SUPREME COURT OF QUEENSLAND

CITATION:	*Ferguson v. Calnan & Anor* [2002] QSC 342
PARTIES:	**GLEN RUSSELL FERGUSON** (plaintiff) **v** **DENIS EDWARD CALNAN** (first defendant) **and** **ANTONIO RANIERI** (second defendant)
FILE NO:	6549 of 1999
DIVISION:	Trial Division
DELIVERED ON:	24 October 2002
DELIVERED AT:	Brisbane
HEARING DATE:	23, 24, 25, and 26 July 2002
JUDGE:	Helman J.
CATCHWORDS:	PERSONAL INJURIES – ASSAULT – where plaintiff refused entry to nightclub – where mêlée with doormen ensued – where plaintiff suffered severe injuries – whether doormen guilty of battery PERSONAL INJURIES – ASSAULT – where doormen severely injured plaintiff when ejecting him from nightclub – where employer authorized use of force – whether employer vicariously liable for damage suffered by plaintiff NEGLIGENCE – PERSONAL INJURIES – BREACH OF DUTY – where plaintiff repeatedly assaulted by doormen of nightclub – where employer failed to intervene – whether employer breached duty of care owed to nightclub patrons *Bank View Mill v. Nelson Corp.* [1942] 2 All E.R. 477, referred to *Beard v. London General Omnibus Co.* [1900] 2 Q.B. 530, referred to *Daniels v. Whetstone Entertainments Ltd* [1962] 1 Lloyd's Rep. 1, applied *Deatons Pty Ltd v. Flew* (1949) 79 C.L.R. 370, referred to *Limpus v. London General Omnibus Co.* (1862) 1 H. & C. 526; 158 E.R. 993, applied *North Sydney Leagues Club Ltd v. Berecry & Ors* (2002) Aust. Torts Reports ¶81-657; [2002] N.S.W.C.A. 154,

referred to

Criminal Code (Qld) 1899

COUNSEL: Mr W.D.P. Campbell for the plaintiff
Mr M. Grant-Taylor S.C. for the defendants

SOLICITORS: Murphy Schmidt for the plaintiff
Palella Humphries & Venardos for the defendants

[1] This action arises out of an incident that took place at about 4.00 a.m. on 2 December 1989 near the entrance to a basement nightclub called Tony's Disco conducted by the second defendant at 198 Wickham Street, Fortitude Valley, Brisbane. The plaintiff was punched by two men and as a result was injured. He claims damages for assault against the first and second defendants, and in addition, damages for negligence against the second defendant. The plaintiff, a man born on 3 July 1965, and three companions (Malcolm May, David Circosta, and Wayne Miller) had been drinking first at the Sportsman's Hotel, Spring Hill and then at another establishment called the Roxy nightclub in Brunswick Street, Fortitude Valley when they decided to visit Tony's. All four had very short hair and so appeared to be 'skin heads'. They were drunk by the time they arrived at Tony's, entry to which was gained by descending a flight of stairs from street level. May and Circosta went down the stairs first and entered the nightclub without incident. They went there to see if they could find a woman May knew. May looked around the nightclub but did not see the woman, but he did see the second defendant.

[2] Soon after May and Circosta had entered the nightclub the plaintiff and Miller came down the stairs but their entry was barred by one or more burly doormen employed by the second defendant. May and Circosta returned to the entrance where May told the plaintiff and Miller that they should all leave. One of the doormen then told the four to leave. The four began to mount the stairs to the street. Then followed a mêlée which began when one of the doormen, who I find was a man called Rex, punched the plaintiff heavily in the face without warning. The plaintiff fell to the floor, apparently unconscious, then another doorman, who I find was the second defendant, joined in the attack on the plaintiff standing over him and punching him repeatedly about the head with heavy blows. The plaintiff's three companions were also assaulted while the plaintiff was being punched. The plaintiff suffered severe injuries I shall describe later.

[3] The question whether Rex was employed by the second defendant was in issue at the trial. I conclude he was, despite the second defendant's sworn denial. In reaching that conclusion I rely on written statements by other employees of the second defendant who could not be found to give evidence. They were Joseph Sobczak a disc jockey, Renee Kay a bar attendant, and Yvonne Fryer a waitress. All three were in Tony's that morning and all made statements to investigating police officers to the effect that Rex was employed by the second defendant. I see no reason to doubt their veracity on that matter.

