

[HIGH COURT OF AUSTRALIA.]

FIEMAN APPELLANT ;
PLAINTIFF,

AND

BALAS AND OTHERS RESPONDENTS.
DEFENDANTS,

ON APPEAL FROM THE SUPREME COURT OF
VICTORIA.

Appeal—Trial by jury—General verdict—Appeal from judgment thereon.

H. C. OF A.
1930.
MELBOURNE,
Oct. 29.

Isaacs C.J.,
Gavan Duffy,
Rich, Starke
and Dixon JJ.

An appeal does not lie to the High Court of Australia from a verdict of a jury, and, so long as the verdict stands, an appeal from a judgment of the Supreme Court of a State given by the trial Judge in accordance with a general verdict of a jury must fail.

APPEAL from the Supreme Court of Victoria.

An action was brought in the Supreme Court of Victoria by John Fieman in which he claimed £3,000 damages from the defendants, Joseph Balas, Robert Leslie Forsyth and Hedley Frank Summons. The plaintiff's claim indorsed on the writ was against the defendant Balas for damages for procuring the certificates hereinafter mentioned and/or causing the plaintiff to be detained in the hospital for insane at Royal Park and elsewhere, and against the defendants Forsyth and Summons as medical practitioners for damages for negligence in giving certificates, on or about 18th June 1927, according to the form prescribed by the *Lunacy Act* 1915 (Vict.) whereby they certified, among other things, that they, Forsyth and Summons, had separately and personally examined the plaintiff and that he was insane, whereas in truth and in fact

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the plaintiff was not insane ; whereby the plaintiff suffered damage. The action was tried by *Irvine* C.J. and a jury of six. The jury brought in a general verdict for the defendants, and judgment was entered for the defendants accordingly.

The plaintiff applied to the High Court for an order that “the whole of the judgment given and pronounced by his Honor the Chief Justice and the verdict of the jury . . . whereby it was ordered that judgment should be entered for the defendants with costs to be taxed . . . be set aside and reversed, and that in lieu thereof it may be ordered that judgment be entered for the above-named appellant or alternatively that there be a new trial of the action.”

D. Claude Robertson, for the appellant.

Walker, for the respondent *Balas*.

Robert Menzies K.C. and *Reynolds*, for the respondents *Forsyth* and *Summons*.

During the argument the following cases were referred to: *Musgrove v. McDonald* (1); *The King v. Snow* (2); *Commonwealth v. Brisbane Milling Co.* (3).

Oct. 29, 1930.

THE COURT delivered the following judgment :—

This appeal must be dismissed. So long as the verdict stands the judgment is correct. In view of the authorities cited we cannot alter the verdict. The judgment must stand. This order is without prejudice to any application that may be made to the Supreme Court for a new trial. Appellant to pay the costs.

Appeal dismissed accordingly.

Solicitors for the appellant, *Loughrey & Douglas*.

Solicitor for the respondent *Balas*, *J. H. S. Campbell*.

Solicitors for the respondents *Forsyth* and *Summons*, *Seton Williams & Heathfield*.

H. D. W.

(1) (1905) 3 C.L.R. 132.

(2) (1915) 20 C.L.R. 315.

(3) (1916) 21 C.L.R. 559.