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~~G.D.G.6~~

Judgment
9, 1966

IN THE PRIVY COUNCIL

No. 20 of 1965.

ON APPEAL

FROM THE FULL COURT OF THE SUPREME COURT OF QUEENSLAND

B E T W E E N :

COBB & CO. LIMITED,
DOWNS TRANSPORT PTY. LTD.,
SOUTH QUEENSLAND TRANSPORT PTY. LTD.,
NORTHERN DOWNS TRANSPORT PTY. LTD., and
NORTHERN TRANSPORT PTY. LTD. Plaintiffs/Appellants

- and -

THE HONOURABLE THOMAS ALFRED HILEY and
NORMAN EGGERT KROPP Defendants/Respondents

RECORD OF PROCEEDINGS

BLYTH, DUTTON, WRIGHT & BENNETT
10, Norfolk Street, Strand,
London, W.C.2.

Solicitors for Appellants.

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

ON APPEAL

FROM THE FULL COURT OF THE SUPREME COURT OF QUEENSLAND

B E T W E E N :

COBB & CO. LIMITED,
DOWNS TRANSPORT PTY. LTD.,
SOUTH QUEENSLAND TRANSPORT PTY. LTD.,
NORTHERN DOWNS TRANSPORT PTY. LTD., and
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- and -

THE HONOURABLE THOMAS ALFRED HILEY and
NORMAN ROBERT KROPP Defendants/Respondents

RECORD OF PROCEEDINGS

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EXHIBITS

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LIST OF DOCUMENTS ON FILEOMITTED FROM THE RECORD

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1	Writ of summons (except special endorsement of Statement of Claim)	8th February 1965
2	Entry of appearance by Defendant Hiley	16th February 1965
3	Entry of appearance by Defendant Kropp	2nd March 1965
4	Entry of demurrer for argument	1st June 1965
4a	Notice of Entry of demurrer for argument	1st June 1965
	Notice of Pleadings	1st June 1965

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES

25 APR 1965

25 RUSSELL SQUARE
LONDON, W.C.1.

No.	Document	Date
6	Notice of Motion to the Full Court of the Supreme Court of Queensland for leave to appeal to Her Majesty in Council	18th June 1965
7	Notice of payment into Court of £500. 0. 0 by way of security for appeal	23rd June 1965
8	Draft index to Record of Proceeding and List of documents omitted and appointment to settle	28th June 1965

DOCUMENT TRANSMITTED TO THE
PRIVY COUNCIL BUT NOT REPRODUCED

Certificate of the Registrar
of the Supreme Court of
Queensland at Brisbane
certifying transcript record
of proceedings

22nd July 1965

1.

IN THE PRIVY COUNCIL

No. 20 of 1965.

ON APPEAL

FROM THE FULL COURT OF THE SUPREME COURT OF
QUEENSLAND

B E T W E E N :

COBB & CO. LIMITED
DOWNS TRANSPORT PTY. LTD.
SOUTH QUEENSLAND TRANSPORT PTY. LTD.
NORTHERN DOWNS TRANSPORT PTY. LTD. and
10 NORTHERN TRANSPORT PTY. LTD.
Plaintiffs/Appellants

- and -

THE HONOURABLE THOMAS ALFRED HILEY and
NORMAN EGGERT KROPP Defendants/Respondents

RECORD OF PROCEEDINGS

No.1

In the Supreme
Court

WRIT OF SUMMONS
(special endorsement of statement of
claim only).

No.1

20 IN THE SUPREME COURT OF QUEENSLAND 1965 No.87

Mr. Justice Jeffriess
Mr. Justice Wanstall

Writ of
Summons
(Special en-
dorsement of
Statement of
Claim only)

BETWEEN:

1. COBB & CO. LTD., 2. DOWNS TRANSPORT PTY. LTD.,
3. SOUTH QUEENSLAND TRANSPORT PTY. LTD.,
4. NORTHERN DOWNS TRANSPORT PTY. LTD., and
5. NORTHERN TRANSPORT PTY. LTD. Plaintiffs

8th February
1965.

