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Judgment 12, 1958

IN THE PRIVY COUNCIL No. 2 of 1958

ON APPEAL

FROM THE SUPREME COURT OF NEW SOUTH WALES

B E T W E E N:-

PERCY SIMONS trading as
Acme Credit Services (Plaintiff)
Appellant

- and -

ANTHONY EUGENE MIDDLETON GALE
(Defendant) Respondent

RECORD OF PROCEEDINGS

BOTTERELL & ROCHE,
Baltic Chambers,
24, St. Mary Axe,
London, E.C.3.
Appellant's Solicitors.

INCE & CO.,
10/11, Lime Street,
London, E.C.3.
Respondent's Solicitors.

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IN THE PRIVY COUNCIL No. 2 of 1958

ON APPEAL

FROM THE SUPREME COURT OF NEW SOUTH WALES

B E T W E E N:

PERCY SIMONS trading as Acme Credit Services (Plaintiff) Appellant

- and -

ANTHONY EUGENE MIDDLETON GALE (Defendant) Respondent

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

E X H I B I T S

DOCUMENT TRANSMITTED TO THE PRIVY COUNCIL BUT NOT PRINTED

No.	Description of Document	Date
M.F.1. 1.	Certificate of Insurance No. SEH 55/264/OM issued by Edward Lumley & Sons (N.S.W.) Pty., Limited	

LIST OF DOCUMENTS NOT TRANSMITTED TO THE PRIVY COUNCIL

No.	Description of Document	Date
1	Writ of Summons	20th September 1956
2	Notice of Appearance	27th September 1956
3	Consent Order of Mr. Justice Kinsella remitting action to the Commercial Causes List	6th December 1956
4	Affidavit of William Harry Tuck in support of Application to remit action to the List of Commercial Causes	6th December 1956
5	Plaintiff's Affidavit of Discovery	13th February, 1957
6	Defendant's Affidavit of Discovery	8th March, 1957
7	Affidavit of William Harry Tuck in support of Order granting leave to serve Subpoena out of Jurisdiction	20th September 1957
8	Order in favour of Plaintiff granting leave to serve Subpoenas out of Jurisdiction	20th September 1957

No.	Description of Document	Date
9	Plaintiff's request for Writs of subpoena ad testificandum	23rd September 1957
10	Affidavit of John William Wight in support of Order to grant leave to serve Subpoenas out of Jurisdiction	3rd October 1957
11	Order in favour of Defendant granting leave to serve Subpoenas out of Jurisdiction	3rd October 1957
12	Defendant's Request for Writs of Subpoenas ad testificandum	3rd October 1957
13	Affidavit of William Harry Tuck in support of Notice of Motion for Leave to Appeal to Privy Council	22nd November, 1957
14	Judgment of the Full Court of the Supreme Court of New South Wales on Plaintiff's Application for Conditional Leave to Appeal to Her Majesty in Council	6th December, 1957
15	Certificate of Prothonotary of due compliance with Conditional Order	17th December, 1957
16	Notice of Motion for Final Leave to the Privy Council	17th December, 1957
17	Affidavit of William Harry Tuck in support thereof	17th December, 1957

IN THE PRIVY COUNCIL No. 2 of 1958

ON APPEAL
FROM THE SUPREME COURT OF NEW SOUTH WALES

BETWEEN: PERCY SIMONS trading as Acme Credit Services (Plaintiff) Appellant

- and -

ANTHONY EUGENE MIDDLETON GALE (Defendant) Respondent

RECORD OF PROCEEDINGS

In the Supreme Court of New South Wales

No. 1.

Particulars of the cause of Action.

6th December, 1956.

No. 1.

PARTICULARS OF CAUSE OF ACTION

IN THE SUPREME COURT OF NEW SOUTH WALES
No. 10237 of 1956

Between: PERCY SIMONS trading as Acme Credit Services Plaintiff

- and -

ANTHONY EUGENE MIDDLETON GALE Defendant

PARTICULARS OF THE CAUSE OF ACTION

The Plaintiff was interested to a total amount of Twenty-nine thousand pounds (£29,000) under two marine Policies of Insurance on the vessel "CAP TARIFA" for respective amounts of Twenty-two thousand pounds (£22,000) and Seven thousand pounds (£7,000) each Policy being dated the Twenty-fifth day of April One thousand nine hundred and fifty six.

PARTICULARS:

(1) Risk underwritten by Defendant Insurer:- That the vessel "CAP TARIFA" should load cattle at Townsville in the State of Queensland within ninety (90) days of having sailed from Noumea.

In the Supreme Court of New South Wales.

No. 1.

Particulars of the cause of Action.

6th December, 1956 - continued.

Warranted animals available for loading and all arrangements for conversion of vessel made at inception of insurance.

(2) Marine Rate paid to Defendant:- 150/- per cent: £2175.

(3) Perils insured against causing loss:- Any cause whatsoever.

(4) Loss:- The sum of Twenty-nine thousand pounds (£29,000) being full and fixed amount under the Policy.

(5) All arrangements for the conversion of the vessel "CAP TARIFA" for the purpose of carrying cattle from Townsville in the State of Queensland to Manila, Phillipine Islands had already been made when the said vessel sailed from Noumea on the tenth day of January One thousand nine hundred and fifty-six.

(6) At all material times, cattle were available for loading at Townsville in the State of Queensland but the "CAP TARIFA" never loaded them within ninety (90) days from the time of sailing from Noumea.

THE PLAINTIFF CLAIMS THE SUM OF TWENTY-NINE THOUSAND POUNDS (£29,000) and interest at the rate of Eight pounds (£8) per cent per annum on that amount from the Ninth day of April One thousand nine hundred and fifty-six.

DATED at Sydney this sixth day of December One thousand nine hundred and fifty-six.

W. H. TUCK,
Plaintiff's Attorney
of CLAYTON, UTZ & COMPANY,
136, Liverpool Street,
SYDNEY.

No. 2.

In the Supreme Court of New South Wales

No. 2.

Particulars of Grounds of Defence.

4th February, 1957.

PARTICULARS OF GROUNDS OF DEFENCE.

IN THE SUPREME COURT OF NEW SOUTH WALES

No. 10237 of 1956

Between: PERCY SIMONS trading as Acme Credit Services — Plaintiff

- and -

ANTHONY EUGENE MIDDLETON GALE — Defendant

PARTICULARS OF GROUNDS OF DEFENCE.

1. By Certificate of Insurance dated 13th December 1955 Acme Credit Services was insured against loss in the sum of £29,000.

2. Subsequently two Policies of Insurance the one for £22,000 and the other for £7,000 each dated 25th April 1956 covering the same risk were issued.

3. The Certificate of Insurance and the two Policies each contained inter alia the following words:-

"To pay total loss of £29,000 in the event of the vessel not completing loading within 90 days from time of sailing from Noumea from any cause whatsoever.

No Free of Capture and Seizure.

Warranted animals available for loading.

Warranted all arrangements for conversion made at inception of this insurance".

4. The Defendant craves leave to refer to the above-mentioned Certificate of Insurance and the Policies of Insurance when produced for their full terms and conditions.

5. The contemplated adventure was the loading of cattle at Townsville in the State of Queensland on board a certain vessel the "Cap Tarifa". For this purpose it was necessary for the said vessel to be converted so as to be fit for the carriage of cattle. No conversion of the said vessel was carried out the adventure was abandoned at Brisbane and the vessel did not proceed to Townsville.

In the Supreme Court of New South Wales.

No. 2.

Particulars of Grounds of Defence.

4th February, 1957 - continued.

6. The Defendant says that in breach of an express warrantsas set out in the above-mentioned Certificate of Insurance and Policies Acme Credit Services had not made all arrangements for conversion at the inception of the said insurance and will rely on the said breach of warranty as a defence to this action.

7. The Defendant admits that animals were available for loading.

8. The Defendant admits the vessel sailed from Noumea on the 10th January 1956.

9. The Defendant does not admit that the Plaintiff Percy Simons was interested as alleged in the Particulars of Cause of Action in the Two Marine Policies therein mentioned to the total sum therein set out or any part thereof.

10. And the Defendant further says that at the time of the issue of the Writ herein on the 20th September 1956 Acme Credit Services by Notice duly filed on the 13th June 1956 with the Registrar General abandoned the use of such business name.

11. Save as herein specifically admitted the Defendant denies each and every allegation in the Particulars of Cause of Action.

DATED this fourth day of February, 1957.

J. W. WIGHT,

Defendant's Attorney

16, Hunter Street,

SYDNEY.

No. 3.

REPLY.

In the Supreme Court of New South Wales.

No. 3.

Reply.

24th September, 1957.

IN THE SUPREME COURT OF NEW SOUTH WALES

No. 10237 of 1956.

Between: PERCY SIMONS trading as Acme Credit Services — Plaintiff

- and -

ANTHONY EUGENE MIDDLETON GALE — Defendant

REPLY.

The Plaintiff says that -

1. As to the first, fifth and sixth paragraphs of the Particulars of Grounds of Defence, he joins issue.

DATED this 24th day of September, 1957.

(Sgd.) W. H. TUCK,
Plaintiff's Attorney.
of CLAYTON, UTZ & COMPANY,
136, Liverpool Street,
SYDNEY.

I consent to this Reply being filed out of time

(Sgd.) J. W. WIGHT,
Defendant's Attorney.

Witness:
(Sgd.) K.R. Reed,
Articled Law Clerk,
16, Hudson St.
SYDNEY.

In the Supreme Court of New South Wales in Commercial Causes.

No. 4.

Counsel's Address.

8th October, 1957.

No. 4.

COUNSEL'S ADDRESS.

IN THE SUPREME COURT OF NEW SOUTH WALES
IN COMMERCIAL CAUSES

CORAM: WALSH J.
Tuesday, 8th October, 1957.

SIR GARFIELD BARWICK, Q.C., with MR. HARDWICK appeared for the Plaintiff.

MR. SHAND, Q.C., with MR. BURDEKIN appeared for the Defendant.

SIR GARFIELD: The Plaintiff sues for the sum of £29,000 and, according to the writ, interest from the date of the writ at 8%. I ask Your Honor's leave to amend that to claim the interest from an earlier date, being the date when the money was payable under the policies of insurance, this being a claim under the policies. No notice has been given to my friend and perhaps I could ask Your Honor later if it is not convenient to do it now.

MR. SHAND: I do not think I will raise any objection.

HIS HONOR: I grant leave to amend in that manner.

SIR GARFIELD: To claim interest from 9th April, 1956. I see that under the particulars of claim it was claimed as from that date. It is merely a divergence between the writ and the particulars which I am seeking to cure.

This is a claim on two policies in relevantly identical terms. One is for £22,000 and one for £7,000. The risk was that the vessel should load cattle at Townsville within 90 days of sailing from Noumea. It is admitted on the pleadings that it did not so load cattle. The vessel did, in fact, sail from Noumea on 10th January. The policies each contain two warranties: (1) "Warranted animals available for loading." Nothing arises as to that. The other is: "Warranted all arrangements for conversion made at inception of this insurance." I gather that the ship was at Noumea and it had to be made appropriate to load cattle, and that had to be done before it got to Townsville, so

that the insurer took a warranty that arrangements for conversion had been made at the inception of the insurance.

HIS HONOR: Which was December.

SIR GARFIELD: That is a question which seems to arise, or may arise. The insurers raise an issue on that warranty. They say that it was not fulfilled. They do raise an issue also in the grounds of defence as to the appropriateness of this Plaintiff. The policies are issued in the name of Acme Credit Services, a firm. In the cause of action the form the Plaintiff used in setting it out was this: The Plaintiff was interested to £29,000 in two marine policies and an issue was made on that, in terms. It is really, I suppose, a challenge to the Plaintiff's proprietorship of the firm. The policy is in the firm name, and that issue raises, I take it, the proprietorship of the Plaintiff. He sues now himself - Percy Simons trading as Acme Credit Services. Those are the only two issues which seem to arise.

HIS HONOR: I see that the defences say also that, at the time of the issue of the writ, Acme Credit Services abandoned the use of the business name.

SIR GARFIELD: That, I submit, is irrelevant. The question is whether Percy Simons was insured under the policy. I propose to treat it as irrelevant.

HIS HONOR: If I have to deal with that I will hear about that in due course.

SIR GARFIELD: Those are the two issues - whether he is the proprietor of the firm in whose name the insurance was made; whether the issue raised on the breach of the warranty is made out. The loss is admitted on the pleadings. It is a valued policy. They are the only two questions which arise.

(Two policies of insurance tendered; objected to unless accompanied by certificate; pressed; admitted and marked exhibits "A" and "B".)

SIR GARFIELD: They are two policies, the same in terms, but with different syndicates. (Extracts read.)

In the Supreme Court of New South Wales in Commercial Causes.

No. 4.

Counsel's Address.

8th October, 1957 - continued.

I want to tender the Registrar General's documents for the firm of Acme Credit Services. We are told, however, that the Registrar General has only sent down a bundle of papers concerning Acme Credit Services Pty., Limited. At the moment I am unable to tender the document. I merely want to tender the registration which demonstrates that Percy Simons was the registered proprietor at the relevant time of insurance. I cannot do that yet. Having established the proprietorship of the firm and tendered the policies etc., I was going to close my case. The insurance company carries the burden in respect of warranties and exceptions.

MR. SHAND: I do not object to my friend having the indulgence of closing his case at this stage, but I may object to the document.

(After further discussion, His Honor adjourned further hearing until 2.30 p.m., pending arrival of documents from Registrar-General's Department).

(At approximately 2.30 p.m. Alfred McMahon, an officer of the Registrar-General's Department produced, on subpoena duces tecum, documents under the Business Names Act, of a firm known as Acme Credit Services.

Access to these documents granted to Sir Garfield).

(Certificate of Registration tendered and marked Exhibit C).

CASE FOR THE PLAINTIFF CLOSED.

Defendant's Evidence.

No. 5.

John William Wight.

8th October, 1957.

No. 5.

JOHN WILLIAM WIGHT

CASE FOR THE DEFENDANT

(File of correspondence under signature of J. Trevis, Secretary of Acme Credit Services, tendered.)

(Certificate from Lumley's called for by Mr. Shand; produced.)

(Above-mentioned letter and annexures objected to; pressed; argument ensued).

JOHN WILLIAM WIGHT.

Sworn, examined as under:

MR. SHAND Q: What is your full name?
A. John William Wight.

Q. You are a Solicitor, with John Wight & Company?
A. That is so.

Q. Did you ever act as Solicitor for either Mr. Trevis or the Plaintiff in this case?
A. No. (objected to; allowed.)

Q. Did you ever accept any retainer or receive any payment? A. No.

Q. From Mr. Trevis or the Plaintiff in this case?
A. No, never.

Q. Would you explain to His Honor the position in which that letter, with the enclosures, was delivered to you? It was delivered to you, was not it? A. Yes, it was delivered. I act fairly regularly for Underwriters at Lloyds. I had a telephone message on one occasion from Mr.Harrington of Lumleys asking me to see him on a matter of urgency. I saw him at his address and was introduced, I think on that occasion, to Mr. Trevis and another person. He told me of some difficulties in Brisbane about a ship.

HIS HONOR Q: Who told you? A. Mr. Trevis. I think it was outlined by Mr. Lumley, in the presence of these other gentlemen, that difficulties had arisen in Brisbane regarding the ship, that Solicitors were acting there for Acme Credits, and I was looking into it on behalf of Underwriters. My advice to Mr. Trevis on that occasion and subsequently was that he should act as if uninsured.

Q. You told him, did you, that you were acting for Underwriters? A. Yes. I subsequently advised Underwriters of my views on that letter and a copy of that letter was produced to the Plaintiff on discovery of documents.

Cross-examined:

SIR GARFIELD Q: When you were introduced to Mr. Trevis, you were introduced as a Solicitor?
A. I was introduced as the Solicitor for Lloyds.

