

IN THE HIGH COURT OF AUSTRALIA

THE COMMONWEALTH OF AUSTRALIA.

V.

AUSTRALAMB PRODUCTS PTY. LIMITED.

REASONS FOR JUDGMENT

Judgment delivered at SYDNEY

on 24th MAY, 1950

COMMONWEALTH OF AUSTRALIA

V.

AUSTRALAMB PRODUCTS PTY. LTD.

JUDGMENT (ORAL)

WILLIAMS J.

COMMONWEALTH OF AUSTRALIA

V.

AUSTRALAMB PRODUCTS PTY. LTD.


JUDGMENT (ORAL)

WILLIAMS J.

In this action, in which the solicitor for the defendant appeared and stated that he had no instructions to defend and asked to be relieved from further attendance, the plaintiff is seeking to recover sums of money by way of rent and for the use and occupation of certain buildings situated in the area known as the Villawood Explosives Factory.

I doubt if the plaintiff has proved a tenancy of these properties up to 20th November 1946 as claimed. It seems to me that in that period the defendant was in use and occupation of the buildings in anticipation of an intended lease. On that date the parties came near to an agreement for the purchase of the buildings by the defendant on a certain basis, but that purchase, like the lease, was never completed, mainly because a fire occurred, and after that date the defendant continued as before in the use and occupation of the premises probably in anticipation of the completion of the purchase on a different basis. But it seems to me that the plaintiff has proved that the defendant entered into possession of all the properties with its authority and had the use and occupation of them during the periods mentioned in the particulars. This is sufficient to raise an implied promise that the defendant will pay a reasonable sum for their use. No difficulty arises as to what is a reasonable sum because the defendant has been charged only with what it offered to pay for the properties.

In previous proceedings in the Supreme Court against the defendant and others the plaintiff recovered judgment in ejectment for the same premises. The writ in this action was issued on 27th May 1949 and this judgment was given on 25th August 1949. The



original particulars claimed sums for use and occupation down to the date of this judgment. But, as I said during the argument - and Mr. Badham now agrees - I am of opinion that such sums can only be recovered up to the date of the writ in ejectment. After that date the plaintiff can only recover any further amounts to which it is entitled for the further use and occupation of the premises by way of damages for mesne profits and there is no such claim in the present action.

Adjusting the particulars on this basis and allowing for the sum of £688. 5. 4 which the defendant has already paid to the plaintiff, the balance is £1,899.11. 3 and I give judgment for the plaintiff for this amount and costs.