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IN THE HIGH COURT OF AUSTRALIA

THE COMMONWEALTH OF AUSTRALIA

V.

STUART BROTHERS PTY. LTD. & ANOR.

REASONS FOR JUDGMENT

Judgment delivered at SYDNEY

on TUESDAY, 26th JULY, 1949

THE COMMONWEALTH OF AUSTRALIA

v.

STUART BROTHERS PTY. LTD. & ANOR.

JUDGMENT (ORAL)

LATHAM C.J.

We are of opinion that the demurrer should be allowed to part of the statement of claim, namely, paragraphs 21 to 28. In these paragraphs allegations are made of terms which are sought to be implied in the written contract and of breaches of those implied terms. We are of opinion that there are no terms in the contract or other facts alleged which support these allegations and therefore the demurrer should be allowed in respect of these paragraphs.

Speaking generally, the implications sought to be made are implications that true information should be given by honest persons to the Commonwealth in respect of goods supplied through several hands to the Commonwealth for the purpose of performing the contract which was made between the Commonwealth and Stuart Brother Pty. Ltd.

The contract, however, is a contract for the supply and delivery of materials, to be paid for upon the terms set forth in the contract, namely, invoices, delivery dockets and the like certified by Stuart Brothers. If Stuart Brothers make claims upon improper certifications in respect of the materials not delivered, or short delivered, the position is that Stuart Brothers are not entitled to be paid.

The statement of claim as left surviving, after the allowance of the demurrer to part of the statement of claim, will support a claim for money paid under a mistake of fact. As my brother Dixon, however, has said, the statement of claim is not very artistically drawn, and liberty, therefore, will be given to the plaintiff to amend the statement of claim if so advised. The demurrer, however, is allowed in part, namely, in relation to the paragraphs which I have mentioned - paragraphs 21 to 28 - and accordingly the plaintiff will pay the costs of the demurrer.