

*Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Victorian Railway Commissioners v. James Coultas and Mary Coultas, from the Supreme Court of the Colony of Victoria; delivered 4th February 1888.*

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Present :

LORD FITZGERALD.

LORD HOBHOUSE.

SIR BARNES PEACOCK.

SIR RICHARD COUCH.

The Respondents brought a suit against the Appellants in the Supreme Court of the Colony of Victoria to recover damages for injuries sustained by the Respondent Mary Coultas, through the negligence of a servant of the Appellants, and expenses incurred by the Respondent James Coultas, her husband, through her illness. The statement of claim stated that, through the negligence of the servant of the Defendants in charge of a railway gate at a level crossing, the Plaintiffs, while driving over the level crossing, were placed in imminent peril of being killed by a train; and, by reason of the premises, the Plaintiff Mary Coultas received a severe shock, and suffered personal injuries, and still suffered from delicate health and impaired memory and eyesight. The Defendants, by their defence, denied the allegations in the statement of claim, and further said they would contend that no cause of action was disclosed by it, as it was not stated that either the Plaintiffs or their property

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were struck or touched by the train of the Defendants; and, further, that the alleged damage arising from shock or fright, without impact, was too remote to sustain the action.

The facts proved at the trial before Mr. Justice Williams, a Judge of the Supreme Court, and a jury, were that on or about the 8th of May 1886, about nine in the evening, the Respondents, together with John Wilson, a brother of the wife, were driving home in a buggy from Melbourne to Hawthorn, which is near Melbourne. They had to cross a level crossing on the line of railway from Melbourne to Hawthorn. When they came to it the gates were closed, and the gate-keeper came and opened the gates nearest to them and then went across the line to the gates on the opposite side. The Respondents followed him, and had got partly on to the up line (the farther one) when a train was seen approaching on it. The gate-keeper directed them to go back, but James Coultas, who was driving, shouted to him to open the opposite gate, and went on. He got the buggy across the line so that the train, which was going at a rapid speed, passed close to the back of it and did not touch it. As the train approached Mary Coultas fainted, and fell forward in her brother's arms. The medical evidence showed that she received a severe nervous shock from the fright, and that the illness from which she afterwards suffered was the consequence of the fright. One of the Plaintiffs' witnesses said she was suffering from profound impression on the nervous system, nervous shock, and the shock from which she suffered would be a natural consequence of the fright. Another said he was unable to detect any physical damage; he put down her symptoms to nervous shock.

The jury found that the Defendants' servant negligently opened the gate and invited the

Plaintiffs to drive over the level crossing when it was dangerous to do so, and that the Plaintiffs could not have avoided what had occurred by the exercise of ordinary care and caution on their part. And they assessed the male Plaintiff's damages at 342*l.* 2*s.*, and the female Plaintiff's at 400*l.*, leave being granted to either side to move for judgement after the Full Court had decided points reserved. The points reserved were :—

1. Whether the damages awarded by the jury to the Plaintiffs, or either of them, are too remote to be recovered ?
2. Whether proof of " impact " is necessary in order to entitle Plaintiffs to maintain the action ?
3. Whether the female Plaintiff can recover damages for physical or mental injuries, or both, occasioned by fright caused by the negligent acts of the Defendants ?

The Full Court, consisting of Mr. Justice Williams and two other Judges, answered that the damages awarded were not too remote to be recovered ; that proof of " impact " was not necessary ; and that the female Plaintiff could recover damages for physical and mental injuries occasioned by the fright. Thereupon judgement was entered for the Plaintiffs for the amounts awarded, and the present appeal is from that judgement. The Defendants did not move for a new trial, and consequently they cannot now contend that there was contributory negligence on the part of the Plaintiffs.

The rule of English law as to the damages which are recoverable for negligence is stated by the Master of the Rolls in "The Notting Hill," 9 Prob. Div., 105, a case of negligent collision. It is that the damages must be the natural and reasonable result of the Defendants' act ; such a consequence as in the ordinary course of things

would flow from the act. The law would be the same in Victoria unless it has been otherwise enacted by the Legislature, which it is not said it has been.

According to the evidence of the female Plaintiff her fright was caused by seeing the train approaching, and thinking they were going to be killed. Damages arising from mere sudden terror unaccompanied by any actual physical injury, but occasioning a nervous or mental shock, cannot under such circumstances, their Lordships think, be considered a consequence which, in the ordinary course of things, would flow from the negligence of the gate-keeper. If it were held that they can, it appears to their Lordships that it would be extending the liability for negligence much beyond what the liability has hitherto been held to be. Not only in such a case as the present, but in every case where an accident caused by negligence had given a person a serious nervous shock, there might be a claim for damages on account of mental injury. The difficulty which now often exists in the case of alleged physical injuries of determining whether they were caused by the negligent act would be greatly increased, and a wide field opened for imaginary claims. The learned Counsel for the Respondents was unable to produce any decision of the English Courts in which, upon such facts as were proved in this case, damages were recovered. The decision of the Supreme Court of New York which he referred to in support of his contention was a case of a palpable injury caused by a boy, who was frightened by the defendant's violence, seeking to escape from it, and is like the case of *Sneesby v. The Lancashire and Yorkshire Railway Company*, L. R. 1, Q. B. Div. 42. It is remarkable that no precedent has been cited of an action similar to the present having been maintained or

even instituted, and their Lordships decline to establish such a precedent. They are of opinion that the first question, whether the damages are too remote, should have been answered in the affirmative, and on that ground, without saying that "impact" is necessary, that the judgement should have been for the Defendants. They will therefore humbly advise Her Majesty to reverse the judgement for the Plaintiffs, and to order judgement to be entered for the Defendants, with the costs of the action and of the argument of the points reserved and the motion for judgement. The Respondents will pay the costs of this appeal.

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