[HIGH COURT OF AUSTRALIA.]

RAE . . . . . APPELLANT;
PLAINTIFF,

AND

THE BROKEN HILL PROPRIETARY COMPANY LIMITED . . . } RESPONDENT.
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

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SYDNEY, *Apr.* 11, 12;

MELBOURNE, *June* 3.

Dixon C.J., McTiernan, Fullagar, Kitto and Taylor JJ.

Negligence—Duty of care—Employer—System of work—Duty to provide safe system—Risk of injury to employee—Reasonable foreseeability.

R., a greaser employed by B.H.P., and a fellow employee were instructed to replace the existing wire cable used as the "lifting line" on an ore bridge in the company's premises. Part of the duties to be performed by R. in the course of this operation required him to stand in a confined space about 1′ 6″ to 2′ wide between the rear portion of a mechanically controlled drum upon which the new wire was to be wound and a small engine house, both situated upon a platform elevated to a considerable height above ground level, and to secure an even distribution of the new wire as it was wound on to such drum by manipulating the coils by tapping them into position with a spanner about 2′ to 2′ 6″ in length. R. had fastened the new wire to the centre clamp of the drum and a considerable length of wire had been drawn on to it. It was found that too much had been drawn on to certain sections of the drum and it became necessary to unwind a few turns. As the drum revolved in the process of unwinding, R. was standing in the confined space mentioned and was holding the spanner in an extended fashion with both hands, the heel thereof near his abdomen and its head above the revolving drum. The head of the spanner made contact with the top of the drum as it reversed, catching in some manner upon one of the clamps, and the heel of the spanner was forced against R. and driven into his abdomen as he became wedged between the heel of the spanner and the engine house behind him. R. sustained serious injury, for which he sought to recover damages in an action brought against the company, alleging negligence in the care, control and management of its premises and plant, failure to provide and maintain a safe system of working and safe and suitable equipment, failure to avoid subjecting employees to unnecessary risk and to warn the plaintiff

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of the risks to which he was exposed. He further alleged by his particulars that the spanner in question was unsafe, unsuitable and too long in the handle. The trial judge directed a verdict in the action for the defendant, from which R. appealed.

Held by *Dixon* C.J., *Fullagar* and *Taylor* JJ., *McTiernan* and *Kitto* JJ. dissenting, that the circumstances in which R. was required to work were not such as to give rise to any relevant risk of injury, nor such as would entitle a jury to find that the injury sustained by R. resulted from a failure by the defendant company to exercise reasonable care.

Decision of the Supreme Court of New South Wales (Full Court): *Rae* v. *The Broken Hill Proprietary Co. Ltd.* (1957) S.R. (N.S.W.) 520; 74 W.N. 257, affirmed.

APPEAL from the Supreme Court of New South Wales.

On 18th August 1954 John William Rae, a greaser employed by The Broken Hill Proprietary Co. Ltd., brought proceedings against that company in the Supreme Court of New South Wales to recover damages for injuries sustained by him whilst working at his employment on 30th August 1952. He alleged that his injuries resulted from the company's negligence in the care, control and management of its premises and plant, its failure to provide and maintain a safe system of working and safe and suitable equipment, its failure to avoid subjecting its employees to unnecessary risk and to warn him of the risks to which he was exposed.

At the trial of the action before *Manning* A.J. and a jury of four the defendant company at the close of the plaintiff's case elected to call no evidence and sought a verdict by direction on the ground that there was no evidence from which the jury would be entitled to conclude that the company had been guilty of negligence. To this application his Honour acceded and a verdict by direction was accordingly entered for the defendant.

From this decision Rae appealed to the Full Court of the Supreme Court of New South Wales (*Street* C.J., *Owen* and *Walsh* JJ.), which, *Walsh* J. dissenting, dismissed the appeal: *Rae* v. *The Broken Hill Proprietary Co. Ltd.* (1).

From this decision Rae appealed to the High Court.

