

~~GDI 66~~

Judgment
4/19/64

IN THE PRIVY COUNCIL

NO.11 of 1964

ON APPEAL

FROM THE FULL COURT OF THE SUPREME COURT OF QUEENSLAND

B E T W E E N :

MARANOA TRANSPORT PTY. LTD (Plaintiff) Appellant

- and -

NORMAN EGGERT KROPP (Defendant) Respondent

R E C O R D O F P R O C E E D I N G S

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
23 JUN 1965
25 RUSSELL SQUARE
LONDON, W.C.1.

- 78681

WALKER MARTINEAU & CO.,
10/11, Gray's Inn Square,
London, W.C.1.

Solicitors for the Appellant

FRESHFIELDS,
1, Bank Buildings,
Princes Street, London, E.C.2.

Solicitors for the Respondent

IN THE PRIVY COUNCILNo. 11 of 1964

ON APPEAL

FROM THE FULL COURT OF THE SUPREME COURT OF QUEENSLAND

B E T W E E N :MARANOA TRANSPORT PTY. LTD (Plaintiff) Appellant

- and -

NORMAN EGGERT KROPP (Defendant) RespondentRECORD OF PROCEEDINGSINDEX OF REFERENCE

No.	Description of Document	Date	Page
	<u>In the Supreme Court of Queensland</u>		
1.	Writ of Summons (Endorsement of Claim only)	7th October 1963	1
2.	Demurrer to Statement of Claim	8th November 1963	3
3.	Judgment of the Full Court of the Supreme Court of Queensland on Demurrer	29th November 1963	4
4.	Order of the Full Court of the Supreme Court of Queensland granting leave to appeal to Her Majesty in Council	29th November 1963	5

EXHIBITS

Mark	Description of Document	Date	Page
1.	Letter: Solicitor for Respondent to Solicitors for Appellant	23rd October 1963	7

Mark	Description of Document	Date	Page
2.	Letter: Solicitor for Respondent to Solicitors for Appellant	31st October 1963	9
3.	Letter: Solicitors for Appellant to Solicitor for Respondent	6th November 1963	10
4.	Letter: Solicitors for Appellant to Solicitor for Respondent	21st November 1963	12
5.	Letter: Solicitor for Respondent to Solicitors for Appellant	25th November 1963	13

DOCUMENT TRANSMITTED BUT NOT REPRODUCED

Description of Document	Date
Certificate of the Registrar of the Supreme Court of Queensland at Brisbane certifying Transcript Record of Proceedings.	6th February 1964

DOCUMENTS ON FILE OMITTED FROM THE RECORD

No.	Description of Document	Date
1.	Entry of Appearance	11th October 1963
2.	Notice of Entry of Demurrer for Argument	14th November 1963
3.	Entry of Question of Law for Argument	14th November 1963
4.	Notice of Motion to the Full Court of the Supreme Court of Queensland for leave to appeal to Her Majesty in Council	29th November 1963
5.	Notice of payment of amount of security into Court	21st January 1964
6.	Appointment to settle Record	21st January 1964

IN THE PRIVY COUNCIL

No. 11 of 1964

ON APPEAL

FROM THE FULL COURT OF THE SUPREME COURT OF QUEENSLAND

B E T W E E N :

MARANOVA TRANSPORT PTY. LTD. (Plaintiff) Appellant

- and -

NORMAN EGGERT KROPP (Defendant) Respondent

RECORD OF PROCEEDINGS

NO.1

In the Supreme
Court of
Queensland

10 ENDORSEMENT OF CLAIM ON WRIT OF SUMMONS NO. 891
of 1963

Writ Issued 7th October 1963

No.1

The Plaintiff's claim is for £138,579. 14. 6.
payable by the Defendant as being money had and
received by the Defendant to the use of the
Plaintiff.

Writ of Summons
7th October 1963

The following are the particulars:-

20 1. The Plaintiff is a company duly incorpor-
ated in the State of Queensland and having its
registered office at 146 Herries Street,
Toowoomba in the State of Queensland.

2. The Defendant is the Nominal Defendant for
the Government of the State of Queensland ap-
pointed by notification in the Government Gazette
dated 7th September 1963.

30 3. Between 30th September 1957 and 2nd May
1961 the Plaintiff made payments totalling
£138,579. 14. 6 in respect of a license purport-
ing to have been issued under Part IV of "The
State Transport Facilities Acts 1946 to 1959".

