ORIGINAL

(4)

IN THE HIGH COURT OF AUSTRALIA

AUSTRALIAN IRON & STEEL LIMITED

V.

DONAGHUE

ORIGINAL

REASONS FOR JUDGMENT

Judgment delivered at Sydney

on Friday, 13th May 1960

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

AUSTRALIAN IRON & STEEL LIMITED

v.

DONAGHUE

JUDGMENT
(ORAL)

JUDGMENT OF THE COURT
DELIVERED BY DIXON C.J.

CORAM: DIXON C.J.
McTIERNAN J.
KITTO J.
MENZIES J.
WINDEYER J.

AUSTRALIAN IRON & STEEL LIMITED

v.

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This is an appeal against a judgment of the Full Court of the Supreme Court of New South Wales. By the judgment an appeal against the verdict of a jury was dismissed as to liability and a cross-appeal was allowed as to the quantum of damages. We are not here concerned with the cross-appeal or the quantum of damages; we are concerned wholly with the question of liability.

The action was one of personal injuries brought by an employee against the Australian Iron & Steel Limited. The personal injuries were suffered in an accident which took place on 30th December 1956. The accident occurred while the employee, who is the plaintiff respondent, was operating a very heavy machine, the purpose of which was to secure the cutting, into long lengths and into sizes, of steel plate which is fed into the machine from rolled cylinders or coils, as they seem to have been called in the factory, of reasonably thin steel.

The machine exhibited difficulties and the accident occurred while the plaintiff respondent was attempting to set them right. To explain the accident it is necessary to say a little about the operation. The plaintiff's normal position was in front of a control table. The machine was in part operated by electrical power and in part by hydraulic power. So far as it was operated by hydraulic power the control table was furnished with levers which the plaintiff would operate. In so far as it was operated by electrical power the control table was furnished with buttons which he would operate. Very large coils of steel were delivered by a crane on to a set of rollers which brought them in front of the operating part of the machine. These rollers were actuated by electrical power

and carried the coils in succession. They were longitudinally placed upon the rollers. When each of them came opposite the actual machine it was tilted on to a cradle from which it was fed into the machine which took charge of the steel and performed the operation of cutting. It is at the entrance to the machine that the accident took place and it is with that part of the machine we are concerned.

A very large roll or coil is placed by the tilting operation upon rollers on the cradle. At this point it is rolled in by the rollers which are of course set in motion by one of the levers at the control table. It is necessary, when it is in that position, before the unwound beginning (if I may use the expression) of the steel is placed in position to be operated upon, to see that the coil is centred. That is done by two side guards which are operated from the table. These side guards, besides centring the roll in the right place, an operation which is checked by a gauge fastened to the side guards, would also see that the roll was not telescoped or, if it was in any degree telescoped, restore it into shape. By telescoped I mean that one side might not be wound with a completely level edge and the other side would be correspondingly pushed in. The operation, once the roll is in that position, is not an unduly complicated one, but it is unnecessary to describe it, for from that time onwards the whole point of the operation is to insert the edge of the steel into rollers above, which then carry the unwinding steel forward into the place where it is cut.

When the cylinder, if I may so call it, or coil, is in position on the cradle and when it is straightened up, a spindle or mandril is thrust mechanically through the coil which may freely turn on the mandril. By this means the coil is held in position and the cradle on which it rested is lowered. The coil thus is kept under the overhead rollers by the spindle.

Unfortunately, the portion of the machine which was

operated by hydraulic methods, or the pipes which led to it, exhibited a great tendency to quiver and vibrate. It is suggested that it was due to a water hammer in the pipes but it is not important why it was so. The control table was some distance away from the machine, eight feet or more, and the pipes which came down apparently had the effect of making one at least of the levers unstable. The plaintiff says that at one stage there was a tendency for the cradle upon which the coil was placed to creep. The lever which controlled the movement of the cradle had three positions; a forward position, which meant that the cradle went forward into the machine; a neutral position, which held the cradle steady in position; and a backward position, which led to the cradle coming out backwards, towards the front.

This tendency was apparently due to the displacement of the lever owing to the vibrating which was caused by the hydraulic pipes. Efforts to stop the vibration were unsuccessful but it was found that if the lever was held by a rubber band in a forward position the vibration would not move the lever and the machine would not either creep or dart backwards.