The material facts are fully set out in the judgments of *Kitto* and *Taylor* JJ. hereunder.

J. R. Kerr Q.C. and *H. H. Glass*, for the appellant.

J. E. Cassidy Q.C. and *P. H. Allen*, for the respondent.

Cur. adv. vult.

(1) (1957) S.R. (N.S.W.) 520; 74 W.N. 257.

The following written judgments were delivered :—

DIXON C.J. In my opinion this appeal should be dismissed. I agree with the reasons given by *Taylor* J.

McTIERNAN J. I am of opinion that the Full Court of the Supreme Court of New South Wales ought to have allowed the motion for a new trial of this action. The reasons of *Walsh* J. for considering that the motion ought to have been allowed are, in my opinion, right. *Walsh* J. decided that there was sufficient evidence of negligence to go to the jury.

In view of the argument, I think that it is to the point to cite from the textbook, *Negligence in Law* by *Beven*, 4th ed. (1928), vol. 1, p. 10, this passage : " The legal standard of diligence is a thing apart from the interpretation of a jury in any case, and is fixed by the law with reference to the ordinary and usual diligence which a man of ordinary sense, knowledge, and prudence is used to show in his own affairs. Of this experience is the test ; and the standard varies with the shifting of general public sentiment. Whether in any particular case this standard has been attained is for the jury, if the evidence will in any view allow of their saying that it has." In my opinion the evidence in this case satisfies that condition.

I think that the motion for a new trial ought also to have been allowed on the ground that the trial judge should not have upheld the objection of the defendant's counsel to the following question : " In other industrial establishments with which you are familiar what tool is normally used for doing the job Rae (the plaintiff) was doing ? " The witness to whom this question was put is a consulting engineer of high standing and long experience. It would appear that the majority of the Full Court did not regard this question as inadmissible or irrelevant. They were of opinion that in all the circumstances its rejection did not so prejudice the plaintiff's case as to justify the making of an order for a new trial. With respect, I do not agree. The purpose of the question was, surely, to prove that the defendant did not supply the same sort of tool as other employers supplied to their workmen in similar circumstances. The question was material to the plaintiff's case. I am of the opinion the question ought to have been allowed : *Paris* v. *Stepney Borough Council* (1).

I would allow the appeal.

(1) (1951) A.C. 367, at p. 382.

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FULLAGAR J. In this case I agree with the judgment of my brother *Taylor*, which I have had the advantage of reading. I do not think that a reasonably prudent and careful employer or manager or foreman could be expected to foresee the possibility of an accident such as that which happened in this case. Nor do I think that it was open to a jury to find that that accident resulted from any failure by the defendant or any of its servants or agents to exercise reasonable care. The case appears to me to bear no resemblance to *Hamilton* v. *Nuroof (W.A.) Pty. Ltd.* (1), where the risk was as obvious as the precaution which would have avoided it.

As I observed in that case, there has been a tendency in cases of this type to forget the legal standard of reasonable care, and to regard the standard employer as a person possessing super-human qualities of imagination and foresight. When it is said in such cases that it is easy to be wise after the event, what is meant—and all that is meant—is that the matter should be judged from an *a priori*, and not from an *ex post facto*, point of view. The fact of the happening of the accident is, of course, itself a relevant consideration, but, in considering whether it ought to have been foreseen, it is wrong to take as the standard of comparison a person of " infinite-resource-and-sagacity ".

The appeal should, in my opinion, be dismissed.

KITTO J. This is an appeal from a decision of the Full Court of the Supreme Court of New South Wales upholding, by a majority, a verdict for the defendant given by the jury at the direction of the presiding judge on the trial of an action by an employee against his employer for damages for negligence.

It was proved that the appellant was seriously injured in performing one of his duties as a greaser at the respondent's steelworks; and the only question to be considered is whether there was evidence on which the jury might reasonably find that the respondent omitted to take reasonable care for the appellant's safety and that the omission was a cause of his injuries.

