

P.J. MURPHY

V.

HUNTLEY COLLIERY PTY. LTD.

REASONS FOR JUDGMENT

Oral

Judgment delivered at Sydney

on Tuesday 6th April 1971

P. J. MURPHY

v.

HUNTLEY COLLIERY PTY. LTD.

ORDER

Appeal dismissed with costs.

P. J. MURPHY

v.

HUNTLEY COLLIERY PTY. LTD.

JUDGMENT

(ORAL)

BARWICK C. J.

P. J. MURPHY

v.

HUNTLEY COLLIERY PTY. LTD.

The appellant sued the respondent in the Supreme Court of New South Wales in three counts, one for what may be called common law negligence and two for breach of statutory duty, namely, the breach of certain rules made under the Coal Mines Regulation Act 1912. The action was heard by a judge and jury. The learned trial judge was of the opinion that there was no evidence upon which the jury could find either a breach of the employer's duty to the appellant as its servant, or of some fellow workman's duty towards the appellant, for which the respondent could be liable. He was also of the opinion that neither of the rules to which the second and third counts of the declaration referred had any application to the circumstances of the case. Accordingly, the trial judge directed the jury to return a verdict for the defendant. On appeal, the Court of Appeal division was of the opinion that the trial judge was not in error in the course he took or in the reasons he gave for taking it.

The facts are simple: the appellant claims to have slipped on a patch of oil over which he had placed some, but apparently insufficient, coal dust, that being the then accepted method of removing the hazard of slipping on oil spilled on the roadway in a mine. The oil had emitted from a fractured pipe in a hose in a hydraulic system on a shuttle car, which was standing at the relevant time at the side of the travelling road. There was

a 20 gallon tank connected to the hose provided with a stop cock. Evidently the shuttle car had broken down at some earlier time and had been moved off the travelling road. The appellant, a fitter, was instructed to repair the shuttle car. He came to the site of the shuttle car, observed a pool of oil partly under the car and partly a matter of some nine inches outside the car at a point approximately at the place where he would need to work. He had coal dust placed on the oil, evidently to his satisfaction, for adequate coal dust was available. He says that whilst working, because alarmed by the noise of the working of the mine roof, he slipped, causing serious injury to himself.

The trial Judge, in my opinion, was correct in his conclusion that neither of the rules made under the Coal Mines Regulation Act were applicable to the oil tank on the shuttle car or to the leakage of oil from the hose connected to it. Therefore, there was no need to consider whether or not the particular rules were intended to give rise to causes of action such as the plaintiff sought to base upon them.

Further, in my opinion, the trial Judge was correct in taking the first count from the jury for want of evidence to support it. However the matter is put, whether as an alleged breach of the employer's duty or as an alleged breach of the duty of a fellow workman I am of the opinion that what was proved would not support a verdict for the plaintiff on that count. I doubt if there was any evidence that any person was careless in connection with the open cock connected to the tank, but assuming carelessness in that connection, it cannot, in my opinion, in the circumstances of this case, be related to the appellant's injury, either as of a kind reasonably foreseeable,

or as directly connected causally in point of law to that injury. Further, the appellant himself had both the obligation and the capacity to render the patch of oil harmless to himself. He failed to do so. If the assumed carelessness would otherwise have been causally connected to the injury, in my opinion the applicant's act of insufficiently dealing with a patch of oil broke that relationship and constituted a new causal act. In my opinion, therefore, the Court of Appeal reached the proper conclusion, and this appeal should be dismissed.

P. J. MURPHY

v.

HUNTLEY COLLIERY PTY. LTD.

JUDGMENT
(ORAL)

McTIERNAN J.

P. J. MURPHY

v.

HUNTLEY COLLIERY PTY. LTD.

I agree that the Court of Appeal reached the proper conclusion as to each count of the declaration.

P.J. MURPHY

v.

HUNTLEY COLLIERIES PTY. LIMITED

JUDGMENT
(ORAL)

MENZIES J.

P.J. MURPHY

v.

HUNTLEY COLLIERIES PTY. LIMITED

I agree with the judgment of the Chief Justice.

MURPHY

v.

HUNTLEY COLLIERY PTY. LIMITED

JUDGMENT
(ORAL)

WINDEYER J.

MURPHY

v.

HUNTLEY COLLIERY PTY. LIMITED

I also agree with the judgment of the Chief Justice.

MURPHY

v.

HUNTLEY COLLIERY PTY. LIMITED

JUDGMENT
(ORAL).

OWEN J.

MURPHY

v.

HUNTLEY COLLIERY PTY. LIMITED

I agree with the Chief Justice.