IN THE HIGH COURT OF AUSTRALIA

PUBLIC TRUSTEE FOR VICTORIA

v.

VERNON

*V.*

PUBLIC TRUSTEE FOR VICTORIA

v.

VERNON AND ANOTHER

1/6.

# REASONS FOR JUDGMENT

*Judgment delivered at* MELBOURNE

*on* TUESDAY, 26TH MAY 1964

A. C. Brooks, Government Printer, Melbourne
C.7639/60

Registry

PUBLIC TRUSTEE FOR VICTORIA

v.

VERNON

PUBLIC TRUSTEE FOR VICTORIA

v.

VERNON AND ANOTHER

ORDER

Appeals dismissed with costs.

negative

PUBLIC TRUSTEE FOR VICTORIA

v.

VERNON

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v.

VERNON AND ANOTHER

JUDGMENT

DARWICK C.J.
[illegible]
[illegible]

PUBLIC TRUSTEE FOR VICTORIA

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VERNON AND ANOTHER

These two appeals are brought from judgments of the Supreme Court of Victoria (Gowans J.) in actions instituted by the respondents in which they claimed damages from the Public Trustee for Victoria, as administrator ad litem of the estate of John Joseph McMahon deceased, for personal injuries sustained as the result of a collision between two motor vehicles on the Pacific Highway between Drouin and Warragul. The vehicles in question were being driven respectively by the respondent Keith Harold Vernon and the deceased John Joseph McMahon, and the respondent Una Grace Vernon, the wife of Keith Harold Vernon, was a passenger in his vehicle. In the result Keith Harold Vernon succeeded in obtaining judgment for £18,820, his wife obtained judgment for £2,180 and a third party claim made against Keith Harold Vernon in the second action was dismissed.

The evidence concerning the manner in which the collision occurred was somewhat scanty. McMahon died as a result of the collision and at the time of the trial it appeared that both the respondents were suffering from amnesia and had no recollection of the events leading up to the accident. But there was evidence upon which the learned trial judge formed the view that the sole cause of the accident was the action of McMahon in so driving his vehicle that some substantial part of it crossed the

centre line of the bitumen strip which constituted the main portion of the highway and that, in the circumstances then prevailing, this constituted a failure to use due care in the management of his vehicle.

The main body of the evidence upon which this conclusion was reached was the testimony of one Cross who at the time was driving a truck on the highway in an easterly direction towards Warragul. He said that he observed Vernon's car approaching him in the opposite direction when it was distant about 200 yards. It was, he said, proceeding at a normal speed and was maintaining a steady course with its off-side wheels approximately two feet or a little less from the centre line of the highway. It passed the truck which Cross was driving on its correct side and immediately afterwards he heard a loud crash and on looking back "at an angle" from his driving window he saw Mahahon's car apparently stopped and Vernon's car "swinging clockwise" towards Drouin on the southern side of the roadway. According to his evidence the collision occurred at a distance of ten to fifteen feet from the line of the rear of his truck, that is to say, from its position at the moment of impact, and it seems that the off-side front of each vehicle came into collision. As Vernon's car passed Cross' truck the latter vehicle was travelling about "32 or 33 miles per hour and its off-side was some 4'6" from the centre line". In addition to this testimony there was evidence concerning the position of debris on the road and the position which the cars occupied after they had come to rest.

The initial contention advanced by the appellant was that the evidence was incapable of supporting the inference which the learned trial judge drew. We reject this contention. It is apparent that one or other vehicle crossed to its incorrect side a very short distance

to the rear of Cross' truck. There was no reason why Vernon's car should have done so and there is the explicit evidence that an instant before he had been maintaining a steady course on his correct side of the road. Further, immediately after the collision occurred, Cross was able to see both vehicles looking back and "at an angle" from his driving window. These observations, alone, are sufficient, we think, to justify the inference that it was McMahon's vehicle which crossed to its incorrect side of the road and if it did so in such close proximity to the truck ahead of it a situation of imminent danger to Vernon's oncoming vehicle was created. However, the learned trial judge felt fortified in his conclusion by consideration of the position of the debris and the position of the cars after they had come to rest.

Consideration of the matters advanced by counsel for the appellant has not induced us to think that the inference which his Honour drew was not open upon the evidence. On the contrary, we think it was clearly open and have no doubt that a proper appreciation of the evidence leads to the conclusion that his Honour was right in finding that the collision was caused by the negligence of McMahon and that this was the sole cause of the accident. This final observation also disposes of the appellant's alternative contention that, upon the evidence, Vernon should also have been held to be responsible.

A further ground of appeal was that the damages awarded to Keith Harold Vernon were excessive. The argument on this point turned, in the main, upon the assessment by the learned trial judge of this respondent's future economic loss at £13,000. There was a somewhat unusual feature in the case but this was given careful consideration by his Honour and we see no reason why a

court of appeal should interfere. An examination of his reasons discloses that he did not act upon any erroneous principle and we think it is impossible to say that the amount of damages which he awarded exceeded the limits of a sound discretionary judgment.