There was evidence which, if accepted, established the following facts. The appellant and a fellow employee named Webster were replacing worn wire ropes constituting the lifting line of a 10-ton overhead crane. The ropes ran from a revolving horizontal drum, ten feet in circumference, through pulley blocks to the grab of the crane. The means of affixing the ropes to the drum consisted of clamps which held the ropes tightly to the face of the drum. The clamps were held in position by nuts screwing down on bolts which

(1) (1956) 96 C.L.R. 18.

projected outwards from the face. There were three of these clamps, one which may be described as in the middle of an imaginary line drawn horizontally across the face of the drum, and one halfway between the centre clamp and each edge of the drum. The centre clamp held the ends of both ropes. One rope was wound round the drum to the left and the other to the right of the centre clamp, each being again secured by one of the outer clamps. Between the centre and the outer clamps the rope lay round a smooth surface, and, of course, did not unwind while the crane was being used. It was only the surface lying between each outer clamp and the outside edge of the drum that accommodated the free portion of the rope, and that surface was grooved. When a new rope was required, it was joined to the grab end of the old rope and hauled through the blocks to the drum. The end of the new rope was then secured to the drum by the centre clamp, and as much of the new rope was wound onto the drum as would leave a sufficient length to reach the grab in its hoisted position. It was essential, however, to see that the portion of the rope which was round the grooved (outer) surface was of a length sufficient to give the drum the desired fall. That required about five turns. If it was found to be not of that length, before the outer clamp was fastened down the drum had to be reversed until the necessary additional length of rope should be off the smooth (inner) surface, for it would not be possible to unwind any rope left on that part once the outer clamp was screwed down. When the additional length had been taken off, the turns remaining on the smooth surface would be too remote from the outer clamp to be secured by means of it; so a couple more turns had to be wound off the smooth surface, and then, when rewinding commenced, the rope as it came back could be guided by means of taps from a heavy instrument so that they would lie closely against the outer clamp and be secured by it. Then the winding of the grooved surface could be completed; and the operation ended with the fastening down of the outer clamp, preceded by a final tapping of the adjacent turns of wire close up against it.

Two things required attention at the drum during this process: the wire had to be tapped from time to time so that each turn should take up the position intended for it, and the nuts holding the clamps down had to be tightened up securely at the appropriate times. The outer clamps required a long spanner with which a good purchase could be obtained on the nuts. In fact the spanner used was two feet or two feet six inches in length. For the tapping, no other implement was provided; the spanner was heavy enough

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for the purpose. The man who had to attend to these matters necessarily stood—such was the layout of the plant—in a space of one foot six inches to two feet wide between the drum and the housing of the winding motor.

On the occasion of his injury, the appellant was in the position described, holding his spanner. The new rope had been wound onto the cable ; it had been found necessary to unwind some of the turns off the smooth surface so that they could be wound back onto the grooved surface ; and the unwinding for this purpose was in progress. The appellant held the spanner in front of him, with its heel near his stomach and its shaft sloping forward and upward so that its head was in front of his face and close above the top of the drum. The movement of the drum as it unwound was such that the projecting bolts approached him from the top. Seven turns of the rope were to be taken off, and the speed of the drum was such that that would take about thirty seconds to one minute. Then the drum would be reversed, and as the rope was wound up on it the appellant would have to do whatever tapping was necessary. He was holding the spanner, in the position I have described, in readiness to do the tapping in less than a minute, or perhaps in less than half a minute.

The evidence did not establish beyond doubt exactly what happened, but from what the appellant and Webster were able to say it was open to the jury to infer that in a moment of absent-mindedness or carelessness the appellant allowed the head of the spanner to sink so near to the surface of the drum that the bolt or nut of the centre clamp as it rolled towards him engaged itself in the jaws of the spanner. Certain it is that the spanner was driven towards the appellant, and, as he could not move backwards in the confined space in which he was standing, he was impaled upon it.