- and -

30 1. THE HONOURABLE THOMAS ALFRED HILEY and
2. NORMAN EGGERT KROPP Defendants

STATEMENT OF CLAIM

(Specially indorsed on the Writ of Summons under
Order 6, Rule 7.)

The plaintiffs' claims are for the amounts

In the Supreme
Court

No. 1

Writ of
Summons
(Special en-
dorsement of
Statement of
Claim only)
(continued)

8th February,
1965.

set against their names respectively hereunder against the defendants in their aforesaid capacities (i.e. as nominal defendant for the Government of Queensland pursuant to the proviso to Section 2 of the Claims against Government Act (of 1866) and as the holder of the office of The Commissioner for Transport under the provisions of "The State Transport Act of 1960"), for money payable to the plaintiffs by the Government of Queensland or by The Commissioner for Transport for money had and received to the use of the plaintiffs in that the said sums represent moneys levied by the Defendant NORMAN EGGERT KROPP as the Commissioner for Transport upon the plaintiffs in or in respect of the period from the fifth day of September 1963 to the thirtieth day of November 1964 as or in the guise of licensing and permit fees under the provisions of "The State Transport Act of 1960" in respect of the carriage of goods on motor vehicles operated by the plaintiffs in the State of Queensland which moneys were demanded of the plaintiffs by the defendant Norman Eggert Kropp unlawfully in that "The State Transport Act of 1960" was not at any time a valid and effective Statute within the competence of the Legislature of Queensland and did not validly and lawfully authorise and empower his demands for the said moneys and such demands were made colore officii the Commissioner for Transport and the said moneys were paid by the plaintiffs involuntarily and under protest.

THE FOLLOWING ARE THE PARTICULARS:-

1963 To fees paid to the Commissioner
Sep 5 for Transport in or in respect of
to this period as follows:-
1964
Nov.

Cobb & Co. Limited 15,909. 9. 4

Downs Transport
Pty. Ltd. 33,853.10. 5

Northern Downs
Transport Pty. Ltd. 26,698.17. 8

10

20

30

40

3.

Northern Transport Pty. Ltd.	19,057. 8. 9
South Queensland Transport Pty. Ltd.	<u>27,297.12.11</u>
Amount owing	<u><u>£122,816.19. 1</u></u>

In the Supreme
Court

No. 1

Writ of
Summons
(Special en-
dorsement of
Statement of
Claim only)
(continued)

8th February,
1965.

No. 2

No. 2

Particulars of allegation in statement of claim
delivered by plaintiffs.

Particulars of
allegation in
Statement of
Claim de-
livered by
Plaintiffs.

PARTICULARS

10

of

Grounds of Allegation in Statement of Claim that
"The State Transport Act of 1960" was not at any
time a valid and effective Statute within the
competence of the Legislature of Queensland.

19th May, 1965.

DELIVERED THE NINETEENTH DAY OF MAY 1965.

1. The said Statute, if valid:-

20

(1) would unlawfully and unconstitutionally
delegate to the Commissioner for Transport
the sovereign powers of the Legislature of
Queensland -

(a) to impose and levy taxes (in the guise
of license and permit fees) in his virtually
unrestricted and unfettered discretion
and in so doing would violate the
principle that no tax may be imposed save
with the full assent of Parliament and
the assent of the Crown.

(b) to repeal alter and amend the taxes
imposed by him and to substitute other
taxes therefor.

In the Supreme
Court

No. 2

Particulars of
allegation in
Statement of
Claim de-
livered by
Plaintiffs
(Continued)

19th May,
1965.

