

33/1927

THE COUNCIL OF THE SHIRE OF BULLI V DAWSON.

JUDGMENT.

KNOX C.J. ISAACS J.

GAVAN DUFFY & STARKE JJ

We are of opinion that there was evidence fit to be left to the jury on the question whether Newman in giving the notice contained in the letter of the 29th July 1926 was acting within the scope of his employment and on the question whether Newman was actuated by malice. We are further of opinion that if Newman in writing the letter abovementioned was acting within the scope of his employment and was actuated by malice the appellant Council is responsible to the respondent. We express no opinion on the other questions raised in the Supreme Court or on this appeal.

The appeal is dismissed with costs.

*To hand down*

THE COUNCIL OF THE SHIRE OF BELL V. DAWSON.

JUDGMENT:

HIGGINS, J.

I concur with my learned brothers in the opinion that this case ought to have gone to the jury, and ought now to go to a jury. There was some evidence fit to be left to the jury, and the Full Court of N. S. W. was justified in ordering a new trial. But I desire not to commit myself to the proposition contained in the second sentence of the statement just handed down by the Chief Justice, in its present absolute form. The less I say on the matter the better, as my remarks may prejudice one party or the other in the new trial.