Q. Do you mean to say they said "Solicitor for

In the Supreme Court of New South Wales in Commercial Causes.

Defendant's Evidence.

No. 5.

John William Wight.

8th October, 1957.

Examination.

Cross-Examination.

In the Supreme Court of New South Wales in Commercial Causes.

Defendant's Evidence.

No. 5.

John William Wight.

8th October, 1957.

Cross-Examination - continued.

Lloyds," or just as a Solicitor?
A. No, "Mr. Wight attends to Lloyds' work."

Q. You say the form of the introduction was that you were a Solicitor and it was said that you attend to Lloyds' business? A. That is so.

Q. You knew at that stage, did you, that Mr. Harrington and Mr. Trevis had been discussing amicably, questions arising in connection with this insurance? A. I do not know what their discussions were. They told me that there had been many discussions at which I was not present.

Q. Can you recollect the opening conversation?
A. I was introduced to Mr. Trevis and another gentleman and I was told that Mr. Trevis was involved in an unfortunate business in Brisbane, involving a ship; that he had instructed Solicitors in Brisbane; and my advice was sought with a view to placing before Underwriters the position as it stood at that date.

Q. Tell us what was said. You were introduced to Mr. Trevis and you were told that Mr. Trevis had some trouble in Brisbane about a ship. You said that he had other Solicitors up there. How did it go on from that point? A. From that point I told them I would have to get some more facts before the matter could be placed before Underwriters, and that until Underwriters' views and instructions were to hand Mr. Trevis should act as if uninsured, and as the result of that Mr. Harrington asked Mr. Trevis on his return to Brisbane to have the facts collected and made available to me.

Q. When you told Mr. Trevis to act as if he was uninsured, that was advice you were giving him?
A. On behalf of Underwriters.

Q. That was advice you were giving him?
A. I was not giving him any advice. That is advice that Underwriters -

Q. You did say to this man who had been introduced to you that he should act as if he were uninsured?
A. Exactly - he could do as he liked under his policy.

Q. What did you say to him?
A. I said he could act as if uninsured.

Q. Did you say to him you would wait until you got his letter? A. I did. I said: "The matter is involved and it is rather confused. It is impossible to place anything before Underwriters. I would like to know more about it." It was then told to me that these papers would be put to me by Mr. Trevis so that it could be referred to London.

Q. Who told you that? A. Mr. Harrington, Mr. Trevis there, and this other gentleman. I have forgotten his name.

Q. You did not say: "I am not going to be acting for you. I am going to be acting for somebody else" - in terms, I mean? A. My attitude from the inception was that I was acting for Underwriters. I made that clear to Mr. Trevis. I said: "I will place this position before Underwriters."

Q. Did you say, in terms, to this man, that you could not advise him because you were going to advise Underwriters? A. No, I did not. My advice was never sought by Mr. Trevis.

Q. Did you say to Mr. Trevis that until you had considered the position, he should act as if he was uninsured?
A. And follow the advice of his Solicitors.

Q. Did you say to him that until you had considered the matter, he should act as if he was uninsured?
A. Yes, and to follow the advice of his Solicitors.

Q. You added that, did you? A. Yes. He was then in the hands of Brisbane Solicitors. He had mentioned some advice that he had received from them.

Q. But you knew that was concerned with endeavouring either to arrest the ship or do something about recovery of money up there?
A. I was not sure what it was.

Q. When you left this interview did you expect to receive from Mr. Trevis direct, an account of the facts and circumstances of Mr. Trevis's difficulties? A. All I expected to receive was the facts, which they claimed were material to this policy of insurance.

In the Supreme Court of New South Wales in Commercial Causes.

Defendant's Evidence.

No. 5.

John William Wight.

8th October, 1957.

Cross-Examination - continued.

Q. Did you expect, when you left this interview, to receive direct from Mr. Trevis, a letter? A. No.

Q. You did receive the document that has been tendered, direct from Mr. Trevis? A. I did.

Q. Did you expect to receive, after that interview, an account of the facts and circumstances touching Mr. Trevis's difficulties? A. Not Mr. Trevis's difficulties; the insured's, Acme Credits difficulties.

HIS HONOR Q: This letter says that Harrington appointed you officially "To act on our behalf." That would mean Acme Credits and on behalf of the Underwriters. Was anything said which could be so described? A. No. I could not act for both parties, in any event. My practice is -

Q. Did you send a reply to this letter? A. I did.

SIR GARFIELD Q: In answer to this? A. Yes. I sent a copy of that -

Q. In answer to Mr. Trevis? A. No, not to Mr. Trevis. My letter was submitted to London.

(Witness retired.)

(Letter and annexures mentioned on page 3 admitted and marked Exhibit "1").

(Copy letter dated 12th December 1956, defendant's solicitors to plaintiff's solicitors, tendered and marked Exhibit "2".)

(Letter of 17th December, 1956 with annexed copy documents, being reply to Exhibit "2", tendered and marked Exhibit "3".)

(Letter of 23rd January, 1957, plaintiff's solicitors to defendant's solicitors, tendered; objected to; tender withdrawn.)

(Lumley's certificate dated 13th December 1955, tendered; objected to; admitted and marked Exhibit "4".)

(At this stage further hearing was adjourned until 10 a.m. on Wednesday, 9th October, 1956.)

In the Supreme Court of New South Wales in Commercial Causes.

Defendant's Evidence.

No. 5.

John William Wight.

8th October, 1957.

Cross-Examination - continued.

In the Supreme Court of New South Wales in Commercial Causes.

Defendant's Evidence.

No. 6.

George Alexander Gatt.

9th October, 1957.

Examination.

No. 6.

GEORGE ALEXANDER GATT.

GEORGE ALEXANDER GATT, Sworn, examined as under:-

MR. SHAND Q: Your full name is George Alexander Gatt? A. Yes.

Q. And you are a marine surveyor? A. Yes.

Q. And qualified as such; and you practice in Brisbane? A. Practising in Brisbane.

Q. Following instructions from Nixon-Smith Shipping and Wool Dumping Co., Pty., Limited, you inspected a ship, did you not, in January, 1956? A. That is right.

Q. What was the ship? A. That was the ship in question, the "Cap Tarifa".

Q. What was the date on which you made your inspection? A. 17th January.

Q. Did you also take certain measurements? A. I did, on behalf of the late Captain Herd.

Q. What did you find, generally, about the ship? (objected to)

Q. Did you measure and calculate how many head of cattle it would hold? (objected to; rejected.)

SIR GARFIELD: No questions.

(Witness retired.)

(Notice of cessation or abandonment of use of business name under hand of Plaintiff, tendered; objected to; admitted and marked Exhibit "5".)

CASE FOR THE DEFENDANT CLOSED.

(Certificate of Insurance in respect of hull of vessel for period "Laid up" in Noumea, tendered; objected to; pressed; rejected; M.F.I. 1.)

CASE IN REPLY CLOSED.

(Counsel addressed)

(Further hearing adjourned until 10 a.m. on Thursday 10th October, 1957.)

No. 7.

In the Supreme Court of New South Wales in Commercial Causes.

No. 7.

Judgment of Mr.Justice Walsh.

12th November, 1957.

JUDGMENT OF MR. JUSTICE WALSH.

IN THE SUPREME COURT OF NEW SOUTH WALES
IN COMMERCIAL CAUSES.

CORAM: WALSH, J.
Tuesday 12th November, 1957

JUDGMENT

HIS HONOR: In this case, heard by me without a Jury as a Commercial Cause, the Plaintiff claimed £29,000 upon two policies of insurance together with a claim for interest, which by amendment made at the hearing became a claim for interest from 9th April 1956 at 8 per cent.

Particulars of the cause of action and particulars of the grounds of defence were filed and reference will be made to these hereinafter so far as it may be necessary to do so in examining the questions that have been debated at the trial.

The evidence tendered and admitted consisted solely of documents. No oral evidence was tendered relating to the issues in the action, except that of a marine surveyor named Gatt called by the Defendant. An objection as to the relevance of the evidence he proposed to give was uphold.

The Plaintiff tendered two policies of insurance which were dated 25th April 1956, and for purposes relevant to this action were in identical terms. He tendered also a certificate of registration under the Business Names Act 1934 and from this it appeared that in 1953 the Business Name "Acme Credit Services" was registered by the Plaintiff Simons who was therein said to be the individual carrying on the business. This constituted prima facie evidence that the Plaintiff was the proprietor of the business carried on under that firm name. (See Business Names Act S.17.)

On the policies the name of the assured was stated as Acme Credit Services and the registration certificate was put in to identify the Plaintiff as being the person entitled to the benefit of the policies.

In the Supreme Court of New South Wales in Commercial Causes.

No. 7.

Judgment of Mr. Justice Walsh.

12th November, 1957 - continued.

Having tendered the documents mentioned, Sir Garfield Barwick for the Plaintiff closed his case. Evidence for the Defendant consisted of letters and annexures thereto, of a certificate of insurance dated 13th December 1955 and a further document relating to the Business Names Register, namely a notice signed by the Plaintiff on the 13th June 1956 stating that the said firm of Acme Credit Services had abandoned the use of that name.

It is clear that if liability was incurred under the policies this happened on a date prior to 13th June 1956. Subject, therefore, to the arguments of Mr. Shand now to be examined, it appears that if the insurance moneys ever became due the Plaintiff was entitled to receive them at the time when they became due.

Mr. Shand submitted however that upon the evidence the Court should not be satisfied that the Plaintiff had the interest under the policies which he claimed or that he was interested at the time of the loss. It was contended for the Plaintiff that it was not open to the Defendant to raise the issue as to whether there was any insurable interest. The contention was that paragraph 9 of the grounds of defence is not apt to raise the question whether there was any relevant insurable interest but only to raise the question that it was not the Plaintiff who had that interest. I shall assume, without deciding, that it is open to the Defendant to raise both those questions. I make that assumption because in my opinion the Plaintiff should succeed upon both of them.

The Certificate of insurance tendered by the Defendant, which is expressed to be on account of Acme Credit Services, states the subject matter of the insurance as follows: "To pay a total loss of £29,000 (Aust.) in the event of the vessel not completing loading Townsville within 90 days from sailing from Noumea from any cause whatsoever."

The risk is stated in the same terms in the policies subsequently issued and the vessel named in all three documents is the "Cap Tarifa". Now it appears from the terms of the cables, which are set out as part of the certificate of insurance and which in the circumstances I think must have some evidentiary value against the Defendant, that

one Brucelas was seeking to buy the ship and was obtaining a loan from Acme Credit Services. This loan was to be repaid when cattle were loaded on the ship at Townsville from a letter of credit already established in Sydney. It was because this source of repayment would be available when the cattle were loaded at Townsville that Acme was seeking cover against the contingency that the cattle would not be loaded. This is clear from the terms of the cables. In my opinion these circumstances gave the firm of Acme Credit Services an insurable interest in the venture consisting of the ship reaching Townsville and loading cattle within the stated time.

It was argued that it must be shown that the interest existed at the time of the loss. That the loss occurred is asserted by the Defendant's grounds of defence which stated that the adventure was abandoned at Brisbane and the vessel did not proceed to Townsville. It may be inferred therefore that the assured was unable to obtain repayment of the loan from the source from which it was contemplated it should be repaid, namely the letter of credit. There is no direct evidence that it was not, prior to the time when the policies crystallised, that is the expiration of 90 days from the date of sailing, repaid from some other source. But it does appear that on 14th February 1956 the Plaintiff by letter informed the Solicitor, who was then and still is acting for the Underwriters, of the facts that the loan was then still unpaid and that the Plaintiff was contemplating a course of action which, if carried out, was estimated to return to him a sum much less than the amounts of the loan and of the insurance. The Plaintiff invited from the Solicitor his guidance and instructions as to that proposed course of action or as to any further action to improve the situation. It does not appear that the Solicitor sent a reply to the Plaintiff.

Care has to be taken against giving any unwarranted evidentiary effect in favour of the Plaintiff to statements contained in his own letter. But at least the letter which was tendered by the Defendant and admitted against the objection of the Plaintiff shows that at that time the Defendant's representative was told that a loss on the loan appeared inevitable and was put in a position to

In the Supreme Court of New South Wales in Commercial Causes.

No. 7.

Judgment of Mr. Justice Walsh.

12th November, 1957 - continued.

check that statement and to make enquiries from then on as to any developments which took place. I think that I can properly treat the letter as some evidence against the Defendant that at that date the loan was unpaid and that there appeared to be no prospect of obtaining repayments in full. In the absence of any suggestion that between February and April that situation changed, I think it is open to me to infer that at all material times the assured's interest in obtaining repayment of the loan continued.

I turn to a consideration of the second question mentioned above. That is whether Simons is the proper Plaintiff to bring an action upon the policies issued in the name of Acme Credit Services. Mr. Shand drew attention to various features of the letter of 14th February 1956, which was signed by J.H. Trevis as Secretary for the Acme Credit Services, and of some of the annexures to that letter. He argued that these indicated for the most part that it was Trevis and not Simons who was the person interested in the loan and in the insurance and that the only document which referred to Simons by name was one which indicated that both he and Trevis were the interested parties. The material upon which the submission is founded appears in the exhibits and there is no need for me to set out here the relevant portions of the documents. It is sufficient to say that I have come to the conclusion that I should accept the evidence contained in the registration documents as sufficient proof that the Plaintiff is entitled to sue, notwithstanding the matters upon which Mr. Shand relied to rebut or cut down that evidence, and notwithstanding that the Plaintiff did not offer any oral evidence on this question.

The remaining questions which arise for decision in this action turn upon the meaning and effect of a warranty contained in the policies and upon an issue of fact as to an alleged breach of that warranty.

One of the policies begins with a recital that the assured "have paid" a specified premium to the assurers. The other begins with the recital that the assured "have promised to pay forthwith" a premium at the same rate. Each policy recites that this was "to insure against loss as follows"

and then in each policy the name of the vessel is typed and followed by typed matter in the following terms:

> "To pay a Total Loss of £29,000 in the event of the vessel not completing loading within 90 days from time of sailing from Noumea from any cause whatsoever.
>
> No free of Capture and Seizure.
>
> Warranted animals available for loading.
>
> Warranted all arrangements for conversion made at inception of this Insurance."

It is in relation to the last sentence of that typed matter that issues of law and of fact have been debated before me at the hearing. These may be stated as being :-

(1) What is the true construction of the Warranty and in particular to what date or point of time do the words "at inception of this insurance" refer;

(2) Does the onus of proof lie upon the Plaintiff or the Defendant in relation to the question whether the warranty was fulfilled or broken;

(3) Upon the evidence does the Plaintiff's action fail upon the ground that the warranty was broken.

I proceed to examine these questions in the order stated:-

(1) For the Defendant it is argued that "at inception of this insurance" means at the latest the time when the Certificate of Insurance was issued. This is dated 13th December 1955 but appears to have been actually issued on the following day. For the Plaintiff it is said that the question is one of the construction of the Policies and that these do not incorporate and are not "tied" to the Certificate. It is said that this was not the document of the Underwriters whom the Defendant represents and that Edward Lumley & Sons (N.S.W.) Pty., Ltd., in issuing it was not in any sense an agent for such Underwriters. It is said that the only date to which reference can be intended in the policies is the date upon which the vessel sailed

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from Noumea, which in fact was the 10th January, 1956.

Now it is true that the policies are not in terms connected with the certificate except to the extent that each has upon it the letters and figures SEH/55/253, which appear also upon the certificate. But the policies can have no sensible meaning or operation unless construed upon the footing that there was some antecedent proposal for insurance and some antecedent acceptance on behalf of the underwriters. The policies are dated 25th April 1956 and the period of 90 days from sailing had elapsed prior to that date, a fact which I think must be taken to have been then known to the Defendant Underwriters. Whether it was known to them or not, it was certainly known to the Plaintiff and it is only upon the basis of some antecedent acceptance of the obligation that he could sue in respect of a loss which had already occurred at the date of the policies.