- (c) to enact or determine as a self contained legislative body or organ matters of substantive law as between the citizen and the State in his unrestricted and unfettered discretion without the sanction or supervision of Parliament or the Governor-in-Council or the Courts of Justice of the State contrary to law and in particular contrary to the provisions of Section 3 of "The Constitution Act Amendment Act of 1934". 10
- (2) would constitute an unlawful and unconstitutional transfer of sovereign power of the Legislature to the said Commissioner or an abdication of such power in his favour.
- (3) would confer upon the said Commissioner a power of dispensing individuals from compliance with or observance of the law conditionally or unconditionally in his discretion and a power to differentiate between individuals. 20
- (4) would give to each determination of the said Commissioner and of the Governor-in-Council of a monetary nature the legal effect of a "Money Bill" duly passed and assented to without compliance with the requirements of law and of Parliamentary usage in respect of such Bills and without the Royal assent.
- (5) would confer upon the said Commissioner a power of regulating "supply" which is an exclusive power of Parliament and in dispensing with payment of fees a power of appropriating public moneys. 30
- (6) would confer upon the Governor-in-Council and the Commissioner for Transport indirect power of repeal of the Act or some of the provisions thereof.
2. The passage through Parliament of the said Statute, being a "Money Bill", was not attended by the procedure required by Parliamentary usage. 40
3. The said Statute so entrenches upon the Royal prerogative that it should have been reserved for the personal assent of the Sovereign.

No. 3

Demurrer to plaintiffs' statement of claim

DEMURRER TO THE PLAINTIFFS' STATEMENT OF CLAIM
SPECIALY ENDORSED UNDER ORDER 6 RULE 7 OF THE
RULES OF THE SUPREME COURT OF QUEENSLAND ON THE
WRIT OF SUMMONS ISSUED ON THE EIGHTH DAY OF
FEBRUARY 1965

DELIVERED the Twenty fifth day of May 1965.

The Defendants demur to the Plaintiffs' Statement of Claim specially endorsed on the Writ of Summons herein under Order 6 Rule 7 of the Rules of the Supreme Court of Queensland, that is to say, that part of the said Writ of Summons from the heading "STATEMENT OF CLAIM" down to the end of the particulars of the claim for money payable, on the grounds 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 Defendants in that:-

1. "The State Transport Act of 1960" is and has at all material times been a good and valid law within the competence of the Legislature of Queensland and has at all material times been in operation.
2. "The State Transport Act of 1960" is and has at all material times been a valid and effective Statute within the competence of the Legislature of Queensland and does and did at all material times validly and lawfully authorise and empower the Defendant, NORMAN EGGERT KROPP as The Commissioner for Transport to levy and demand the money referred to in the said Statement of Claim as licensing and permit fees under the provisions of the said Act.
3. Further or 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 within the competence of the Legislature of Queensland and has at all

In the Supreme Court

No. 3

Demurrer to Plaintiffs' Statement of Claim.

25th May, 1965.

6.

In the Supreme
Court

No. 3

Demurrer to
Plaintiffs'
Statement of
Claim
(continued)

25th May,
1965.

material times been in operation.

4. On other grounds sufficient in law.

J.P. O'Callaghan

Crown Solicitor
Solicitor for the Defendants.

No. 4

Judgment of
the Full
Court of the
Supreme
Court of
Queensland
on demurrer

18th June,
1965.

No. 4

Judgment of the Full Court of the Supreme Court
of Queensland on demurrer

FULL COURT

BEFORE THEIR HONOURS: MR. JUSTICE HANGER
MR. JUSTICE GIBBS
MR. JUSTICE HART

10

THE EIGHTEENTH DAY OF JUNE 1965.

The defendants having on the twenty fifth
day of May 1965 demurred to the plaintiff's
statement of claim and the demurrer having come
on for hearing this day and the said demurrer
having been allowed by the Court THIS COURT DOTH
ORDER AND ADJUDGE that the plaintiffs recover
nothing against the defendants and that the
defendants recover against the plaintiffs their
costs of the demurrer and of the action to be
taxed.

20

BY THE COURT

(L.S.)

J. Shannon

REGISTRAR.

No. 5

Order of the Full Court of the Supreme Court of Queensland granting leave to appeal to Her Majesty in Council.

In the Supreme Court

No. 5

FULL COURT

BEFORE THEIR HONOURS: MR. JUSTICE HANGER
MR. JUSTICE GIBBS
MR. JUSTICE HART

THE EIGHTEENTH DAY OF JUNE 1965.

Order of the Full Court of the Supreme Court of Queensland granting leave to appeal to Her Majesty in Council.

