

Sydney Morning Herald Oct 28/14

ALLEGED BREACH OF AGREEMENT.

Anderson v Allan. p. 8.

Mr. Curtis, instructed by Mr. Neville W. Montagu, appeared for the plaintiff; and Mr. E. J. Bayly Macarthur, instructed by Messrs. Stephen, Jaques, and Stephen, for defendant. This was an action brought by William Anderson, theatrical proprietor, against Maud Allan, the well-known dancer, to recover compensation for alleged breach of agreement. Particulars of the case have already been stated.

The evidence for the defence was continued, and defendant, being further cross-examined, said that on the night of the accident she did not come forward after the performance and bow to the audience. She was at the back of the stage. The cost of the orchestra to her came to about £120 per week. There were 34 or 35 performers, and she did not think they received as much as £183.

Did you not occupy a box at "Bunty Pulls the Strings" on August 16, the second Wednesday after the accident?—No.

Before August 22?—No. To Mr. Bayly Macarthur: Her losses owing to her inability to appear were about £1200. Her expenses had been very heavy, and she had to cancel engagements at Brisbane and Adelaide, and continue paying salaries to people in her employ.

To his Honor: She suffered serious pain for about three weeks, and after that time the intensity of the pain diminished.

A Jurymen: Can you say why it was that there was delay in plaintiff's doctors having an interview with you?—That depended on the arrangements they made with my own medical advisers. The only stipulation I made was that they should make their examination in the presence of either Sir Alexander MacCormick or Dr. Dawson.

William A. M'Leod, manager for the defendant, gave evidence that no delay occurred in informing plaintiff's manager of defendant's inability to perform, and immediately after the medical man had examined Miss Allan he went straight to the Palace Theatre with their verdict. Defendant was confined to her bed for 10 days, and it was not until September 26 that she was again able to appear on any stage. In the first week of her season in Sydney (apart altogether from her personal expenditure) she incurred expenses amounting to £396. In the next three weeks her expenditure was £485. During the three weeks of the Melbourne season the receipts were £791, £1026, and £776.

Other evidence, including that of Leo Cherniavsky, was given in corroboration of previous witnesses as to the accident to defendant, and what occurred immediately afterwards.

Sir Alexander MacCormick, whose evidence was taken on commission prior to his departure from Australia, said that about July 8 he was called in to attend Miss Allan, and found that she was suffering from a displaced cartilage. At the time he examined her it was absolutely impossible for her to go through the contortions in connection with the dances which she performed. He advised her to take a complete rest, and to use massage. The rest necessary in his opinion to bring about a complete cure, and to prevent a recurrence of the dislocation, was eight weeks. If the defendant had gone on dancing, and had a recurrence of the trouble, it would lead to permanent injury.

Dr. Dawson, whose evidence had also been taken on commission, said there was no doubt that defendant when he saw her was suffering from dislocation of the cartilage of the knee. She was suffering pain, and he advised her to stay in bed for a time. If Miss Allan had attempted to dance immediately after the reduction of the dislocation there would have been a recurrence of the injury.

This closed the evidence on both sides. Counsel completed their addresses, but his Honor did not finish his summing up to the jury.

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NO. 1 JURY COURT.  
(Before Mr. Justice Ferguson and a jury of four.) Oct 29/14  
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His Honor finished his summing up, and the jury, after consideration for 2½ hours, returned a verdict for defendant.

THEATRE ROYAL  
Oct 24 1914  
TWO NIGHTS, AT 8.15.  
FOR SIX NIGHTS ONLY, and  
ONE MATINEE, WEDNESDAY, 25th, at 2.15.

MAUD ALLAN,  
and LEO, JAN, and MENCHEL  
CHERNIAVSKY.