It may be true, as Sir Garfield Barwick submitted, that as against the Plaintiff it does not appear from the evidence at what date the various Underwriters bound themselves to accept a proportionate part of the obligation and that in that sense the date or dates when the antecedent obligation was accepted and a contract of insurance became effective is not established. But whenever it was, the obligation can only have been accepted as being one defined and delimited by some terms then known to the Underwriters or to somebody whom they authorised to accept the obligation on their behalf. If it is asked where are such terms to be found, the answer must surely be that they are to be found in the certificate issued by Lumley. Whether or not the various Underwriters had accepted an obligation at the time of the issue of the certificate and whether or not the certificate of its own force was binding upon them, when one comes to construe and to give effect to the policies one is in my opinion, entitled to take into account the fact that a certificate had been issued to the Plaintiff and the date of its issue in determining what was meant by the language used in the policies. In other words the policies cannot be construed in the abstract without relation to the events which had preceded them and which led to their issue.

For the reasons stated I think it is permissible

in construing the policies to regard the issue of the certificate as one point of time to which the words "at inception of this insurance" were possibly intended to relate. The question must then be decided whether that was the point of time intended or whether the construction that the reference is to the time of sailing is to be preferred, that being the time when it is contended the risk began.

Having considered various arguments submitted in favour of each of these constructions, I have come to the conclusion that the more natural sense in which to read the words as to make them relate to the arrangements for insurance and to the obtaining of an insurance cover, rather than to the date when the ship should happen to sail. I do not propose to discuss the arguments urged in favour of the opposite view except to make some comment upon one of them. In both the policies the two warranties as to availability of animals for loading and as to arrangements for conversion of the ship began on separate lines, and are separated by a full stop. This is not so in the certificate. The relevant portion of which reads:-

> "Warranted animals available for loading and all arrangements for conversion of vessel made at inception of this insurance."

It was argued that in this form the words mean that animals were to be available for loading "at the inception of the insurance" and that in the policies, in spite of the different punctuation, the same meaning must be taken to have been intended. Then it was said that the parties cannot be supposed to have intended that the animals were to be available for loading on the 13th or 14th of December 1955 since the ship might not sail for a long time thereafter. By this means it is sought to show that the words "at inception of this insurance" should be referred to a later date and the obvious date to which to refer them then becomes the date of the sailing of the ship. In my opinion, however, the words "at inception of this insurance" both in the certificate and in the policies, are not to be read as forming part of both the warranties but as referring only to the second of them. I think that the warranty as to the animals contains no express provision as to

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the time when it operates, but should be read as meaning that they are to be available at Townsville when the ship is available there to take them on. In other words it is a warranty the purpose of which is that no delays in the completing of the loading shall occur because the animals are not available.

In my opinion what the Plaintiff warranted was that all arrangements for conversion had been made at the time when the certificate was issued. I think it is arguable that the reference was to an earlier time, namely the time when application for the insurance was first made. This would be on or about 7th December. However, having regard to the views I have formed upon other questions yet to be discussed it makes no practical difference whether the critical date is the 7th or 14th of December; and it is sufficient for me to hold that the policy required that at the latest the arrangements should have been made by the 14th December.

(2) The question as to onus of proof appears to me to require a consideration of the nature of the warranty. Is it to be regarded as a true condition precedent such that unless it be fulfilled no liability can be regarded as ever attaching under the policies? or should it be regarded as a condition, the breach of which discharges the insurer from a contractual liability which is assumed to have come into operation?

The term "warranty" is used in different senses and in insurance law special considerations are applicable to the problem under discussion, apart from the general principles of contract law. Thus the familiar distinction between condition and warranty in the general law of contract is not applicable in discussion of warranties in policies of insurance.

In Arnould Marine Insurance (14th Ed., para. 1277) the following statement is made. "Arnould stated that compliance by the Plaintiff with all express warranties, "being conditions precedent to the policies attaching", must be proved by him as part of his case. This is probably true, though it is not correct to speak of all warranties as conditions precedent to the policies attaching. It is clear, however, that the onus of proving

unseaworthiness is upon the Underwriter and it is not clear why in this respect there should be a distinction between warranties expressed and implied".

Of the three cases noted as having been quoted in the second edition for the proposition stated by Arnould, two of them do not appear really to touch the point. The other case Arcangelo -v- Thompson (2 Camp. 620) appears to proceed upon the footing that the onus was on the Plaintiff as to a warranty that the ship insured was Danish but there is no discussion on the point. But as the 14th Edition points out, the view of Arnould that every breach of express warranty voided the policy ab initio appears to have had the support of Lord Mansfield (See Arnould, 14th Ed., pp.589 and 590) (Footnote.)

Again the language of Lord Eldon in Newcastle Fire Insurance -v- McMorran (3 Dowling 255) suggests that all warranties (as distinguished from representations) affect the formation of the contract and that if they are not fulfilled there is no contract.

But leaving aside the statutory provision on the point contained in S.39 (3) of the Marine Insurance Act, I do not think that it must be accepted as a first principle of the Law of insurance on all occasions (Ib. at 262.), that every breach of any provision which can be described as a warranty renders the policy void ab initio. To accept such a principle as being of universal application would appear to be contrary to the decisions to which I must now refer, and to be unsound. In Stebbing -v- Liverpool & London & Globe Insurance Company (1917) 2 KB. 433 the Court considered a policy which recited that the Claimant had submitted a proposal and declaration with certain written statements and particulars "as the basis of the contract". It was asserted by the insurer that a false answer had been given to a question in the proposal. The Court held that the onus of proof was upon the insurer.

In Bond Air Services -v- Hill (1955) 2 K.B.417, a policy of insurance against loss or damage to an aeroplane contained a number of conditions and contained a clause in the following terms:

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"8" "The observance and performance by the insured of the conditions of this policy so far as they contain anything to be observed or performed by the insured are of the essence of the contract and are conditions precedent to the insured's right to recover hereunder."

In answer to a claim under the policy, the insurer set up that in various respects the conditions of the policy had not been performed by the assured. The matter went to arbitration and the Arbitrator held that the burden of proof was on the insurer. He regarded Clause 8 as having no effect upon the burden of proof. On appeal, it was argued that the proof of performance of conditions precedent was a necessary ingredient of the Plaintiff's case. Reliance was placed upon the passage from Arnould which I have quoted, in respect of the general proposition that it lies upon the insured to prove compliance with express warranties. But Lord Goddard C.J., upheld the ruling of the Arbitrator. In his reasons he said, at page 426 "I do not think that it can be doubted that, ordinarily, it is for the Underwriter to prove a breach of condition, at least where he is not contending that the policy is void on the ground that there has been a breach of a condition precedent to the formation of the policy. So, too, it is for him to prove an exception. The difference between a condition and an exception is that the former places some duty or responsibility on the assured, while the latter restricts the scope of the policy. That it is for the insurers who allege that the conditions were broken to prove it, has, I think, always been accepted, at least since Baron Parke's Judgment in Barrett -v- Jermy (3 Exch 535)" Later, after a reference to Geach -v- Ingall (14 M. & W. 95) and to Ashby -v- Bates (15 M. & W. 589) he said "I cannot find that these cases have ever been regarded, either in any judgment or in the opinion of eminent text writers, as throwing doubt on what I think is axiomatic in insurance law, that, as it is always for an insurer to prove an exception, so it is for him to prove the breach of a condition which would relieve him from liability in respect of a particular loss."

As to the effect of the declaration in the policy that the observance of conditions was to be a condition precedent to the right to recover, Lord

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Goddard regarded Stebbing's case as governing that point as against the insurer. His Lordship went on to say: "In my opinion much clearer words than are used here would be necessary to change what I think, certainly for a century and probably for much longer, has always been regarded as a fundamental principle of insurance law, that it is for the insurers who wish to rely on a breach of condition to prove it."

This "fundamental principle" seems to be stated by His Lordship in the sentence last quoted as being applicable to all cases of breach of condition. But the earlier passages I have quoted from his reasons suggest that it may not apply in relation to a breach of a condition precedent to the formation of the policy and that it may be limited to cases of breach of a condition which would relieve the insurer from liability.

In the present case it is contended for the Plaintiff that the warranty is of the latter type of condition, that is, a condition which has no effect on the formation of the contract but which may operate to discharge or excuse from liability. For the Defendant the contrary is contended and it is said that this is a condition which forms part of the description or definition of the risk undertaken and that without its fulfilment no risk can attach. If the two warranties were not in the policy, it is said that the adventure against which insurance is provided would be a different one and the area of risk would be enlarged.

I have come to the conclusion that the Plaintiff's contention should be accepted and that the onus of proof is on the Defendant. It is true of many warranties that they affect the risk undertaken and if the principle put forward by Mr.Shand were to be adopted as the means of determining the burden of proof, the inquiry would really be into the question whether the particular condition was material or non-material. But the law of insurance seeks to make it unnecessary in general to embark upon any such inquiry in relation to warranties, inasmuch as a breach of warranty precludes recovery under the policy whether or not the risk is in fact affected. I think the warranty under consideration should be regarded as a "relieving" or "discharging" provision rather than one which is a condition precedent to the formation of a contract.

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I have dealt with this matter as being one to be determined under the general law and not by reference to the Marine Insurance Act, since I doubt that the policies are "contracts of Marine Insurance" within the meaning of that Act. But if they are, that would serve only to strengthen the conclusion which I have reached as to the burden of proof.

(3) I must now determine upon the facts, whether there was a breach of the warranty relating to conversion of the vessel.

The cables endorsed upon the certificate of insurance contain two references to the installation of stalls. Cable 8396 indicated that the ship was to arrive at Brisbane on 27th December, 1955 for installation of stalls, and was to sail from Brisbane on 11th January, 1956. Cable 8408 asked that the warranty be not insisted upon, and referred to a letter from a reputable Brisbane firm regarding installation of stalls. No such letter has, however, come to light in evidence.

The letter of 14th February, 1956, written on behalf of the Plaintiff, contained a narrative of the facts relating to the whole transaction, and includes copies of correspondence. In the letter itself, nothing material to the present question appears except a statement that Brown and Broad Limited of Brisbane were contacted by telephone in relation to fitting the ship and they expressed their ability and willingness to carry out the necessary work. Four relevant letters are attached as schedules to the letter of 14th February being schedules H, I, J and K.

On 12th December, 1956 the Defendants Solicitor asked the Plaintiff's Solicitor for particulars of a paragraph in the particulars of cause of action, which stated that all arrangements for the conversion of the vessel for the purpose of carrying cattle had been made when the vessel sailed from Noumea on 10th January, 1956. The reply, sent on 17th December, stated that arrangements for conversion were made orally between Mr. J. H. Trevis on behalf of the Plaintiff, and Brown and Broad Limited, on or about 14th December, 1955 and confirmed by subsequent letters from that company of 15th and 30th December. It went on: "For

further particulars thereon we enclose copies of the following documents evidencing the arrangements made," and it enclosed copies of six declarations, including three made by Trevis and three by employees of Brown and Broad Limited, and copies of five letters. Three of these are identical with three of the annexures to the letter of 14th February already mentioned.

The foregoing constitutes the material upon which the Defendant relies in support of the claim that the warranty was broken. Much of the documentary evidence deals with events which took place after 14th December, 1955 and which are, therefore, not directly relevant, having regard to the view I have taken as to the construction of the warranty. But some of the subsequent letters and conversations do throw light upon the question directly in issue, that is, whether the necessary arrangements had been made by 14th December.

There is no letter in the correspondence between the Plaintiff and Brown and Broad Limited earlier than the letter of 15th December. This letter refers to a telephone conversation concerning the fitting out of a ship for the carriage of cattle. The letter states: "We confirm our advice to you that on present indications we could carry out this work approximately the first week in January." It also states that a quotation could not be given, and gives reasons. This part of the letter reads: "In connection with a quotation for the job, we regret we cannot quote as you will understand that we have not fitted this ship previously, and do not know what work is entailed nor the amount of material required." The letter was signed for Brown and Broad Limited by a Mr. Dark. It appears from the declarations that the telephone conversation to which the letter of the 15th December refers, was between Trevis and a Mr. Boal of Brown and Broad Limited. According to Boal's declaration, he said to Trevis: "We will fit the ship, but it depends on when it arrives in Brisbane." Then, having checked on the work "due about that time," that is, about the first week in January, Boal said: "We can fit the ship if it arrives about that time." He declined to give any quotation of price for the work. He says he reported to Dark the arrangements made with Trevis, and Dark confirmed them. I have already quoted from the letter written by Dark on 15th December.

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The account of the conversation given by Trevis in a declaration is substantially to the same effect as that of Boal.

From the foregoing it would appear that Boal stated that Brown and Broad Limited were willing to carry out the work, and that it would be able to do so if the ship should arrive about the first week in January. But the price to be paid was not settled by any express arrangement, although Trevis sought a definite price. The subsequent history of the matter shows that, in the circumstances, there could be no implied agreement or arrangement that the Plaintiff was to pay "reasonable" charges for the work done. The Plaintiff continued later to press for a firm price but was unsuccessful in this, and ultimately the arrangement was accepted that the Plaintiff would pay on the basis of cost plus 10%. Another important circumstance was that the nature and quantity of the work to be done and of the materials required were, at that stage, entirely unspecified and, indeed, unknown. Trevis wrote on 21st December giving some details as to the dimensions and tonnage of the ship and promising to forward a plan of the ship later. It was only after the vessel had arrived in Brisbane on 16th January that the parties got down to the task of ascertaining what work had to be done - (see Schedule "K" to letter of 14th February, 1956).

The conclusion to which this evidence brings me is that what took place on 14th December was no more than exploratory of an arrangement later intended to be made for the carrying out of the work. I think it is clear that, at that time, neither party became contractually bound to proceed with the transaction. It has been submitted that the warranty does not require that there should have been a binding contract for the doing of the work. Even if this be so, in my opinion the warranty as to the "making of all arrangements" for conversion required something more definite and precise than the tentative undertaking given by Brown and Broad Limited on 14th December. That company had no prior knowledge of the vessel, not having fitted her before, and had no plan and no information at all as to the work to be done. It seems to me that, quite apart from any contractual obligation, it could not truly be said, on 14th December, that Brown and Broad Limited had put itself under any

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firm engagement, binding upon it as a matter of business honesty and fair dealing. Whether it would turn out to be so bound remained to be seen, and was dependant upon a number of factors not yet explored or not yet agreed upon by both sides. These included the Plaintiff's willingness to submit to the company's policy as to quotations, and the details as to the magnitude and nature of the task to be performed.

I have sought to consider the relevant evidence from the point of view which I was urged, on behalf of the Plaintiff, to approach it. This was to take it as a whole, and to view it at its highest in favour of the Plaintiff. I have not overlooked that in subsequent declarations, officers of Brown and Broad Limited have asserted that there was a definite arrangement. But as to this, two things may be said. The first is that the letters and conversations must be examined by me to ascertain whether they support such an assertion; and I cannot accept it merely because it is made. The second is that, as Mr. Shand argued, at least some parts of the declarations suggest that the definite arrangement came into being on 23rd December, at a conversation which took place on that date and, therefore, tend to negative the proposition that a definite arrangement was made on 14th December.

I find that the Defendant has established the defence that there was a breach of warranty. From that finding it follows that the Plaintiff cannot succeed in the action and, therefore, I find a verdict for the Defendant. I direct that judgment may be entered accordingly.

I certify that this and the preceding 19 pages are a true copy of the reasons for the judgment herein of His Honor Mr. Justice Walsh.

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No. 8.

Notice of Motion for Leave to Appeal to Her Majesty in Council. 22nd November, 1957.

No. 8.