18th June, 1965.

10 UPON MOTION this day made unto the Court by Mr. Matthews Q.C. on behalf of the plaintiffs and UPON HEARING Mr. A.L. Bennett Q.C. with him Mr. Byth of Counsel for the defendants, THIS COURT

20 DOETH ORDER that the plaintiffs do have leave to appeal to Her Majesty in Council from the judgment of this Honourable Court dated the eighteenth day of June 1965 whereby upon a demurrer having been allowed it was ordered that the plaintiffs should recover nothing against the defendants and that the defendants should recover against the plaintiffs their costs of the demurrer and of the action to be taxed UPON CONDITION that the plaintiffs not later than the second day of July 1965 do enter into a good and sufficient security to the satisfaction of the Registrar of this Court in the sum of FIVE HUNDRED POUNDS (£500. 0. 0.) or at their option do pay that sum into Court as security for the due prosecution of the said appeal and the payment of all such costs as may

30 become payable to the above named defendants the said THE HONOURABLE THOMAS ALFRED HILEY and the said NORMAN EGGERT KROPP in the event of the appeal being dismissed for non-prosecution or if Her Majesty in Council should order the appellants to pay the respondents' costs of the appeal AND

40 UPON CONDITION that the appellants take the necessary steps for the purpose of procuring the preparation of the Record and its despatch to England within two months from the date hereof AND THIS COURT DOETH FURTHER ORDER that the costs of and incidental to the motion and this Order do abide the event unless Her Majesty in Council should otherwise order AND THIS COURT DOETH FURTHER ORDER that the said costs be paid by the

In the Supreme
Court

appellants in the event of the appeal not being
proceeded with or being dismissed for non-
prosecution.

No. 5

Order of the
Full Court of
the Supreme
Court of
Queensland
granting
leave to
appeal to
Her Majesty
in Council.
(Continued)

BY THE COURT

(L.S.)

J. Shannon

REGISTRAR

18th June,
1965.

Exhibit
No.1(1)

EXHIBIT NO. 1 (1)

Letter from Solicitors for Appellants to
Solicitor for Respondents

Letter from
Solicitors for
Appellants to
Solicitor for
Respondents

HOBBS, BERNAYS & McDONALD
Solicitors
Brisbane

10

Ref: M-481

4th May, 1965

T & G Building,
137 Queen Street,
BRISBANE, B6.

4th May, 1965.

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

20

Dear Sir,

Re: Cobb & Co. Limited &
Others v. Kropp
Actions Nos. 1964 No.
380 and 1965 No. 87.

With reference to the Notice of Motion for

10 leave to appeal to the Privy Council in Action 1964 No 380, the reasons for judgment deal with the validity of "The State Transport Act of 1960", but the validity of that Act was not formally before the Court in that Action, and the Privy Council might decline to consider the 1960 Act. To avoid any difficulty in that connection, our clients will be glad if consideration may be given to a demurrer in Action 1965 No. 87, with a view to the Full Court being asked to allow it without argument, following on which our clients would ask for an Order consolidating the two appeals.

20 The claims for a declaration and an injunction indorsed on the Writ of Summons in Action 1965 No. 87, as well as the monetary claim specially indorsed, appear to be within the definition of "pleading" contained in Section 1 of "The Judicature Act", and would appear to be demurrable under Order 29, R.1, but a demurrer to the monetary claim should be sufficient for our purposes.

We shall be glad to hear from you on this subject at your early convenience.

Yours faithfully,

HOBBS BERNAYS & McDONALD

Per: John McDonald

In the Supreme Court

Exhibit
No.1(1)

Letter from
Solicitors for
Appellants to
Solicitor for
Respondents
(Continued)

4th May, 1965.

In the Supreme Court

EXHIBIT No.1(2)

Exhibit No.1.(2)

Letter from Solicitor for Respondents to Solicitor for Appellants

CROWN SOLICITOR,
BRISBANE, QUEENSLAND.

Letter from Solicitor for Respondents to Solicitors for Appellants

516
Carr-Boyd.
HC-B:EP

7th May, 1965.