PROGRAMME FOR TO-NIGHT

Leo, Jan, and Mancel will play  
CHERNIAVSKY

THRO. the Palace, Vienna, and 'Cello' ... W. Bach

MAUD ALLAN will Dance  
The "Tom Quin" Suite ... Gring

MENCHEL CHERNIAVSKY will play  
(a) Sonatas ... Scherz  
(b) Hungarian Rhapsody ... Poppo

MAUD ALLAN will Dance  
The Blue Danube, Yalse ... Strauss

JAN CHERNIAVSKY will play  
(a) Scherz, (b) Polka ... Chopin

LEO CHERNIAVSKY will play  
(a) Two Marches ... Schubert-Tony  
(b) Spanish Dance ... Strauss

MAUD ALLAN will Dance

"THE VISION OF SALOME"  
"THE VISION OF SALOME"  
"THE VISION OF SALOME"

Accompanied by Frank M. Logie.

PLAN at Melbourne's from 9.30 to 11, and thereafter  
with Day sale, at 11.15.

PRICES Reserved Seats and Clerk, 4/- (Twilight,  
7/-) General, 2/- and 1/- Children Half-price to  
the Matinee.  
Squires and Squires in Ladies Half-price to all  
Performances.

CHANGE OF PROGRAMME AT EACH CONCERT.

The "VISION OF SALOME" every evening.

Director W. Angus MacLeod, Manager Howard Ellis.



the amount claimed, £261 16s 3d.

A THEATRICAL ACTION.

ALLEGED BREACH OF AGREEMENT.

Anderson v Allan.

Curtis, instructed by Mr. Neville W. Montagu, appeared for the plaintiff; and Mr. E. J. Bayly Macarthur, instructed by Messrs. Stephen, Jaques, and Stephen, for defendant. This was an action brought by William Anderson, theatrical proprietor, against Maud Allan, the well-known dancer, to recover compensation for alleged breach of agreement. Plaintiff's case was that in consideration of the plaintiff agreeing to pay defendant and her company (including Lee Jan and Michel Cherniavsky) during a season of three weeks, commencing on June 18, at the King's Theatre, Melbourne, and three weeks commencing on July 18, 1914, at the Palace Theatre, Sydney, defendant promised to give performances in complete fulfilment of the agreement, but that she had failed to carry out the agreement though repeatedly requested to do so. Plaintiff said that in consequence he had been put to expense, and had lost the profits he otherwise would have made. Damages were laid at £1000. The action was only in reference to the season at the Palace Theatre.

Defendant pleaded that it was a term and condition of the agreement that in the event of serious illness, on her part, which would render the fulfilment of the agreement impossible, it would be rendered null and void, and that no damage should be claimed by plaintiff. After the agreement was entered upon defendant became seriously ill within the meaning of the agreement, and found it impossible to fulfil it.

In the course of his address to the jury, Curtis said that plaintiff had to provide theatre, electric lighting, cleaning, etc., and also the preliminary advertising, which was a heavy item; while defendant had to provide the company (including the three musicians, Cherniavsky), and the orchestra, the cost of which to defendant was £200 per week. Plaintiff was to receive 40 per cent of the gross takings, and the defendant, in consideration of the expense she was under, was to receive 60 per cent. It was estimated that the plaintiff's expenses would be about £250 per week, and in order to make a profit it was necessary that the gross takings should be £600 per week. The performance lasted only three nights, and on the opening night (Saturday) the takings were £256, on the second they dropped £140, and on the third the receipts were £140. Defendant did not appear after the third night and gave as a reason that she had, while performing, displaced a cartilage of one of her knees, and was, therefore, too seriously ill to appear. There was no doubt, said counsel, that if defendant suffered in that way it would have rendered the agreement void, but plaintiff's contention was that nothing of the kind occurred to prevent defendant from appearing, and that after the third performance she was able to come forward and bow her acknowledgments to the audience for their applause, and walk out of the theatre. Next morning defendant's manager informed the representative of plaintiff that she had injured one of her legs while performing at the theatre on the previous night, and therefore could not continue her engagement. The result was that persons attending the performance had to be paid their money back, and plaintiff lost the bookings for the following Saturday, which were heavy.