NOTICE OF MOTION FOR LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

IN THE SUPREME COURT OF NEW SOUTH WALES IN COMMERCIAL CAUSES

No.10237 of 1956.

Friday 22nd November 1957

Between: PERCY SIMONS trading as Acme Credit Services (Plaintiff) Applicant

- and -

ANTHONY EUGENE MIDDLETON GALE (Defendant) Respondent

TAKE NOTICE that this Honourable Court will be moved before the Honourable Mr. Justice Walsh at the Supreme Court House King Street Sydney in the State of New South Wales on Thursday the fifth day of December One thousand nine hundred and fifty-seven at thirty minutes past the hour of nine of the clock in the forenoon or so soon thereafter as Counsel can be heard on behalf of the above-named Plaintiff for an order granting to the Plaintiff leave to appeal to Her Majesty in Council from the whole of the final judgment of the Honourable Mr. Justice Walsh sitting as the Supreme Court of New South Wales delivered on the Twelfth day of November One thousand nine hundred and fifty - seven whereby it was ordered that there should be a verdict for the Defendant in the action and it was directed that judgment be entered in accordance with that verdict in an action in which the present Applicant was the Plaintiff and the present Respondent was the Defendant UPON THE FOLLOWING amongst other GROUNDS:

1. THAT His Honour was in error in finding a verdict for the Defendant.

2. THAT His Honour should have found a verdict for the Plaintiff for the full amount claimed and awarded to the Plaintiff damages in the nature of interest at the rate of Eight pounds per centum per annum.

3. THAT His Honour was in error in admitting in

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evidence the certificate dated the Thirteenth day of December One thousand nine hundred and fifty-five issued to the Plaintiff by Edward Lumley & Sons (N.S.W.) Pty., Limited, Insurance Brokers.

4. THAT having admitted the Certificate dated the Thirteenth day of December, One thousand nine hundred and fifty-five His Honour was in error in rejecting the Certificate dated the Twenty-ninth day of December, One thousand nine hundred and fifty-five issued to the Plaintiff by Edward Lumley & Sons (N.S.W.) Pty. Limited, Insurance Brokers.

5. THAT His Honour was in error in holding that the words "at inception of this insurance" which appear in a warranty contained in each of the two policies of insurance the subject of this action refer to the date or point of time when the said certificate was issued to the Plaintiff by Edward Lumley & Sons (N.S.W.) Pty., Limited.

6. THAT His Honour should have found that the words "at inception of this insurance" did refer to the date or point of time when the vessel "Cap Tarifa" sailed from Noumea which was the Tenth day of January One thousand nine hundred and fifty-six.

7. THAT His Honour was in error in holding that the Defendant proved that the Plaintiff was in breach of the express warranty which required that the Plaintiff make "all arrangements for conversion at inception of this insurance".

8. THAT His Honour should have held that the Defendant failed to prove that the Plaintiff had not made all arrangements for conversion at inception of the insurance.

9. THAT, in any event, His Honour should have held that upon the evidence all arrangements for conversion of the vessel "Cap Tarifa" had been made by the Plaintiff at inception of the insurance.

AND FURTHER TAKE NOTICE that in lieu of the

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Notice of Motion for Leave to Appeal to Her Majesty in Council.

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judgment of His Honour the (Plaintiff) Applicant will seek an order that his appeal be allowed and that a verdict be entered for the Plaintiff the present Applicant in the said action for the sum of Twenty-nine thousand pounds Australian Currency (£A29,000) and that there be awarded to the Plaintiff damages in the nature of interest at the rate of Eight pounds per centum per annum from the Sixteenth day of April One thousand nine hundred and fifty-six and that it be directed that judgment be entered accordingly AND for such further and other order as to Her Majesty in Council may seem fit upon the grounds appearing in and by the affidavit of William Harry Tuck sworn the Twenty-second day of November instant and filed herein.

DATED this Twenty-second day of November, 1957.

W. H. TUCK,

Solicitor for the Plaintiff.

NOTE: It is intended to serve this notice of motion upon Messrs. John Wight & Co., of 16 Hunter Street, Sydney, the Solicitors for the above-named Respondent (Defendant).

This notice of motion is filed by William Harry Tuck of Messrs. Clayton Utz & Company, Solicitors for the above-named Plaintiff of Derwent House, 136 Liverpool Street, Sydney.

No. 9.

In the Supreme Court of New South Wales in Commercial Causes.

No. 9.

Judgment for Defendant after Verdict.

10th December, 1957.

JUDGMENT FOR DEFENDANT AFTER VERDICT

IN THE SUPREME COURT OF NEW SOUTH WALES
IN COMMERCIAL CAUSES.

No. 10237 of 1956.

Between: PERCY SIMONS trading as Acme Credit Services Plaintiff

- and -

ANTHONY EUGENE MIDDLETON GALE Defendant

WHEREAS on the Twelfth day of November One thousand nine hundred and fifty-seven this action was tried by His Honour, Mr. Justice Walsh by consent jury having been dispensed with and the verdict was found for the above-named Defendant Anthony Eugene Middleton Gale against the above-named Plaintiff Percy Simons trading as Acme Credit Services and His Honour directed judgment accordingly.

THEREFORE it is adjudged that the said Plaintiff recover nothing against the said Defendant and that the said Defendant recover against the Plaintiff his costs of defence.

Judgment signed this 10th day of December, 1957.

For the Prothonotary.

J. W. BAGGOTT (L.S.)

Clerk of the Supreme Court.

Defendant's costs £

In the Supreme Court of New South Wales.

No.10.

Conditional Rule for Leave to Appeal to Her Majesty in Council.

6th December, 1957.

No. 10.

CONDITIONAL RULE FOR LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

6th December, 1957.

IN THE SUPREME COURT OF NEW SOUTH WALES

No. 10237 of 1956.

Between: PERCY SIMONS trading as Acme Credit Services — Plaintiff

- and -

ANTHONY EUGENE MIDDLETON GALE — Defendant

The Sixth day of December One thousand nine hundred and fifty-seven

UPON MOTION made the Fifth day of December One thousand nine hundred and fifty-seven and this day on behalf of the above-named Plaintiff pursuant to notice of motion filed herein on the Twenty-second day of November, One thousand nine hundred and fifty-seven WHEREUPON AND UPON READING the said notice of motion and the Affidavit of William Harry Tuck sworn the Twenty-second day of November One thousand nine hundred and fifty-seven AND UPON HEARING what was alleged by Sir Garfield Barwick of Queen's Counsel with whom appeared Mr.M.R.Hardwick on behalf of the above-named Applicant and Mr.J.W.Shand of Queen's Counsel with whom appeared Mr.B.Burdekin of Counsel on behalf of the above-named Defendant IT IS ORDERED that the said notice of motion be amended by deleting the words "before the Honourable Mr. Justice Walsh" AND IT IS FURTHER ORDERED that leave to appeal to Her Majesty in Council from the Judgment of this Court be and the same is hereby granted to the above-named Plaintiff hereinafter called the Appellant UPON CONDITION that the Appellant do within one month from the date hereof give security to the satisfaction of the Prothonotary in the amount of Two hundred and fifty pounds (£250.0.0) for the due prosecution of the said appeal and the payment of such costs as may become payable to the Respondent in the event of the Appellant not obtaining an order granting him final leave to appeal from the said judgment or of the appeal being dismissed

for non-prosecution or of Her Majesty in Council ordering the Appellant to pay the Respondent's costs of the said appeal, as the case may be, AND UPON FURTHER CONDITION that the Appellant do within seven (7) days from the date hereof deposit with the Prothonotary the sum of Twenty five pounds (£25.0.0) as security for and towards the costs of the preparation of the transcript record for the purposes of the said appeal AND UPON FURTHER CONDITION that the Appellant do within twenty one days of the date hereof take out and proceed upon all such appointments and take all such other steps as may be necessary for the purpose of settling the index to the said transcript record and enabling the Prothonotary to certify that the said index has been settled and that the conditions hereinbefore referred to have been duly performed AND UPON FURTHER CONDITION finally that the Appellant do obtain a final order of this Court granting it leave to appeal as aforesaid AND THIS COURT DOTH FURTHER ORDER that the costs of all parties of this application as if the said application were unopposed and of the preparation of the said transcript record and of all other proceedings hereunder and of the said final order do follow the decision of Her Majesty's Privy Council with respect to the costs of the said appeal or do abide the result of the said appeal in case the same shall stand or be dismissed for non-prosecution or be deemed so to be subject however to any orders that may be made by this Court up to and including the said final order or under any of the rules next hereinafter mentioned that is to say rules 16, 17, 20 and 21 of the Rules of the second day of April One thousand nine hundred and nine regulating appeals from this Court to Her Majesty in Council AND THIS COURT DOTH FURTHER ORDER that the costs of all parties of this application other than the costs aforesaid ordered to abide the result of the said appeal be taxed and paid by the Defendant to the Appellant AND THIS COURT DOTH FURTHER ORDER that the costs incurred in New South Wales payable under the terms hereof or under any order of Her Majesty's Privy Council by any party to this appeal be taxed and paid to the party to whom the same shall be payable AND THIS COURT DOTH FURTHER ORDER that so much of the said costs as become payable by the Appellant under this order or any subsequent order of the Court or any order made by Her Majesty in Council in relation to the said appeal may be

In the Supreme Court of New South Wales.

No.10.

Conditional Rule for Leave to Appeal to Her Majesty in Council.

6th December, 1957 - continued.

paid out of any moneys paid into Court as such security as aforesaid so far as the same shall extend AND that after such payment out (if any) the balance (if any) of the said moneys be paid out of Court to the Appellant AND that each party is to be at liberty to restore this matter to the list upon giving two days notice thereof to the other for the purpose of obtaining any necessary rectification of this order.

BY THE COURT,
FOR THE PROTHONOTARY,
E. F. LENNON (L.S.)
CHIEF CLERK.

No.11.

Order granting final Leave to Appeal to Her Majesty in Council.

20th December, 1957.

No. 11.

ORDER GRANTING FINAL LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

IN THE SUPREME COURT OF NEW SOUTH WALES
No. 10237 of 1956.

Between: PERCY SIMONS trading as Acme Credit Services (Plaintiff) Appellant

- and -

ANTHONY EUGENE MIDDLETON GALE (Defendant) Respondent

ORDER GRANTING FINAL LEAVE TO APPEAL

The 20th day of December 1957

UPON MOTION made this day pursuant to the Notice of Motion filed herein on the Seventeenth day of December, 1957 WHEREUPON AND UPON READING the said Notice of Motion the affidavit of William Harry Tuck sworn on the Seventeenth day of December, 1957, and the Prothonotary's Certificate of Compliance AND UPON HEARING what is alleged by Mr. M.R. Hardwick of Counsel for the Appellant and

Mr. B. Burdekin of Counsel for the Respondent IT IS ORDERED that final leave to appeal to Her Majesty in Council from the judgment of The Honourable Mr. Justice Walsh given and made herein on the Twelfth day of November, 1957, be and the same is hereby granted to the Appellant AND IT IS FURTHER ORDERED that upon payment by the Appellant of the costs of preparation of the Transcript Record and despatch thereof to England the sum of Twenty five pounds (£25) deposited in Court by the Appellant as security for and towards the costs thereof be paid out of Court to the Appellant.

By the Court,

For the Prothonotary,

(Sgd.) E. L. LENNON,

Chief Clerk.

In the Supreme Court of New South Wales.

No.11.

Order granting final Leave to Appeal to Her Majesty in Council.

20th December, 1957 - continued.

No. 12.

No.12.

CERTIFICATE OF PROTHONOTARY OF SUPREME COURT OF NEW SOUTH WALES VERIFYING TRANSCRIPT RECORD

Certificate of Prothonotary of Supreme Court of New South Wales verifying Transcript Record.

23rd January, 1958.

IN THE SUPREME COURT OF NEW SOUTH WALES.

No. 10237 of 1956.

Between: PERCY SIMONS trading as Acme Credit Services (Plaintiff) Appellant

- and -

ANTHONY EUGENE MIDDLETON GALE (Defendant) Respondent

CERTIFICATE VERIFYING TRANSCRIPT RECORD

I, RONALD EARLE WALKER of Sydney in the State of New South Wales Prothonotary of the Supreme Court of the said State DO HEREBY CERTIFY that the sheets hereunto annexed and contained in pages numbered 1 to 107 inclusive contain a true copy

In the Supreme Court of New South Wales.

No.12.

Certificate of Prothonotary of Supreme Court of New South Wales verifying Transcript Record.

23rd January, 1958 - continued.

of all the documents relevant to the appeal by the Appellant Percy Simons to Her Majesty in Council from the judgment of the Honourable Mr. Justice Walsh given and made herein on the Twelfth day of November One thousand nine hundred and fifty-seven so far as the same have relation to the matters of the said appeal together with the reasons for the said judgment given by the said Judge and an index of all the papers documents and exhibits in the said suit included in the annexed transcript record which true copy is remitted to the Privy Council pursuant to the order of His Majesty in Council of the second day of May in the year of our Lord One thousand nine hundred and twenty-five.

IN FAITH AND TESTIMONY whereof I have hereunto set my hand and caused the seal of the said Supreme Court in Commercial Causes to be affixed this 23rd day of January in the year of Our Lord One thousand nine hundred and fifty eight.

(L.S.)

L. E. WALKER,

Prothonotary of the Supreme Court of New South Wales.

Exhibits

Plaintiff's Exhibit "C".

Certificate of Registration of Acme Credit Services.

21st August, 1952.

PLAINTIFF'S EXHIBIT "C" - CERTIFICATE OF REGISTRATION OF ACME CREDIT SERVICES

BUSINESS NAMES ACT, 1934. (SECTION 6.)

REGISTRATION OF A FIRM, INDIVIDUAL OR CORPORATION CARRYING ON BUSINESS UNDER A BUSINESS NAME.

Business name ACME CREDIT SERVICES.

General Nature of business FINANCING ON HIRE PURCHASE.

Place or places of the business including the particular address or addresses at which the business is carried on (indicating the principal place of business, if more than one.) C/- 226-228 LIVERPOOL ST. EAST SYDNEY, N.S.W.

LS.

1-9-52.

Date of commencement From date registration is approved.

Full name and other particulars of the individual or of each individual and of every corporation carrying on the business.

Christian names and surnames of the individuals and names of corporations	Usual residence of the individuals or the registered offices in New South Wales of the corporation	Other business occupations (if any) of the individual
SIMONS, PERCY	37, SIMPSON ST., BONDI	ENGINEER & MERCHANT

(a) SIGNED at Sydney on the 21st day of August, 1952

Percy Simons
(Usual Signature)

Before me E.F.Horan, J.P.

(b) SIGNED at on the day of 19

(Usual Signature)

Before me

(c) SIGNED by a Director the Secretary

of Company Limited

on the day of 19 .

(Usual Signature)

Before me.

Exhibits

Plaintiff's Exhibit "C"

Certificate of Registration of Acme Credit Services.

21st August, 1952 - continued.

PLAINTIFF'S EXHIBIT "C"

Statement No. 156829

Packet No.

A 79171 10/- J.B. 25/8/52.

LS.

BUSINESS NAMES ACT, 1934

ORIGINAL REGISTRATION

REGISTERED in the office of the REGISTRAR GENERAL, SYDNEY.

26 AUG. 1952

T. Wells,

Registrar General.

Certificate sent to C.C.C. & R. for posting to P. Simons.

37 Simpson St.,
Bondi.

Date 26 AUG. 1952

Initials

Presented for filing by

STATUTORY DECLARATION

(This is required in the case of a firm unless all the individuals and a director or the Secretary of each corporation sign the statement)

I, of
do hereby solemnly and sincerely declare that all the particulars contained in this Statement, signed by me on the day of 19 , are true.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act, 1900.