7th May, 1965.

Gentlemen,

Re: Hiley and Kropp ats. Cobb & Co. Limited and Other Actions 1964 No. 380 and 1965 No. 87 Your Reference: M-481.

10

I acknowledge receipt of your letter of the 4th instant, which has been referred to my clients.

I am instructed to reply as follows.

Your letter comes as a shock in view of your statement in your letter of the 24th February last -

"In fact, the plaintiffs are desirous that the defendants should not plead prior to the decision of the Full Court, as in the event of that decision being adverse, their intention is to discontinue Action No.87 of 1965, and they will be glad if your clients will meet them in that regard."

20

There are other aspects of these matters also which make it necessary for my clients to insist on precise understandings, particularly in view of the departure from the "peace with honour" arrived at in the latter part of 1963.

30

You will appreciate that it has been the desire of my client in the earlier of these Actions to plead in that Action with a view to resisting your clients' claims on the facts and, particularly, on the basis of the binding compromise made in 1963. Nevertheless, he took what he was advised would be a shorter course to deal, first, with the legal basis of your clients' claim.

Particularly, this was brought about by assurances that the matter would end in the Full Court.

In the Supreme
Court

In spite of the weight of these considerations, my clients realise that the further Writ raises issues outside the period covered by the settlement. It would seem that the questions of law (if I understand your clients' further Writ) could be dealt with in the one hearing. In the circumstances, therefore, my co-operation in the request you make is available only on definite understandings and certain conditions. Furthermore, I make it clear that it is not conceded that your clients' Writ in Action 1965 No. 87 is a pleading so far as the general claim is concerned. Certainly, it goes further than the claim required in a general endorsement, but if it had followed normal practice it would have been a bare statement of remedy which is not a demurrable document. My clients, therefore, are not prepared to plead to your general claim.

Exhibit
No.1(2)

Letter from
Solicitor for
Respondents to
Solicitors for
Appellants
(continued)

7th May,
1965.

Your second suggestion, however is accepted on the following conditions and with a view to accelerating the matter so that the projected appeal can be heard at the same time as the appeal in Action 1964 No. 380.

The conditions under which my clients are prepared to take this course are as follows:-

- (1) That security, times and other conditions of appeal in Action 1964 No. 380 be determined at the Sittings of the Full Court commencing 11th May, 1965;
- (2) That the necessary steps in Action 1965 No. 87 be taken as quickly as possible with a view to terms of appeal being fixed that will bring it into coincidence with the times in the earlier matter;

In the Supreme
Court

Exhibit
No.1(2)

Letter from
Solicitor for
Respondents to
Solicitors for
Appellants
(continued)

7th May,
1965.

(3) That upon the records being transmitted to the Privy Council the necessary order be sought for a consolidation so that there will be one Appeal Book and a joint hearing;

(4) That all parties to the above Actions co-operate and, so far as is practicable, seek the co-operation of any possible further appellant to arrange a joint hearing before the Privy Council;

10

(5) That all parties to the above Actions co-operate with a view to an early hearing by the Privy Council;

(6) That your clients agree that (in the event of their success on the points of law raised by the demurrer) the defendants be given leave to plead in both Actions;

(7) That your clients clarify the special endorsement in Action 1965 No.87 in accordance with the considerations discussed in the next paragraph.

20

It is necessary to have from your clients a similar specific understanding in relation to the pleading specially endorsed on their Writ in Action 1965 No. 87 to that arrived at in the earlier Action, namely, that the pleading "the said moneys were paid by the plaintiffs involuntarily and under protest" raises no point other than your clients' allegation that "The State Transport Act of 1960" was not at any time a valid and effective Statute within the competence of the Legislature of Queensland and did not validly and lawfully authorise and empower the alleged demands of the Commissioner for Transport. The allegation that "such demands were made colore officii the Commissioner for Transport" should be clarified. Will you make it clear that that allegation also refers only to such point of law asserted by you? Then, it is necessary to have the allegation of invalidity particularised and I seek your assurance that it refers to the question of taxation recently argued in the Full Court in Action 1964 No. 380.