In the
Supreme
Court of
Queensland

4. The payments mentioned in paragraph 3 hereof were not lawfully exigible because "The State Transport Facilities Acts 1946 to 1959" has never had any lawful operation.

No. 1

5. The payments mentioned in paragraph 3 hereof were unlawfully demanded by the Defendant under colour of "The State Transport Facilities Acts 1946 to 1959".

Writ of
Summons
7th October
1963
continued

6. All the said payments were made by the Plaintiff involuntarily and under compulsion.

3.

NO.2

DEMURRER TO STATEMENT OF CLAIM

DELIVERED 8th DAY OF NOVEMBER 1963

In the Supreme
Court of
Queensland

No. 2

Demurrer to
Statement of
Claim

8th November
1963

The Defendant demurs to the whole of the Statement of Claim on the ground that it is bad in law and does not show any cause of action to which effect can be given by the Court against the Defendant in that:-

10 1. "The State Transport Facilities Acts, 1946 to 1959" were at all material times good and valid law and were at all material times in operation. Alternatively, "The State Transport Facilities Acts 1946 to 1959" so far as are material to the present case were at all material times good and valid law and were at all material times in operation.

20 2. "The State Transport Facilities Acts 1946 to 1959" were at all material times and apart from and prior to "The Transport Laws Validation Act of 1962" good and valid law and in operation, alternatively, good and valid law and in operation other than Part V so far as it relates to carriage by water, which part is severable.

3. Alternatively, "The State Transport Facilities Acts 1946 to 1959" were as at all material times validated and made operative other than Sections 49, 50, 51 and, so far as it relates to carriage by water, Section 55 by "The Transport Laws Validation Act of 1962".

30 4. On other grounds sufficient in law.

J.P. O'Callaghan

Crown Solicitor
Solicitor for the Defendant

In the
Supreme
Court of
Queensland

NO. 3

JUDGMENT OF THE FULL COURT OF THE SUPREME
COURT OF QUEENSLAND ON DEMURRER

No. 3

IN THE SUPREME COURT OF QUEENSLAND

1963 No. 891

Judgment

MR. JUSTICE MACK
MR. JUSTICE HANGER

29th November
1963

BETWEEN:

MARANOVA TRANSPORT PTY. LTD Plaintiff

- and -

NORMAN EGGERT KROPP Defendant

FULL COURT

10

BEFORE THEIR HONOURS: THE CHIEF JUSTICE, MR. JUSTICE
JEFFRIESS AND MR. JUSTICE
LUCAS

The twenty ninth day of November, 1963

The Defendant having on the Eighth day of
November 1963 demurred to the Plaintiff's Statement
of Claim and the said Demurrer having been allowed
by the Court IT IS THIS DAY ADJUDGED that the Plain-
tiff recover nothing against the Defendant and that
the Defendant recover against the Plaintiff his costs
of the action to be taxed.

20

By the Court,

(L.S.) J. Shannon

Registrar



NO.4

In the Supreme
Court of
Queensland

ORDER OF THE FULL COURT OF THE SUPREME
COURT OF QUEENSLAND GRANTING LEAVE TO AP-
PEAL TO HER MAJESTY IN COUNCIL

No. 4

IN THE SUPREME COURT OF QUEENSLAND No.891 of 1963

MR. JUSTICE MACK
MR. JUSTICE HANGER

Order granting
leave to appeal
to Her Majesty
in Council

29th November
1963

BETWEEN:

MARANOVA TRANSPORT PTY. LTD Plaintiff

10

- and -

NORMAN EGGERT KROPP Defendant

FULL COURT

BEFORE THEIR HONOURS: THE CHIEF JUSTICE (SIR
ALAN MANSFIELD), MR.
JUSTICE JEFFRIES AND MR.
JUSTICE LUCAS

The twenty ninth day of November 1963

20

30

UPON MOTION made herein this day unto the
Court by Mr. Douglas Q.C. with him Mr. Pincus of
Counsel for the Plaintiff and UPON HEARING Mr.
Bennett Q.C. with him Mr. Byth of Counsel for the
Defendant THIS COURT DOETH ORDER that the said
Plaintiff be granted leave to appeal to Her
Majesty in Council from the judgment of the Full
Court of Queensland made herein this day whereby
the said Court ordered that judgment be entered
in favour of the Defendant in the action with
costs to be taxed UPON THE CONDITION that the
Plaintiff not later than the Twenty ninth day of
January 1964 do enter into good and sufficient
security to the satisfaction of the Registrar of
this Court in the sum of Five hundred pounds
(£500) for the due prosecution of the said Appeal
and the payment of all such costs as may become
payable to the abovenamed Defendant in the event
of the appeal being dismissed for non-prosecution