Declared at)
this day of) .....
19)

Before me,

(Justice of the Peace or Commissioner for Affidavits)

DEFENDANT'S EXHIBIT "1" - LETTER FROM ACME CREDIT SERVICES TO JOHN WIGHT & CO.

Exhibits

Defendant's Exhibit "1".

Letter from Acme Credit Services to John Wight & Co.,

14th February, 1956.

JHT/MM:

Acme Credit Services,
226-228, Liverpool St.,
East Sydney.

14th February, 1956.

J.Wight, Esq.,
John Wight & Co.,
16, Hunter Street,
SYDNEY.

Dear Sir,

Re: SALVADOR BRUCELAS -
INSURANCE POLICY NO. SEH55/253.
EDWARD LUMLEY & SONS (N.S.W.) PTY. LTD.

I wish to confirm the information given to you verbally on my recent visits to you. Copies of documents and relative correspondence are attached to substantiate the facts.

On the 2nd December, 1955, I was approached by Mr. Salvador Brucelas of 62 Colayco, Pasey City via Manilla, Philippine Islands, to loan him the amount of A£23,000 for the purpose of purchasing the ship "Cap Tarifa". He advised that the ship was owned by Societe Le Nickel, Noumea and the ship's broker offering the boat was Captain W. L. Kennedy, 63 Pitt Street, Sydney. The ship was to be used for the transport of cattle between Townsville and Manilla and for this purpose an irrevocable letter of credit for 160,000 dollars had been established by Brucelas and Martinez, Manilla in favour of New Zealand Loan and Mercantile Agency Co., Ltd., Townsville through the Commercial Bank of Australia Ltd.

I was not interested in advancing money and taking a ship as collateral and my first inclination was not to make the loan. After considering the matter it occurred to me that perhaps it was an insurable risk and with this in mind I collected the following information to present to an Insurance broker.

(a) The letter of credit was checked by the National Bank of Australia Ltd., 134 Liverpool Street, Sydney. It was found that :-

(i) It existed.

Exhibits

Defendant's Exhibit "1".

Letter from Acme Credit Services to John Wight & Co.,

14th February, 1956 - continued.

(ii) It was irrevocable and 100% of same could be realised on loading the cattle at Townsville.

(iii) It covered the purchase of 1000 head of cattle of 1000 lb. live weight each at 16 cents per lb. C.I.F.

(iv) It was reported that the partnership Brucelas and Martinez existed and the monetary backing behind same was considerable.

(b) The New Zealand Loan & Mercantile Agency Co., Ltd., Townsville was contacted by telephone. They confirmed all statements by Brucelas and advised that the cattle were available.

(c) Captain Kennedy was interviewed and gave details of the availability of the ship and method of purchase also that because of furnace trouble a permit for voyage to Manilla via Brisbane and Townsville only, had been issued.

(d) The method of repayment was discussed with Brucelas as follows :-

160,000 dollars	=	A£71,000
Plus 10% allowed to be overdrawn	=	A£ 7,000
		A£78,000 available
Cost of cattle, fodder, Insurance etc. approx. 8 cents per lb.		A£39,000
BALANCE		A£39,000

The balance available could be used for repaying loan, interest, insurance, fitting of ship and financing movement of same.

On the 7th December, 1955 the above information was presented to Mr. Harrington of Edward Lumley & Sons (N.S.W.) Pty., Ltd., with the request for insurance cover as follows :-

"If in the event of the ship not completing loading of cattle at Townsville within 90 days from sailing from Noumea from any cause whatsoever that this Company be paid an amount approximating A£27,000".

Exhibits

Cables ensued between Edward Lumley & Sons (N.S.W.) Pty., Ltd., and Lloyd's Underwriters, London. A copy of such cables (Schedule "A") are attached and are self explanatory. Defendant's Exhibit "1".

On 13th December, 1955 after it had been established that insurance cover was available I had Brucelas sign a document (Schedule "B"), acknowledging the loan and the method of repayment etc., also an authority (Schedule "C") for New Zealand Loan and Mercantile Agency Co., Ltd., to repay the loan etc. The latter authority was presented to New Zealand Loan and Mercantile Agency Co., Ltd., and their acceptance (Schedule "D") was obtained from their Sydney office. Letter from Acme Credit Services to John Wight & Co., 14th February, 1956 - continued.

An application by letter (Schedules "E" & "F"), and personally, was made to Exchange Control for permission to transfer the necessary funds to Noumea and their approval was obtained on the 28th December, 1955. (Schedule "G").

Brown and Broad Ltd., Brisbane were contacted by telephone in relation to fitting the ship and they expressed their ability and willingness to carry out the necessary work. Copies of correspondence (Schedules "H", "I" & "J") are attached hereto.

Mr. Brucelas departed for Noumea on the 26th December, 1955 to supervise the taking over and sailing of the vessel. Considerable difficulty was experienced in bringing a crew from the Philippines and eventually a crew was signed by Brucelas in Noumea and the vessel sailed on the 10th January.

On the 11th January, 1956 Mr.J.Howell called at my office. Mr. Howell is the husband of Juanita Martinez, the partner of Brucelas. The whole matter was explained to him and the following is a precis of the information gained in the conversation.

(a) Mr. Howell held a power of attorney from his wife.

(b) Mr. Howell or his wife knew nothing of the intention to purchase a ship and indicated that the letter of credit was for purchase of cattle C.I.F. and not for any other use.

Exhibits

Defendant's Exhibit "1".

Letter from Acme Credit Services to John Wight & Co.,

14th February, 1956 - continued.

(c) He was suspicious of Mr.Brucelas in that the ship was being purchased in Brucelas' name using funds from the letter of credit.

(d) He produced the partnership agreement between Brucelas & Martinez the salient points of which were :-

(i) The partnership was created for the purchase of cattle - Brucelas supplying the licence, Howell supplying the capital through his wife. Profits to be shared 70% Martinez, 30% Brucelas.

(ii) No partner was to give any undertaking to arrange any business transaction without the consent of the other partner in writing.

(e) He had called on Mr. Gale, General Manager of New Zealand Loan and Mercantile Co., Ltd., who agreed not to issue any credit against the letter of credit without Howell's instructions.

I prevailed on Mr. Howell not to take any drastic action at that stage and he then expressed himself willing to go to Brisbane with me, and if he was satisfied with the ship, and Brucelas would sign same over to the partnership, then he may ratify the arrangements already made by Brucelas.

I introduced Mr. Howell to Mr. Harrington, of Edward Lumley & Sons (N.S.W.) Pty., Ltd., and explained the position to him. My intention was to have underwriters informed of proceedings at that time.

Howell and I departed for Brisbane on the 13th January, 1956. We arranged for berthing of the ship after considerable difficulty and appointed Nixon-Smith Shipping and Wool Dumping Co., Pty., Ltd., as ship's agent. The ship berthed on the 16th January, 1956.

I had the ship surveyed by Captain Herd and Captain Gatt of the Bureau Veritas in conjunction with Captain Wish of the Navigation Department and a representative of Brown and Broad Ltd. The fitting of the vessel was arranged as indicated in a letter obtained from Mr. Hunter of Nixon-Smith (Schedule "K").

Exhibits

Defendant's Exhibit "1".

Letter from Acme Credit Services to John Wight & Co., 14th February, 1956 - continued.

The survey carried out by the Bureau Veritas in Noumea was called for and it was discovered that the boiler and furnaces had to be replaced when the ship arrived in Manilla and not repaired as previously indicated. An estimated cost was obtained by the boiler surveyor of the Bureau Veritas in Brisbane and same was given as not less than A£30,000.

It was further discovered, on a report from the Captain of the ship, that the ship would have to be put in dry dock in Brisbane for the purpose of cleaning the hull, painting same, drawing the tail shaft and renewing the lignum vitea bearings. An estimate of the cost was given as £3,000.

Mr. Howell made the statement that he would not assume this liability and refused to ratify any arrangements made by Brucelas.

Brucelas was in the position that the ship was in his name and he had no money to cover liabilities incurred by the ship in port, crews wages under contract etc. He first expressed the intention to take the ship direct to Manilla but Mr. Hunter advised he would arrest the ship for his expenses and I advised Brucelas I would obtain a writ against same to cover his indebtedness to this Company.

Mr. Brucelas then asked Mr. Hunter could he sell the ship and Mr. Hunter offered same for A£30,000 through his world wide agents. The next day a cable was received from Bendix in New York offering on behalf of their clients, A£25,000 subject to dry-docking and inspection. Brucelas accepted this offer and gave Mr. Hunter a full power of attorney.

Before my leaving Brisbane, Mr. Hunter was in contact with the buyers, (Madrigal & Co. Manilla) and they agreed to purchase without dry-docking and inspection of the vessel.

Mr. Howell expressed a keen desire to continue with the original cattle business and signed an agency agreement, already signed by Brucelas, appointing me as agent for the business in Australia. Arrangements were commenced to charter ships for transporting the cattle. I have on offer for

Exhibits

Defendant's Exhibit "1".

Letter from Acme Credit Services to John Wight & Co.,

14th February, 1956 - continued.

charter the "Nieu Hebrides", "San Miguel" "San Anesto" and the "Philippine Merchant".

Mr. Brucelas departed suddenly for Manilla without my knowledge on the 20th January, 1956 after telling Mr. Hunter that he would obtain A£5,000 in Manilla and remit same to him through consular channels as part payment of his indebtedness in Australia.

Bureau Veritas surveyors and Mr. Hunter, who have had experience in arresting a ship indicated that by doing so it would well mean a protacted procedure because of a foreign person being involved and in addition could well result in a considerably reduced amount being obtained for the ship when prospective buyers realise that the ship must be sold.

At this stage I returned to Sydney in haste and telephoned Mr. Harrington for an interview at the same time giving him a broad outline of the facts. The interview took place on the 23rd January, 1956 between Mr. Harrington, yourself, Mr. Howell and myself and on my stating the facts of the situation Mr. Harrington appointed you officially to act on our behalf and on behalf of the underwriters in the matter.

I announced my willingness and intention to accept your advice and instructions as to future action I should take. I realised I must act as any prudent business man would act if he were uninsured and I elucidated the problem that presented itself to my mind, having been in close contact with all proceedings as at that date.

The first course of action open to me was to arrest the ship. I contended that I could do so because Brucelas had made a firm agreement to sell the ship in Brisbane. This meant the ship could not sail and load cattle in Townsville, thereby relasing credit to repay our loan. Any alternative method of shipping the cattle would have to be by charter or a freight agreement and the freight content of the letter of credit was not sufficient to arrange a charter and/or freight and still allow a balance remaining from the letter of credit to repay our loan. Reducing this first course of action to figures there would appear to be an amount of A£7,107 recoverable by this Company.

Exhibits

Defendant's Exhibit "1".

Letter from Acme Credit Services to John Wight & Co.,

14th February, 1956 - continued.

This amount is computed as follows and in arriving at same I am basing figures on the opinions of the Bureau Veritas experts in Brisbane and Mr. Hunter, men of great experience in shipping and of undoubted integrity.

Sale Price of vessel under arrest			£18,000.
Less:- Brokerage on sale		£ 800.	
Crews wages under contracts made with Brucelas, food etc.		£4000.	
Repatriation of crew to Noumea as per contracts.		£2000.	
Money owing under Mortgage on vessel to Mr. Gordon (N.B. See explanation given later in this letter)		£2000.	
Wharfage at £20 per day plus watchmans wages £3 per day during period of litigation say 3 months		£2093.	£10,893.
	BALANCE		£ 7,107.

I am given to understand that the above expenses must have first call on any proceeds of sale.

The second course of action was to allow the sale already arranged to proceed and make claim on the balance after other creditors had been settled.

The balance under such circumstances appears to be as follows :-

Sale Price (firm)			£25,000.
Less:- Brokerage		£1000.	
Crews wages, food etc.		£4000.	
Repatriation of crew		£2000.	
Mortgage to Mr. Gordon		£2000.	
Nixon Smith & Co. for port dues, expenses etc.		£1000.	
Expenses incurred by myself as agent (See Schedule "L")		£2992.	£12,992.
	BALANCE		£12,008.

Exhibits

Defendant's Exhibit "1".

Letter from Acme Credit Services to John Wight & Co.,

14th February, 1956 - continued.

The figures shown are based on known facts and information given on my seeking same from recognised authorities. Assuming them to represent a close assessment of the position it appeared that the latter alternative was the better one to adopt. Further facts tended to substantiate this, as in the first alternative all creditors would have to participate in the proceeds. The first alternative would also mean legal proceedings against Brucelas with the obvious result that his licence to import cattle into the Philippines would be cancelled.

The latter alternative precludes the necessity for legal proceedings against Brucelas and allows every endeavour to be exercised to proceed with the original business of cattle exporting and so gives Brucelas an earning capacity. The partnership assures me that any such earnings and any balance remaining from letters of credit would be signed over to this Company. If the arrangements for chartering ships eventuate in the near future it is a distinct possibility and my wish that all indebtedness by Brucelas to this Company will be liquidated within the 90 days period of the insurance policy and so preclude any claim under the policy.

It was agreed that I proceed to Brisbane to arrange the latter alternative and I handed to Mr. Hunter letters marked Schedules L. & M, together with receipts, documents etc., to substantiate same. Mr. Hunter proved very co-operative and handed me the documents marked Schedules M and O.

The position of New Zealand Loan and Mercantile Agency can well be derived and assessed by the enclosed copies of correspondence marked Scheduled P. Q. R. & S.

The claim for £2,000 on behalf of Mr. Gordon results from Brucelas finding himself in the position of requiring that amount while in Noumea for expenses, bunkering the ship, ship's stores, harbour expenses etc. He applied to me for the money and I refused to advance same. He then applied to New Zealand Loan and Mercantile Agency Co. Ltd., Townsville for same and they arranged a private loan with a cattleman, Mr. Gordon.

Brucelas gave an undertaking to give a security

Exhibits

over the ship for the amount and the money was remitted through this Company to Noumea. When Brucelas arrived in Brisbane, I introduced him to a Solicitor, Mr. Patterson of O'Mara Patterson & Perrier, and explained the undertaking given by Brucelas. A Bill of Sale was created and registered in Brisbane for the amount of £2,000.

Defendant's Exhibit "1".

Letter from Acme Credit Services to John Wight & Co.,

14th February, 1956 - continued.

I have endeavoured to set out the facts of this matter in a logical sequence and I again reiterate that I would appreciate your guidance and instructions should you consider the course of action taken is not the correct one or if any further action would improve the position.

Yours faithfully,

J. H. TREVIS,

Secretary.

DEFENDANT'S EXHIBIT "1.A" - CABLES BETWEEN EDWARD LUMLEY & SONS (N.S.W.) PTY., LTD., SYDNEY and EDWARD LUMLEY & SONS LTD., LONDON

Defendant's Exhibit "1.A".

Cables between Edward Lumley & Sons (N.S.W.) Pty., Ltd., Sydney and Edward Lumley & Sons Ltd., London.

SCHEDULE "A"

TO LONDON - 7/12/55.

8396 - CAPTARIFA OWNERS NICKEL CO. NOUMEA UNDER OFFER OF SALE TO BRUCELAS PHILIPPINES FOR TRANSPORTATION CATTLE FROM AUSTRALIA TO MANILA STOP NEW ZEALAND LOAN AND MERCANTILE COMPANY WILL FINANCE MOVEMENT OF VESSEL TO AUSTRALIA STOP VESSEL HAS PERMIT FROM BUREAU VERITAS ONE VOYAGE MANILA VIA AUSTRALIA PENDING FURNACE REPAIRS AND WILL HAVE PHILIPPINO CREW STOP OWING CURRENCY RESTRICTIONS NEW OWNER OBTAINING LOAN 26,500 A.C. WHICH REPAYABLE FROM LETTER OF CREDIT ESTABLISHED IN SYDNEY FOR 80,000 WHEN CATTLE LOADED TOWNSVILLE STOP FINANCE HOUSE MAKING LOAN REQUIRE INSURANCE TO PAY 26,500 IF VESSEL NOT LOADED WITHIN NINETY DAYS FROM TRANSFER OWNERSHIP NOUMEA FROM ANY CAUSE UNDERWRITERS TO BE SUBROGATED RIGHT EVENTUAL RECOVERY STOP ANTICIPATED ITINERARY FROM APPROX SALE NOUMEA 20 DECEMBER ARRIVE BRISBANE 27TH FOR INSTALLATION STALLS SALE BRISBANE 11TH JAN. ARRIVE TOWNSVILLE 14TH SALE 18TH APPROX 30 DAYS IN ALL.

