

ORIGINAL

IN THE HIGH COURT OF AUSTRALIA

CATHCART & ANOR.

V.

SPEE

ORIGINAL

REASONS FOR JUDGMENT

(ORAL)

Judgment delivered at SYDNEY

on TUESDAY, 22nd AUGUST 1962

CATHCART AND ANOTHER

v.

SPR

JUDGMENT
(ORAL)

JUDGMENT OF THE COURT
DELIVERED BY DIXON C.J.

CORAM: DIXON C.J.
MCLENNAN J.
ROBERT J.
TAYLOR J.
WINDEYER J.

CATHCART AND ANOTHER

v.

SPEE

This is an appeal from an order of the Full Court of the Supreme Court of New South Wales refusing a new trial in a case where the jury found a verdict for the plaintiff in an action claiming damages for personal injuries.

Mr. Woodward has argued the case with clearness and candour but we think that this appeal cannot succeed. The sole ground on which it is based is that the jury's verdict was against the evidence and the weight of the evidence. It is not contended, and never has been contended, that if the jury believed the plaintiff to the exclusion of other evidence there was not evidence fit to go to the jury of negligence on which a verdict might be found in favour of the plaintiff. What is contended is that there is such a great preponderance of evidence in favour of a more probable solution of the accident that occurred and that the probabilities are so extremely high that the verdict ought not to be allowed to stand. The contention is that it is an unreasonable conclusion to draw from all the evidence which was adduced. It is, in our opinion, entirely a question of credibility which the jury attached to the various witnesses and of the inferences which they chose to draw from such circumstances as they found. It is clear that a very close investigation of the case was made by the jury and it is not a case where you can point to a definite misunderstanding or error in the course of their consideration of the case as a whole; it is simply a case where they preferred to take a view which according to the appellants, the defendants, was entirely erroneous, an error which can be seen on a consideration of the preponderance of evidence and the probabilities.

We think the appeal is one which could not be supported on grounds of that description; it is, indeed, a very difficult ground to make good and experience of such appeals shows that it is not a ground which often succeeds. The concluding observations of Mr. Justice Owen seem to mean that.

In our opinion the appeal should be dismissed. The order will be appeal dismissed with costs.