

ORIGINAL

IN THE HIGH COURT OF AUSTRALIA

ATTORNEY-GENERAL OF THE COMMONWEALTH
OF AUSTRALIA

V.

G. GRAMP & SONS PROPRIETARY LIMITED

ORIGINAL

REASONS FOR JUDGMENT

Judgment delivered at SYDNEY

on WEDNESDAY, 30th JUNE 1965

BILLIE MACKIE SNEDDEN, ATTORNEY-GENERAL OF
THE COMMONWEALTH OF AUSTRALIA

(Plaintiff)

v.

G. GRAMP & SONS PROPRIETARY LIMITED

(Defendant)

ORDER

Declare that on 14th October 1963 the defendant, at Canberra, and in breach of s. 7B of the Australian Industries Preservation Act 1906-1950, refused, except upon disadvantageous conditions, to sell to M.P.R. Pty. Limited certain goods, to wit a quantity of wines, for the reason that M.P.R. Pty. Limited was dealing with and intending to deal with Murrayvale Wines (A.C.T.) Pty. Limited.

Convict the defendant of the said offence.

Order that the defendant pay to the plaintiff a pecuniary penalty of Fifty Pounds.

Further order that the defendant pay the plaintiff's costs of the action.

BILLIE MACKIE SNEDDEN, ATTORNEY-GENERAL OF
THE COMMONWEALTH OF AUSTRALIA

(Plaintiff)

v.

G. GRAMP & SONS PROPRIETARY LIMITED

(Defendant)

JUDGMENT

TAYLOR J.

BILLIE MACKIE SNEDDEN, ATTORNEY-GENERAL OF
THE COMMONWEALTH OF AUSTRALIA

(Plaintiff)

v.

G. GRAMP & SONS PROPRIETARY LIMITED

(Defendant)

The proceedings in this case are similar to those in Attorney-General of The Commonwealth of Australia v. Dalgety Trading Company Pty. Limited. However the evidence in this case, unlike the evidence in that case, discloses quite clearly that there was a refusal on the part of the defendant's agent, acting within the scope of his authority, to execute an order given on behalf of M.P.R. Pty. Limited by its manager Ross and accepted by the defendant's agent, except upon conditions which I shall refer to immediately. The order was given and accepted in the ordinary course of business on 14th October 1963 but within a few hours of its acceptance Ross was informed by the defendant's agent that it would be fulfilled only if M.P.R. was prepared to pay a surcharge of twenty-five per cent in addition to the ordinary list prices for the goods the subject of the order and to pay cash on delivery. Ross, on behalf of M.P.R., said, in effect, that his company was not prepared to accept these conditions and the order was cancelled.

It was not suggested that the terms proposed were not "disadvantageous conditions" within the meaning of s. 7B of the Australian Industries Preservation Act as applied to the Australian Capital Territory and I have no doubt that they were. Furthermore there was clearly a refusal by the defendant to sell except upon those conditions. As to the reason for the refusal no distinction can be drawn between the admissible evidence in this case and that in Dalgety's Case and

for the reasons given in that case I find that it was because M.P.R. was at that time dealing with and intending to deal with Murrayvale Wines (A.C.T.) Pty. Limited. I therefore find that the defendant committed the offence alleged.

There will, therefore, be a declaration as asked and the defendant will be convicted of the offence the subject of the declaration. As to the question of penalty it may be said in the defendant's favour that it was pursuing a course of action decided upon by a trade association, that it, no doubt, was a course which had been pursued on previous occasions without question, that probably it was unaware that it was committing an offence and that the provisions of s. 7B as applied to the Australian Capital Territory had rarely, if ever, been invoked before. I think the purpose of the litigation will be substantially served by the declaration which I propose to make and the defendant will be more or less amply penalised by the order which I propose to make requiring that it pay the plaintiff's costs of the proceedings. In all the circumstances of the case I think the interests of justice will be served by the imposition of a fine of Fifty pounds. The claim for an injunction was not pursued and, indeed, I am unable to perceive any ground upon which, in the circumstances of the case, an injunction should be granted.