Exhibits

Defendant's Exhibit "1.A".

Cables between Edward Lumley & Sons (N.S.W.) Pty., Ltd., Sydney and Edward Lumley & Sons Ltd., London - continued.

FROM LONDON - 8/12/55.

6141 - CAPTARIFA IS IT INTENTION HAVE FURNACE REPAIR DONE AFTER OUR RISK EXPIRED STOP ADVISED INSURED VALUE OF VESSEL.

TO LONDON - 8/12/55.

8401 - CAPTARIFA WE ADVISED BY CAPTAIN KENNEDY WHO ACTING AS AGENTS FOR OWNERS THAT CERTAIN WORK HAS BEEN CARRIED OUT FOLLOWING BUREAU VERITAS QUARTERLY BOILER SURVEY TO ENABLE VESSEL PROCEED MANILA VIA AUSTRALIAN PORTS ON RESTRICTED PERMIT IN RESPECT FURNACES STOP FINAL WORK ON FURNACES WILL BE COMPLETED END THIS VOYAGE AT MANILA STOP MEANTIME PURCHASE HELD UP UNTIL NECESSARY AUSTRALIAN CURRENCY SECURED STOP OUR CLIENTS REQUIRE COVER AS OUTLINED OUR 8396 BEFORE ADVANCING MONEY STOP WE SHALL ASK TO QUOTE FOR HULL POSSIBLY ON VALUE 30,000 STERLING STOP WE ADVISED BRUCELAS WEALTHY AND HIGHLY REGARDED BY NEW ZEALAND LOAN AND MERCANTILE AND THAT HE ARRIVING SYDNEY TOMORROW TO FINALISE DEAL WHICH NOW ABSOLUTELY DEPENDENT UPON YOUR SECURING NECESSARY PROTECTION FOR FINANCE COMPANY STOP WOULD APPRECIATE YOUR REPLYING URGENTLY TOMORROW FRIDAY WITHOUT FAIL.

TO LONDON - 8/12/55.

8402 - IN CASE OUR 8401 NOT CLEAR FINAL REPAIRS FURNACES WILL NOT TAKE PLACE UNTIL VOYAGE IN WHICH WE ARE INTERESTED IS COMPLETED.

FROM LONDON - 9/12/55.

6142 - CAPTARIFA HAVE INDICATION 7½% TO PAY A TOTAL LOSS OF 26.500 IN THE EVENT OF VESSEL NOT COMPLETING LOADING TOWNSVILLE WITHIN NINETY DAYS FROM SAILING FROM NOUMEA FROM ANY CAUSE WHATSOEVER WARRANTED ANIMALS AVAILABLE LOADING AND ALL ARRANGEMENTS FOR CONVERSION VESSEL MADE AT INCEPTION THIS INSURANCE STOP IF RATE ACCEPTABLE WILL ENDEAVOUR TO COMPLETE BUT MARKET VERY RESTRICTED.

TO LONDON - 9/12/55.

8408 - CAPTARIFA CLIENTS FEEL 7½% EXTREMELY EXPENSIVE BUT ACCEPT IN THE HOPE THAT UNDERWRITERS WILL WAIVE WARRANTIES IN VIEW LETTER RECEIVED FROM NEW ZEALAND LOAN CONFIRMING AVAILABILITY ANIMALS AND LETTER FROM REPUTABLE BRISBANE FIRM REGARDING INSTALLATION STALLS STOP CLIENTS FEEL THAT IN VIEW OF

Exhibits

Defendant's Exhibit "1.A".

Cables between Edward Lumley & Sons (N.S.W.) Pty., Ltd., Sydney and Edward Lumley & Sons Ltd., London - continued.

THIS ASSURANCE IN WRITING THAT UNDERWRITERS SHOULD ACCEPT RISK WITHOUT WARRANTIES AS THERE ARE HAZARDS SUCH AS FLOODS, STRIKES ETCETERA WHICH COULD CAUSE DELAY AND EVEN PREVENT LOADING STOP HOWEVER BRUCELAS ARRIVING LATE TODAY WHEN IT IS HOPED FINAL ARRANGEMENTS WILL BE MADE BUT MEANTIME SUPPOSE YOU ARRANGE BEST POSSIBLE TERMS STOP IF DEAL CONCLUDED ANTICIPATE SENDING ORDER ON VESSEL FOR 12 MONTHS AND HOPEFUL SECURING INSURANCE ON CATTLE STOP MANY THANKS YOUR EFFORT.

FROM LONDON - 12/12/55.

6144 - CAPTARIFA HAVE PLACED 18,000 SO FAR BUT INCLUDING WARRANTIES AS QUOTED STOP DOES STRIKE MASTER MARINERS COASTAL VESSELS AFFECT THIS RISK STOP UNDERSTAND PRICE FORBES ENGINEERING ARRANGE INSURANCE ON CATTLE.

TO LONDON - 12/12/55.

8409 - CAPTARIFA AMOUNT TO BE ARRANGED NOW 29,000 A.C. AS ORIGINAL FIGURE DID NOT INCLUDE PREMIUM STOP MASTER MARINERS STRIKE ONLY AFFECTS INTERSTATE SHIPPING AS OVERSEAS VESSELS EMPLOY PILOTS WE MUST HAND OUR COVER NOTE TO CLIENT TOMORROW MORNING AS THEY WILL NOT CONCLUDE DEAL UNTIL FULL AMOUNT ARRANGED PLEASE ADVISE COMPLETION URGENTLY.

FROM LONDON - 13/12/55.

6146 - CAPTARIFA VERY DIFFICULT HAVE PLACED 25,500 SO FAR WILL COMPLETE TOMORROW BUT ESSENTIAL WE EXCLUDE INSOLVENCY OF ASSURED CONFIRM.

TO LONDON - 13/12/55.

8412 - CAPTARIFA CANNOT UNDERSTAND EXCLUSION INSOLVENCY ASSURED AS ASSURED IS LOCAL FINANCE HOUSE STOP IF YOU MEAN INSOLVENCY BRUCELAS OWNER OF VESSEL SURELY FACT LETTER CREDIT 80,000 ACTUALLY ESTABLISHED IN SYDNEY ALSO LETTER CREDIT 75,000 FOR NEXT VOYAGE SUFFICIENT EVIDENCE BRUCELAS SOLVENCY PLUS FACT THAT NEW ZEALAND LOAN ARE FINANCING MOVEMENT VESSEL OUR VOYAGE STOP NEW ZEALAND LOAN ARE SELLING CATTLE TO BRUCELAS WHO CAN OBTAIN PHILIPPINE CURRENCY FOR CATTLE BUT NOT FOR PURCHASE OF SHIP FUNDS FOR WHICH BEING PROVIDED BY OUR CLIENT WHO IS LOADED ADVISE URGENTLY.

Exhibits

Defendant's Exhibit "1.A".

Cables between Edward Lumley & Sons (N.S.W.) Pty., Ltd., Sydney and Edward Lumley & Sons Ltd., London - continued.

TO LONDON - 13/12/55.

8415 - FURTHER OUR 8412 HAVE RECEIVED CHEQUE FOR PREMIUM BASED ON 29,000 IMPERATIVE WE ISSUE COVER NOTE TOMORROW MORNING ON TERMS PREVIOUSLY INDICATED WITHOUT FURTHER WARRANTIES OR AMENDMENTS.

FROM LONDON - 14/12/55.

6147 - CAPTARIFA ARRANGED WITHOUT ADDITIONAL EXCLUSION ADVISE SAILING DATE NOUMEA.

Defendant's Exhibit "1.B".

Document addressed to P. Simons and J.H. Trevis by S. Broucelas.

13th December, 1955.

DEFENDANT'S EXHIBIT "1.B".
DOCUMENT ADDRESSED TO MESSRS. P. SIMONS and J. H. TREVIS BY S. BROUCELAS.

Messrs. P. Simons
and J.H. Trevis,
228, Liverpool Street,
SYDNEY.

13th December, 1955.

Dear Sirs,

In consideration of the loan by you to me of the sum of £23,000 (the receipt whereof I hereby acknowledge), I agree:

(a) to leave with you an irrevocable letter addressed to The New Zealand Loan and Mercantile Agency Co., Limited authorising the sum of £29,250 to be paid to Acme Credit Services out of the proceeds of two Letters of Credit.

(b) I hereby declare that I have full authority to authorise The New Zealand Loan and Mercantile Agency Co., Limited to make the payment referred to and

(c) I acknowledge that if the whole or any portion of the said amount of £29,250 is

not paid to Acme Credit Services pursuant to this authority I shall be personally responsible and that the firm of Broucelas and Martinez shall also be jointly responsible with me for the payment of the said amount of £29,250 or such portion thereof as is not paid from the two Letters of Credit referred to.

Yours faithfully,

(Sgd.) SALVADOR BOUCELAS

Exhibits

Defendant's Exhibit "1.B".

Document addressed to P. Simons and J.F. Trevis by S. Broucelas.

13th December, 1955 - continued.

DEFENDANT'S EXHIBIT "1.C".
DOCUMENT ADDRESSED TO NEW ZEALAND LOAN & MERCANTILE AGENCY CO., LTD., SYDNEY

Defendant's Exhibit "1.C".

Document addressed to New Zealand Loan & Mercantile Agency Co., Ltd., Sydney.

December, 1955.

December, 1955.

The Manager,
The New Zealand Loan and
Mercantile Agency Co.
Limited,
SYDNEY.

Dear Sir,

I hereby irrevocably authorise your Company to pay Acme Credit Services the sum of £29,250 from the proceeds of a Letter of Credit established for 160,000 Dollars by Messrs. Broucelas and Martinez through the Philippines National Bank and the Commercial Bank of Australia Limited, Townsville Branch, and if the full proceeds of the Letter of Credit are not sufficient to cover the said amount of £29,250 then I hereby irrevocably authorise your Company to pay any balance required from the proceeds of a further Letter of Credit for 155,000 Dollars established by Messrs. Broucelas and Martinez through the same two Banks.

Yours faithfully,

Exhibits

Defendant's Exhibit "1.D".

Letter New Zealand Loan & Mercantile Agency Company Limited to Acme Credit Services.

13th December, 1955.

DEFENDANT'S EXHIBIT "1.D"
LETTER NEW ZEALAND LOAN & MERCANTILE AGENCY COMPANY LIMITED TO ACME CREDIT SERVICES

NEW ZEALAND LOAN & MERCANTILE AGENCY COMPANY LIMITED,
38, Bridge Street,
Sydney.
13th December, 1955.

The Manager,
Acme Credit Services,
220, Liverpool Street,
SYDNEY.

Dear Sir,

re Broucelas & Martinez

We have received from Mr. Broucelas a letter dated 13th December, 1955 requesting us to pay to your Company the sum of £29,250 from the proceeds of a letter of Credit established for 160,000 dollars in favour of our Company and, if necessary, from a further Letter of Credit for 155,000 dollars similarly established.

This note is to place on record the fact that the order signed by Mr. Broucelas, as above, is held by us for the necessary attention and we are prepared to make this payment from any credit arising in our books, provided there is no legal impediment to our doing so.

We should add that the only Letter of Credit at the moment in our possession is one for 160,000 United States dollars expiring 31st December, 1955, but we are informed by Mr. Broucelas that he is arranging an extension of this and for the establishment of a second Letter of Credit for 155,000 United States dollars.

Yours faithfully,

Manager for New South Wales.

DEFENDANT'S EXHIBIT "1.E".
LETTER J.H.TREVIS TO SECRETARY EXCHANGE CONTROL, SYDNEY.

Exhibits

Defendant's Exhibit "1.E".

Letter J.H. Trevis to Secretary Exchange Control, Sydney

14th December, 1955.

RHT/DP.
14th December, 1955.

The Secretary,
Exchange Control,
Commonwealth Bank of Australia,
HEAD OFFICE,
SYDNEY. ATTENTION MR.GORDON.

Dear Sir,

We were approached by Mr. Brucelas of Brucelas and Martinez of 62 Colayco, Pasey City, via Manilla, on the 6th instant to advance the sum of Twenty three thousand pounds (£23,000) to him for the purchase of a boat named the "Cap Terifa". The purchase was being handled by Captain W. L. Kennedy, Ship's Broker, 63 Pitt Street, Sydney and at the time it was assumed he had made arrangements with you to have the funds remitted in French francs to Noumea. The boat is to be used for the transport of cattle purchased in Australia from Townsville to the Philippine Islands.

Brucelas and Martinez have established two irrevocable letters of credit in favour of the New Zealand Loan and Mercantile Agency Co. Ltd., Townsville Branch, for the amounts of 180,000 dollars and 150,000 dollars respectively. Mr. Brucelas has signed an irrevocable letter authorising payment of the amount of the loan plus interest by New Zealand Loan and Mercantile Agency Co., Ltd., from the proceeds of the letters of credit. This authority has been acknowledged by them. The proceeds of the letters of credit are available on the loading of the cattle at the port of shipment, Townsville. We have insured against loss from any cause whatsoever should the cattle not be loaded within ninety days from date of purchase of the boat.

We have been appointed sole Australian agents for Brucelas and Martinez under an agency agreement dated the 13th instant. Their permit is at present for the shipment of 3,000 head of cattle per month and if this quota is fully utilized the purchases would be approximately 6,500,000 dollars per year.

Exhibits

Defendant's Exhibit "1.E".

Letter J.H.Trevis to Secretary Exchange Control, Sydney.

14th December, 1955 - continued.

If it is in order for us to make an application for remittance of the necessary funds in francs to Noumea then we hereby do so, and in making the application we feel sure that in view of the benefit to Australia of this large dollar export trade, we will receive your sympathetic and urgent consideration to same.

The owners of the boat are Societe le Nickel who have an office in Noumea and the money will be deposited in the Comptoir National d'Escompte de Paris, 4 Wynyard Street, Sydney.

We will be pleased to submit any further information you may require in the consideration of this matter.

Yours faithfully,
J. H. TREVIS,
Secretary.

Defendant's Exhibit "1.F".

DEFENDANT'S EXHIBIT "1.F".
APPLICATION FOR FOREIGN CURRENCY

Application for Foreign Currency.

15th December, 1955.

Exchange Control Form A1.

AUSTRALIA.

APPLICATION FOR FOREIGN CURRENCY
(Other than for Travelling).

To National Bank of Australasia Ltd.,
134, Liverpool Street, Sydney.

We, Acme Credit Services of 220, Liverpool Street, Sydney hereby apply for Foreign Currency amounting to A£23,000 in francs in the form of Telegraphic transfer for the purpose of purchase of boat "Cap Tarifa" - purchase price to be refunded from irrevocable letter of credit.(see documents attached).

We declare that -

(a) the final destination of the said Foreign Currency is NOUMEA.

(b) we have not made any other application for Foreign Currency for the purpose stated.

(c) we neither own nor have any interest in any Foreign Currency except as may have been obtained for other purposes under Part II of the Banking (Foreign Exchange) Regulations, or as stated on the reverse hereof.

ACME CREDIT SERVICES.
(SIGNATURE OF APPLICANT)

DATED 15th December, 1955.