The case stands part heard.

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John Fanning, manager and representative in Sydney of plaintiff, gave evidence that he did not think the defendant had been injured in the manner described. Her manager after the third night's performance told him that defendant had been taken to Sir Alexander MacCormick's surgery to have the injured limb examined. Witness stated further that for the first week of the performance they might reasonably have looked for a return of £1000: £700 for the second; and £500 for the third week. On the three nights the season lasted plaintiff received £210 and defendant £318. These results were not as good as anticipated, but by not performing defendant herself suffered loss, because, if the takings had been maintained, her margin of profit would have amounted to £280. Care was taken to render the stage suitable for the performance. He thought that Miss Allan's salary in London would be about £200 a week.

Mr. Curtis: Then the season here at the Palace would not have been much good to her?—No.

You saw the defendant leaving the theatre on the night she was said to have been injured?—Yes, and she appeared to need no assistance.

Dr. John McDonagh gave evidence that he was surgeon in connection with the firm of J. C. Williamson, Limited, for eight years. About three weeks after the accident, he, in company with Drs. Grigor and Dawson, saw defendant, and on examination he could find no sign of recent injury to her knee. If she had had a dislocated cartilage he would have expected to find well marked indications of the injury. Acute agony and inability to use the limb would have resulted from such an injury.

To Mr. Bayly Macarthur: It was a common thing for dancers and athletes to replace a dislocated cartilage themselves.

Q: I suppose that a medical man who saw an injury a few hours after it happened would be better able to give an opinion than one called in three weeks later?—Yes, if he had experience of that class of injury.

Dr. W. E. Grigor said that in his opinion if the cartilage of defendant's knee had been displaced it would have been impossible for her to complete her dance. After examining Miss Allan he came to the conclusion that the injury must have been slight.

John Joseph Ricketts, who was treasurer at the Palace Theatre during defendant's performance, said that apart from the three nights' receipts the bookings represented £240.

Other evidence was given by employees at the theatre, and the case for the plaintiff closed.

Maud Allan, defendant in the action, said that on arriving from Melbourne to continue her season she went straight to the theatre and found the floor of the theatre in a bad condition. The flooring boards were very uneven, and there were a number of traps in the floor, which made it very dangerous for dancing. She spoke to the plaintiff's representative about the floor, and said she considered it so dangerous that were it not for breaking faith with the public she would not appear, and that if anything happened to her she would hold the plaintiff responsible. An effort was made to patch the floor up and make it even, but this was not successful, as the depressions in the floor were very distracting. On the third night, while dancing in the "Vision of Salome," she injured her knee, and suffered excruciating pain. She finished her dance and went to her dressing room, and felt extremely faint from the pain with which she was suffering. She was assisted home to her hotel, and during the night suffered great pain, which she endeavoured to alleviate by hot and cold compresses. She sent for a doctor, and was attended by Dr. Dawson, and in his company she went to see Sir Alexander MacCormick, and as a result of his advice she did not dance that afternoon, but went home to bed. For over a month she was treated by a masseuse, and during the whole of that time she carried out the directions of her medical advisers most carefully.

Under cross-examination the defendant said that she did not express condemnatory opinions concerning the Palace Theatre. She told the manager of the theatre that it would suit her well, because it would bring her into closer touch with her audience. She had expressed strong opinions concerning the floor of the stage, and she was in thorough accord with the words contained in the letter written by her manager, in which he said that she would not dance on the stage again unless the flooring was renewed. On the night of the accident she did not complain to the management of the theatre regarding the accident. She was hoping that the injury would not be serious, but later on she consulted her own manager, and he communicated with Mr. Anderson's representative.

The case stands part heard.



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The evidence for the defence was continued, and defendant, being further cross-examined, said that on the night of the accident she did not come forward after the performance and bow to the audience. She was at the back of the stage. The cost of the orchestra to her came to about £120 per week. There were 34 or 35 performers, and she did not think they received as much as £153.