[4] Also in issue at the trial was whether the first defendant was the doorman who attacked the plaintiff after the first blow was delivered by Rex. I accept that he was, relying on the evidence of May, who identified him as a man whom he saw at a committal hearing of a charge of doing grievous bodily harm brought against the

first defendant, and on Sobczak's description of the removal of four skin heads from the nightclub by Rex, the first defendant, and, he said, 'some customers'.

[5] The first defendant had a criminal history: he had been convicted in magistrates courts of two minor drug offences, one offence of wilful and unlawful destruction of property, one offence of common assault, one concealable firearm offence, and one offence of possessing a dangerous article. Non-custodial penalties were imposed in each case. For the assault he was fined $100. No further details of the circumstances of the commission of the offences are revealed in the evidence.

[6] Notwithstanding the second defendant's evidence that he was not present at his nightclub when the attack on the four took place, I accept May's evidence that he was indeed present. May recognized the second defendant at the time, although he was unable to do so at the trial.

[7] It would be naïve to expect precision in the evidence about the incident in view of the time that has elapsed since. Further, most of the people who provided evidence about the events of the night in question were drunk at the time of the incident. As I have related the plaintiff and his two companions who gave evidence (May and Miller) were. Of those who gave oral evidence concerning the events I considered May to be the most reliable. May gave an account of the incident to investigating police officers, which was recorded in a typed statement, on 2 December 1989. There is an important discrepancy between that statement on the one hand and his evidence given at the committal hearing on 12 January 1990 and that given at the trial on the other: in the statement he refers to only one doorman, the first defendant, attacking the plaintiff, whereas at the committal hearing and at the trial he referred to two doormen: Rex and the first defendant. I accept his explanation for the discrepancy, i.e., his lack of sleep before he gave the statement and signed it and an evident misunderstanding of his account by the police officers. The plaintiff has, I conclude, no memory of the incident and Miller's memory is not as reliable as May's. Circosta died on 2 September 1991. The second defendant claimed he was not present at the time of the incident and returned only in time to see three or four young men waiting for a taxi. He was extremely evasive about his whereabouts that morning, and, as I have indicated, I do not accept what he said on that subject.

[8] Although the first formulation of the plaintiff's case is as one of assault, the gravamen of his claim is the striking, i.e. battery rather than assault, for which the plaintiff claims the second defendant is vicariously liable. As a further or alternative claim against the second defendant the plaintiff alleges negligence and gives the following particulars of negligence in paragraph 12 of his pleading:

> (a) failing to ensure that the security staff employed by him, including the First Defendant, did not injure any person in the eviction of those persons from the premises;
>
> (b) failing to properly instruct the security staff employed by him, including the First Defendant, as to the manner in which person [*sic*] in the nightclub might be removed from the premises;
>
> (c) failing to keep any or any proper control of the security staff employed by him, including the First Defendant;

(d) failing to prevent the repeated assaults on the Plaintiff by the First Defendant;

(e) employing persons as members of his security staff, including the First Defendant, whom he knew or ought to have known were of violent disposition.

[9] The plaintiff claimed aggravated damages from the first defendant in his pleading but that part of the claim was abandoned at the trial.

[10] In the defendants' defence they plead that the plaintiff and his three companions were refused admission to Tony's by Rex because the four 'were or had the appearance of being under the influence of liquor or drugs and did not meet the minimum standards of dress required for entry thereto'. The defendants plead that the four thereupon unlawfully assaulted Rex by punching him with their fists to the head and body a number of times, that they wrongfully entered Tony's and refused to leave and that they conducted themselves in a disorderly manner. The defendants plead that if Rex used any force against the four, which was not admitted, he did so in necessary self defence, using such force as was reasonably necessary to make effectual defence against the assaults on him. The defendants plead that if the first defendant used any force against the four, which was not admitted, he did so in good faith using such force as was reasonably necessary to aid Rex in defending himself. The defendants plead that the first defendant was authorized by the second defendant to use force in order to remove the four from the premises 'provided that they [*sic*] did not do them bodily harm', and that if force was used by the first defendant and Rex, which was not admitted, such force was used to remove the four from the premises. The defendants plead that if the plaintiff suffered personal injuries, which was not admitted, such personal injury was caused by other persons who used force for the purpose of defending Rex, and that any injuries suffered by the plaintiff were sustained with his consent.

