

IN THE HIGH COURT OF AUSTRALIA

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THE COMMONWEALTH OF AUSTRALIA

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v.

GREENWOOD

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## REASONS FOR JUDGMENT

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Judgment delivered at MELBOURNE

on 14 th OCTOBER 1975

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THE COMMONWEALTH OF AUSTRALIA

v.

GREENWOOD

ORDER

Appeal dismissed with costs.

THE COMMONWEALTH OF AUSTRALIA

v.

GREENWOOD

ORAL JUDGMENT

BARWICK C.J.

THE COMMONWEALTH OF AUSTRALIA

v.

GREENWOOD

In my opinion this appeal should be dismissed. The facts are sufficiently set out in the judgments of the learned primary judge and of the members of the Full Court which heard the appellant's appeal to that Court.

The respondent was a passenger in the car of a fellow naval rating. The question of fact in the case was whether that fellow rating in carrying the respondent in his private motor car was doing so in the course of his, that is, the driver's employment. It is submitted there was no evidence upon which the jury could answer that question affirmatively. In my opinion there was ample evidence for that purpose. The driving rating was authorised clearly by the appellant's admission to carry the respondent. I am unable to agree with the view of Mr. Justice Lush that the jury could not act on the admission contained in the answer to an interrogatory, and they were bound, on looking at the Regulation, to disregard that admission. The respondent was "an authorised passenger of" the driving rating, that is to say, authorised by the Commonwealth. Both ratings were on duty, moving from one ship to another. They were authorised to travel together for the convenience of the appellant. I do not think the matter need proceed further. The question is not whether the driving rating was instructed to carry the respondent; it is enough that there is material upon which it could be concluded by the

jury that the respondent was carried by the driving rating in the course of that rating's employment.

It was submitted that this Court's decision in The Commonwealth v. Cocks 115 C.L.R. 413 precludes a decision by the jury that the driver was in the course of his employment in carrying the respondent. However, not only is a decision in point of fact no authority upon another matter of fact, but the decision in that case was that the Commonwealth, by giving permission for the use of its servant's private car, had not made its servant its agent to drive his car so as to attract liability to the Commonwealth towards passengers carried in the servant's private car. By contrast the jury were clearly entitled in my opinion in this case to conclude that the Commonwealth had authorised the driving rating to carry his fellow rating as they both proceeded in the course of their duty from one ship to another.

Indeed there is much to be said for the view that the Commonwealth had taken charge for its own purposes, not merely in relation to cost or expense, of the manner by which the naval rating should travel when in the course of his duty he was transferring from one ship or station to another; but there is no need to decide that question in order to sustain the jury's verdict.

In my opinion the trial judge was not in error in leaving the case to the jury and the majority of the Full Court were not in error in dismissing the appellant's appeal to that Court. In my opinion, as I have said, this appeal should be dismissed.

COMMONWEALTH OF AUSTRALIA

v.

GREENWOOD

J U D G M E N T  
(ORAL)

GIBBS J.

COMMONWEALTH OF AUSTRALIA

v.

GREENWOOD

I agree.

COMMONWEALTH OF AUSTRALIA

v.

WILLIAM DESMOND GREENWOOD

JUDGMENT

(ORAL)

STEPHEN J.:



COMMONWEALTH OF AUSTRALIA

v.

WILLIAM DESMOND GREENWOOD

I agree.

COMMONWEALTH OF AUSTRALIA

v.

GREENWOOD

JUDGMENT  
(ORAL)

MASON J.

COMMONWEALTH OF AUSTRALIA

v.

GREENWOOD

I agree.

COMMONWEALTH OF AUSTRALIA

and

WILLIAM DESMOND GREENWOOD

ORAL JUDGMENT

MURPHY J.

COMMONWEALTH OF AUSTRALIA

and

WILLIAM DESMOND GREENWOOD

I agree.