Exhibits

Defendant's Exhibit "1.F".

Application for Foreign Currency.

15th December, 1955 - continued.

DEFENDANT'S EXHIBIT "1.G".
LETTER EXCHANGE CONTROL SUPERINTENDENT TO ACME CREDIT SERVICES

Defendant's Exhibit "1.G".

Letter Exchange Control Superintendent to Acme Credit Services.

Commonwealth Bank of Australia,
SYDNEY.
Cnr.Pitt Street & Martin Place.
28th December, 1955.

28th December, 1955.

The Secretary,
Acme Credit Services,
220-228 Liverpool Street,
EAST SYDNEY, N.S.W.

Dear Sir,

EXCHANGE CONTROL
BRUCELAS AND MARTINEZ - PHILIPPINES.

We refer to your letter of 14th December, reference: RFT/DP, and to our recent conversations concerning the above-named.

We note from your letter that an amount of £23,000 has been advanced to Mr. Brucelas of Brucelas and Martinez to enable him to purchase a ship, and in this connection we would mention that Regulation 8 of the Banking (Foreign Exchange) Regulations, in effect, provides that a person shall not make or receive any payment on behalf of a non-resident of the Sterling Area, or place any sum to the credit of such person except with the approval of the Commonwealth Bank of Australia. You will appreciate, therefore, that any financial transactions which are effected on behalf of persons resident outside the Sterling Area, require our approval.

Exhibits

Defendant's Exhibit "1.G".

Letter Exchange Control Superintendent to Acme Credit Services.

28th December, 1955 - continued.

However, as repayment of the loan will be made to you, within 90 days, of the purchase of the ship, by the New Zealand Loan and Mercantile Agency Co., Ltd., from funds arising from a U.S. dollar Letter of Credit, the arrangements in respect of the loan may, in this instance, be regarded as satisfactory.

At the same time, we note that your Company has been appointed the Australian agents of Messrs. Brucelas and Martinez and you will, of course, appreciate from the foregoing that any financial transactions which you may wish to undertake on their behalf in this connection, will also require our approval. However, we are agreeable for you to open an account in your books in the name of Brucelas and Martinez and to pass entries to the account in respect of funds received from the New Zealand Loan & Mercantile Agency Co., Ltd. in terms of the arrangements advised to us. However, the funds held on behalf of Messrs. Brucelas and Martinez should not be used in any way, without prior Exchange Control approval. We might add that if you wish, we would be prepared to consider an application to issue you with a "blanket" approval to allow you to carry out certain transactions, such as the investment of the funds on their behalf, without referring specific applications to us.

Yours faithfully,

For the Superintendent,
Exchange Control.

Defendant's Exhibit "1.H".

Letter Brown & Broad Limited Brisbane to J. H. Trevis.

15th December, 1955.

DEFENDANT'S EXHIBIT "1.H".
LETTER BROWN & BROAD LIMITED, BRISBANE to J. H. TREVIS.

Brown & Broad Ltd.,
Breakfast Creek Road,
Newstead, N.1. Brisbane.

RD:PD.

15th December, 1955.

AIR MAIL

Mr. J. Trevis,
C/- 226, Liverpool Street,
SYDNEY.

Dear Sir,

Further to our telephone conversation in connection with the fitting out of a ship for the carriage of cattle.

Exhibits

Defendant's Exhibit "1.H".

Letter Brown & Broad Limited Brisbane to J. H. Trevis.

15th December, 1955 - continued.

As we carry out considerable work in the fitting of ships in Brisbane, and as you would be aware of the uncertainty of their movements, it is impossible for us to visualise what ships will be in Port requiring our services at that time; but we confirm our advice to you that on present indications we could carry out this work approximately the first week in January.

In connection with a quotation for the job, we regret we cannot quote as you will understand that we have not fitted this ship previously, and do not know what work is entailed nor the amount of material required.

Thanking you for the enquiry.

Yours faithfully,
BROWN & BROAD LTD.

Sales Manager.

DEFENDANT'S EXHIBIT "1.I".
LETTER J.H. TREVIS to BROWN & BROAD LTD.

Defendant's Exhibit "1.I".

Letter J.H.Trevis to Brown & Broad Ltd.

21st December, 1955.

JMT/DP.

21st December, 1955.

The Secretary,
Brown & Broad Ltd.,
Breakfast Creek Road,
NEWSTEAD, N.1.
BRISBANE.

Dear Sir,

ATTENTION MR. BOAL

We are in receipt of your letter dated the 15th instant and now confirm our telephone conversation of today's date.

The "Cap Tarifa" will arrive in Brisbane in the first week in January, 1956, and we note you have booked same in for the purpose of fitting cattle stalls.

So that you may give us a firm quote we are obtaining a plan of the boat and we should have same to forward to you within a matter of days. In the meantime we give the following information if it will be of assistance to you.

Exhibits

Defendant's Exhibit "1.I".

Letter J.H.Trevis to Brown & Broad Ltd.

21st December, 1955 - continued.

"Cap Tarifa"

Gross Weight	2177 tons
Dead weight	3250 tons
Length overall	281'7"
Breadth Extreme	39'7"
Decks	One.

The payment for such fittings as required will be paid for by New Zealand Loan and Mercantile Agency Ltd., but please forward your quotation direct to ourselves when in a position to do so.

Yours faithfully,

J.H. TREVIS,
Secretary.

Defendant's Exhibit "1.J".

Letter Brown & Broad Ltd., to J.H.Trevis.

30th December, 1955.

DEFENDANT'S EXHIBIT "1.J".
LETTER BROWN & BROAD LTD., to J.H.TREVIS

RD.PD.

AIR MAIL

Brown & Broad Ltd.,
Breakfast Creek Road,
Newstead, N.1. Brisbane.

30th December, 1955.

Mr.J.H.Trevis,
226-228 Liverpool Street,
EAST SYDNEY, N.S.W.

Dear Sir,

We acknowledge receipt of your letter of the 21st instant giving certain details of the ship "Cap Tarifa", and that you are forwarding a plan of the boat.

As mentioned in our letter of the 15th December, the work on this ship could be carried out, but we emphasize again that we are unable to give firm quote for the job.

Yours faithfully,

BROWN & BROAD LTD.,

Sales Manager.

Exhibits

DEFENDANT'S EXHIBIT "1.K".
LETTER FROM NIXON-SMITH SHIPPING & WOOL DUMPING CO., PTY., LTD.

Defendant's Exhibit "1.K".

Letter from Nixon-Smith Shipping & Wool Dumping Co., Pty. Ltd.

20th January, 1956.

THE NIXON-SMITH SHIPPING & WOOL DUMPING CO., PTY., LTD.,
BRISBANE.
20th January, 1956.

TO WHOM IT MAY CONCERN

This is to certify that the steamship "Cap Tarifa" arrived at Brisbane on Monday 16th January 1956 and berthed at Nixon-Smith Wharf, Circular Quay, Brisbane.

Since the vessel's arrival, conferences have taken place between the Owner of the vessel Salvador BRUCELAS, Surveyor representing Bureau Veritas, a Surveyor representing the Commonwealth Navigation Department, a representative of Brown & Broad Ltd., and others, concerning the fitting up of the vessel for the carriage of cattle. Detailed measurements of the vessel have been taken and the representative of Messrs. Brown & Broad expressed their readiness and ability to carry out the necessary fittings to enable the vessel to load cattle.

Yours faithfully,
E.R.HUNTER,
MANAGING DIRECTOR.

DEFENDANT'S EXHIBIT "1.L".
LETTER J.H. TREVIS TO NIXON-SMITH SHIPPING & WOOL DUMPING CO., PTY., LTD.

Defendant's Exhibit "1.L".

Letter J.H.Trevis to Nixon-Smith Shipping & Wool Dumping Co. Pty. Ltd.

21st January, 1956.

226, Liverpool St.,
EAST SYDNEY.
21st January, 1956.

Mr.R.Hunter,
The Nixon-Smith Shipping
& Wool Dumping Co. Pty. Ltd.,
Maritime Buildings,
Circular Quay,
BRISBANE.

Dear Sir,

RE BRUCELAS - CAPTARIFA

I am the official agent for Mr. Brucelas for the purpose of transacting business for the purchase and shipment of cattle from Townsville to

Exhibits

Defendant's Exhibit "1.L".

Letter J.H.Trevis to Nixon-Smith Shipping & Wool Dumping Co. Pty. Ltd.

21st January, 1956 - continued.

Manila. The agency agreement is enclosed for your information and inspection.

I have advanced certain money as such an agent for the purpose of moving the ship "Cap Tarifa" to transport the said cattle. It was arranged that repayment be made from an irrevocable letter of credit already established, the funds of which were to be realised when the cattle were loaded at Townsville.

It is to my knowledge that the ship cannot proceed to Townsville to effect the loading of cattle and that Mr. Brucelas has instructed you to sell the ship in the Brisbane River.

As ships agent and his power of attorney I therefore request you to recognise the attached claim for my expenses in direct relationship to the ship and allocate the necessary amount to me as first claim against the proceeds of sale after your own liabilities have been satisfied.

I trust your power of attorney will enable you to do this otherwise I am left with no alternative but to issue a writ against the ship for recovery of the indicated amount.

Receipts and cancelled cheques are appended which after being sighted by you are to be returned to me.

Yours faithfully,
J.H. TREVIS.

13.12.55	Brokerage on sale of boat to Cap. Kennedy	£	562.10. 0
	Balance between amount owing and amount recoverable under Insurance Policy		250. 0. 0
21.12.55	Air fares, hotel expenses for Brucelas		
23.12.55	Captain and Engineer, Sydney to Noumea		300. 0. 0
	Forward	£	1,112.10. 0

		Forward	£ 1,112.10. 0
5. 1.56	Edward Lumley & Sons - Harbour Insurance on "Cap Tarifa" Noumea	29. 9. 9	
6. 1.56	Clayton, Utz & Company legal fees for creation of Agency	5. 5. 0	
9. 1.56	Edward Lumley & Sons - Insurance "Cap Tarifa"	385.14. 9	
9. 1.56	Maurice Pellitier as Agents for Societe le Nickel - bunkering dues etc.	751. 0. 0	
13. 1.56	Expenses trip Brisbane re berthing "Cap Tarifa"	150. 0. 0	
16. 1.56	Advance Nickson Smith re docking expenses	200. 0. 0	
19. 1.56	Cash loan Brucelas - Brisbane	10. 0. 0	
19. 1.56	O'Mara, Patterson & Perrier legal expenses for Bill of Sale on "Cap Tarifa" etc.	47.10. 0	
Several cables and telephone calls to Manilla & Noumea etc., say		300. 0. 0	
		£ 2,991. 9. 6	

Exhibits

Defendant's Exhibit "1.L".

Letter J.H.Trevis to Nixon-Smith Shipping & Wool Dumping Co. Pty. Ltd.

21st January, 1956 - continued.

Exhibits

Defendant's Exhibit "1.M".

Letter J.H.Trevis to Nixon-Smith Shipping & Wool Dumping Co. Pty. Ltd.

24th January, 1956.

DEFENDANT'S EXHIBIT "1.M".
LETTER J.H. TREVIS TO NIXON-SMITH SHIPPING & WOOL DUMPING CO., PTY., LTD.

JHT/DP.

24th January, 1956.

Mr. R. Hunter,
The Nixon Smith Shipping & Wool Dumping Co., Pty., Limited,
Maritime Buildings,
Circular Quay,
BRISBANE.

Dear Sir,

Re S. BRUCELAS - "CAP TARIFA"

I refer to our many conversations during my recent visit to Brisbane and in particular to the fact you are the above ship's agent and hold a power of attorney signed by Mr. Brucelas.

Our main transaction with Mr. Brucelas was covered by an Insurance Policy and now that Mr. Brucelas has accepted a firm offer for the sale of the boat at Brisbane it is obvious the boat cannot proceed to Townsville and complete the original arrangements whereby cattle would be loaded and funds negotiated from an irrevocable letter of credit to satisfy money lent to Mr.Brucelas for the purchase of the boat.

In spite of the insurance policy it is encumberent on me to act as a normal prudent business man would act if he were uninsured. There seems to be two courses of action open to me as follows:-

(a) To take out a Writ against the ship. If this course of action was taken it could well upset the two lucrative offers for the boat which I understand are firm offers for the boat which I understand are firm offers for the following amounts -

1st offer. £25,000 Australian subject to inspection on dry docking. This is the first offer received by you and the one accepted by Mr. Brucelas.

2nd offer. £23,000 Sterling where is, as is.

Exhibits

Defendant's Exhibit "1.M".

Letter J.H.Trevis to Nixon-Smith Shipping & Wool Dumping Co. Pty. Ltd.

24th January, 1956 - continued.

(b) If the Power of Attorney given to you by Mr. Brucelas enables you to do so, to have you officially recognise our claim for £29,000 and have the balance of sale price transferred to us for an amount not exceeding our claim.

I am being guided in this matter by the Bureau Veritas experts in Brisbane who have wholly indicated that the firm offers held by you is considerably greater than the amount that could be realised should I force a sale by issuing a Writ against the ship.

If it is possible I therefore elect the latter of the above alternatives, and by so doing it seems that Mr. Brucelas is thereby given the opportunity to raise further funds in an endeavour to liquidate his indebtedness.

I feel by taking this action I am doing my utmost to protect underwriters in this matter but should the course of action nominated not be practical I am left with no alternative but to issue a Writ against the ship.

Documents proving the indebtedness by Mr. Brucelas are enclosed and after sighting same it would be appreciated if they could be returned to this Company.

Yours faithfully,

J. H. TREVIS.

Secretary.

Exhibits

Defendant's Exhibit "1.N".

Letter R.Hunter to J.H. Trevis.

26th January, 1956.

DEFENDANT'S EXHIBIT "1.N". LETTER R. HUNTER TO J.H. TREVIS

Maritime Buildings,
Circular Quay,
BRISBANE.
26th January, 1956.

J.H.Trevis, Esq.,
Secretary,
Acme Credit Services,
226, Liverpool Street,
SYDNEY.

Dear Sir,

s.s. "CAP TARIFA"

I have for acknowledgment your letter of 21st instant wherein you enclose a list of expenditure incurred by you in connection with the above vessel amounting to £2,991.9.6.

Your attention is drawn to the following amounts for which I have seen no vouchers and am therefore unable to verify their correctness.

13/1/56	"Expenses Trip Brisbane" etc.	£150. 0. 0
19/1/56	"Cash Loan Brucelas Several cables" etc.	10. 0. 0 300. 0. 0

It may be that further evidence of the payment of these amounts will be required before liability is accepted and at this juncture these items must remain in abeyance.

The claim for £5.5.0. legal expenses to Clayton Utz & Co., should, in my opinion, be borne by your goodself as you are the beneficiary under the Agreement.

The balance amounting to £2,526.4.6. appears to be in order as having been paid to or authorised by Salvador Brucelas and on presentation of certified accounts with supporting vouchers the sum of £2,526.4.6. will be recognised by me as a debt due in respect of the vessel.

Yours faithfully,

R. HUNTER

AS ATTORNEY FOR SALVADOR BRUCELAS.

DEFENDANT'S EXHIBIT "1.0".
LETTER R.HUNTER TO ACME CREDIT SERVICES

Exhibits

Defendant's Exhibit "1.0".

Letter R.Hunter to Acme Credit Services.

26th January, 1956.

26th January, 1956.

The Secretary,
Acme Credit Services,
SYDNEY.

Dear Sir,

s.s. "CAP TARIFA"

I am in receipt of your letter of 24th instant wherein you claim the sum of £29,000 purporting to be due to you by Salvador Brucelas in respect of the above vessel.

I have had the opportunity of perusing vouchers, cheque butts and other relative documents and am of the opinion that Salvador Brucelas is indebted to your firm for the amount claimed.

