ORIGINAL

IN THE HIGH COURT OF AUSTRALIA

LIFGREN

V.

WALKERS LIMITED

ORIGINAL

REASONS FOR JUDGMENT

Judgment delivered at Sydney

on Friday, 12th August 1960

W. M. Houston, Govt. Print., Melb.

LIFGREN

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ORDER

Appeal dismissed with costs.

LIFGREN

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WALKERS LTD.

JUDGMENT DIXON C.J.

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JUDGMENT DIXON C.J.

This appeal raises a question of fact which only the judge at the trial could satisfactorily resolve. The true issue was whether employers, through their foreman, had directed or pursued a safe method of performing a piece of work fulfilling the duty of due care to avoid injury to the employees. It involved the turning on its side of what is called a column constructed as a support for roofing. The column consisted of a piece of steel, intended to be vertical when the column would be placed in position, with another piece of steel operating as a support running down from the top at an acute angle with the main or vertical piece and strutted or laced with it. The column was lying horizontally on blocks on the ground with the angled leg up and it was to be turned over flat. To do this a mobile crane was used to the fall of which a chain was attached; the other end of the chain ended in an open-mouthed hook. That end was passed round the uppermost leg with a view of lifting the column slightly in a way which meant that when let down it would assume a flat position, that is, on its side. The plaintiff was a member of a gang of riggers and when the column was lifted he came forward to the foot or heavier end. It was considered necessary to have the chain at the centre of gravity so that the whole column would be lifted as a horizontal beam: the centre of gravity was usually found by trial and error with sufficient approximation. In fact, according to the evidence, on this occasion the chain was not attached near enough to the centre of gravity and the foot or heavy end went up and the other end hung down. The plaintiff is said to have seized the heavy end and pulled it

down with all his weight or strength. He could not hold it and let it go so that the other end bumped on the ground. A good deal of movement was imparted to the whole attachment and the chain came off the column. The plaintiff was seriously injured by the column when it came down. The chain had been attached to the column by passing it round the upper member once or twice and placing the hook round the chain where the perpendicular pull would begin. I should have thought the case must really depend upon a primary issue of negligence or no negligence in the manner in which the chain was secured to the column; and that that issue might be much affected by the general likelihood of the column with the fall attached encountering obstacles or swinging in to objects or experiencing any form of shock or movement which would shake the chain out of the open hook or detach the hook. At the trial, however, greater attention was given to the action of the plaintiff in coming forward, seizing the end and pulling or attempting to pull it down and this is reflected in the judgment of the trial judge, Sheehy J., who regarded the plaintiff as doing something outside the scope of his duty. His Honour found that there was no negligence on the part of the defendants.

The account or accounts of the accident which the evidence contains and the explanations thus provided did not strike me as wholly satisfying. But upon consideration I have reached the conclusion that upon the view adopted by the learned judge at the trial of the evidence that should be accepted, the plaintiff made out no case. As a Court of Appeal we could not substitute for the opinion his Honour formed an inference that there had been negligence on the part of the employers through their foreman in the method employed for performing the work or the mode of fastening the hook and chain.

I therefore think that the appeal should be dismissed.

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JUDGMENT MENZIES J.

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This is an appeal from a judgment of Sheehy J. dismissing the appellant's action for damages for injuries which he claimed were caused by the negligence of his employer, the respondent company.

The appellant was severely injured when an A-shaped steel column thirty seven feet six inches long and weighing thirty five hundredweight that was suspended above the ground by a chain from the hook of a crane, fell because the chain, which had been taken twice round a section of the column and passed through a hook at the end of the chain, jumped out of the hook, so releasing the column which in falling struck the appellant, who was near the end to which base plates had been attached. The appellant was one of a gang of riggers employed by the respondent, of which one Pratoney was leading hand, and the accident occurred while Pratoney was using a mobile crane to turn the column, which was resting lengthwise along one leg upon two wooden blocks some distance apart with the other in the air directly above it, in order that it would then rest with the same leg still on the blocks but the other upon the ground. Thus the column was to be taken through an angle of ninety degrees. This was being done at about five o'clock on a Friday evening to facilitate the job of welders when they began work on the column after the week-end. The section of the column around which a couple of turns had been taken with the chain was about the middle of the top leg - i.e., the leg which, when the job was done, would be resting upon the ground - with the hook towards the outer edge of it. The plan of operation once the chain was at the centre of gravity so that the column balanced when lifted was to take the weight with the crane and then,

