8.

IN THE HIGH COURT OF AUSTRALIA

CLOWRY

V.

RALSTON

REASONS FOR JUDGMENT

Judgment delivered at MELBOURNE

on TUESDAY, 15TH OCTOBER, 1957.

W. M. HOUSTON, Govt. Print., Melb.

C.1978/55

CLOWRY

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RAILSTON

ORDER

Appeal allowed with costs.

Judgment of the Supreme Court of the Capital Territory discharged. In lieu thereof enter judgment for the defendant with costs.

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JUDGMENT

DIXON C.J.
WEBB J.

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The question which we are called upon to decide in this appeal is whether a breach of duty was established against the driver of a taxi-cab the door of whose cab was in such a condition that in course of opening it the intending passenger sustained a blow on his spectacles causing a serious injury to his eye.

The appeal comes from the Supreme Court of the Capital Territory which gave judgment on 17th April 1956 for the plaintiff for £4,900. The accident occurred as long ago as 29th January 1952. The defendant, the driver of a taxi-cab, was plying for hire at a rank in Manuka in Canberra. The plaintiff is a medical practitioner who desired to hire the cab. The defendant was sitting in the driver's seat and the plaintiff approached the cab from the left hand side and took the handle of the front door in his left hand. He says that he asked the taxi driver if he could take him to the hospital and received an affirmative reply. He applied a moderate amount of force in order to open the door, at first unsuccessfully. Suddenly the door opened and struck the left hand lens of the spectacles which he was wearing. Unfortunately the lens was broken and the glass entered his eye. The consequences to his eye have proved serious.

There is some evidence that the taxi driver when he found the plaintiff in difficulties leaned over to his left and assisted in the opening of the door. In his evidence the defendant said that he did not remember touching the door from the inside but thought that he got out to go to assist the plaintiff in opening the door and that before he got there the plaintiff had opened the door and injured his eye. He did not feel sure but as far as he could remember he did not take part in opening the door. The plaintiff however said that about

Christmas time 1954 he and his wife had a conversation with the defendant, who had been very concerned about the accident and its consequences to the plaintiff. The plaintiff said that at the conversation he asked the defendant if he would describe the circumstances of the accident as he remembered them. The defendant then gave the following account of the accident, - The plaintiff came to the open window on the passenger side of the car and said - "Can you take me to the hospital?" He, the defendant, said - "Yes"; the plaintiff then attempted to open the front door; the defendant leaned across and did something to the latch; the door then opened suddenly and the plaintiff put his handkerchief to his eye and he appeared to have hurt his eye.

The defendant seems to have said in the box that he "could have" touched the door handle and cannot swear that he did not touch it. The judge at the trial (Simpson J.) said - "I am satisfied that he did touch it but, in effect, that was negligence on his part because he should have foreseen that if the door was jammed and was suddenly manipulated both by the plaintiff outside and the defendant inside, the door might open suddenly. And I think that is what happened and it did open suddenly." After negativing contributory negligence on the part of the plaintiff his Honour proceeded: "What happened when the defendant leaned across the car and either pushed the door by the handle or attempted to open the door by manipulating the inside handle is clear; the door suddenly flew open. I am quite satisfied that that is what happened and that the defendant should have foreseen the possibility of that happening. That was negligence on his part and there was, in my opinion, no contributory negligence on the part of the plaintiff."

It is necessary to add that the unsatisfactory condition of the door may have been attributable to an accident

in which the car had been involved. The accident consisted in the car brushing posts on the side of the road. It sustained what was described as a "side swipe". The two doors and the mudguard on the left hand side were affected. The damage was repaired; it was treated as a matter of panel beating. The door had afterwards refused to open easily once or twice but the defendant had taken the car immediately back to the body repairers to tectify the defect. After that the door worked normally and its condition seemed good. It did not stick again until the occasion when the plaintiff sought to open it. The trouble which had led the defendant to take the ear back to the body repairers was that the lock of the door would not allow it to open easily. It meant, said the defendant, that the handle had to be more fully depressed by a little heavier pressure put on it. He never had to prise the door open at any time. It was a matter of repeated tries at the handle to open the door. That had not happened between the time the further repair had been done and the accident to the plaintiff.