30

40

I should hope to plead to your special endorsement within the time as extended by your letter of the 24th February, 1965, provided you reply to this letter by Tuesday, the 11th instant, and I should request you to endeavour to have your answer by this date

Yours faithfully,

J.P. O'Callaghan
per HC-B

(J.P. O'Callaghan)
Crown Solicitor

10

Messrs. Hobbs, Bernays & McDonald,
Solicitors,
T & G Building,
137 Queen Street
BRISBANE.

In the Supreme
Court

Exhibit
No.1(2)

Letter from
Solicitor for
Respondents to
Solicitors for
Appellants
(continued)

7th May,
1965.

EXHIBIT 1(3)

Letter from Solicitors for Appellants to Solicitor
for Respondents.

Exhibit
No.1(3)

20

HOBBS, BERNAYS & McDONALD
SOLICITORS
BRISBANE
QUEENSLAND

T & G BUILDING,
137 QUEEN STREET,
BRISBANE, B6.

Letter from
Solicitors for
Appellants to
Solicitor for
Respondents

11th May,
1965.

Ref: M-481.

11th May, 1965.

30

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

Dear Sir,

re: Cobb & Co. Ltd. & Others v. Hiley &
Kropp. Actions 1964 No. 380 and 1965
No. 87. Your Reference HC-B:EP.

We have to acknowledge the receipt of your letter of 7th instant and have submitted it to our clients for instructions.

With regard to your opening observations, we are in some difficulty, and trust that you will

In the Supreme
Court

Exhibit
No.1(3)

Letter from
Solicitors for
Appellants to
Solicitor for
Respondents
(Continued)

11th May,
1965.

excuse us from saying more than that we very much regret that any communication from us to you should have contained what we may perhaps describe as an inaccurate forecast.

A demurrer limited to the special indorsement will serve our client's purposes.

We suggest that your requirement of clarification can best be met by the delivery of particulars, and they are in course of preparation.

For present purposes, it will perhaps be sufficient if we say that the appeal will definitely be limited to the matters argued before the Full Court on the demurrer in Action 1964 No. 380. It seems to be beyond question that the Privy Council will not allow any other matters to be raised. 10

The allegations that permit fees were paid by our clients involuntary and under protest, and that the demands therefor were made *colore officii* the Commissioner for Transport have been pleaded solely as elements of the cause of action for money had and received and are not designed to set up any independent cause of action. 20

The conditions which you have laid down are acceptable to our clients, with a reservation as to No. (4) that any possible further appellant must be a person acceptable to our clients and that the relative appeal will not involve any extraneous matter.

With regard to condition No.(3) we suggest that the Full Court be asked to make an Order for consolidation under Rule 15 of the "Rules regulating Appeals from Queensland" - Imperial Order-in-Council of 18th October 1909. 30

Our proposal is that on the hearing of the demurrer in action 1965 No. 87, which we hope will be possible at the sittings commencing on 15th June, the Full Court be asked to allow it and at the same time to give leave to appeal to the Privy Council and to order consolidation of the two appeals

Yours faithfully,
HOBBS BERNAYS & McDONALD

per: John McDonald

40

IN THE PRIVY COUNCIL

No. 20 of 1965.

ON APPEAL

FROM THE FULL COURT OF THE SUPREME COURT OF QUEENSLAND

B E T W E E N :

COBB & CO. LIMITED,
DOWNS TRANSPORT PTY. LTD.,
SOUTH QUEENSLAND TRANSPORT PTY. LTD.,
NORTHERN DOWNS TRANSPORT PTY. LTD., and
NORTHERN TRANSPORT PTY. LTD. Plaintiffs/Appellants

- and -

THE HONOURABLE THOMAS ALFRED HILEY and
NORMAN EGGERT KROPP Defendants/Respondents

RECORD OF PROCEEDINGS

BLYTH, DUTTON, WRIGHT & BENNETT
10, Norfolk Street, Strand,
London, W.C.2.

Solicitors for Appellants.

FRESHFIELDS,
1, Bank Buildings,
Princes Street,
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Solicitors for
Respondents.