

**ORIGINAL**

IN THE HIGH COURT OF AUSTRALIA

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NESPOR

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F.

THE COMMONWEALTH OF AUSTRALIA

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**ORIGINAL**

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**REASONS FOR JUDGMENT**

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*Judgment delivered at* SYDNEY

*on* FRIDAY 6th MAY 1966.

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NESPOR

v.

THE COMMONWEALTH OF AUSTRALIA

JUDGMENT

TAYLOR J.

NESPOR

v.

THE COMMONWEALTH OF AUSTRALIA

ORDER

Action dismissed with costs. Judgment  
for defendant.

NESPOR

v.

THE COMMONWEALTH OF AUSTRALIA

On 7th February 1962 the plaintiff, whilst a member of an Australian Antarctic Expedition stationed at Macquarie Island, met with an accident as a result of which he claims that, in addition to minor abrasions, he suffered a dislocated right great toe which has permanently impaired its efficiency and left him with a painful arthritic condition in the first metatarsal phalangeal joint. He alleges that his injuries were the result of negligence for which the defendant is responsible and brings this action to recover damages.

At the time when the accident occurred he was returning with a companion, Anthony John Evans, from a journey which they had made together to Lake Prion from the camp which had been established about sea-level at the northern end of the island. In the course of their outward journey it was necessary for them to negotiate a rough track along Gadget Gully which rose some seven hundred feet to a plateau. At two places on this track ladders were placed to render the ascent of two stony ridges less difficult and it was whilst the plaintiff was coming down the uppermost ladder on the return journey that the accident happened. There was some question as to the length of the ladder but I have no doubt that it was a ladder with five rungs only, that it was about seven feet in length and that it was standing at an angle of approximately thirty degrees from the perpendicular. Further there was adjacent

The plaintiff's original complaint was that whilst descending the ladder he was holding the rope with one hand and that the rope broke causing him to fall to the ground at the foot of the ladder. But at the trial he alleged that whilst he was on the ladder it commenced to move to one side, that this caused him to be precipitated to the ground where he found himself still clinging to the broken end of the rope. He alleges that the foot of the ladder, which was not a fixed ladder, was insecurely and negligently placed and that the rope had so deteriorated as to become unsafe. There seems to be no doubt that the ladder actually fell and that the rope broke, but in my view these events were in no way the cause of the mishap. On the contrary they seem to me to have been the consequences of the manner in which the plaintiff chose to descend the ladder. The evidence of Evans was to the effect that as they approached the ladder on the return journey the plaintiff was leading, that he immediately started to walk down the ladder facing outwards and that when he had gone down a few rungs he started to overbalance and the ladder started to move with him. There was at this stage some slack in the rope as he held it and as he fell the "rope tautened" and broke. This witness said, as seems to me to be obvious, that it is very difficult "to get any sense of balance when you walk down a ladder frontwards". The plaintiff says that he does not remember which way he was facing as he descended the ladder but I have no hesitation in accepting the account given by Evans. It is, I think, beyond question, particularly when regard is had to photographic evidence showing the ladder in question and

plaintiff commenced his descent in this fashion, that the accident happened much as Evans described it and that it was in no way caused by the manner in which the ladder was positioned or by the breaking of the rope. There is no evidence that the ladder was insecurely positioned apart from any inference which could arise from the mere fact that it fell. But no such inference can in the circumstances arise because the fact seems to me to be that the falling of the ladder was caused by the overbalancing of the plaintiff whilst descending it in the way in which I have described. Further the evidence shows that both the rope and the ladder were inspected by the leader of the expedition shortly before the accident whilst in the course of an expedition shortly after the arrival of the party at the island, and found to be in a satisfactory condition for normal use. I am satisfied by this evidence that there was no lack of reasonable care in relation either to the rope or the ladder.

Before parting with the case I think I should observe that I was far from satisfied that the plaintiff's present disability resulted from the accident. The evidence is overwhelming that primarily it is the result of an earlier accident which occurred on 10th December 1961 in respect of which the plaintiff subsequently made a claim, which ultimately was not pursued, under the Commonwealth Employees' Compensation Act. It may be that the second accident, to a minor extent, resulted in some aggravation but I was not impressed by the evidence of the plaintiff, who is himself a medical practitioner, to the effect that his present disability resulted from the second accident.