In the
Supreme
Court of
Queensland

No. 4

Order
granting
leave to
appeal to Her
Majesty in
Council
29th November
1963
continued

or of Her Majesty in Council ordering the Appellant to pay the Respondent's costs of Appeal AND UPON THE CONDITION that the Appellant take the necessary steps for the purpose of procuring the preparation of the record and its despatch to England within three months of the date hereof AND THIS COURT DOTH FURTHER ORDER that the costs of and incidental to this Motion abide the event unless Her Majesty in Council should otherwise order AND THIS COURT DOTH FURTHER ORDER that the said costs be paid by the Appellant in the event of the Appeal not being proceeded with or being dismissed for non-prosecution.

10

By the Court,

(L.S.) J. Shannon

Registrar

EXHIBITS

EXHIBIT 1.

Exhibits

Ex. 1

Letter: Solicitor for Respondent to Solicitors
for Appellant.

516

Carr-Boyd.
HC-B:EP

23rd October 1963.

Letter: Solicitor
for Respondent
to Solicitors
for Appellant

23rd October
1963

Gentlemen,

10

Re: Kropp ats. Maranoa Transport Pty.Ltd.
Writ No.891 of 1963

You are advised that I am instructed in this matter to demur to the whole of the Plaintiff's Statement of Claim. This seems to be the simplest and most direct way of having the main issue determined. Should he be unsuccessful in the demurrer proceedings, the Defendant would, of course seek leave to defend.

20

Another point which concerns the Defendant would seem to be a verbal and technical one. I refer to the last paragraph of the Statement of Claim, which reads:-

"All the said payments were made by the Plaintiff involuntarily and under compulsion".

It is assumed that this is a consequence of the other allegations and is not put forward as an independent cause of action.

30

Subject to clarifying this point, the demurrer will be delivered forthwith, and, in the meantime, you are asked for an extension of time to enable the Defendant to answer the Plaintiff's Statement of Claim.

Exhibits

It is a matter for you, but Counsel for the Defendant think it desirable that this final paragraph should be formally amended to show that it depends on the main allegations.

Ex.1

Letter:
Solicitor for
Respondent to
Solicitors
for Appellant

Your early reply would be appreciated.

Yours faithfully,

(J.P.O'Callaghan)
Crown Solicitor

23rd October
1963
continued

Messrs. McGregor Given & Co.,
Solicitors,
282, Edward Street,
BRISBANE.

EXHIBIT 2

Exhibits

Letter: Solicitor for Respondent to Solicitors
for Appellant

Ex. 2

282

Letter: Solicitor
for Respondent
to Solicitors
for Appellant

McMahon
VMcM:LS

31st October 1963.

31st October
1963

Gentlemen,

Re: Kropp ats. Maranoa Transport Pty. Ltd.
Writ No. 891 of 1963

10

I am instructed to refer to my letter of the
23rd instant to which I have not as yet been
favoured with your reply.

So that the matter may proceed without de-
lay, would you confirm or advise otherwise that
the last paragraph of the Plaintiff's Statement
of Claim is a consequence of the other allegations
contained in the Statement of Claim and is not
put forward as an independent cause of action.

20

Your consent to the extension of time sought
in my letter under reference is requested also.

Your urgent reply is desired.

Yours faithfully,

(J.P. O'Callaghan)
Crown Solicitor

Messrs. McGregor Given & Co.,
Solicitors,
282, Edward Street,
BRISBANE.

Exhibits

EXHIBIT 3

Ex.3

Letter: Solicitors for Appellant to Solicitor
for Respondent.

Letter:
Solicitors for
Appellant to
Solicitor for
Respondent

McGregor Given & Co,
Solicitors
PE.

282, Edward Street,
Brisbane.

6th November
1963.

