IN THE HIGH COURT OF AUSTRALIA

SOUTHERN

V.

THE COMMONWEALTH OF AUSTRALIA

REASONS FOR JUDGMENT

Oral

Judgment delivered at Sydney

on Tuesday, 23rd November 1971

SOUTHERN

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ORDER

Appeal allowed with costs. Order of the Supreme Court of the Northern Territory set aside and in lieu thereof order that a verdict be entered in the action for the plaintiff in the sum of $8,500 with costs.

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JUDGMENT

(ORAL)

BARWICK C.J.

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The appellant was employed by the respondent Commonwealth. He was injured at work while performing his duties. The respondent was placing a catwalk from the bank of a stream in the Northern Territory to a vertical bore casing standing midstream.

The method employed was to draw the metal catwalk from the bank towards the bore casing by a wire sling placed around the catwalk and attached to a wire rope passing over a pulley on the bore casing and drawn by a motor vehicle operating on the other bank of the stream.

When the catwalk had been drawn to a point so proximate to the casing that it was appropriate to have an employee in position to affix the end of the catwalk to the casing, the appellant was required to be on the catwalk, at that time suspended over the stream, and supported by the wire sling and rope attached to the motor vehicle.

Of a sudden, the appellant was precipitated to the ground, suffering injury. The rope support of the suspension of the catwalk had parted. No more is known of the occurrence;

neither the appellant nor the respondent called evidence explanatory of the breaking of the wire rope.

The learned trial judge found for the respondent. He said - and I would read what he said at pages 86 and 87 of his reasons for Judgment:

> "There is, of course, no absolute duty to provide equipment which is without a defect. There is a duty only to take reasonable steps to ensure that the equipment provided is free from defects. The breaking of a wire rope does not allow a judge or a jury to draw from that fact alone the inference that the defendant under whose control the rope was has failed to take reasonable steps. Judges and juries have no knowledge, save by chance, of the characteristics of wire ropes and in particular whether or not they are liable to break unexpectedly and whether or not any such liability is a defect discoverable by reason of an inspection. From this it necessarily follows that it is not proper for a judge or a jury to infer from the breaking of a wire rope that it was subjected to undue stress, either of weight or friction: in other words, if the defendant failed to take reasonable steps to make the apparatus safe for the plaintiff."

In my opinion, therefore the plaintiff's case must fail in so far as it is based on the maxim res ipsa loquitur.

The extent of the ordinary experience of mankind can, on occasion, raise a difficult question, but in my opinion it is within the experience of the ordinary man that a wire rope, properly chosen for its task and properly maintained, does not fail if not subjected to greater stress than it is designed to receive. If such a rope parts in the course of such an operation as was on foot when the appellant was injured, it can properly be said, in my opinion, that a jury can say that in its opinion it

was more probable than not that the parting of the wire rope was due to a want of reasonable care on the part of the employer for the safety of its workmen. In my opinion, the trial judge was therefore in error in concluding, as in substance he did, that there was no evidence of negligence before him. In my opinion there was. The case is not one in which we are asked to review a judge's conclusion of fact but to consider his conclusion of law. If the Court is of opinion that the judge was in error in point of law the Court is able to decide the case without being under any need to order a new trial. It is able to make up its own mind whether it will infer negligence from the circumstances of the occurrence. I would. There is no explanation of the parting of the wire rope. The appellant was required to do a hazardous task. It could not be said that, by reasonable care in the selection and maintenance of wire ropes for the task in hand, bearing in mind the stresses involved, a wire rope of adequate strength could not have been used. More likely than not, I think, the wire rope parted because it was not adequate to its task. So to say is, in my opinion, to conclude that the respondent failed to take reasonable care for the safety of its employee. I would find a verdict for the appellant. The damages have been assessed by the trial judge, and the appellant's counsel has withdrawn the appeal against the amount of damages.

The verdict should therefore be for the amount assessed by the trial judge.

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JUDGMENT
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MENZIES J.

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I agree.

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JUDGMENT
(ORAL)

WINDEYER J.

In my opinion the conclusion of a trial judge on whether or not facts proved and considered by him establish negligence should not be disturbed by a Court of Appeal except in extraordinary cases. But that is not the question here. I do not say that I think that upon the facts proved, his Honour should necessarily have found that the defendant was negligent; but I do think that he should not have ruled out the fact of the occurrence as evidence of negligence fit for his consideration. That, as I read what he said, is what he did. Counsel for the respondent, in supporting his Honour's judgment, agrees that he did this, saying that there was in the case no evidence of negligence fit to have been considered by a jury. That, I think, is not so. I think that an inference of negligence was certainly open. The purely logical conclusion from the attitude that I take it might be said, should be that there should be a new trial on the issue of negligence, there being some, but not necessarily compelling, evidence of negligence. But his Honour said, as I understand it, that if he had been able to take the fact of the occurrence as negligence, then he would have found for the plaintiff. In the circumstances I think that this Court should say that there was evidence of negligence and that negligence was established; therefore, that the damages which his Honour assessed should be awarded.

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JUDGMENT
(ORAL)

OWEN J.

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I agree with the Chief Justice and the order which he proposes.

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JUDGMENT
(ORAL)

WALSH J.

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I agree with the order proposed by the Chief Justice and with his reasons.