IN THE HIGH COURT OF AUSTRALIA

PRESTON COAL COMPANY LIMITED

V.

HAROLD

REASONS FOR JUDGMENT

Oral

Judgment delivered at Sydney

on Wednesday 15th April 1970

PRESTON COAL COMPANY LIMITED

v.

HAROLD

ORDER

Appeal is allowed with costs. The order of the Supreme Court of the State of New South Wales set aside and in lieu thereof order that the appeal from that Court to the Court of Appeal of the State of New South Wales be allowed with costs, verdict for plaintiff be set aside and judgment entered for the defendant.

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JUDGMENT

(ORAL)

BARWICK C.J.

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In my opinion there was in this case no evidence of negligence on the part of the appellant. The respondent was directed to work according to the directions of a man named Riley. This must have meant that the manner of doing the work was to be in accordance with Riley's instructions for the job itself had been nominated by Thomas.

It is quite clear that Thomas had, in substance, told the respondent to wait for Riley before doing the work in connection with the centrepiece; but as the respondent was on his way to doing another job, pending the arrival of Riley, he met Riley who said to the respondent and his fellow workmen, "I will take these coils to the charger and yous can go around".

The only suggested grounds of negligence which now remain open to the respondent are first, that the appellant failed to give him adequate instructions as to the manner of doing a job which, apparently simple, could prove dangerous; and secondly, that Riley ought to have given a specific warning not to start work till he arrived because of what is claimed to have been an inherent danger in the performance of the work.

In my opinion the words used by Riley to the respondent were incapable of bearing the meaning that the respondent was to start the work in Riley's absence and, perhaps more significantly, that where instructions as to the manner of doing the work might prove necessary, the respondent should go ahead without any instructions.

There could be no failure to give adequate instructions in this case if the right view of the evidence is that the respondent was to wait for Riley and, by inference, Riley's instructions before commencing the work. That was the situation in this case in my opinion and there was no evidence of this suggested ground of negligence.

On the other ground it is sufficient to say that on the view I have taken of the words used by Riley to the respondent in the context of the words used by Thomas, the respondent had been told not to work till Riley arrived. Further, I see no basis for a finding that Riley knew anything of the relative height of the centrepiece and the lip of the shuttle car.

I am content, myself, to agree with the judgment of his Honour Mr. Justice Asprey and his view that there was no evidence to support the jury's verdict.

Accordingly, in my opinion, the appeal should be allowed and the order of the Supreme Court set aside.

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JUDGMENT
(ORAL)

KITTO J.

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I am of the same opinion.

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JUDGMENT
(ORAL)

MENZIES J.

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I agree.

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JUDGMENT OWEN J.

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I agree.

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JUDGMENT
(ORAL)

WALSH J.

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I agree.