

DOWNS

v.

EDGECOCK (AN INFANT BY HIS NEXT
FRIEND, THOMAS EDGECOCK)

JUDGMENT
(ORAL)

WALSH J.

22 Sept
1972
full cont.

DOWNNS

v.

EDGECOCK (AN INFANT BY HIS NEXT
FRIEND, THOMAS EDGECOCK)

It appears to me that the arguments submitted to this Court on behalf of the appellant are arguments which might well have been addressed - and very likely were addressed - to the learned trial judge to persuade him that he ought not to find negligence on the part of Mr. Brooks.

In my opinion, it has not been shown that there was no evidence upon which the learned trial judge could reasonably make that finding.

Quite apart from any risk that may have existed that the boys might do injury to each other through ill will or spite or through sheer mischief, the finding was open, in my opinion, in the circumstances of the case, that there was a risk, against which in fact adequate precautions were not taken, that through negligence, including youthful heedlessness and lack of prudence, one boy might injure the other through contact with the unguarded mower, which was an implement capable, if a mishap did occur, of inflicting serious injury. In those circumstances, I am of the opinion that the appeal fails.