The learned trial judge concluded that there was no evidence of negligence to go to the jury, reaching this conclusion mainly because, for all that appeared, the spanner might have had a rounded head with jaws opening to the side, and, if it had, the chance of its fouling one of the projections from the drum and being driven backwards into a man, as distinct from being knocked aside, was so extremely remote that the jury could not properly conclude that the respondent ought reasonably to have foreseen that such a thing might happen. In the Full Court the verdict was upheld by a majority of the judges who sat, but they did not rest their decision on the ground stated by the trial judge. Indeed, although it was true that the shape of the head of the spanner was not

specifically described in the evidence, it was open to the jury to infer from the general tenor of the evidence, coupled with the very fact that the spanner was driven straight back and not pushed to one side, that the centre clamp-bolt or its nut became engaged in jaws so located that the resulting pressure was directly down the shaft. The view which prevailed in the Full Court was that such a happening as that which injured the appellant was due to "a strange and unforeseeable freak combination of circumstances" which the respondent could not have been expected to anticipate.

This view was reached by adding together several features which their Honours thought that the case presented. The spanner, they thought, was an appropriate tool for both the purposes which the appellant had to perform. The area of operations they considered a safe one. The work the appellant was doing was simple and was concerned with a relatively slow-moving machine. No other employee had been similarly hurt, though the operation had been performed over a long period—their Honours said eighteen years, but this was due to a misapprehension of certain portions of Webster's evidence. Their Honours accepted the argument for the respondent which they stated in these terms:—"It was unreasonable to foresee that an employee, standing in a safe position at a time when the drum was unwinding and therefore required no operation to be performed with a tool, would place one end of this spanner against the pit of his stomach and then permit the other end to touch the moving drum at the precise point where the head of the spanner would engage firmly against the bolt and in a direct thrust without any deflection."

The question for their Honours, however, was not whether it was reasonable to foresee that the appellant would hold the spanner exactly as he did, and would permit the head to touch the drum at the precise point where it would firmly engage the bolt so as to receive a straight thrust. The question to be decided was whether on the evidence the jury might reasonably answer against the respondent a more general question than that, namely whether in the proved circumstances a reasonable employer, reasonably considering what kinds of mishap might occur to an employee performing the work which the appellant was doing, and what might be done to prevent such mishaps, would have considered it prudent in the interests of the safety of such an employee to take steps which the respondent failed to take, such as giving the man a shorter implement for the tapping which was to be done immediately after the unwinding of the drum, or instructing him to stand out of the narrow space during the unwinding, or at least instructing

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him to hold the spanner in such a position that it could not catch on the revolving centre bolt of the drum and so be forced back upon him.

In considering this question the jury was entitled, in my opinion, to take the view that the tapping which the appellant was waiting to do was most conveniently to be done, and therefore most likely to be done, at the top of the drum; and that consequently the appellant was acting in a way in which he might reasonably be expected to act when he held the spanner in the position in which in fact he held it. Webster's evidence provided ample ground for thinking that what the appellant was doing was in every way normal for a man engaged in his immediate task. If the jury had formed that opinion, it was, I think, well open to them to conclude that there was a lack of reasonable care on the part of the respondent when the system of work which it prescribed or allowed placed a man in a space no more than two feet wide, holding in the manner I have described a heavy spanner of two feet to two feet six inches in length, while the drum revolved so as to carry a two-inch bolt, projecting from its surface, towards the spanner-head which tiredness or inattention might easily cause to be lowered.

I do not fail to see that arguments of no little weight might fairly be used at the trial for the purpose of persuading the jury that they should regard the event which occurred as a remote contingency, not reasonably to be foreseen. But it seems to me that in a case such as the present, where there is no evidence to show whether precautions are taken in similar circumstances elsewhere or even that in other enterprises men have to do work similar to the appellant's in a comparable situation, it is for the jury to decide as best it can what was reasonably foreseeable, by considering the lay-out of the plant, the characteristics of the operation which was being performed, the type of tool the employee was given with which to do his work, the course ordinarily followed in doing that work in the respondent's establishment, and the nature of the mishap that overtook the employee. In my opinion, if the present case had been left to the jury, and they had found for the appellant, the verdict must have stood; for everything that has been said in support of the decision of the trial judge is, in my opinion, no more than an argument proper for the consideration of the jury.

