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IN THE HIGH COURT OF AUSTRALIA

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BULOLO GOLD DREDGING LIMITED

V.

THE COMMONWEALTH OF AUSTRALIA

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## REASONS FOR JUDGMENT

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*Judgment delivered at* SYDNEY

*on* 27TH SEPTEMBER 1946.

BULOLO GOLD DREDGING LIMITED

-v-

THE COMMONWEALTH OF AUSTRALIA.

JUDGMENT.

MCTIERNAN J.

BULOLO GOLD DREDGING LIMITED

-v-

THE COMMONWEALTH OF AUSTRALIA

JUDGMENT.

McTIERNAN J.

In this action there should be a declaration that 450.69 ounces of gold amalgam which is in the possession of the Commonwealth is the property of the plaintiff and the plaintiff is entitled to the possession of it.

Under Order IV Rule 1 the Court may make binding declarations of right in an action properly brought whether any consequential relief is or could be claimed therein or not. I do not make any other order than this declaration save an order with respect to costs. That order is that the defendant pay the plaintiff's costs of the action. It is not necessary to make any further order to do justice between the parties because I assume, and indeed I gather from the statements made by Counsel for the Commonwealth to the Court during the trial, that if the Court were satisfied that the whole or any part of the gold amalgam claimed by the plaintiff were its property the Commonwealth would hand the whole or such part of the gold amalgam to the plaintiff. It was submitted for the Commonwealth that it became a trustee of this gold amalgam for its true owner and that as such trustee it was entitled to its costs as between solicitor and client of this action. In my opinion there is no substance in this submission. The property in the gold was never in the Commonwealth; it was the custodian for the lawful owner. It appears from the documents in the case that the Commonwealth forced the plaintiff to bring this action in order to establish that the plaintiff was the legal owner of the gold amalgam in question. The Commonwealth defended the action and by its pleading and its conduct of the action put the plaintiff to the proof of its title to the gold amalgam. The plaintiff has succeeded on the principal issue in the action. The plaintiff's claim in detinue did not substantially add to the time occupied by the issue of ownership.

At the conclusion of the hearing I was satisfied that the plaintiff had discharged the onus of proving that the gold amalgam, the subject of the declaration, now made, was its property. I reserved.

judgment/

judgment to read the cases cited in argument relating to the issue of wrongful detention. Since then I have read these authorities and many others. This issue involves a question of law, which, to my mind, is a difficult one. I assume that the Commonwealth will act upon the declaration which is made that the plaintiff is the owner of the gold amalgam to which the declaration refers. If the Commonwealth will do so it is not necessary to determine the claim in detinue in order to do justice between the parties. The plaintiff adduced convincing evidence that the gold amalgam, the subject of this declaration, was its property. The Commonwealth called no evidence in rebuttal. The witnesses called on behalf of the plaintiff were all witnesses of credit and their evidence was not weakened by cross-examination. In the end the Commonwealth did not really contest the submission made on the plaintiff's behalf that the evidence established that it was the owner of the quantity of gold amalgam mentioned in the declaration which is now made. It is unnecessary to enter into any analysis of the evidence. There are no difficult inferences of fact to be drawn. It is enough to say that the evidence satisfies me that the plaintiff has discharged the onus of proving that the quantity of gold amalgam, which I have mentioned, is its property.

There will be a declaration in the terms which I stated at the beginning: also the order that the defendant pay the plaintiff's costs of the action, including reserved costs: and liberty to apply is reserved.