[11] In the circumstances of the case as I find them to be there was no justification or excuse for the attack by Rex and the first defendant on the plaintiff. The plaintiff and his companions posed no threat to Rex or the first defendant, were not disorderly, and were leaving as requested before the first blow was struck. The first defendant was therefore guilty of the tort of battery, as was Rex.

[12] I should mention that at the beginning of his final address for the defendants Mr Grant-Taylor conceded that the evidence would not support any of the pleaded *Criminal Code* defences.

[13] It was the defendants' case, not departed from at the trial, as Mr Grant-Taylor made clear, that the first defendant as a doorman was authorized by the second defendant 'to use force to escort people from the premises' (transcript, p.219). It is reasonable to conclude that Rex too, as a doorman, was authorized to use force. In giving evidence the second defendant asserted that he had not authorized the first defendant to punch people seeking to enter the nightclub, but since force was authorized he will be held vicariously liable for the damage suffered by the plaintiff even for acts he did not authorize provided that they were so connected with the acts he did authorize that they may rightly be regarded as modes – although improper modes – of doing them: *Daniels v. Whetstone Entertainments Ltd* [1962] 1 Lloyd's

Rep. 1 at p.5 where Davies L.J., with whom Holroyd Pearce L.J. agreed, quoted with approval a passage in *Salmond* on *Torts*, 13th ed. (1961). Provided that the employee was doing something wrong within the scope of his employment it does not matter that he has defied the employer's orders (*Limpus v. London General Omnibus Co.* (1862) 1 H. & C. 526; 158 E.R. 993; and see F.D. Rose, 'Liability for an Employee's Assaults', 40 *Mod. L. Review* 420 (July 1977) at pp.422-424), but if the employee was acting outside the scope of his employment altogether, the employer will not be liable: *Beard v. London General Omnibus Co.* [1900] 2 Q.B. 530; *Deatons Pty Ltd v. Flew* (1949) 79 C.L.R. 370; and *Daniels v. Whetstone Entertainments Ltd*, at p.8 per Davies L.J.

[14] I cannot conclude on the evidence that the second defendant specifically authorized the attack on the plaintiff by Rex and the first defendant, but what they did in using force to eject the plaintiff and his companions, was, I find, within the scope of their employment and hence the second defendant is vicariously liable for their actions and for the injuries caused to the plaintiff. The first basis on the plaintiff's claim against the second defendant therefore succeeds.

[15] The plaintiff's alternative formulation of his case against the second defendant is in negligence.

[16] For particular (a) to be made out an unreasonably high standard of vigilance would have been required of the second defendant, in my view. He could not have been expected to *ensure* that the security staff employed by him, including the first defendant, did not injure any person in the eviction of that person from the nightclub. His duty went no further than to take reasonable care for the safety of patrons.

[17] The effect of the second defendant's evidence was that proper instructions as to the manner in which persons in the nightclub might be removed from the premises were given to the doormen, and while I have reservations about the second defendant's truthfulness, I am not persuaded that the plaintiff has made out his case on particular (b).

[18] Particular (c), as I understand it, falls into the same category as particular (a). For it to succeed an unreasonably high standard of vigilance would have been required of the second defendant, for, as I read it, it is based on the premiss that the second defendant was required to have prevented any battery of the plaintiff. The evidence is that the initial blow was struck by Rex without warning.

[19] The second defendant did fail to prevent the repeated assaults on the plaintiff by the first defendant and could reasonably have been expected to do so, I find. By taking no action to intervene after the first blows were struck, the second defendant had breached the duty of care he owed to those seeking entrance to the nightclub: cf., *North Sydney Leagues Club Ltd v. Berecry & Ors* (2002) Aust. Torts Reports ¶ 81-657; [2002] N.S.W.C.A. 154. I therefore find particular (d) made out.

[20] I am not satisfied that the second defendant knew or ought to have known that Rex and the first defendant had violent dispositions. There is no evidence of prior incidents like the one in question. The plaintiff sought to rely on the first defendant's criminal record as showing he was of violent disposition. There is, however, no evidence that the second defendant knew of the first defendant's criminal record; and, if he did, it would not necessarily indicate that the first

defendant was a violent man. It follows that the plaintiff has failed to make out his case on particular (e).

[21] I therefore conclude that the second defendant was guilty of negligence as alleged in particular (d).

