

SZATMARY

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V.

PIN & BALL LIMITED

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REASONS FOR JUDGMENT

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Oral

Judgment delivered at Sydney

on Wednesday 29th July 1970

SZATMARY

v.

PIN & BALL LIMITED

ORDER

Appeal dismissed with costs.

SZATMARY

v.

PIN & BALL LIMITED

JUDGMENT

(ORAL)

BARWICK C.J.  
MCTIERNAN J.  
MENZIES J.  
WINDEYER J.  
OWEN J.

SZATMARY

v.

PIN & BALL LIMITED

Mr. Toomey who appeared for the appellant has put before us everything that could be said in favour of this appeal. He has done it with clarity and with a great deal of commendable candour and I may say the court has been considerably assisted by what he has said. This is particularly so as we have had a voluminous transcript in a case in which the indorsement of the writ and the statement of claim have been departed from both in the admission of the evidence and in the consideration of issues which probably did not arise on the pleadings or were not covered by the indorsement.

However, having regard to what did happen at the trial and the way in which the matter has been dealt with by the Full Court, we have listened to an argument by Mr. Toomey which has ranged beyond the pleadings and has travelled widely through the facts. He has asked us to look at, and we have looked at, all the facts which he claims - and I do not think there were any others that he could have claimed - would establish a right in his client to succeed in the action.

Having heard all that he has said and having considered those facts, the court is of opinion that this appellant has not made out a case and cannot make out a case that as at the date of writ commencing this action there was

any sum due to him in respect of the price of the 20 machines which had been delivered to the respondents beyond the sum which at that time had already been paid. I say this not merely looking at the matter from the point of view of the pleadings but from the point of view of a consideration of the whole of the material put in evidence, the relevant parts of which Mr. Toomey has brought to our attention.

As in our opinion the appellant could not make out, as at the date of the writ, a claim to a sum for the price of those 20 machines, this appeal should be dismissed and with costs.