by operating the crane, ease the column over upon its side without raising the leg that was resting upon the blocks. It was when Pratoney had attached the chain and was testing by lifting with the crane to find out whether the column was balancing that the accident occurred. It seems that the chain was too close to the end with the base plates and that this end lifted. The appellant then pulled it down and raised the other end, but, not being able to hold the column, let it go, with the result that the far end bumped upon the block nearest to it or upon the ground with considerable force. The jar that the bump caused was increased by the crane tipping forward upon its softly inflated front tyres, so that the weight came off the chain which then fell out of the open hook; and the column, being released, fell.

The appellant gave evidence that he had not put any weight upon the elevated end and had done no more than put his hand upon it to steady it. This his Honour did not accept, but found that the plaintiff used such force that his body and knees were bent with the effort. His Honour further found that it was no part of the appellant's duty to do what he did and that he acted foolishly. These findings were made in the following terms:- "His case was not that he was testing for weight to gauge where the chain should be placed next. If he had been, and this is contrary to his evidence, he quite wrongly used the excessive force, which he did. He himself admits so. Accepting the evidence of the other witnesses, it may be that in an excess of zeal - it was nearly 5 o'clock knock-off time - he was anxious to assist in the operation and did what he did, but the defendant cannot be held responsible for his foolishness." Upon the question of the defendant's negligence, his Honour found as follows:- "In my view the system adopted was a safe system of work and the plaintiff by doing something outside the system i.e. exerting the force to the extent and in the manner described above has only himself to blame. It is true looking backwards that the accident might not

have happened if something else had been done i.e. a closed hook used on the chain, or even if the hook had been put around the chain with the throat towards the apex (but how was the leading hand to know which end, if any, would come up). But that is not the test. The chain, hook, crane, and all equipment were sufficient, proper and safe for the operation. The system and procedure for the turning were, in my view, perfectly safe. The equipment was used in a safe manner, having regard to the job being done, and the system which should have been adopted. The hook was properly attached. Pratoney was a skilled and careful leader."

The foregoing findings amount to this: that the appellant was negligent but the respondent was not. It is worth noticing that in dealing with the case as he did his Honour considered, at some length, whether the plaintiff was negligent and then, shortly, whether the defendant was negligent. This inappropriate order of consideration - inappropriate because it is only if the defendant was negligent that it became material to consider whether the plaintiff was negligent - is not without significance and it indicates that because of the way the parties conducted their cases at the trial the issues might have been confused. Upon this appeal, the question for us is whether, having regard to his Honour's findings, the evidence proves that the defendant was negligent.

There was some evidence from the appellant's fellow workers, including Pratoney, that a severe bump was something to be expected in performing the operation upon which Pratoney had embarked, but this evidence came out in the course of cross-examination in such a way that the trial judge was certainly not bound to accept it literally. It does seem, however, that a slight error - e.g., failing to pull the chain tightly around the member so that it would slip when the weight was taken, or a quick lift by the crane when the chain

was not at the centre of gravity - could cause a jolt, and the question whether things of this sort should have been guarded against by using a ring instead of a hook or by putting a tie across the throat of the hook so that the chain could not jump out, seems to me the critical question that we have to consider.

This is a straight-out question of fact, and upon a full reading of the evidence I am left with the impression that to make a finding of negligence contrary to that of the learned trial judge, who saw and heard a number of witnesses whose daily work it was to do the kind of thing that was being done when the accident occurred, would as his Honour said be to be wise after the event and to apply to an every-day and essentially practical matter a theoretical rather than a practical standard. Negligence involves taking less care than an ordinary reasonable man would have done in the circumstances; in this case his Honour decided as he did in accordance with the evidence of experienced practical men that to use a chain with a hook on the end to hold a column as Pratoney did was in accordance with a practice that was not only established, but was regarded as proper and safe.

Accordingly, I consider the appeal should be dismissed.

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JUDGMENT WINDEYER J.

I agree. The primary question was whether there was any negligence, for which the respondent was responsible, in relation to the kind of chain and hook provided or in the manner in which they were used, rather than whether the appellant's participation in the operation was officious or unwise. The primary question was considered by his Honour. We should not in the circumstances interfere with his conclusion.