

No. 27 of 1946

(11)

IN THE HIGH COURT OF AUSTRALIA.

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TWENTIETH CENTURY UTILITY COMPANY  
PROPRIETARY LIMITED

V.

G. HUPPERT AND COMPANY PTY. LTD.

**ORIGINAL**

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**REASONS FOR JUDGMENT.**

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*Judgment delivered at* MELBOURNE

*on* WEDNESDAY, 5th MARCH, 1947.

TWENTIETH CENTURY UTILITY COMPANY PROPRIETARY LIMITED

v.

C. HUPPERT AND COMPANY PTY. LTD.

JUDGMENT.

LATHAM C.J.  
RICH J.  
DIXON J.  
McTIERNAN J.  
WILLIAMS J.

This is an appeal from a judgment of the Supreme Court of Victoria in favour of the respondent to the appeal for the recovery of possession of certain factory premises in Bouverie Street, Carlton. The power of the court to make orders for the recovery of possession of such premises is limited by the National Security (Landlord and Tenant) Regulations. Under reg. 58, proceedings for the recovery of the possession of premises to which the regulations apply must be based upon some one or more of certain prescribed grounds. In the present case the plaintiff, the respondent to the appeal, relied upon ground (g)(ii), namely that the premises, not being a dwelling-house, were reasonably required for occupation by the lessor. That ground was established by evidence and the decision of the learned trial judge, His Honour Mr. Justice MacFarlan, on that point has hardly been challenged in this court. Reg. 63 requires the the court, upon the hearing of any proceedings by a lessor for an order for the recovery of possession of premises, to take into consideration, in addition to all other relevant matters, certain matters which are set out under three heads:- (a) any hardship which would be caused to the lessee or any other person by the making of the order; (b) any hardship which would be caused to the lessor or any other person by the refusal of the court to make the order; and (c) where the application is made on any one or more of the grounds specified in, inter alia, paragraph (g) of sub-reg.(5) of reg. 58, whether reasonably suitable alternative accommodation in lieu of the prescribed premises is, or has been since the date upon which notice to quit was given, available for the occupation of the person occupying the prescribed premises or for the occupation of the lessor

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or other person by whom the prescribed premises would be occupied if the order were made. It has been argued on behalf of the appellant by Mr. Wiseman, who has made, we all think, the best of his case, that the learned judge has not attached due weight to the circumstances affecting the relative hardship to the plaintiff corporation and the defendant corporation, and that there is no evidence to support the conclusion of the learned judge that reasonable suitable alternative accommodation could be found by the defendant lessee. The court has been embarrassed to some extent by the absence of any satisfactory record of the evidence given in the case, but the onus is upon the appellant to show to us that the order made was wrong. An appellant must discharge this onus before an appeal can succeed.

The learned judge considered the position of the plaintiff. The plaintiff conducts a relatively large business, employing over 150 persons. The conduct of that business, it was found, would be substantially prejudiced if the plaintiff were not allowed to recover possession of the premises in question, which adjoin the premises already occupied by the plaintiff. He also considered the position of the defendant company which, on the other hand, employs only three persons. The learned judge examined various premises which were mentioned by witnesses. He made a personal inspection of these premises, and great weight must be attached to the fact that he has actually seen the business which was carried on. His Honour reached his conclusion after considering the hardship to the plaintiff and to the defendant in a business sense and after considering the question of the possibility of either party, that is, both plaintiff and defendant, obtaining reasonably suitable alternative accommodation. A wide discretion is vested in the Supreme Court by the regulations. The learned judge considered all the relevant circumstances. No wrong principle has been applied. There is evidence to support the conclusions which he reached. It is therefore impossible to say that the decision was wrong, and the appeal must therefore be dismissed. The court, however, varies the order of the Supreme Court by providing that there shall be a stay of execution for one calendar month from this date. The appeal is dismissed. No order as to costs.