I do not feel any need to be deterred from acting on this view by the warning, so often given in cases of this kind, that it is easy to be wise after the event. The saying invites error of law, for it insinuates that the question to be decided is whether the defendant ought to be blamed and not whether he did or did not comply with

an objective standard of reasonable care. It appeals to the sympathy of any who may be persuaded to think that they might have done no better themselves. It does not help a judge who has to decide whether there is any case to go to a jury. He must leave the decision to the jury, unless the evidence justifies him in asserting that it would be out of all reason to take the view that an employer in the defendant's position, reasonably considering the inherent possibilities of the situation which in fact produced the plaintiff's injury, would have thought it prudent to take some step or steps which, if taken, would have obviated the plaintiff's injury.

To make such an assertion in this case seems to me to be going much too far. I entirely agree with *Walsh* J., who dissented in the Supreme Court, in thinking that the case was essentially one for the jury and should be sent down for a new trial.

I would accordingly allow the appeal.

TAYLOR J. The appellant in this case sued the respondent to recover damages in respect of personal injury alleged to have been caused by negligence. By the direction of the learned trial judge the jury returned a verdict for the respondent and a subsequent appeal by the appellant to the Full Court of the Supreme Court was dismissed. This appeal is now brought from the order of dismissal.

The facts show that at the material time the appellant was employed by the respondent as a greaser at its Newcastle steel works. On 30th August 1952 he and another employee, one Webster, were instructed by a foreman to replace the existing wire cable used as the "lifting line" on No. 3 ore bridge. The ore bridge may be described as an overhead travelling crane with a lifting capacity of ten tons and it is used for the purpose of unloading ore from nearby vessels and transporting it to storage receptacles. Each end of the lifting wire is attached by clamps to a mechanically controlled drum from which it proceeds through a series of pulleys, ultimately, to the grab. The wire is fastened to the grab by two blocks. The drum which controls the lifting wire and, ultimately, the lifting and lowering of the grab may be described as consisting of four sections; there is a ridge extending circumferentially around its centre and on either side of this ridge the surface of the drum is smooth for about half the distance towards each end. Thereafter the surface is grooved or corrugated. The circumference of the drum is about ten feet and in normal use makes about six or seven revolutions per minute. What has been called the centre clamp is situated on and immediately beside the central ridge and

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the outside clamps are situated respectively approximately half way between that ridge and each end of the drum.

According to the evidence the lifting line becomes chafed after comparatively short periods of use and replacements are required frequently. After certain preparatory work, which it is unnecessary to describe, the first step in replacing a wire is to lower the grab to the ground and after the old wire has been unwound to its fullest extent it is severed about six feet from each of the two blocks by which it is fastened to the grab. Thereupon the two ends of the new wire are " married " to the severed ends of the old wire. The next step is to raise the old wire and, with it, to draw the new wire on to the drum. It is unnecessary to describe how the old wire is disposed of, but when this has been done it becomes necessary for each end of the new wire to be firmly attached to the drum by means of the centre clamp. This is done by bolting the head of the clamp firmly into position, a task that is accomplished by means of a spanner. Thereafter the new wire is drawn on to each of the smooth portions of the drum until the outer clamps are reached where the wire is again fastened in the same manner. The nuts holding these clamps in position are larger than that on the centre clamp and the spanner used for tightening the former is about two feet six inches or three feet in length.

