

QUINCE

v.

THE COMMONWEALTH OF AUSTRALIA  
AND OTHERS

ORDER

Action for Trial dismissed with costs.

5/1965  
Date delivered ?

QUINCE

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JUDGMENT  
(ORAL)

MENZIES J.

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The plaintiff, who, in 1962, while he was a soldier, suffered very serious personal injuries while driving a Land Rover in the course of his duties with the Commonwealth, sues the Commonwealth for damages for negligence. It is common ground that the doors and the canopy of the Land Rover had been removed and the plaintiff was alone in the Land Rover at the time when the accident occurred. He was driving back from Broadmeadow to Singleton and had nearly reached the camp of Singleton when the accident occurred.

After listening carefully to the evidence and reading the documents that have been made part of the evidence, I find that I cannot determine how the accident in which the plaintiff was injured did in fact happen. I am certainly not convinced that it happened in the way that the plaintiff described in his evidence. I did not find that part of his evidence convincing, and it is inconsistent with his pleading and with other accounts which he gave of the accident, - statements which I am satisfied that he made.

I am satisfied, however, that the accident was not contributed in any way by the plaintiff striking his elbow upon what has been called the projection - if that happened. The evidence did not support such a case. In these circumstances, it is not necessary for me to determine whether the Land Rover was less safe than it should have been by reason of the existence of this projection. Accordingly, the only way in which a finding of negligence can be made against the Commonwealth rests upon the provision of the Land Rover without doors and without canopy.

The plaintiff had been driving the vehicle in that condition during the day previous to the night on which the accident happened, and I do not think that it constitutes negligence on the part of the Commonwealth to provide a soldier with such a vehicle, without canopy and doors, to drive along a country road. The evidence established clearly enough that soldiers are used to driving Land Rovers in this condition as a normal part of their service. Furthermore, I am not satisfied that the plaintiff was in fact thrown from the vehicle before it capsized. In these circumstances, I am not able to find that there was negligence on the part of the Commonwealth which contributed to this unfortunate accident, and there must be judgment for the defendant.