[22] As a result of the blows inflicted on the plaintiff by Rex and the first defendant the plaintiff suffered a severe closed head injury, cerebral oedema, and left frontal lobe contusions with a mass effect, a brain stem injury, and a fracture of the left mandible. He was rendered unconscious and had a retrograde traumatic amnesia of some minutes. He was taken to the Mater Misericordiae adult hospital where he was initially managed in the intensive care unit. He was in a coma and remained so for some weeks. A tracheostomy was performed there. He was then transferred to the neurosurgical ward where his condition improved slowly. He underwent a plating operation of his fractured mandible. He recovered sufficiently to be transferred to the head injury rehabilitation unit at the Princess Alexandra hospital on 6 February 1990. He was discharged from that hospital on 9 March 1990 and from 15 March 1990 to 15 May 1990 he had occupational and speech therapy at the rehabilitation day hospital within the Prince Charles hospital.

[23] The plaintiff receives a disability support pension. He has been left with some degree of permanent disability as a result of his head injuries: attention, memory, and learning impairments with some reduction in psycho-motor speed. He suffers from impaired balance. He has difficulty reading and writing, and while he had such difficulties before he was injured as a result of suffering from severe dyslexia, they are now worse. Intellectually he is at the lower limits of normal. He is now what Dr Leigh Atkinson, neurosurgeon, described in a report dated 27 June 2002 as 'an independent invalid' who can perform ordinary household tasks like getting dressed, cooking, and managing household finance. He can drive a motor car, but as Dr Atkinson said in that report, he is 'commercially unemployable' although he could do simple casual work like lawn mowing or picking fruit from time to time.

[24] There is no treatment that could reduce the plaintiff's organic brain injury. The impairment of his cerebral function is eighty per cent. attributable to the injuries suffered on 2 December 1989 and the remainder to the learning difficulties he had before the incident. He has a tracheostomy scar and a scar on his forehead.

[25] His injuries do not prevent his enjoying recreational activities such as fishing, bicycle riding, working out with gymnasium equipment, and weightlifting. Three days a week he rides a bicycle about thirteen kilometres and occasionally he rides fifteen to twenty kilometres around the bush in the Burpengary-Caboolture area. He lives at Burpengary in his mother's house which is on two hectares of land. He does ordinary maintenance around the house, removing leaves from the gutters and roof, freeing drains of obstruction, and gardening including digging holes and removing stumps. He tries to keep as active as possible. He gave evidence that he was 'pretty happy-go-lucky' before he was injured, but now is conscious of his disabilities and so has periods of agitation, irritability, and depression.

[26] I assess his damages for pain and suffering and loss of amenities at $75,000: $35,000 for the past, and $40,000 for the future.

[27] The plaintiff claims nearly $560,000 as damages for impairment of earning capacity, past and future. In making that claim he relies on figures supplied by the

Australian Bureau of Statistics relating to relevant awards. A review of the evidence concerning the plaintiff's earnings before the incident reveals, however, that his earning capacity before he was injured does not support that method of calculating his loss.

[28] The plaintiff left school when he was fifteen years old, having attended the Brighton State School and the Caboolture Special Education Unit. He then attended the Ithaca College of Technical and Further Education where he undertook carpentry, joinery, and wood machining courses. In 1987 he undertook a twelve-week engineering-trades assistant course at the Eagle Farm College of Technical and Further Education where he was instructed in skills for working, vocational computations, fitting and machining, boilermaking, process welding, and process sheet metal work. He was employed at the Eagle Farm college from 5 May to 5 June 1987 in the capacity of engineer's labourer and was found to be courteous, hard working, and to have performed his duties with initiative. Later in 1987 he was again employed at the college, as a trade assistant in the sheet metal workshop for three months. He was found to be punctual, to listen carefully to instructions, and to carry out the tasks assigned to him without constant supervision. He attended classes during that period.

[29] The plaintiff's income prior to December 1989 came from a number of unskilled and semi-skilled jobs: steel cutter, labourer, yardman, salesman, caretaker, gardener, and driver. At the time of the incident which gave rise to his claim he was working as a casual labourer for a paving contractor, Jeffrey Smith. He had an ambition to be a professional boxer and fought one professional fight in Toowoomba, but after he suffered a broken right wrist in a motor cycle accident in July 1988, he was unable to pursue his boxing career and says he was unable to work from then until November 1989. He received worker's compensation until March 1989.

