

19

Copyright Reserved

(N.B. Copyright in this transcript is the property of the Crown. If this transcript is copied without the authority of the Attorney-General of the Commonwealth, proceedings for infringement will be taken.)

IN THE HIGH COURT OF AUSTRALIA

New South Wales Registry

No. 14 of 1963

ORIGINAL JURISDICTION

B e t w e e n -

MARIAN DZIKOWSKI

Plaintiff

- and -

STANLEY MAZGAY

Defendant

Coram: WINDEYER, J.

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY ON WEDNESDAY, 7TH JULY 1965, AT 10.15 A.M.

MR. J. K. McLAUGHLIN (instructed by Mr. Bruce R. Miles) appeared for the plaintiff.

MR. S. SIMBLIST (instructed by Mr. A.O. Ellison) appeared for the defendant.

MR. McLAUGHLIN: I am happy to inform your Honour this case has been settled for the amount of £7750.

HIS HONOUR: Why are you informing me now when the matter is in the list for trial? You have subpoenaed 14 witnesses including the Commissioner of Police of Queensland, it has been in the list since 1963, and on the eve of the

SG/IG/la.
Dzikowski.

1.

APPEARANCES. 7/7/65.

trial you come and announce settlement.

MR.McLAUGHLIN: Well, your Honour, the matter was settled only this morning.

HIS HONOUR: Well, where are the 14 witnesses? Think of their inconvenience. I suppose they are here waiting outside. I do not approve at all of this habit of settling in this way - it seems to be growing. Matters which could be settled earlier, obviously, are settled only when the Court is about to sit. The Court tries to get through its business and expects the help of the profession in doing so.

Very well. Do you agree this matter has been settled, Mr.Simblist?

MR.SIMBLIST: If it please your Honour, I think I should say that the matter of settlement was only opened up very late and in a definite way only yesterday, but my learned friend Mr.McLaughlin did not seem to have any great part in it; I was dealing with Mr.Evatt senior and Mr.Evatt junior, and a proposition was put to us which we had to refer to Brisbane.

HIS HONOUR: Very well. I would ask you to convey my remarks to those concerned. You have witnesses here, have you?

MR. McLAUGHLIN: None at the Court.

HIS HONOUR: Why are they not here?

MR.McLAUGHLIN: We did not bring them down from counsel's chambers.

HIS HONOUR: Are they there?

MR.McLAUGHLIN: Some of them, your Honour.

HIS HONOUR: Well, this has happened before. It is a thoroughly undesirable proceeding. If you were hoping to settle the matter some approach should have been made earlier. This course is unsatisfactory for the profession and entirely unsatisfactory to this Court. You will have to prove that at the time the action was commenced the parties were resident in different States. Otherwise I cannot make an order.

MR.McLAUGHLIN: If your Honour will accept proof of the settlement - -

HIS HONOUR: If you ask me I will strike the matter out; but if you ask me to make an order on which you can tax - on which you can get a judgment and costs, you must prove that the Court has jurisdiction.

MR.McLAUGHLIN: Would your Honour permit me to speak to my learned friend?

HIS HONOUR: Yes. You see, it is not abundantly clear. From what you told me formerly all witnesses are in Sydney. The question is not where the parties were resident when the accident occurred but where the parties were resident at the time the writ was issued - where in the proper legal sense they were resident at that time.

MR. McLAUGHLIN: Well, your Honor I ask that it be struck out.

HIS HONOUR: Very well; on the announcement that you do not wish to proceed further in the matter I am prepared to strike it out. I hope you will convey what I have said to those concerned.

HEARING CONCLUDED

AT 10.20 A.M. THE COURT ADJOURNED SINE DIE.