Did you not occupy a box at "Bunty Pulls the Strings" on August 18, the second Wednesday after the accident?—No.

Before August 22?—No.

To Mr. Bayly Macarthur: Her losses owing to her inability to appear were about £1200. Her expenses had been very heavy, and she had to cancel engagements at Brisbane and Adelaide, and continue paying salaries to people in her employ.

To his Honor: She suffered serious pain for about three weeks, and after that time the intensity of the pain diminished.

A Juryman: Can you say why it was that there was delay in plaintiff's doctors having an interview with you?—That depended on the arrangements they made with my own medical advisers. The only stipulation I made was that they should make their examination in the presence of either Sir Alexander MacCormick or Dr. Dawson.

William A. McLeod, manager for the defendant, gave evidence that no delay occurred in informing plaintiff's manager of defendant's inability to perform, and immediately after the medical man had examined Miss Allan he went straight to the Palace Theatre with their verdict. Defendant was confined to her bed for 19 days, and it was not until September 26 that she was again able to appear on any stage. In the first week of her season in Sydney (apart altogether from her personal expenditure) she incurred expenses amounting to £396. In the next three weeks her expenditure was £486. During the three weeks of the Melbourne season the receipts were £791, £1028, and £776.

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Sir Alexander MacCormick, whose evidence was taken on commission prior to his departure from Australia, said that about July 8 he was called in to attend Miss Allan, and found that she was suffering from a displaced cartilage. At the time he examined her it was absolutely impossible for her to go through the contortions in connection with the dances which she performed. He advised her to take a complete rest, and to use massage. The rest necessary in his opinion to bring about a complete cure, and to prevent a recurrence of the dislocation, was eight weeks. If the defendant had gone on dancing, and had a recurrence of the trouble, it would lead to permanent injury.

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His Honor finished his summing up, and the jury, after consideration for 2 1/2 hours, returned a verdict for defendant.

THEATRE ROYAL  
Oct 24 - 1914  
FOR SIX NIGHTS ONLY, and  
ONE MATINEE, WEDNESDAY, 25th, at 2.15  
MAUD ALLAN,  
and LEO, JAK, and MENDEL  
CHERNIAVSKY.  
PROGRAMME FOR TO-NIGHT  
LEO, JAK, and MENDEL will play  
CHERNIAVSKY  
THEO the Prince, Fables and 'Tales' ..... W. Deane  
MAUD ALLAN will Dance  
The "Topsy Turvy" Suite ..... Gony  
MENDEL CHERNIAVSKY will play  
(1) "Scherzino" ..... Scherz  
(2) "Hungarian Rhapsody" ..... Papp  
MAUD ALLAN will Dance  
The "Black and White" Suite ..... Scherz  
JAK, CHERNIAVSKY will play  
A "Topsy Turvy" ..... Gony  
LEO CHERNIAVSKY will play  
(1) "The Vision of Salome" ..... Scherz  
(2) "The Vision of Salome" ..... Scherz  
MAUD ALLAN will Dance  
"THE VISION OF SALOME"  
"THE VISION OF SALOME"  
"THE VISION OF SALOME"  
Arrangement ..... Frank H. Lopez  
PLAY at 8.15 on Wednesdays at 2.15, and thereafter  
will play at 2.15  
PERFORMERS: MAUD ALLAN, LEO, JAK, and MENDEL, LEO CHERNIAVSKY, and H. CHERNIAVSKY. (Children admitted to the Palace.)  
Admission: 1st Row, 1s; 2nd Row, 6d; 3rd Row, 3d; 4th Row, 2d; 5th Row, 1d.  
CHANGE OF PROGRAMME AT EACH CONCERT.  
The "VISION OF SALOME" every evening.  
Conductor: W. Angus MacLeod, Manager: Robert Fife.