IN THE HIGH COURT OF AUSTRALIA)
NEW SOUTH WALES REGISTRY) No. 1 of 1938

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES

BETWEEN

THE COMMISSIONER FOR RAILWAYS

Appellant (Defendant)

- and -

KEMP BEACH

Respondent (Plaintiff)

Before Their Honours The Chief Justice, Mr. Justice Rich, Mr. Justice Starke, Mr. Justice Dixon and Mr. Justice Evatt.

Thursday the seventh day of April in the year of Our Lord one thousand nine hundred and thirty eight.

WHEREAS this action was heard in the Supreme Court of New South Wales before His Honour Mr. Justice Milner Stephen and a jury of four persons on the twenty eighth, twenty ninth and thirtieth days of September and the first day of October one thousand nine hundred and thirty seven on which last mentioned day a verdict was given in favour of the abovenamed Respondent ~~Plaintiff~~ for the sum of One thousand and forty five pounds and eleven shillings (£1,045.11.0) and Judgment was entered in the said action by His Honour accordingly AND WHEREAS the abovenamed appellant appealed to the Full Court of the said Supreme Court against the said judgment AND WHEREAS the appeal was heard on the fifteenth and sixteenth days of November One thousand nine hundred and thirty seven on which last-mentioned day the said Court reserved judgment AND WHEREAS on the seventeenth day of December One thousand nine hundred and thirty seven the said Court ordered the said appeal to be dismissed with costs AND WHEREAS the said appellant on the sixth day of January One thousand nine hundred and thirty eight filed a Notice of Appeal to this Court against the said

Judgment and order of the said Full Court of the Supreme Court of New South Wales AND WHEREAS the said appellant duly institute this appeal and this appeal came on to be heard on the sixth and seventh days of April One thousand nine hundred and thirty eight WHEREUPON AND UPON READING the certified copy of the transcript record of documents transmitted by the Prothonotary of the said Supreme Court of New South Wales to the New South Wales District Registry of this Court AND UPON HEARING what was alleged by Mr. W. J. Bradley of King's Counsel with whom was Mr. E. P. Kinsella of Counsel on behalf of the Appellant and by Mr. Clive Evatt of King's Counsel with whom was Mr. F. A. Dwyer of Counsel on behal of the Respondent THIS COURT DOTH ORDER that this appeal be and the same is hereby dismissed AND THIS COURT DOTH FURTHER ORDER that it be referred to the proper officer of this Court to tax and certify the costs of the said Respondent of and incidental to this appeal and that such costs when so taxed and certified be paid by the said Appellant to the said Respondent or to Miss Christian Jollie Smith his attorney after service of a copy of the certificate of taxation AND THIS COURT DOTH DECLARE that the said costs as so taxed should be paid out of the sum of fifty pounds (£50) paid into Court by the Appellant as security for the costs of this Appeal so far as the same shall extend to the Respondent or his attorney the said Christian Jollie Smith and that the balance of the said sum if any should be paid out to the appellant or its Attorney Mr. F. W. Bretnall.

BY THE COURT

HIGH COURT OF AUSTRALIA SYDNEY REGISTRY OFFICIAL SEAL

DISTRICT REGISTRAR.

IN THE HIGH COURT OF AUSTRALIA

NEW SOUTH WALES REGISTRY

No. 1 of 1938

THE COMMISSIONER FOR RAILWAYS

V.

KEMP BEACH

Reasons for Judgment, Dixon J.
(Oral Judgment)

COMMISSIONER FOR RAILWAYS v. BEACH

ORAL JUDGMENT DIXON J.

I agree. The plaintiff said that he tripped at the lower landing and fell down the last flight of stairs to the platform. He said his heel caught in something solid sticking up. Other evidence was adduced to show that it was a bolt or nail. The defendant sought to disprove the existence of the nail It is now said on the defendant's behalf that, if there were no nail or bolt, the plaintiff had no other complaint against the stairs implying negligence. It is quite clear that the plaintiff relied also on the generally worn conditions of the stairway. It is evident that the protruding of a nail may be the result of the worn condition of a stairway. Three things were put to the jury :- (1) the nail or bolt; (2) the worn condition and (3) the absence of a handrail. The steepness was not, I think, submitted as a head of negligence. In what His Honour afterwards said, he treated the worn condition and absence of the rail as associated. This view, I think, is natural. In the case of proper stairs the failure to provide a handrail could scarcely be negligence. But, if the stairs through disrepair or because of faulty construction are in a dangerous condition, the absence of a handrail might legitimately be taken into consideration. The jury's answer to the learned Judge's question was that the negligence consisted in the worn and dangerous condition of the steps generally, including the nail. His Honour does not appear to have understood the jury as finding that the nail was there and his two succeeding questions produced answers apparently inconsistent with such a finding. But, even excluding the nail, I think the verdict was fully justified by the evidence of the worn condition of the stairs. The reference to the worn condition of the steps makes it quite clear that the jury

did not found their verdict on the absence of the handrail, at all events on the mere absence of a handrail. It is said that the plaintiff's fall was not shown to be due to the condition of the st eps or the absence of the handrail. I think that it is enough that the plaintiff caught a foot in a worn stair and fell. The handrail is only a means of guarding against a fall from such a cause as a defective step. It is true that it can't be said that a handrail, if provided, would have been within the plaintiff's reach at the time of his fall. But this overlooks the fact that the jury found the condition of the step was worn and if, which I doubt, the jury included the absence of the handrail as a cause of the accident, it is only as a possible means of avoiding the consequences of the defective condition of the steps. It does not appear to me to be correct that the plaintiff's case was confined to the nail. Evidence of three previous accidents was admitted notwithstanding the defendant's objection. The accident in question took place on 24th July 1935; Miss Boland's accident, on 24th November 1934 and Mrs. Hood's on 3rd July and Mrs. O'Connell's on 15th July 1935. In my opinion evidence of those accidents upon the stairway was admissible, even although it was not shewn that they occurred upon the particular step or even although it was shown that they occurred upon other steps than that upon which the plaintiff fell. The evidence was admissible because it tended to show that it was a matter upon which due care ought to have been exercised.

I agree with my brother Starke that in some respects Miss Boland's evidence was carried further than this ground of admissibility might sppear to warrant, but it must be remembered that, when her accident was established as an occurrence, the conditions affecting it were necessarily gone into, bedause the plaintiff himself have evidence at the trial of her action

and, on the trial of the present action, he was closely cross-examined as to what he said, and she also gave evidence. Aspects of the matter therefore were probably gone into before the jury which otherwise might not be strictly justifiable.

As to damages, it is very difficult for a Court to interfere with an assessment of compensation for personal injury. Where a serious injury has been sustained and the plaintiff has undergone real pain and suffering, the amount of damages which he should receive is governed by standards which are peculiarly within the province of the jury.

In the present case I think it is quite impossible to interfere with a verdict of £1,000, even although it exceeds the amount commonly awarded by juries in what may be supposed to be analogous cases.