The fastening of each end of the wire by means of the outer clamps may not be necessary to ensure that the rotation of the drum will take up the wire but it appears to be an additional precaution to ensure that when heavy loads are lifted the wire will not break free from the drum. The additional fastening at the outer clamps, however, makes it necessary, when replacing a wire, to see that sufficient wire is left to run free on each of the grooved or corrugated sections of the drum. It is necessary, therefore, to space the turns of the wire on the smooth sections of the drum ; depending on the length of wire many turns will be necessary on some occasions whilst on others there will be comparatively few. But however many there are they must be spaced so that the wire will reach the outer clamps at the appropriate point. Accordingly, it is necessary to manipulate the coils as they wind on to the smooth portions of the drum ; sometimes it is necessary to bring them closer together and at other times to keep them further apart. This is done by tapping the coils and it appears that the practice has been followed of using the larger spanner already referred to for this purpose.

Only two other things need to be said at this stage concerning the practice which was followed. The first is that the employee

whose duty it was to fasten the clamps and to tap the wire could accomplish these tasks only by standing in a confined space between the rear of the drum and a small engine house. The engine house was a hexagonal enclosure and at its narrowest point the space referred to was about one foot six inches or two feet wide. The second thing to be said is that as the drum wound up the wire it revolved so that the bottom of the drum moved towards this space and the top away from it.

At the time when the appellant was injured he had already fastened the ends of the new wire by means of the centre clamp and a considerable length of wire had been drawn on to the drum. Indeed, too much had been drawn on to the smooth sections of the drum and it had become necessary to unwind a few turns. This process was being carried out when the appellant was injured. As the drum revolved for this purpose the appellant was standing in the space referred to and he appears to have been holding the spanner in an extended fashion with both hands. The heel of the spanner is said to have been held near his abdomen and the other end above the revolving drum. He, himself, says that the heel of the spanner was near his stomach and the other end " was resting on the drum—it was practically on top of the drum ". When asked if he meant that the other end of the spanner was above the drum he said : " It is that long ago I cannot remember now." Webster, who was jointly engaged with the appellant in the task of re-wiring carries the matter no further. He was standing on the other side of the drum and although he saw the appellant standing in the confined space shortly before the accident he did not see him again until after it had occurred. But whatever the originating cause of the appellant's injuries it is clear that, in some way or another, the head of the spanner made contact with the top of the drum as it reversed, that it caught in some manner on one of the clamps and, as the drum reversed, the heel of the spanner was forced against the appellant. Immediately thereafter he became wedged between the heel of the spanner and the engine house behind him and thereby sustained the injuries in respect of which he seeks to recover damages. It was an extraordinary accident and it is quite impossible to ascertain from the evidence precisely how it happened. The appellant, himself, said that he did not know " exactly how it happened ". " It happened so quickly ", he said and added " it (the spanner) must have caught on the clamp on the top of the drum ". It should be added that no other evidence was given capable of carrying the appellant's case any further.

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The learned trial judge was of the opinion that the facts, as related, did not constitute any foundation for the inference that the appellant's injuries had been brought about by any failure on the part of the respondent to take reasonable care for his safety. In the first place he thought that the accident, proved as it was by evidence which left a great deal to speculation, was of such an extraordinary and fortuitous character that failure to envisage the possibility of it happening, and to guard against it, was not inconsistent with the fulfilment of the duty of care owed by the respondent to the appellant. Further he was " unable to see anything in the evidence which would justify a jury in concluding that the spanner was lowered to the drum and came into contact with the projection by reason of circumstances for which the defendant is responsible, rather than by reason of circumstances for which the defendant is not responsible".

