hand, and brought an action in the District Court of Queensland at Brisbane, alleging that these injuries were caused by the negligence of the defendant or his servants. The action was tried with a jury; and the facts proved, or which might have been found by the jury, were substantially to the following effect:—The plaintiff entered a carriage and took a seat, leaving a space almost sufficient for one other person between herself and the door. She closed the door of the carriage behind her, but did not fasten it. Soon afterwards the train started and quickly gathered speed. A porter noticed that the carriage door was unfastened, and, running along the platform, he opened the door, and then slammed it hard. At the moment he was closing the door, the train, which was on an S curve at the time, gave a lurch or jerk, causing the plaintiff to sway towards the door. As the plaintiff did so, she threw her right hand towards it to steady herself, and it so happened, during the interval between the porter's opening and slamming the door, that the plaintiff's fingers reached the hinge; and, on the door being slammed, they were crushed between it and the framework of the carriage.

The defendant moved for a nonsuit or judgment, but the learned Judge who tried the case adjourned the motion, and put the following questions to the jury:—(1) Was the defendant guilty of negligence (a) in failing to take care that the side door of the carriage

(1) (1873) L.R. 8 Q.B., 161, at p. 170.

was fastened before starting the train? (b) in failing to take care, when closing the door, to avoid causing injury to passengers? (2) Was the plaintiff injured by such negligence? (3) Was the plaintiff guilty of contributory negligence? The jury answered questions 1 and 2 in the affirmative, and question 3 in the negative. They assessed damages at £200. Subsequently the adjourned motion was argued before the learned Judge, who was of opinion that, assuming there was evidence to support the finding of negligence under question 1 (a), such negligence was not the cause of the accident, and that there was no evidence to support the finding of negligence under question 1 (b). He therefore entered judgment for the defendant.

On appeal the Supreme Court affirmed this decision. Special leave was given to appeal to this Court against the decision of the Supreme Court, and this appeal now comes before us for determination.

Both the primary and the appellate Judges thought the case indistinguishable in principle from the cases of *Metropolitan Railway Co.* v. *Jackson* (1), *Drury* v. *North-Eastern Railway Co.* (2) and *Taylor* v. *Great Southern and Western Railway Co.* (3). The only principle of law, however, that can be extracted from the cases is authoritatively stated by *Cairns* L.C. in *Jackson's Case* (4):—"The Judge has a certain duty to discharge, and the jurors have another and a different duty. The Judge has to say whether any facts have been established by evidence from which negligence *may be* reasonably inferred; the jurors have to say whether, from those facts, when submitted to them, negligence *ought to be* inferred. . . . The negligence must in some way connect itself, or be connected by evidence, with the accident." The cases relied upon by the learned Judges are valuable illustrations of the application of this principle to the circumstances of these cases, but they can hardly be relied upon as authorities in a case in which the facts are not identical.

Might negligence be reasonably inferred from the facts proved in this case? This depends upon "whether a reasonable person would foresee that the act or omission relied upon as negligent would or

(1) (1877) 3 App. Cas., 193.
(2) (1901) 2 K.B., 322.
(3) (1909) 2 I.R., 330.
(4) (1877) 3 App. Cas., at pp. 197-198.

H. C. OF A. 1922.

DICKSON v. COMMISSIONER FOR RAILWAYS (QD.).

might probably cause damage." The facts in this case must be looked at as a whole. The defendant allowed the plaintiff to enter his train as a passenger, but omitted to see that the door of the carriage in which she was seated was securely fastened before the train started. The defendant's own Regulations provide (reg. 278 (*a*)):—"Care must be taken that the side doors and end platform gates and bars of all carriages and other vehicles are fastened before starting the train, and doors must not be opened to allow passengers to alight from or enter a train before it has come to a stand or after it has started. When closing doors care must be taken to avoid injury to passengers." This regulation was evidence to go to the jury that it was a reasonable and proper precaution to fasten the carriage doors before starting the train. In addition, the jurors were entitled, apart from the Regulations altogether, to consider the probable danger of unfastened doors in railway trains. A passenger might easily fall through the door, or have his body injured or his fingers crushed by a swinging door. Consequently there was evidence from which a jury might reasonably infer negligence in omitting to securely fasten the carriage door before the train started.

It would be difficult to impute negligence to the porter in closing the door. But that act was an endeavour to rectify the earlier default. The hurried nature of the act gave the porter little or no opportunity of appreciating the plaintiff's unstable position or the risk of injury to her, and this condition of things was brought about by the defendant's earlier default. The defendant cannot protect himself against liability for his original default by attempting to amend it at the risk of the plaintiff, if injury results from the combined effect of the negligent act and the attempt to amend it. Here, but for the original default the door would have been securely fastened and the plaintiff's fingers would not have been crushed. The injury to her fingers connects itself, and is connected by evidence, with the original default on the part of the defendant. It is "directly traceable to" that default, and is not "due to the operation of independent causes having no connection with" the default. It is quite immaterial in this view that the injury to the plaintiff's

fingers was unexpected, or could not have been anticipated or foreseen by the defendant or his servants (*In re Polemis and Furness, Withy & Co.* (1)).

The judgments of the Courts below must, therefore, be reversed, and judgment entered for the plaintiff.

Appeal allowed. Judgment of Supreme Court reversed. Judgment of District Court for defendant set aside. Judgment for plaintiff for £200 *with costs in the District Court and Supreme Court and in the High Court.*

Solicitors for the appellant, *J. B. Price & Daly.*

Solicitor for the respondent, *H. J. H. Henchman*, Acting Crown Solicitor for Queensland.

J. L. W.

(1) (1921) 3 K.B., 560.

Rev Welden v Smith (1924) 34 CLR 29

[HIGH COURT OF AUSTRALIA.]

SMITH . . . . . APPELLANT;
NOMINAL DEFENDANT,

AND

WELDEN . . . . . RESPONDENT.
PLAINTIFF,

ON APPEAL FROM THE SUPREME COURT OF SOUTH AUSTRALIA.

H. C. OF A. 1922.

MELBOURNE, *May* 29-31; *June* 1.

ADELAIDE, *Aug.* 17, 21.

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

Negligence—Wheat pool scheme—Statutory authority—Wheat delivered to Government for sale—Damage to wheat through negligence of Government—Duty towards owner of wheat to take care of all wheat in pool—Wheat Harvest (1915-1916) *Act* 1915