

[HIGH COURT OF AUSTRALIA.]

THE PRESIDENT OF INDIA . . . APPELLANT ;

AND

THE MOOR LINE LIMITED . . . RESPONDENT.

[No. 2].

ON APPEAL FROM THE SUPREME COURT OF
VICTORIA.

H. C. OF A. *Arbitration—Special case stated by arbitrator for opinion of Supreme Court—Costs—*
1955-1958. *Jurisdiction of Supreme Court to award—Arbitration Act 1928 (Vict.) No. 3637,*
s. 19.

MELBOURNE,
1955,
Mar. 15;
1958,
May 15.
Dixon C.J.,
Williams,
Webb,
Fullagar and
Taylor JJ.

Since an opinion of the Supreme Court on a case stated by an arbitrator under s. 19 of the *Arbitration Act 1928* (Vict.) is advisory, no appeal lies from it. Further, the Supreme Court has no jurisdiction to make an order as to the costs of such a case stated.

In Re Arbitration between Groutch and the State Rivers and Water Supply Commission (1913) V.L.R. 455, approved.

Decision of the Supreme Court of Victoria (*O'Bryan J.*), varied.

APPEAL from the Supreme Court of Victoria.

A dispute having arisen between the President of India, as charterer of the *M.V. Exmoor* and the owner of the vessel, the Moor Line Limited, the same was referred to the arbitration of James Stratton Cameron as umpire.

On 23rd March 1954 the umpire stated a case for the opinion of the Supreme Court of Victoria upon certain questions arising in the arbitration.

The case was heard before *O'Bryan J.*, who, in a judgment delivered on 4th June 1954, answered the questions in favour of the President of India and awarded the costs of the proceedings to him.

From this decision the Moor Line appealed to the Full Court of the Supreme Court of Victoria, constituted by *Herring C.J., Barry and Dean JJ.* On 28th September 1954 the Full Court allowed the appeal and awarded the costs of the proceedings, both before it and before *O'Bryan J.* to the Moor Line Ltd.

From this decision, pursuant to special leave granted by the High Court on 12th October 1954, the President of India appealed to the High Court. When the appeal came on for hearing on 15th March 1955 the High Court indicated that the Full Court of the Supreme Court had had no jurisdiction to entertain the appeal from the decision of *O'Bryan J.*, and the proceedings were accordingly adjourned and the costs reversed.

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1955-1958.
—
THE
PRESIDENT
OF INDIA
v.
THE
MOOR LINE
LTD.
[No. 2].
—

D. I. Menzies Q.C. and *K. A. Aickin*, for the appellant.

Dr. E. G. Coppel Q.C. and *R. K. Fullagar*, for the respondent.

The Court delivered the following written judgment :—

1958, May 15.

In this litigation the substance of which we have decided in the judgments just delivered there were proceedings which reached this Court of the costs of which it is necessary to dispose. The umpire stated a case for the opinion of the Supreme Court. Under the law of Victoria such an opinion is of an advisory nature: see *In re C.T. Arbitration between Knight and Tabernacle Permanent Building Society* (1); *Cogstad & Co. v. H. Newsum, Sons & Co. Ltd.* (2). The case stated came before *O'Bryan J.* whose opinion was against the shipowners. The shipowners appealed to the Full Court of the Supreme Court of Victoria. As the opinion was advisory no such appeal lay in point of law. The point that no appeal lay was not, however, taken in the Full Court and the Full Court pronounced an order reversing the order of *O'Bryan J.* The order of *O'Bryan J.* had awarded the costs of the proceedings before him to the charterer. In fact he had no jurisdiction to award costs. It had been so decided in *In re Arbitration between Groutch and State Rivers and Water Supply Commission* (3). But his attention was not drawn to this decision. The order of the Full Court reversed his order and awarded the costs of the proceedings both before *O'Bryan J.* and in the Full Court to the shipowners. On 12th October 1954 the charterer obtained from this Court special leave to appeal from the order of the Full Court of the Supreme Court. The appeal came on for hearing before this Court on 15th March 1955. The

(1) (1892) 2 Q.B. 613.
(2) (1921) 2 A.C. 528.

(3) (1913) V.L.R. 455.

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Fullagar J.
Taylor J.

Court there pointed out that the proceedings had been misconceived. An order was thereupon made adjourning the appeal then before this Court and reserving the costs.

We have considered how these proceedings should be disposed of. We think in all the circumstances that the right course for this Court to take is to allow the appeal from the Full Court of the Supreme Court, discharge the order of that court and in lieu thereof set aside so much of the order of *O'Bryan J.* as awards costs to the charterer. Over the rest of the order of *O'Bryan J.* we have no jurisdiction. The order for costs is, of course, a judicial order and we may therefore set it aside. We do so following *Groutch's Case* (1). The rest of his order is advisory and is not appealable. It therefore must remain untouched although the opinion his Honour expressed is not in conformity with the judgments we have just pronounced.

Allow appeal from the order of the Full Court of the Supreme Court of Victoria of 28th September 1954. Discharge such order. In lieu order that so much of the order of O'Bryan J. dated 4th June 1954 be discharged as deals with costs.

No order as to costs in this Court or in the Supreme Court.

Solicitors for the appellant, *Snowden, Neave & Demaine.*

Solicitors for the respondent, *Middleton, McEacharn & Shaw.*

R. D. B.

(1) (1913) V.L.R. 455.