The nature of the duty of care owed by an employer to his employees has recently been discussed in cases such as *Paris* v. *Stepney Borough Council* (1); *Morris* v. *West Hartlepool Steam Navigation Co. Ltd.* (2) and, in this Court, in *Hamilton* v. *Nuroof (W.A.) Pty. Ltd.* (3) and it is unnecessary to do more than, briefly, to re-state the appropriate principle. The question always is whether an employee's injury has resulted from some failure on the part of the employer to take reasonable care for the safety of the former. Such a failure may be shown by establishing, in appropriate cases, a failure to observe commonly recognised precautions or safeguards or, in others, by showing that the performance of his work by an employee has exposed him to risk of injury which might reasonably have been foreseen and avoided. Accordingly the first question in this case is whether, upon the facts, a jury would have been entitled to say that the plaintiff was exposed to a risk of injury which by the exercise of reasonable care might have been foreseen and avoided. But in pursuing such an inquiry it is a simple matter to permit hindsight to take the place of foresight and to see, after the occurrence of an accident, that appropriate safeguards might have been provided which would have ensured safety. But, as has been said so many times, this is a completely erroneous approach to the problem. No doubt in many cases where an employee has sustained an injury in the performance of his daily work a relevant breach of duty may frequently be readily detected but, in general, the mere occurrence of an accident is not itself indicative of the breach of a duty to take care.

(1) (1951) A.C. 367.
(2) (1956) A.C. 552.
(3) (1956) 96 C.L.R. 18.

The gist of the appellant's complaint in the present case is that in order to tap or manipulate the coils of wire as they were wound on to the smooth sections of the drum it was necessary for him to stand in the confined space between the drum and the engine house and that the practice of performing this task with a spanner some two feet six inches or three feet in length involved a foreseeable element of risk. The initial suggestion is, of course, that the implement provided was, in the circumstances, unwieldy and awkward though I do not understand it to be suggested that any element of danger was involved in using it to tap the coils into position when the top of the drum would be moving away from the operator. But, it is said, it was not an uncommon feature of the operation for the drum to be reversed as occurred on this occasion and then a real risk of injury would arise. It would, it is contended, be reasonable to expect the operator to continue holding the spanner in readiness for the next stage of the operation and this involved the distinct possibility of one of the clamps striking or catching the head of the spanner and causing it to be forced against the operator in some way. The argument then proceeds that such a risk might reasonably have been foreseen and avoided, either, by providing a shorter implement for the tapping process or by instructing the operator to move out of the "danger area" whilst the drum was unwinding. The answer to these arguments is firstly, that there is no reason for thinking that any element of danger was involved in using the spanner in question for the tapping process and secondly, that the space between the drum and the engine house was not, in any relevant sense, a danger area. Nor, upon the evidence, can the happening of the accident be ascribed to either of these factors. As pointed out already the evidence is vague and uncertain but it is possible to say that the appellant's injuries must have resulted from a most unusual combination of circumstances, the most important of which was the manner in which the appellant held and controlled the spanner at the time. He must have been holding it so that the head of the spanner rested upon or was in the closest proximity to the top of the revolving drum and in such a manner that when it caught upon the centre clamp—an obstruction about two inches high—the heel of the spanner was adjacent to his abdomen. These were the factors which really created a state of danger and, indeed, which brought about the appellant's injuries. That being so, it is impossible to say that the circumstances in which the appellant was required to work gave rise to any relevant risk of injury or that the duty of care owed by the respondent to the appellant called for the giving of any further instructions or the

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provision of any additional safeguard. The argument to the contrary, in effect, rests upon the view, not that the appellant's work involved any general situation of danger or risk of injury, but rather that the possibility of some accident of the character of that which actually happened should have been foreseen and avoided by some precaution. But the combination of circumstances which caused it was extraordinary to a degree and not such as a jury was entitled to say should or would have been avoided by the exercise of reasonable care on the part of the employer.

In those circumstances it is unnecessary to refer at length to the additional ground upon which the appellant seeks a new trial. This was that certain evidence which the appellant sought to adduce from an expert witness was excluded from the consideration of the jury. Some of this evidence was clearly inadmissible and, concerning a small residue, it is sufficient to say that, even if it was admissible, favourable answers to the questions which were disallowed would not have advanced the appellant's case.

For the reasons given the appeal should be dismissed.

Appeal dismissed with costs.

Solicitors for the appellant, *J. R. McClelland & Co.*

Solicitors for the respondent, *A. Nathan*, Newcastle, by *Purves Moodie & Storey.*

R. A. H.