

Balmain New Ferry Co v Robertson (1906) 4 CLR 379

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Facts

- Robertson bought a ticket to ride the ferry between Sydney and Balmain
- Before the ferry departed, he changed his mind and wished to leave
- He could only leave via the exit turnstiles, which charged a fee of 1 penny for use
- He tried to squeeze past but the guards physically restrained him from doing so
- He alleged false imprisonment and assault as he said they had no right to keep him there once he abandoned the contract to ride the ferry.

Issue

- Was it false imprisonment or assault?

Held

- The Court, unanimously, held that it was not false imprisonment or assault.
- O'Connor J stated that a person can enter into a contract where there is an implied term that their liberty will be abridged for some period, such as going on the train
- In this case, there was an implied term in the contract, and the wharf was private property. The Balmain New Ferry Co had the right to impose terms that the turnstiles could only be used in certain circumstances.
- The court also held that the guards had used a reasonable amount of force to prevent Robertson from exiting without paying.
- Therefore Robertson's claim failed.

Quotes

“The abridgement of a man's liberty is not under all circumstances actionable. He may enter into a contract which necessarily involves the surrender of a portion of his liberty for a certain period, and if the act complained of is nothing more than a restraint in accordance with that surrender he cannot complain. Nor can he, without the assent of the other party, by electing to put an end to the contract become entitled at once, unconditionally and irrespective of the other party's rights, to regain his liberty as if he had never surrendered it” (O'Connor J)

“It is an implied term of such a contract that the passenger will permit the restraint of his liberty so far as may be necessary for the performance by the company of the contract of carriage.” (O'Connor J)

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