

IN THE HIGH COURT OF AUSTRALIA

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WATERS

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v.

THE COMMONWEALTH OF AUSTRALIA

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**REASONS FOR JUDGMENT**

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Oral

Judgment delivered at Sydney

on Tuesday 14th April 1970

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WATERS

v.

THE COMMONWEALTH OF AUSTRALIA

ORDER

Appeal dismissed with costs.

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WATERS

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THE COMMONWEALTH OF AUSTRALIA

JUDGMENT  
(ORAL)

BARWICK C.J.

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Mr. Horler has placed before the Court the facts on which he relies for the support of his submission that there was in this case evidence of negligence causing the plaintiff's injury and for which the Commonwealth can be held responsible. The grounds of negligence put forward are two: first, that the system of work employed by the defendant exposed the plaintiff, who, due to his existing physical condition, was inarticulate, to unnecessary risk; and second, that the driver of the truck, Thompson, ought to have stopped so soon as the plaintiff passed out of his vision.

As to the first of these submissions, I am of opinion that it could not be concluded from the description in the evidence of the work being done that the plaintiff was at any time required to stand or pass immediately in the path of the reversing vehicle. Indeed to do his work it would seem that he ought necessarily to have placed himself clear of that path. There is, in my opinion, no evidence of a defective system of work importing negligence on the part of the defendant as the plaintiff's employer. In so saying I do not pause to consider questions of causation but I mention only that the plaintiff's incapacity to articulate clearly seems to me quite immaterial to the resolution of the case.

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As to the second ground of negligence, which does not seem to have been agitated before the Full Court, or at the trial, I am unable to accept the submission that so soon as the driver of the truck did not see the plaintiff in his view he was bound to stop. In the manner of performing the work on which the two men were engaged, there was in my opinion no reason, in relation to the safety of the plaintiff, for the driver of the truck either to be watching him continuously or to keep his truck moving only whilst he could see the plaintiff. Even if in the course of performing his work of guiding the reversing truck the plaintiff might pass from the offside to the near side of the truck, there was no reason, in my opinion, to suppose that he would pass close to the moving vehicle or that in passing from one side to the other he might stumble or fall close to the rear of the truck.

In my opinion the Supreme Court was right to direct the entry of a verdict for the defendant and the appeal, in my opinion, should be dismissed.

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JUDGMENT  
(ORAL)

KITTO J.

WATERS

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I agree that the verdict was properly entered  
for the defendant from want of evidence to support the  
plaintiff's case.

WATERS

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JUDGMENT  
(ORAL)

MENZIES J.



WATERS

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I agree.

WATERS

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THE COMMONWEALTH OF AUSTRALIA

JUDGMENT  
(ORAL)

OWEN J.

WATERS

v.

THE COMMONWEALTH OF AUSTRALIA

I agree that there was no evidence of  
negligence.

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JUDGMENT  
(ORAL)

WALSH J.

WATERS

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I agree also that the evidence did not support the verdict; the decision of the Supreme Court was right.