On the date of the accident, when the process was going on, the plaintiff found that one of the coils had telescoped and had to be levelled up by the side guards. He went and inspected it and went through some operations with the side guards in order to level it up. I should say that the vibration occurred as a result of the use of the side guards. Then when he had removed the side guards, he returned from the control table to look; he had withdrawn the spindle. That meant that he put up the cradle so as to take the weight of the coil and had then withdrawn the mandril or spindle. The machine was as a result in a somewhat unusual position. That is to say, it had been operated up to a point; the side guards had been used, the spindle had been in position, the unwound beginning of the steel had been drawn up into the rollers at the top, but then

the plaintiff, for the purpose of getting rid of the telescoping and centring the coil, had put up the cradle, withdrawn the mandril or spindle and had used the side guards again.

He went again to inspect the position; he wanted to see underneath, and he put his foot upon the cradle, and stood on it, I suppose. As he was standing in that position, something occurred which precipitated both himself and the coil into a large cavity underneath the machine, injuring him severely. What happened did not appear clearly, but from the facts that the gear lever which operated the cradle had moved out of the forward position in which the plaintiff had left it, held by the rubber band; that the rubber band had become detached from the tube and was hanging round the lever; and that the cradle had moved from the forward into the reverse position, it might be inferred that it was a sudden movement of the cradle backwards towards the plaintiff while he was standing on it that caused both him and the coil to fall into the cavity. At all events a fair inference arose that the security of the rubber band had proved insufficient and that had occasioned the accident.

On those facts, the plaintiff's case simply was that the machine had been in an unsafe condition and that the expedient of using a rubber band to hold the lever and prevent the lever from coming backwards into the rear position was inadequate and improper. At the trial that case was put by the plaintiff. His evidence described the machine and the accident. The only other material witness was the man who at the time had been at the other end of the machine, in charge of the cutting apparatus. He came forward and found the plaintiff in the pit. He inspected the control table and saw the position of the lever and of the rubber band. It was attached to the lever but had become detached at the other end.

The defendant called no evidence.

The case therefore presented a somewhat simple aspect. There was a large machine which had proved defective in its

operation, to the extent that I have described, namely, that the lever was liable to shift so that the movement of the machine could take place and the correction had been by the use of a rubber band and that had failed.

The duty of an employer is to take reasonable care to provide safe premises, safe methods of working, and plant in a safe condition. It was reasonably open to the jury, on that state of circumstances, to infer that the duty had not been performed; that the device of using a rubber band to secure it was inadequate; and that reasonable care had not been taken to see that the use of the machine was entirely safe.

The plaintiff said that he had asked more than once that steps be taken to remedy the position. Apparently great difficulty had been found in finding any remedy for the vibration of the hydraulic pipes. In making the request the plaintiff himself probably was not actuated by a desire to see that the position was made safe but rather that the operation should be conducted somewhat more regularly without the rubber band. At all events the situation was such that it was reasonably open to the jury to find that the obligation of due care for the safe working of the machine had not been fulfilled. The only question which appears to me to be left for the defendant to contest is that the accident in the form which it took was not the reasonable consequence of the default of duty which the jury were so at liberty to find.

That in substance, I think, is the case in fact made for the defendant appellant upon this appeal. The answer to it is equally simple; it is that the accident which occurred is of a kind which might be expected within the large range of consequences any one of which may be expected to ensue from a defect in machinery or plant or in the method of operating it. For the workman to come forward to inspect in order to see what the position was and to find himself in difficulties through the course that he took, is not outside the range of reasonable

and probable consequences which would ensue from a defect of duty of the description in question.

It therefore appears to me that there is no ground upon which this appeal could be sustained and I think it should be dismissed with costs.

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JUDGMENT McTIERNAN J.

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I am of the same opinion as the Chief Justice.

As I understand the argument for the appellant, it seeks to throw upon the respondent, who, in fact, has no engineering skill, the responsibility belonging to the appellant, of making this machine safe, in compliance with the appellant's own duty as employer. I think that the argument is unsound. The jury could reasonably find, upon the evidence, that the respondent did not take due care to correct the serious defect, explained in the evidence, which had developed in the machine. Clearly, this defect made the machine a dangerous one for the operator. It was open to the jury also to find that the provision of the rubber band was an amateurish device which was not likely to correct the defect and, consequently, that the appellant was guilty of a breach of its duty as employer to the respondent, as its employee.