

CARATTI AND ANOTHER

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V.

CABLE (1956) LIMITED

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REASONS FOR JUDGMENT

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Oral

Judgment delivered at Perth

on Friday 11th September 1970

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CARATTI AND ANOTHER

v.

CABLE (1956) LIMITED

ORDER

Application for special leave refused with costs.

CARATTI AND ANOTHER

v.

CABLE (1956) LIMITED

JUDGMENT

(ORAL)

BARWICK C.J.

CARATTI AND ANOTHER

v.

CABLE (1956) LIMITED

In my opinion, this is not a case in which we should grant special leave. The case concerns the answer to an interrogatory by which the plaintiff seeks to obtain an admission by the defendant of the making and the terms of the oral agreement on which the plaintiff sues.

As I understand the matter as it presently stands, the express objection taken by the defendant to the making of the answer is as to the relevance of the question and answer. It was not expressly submitted that the insistence on a written answer would be oppressive or that the making of the answer would itself be oppressive. But we have been informed that both before the primary judge and before the Full Court it was contended that as the answer to the interrogatory could provide a memorandum sufficient to satisfy the Statute of Frauds in another proceeding, the order should not be made that the defendant answered the interrogatory.

In so far as the objection is merely as to the relevance or as was stated by counsel the materiality of the interrogatory and answer there is, in my opinion, no

reason to doubt the Full Court's decision. The making of an oral agreement is in issue and the plaintiff must prove it. The interrogatory and the answer are clearly relevant to that issue.

In so far as the objection, although not expressly made in those terms, is that the insistence on a written answer was of necessity oppressive, in my opinion the suggestion that the plaintiff might use the answer to the interrogatory in the fashion suggested does not establish the objection. But of course it may be shown that ability to use the written answer in another suit might result in the present suit being discontinued. That use of the written answer might be oppressive.

In so far as this possibility exists the Supreme Court, in my opinion, would appear to be in a position to control the suit. We have been referred to the Rules of the Supreme Court and so far as I understand them it would appear to me that this suit has reached the stage where it cannot be discontinued without the leave of the Court or a judge thereof. That being so, it seems to me that by refusing leave to discontinue, either conditionally or unconditionally, the Supreme Court is able if it thinks fit to take that course to ensure that an oppressive use is not made of the written answer to the interrogatory.

In those circumstances, in my opinion, the application for special leave ought to be refused.

CARATTI AND ANOTHER

v.

CABLE (1956) LIMITED

JUDGMENT  
(ORAL)

MENZIES J.

CARATTI AND ANOTHER

v.

CABLE (1956) LIMITED

I agree.

CARATTI AND ANOTHER

v.

CABLE (1956) LIMITED

JUDGMENT  
(ORAL)

WINDEYER J.



CARATTI AND ANOTHER

v.

CABLE (1956) LIMITED

I agree.

CARATTI AND ANOTHER

v.

CABLE (1956) LIMITED

JUDGMENT  
(Oral)

WALSH J.

CARATTI AND ANOTHER

v.

CABLE (1956) LIMITED

I agree.

CARATTI AND ANOTHER

v.

CABLE (1956) LIMITED

JUDGMENT  
(ORAL)

GIBBS J.

CARATTI AND ANOTHER

v.

CABLE (1956) LIMITED

I agree.