If telephoning or calling on
this matter please refer to
Mr.D.B.Given

10

6th November 1963.

The Crown Solicitor,
Treasury Building,
Queen Street,
BRISBANE.

Dear Sir,

Maranoa Transport Pty. Ltd. v. N.E.
Kropp - Writ No.891 of 1963

We thank you for your letters of the 23rd
and 31st ultimo. We confirm that the allegation
in the last paragraph of the Statement of Claim
is not put forward as an independent cause of
action but is related to the other allegations
made.

20

We also note that you propose to demur to
the whole of the Statement of Claim. We assume
that your demurrer will be founded upon the de-
cisions of the High Court of Australia in Bolton
v Madsen and Turner v. Madsen. We inform you
that we shall instruct our Counsel not to contend
that there is any relevant distinction between
those cases and the present one and shall further
instruct him to concede that the question of the
lawful operation of the State Transport Facili-
ties Acts 1946 to 1959 and the State Transport
Act of 1960 is not open in the Supreme Court or
in the High Court.

30

We appreciate, of course, that your demurrer (assuming it is put upon the foundation mentioned) must succeed in the Supreme Court. Our instructions are then to proceed by way of petition to the Privy Council.

We have informed you formally of these matters so that you will be under no misapprehension as to our client's proposed course of action.

10 We would request that you deliver your demurrer at the earliest possible date and, in any event, on or before Friday, 8th November.

Yours faithfully,

McGregor Given & Co.

(D.B. GIVEN)

Exhibits

Ex. 3

Letter:
Solicitors for
Appellant to
Solicitor for
Respondent

6th November
1963
continued.

Exhibits

EXHIBIT 4

Ex. 4

Letter: Solicitors for Appellant to Solicitor for Respondent.

Letter: Solicitors for Appellant to Solicitor for Respondent

McGregor Given & Co. Solicitors

282, Edward Street, Brisbane.

21st November 1963

If telephoning or calling on this matter please refer to Mr. C. T. King

10

PE.

21st November 1963.

The Crown Solicitor, Treasury Building, Queen Street, BRISBANE.

Dear Sir,

Western Transport Pty. Ltd. v. N.E.Kropp
Writ No. 890 of 1963

Maranoa Transport Pty. Ltd. v. N.E.Kropp
Writ No. 891 of 1963

20

We refer to the Demurrers in the above-mentioned actions which have been set down for hearing for the Sittings of the Full Court due to commence on Tuesday next the 26th instant.

In the event of the Demurrers being allowed it is our clients' intention to move for leave to appeal to the Privy Council. We take it that as the appeal is as of right there will be no objection raised to such applications.

30

Yours faithfully,

McGregor Given & Co.

Per: COLIN T. KING

EXHIBIT 5

Letter: Solicitor for Respondent to Solicitors
for Appellant.

Exhibits

Ex. 5

25th November, 1963.

Gentlemen,

Western Transport Pty. Ltd. v. N. E. Kropp
Writ No. 890 of 1963

Maranoa Transport Pty. Ltd. v. N. E. Kropp
Writ No. 891 of 1963

Letter:
Solicitor
for Respon-
dent to
Solicitors
for
Appellant.

25th November
1963.

10 I have to acknowledge receipt of your letter
of the 21st instant in which you advise that in
the event of the Demurrers being allowed it is
your clients' intention to move for leave to appeal
to the Privy Council and asking whether there will
be any objections to such an application.

I have to advise that this question will be
considered when you make your applications.

Yours faithfully,

20

(J.P.O'Callaghan)
Crown Solicitor

Messrs. McGregor Given & Co.,
Solicitors,
282, Edward Street,
BRISBANE.

IN THE PRIVY COUNCIL

NO.11 of 1964

ON APPEAL

FROM THE FULL COURT OF THE SUPREME COURT OF QUEENSLAND

B E T W E E N :

MARANOA TRANSPORT PTY. LTD (Plaintiff) Appellant

- and -

NORMAN EGGERT KROPP (Defendant) Respondent

R E C O R D O F P R O C E E D I N G S

WALKER MARTINEAU & CO.,
10/11, Gray's Inn Square,
London, W.C.1.

Solicitors for the Appellant

FRESHFIELDS,
1, Bank Buildings,
Princes Street, London, E.C.2.

Solicitors for the Respondent