

IN THE HIGH COURT OF AUSTRALIA

POTTS

V.

THOMPSON

(ORAL)

REASONS FOR JUDGMENT

Judgment delivered at MELBOURNE
on WEDNESDAY, 22ND OCTOBER, 1958.

LILLIAN JESSIE POTTS

v.

ALBERT THOMPSON

JUDGMENT
(ORAL)

JUDGMENT OF THE COURT
DELIVERED BY DIXON C.J.

CORAM: DIXON C.J.
McTIERNAN J.
KITTO J.
TAYLOR J.
WINDEYER J.

LILLIAN JESSIE POTTS

v.

ALBERT THOMPSON

This is an appeal from an order or orders of the Supreme Court made upon a case stated by the Workers' Compensation Board. The Workers' Compensation Board determined a death claim in favour of the applicant. The respondent then asked for a case stated, and a case stated was prepared and the Board stated it. The Full Court of the Supreme Court dealt with it and decided against the applicant who now appeals to this Court as of right.

A preliminary embarrassment in dealing with the appeal lies in the fact that there are two versions of the order made by the Supreme Court, both bearing the seal of the Court, and not agreeing one with the other. We have elaborate rules in this Court to secure the presentation to this Court in a proper transcript of the authentic materials which constitute the proceedings in the Court below. The rules were carefully framed and framed in some hope that we might always know what had occurred in the Court below before we decided an appeal. Their success has not been as great as had been hoped.

The case stated concluded with three questions. According to the formal order which was certified to us in the certificate which was sent up to the registry here, the questions were not answered, but an order was made that the appeal be allowed and that the award of the Workers' Compensation Board dated 13th August 1956 be set aside and that the appellant's costs of the appeal and the proceedings before the Board be taxed and when so taxed be paid to the appellant in the Supreme Court by the respondent, that is to say, the applicant.

However, Mr. Menhennitt, who appears for the respondent in this Court, who was the respondent before the

Board, secured from some source the original of another formal order and thought it right, as it certainly was right, to present it to this Court. That order bears the seal of the Supreme Court and the appropriate stamps and is expressed as "By the Court", but, according to that version, the order did answer the questions and then let the matter stand with the answers without setting aside the determination of the Board.

The explanation would seem to be, although one is not sure, that different certificates were given by the proper officer of the Full Court of the Supreme Court, one to one solicitor and the other to the other, so that two orders were issued, one on one certificate and one on the other. But of that explanation one cannot be sure.

At all events, we begin with the embarrassment of two orders, both on their face authentic, representing the order of the Court made by the Full Court.

The case stated by the Board has been the subject of a rather prolonged discussion before us provoked very largely by this Court. I shall not go into the facts of the case beyond stating that what they really are appear to me to be made plainer by the evidence than by the case stated. The evidence, or rather that which is not documentary, the oral evidence as noted, is annexed to the case stated; the case says that the notes of the learned Chairman of the Board, his notes of the evidence, are annexed thereto and marked "X". What one is to do about them the case does not say. It does not say that they are part of the case stated, but as an annexure we have read them and obtained some information from them.

The case stated itself includes a number of findings, eight in number, which fail to give me, speaking for myself, any very clear picture of the events that actually happened. Elucidated by the evidence, one can see why the facts were so found and elucidated by some of the language in the decided cases, it is possible to form some opinion as

to what the various disputed sentences in the case stated mean. For it would appear that the Board had been encouraged to take passages from the decided cases and with slight alterations to express their findings in that form.

The questions are stated in a manner which strikes me as inquiring after matters of fact, that is, they seem to seek ultimate conclusions which involve questions of fact, although no doubt they also involve an application of the law. The final one of them seemed to me to involve very little law indeed, perhaps none. It is, "If so, whether the death of the deceased resulted from the injury". Having discussed the case and done our best to reach a position in which we might give some useful decision which, although perhaps not disposing of the matter in full, would at least have answered the questions of law which seemed to be implicit in the proceedings and perhaps to be contained within the questions although not stated by them, we find that we can take no other course except one which will result in the case stated being remitted to the Board.

