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Judgment
46 1964

IN THE PRIVY COUNCIL

No. 10 of 1964

ON APPEAL

FROM THE FULL COURT OF THE SUPREME COURT OF QUEENSLAND

B E T W E E N

WESTERN 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.

.. 78680

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

Solicitors for Appellant

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

Solicitors for Respondent

IN THE PRIVY COUNCILNo. 10 of 1964

ON APPEAL
FROM THE FULL COURT OF THE SUPREME COURT OF QUEENSLAND

B E T W E E N :

WESTERN TRANSPORT PTY. LTD. (Plaintiff) Appellant

- and -

NORMAN EGGERT KROPP (Defendant) Respondent

RECORD OF PROCEEDINGS

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<u>DOCUMENT TRANSMITTED BUT NOT REPRODUCED</u>			

Description of Document	Date
Certificate of the Registrar of the Supreme Court of Queensland at Brisbane certifying Transcript Record of Proceedings.	6th February 1964
<u>LIST OF DOCUMENTS ON FILE OMITTED FROM THE RECORD</u>	

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
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IN THE PRIVY COUNCIL

No. 10 of 1964

ON APPEAL
FROM THE FULL COURT OF THE SUPREME COURT OF QUEENSLAND

B E T W E E N :

WESTERN 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.890
of 1963

WRIT ISSUED 7th OCTOBER, 1963

No. 1

The Plaintiff's claim is for £449,238.6.10 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 incorporated 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 appointed by notification in the Government Gazette dated 7th September 1963.

3. Between 30th September 1957 and 1st May 1961 the Plaintiff made payments totalling £138,236.15s.2d. in respect of a license purporting to have been issued under Part IV of "The State Transport Facilities Acts, 1946 to 1959".

In the
Supreme
Court of
Queensland

No.1

Writ of
Summons
7th October
1963
continued

4. Between 1st May 1961 and 28th August 1963 the Plaintiff made payments totalling £311,001.11.8., in respect of goods permits purporting to have been issued under "The State Transport Act of 1960".

5. The payments mentioned in paragraphs 3 and 4 hereof were not lawfully exigible because neither "The State Transport Facilities Acts 1946 to 1959" nor "The State Transport Act of 1960" has ever had any lawful operation.

6. The payments mentioned in paragraph 3 hereof were unlawfully demanded by the Defendant under colour of "The State Transport Facilities Acts 1946 to 1959" and the payments mentioned in paragraph 4 hereof were unlawfully demanded by the Defendant under colour of "The State Transport Act of 1960".

10

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

DEMURRER TO STATEMENT OF CLAIMDELIVERED 8th NOVEMBER, 1963In the Supreme
Court of
Queensland

No.2Demurrer to
Statement of
Claim8th 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. "The State Transport Act of 1960" is and has at all material times been a good and valid law and has at all material times been in operation. Alternatively, "The State Transport Act of 1960" so far as is material to the present case is and has at all material times been a good and valid law and has at all material times been in operation.

5. "The State Transport Act of 1960" is and was at all material times and apart from and

In the
Supreme
Court of
Queensland

prior to "The Transport Laws Validation Act of 1962" a good and valid law and in operation, alternatively, a good and valid law in operation, other than Part VIII so far as it relates to carriage by water, which part is severable.

No. 2

Demurrer to
Statement
of Claim

6. Alternatively, "The State Transport Act of 1960" was as at all material times validated and made operative other than Sections 56, 57, and, so far as it relates to carriage by water, Section 60, by "The Transport Laws Validation Act of 1962".

10

8th November
1963
continued

7. On other grounds sufficient in Law.

J.P. O'Callaghan

Crown Solicitor

Solicitor for the Defendant.

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

IN THE SUPREME COURT OF QUEENSLAND 1963 No.890

No. 3

THE ACTING CHIEF JUSTICE

Judgment

MR. JUSTICE STANLEY

29th November
1963

BETWEEN:

WESTERN TRANSPORT PTY. LTD. Plaintiff

- and -

10

NORMAN EGGERT KROPP Defendant

FULL COURT

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

The twenty ninth day of November, 1963

20

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

By the Court,

Sgd. J. Shannon

Registrar.

