

ORIGINAL ~~ATT~~ D.R.
p.p.
16

IN THE HIGH COURT OF AUSTRALIA

INGLIS AND ANOTHER

V.

GIFFORD

ORIGINAL

REASONS FOR JUDGMENT

Judgment delivered at HOBART
on FRIDAY, 12TH FEBRUARY, 1965.

INGLIS AND ANOTHER

v.

GIFFORD

JUDGMENT
(ORAL)

JUDGMENT OF THE COURT
DELIVERED BY BARWICK C.J.

CORAM: BARWICK C.J.
 TAYLOR J.
 WINDEYER J.
 OWEN J.

INGLIS AND ANOTHER

v.

GIFFORD

The plaintiffs in this action issued a writ with a statement of claim endorsed against the defendant, who was the manager of a branch of the Commonwealth Trading Bank at which the plaintiffs have for some time had an overdrawn account or accounts secured by mortgage of land and by the assignment of certain policies of insurance.

A Justice of the Court, on the application of the defendant, set aside the writ on the ground that this Court had no jurisdiction to try this action between the parties. The appellants appealed to the full High Court against this order and desired to have their appeal determined upon a written argument. They gave the necessary notices, and written arguments on behalf of each of the parties were lodged with the Court.

All the Justices hearing this appeal read and considered these written arguments in Sydney, but in the course of doing so found difficulty in finding in the plaintiffs' statement of claim any cause of action of any kind against the defendant. Accordingly, it was decided that the parties should be given an opportunity to present their oral arguments to the Court as to whether or not the statement of claim does disclose any cause of action, and the parties were duly notified that the matter would be listed at Hobart at these sittings for this purpose.

We have now heard the argument for the appellants, but have found it unnecessary to call upon the respondent. We have listened very carefully to what the appellants have

had to say to ensure that the failure to state a cause of action in the statement of claim did not stem from any oversight or any inability on the part of the appellants to express what they claimed to be their cause of action.

However, it is in our opinion perfectly clear that the appellants' statement of claim, treating the amendments proposed by the plaintiffs as having been made, does not disclose any cause of action of any kind against the defendant. This conclusion we reach, not because of any lack of technical expression, but as a matter of substance from the assertions which are contained in the statement of claim.

Having reached this conclusion, it becomes unnecessary for us under s. 75 of the Constitution to enter upon any question as to the power of this Court to entertain an action against the defendant. The proper course, we think, in these circumstances will be to substitute for his Honour's order an order striking out the statement of claim as disclosing no cause of action and dismissing the action.

Otherwise, the appeal will be dismissed.