I made a proposal of my own to the parties which involved our transferring, so to speak, our consideration from the findings of the Board as the exclusive material on which the questions should be answered, to the evidence by which those findings might be supported and limiting ourselves to the questions of law which we found to be contained within the questions, not otherwise answering the questions. But it was necessary to obtain, or I thought it was necessary to obtain, the consent of the parties, to transferring our consideration from the findings of the Board as the exclusive material on which the case should be decided, to a consideration of the evidence by which those statements expressing the findings might be supported and on which the ultimate finding in favour of the applicant might be supported.

In the absence of agreement by the parties on

that course I think that we can do nothing but take what is strictly the correct course of remitting the case to the Board. It is natural in the case of a tribunal from which there is no general appeal but from which a case stated may be obtained to serve as an appeal on matters of law that parties should try to use the procedure to obtain so far as possible the views of an appellate Court on the whole case, fact and law. Again speaking for myself, I have never found in the course of my experience that an attempt to give a partial appeal results in an appellate Court being able to do complete justice between the parties. It nearly always results in the appellate Court necessarily being concerned mostly in a discrimination between its functions and the functions of the Court of first instance and in the probable disappearance of the substantial question which originally the parties came to litigate.

But in such a case as this where there can only be a case stated raising questions of law it is, perhaps, desirable to recall some rules of the law that govern the statement of a case and the limitations upon the Court to which it is stated. There will be found in a judgment of Mr. Justice Isaacs in the case of Mack & Others v. The Commissioner of Stamp Duties (N.S.W.) 28 C.L.R., 373 at p. 381, a very precise and clear if strict statement of what is the function of the case stated. I shall not read the passage, but it emphasizes the need of stating the ultimate facts.

Another judgment of Mr. Justice Isaacs also deals with the question; that is in The Merchant Service Guild of Australasia v. The Newcastle and Hunter River Steamship Co. Ltd. & Others which is reported in 16 C.L.R., 591; at p. 624 he deals with the difference between the inferences which Courts may not be invited to draw and the implications which they may make in an inadequately stated case.

Where there is a question whether a finding may be legitimately reached, it is of course a question of law whether there is evidence to support it and in such cases it is necessary to set out the evidence for the purpose of the Court above deciding the question; but generally speaking the evidence is not the proper source for the ascertainment of the facts.

In the present case I do not think the case would have been at all intelligible without recourse to the evidence. One of the main questions in the case, the third question which I have read, that lettered (c), was found, when the case stated came to be examined, really to depend on the construction which was given to the language in which some findings of fact were expressed. In a critical passage which seemed to be based upon phrases found in decided cases, in stating the course of events the word "led" was used. In another passage another event, antecedent to that to which the word "led" was affixed, the words "caused and materially contributed" were used.

It became clear that a prime question with which we were to be faced is what was meant by the case and whether the word "led" did or did not involve any causation. It would be a very unhappy result if the rights of the parties were to depend entirely on our effort to interpret or construe such words and to ascertain what they were intended to convey.

In all these circumstances, we think the proper course for the Supreme Court to adopt was to remit the case for restatement and for restatement in full. We think that we, on this appeal, should set aside the order of the Supreme Court whether it be expressed in the document which is incorporated in the transcript or that which was produced in the course of the argument, and that in lieu thereof we should make an order that the case stated be remitted to the Board for the purpose of restating the case and submitting questions of law.

The remaining question is what we should do

about the costs of this proceeding and we think that before deciding that question we should hear the parties upon it.

TIERNAN J.:

I agree and I shall add only a reference to the case of Press v. Mathers (1927) V.L.R. p. 326, a case in which the judgment of the Court was given by the Chief Justice of this Court when a member of the Supreme Court of Victoria. I would invite the attention of the parties to be concerned in the preparation of this new case stated to what his Honour said at p. 330.

After hearing counsel for the respondent and for the appellant upon the question of costs the Court made the following order:-

Appeal allowed. Discharge the order of the Supreme Court. In lieu thereof remit the case stated to the Workers' Compensation Board for complete restatement and for the submission of questions solely of law. Order that the respondent in this Court pays the costs of this appeal and of the proceedings in the Supreme Court.