[30] In exhibit 2 there are schedules showing the plaintiff's employment history before 2 December 1989 and his employment history after that, together with his income tax records, such as they are.

[31] The schedule showing his employment history before 2 December 1989 covers the period 1 July 1986 to 2 December 1989 and reveals that in that approximately three and a half years his earnings were about $20,000 after the deduction of income tax. The schedule shows that in the year which ended on 30 June 1987 he was employed by Budget Demolitions as a yardman and salesman for fifty-two weeks and by the Eagle Farm College of Technical and Further Education as an engineer's labourer for nearly four and a half weeks, but that his after-tax income from those jobs is unknown. (It appears that for nearly four and a half weeks he had two jobs.) Among his taxation records there is, however, an Australian Taxation Office refund notice issued on 30 September 1987 showing that his taxable income for the year ended 30 June 1987 was nil and that he was entitled to a refund of $354.62. For the year ended 30 June 1988 the schedule shows his after-tax income as $14,299.42: $2,666.95 earned as a yardman and salesman for Budget Demolitions, $1,100 as a casual gardener for the Cottage Car Co. Pty Ltd, $8,817.12 earned as a labourer for Eddie Wright, house remover, and another $1,715.35 earned as a gardener and driver for the Cottage Car Co. Pty Ltd. Among the other documents in exhibit 2 is, however, an Australian Taxation Office refund notice issued on 5 September 1988 showing the plaintiff's taxable income for the year ended 30 June 1988 at $4,389,

and that he was entitled to a refund of $441.27. Other documents show that he received $1,766.81, from which tax instalments of $30.37 were deducted, from the Department of Social Security for the period 25 November 1987 to 15 March 1988, and $773.60 from that department for the period 17 May 1988 to 28 June 1988. The schedule shows that for the year ended 30 June 1989 the plaintiff's after-tax earnings were $516.44 as a labourer for Eddie Wright, and other documents show that he received $1,932.56 from the Department of Social Security for the period 14 July 1988 to 22 June 1989, and $7,844, from which tax instalments of $1,305 were deducted, by way of worker's compensation for the period 21 July 1988 to 1 March 1989. For the period from 1 July 1989 to 2 December 1989 the schedule shows his after-tax earnings as $1,000 as a labourer for Jeffrey Smith from 2 November 1989 to 2 December 1989. Another document shows he received $2,662.50 from the Department of Social Security in the period from 6 July 1989 to 23 November 1989. Adding together the $14,299.42, the $516.44, and the $1,000, I arrive at $15,815.86, to which must be added a figure for the unknown income earned in the year ended 30 June 1987 which was not, it appears, taxable. Taking that unknown income into account, I conclude that his after-tax income in that approximately three and a half years was $20,000 or slightly more, and therefore only approximately $6,000 per annum.

[32] That analysis – although based on the premiss upon which the pre-December 1989 schedule appears to have been prepared, that the period from 1 July 1986 provides an adequate indication of the plaintiff's earning capacity before he was injured – gives a distorted picture of that earning capacity. It is distorted by the long period away from work as a result of the motor cycle accident. To overcome that difficulty I think that one must take the basis of the analysis back to the beginning of the financial year that preceded the period covered in the schedule. The plaintiff's income tax assessment for the year ended 30 June 1986 shows a taxable income of $10,346, upon which income tax of $1,437.75 and a Medicare levy of $103.46 was payable, leaving him with an after-tax sum of $8,804.79. The evidence on this subject is of course not as clear as it would have been if full records were available.

[33] Since the incident of December 1989 the plaintiff has been employed as a casual labourer working for a landscaper, a builder, and a fencing contractor, and has had other casual employment fruit picking, cleaning, and mowing lawns. The total shown in the schedule showing the plaintiff's post-accident employment history is $12,411.40, but there appears to be an arithmetical error in that a figure of $1,300 which is shown as the sum earned in late 1990 does not appear to have been included. The figure should then be $13,711.40. I should add that there is one inconsequential item showing his income as unknown for a brief period of employment (23 and 24 November 1991) as a labourer for Eddie Wright, by then a furniture remover. He is capable of undertaking casual employment in unskilled jobs under supervision, but is not now capable of undertaking full-time work without supervision.

