



Friday, 6 September 2019

Weekly Employment Law A Weekly Bulletin listing Decisions of Superior Courts of Australia covering Employment Law

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Executive Summary (1 minute read)

Davies v Whitehaven Coal Mining Ltd (NSWSC) - negligence - employer's non-delegable duty of care - plaintiff employee injured at colliery - defendant employer not liable - judgment for defendant



Summaries With Link (Five Minute Read)

Davies v Whitehaven Coal Mining Ltd [2019] NSWSC 1125

Supreme Court of New South Wales

Wright J

Negligence - plaintiff employed by defendant in its colliery - plaintiff contended he was injured due to defendant's 'negligence and breach of statutory duty' and that he suffered 'loss and damage' as a result - defendant denied liability and pleaded payments of compensation to plaintiff under *Workers Compensation Act 1987* (NSW) in defence - employer's 'non-delegable duty of care to take reasonable care' to avoid plaintiff's exposure to 'unnecessary risk of injury' - *Czatyрко v Edith Cowan University* [2005] HCA 14 - held: defendant not liable - judgment for defendant.

[View Decision](#)

[From Benchmark Tuesday, 3 September 2019]

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From: The Hunting of the Snark

By: Lewis Carroll

Fit the Sixth

The Barrister's Dream

They sought it with thimbles, they sought it with care;
They pursued it with forks and hope;
They threatened its life with a railway-share;
They charmed it with smiles and soap.

But the Barrister, weary of proving in vain
That the Beaver's lace-making was wrong,
Fell asleep, and in dreams saw the creature quite plain
That his fancy had dwelt on so long.

He dreamed that he stood in a shadowy Court,
Where the Snark, with a glass in its eye,
Dressed in gown, bands, and wig, was defending a pig
On the charge of deserting its sty.

The Witnesses proved, without error or flaw,
That the sty was deserted when found:
And the Judge kept explaining the state of the law
In a soft under-current of sound.

The indictment had never been clearly expressed,
And it seemed that the Snark had begun,
And had spoken three hours, before any one guessed
What the pig was supposed to have done.

The Jury had each formed a different view
(Long before the indictment was read),
And they all spoke at once, so that none of them knew
One word that the others had said.

"You must know—" said the Judge: but the Snark exclaimed
"Fudge!"

That statute is obsolete quite!
Let me tell you, my friends, the whole question depends
On an ancient manorial right.



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"In the matter of Treason the pig would appear
To have aided, but scarcely abetted:
While the charge of Insolvency fails, it is clear,
If you grant the plea 'never indebted.'

"The fact of Desertion I will not dispute;
But its guilt, as I trust, is removed
(So far as relates to the costs of this suit)
By the Alibi which has been proved.

"My poor client's fate now depends on your votes."
Here the speaker sat down in his place,
And directed the Judge to refer to his notes
And briefly to sum up the case.

But the Judge said he never had summed up before;
So the Snark undertook it instead,
And summed it so well that it came to far more
Than the Witnesses ever had said!

When the verdict was called for, the Jury declined,
As the word was so puzzling to spell;
But they ventured to hope that the Snark wouldn't mind
Undertaking that duty as well.

So the Snark found the verdict, although, as it owned,
It was spent with the toils of the day:
When it said the word "GUILTY!" the Jury all groaned,
And some of them fainted away.

Then the Snark pronounced sentence, the Judge being
quite
Too nervous to utter a word:
When it rose to its feet, there was silence like night,
And the fall of a pin might be heard.

"Transportation for life" was the sentence it gave,
"And then to be fined forty pound."
The Jury all cheered, though the Judge said he feared
That the phrase was not legally sound.



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But their wild exultation was suddenly checked
When the jailer informed them, with tears,
Such a sentence would have not the slightest effect,
As the pig had been dead for some years.

The Judge left the Court, looking deeply disgusted:
But the Snark, though a little aghast,
As the lawyer to whom the defence was intrusted,
Went bellowing on to the last.

Thus the Barrister dreamed, while the bellowing seemed
To grow every moment more clear:
Till he woke to the knell of a furious bell,
Which the Bellman rang close at his ear.

https://en.wikipedia.org/wiki/Lewis_Carroll

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