The defendant now appeals to this Court from the decision of the Supreme Court of the Capital Territory. In support of the appeal it is contended that the finding of negligence on the part of the defendant cannot stand and that the accident was not caused by any negligence on the part of the defendant. For the respondent the judgment of the Supreme Court was supported, not only on the ground upon which the learned judge placed it, but on the further ground that owing to the defendant's negligence the door of the taxi-cab remained in a defective condition. It was contended that the defective condition was the cause of the plaintiff's injury and that as a public carrier of passengers it was incumbent upon the defendant in those circumstances to show that he had exercised reasonable care and skill to remove the defect or prevent it arising and

that if he employed independent contractors for the purpose, they in their turn had used due care and skill. It is convenient to deal at once with this latter contention. After all, the defect complained of was simply a difficulty in opening the door. As soon as the defendant found the door proved difficult he took the car to the body repairers. When he got it back from them he found by the subsequent use of the car that they had removed the defect, even if only temporarily. It is difficult to know what more he on his part could do. The evidence of what happened on the occasion of the accident to the plaintiff is quite insufficient to show what was the actual cause of the failure of the door to open readily. According to the evidence it may have been no more than the necessity of pressing down the door handle to a greater degree than is usually required. The plaintiff hardly begins to make out his case by proving that the door was in a defective condition making it hard to open by a person seeking to enter the car. In the next place, even if it be assumed that there was in a general sense a want of due care to see that the door was in a satisfactory condition so that it was easily opened and shut, that is not the same thing as saying there was any want of due care for the safety of others. The accident which befell the plaintiff was of an unusual nature and seems to have arisen primarily from the undue proximity of his glasses to the path through which the door would swing which he was seeking to open. It may be conceded that the owner or driver of a taxi-cab is under a duty of care to avoid danger to an intending passenger as a reasonable or probable consequence of any defect in his cab whether it be in the door or any other part of the vehicle. But it does not seem possible to regard the present accident as a consequence of a breach of that duty. For in the first place, whatever dangers are to be apprehended from a sticking door, it is going too far to say that the risk of an intending passenger pulling it into his face must be guarded

against. In the second place, the defendant had ceased to have reason to expect the door again to prove so difficult. It was suggested that a door which would not open easily might when it suddenly opened give rise to a class of dangers which could not precisely be foreseen or defined, as for example,the overbalancing of passengers. It was said that the present case was merely an example, if an unusual one, of the manner in which the risks of that general class might be manifested. But to say this simply ignores the fact that the plaintiff sustained his injury not through any dangerous property of the door but because in attempting to open it he was too close to the path through which it would swing. That does not mean that he was guilty of contributory negligence. It simply means that his injury was not traceable to any breach of the defendant's general duty of care for the safety of passengers and intending passengers.

It is now necessary to turn to the question whether the defendant was guilty of personal negligence in the manner in which he aided the plaintiff in opening the door. It will be seen from the findings of the learned judge on this subject that what the defendant did is not definitely ascertained. This perhaps is of little importance but it makes it necessary to consider the matter on more than one hypothesis. Let it be supposed that the defendant leaned across the car and pushed the door so as to apply additional force. In what way can it be said that he was guilty of want of due care? It is not suggested that the want of due care arose from his perceiving that the plaintiff was too close to the path of the opening door. The door was hinged from the front of the car, the plaintiff held the handle in his left hand and was himself attempting to open the door, applying, as he said, moderate force for the purpose. It would be a reasonable thing to help him from the inside by adding to the force. How can it be

said that the defendant adopted a risky procedure likely to cause injury? On that footing there appears no ground for saying that he was guilty of negligence causing the accident.

Let it be supposed on the other hand that he merely manipulated the catch which the plaintiff on his side had failed sufficiently to press down or otherwise to manipulate. Why should that be considered to be an act of negligence? It could only be so if he were aware that the door would fall back upon the plaintiff. The plaintiff himself was attempting to manipulate it and might have succeeded at any moment in opening it. Whatever consequences would flow from the contribution, if any, made by the defendant towards the opening of the door, would flow from the very thing the plaintiff was attempting to do unaided.

Scrutinise the facts of the case as one may it is impossible to see in them any sufficient evidence of negligence upon the part of the defendant to support a finding of breach of duty causing the accident. The consequence is that the appeal must be allowed and the judgment of the Supreme Court of the Capital Territory discharged and judgment entered for the defendant.

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JUDGMENT

TAYLOR J.

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v.

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I agree that this appeal should be allowed. In my view the evidence is incapable of supporting the conclusion that the respondent's injuries resulted from any breach of duty on the part of the appellant either in relation to the condition of the door of his taxi cab or with respect to his conduct as the respondent was attempting to open the door. Indeed I am satisfied that it is impossible to infer from the evidence that the violent opening of the door resulted either wholly or in part from conduct, negligent or otherwise, on the part of the appellant and not from the actions of the respondent alone.