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**ORIGINAL**

IN THE HIGH COURT OF AUSTRALIA

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**GOLDFINCH**

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V.

**SEYMOUR**

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**REASONS FOR JUDGMENT**

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*Judgment delivered at* **SYDNEY**  
**(ORAL)**  
*on* **Thursday, 10th November, 1955**

GOLDFINCH  
.....

v.

SEYMOUR  
.....

JUDGMENT (ORAL)  
.....

DIXON C.J.  
WILLIAMS J.  
WEBB J.  
KITTO J.  
TAYLOR J.  
.....

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GOLDFINCH

v.

SEYMOUR

JUDGMENT (ORAL)

DIXON C.J.  
WILLIAMS J.  
WEBB J.  
KITTO J.  
TAYLOR J.

This appeal is from a decision of the Full Court of the Supreme Court dismissing an appeal by the defendant in an action brought to enforce two guarantees. A verdict and judgment for the plaintiff was given at the trial which the Full Court affirmed with this qualification, namely that the Court reduced the amount by £350.

The contracts of guarantee constituting the cause of action were specially pleaded and in addition there was a common money count which included an account stated. The defendant's defence to the counts pleading the two guarantees specially was the Statute of Frauds. The question whether the requirements of the Statute of Frauds were satisfied depends entirely on the sufficiency of two writings which are in the same form, one for each guarantee. It will be enough to read one of them. It runs:-

"Mr. G.T. Seymour (Plaintiff) - Sir, in consideration of your advancing the sum of Fifteen Hundred Pounds (£1,500) for the purpose of meeting Letters of Credit for Cotton from Italy, I, Harold Joseph Moore, partner of the firm of Tru-Weave Textiles Company, hereby guarantee to repay the sum at the rate of One Hundred and Fifty Pounds per week to commence week-ending 19th September, 1951. I further agree to pay consideration of £150 for the aforementioned accommodation.

SIGNED: H. MOORE  
DATE: 24th August 1951

I hereby guarantee the repayment of the above mentioned sum."

SIGNED: I.A. GOLDFINCH.  
DATE: 24th August 1951."

The action is brought against Goldfinch the defendant upon the guarantee expressed in the last words.

As far as the Statute of Frauds is concerned one point only arises and that is whether there is sufficient identification of the obligation, that is to say of the principal debt. For the defendant it is contended that it is not sufficiently identified, because the principal debtor is not named. The principal debt was in fact contracted by Tru-Weave Textiles Company, a partnership of which Moore was a member but as will be seen from what I have read Moore expressed his obligation in the writing. It is not material whether he did so on behalf of the firm or as a separate additional obligation. Clearly in one way or the other he guarantees, that is promises, repayment of the sum which is mentioned. We think, upon the considerations which appear on the face of the document, that the principal debt or obligation was sufficiently identified and that the requirements of the Statute of Frauds were fulfilled by the two writings. The point on the Statute of Frauds fails.

The guarantee does not extend in our opinion to the sums of £150 expressed in the last words at the bottom of the document I have read, namely: "I further agree to pay consideration of £150 for the aforementioned accommodation" and we agree in the view of the Full Court that that should not have been included in the verdict.

The same observation applies to the second guarantee where the amount is not £150 but £200, making in all £350.

The respondent cross appeals, maintaining the contrary of what I have just now said. We think the cross appeal must fail. We think that the judgment given in respect of the cause of action upon the guarantees must be affirmed. That makes it unnecessary to express any opinion as to the availability of an account stated, beyond saying that it would not carry the

case for the extra £350. For those reasons the cross appeal should be dismissed.

The appeal will be dismissed with costs and the cross appeal will be dismissed with costs and the costs set off.