ORIGINAL.

IN THE HIGH COURT OF AUSTRALIA

HENRY

V.

WILLIAMS

ORIGINAL.

REASONS FOR JUDGMENT

Judgment delivered at SYDNEY

on FRIDAY, 21st APRIL 1961

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

C.1978/55

HENRY

v.

WILLIAMS

ORDER

Appeal dismissed with costs.

HENRY

v.

WILLIAMS

JUDGMENT
(ORAL)

JUDGMENT OF THE COURT
DELIVERED BY DIXON C.J.

CORAM: DIXON C.J.
KITTO J.
TAYLOR J.
MENZIES J.
WINDEYER J.

HENRY

v.

WILLIAMS

DIXON, C.J: This is an appeal from an order of the Full Court of the Supreme Court of New South Wales refusing an application for a new trial made on behalf of the plaintiff in an action for personal injuries sustained as a result, as is alleged, of the negligence of the defendant.

The plaintiff was a pedestrian, a somewhat elderly lady, who was injured as she was crossing a road at about a quarter to seven in the evening of the 10th May 1957. She was crossing not quite directly across a well used country road in a town, from the house where she had been to her own house. She crossed slightly diagonally.

The jury found a verdict against her on a summing-up, putting negligence and contributory negligence fully. The application for a new trial was based on the ground that in the circumstances of the case the judge should in addition have directed the jury that the defendant might be liable if, notwithstanding the plaintiff's negligence, he might by a proper exercise of care and skill still have avoided the consequences so as to save the plaintiff from injury but neglected to do so or was disabled from doing so by his own negligence.

The case is an extremely simple one in its facts. The defendant was riding a motor cycle, and he was on the furthest side of the road from that from which the plaintiff proceeded to cross. It was dark, or at all events dusk. She looked to her right, she saw motor cars coming - two or three - and waited. On her left she saw the bright lights of a motor cycle which in fact was not the motor cycle of the defendant. She crossed, according to her own version,

in front of the lights of the first motor cycle so that it passed behind her. She then proceeded. The second motor cycle, the defendant's, then hit or touched her so that she was thrown into the gutter on the further side of the road, that which represented her destination. The blow which she received was not a very severe one and might have been from the running board of the motor cycle, but be that as it may she was seriously injured.

The case made against her, as plaintiff, was that as she went across the road and got to the centre she must have seen the oncoming motor cycle, or if she did not she ought to have done so, and she then hurried across, rushed across. That case was based, to a very great extent, on a statement she was alleged to have made to the police. The jury might have taken various views of the precise circumstances of the case, but they took a view against her. The learned judge, in his summing-up, began with a very wide statement of what would disqualify her from success as a plaintiff if she were negligent. Had his direction stood there, it might have seemed that there was ground for saying that he should have qualified it in the manner contended for. For it would have left the jury to roam rather at large in the case and find for themselves some negligence on her part which they might treat as fatal notwithstanding that the consequences of such negligence were more or less exhausted, as for example if it took place on the side of the road from which she started. But having made these wide observations, his Honour said that he would proceed with the details later on, and that he did. We have examined the summing-up with some care, and it appears to us that in what his Honour later said, he completely qualified the very wide statement he made and, so to speak, pinned down the contributory negligence imputed to the unfortunate plaintiff to one thing, namely to her having

rushed from somewhere about the middle of the road across to the other side in front of the oncoming motor cycle. How far she saw the oncoming motor cycle perhaps is not a material inquiry because we are dealing with a question of the judge's direction to the jury and not with the facts. But the hypothesis put to them as contributory negligence on the part of the plaintiff was that supposing the defendant's cycle was not equipped with sufficient lights illuminating the path, or that the defendant was not keeping a proper look-out, or went too close to the side of the road, nevertheless on any of those suppositions it was the negligence alleged against the plaintiff of rushing across in front of the oncoming motor cycle that caused or decisively contributed to the injury. If that was her only negligence, it was of a kind which in the circumstances made any reference to the motor cyclist having a further opportunity by due care of avoiding the accident quite irrelevant.

It seems to us that the summing-up of the learned judge pinned down, so to speak, the allegation of contributory negligence to this particular act of negligence on the part of the plaintiff and that it was an act of negligence which made any further reference to the possibility of the defendant finally avoiding the accident by the exercise of care, call it a last opportunity, quite immaterial.

That means that the verdict for the defendant was properly found and that the attack upon the summing-up fails. The Full Court was right in sustaining the verdict for the defendant. The appeal should be dismissed with costs unless she appealed <u>in forma pauperis</u> in this court.

MR. MEARES: In the application to the State Court, I think, your Honour.

DIXON, C.J: Yes, but was she <u>in forma pauperis</u> here?

MR. MEARES: An assisted person.

DIXON, C.J: The only thing that matters here is in forma pauperis.

MR. MEARES: No, your Honour, she is an assisted person.

DIXON, C.J: She is not? Very well.

We will adjourn until Wednesday morning at half past ten.