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IN THE HIGH COURT OF AUSTRALIA.

HEYES

V.

THE COMMONWEALTH OF AUSTRALIA.

Oral
REASONS FOR JUDGMENT.

Delivered at SYDNEY.

on TUESDAY, 27th July, 1948.

HEYES

v.

THE COMMONWEALTH OF AUSTRALIA

JUDGMENT

WILLIAMS J.

HEYES V. THE COMMONWEALTH OF AUSTRALIA

JUDGMENT

WILLIAMS J.

The Plaintiff, who is a solicitor practising in Sydney, is suing the Defendant, the Commonwealth of Australia, for the damage which he has suffered in his business caused by trespass to land and trespass and conversion of goods arising out of certain events which occurred at his office on the late afternoon of 17th January 1941. The Plaintiff was then acting as solicitor for a number of clients who had no connection with the five bodies which I shall call compendiously the Association of Jehovah Witnesses and also as solicitor for those five bodies and a number of clients, members of those bodies, who had become his clients on the recommendation of the officials of those bodies.

On the day in question these five bodies were declared unlawful under the National Security (Subversive Associations) Regulations and late on that afternoon, and it seems to me to be immaterial whether it was at 4.30 as the plaintiff alleges or at 5 o'clock as the defendant alleges, officers of the Commonwealth Investigation Branch went to the plaintiff's office and, purporting to act under the authority of regulation 5 of those regulations, claimed the right to search his office and impound all documents which they were satisfied belonged to or were used by or on behalf of or in the interest of those five bodies.

Accounts have been given of the events which took place during the one and a quarter hours that the Commonwealth Officers were on the premises by the plaintiff and by Mr. Magnusson, one of the officers. It is unnecessary to go through these accounts in detail. It is sufficient to say that, insofar as they differ on any material fact, I prefer to accept the evidence

of the plaintiff to that of Mr. Magnusson. It is clear that the officers impounded and removed all the legal documents and papers in the plaintiff's possession relating to the business of the five bodies and of the clients they had recommended. In Jehovah Witnesses v. The Commonwealth 67 C.L.R. p. 116, this Court held that regulation 5 was invalid so that the officers entered the plaintiff's premises and impounded and removed the documents without any statutory authority.

I think however that the plaintiff invited the officers into his office after they had stated their business so that they entered with his authority and that he has not proved that there was any trespass to land. Even if there was such a trespass, no damage other than nominal damage has been proved.

But I am satisfied that the documents were impounded and removed and retained without the authority of the plaintiff. Most of the documents were returned to the plaintiff in about three month's time, but the whole of the balance was not returned until July 1943. The plaintiff has therefore proved trespass to and conversion of his goods.

* In impounding and removing the documents the officers believed they were authorised by the regulation to enter the office and act as they did. They carried out their duties with care and discretion and in an unobstrusive manner, so that no case has been made for exemplary, or as they are sometimes called punitive damages. The plaintiff must rely on such damage, general and special, as naturally and directly flowed from the trespass to and conversion of the goods. The plaintiff has alleged in his statement of claim that, as a result of the wrongful acts complained of, he lost numbers of his clients and the profits which he otherwise would and could have made.

I think that the plaintiff has proved and I find as a fact that this trespass resulted in the loss of the five

associations as his clients. The impounding and removal and retention of these goods was in my opinion the real and substantial cause of the loss of these clients and the damage due to this loss included the loss of the business of further prospective clients who would have been recommended to him if the associations had remained his clients. This seems to me to be special damage which naturally and directly flowed from this trespass to and conversion of these goods, and, as I have said, the special circumstances have been pleaded.

The amount of damage is in this case as in so many other cases difficult to calculate, but after considering the whole of the evidence, particularly the amount of business the plaintiff was doing for the five bodies at the time of the intrusion, and the submissions of counsel, I have reached the conclusion that the damages are substantial and that I should give judgment for the plaintiff for £600 damages.

What order do you ask for Mr. Wallace? There is £100 in Court. I think I will have to make an order for the payment of the £100 out of Court. Would you have any objection to that Mr. Taylor?

MR. TAYLOR: I would ask Your Honor not to make that order at this stage. I would like an opportunity of looking into the matter.

HIS HONOR: I think I must make whatever order flows from the judgment I have just delivered.

MR. TAYLOR: Precisely, but Your Honor asked if I had any objection.

HIS HONOR: I was only going to ask if you had any objection to that order being made as part of the judgment I have just delivered.

MR. TAYLOR: In effect what I was suggesting was a stay of proceedings. If I were in the Supreme Court that is what I would ask for. If Your Honor makes an order now for payment out, it defeats any application for a stay of proceedings.

MR. WALLACE: The order I ask for, in answer to Your Honor's question, is that there should be judgment for £600 and that the amount of £100 paid in should be paid out in part satisfaction of the judgment.

HIS HONOR : Judgment for the plaintiff for £600 and costs, the amount of £100 paid into Court to be paid out of Court to the plaintiff in part satisfaction of this judgment if no appeal is lodged within 21 days. I think that would meet your objection Mr. Taylor?

MR. TAYLOR: Yes Your Honor.