[34] Bearing in mind the plaintiff's poor employment record before the incident, I do not find it easy to assess the impact of his injuries on his earning capacity. His earning capacity before the incident was modest, and, although it is not as great as it was before the incident, he still has some residual earning capacity. Taking into account the evidence of the plaintiff's earnings from 1 July 1985 to 2 December 1989 and in particular those in the three years to 30 June 1988, I think

it reasonable to assess his impairment using $12,000 per annum for the past, and, allowing for inflation and for some improvement in the plaintiff's earning capacity as he became older, a figure of $300 per week as the basis for calculating his future loss. Nearly thirteen years have elapsed since the incident so that beginning with a figure of $156,000 for the past and, adjusting it for contingencies, I arrive at $132,600 from which must be deducted the $13,711.40 leaving $118,888.60, which I round off to $119,000. The plaintiff is now thirty-seven years old, so, allowing another twenty-eight years of working life at $300 a week, I arrive at $239,100 for future impairment of earning capacity after applying the five per cent. table. Adjusting that figure for contingencies and residual earning capacity, I arrive at $190,000. I assess the plaintiff's damages for impairment of earning capacity, then, at $309,000.

[35] For loss of superannuation the plaintiff is entitled to $21,860: $4,760 (four per cent. of $119,000) for the past, and $17,100 (nine per cent. of $190,000 for the future). Those percentages are based on those set out in exhibit 11.

[36] The plaintiff also claims damages for voluntary assistance and services, provided chiefly by his mother in the past, in the sum of $50,000. That is based on the details given in exhibit 8. I accept that the $50,000 is reasonable under that head.

[37] Relying on exhibit 4, the plaintiff claims 90 cents per week for future pharmaceutical expenses. Applying the five per cent. table to the 90 cents per week for a period of forty years I arrive at $826.20 which I adjust for contingencies at $500.

[38] There is a claim for future psychotherapy based on a recommendation by Dr Jocelyn Ewing, neuropsychologist. The claim was for $161 per month for forty years. Dr Ewing in a report dated 4 July 2002 suggested that he be referred for 'supportive psychotherapy to assist him in understanding and adjusting to his deficits and to provide supportive structure to his life'. Dr Ewing said that the necessary treatment, costing $161 per hour, would be long-term - once a fortnight or once a month indefinitely - if it were to assist in preventing crises in the plaintiff's life. Applying the five per cent. table to the $37.15 per week ($161 per month) for forty years one arrives at the figure of $34,104. In giving evidence the plaintiff said that he could see that psychotherapy could help him, but he added that seeing psychologists revives painful memories. I am not persuaded that the plaintiff will continue with the psychotherapy for as long as the claim suggests although I accept that he probably will have some such treatment. I shall allow $10,000 under that head.

[39] I am satisfied that the plaintiff has proved special damages of $33,805.57: $22,440 payable to the Mater Hospital, $6,120 payable to Queensland Health in relation to his admission to the Princess Alexandra Hospital, travelling expenses of $4,662.50, and pharmaceutical expenses of $583.07.

[40] In addition to the sums I have mentioned the plaintiff would be entitled to some awards of interest.

[41] There will be judgment for the plaintiff for the full amount of the plaintiff's damages against the second defendant on the ground of his being vicariously liable for the actions of Rex and the first defendant. It was not contended on behalf of the plaintiff that Rex and the first defendant were joint tortfeasors, and submissions I

heard from both Mr Campbell, for the plaintiff, and Mr Grant-Taylor concerning the first defendant's liability proceeded on the premiss that he would be responsible, if he were responsible at all, for only the damage the plaintiff suffered at his hands. It appeared then that it was common ground that Rex and the first defendant were, if tortfeasors at all, several tortfeasors causing different damage, not joint tortfeasors or several tortfeasors causing the same damage. On the evidence I am unable to determine whether it was Rex or the first defendant who caused the serious brain injuries suffered by the plaintiff. It was not argued that in the absence of evidence enabling me to apportion the damages I could attribute one-half to the first defendant: see *Clerk & Lindsell* on *Torts*, 18th ed. (2000), para. 4-110, p.205 and *Bank View Mill v. Nelson Corp.* [1942] 2 All E.R. 477, at p.483. I shall therefore confine the award against the first defendant to $25,000 on the ground that he clearly enough caused some injury to the plaintiff. So far as the second defendant is liable in negligence a similar result would have followed: his negligence was in failing to restrain the first defendant and therefore was a cause of the damage inflicted by the first defendant only.

[42] I shall invite further submissions on interest, the form of final orders, and costs.