

(8)  
IN THE HIGH COURT OF AUSTRALIA.

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*Williams.*

v.

*Richardson & anor.*

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**REASONS FOR JUDGMENT.**

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7 August 1941

No. 5 of 1941

No 5 of 1941

(9)

IN THE HIGH COURT OF AUSTRALIA  
NEW SOUTH WALES REGISTRY.

Continued from the Court of Appeal No. 5 of 1941.

ON APPEAL from the Federal Court of  
Bankruptcy District of the State of  
New South Wales and the Australian  
Capital Territory.

BETWEEN

HAROLD ROY WILLIAMS,

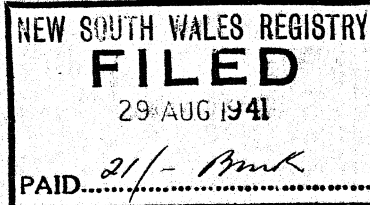
Appellant,

- and -

ARNOLD VICTOR RICHARDSON, Official  
Receiver of the Estate of Theodore  
Charles Trautwein and COMMONWEALTH  
BANK OF AUSTRALIA,

Respondents.

O R D E R.



*Pd 26/8/41*

H. F. E. WHITLAM,

Crown Solicitor for the Commonwealth.

IN THE HIGH COURT OF AUSTRALIA }  
NEW SOUTH WALES REGISTRY. }

No. 5 of 1941.

ON APPEAL from the Federal Court of  
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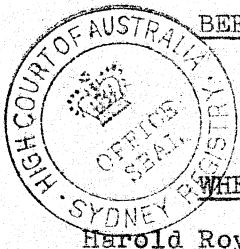
BETWEEN HAROLD ROY WILLIAMS,

Appellant,

- and -

ARNOLD VICTOR RICHARDSON, Official  
Receiver of the Estate of Theodore  
Charles Trautwein and COMMONWEALTH BANK  
OF AUSTRALIA,

Respondents.



BEFORE THEIR HONOURS THE ACTING CHIEF JUSTICE, MR. JUSTICE  
STARKE AND MR. JUSTICE WILLIAMS.

TUESDAY THE SEVENTH DAY OF AUGUST ONE THOUSAND  
NINE HUNDRED AND FORTY ONE.

WHEREAS on the 14th day of March 1941 the abovenamed appellant  
Harold Roy Williams filed in this Court a Notice of Appeal against  
the whole of the Order of His Honour Judge Lukin made on the 21st  
day of February 1941 with respect to the delivery up to the above-  
named Respondent Arnold Victor Richardson of certain diamonds  
AND WHEREAS the appeal came on to be heard before this Court this  
day WHEREUPON AND UPON READING the transcript record of the  
proceedings transmitted to this Court by the Registrar in Bankruptcy  
of the said Court of Bankruptcy AND UPON HEARING Mr. Barwick of  
Counsel on behalf of the Appellant and Mr. Weston of King's Counsel  
with whom was Mr. A. M. Cohen of Counsel on behalf of the Respondent  
the said Arnold Victor Richardson and no one appearing on behalf  
of the Respondent Commonwealth Bank of Australia THIS COURT DOTH  
ORDER that the appeal be and the same is hereby dismissed AND THIS  
COURT DOTH FURTHER ORDER that it be referred to the proper officer  
of this Court to tax and certify the costs of the said Respondent  
Arnold Victor Richardson of the said appeal as between solicitor  
and client and that such costs when so taxed and certified be paid  
by the Appellant to the Respondent or to his solicitor Harry  
Frederick Ernest Whitlam, the Crown Solicitor for the Commonwealth  
AND THIS COURT DOTH FURTHER ORDER that in default of payment by

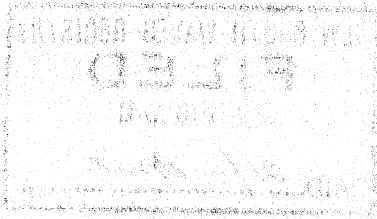
2.

the said Appellant of the said costs the said Arnold Victor Richardson be at liberty to retain such costs out of the bankrupt estate of the abovenamed Theodore Charles Trautwein.



By the Court,

*J. Hardman*  
District Registrar.



Judgment.

Rich A.C.J

This is an appeal from an order made by the Judge in Bankruptcy by which he ordered certain diamonds to be delivered by the present appellant to the trustee of the estate of the bankrupt Trautwein. The order made by the learned Judge was based on the finding that at all relevant times up to the date of the sequestration order the diamonds were and remained the property of the bankrupt and that upon the making of the sequestration order this property passed from the bankrupt to the Official Receiver. His Honour found that the claim made by the appellant was that the ownership in the diamonds passed from Trautwein to him by reason of a certain sale. He held that this sale was not a genuine one.

The only question with which it is necessary to deal is whether the evidence was sufficient to warrant the learned Judge in making this finding.

It appears to me that the evidence taken as a whole showed the diamonds were owned by Trautwein at the date of the alleged sale, that is 16th April 1940, and also justifies the finding of the learned Judge that a genuine sale to Williams never took place, with the result that the ownership in the goods remained in the bankrupt at the commencement of the bankruptcy.

It is therefore unnecessary to deal with the other questions raised <sup>in His Honour's judgment</sup> and I express no opinion upon them. The finding to which I have referred disposes of the case and these ~~any~~ other questions would only arise if that finding was unjustified.

I think the appeal should be dismissed.

Order. Appeal dismissed with costs. If and in so far as the costs are not paid by the appellant the Official Receiver may recover his costs out of the assets as between solicitor and client.