

FRIENDS FOR 20 YEARS. -----

DISAGREE IN RAILWAY CARRIAGE CROSS ACTIONS IN DISTRICT COURT.

Before Judge Rogers, in the Sydney District Court, John Roulston Smith, accountant, of 57 Victoria-street, Lewisham, sought to recover £100 damages from Daniel George Stuckey, inquiry agent, of Shaw-street, Petersham, for an alleged assault in a railway carriage on the afternoon of April 2 last. Stuckey brought a cross-action against Smith for an alleged assault upon him on the same date, and claimed £100 damages. It was decided to hear the cases together. Mr. C. W. Clegg appeared for Smith in both actions; and Mr. Cecil Teece (instructed by Mr. J. W. Abigail) for Stuckey. Smith stated that on Saturday, April 2 last, he was travelling from Sydney to Lewisham by the 3 p.m. train. He occupied a seat along side Stuckey in a second-class carriage. After passing Redfern Station Stuckey placed a hand on his (Smith's) leg, and made a certain remark. He was reading the paper at the time, and when Stuckey made a further remark he told him to behave himself. He hit Stuckey with the back of his hand on the side of the cheek, and Stuckey then struck him, knocked his hat off, and made three or four violent blows, on his head. When the train reached Macdonaldtown, he made a complaint to the guard of the train, and asked him to remove Stuckey from the carriage. He afterwards went three or four seats behind Stuckey, and was reading the paper, when Stuckey came down, and smacked him in the face, knocking two of his teeth back. Stuckey, who was pulled off by some of the passengers, said something about "finishing him" when he got out at Lewisham. He left the train at Lewisham, and immediately reported the matter to the guard, and subsequently to the police. Later on he went to a Lewisham dentist and had the two teeth extracted. In cross-examination, Smith said he only had one whisky on April 2. He had known Stuckey about twenty years, and they had always been friends up to the date in question. He could not understand Stuckey's conduct at all, nor did he believe in practical joking. He did not hit Stuckey in the mouth with his clenched fist. He admitted that Stuckey's lip was bleeding and that it had been caused by a smack which he gave him with the back of his hand. Richard Cox, guard on the train by which the parties travelled, stated that Smith spoke to him at Macdonaldtown, and wanted to give Stuckey in charge for assaulting him. He remarked that Smith did not look as though he had been assaulted, while Stuckey, whose mouth was bleeding, certainly did. He saw Stuckey knock Smith's hat off in a jocular way. A number of the passengers called out that Smith was the aggressor. John Charles Smith, a clerk in the employ of the Water and Sewerage Board, said he never heard a number of the passengers say that Smith was the aggressor. After Smith had complained to the guard at Macdonaldtown, he saw Stuckey go to where he (Smith) was sitting, and leaning over another passenger, struck him in the mouth. He heard Stuckey say something like, "I'll murder him at Petersham if he gets out." In his opinion, Stuckey was the aggressor. Arthur William Burton, dentist, of Lewisham, deposed to extracting Smith's two teeth, which had been knocked out of the sockets. He told Smith he would replace the teeth for nine guineas. This closed Smith's case. Stuckey

stated that on the afternoon to question Smith came and sat beside him in the railway carriage. He (Stuckey) was a temperate man, but on the day in question he had a couple of whiskies, as he did not feel well.

When Smith came to where he was sitting he pushed him over in a jocular way, saying, "Don't take up the whole the seat." Smith was smoking a cigar at the time, and he asked him for one. Smith said he had no more, and saying, 'That be hanged for a yarn," he (Stuckey) began feeling his pockets for one. All at once Smith swung round and struck him violently in the cheek with his clenched fist. It was not true that Smith merely struck him on the cheek with his open hand in order to push him away. He was so surprised at receiving the blow that he struck Smith back. Two or three of the passengers told the guard that Smith was the agressor.

After Smith shifted his seat he (Stuckey) went to him and told him he ought to apologise, at the same time jocularly tilting his hat off. He never threatened to "finish" Smith at Lewisham. Being unaccustomed to liquor, he was somewhat under the influence of drink from the two whiskies on April 2, but he was quite capable of taking care of himself. He thought Smith was more under the influence of drink than he was. In cross-examination, Stuckey admitted tilting Smith's hat off in the presence of the train guard. He meant the blow which he gave Smith in return for the smack on the cheek to be severe. He did not strike Smith a second time. The only reason he could advance for Smith's conduct was that he was under the influence of drink. Wm. M'Gee generally corroborated Stuckey's story. He said that the two men were under the influence of drink, Smith being more so than Stuckey. The station-master at Lewisham deposed to Smith making a complaint to him about Stuckey on the afternoon mentioned. Smith was sober, so far as he could see. His Honor found in favor of Stuckey in both cases, and in the latter one he awarded him 40s damages.