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IN THE HIGH COURT OF AUSTRALIA.

**ORIGINAL**

*Levi*

V.

*Bolgate Palmolive  
Pty. Limited*

**REASONS FOR JUDGMENT.**

No 13 of 1941

C.11235

H. J. Green, Govt. Print., Melb.

Judgment delivered at *Sydney*  
on 5 August 1941

LEVI

V.

COLGATE PALMOLIVE PROPRIETARY LIMITED.

JUDGMENT.

RICH A.C.J.

LEVI

V.

COLGATE PALMOLIVE PROPRIETARY LTD.

JUDGMENT. Without calling <sup>on</sup>/counsel for the respondent RICH, A.C.J. said—

This is an appeal from the judgment and order of the Full Court of New South Wales, dismissing a motion for a new trial in an action for negligence in which the plaintiff had been non-suited. The declaration in the action ~~for negligence~~ alleged that the defendant manufactured and supplied to the plaintiff certain bath salts, that the defendant was negligent in manufacturing testing and analysing the same and that they were not good and safe bath salts but bad and dangerous, whereby the plaintiff contracted a disease of the skin. In the course of the trial counsel for the plaintiff sought to amend the declaration by adding a count alleging negligence in failing to issue a notice warning users of the bath salts that they contained ingredients which might be injurious to specially sensitive persons ~~xx~~ and suggesting medical advice should be taken before the salts were used. The learned trial judge non-suited the plaintiff on the grounds that there was no evidence to support the declaration; and he refused to allow the amendment on the ground that the evidence would not support the count if it were added.

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I am in general agreement with the judgment of Jordan C.J. Assuming that the defendants owed a duty to the plaintiff there is no evidence, I think of any breach of duty. Bath salts are an ordinary commodity not known to have any injurious effect on the human body. The analysis of the bath salt in question did not show that there was any deleterious element in them. Nor was there any evidence that the defendant company was negligent in the preparation of the salts. Moreover/<sup>the</sup>evidence did not give rise to any inference that there was a duty on its part to issue a warning to users of its salts, and there was no evidence that the manufacturers knew or ought to have known that harmful consequences would follow from the user of the salts. It does not appear that the harm alleged to have ensued is a consequence that might reasonably be expected to follow from user. As to the argument with regard to the application of the principle of res ipsa loquitur I agree with the learned Chief Justice in thinking that the principle does not apply. Counsel for the plaintiff in the exercise of his discretion, no doubt exercised wisely did not confine the evidence he led in such a way as merely to attract this doctrine. But chose rather to lead evidence which showed that the salts

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in question were not harmful to normal persons and that the injuries complained were due to the plaintiff's abnormal condition.

For these reasons I am of opinion that the appeal should be dismissed.

Starke J.                      I agree

McTiernan J.                I agree

Williams J.                I agree

Rich A.C.J. The appeal will be dismissed and as it was in forma pauperis without costs.

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