In the
Supreme
Court of
Queensland

NO. 4

ORDER OF THE FULL COURT OF THE SUPREME COURT OF
QUEENSLAND GRANTING LEAVE TO APPEAL TO HER MAJESTY
IN COUNCIL

No. 4

IN THE SUPREME COURT OF QUEENSLAND

NO. 890 of 1963

Order
granting
leave to
Appeal to Her
Majesty in
Council

THE ACTING CHIEF JUSTICE

MR. JUSTICE STANLEY

BETWEEN:

WESTERN TRANSPORT PTY. LTD Plaintiff

- and -

NORMAN EGGERT KROPP Defendant

10

FULL COURT

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

The twenty ninth day of November, 1963

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 DOTH 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 secu-
rity 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 pay-
ment of all such costs as may become payable to the
abovenamed Defendant in the event of the appeal
being dismissed for non-prosecution or of Her Majesty
in Council ordering the Appellant to pay the Respon-
dent's costs of Appeal AND UPON THE CONDITION that

20

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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

In the Supreme
Court of
Queensland

No. 4

Order granting
leave to Appeal
to Her Majesty
in Council

29th November
1963
continued

Exhibits

EXHIBITS

EXHIBIT 1.

Ex. 1

Letter: Solicitor for Respondent to Solicitors
 for Appellant.
 Solicitor for Respondent to 516
 Solicitors Carr-Boyd.
 for Appellant HC-B:EP

23rd October
1963

23rd October, 1963.

Gentlemen,

Re: Kropp ats. Western Transport Pty Ltd
Writ No. 890 of 1963

10

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.

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:-

20

"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.

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.

30

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.

Your early reply would be appreciated.

Yours faithfully,

(J.P. O'Callaghan)

Crown Solicitor

Exhibits

Ex .1

Letter:
Solicitor for
Respondent to
Solicitors for
Appellant

23rd October,
1963
continued

10

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

Exhibits

EXHIBIT 2

Ex.2

Letter: Solicitor for Respondent to Solicitors for Appellant.

Letter: Solicitor for Respondent to Solicitors for Appellant

282
McMahon
VMcM:LS

31st October, 1963.

31st October 1963.

Gentlemen,

Re: Kropp ats. Western Transport Pty.Ltd.
Writ No. 890 of 1963

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

10

So that the matter may proceed without delay, 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.

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

20

Your urgent reply is desired.

Yours faithfully,

(J.P. O'Callaghan)

Crown Solicitor

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

EXHIBIT 3

Exhibits

Letter: Solicitors for Appellant to Solicitor
for Respondent.

Ex. 3

McGregor Given & Co.
Solicitors

282 Edward Street,
Brisbane.

Letter:
Solicitors for
Appellant to
Solicitor for
Respondent

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

6th November
1963

10 PE

6th 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

20

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.

30

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-
cision 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.

Exhibits

Ex. 3

Letter:
Solicitors
for Appel-
lant to
Solicitor
for
Respondent

6th November
1963
continued

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.

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

10

Yours faithfully,

McGregor Given & Co.

D.B.Given

EXHIBIT 4

Letter: Solicitors for Appellant to Solicitor
for Respondent.

Exhibits

McGregor Given & Co.
Solicitors

Ex.4

282, Edward Street,
Brisbane.

Letter:
Solicitors for
Appellant to
Solicitor for
Respondent

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

21st November
1963

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

Exhibits

EXHIBIT 5

Ex. 5

Letter: Solicitor for Respondent to Solicitors
for Appellant.

Letter:
Solicitor
for Respon-
dent to
Solicitors
for
Appellant

25th November, 1963.

Gentlemen,

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

25th November
1963

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

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 applications.

10

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

Yours faithfully,

(J.P. O'Callaghan)

Crown Solicitor

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

IN THE PRIVY COUNCIL

No. 10 of 1964

ON APPEAL

FROM THE FULL COURT OF THE SUPREME COURT OF QUEENSLAND

B E T W E E N

WESTERN 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 Appellant

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

Solicitors for Respondent