The steamer has been sold at Brisbane and as Attorney for the said Salvador Brucelas I now undertake to pay to your firm such sum of money as remains in my hands after all other claims, debts and liabilities incurred in respect of the "CAP TARIFA" have been paid in full, such payment to you not to exceed the amount of £29,000.

This undertaking is given expressly on the understanding that neither your firm or any other organisation acting under your instructions or subrogation of rights will take any other action against the "CAP TARIFA" for the recovery of the amount due.

Yours faithfully,

R. HUNTER.

AS ATTORNEY FOR SALVADOR BRUCELAS.

Exhibits

Defendant's Exhibit "1.P".

Letter New Zealand Loan & Mercantile Agency Company Limited to Acme Credit Services.

12th December, 1955.

DEFENDANT'S EXHIBIT "1.P".
LETTER NEW ZEALAND LOAN & MERCANTILE AGENCY CO., LTD., TO ACME CREDIT SERVICES

NEW ZEALAND LOAN & MERCANTILE AGENCY COMPANY LIMITED, TOWNSVILLE.

12th December, 1955.

Acme Credit Service,
226, Liverpool Street,
EAST SYDNEY.

Dear Sirs,

Further to our telephone conversation of today's date regarding the proposition for the purchase of the vessel "Cap Tarifa" for cattle trading with the Philippines on account of Brucelas & Martinez Co., 818 Ilaya Street, Manila, Philippines, as requested we enclose copy of the original Letter of Credit and subsequent amendment. We have also been informed by Mr. Brucelas that he has received a cable advice from the Philippines to the effect that the expiry date of the Letter of Credit has now been extended to 29th February, 1956.

You will be fully conversant with the proposition, and it would be the endeavour of this Company and Mr. Brucelas to utilise the funds of this Letter of Credit to the fullest extent.

With regard to your suggestion that the New Zealand Loan & Mercantile Agency Company Limited guarantee that you will be repaid £29,000 from the Letter of Credit following the first shipment, you will appreciate that the factors involved preclude the possibility of the Company's guaranteeing this amount.

We submit for your consideration a summary of how the position may work out after the first shipment of 900 head of cattle -

900 cattle at 16 cents per lb. c.i.f. Manila average liveweight 1,100 lbs. recoverable from Letter of Credit by sight drafts on presentation of shipping

Exhibits

Defendant's Exhibit "1.P".

Letter New Zealand Loan & Mercantile Agency Company Limited to Acme Credit Services.

12th December, 1955 - continued.

	documents		£70,434. 0. 0
	Cost of cattle - 900 head at 7 cents per lb. f.o.b. live-weight 1,100 lbs.	£30.600.0.0.	
	Estimated cost of re-fitting vessel with cattle stalls - 900 at £7 per head	6,300.0.0.	
10	Estimated cost of fodder - 50 tons at £22 per ton	1,100.0.0.	
	Estimated cost of bunkers ex Townsville - 370 tons at £4/5/2 per ton	1,576.0.0.	
	Insurance on cattle	2,000.0.0.	
	Harbour Dues, provedoring, etc.	1,000.0.0.	
20	Contingencies	500.0.0.	
	Estimated balance available after first shipment	27,358.0.0.	
		£70,434.0.0.	£70,434. 0. 0

These figures have been computed on to-day's exchange rate of 2.2489 dollars to the £1. On this rate of exchange the Letter of Credit of 160,000 dollars would be worth £71,000.

From the above figures you will note that there
30 would be approximately £1,600 outstanding, but you will appreciate that our estimate of insurance on cattle, Harbour Dues and provedoring, may be higher than the actual cost; furthermore, the weight of the cattle could be in excess of an average weight of 1,100 lbs., consequently we would be able to secure the full Letter of Credit of £71,000. In this event the full amount of £29,000 would be available for repayment.

The New Zealand Loan & Mercantile Agency Co.
40 has informed Mr. Brucelas that if he is able to arrange finance for the cost of the vessel this Company would be prepared to advance funds for re-fitting with cattle stalls, fodder, bunkers, insurance, Harbour Dues and provedoring, if everything

Exhibits

Defendant's Exhibit "1.P".

Letter New Zealand Loan & Mercantile Agency Company Limited to Acme Credit Services.

12th December, 1955 - continued.

is satisfactory when the vessel arrives in Brisbane. The report on the vessel does not presuppose that everything would not be satisfactory.

As regards the private loan, when funds are available from the Letter of Credit we would be prepared to pay over any funds that may ultimately stand to the credit of Mr. Brucelas in our books if he gives the Company a written authority to do so. Mr. Brucelas is prepared to give this authority and it would be desirable if your receipt for the amount involved would be acceptable by Mr. Brucelas that repayment had been effected. We would not, however, be prepared to give any undertaking that this Company would in any way be responsible for the loan.

We have advised Mr. Brucelas to this effect on the telephone subsequent to our conversation this afternoon. It was pointed out that private funds could be secured for Mr.Brucelas against the mortgage of the vessel to cover the difference between the balance available from the Letter of Credit and the £29,000 that is required by you from this first shipment.

It is impossible to shade the price any lower than 7 cents as we would then be unable to secure cattle as the price would then be lower than present ruling rates in this area.

We can readily appreciate your position and would ask your favourable consideration to the proposition submitted by Mr. Brucelas as it would be the endeavour of this gentleman and this Company to secure the maximum repayment on your account. It would be absolutely certain that full repayment would be effected after the second shipment as Brucelas & Martinez Co., are opening a further Letter of Credit for 155,000 dollars and would have in excess of £30,000 available in this country after the second shipment and would be able to liquidate fully any outstanding debt. It is suggested, therefore, that Mr. Brucelas guarantee repayment of the £29,000 after the first shipment and we on our part would endeavour to secure the maximum balance and assist him in every way to secure the private finance if any that would be required to meet your demand.

Exhibits

Whilst we realise business is without sentiment, the commencement and continuity of business with the Philippines would be of particular benefit to the cattle industry in Queensland and the intake of dollars to the country generally.

We trust that you will be able to assist Brucelas & Martinez Co., to commence this business.

Yours faithfully,

STOCK & LAND DEPT.

Defendant's Exhibit "1.P".

Letter New Zealand Loan & Mercantile Agency Company Limited to Acme Credit Services.

12th December, 1955 - continued.

DEFENDANT'S EXHIBIT "1.Q".
LETTER NEW ZEALAND LOAN & MERCANTILE AGENCY COMPANY LTD., TOWNSVILLE TO ACME CREDIT SERVICES.

Defendant's Exhibit "1.Q".

Letter New Zealand Loan & Mercantile Agency Company Limited to Acme Credit Services.

14th December, 1955.

NEW ZEALAND LOAN & MERCANTILE AGENCY COMPANY LIMITED, TOWNSVILLE.

14th December, 1955.

Mr. Trevis,
Acme Credit Services,
226, Liverpool Street,
EAST SYDNEY, N.S.W.

Dear Mr. Trevis,

Further to our recent telephone conversations, we were pleased to learn from Mr. Brucelas that you had advanced to him the necessary funds for the purchase of the vessel "Cap Tarifa" to engage in the shipping of cattle to the Philippines. We understand from Mr. Brucelas that it is expected the vessel should be delivered in Brisbane within about 14 days from yesterday, to commence refitting.

You will have received our letter setting out what this Company is prepared to do to assist Mr. Brucelas, and no doubt you will take the necessary steps with Mr. Brucelas regarding his letter of authority to us to pay to you such monies as may ultimately stand to the credit of his account in our books from the present Letter of Credit and subsequent Letter of Credit for 155,000 dollars which he informed the writer will be opened immediately the vessel arrives in Brisbane.

Exhibits

Defendant's Exhibit "1.Q".

Letter New Zealand Loan & Mercantile Agency Company Limited to Acme Credit Services.

14th December, 1955 - continued.

We discussed with Mr.Brucelas the possibility of amending the present letter of Credit to read - "amount about 160,000 dollars". The inclusion of the word "about" will permit us to draw up to 10% more or less than the present Letter of Credit, which would be particularly helpful in eliminating any possibility of delay in negotiating the Letter of Credit and could be utilised possibly to recoup the full amount of advances made to Brucelas & Martinez Co., by yourself and this Company in establishing the business.

Referring to your advice, and subsequent confirmation from Mr. Brucelas, that you have been appointed his agent in Australia, and that you will advise us regarding shipments and we shall quote to you the price, we feel that if we are to assist Mr. Brucelas to the extent outlined in our letter it is not unreasonable to assume that this Company will have the franchise for the supply of cattle to Brucelas & Martinez Co. We had agreed with Mr. Brucelas that our price would be 8 cents f.o.b.and that he would advise us from time to time as would suit his purpose as to what quotation he would require as a c.i.f. basis for the purpose of opening a Letter of Credit.

We have the cattle available for the first shipment and no doubt Mr. Brucelas will be expediting the contract as regards refitting etc., and it is thought that the first shipment may possibly get away between the 18th and 25th January provided the present rail and shipping position does not deteriorate.

We feel that it would not be unreasonable that a firm agreement between yourself, Brucelas & Martinez Co., and this Company, as regards the manner and basis on which we shall operate, should be made that would be in the mutual interests of all concerned.

The commencement of this business will be a boon to the industry in this area and Mr. Brucelas is assured of a good supply of suitable cattle for his requirements. It would be our endeavour to develop the potential of this business.

You will appreciate that it is essential these points be cleared before the arrival of the vessel in Brisbane so that all concerned will understand what is expected of them in the continuity of this business.

Yours faithfully,

Manager.

Exhibits

Defendant's Exhibit "1.R".

Letter New Zealand Loan & Mercantile Agency Company Limited to Acme Credit Services.

29th December, 1955.

DEFENDANT'S EXHIBIT "1.R".
LETTER NEW ZEALAND LOAN & MERCANTILE AGENCY COMPANY LTD., TO ACME CREDIT SERVICES

NEW ZEALAND LOAN & MERCANTILE AGENCY CO. LIMITED
Townsville,

29th December, 1955

Acme Credit Services,
226, Liverpool Street,
EAST SYDNEY.

Dear Mr. Trevis,

Re: Shipments of Cattle to Philippines.

Further to our various telephone conversations of recent weeks regarding the above business, it is pleasing to assume that with no unforeseen circumstances the vessel "Cap Tarifa" should be ready to sail from Noumea about 2nd January next to Brisbane to be refitted for the cattle trade, with the intention of loading 900 cattle at Townsville before the end of January.

To ensure the smooth co-ordination of this first shipment, we would draw your attention to the following details that will require close attention.

1. Letter of Credit.

You will be aware that in negotiating the Letter of Credit with the Philippine National Bank it is essential that the documents lodged comply specifically with the terms of the Letter of Credit.

This matter has been discussed fully with the Commercial Bank of Australia Ltd., in view of our endeavour to utilise to the fullest possible extent the funds of this Letter of Credit to provide finance for the purchase of a vessel. In this regard we have endeavoured to assist by reducing the purchase price of the cattle to 7 cents per lb. liveweight f.o.b. basis.

The matter was referred to the Head Office of the Bank in Melbourne who evidently handle a quantity of similar business, and their interpretation is that as the credit covers a specified number of cattle it would be incorrect to accept a lesser number of beasts in the event of a single shipment utilising one hundred per cent of the credit facility.

Exhibits

Defendant's Exhibit "1.R".

Letter New Zealand Loan & Mercantile Agency Company Limited to Acme Credit Services.

29th December, 1955 - continued.

Earlier we had cabled Brucelas & Martinez Company, Manila, requesting that they insert the word "about" after "amount" in the Letter of Credit. This amendment would permit us to draw up to ten per cent more or less than the amount specified in the credit. The advice received from Manila was to the effect that the Central Bank would not permit drawings in excess of the specified amount. This possibility could also be covered by amending the existing Letter of Credit to read "up to 1,000 head". We suggest that this matter be discussed with Mr. Brucelas, to ensure that there cannot be any possibility of a delay in negotiating these funds.

2. Regulations Covering Shipments of Cattle.

It will be necessary for Mr. Brucelas to secure from the Department of Commerce a permit to ship cattle, advising the number to be shipped. The number of the Permit will have to be advised to us. Arrangements will have to be made for the Philippines Veterinary Officer to inspect the cattle for shipment; then he will issue a certificate of health, likewise the Divisional Veterinary Officer of our Department of Agriculture & Stock will certify as to the health of the cattle. We shall then secure the Export Licence. It is required that these cattle be inspected about 14th to 18th January, if the shipment is to be made about 26th to 30th January.

3. Loading Dates.

We do not consider it would be wise to load during February if it can be avoided. The wet season in this area can cut communications and prevent the movement of stock to the railhead.

4. Construction of Stalls.

We note your advice that arrangements are being made with Brown & Broad Ltd., Brisbane, for the refitting of the "Cap Tarifa" with cattle stalls. These stalls must comply with the regulations of the Department of Navigation, whilst the Prevention of Cruelty to Animals Society takes an active interest. To the best of the writer's knowledge, each beast is to be allowed 75 cubic feet. There was such an outcry about the treatment of cattle in the last shipment on the

"Philippine Trader" that the next shipment - ours - will be subjected to very close surveillance and we must eliminate any possibility of infringing the regulations.

We have written our Brisbane Office to make available an officer from the Stock Department to assist you in siting the stalls and the blowers for ventilation. We suggest you contact Mr. Arnold, Brisbane Office, in this regard.

5. Loading Ramp.

We have the assurance of the Townsville Harbour Board that they will construct a loading ramp for handling the cattle ex the Railway wagons direct to the ship.

6. Fodder, Ship's Stores and Bunkers.

We suggest that these be secured through our Brisbane Office during refitting or at its completion. We consider that this would eliminate any delay here and the cost of the above items would be cheaper in Brisbane. It is thought that with the vessel being in Brisbane, it would be easier to handle the storage etc. of these items.

7. Water.

This is important and we suggest this can be surveyed during the vessel's stay in Brisbane. In addition to the supply required for the ship's boilers, 900 head of cattle would drink at least 10,000 gallons per day, probably more in the summer months.

8. Date of arrival of Ship.

You will appreciate that it will be necessary to co-ordinate the movement of the cattle, rail trucks, etc., to coincide with the arrival of the vessel in Townsville. We would like if possible on this trip at least 10 days notice of the estimated date of arrival of the vessel at this centre.

We shall be pleased to have your advices and comments on the suggestions and requirements we have outlined.

Yours faithfully,

STOCK AND LAND DEPT.

Exhibits

Defendant's Exhibit "1.S".

Letter New Zealand Loan & Mercantile Agency Company Limited to Acme Credit Services.

6th January, 1956.

DEFENDANT'S EXHIBIT "1.S".
LETTER NEW ZEALAND LOAN & MERCANTILE AGENCY COMPANY LTD., TO ACME CREDIT SERVICES

NEW ZEALAND LOAN & MERCANTILE AGENCY CO. LIMITED
TOWNSVILLE,

6th January, 1956.

Mr. J.H.Trevis,
Acme Credit Services,
226, Liverpool Street,
EAST SYDNEY.

Dear Sir,

Further to our recent telephone conversation regarding mortgage of the vessel "Cap Tarifa" as security for an advance of £2,000 which was to be utilised for the purchase of broken stores and bunkers in Noumea by Brucelas & Martinez & Co., we have received from the National Bank of Australasia Ltd., your undertaking to arrange the above-mentioned mortgage.

We would point out, however, that the Bank evidently misunderstood the instructions received from their Townsville Office, and we should be pleased if you would ensure that when this mortgage is being executed by Salvador Brucelas, on behalf of Brucelas & Martinez Co., it is made in favour of James Gordon, Constance Street, Mareeba, and not the New Zealand Loan & Mercantile Agency Co., Ltd.

When the mortgage is completed with the signature of Mr. Brucelas, we should be pleased if you would send it to us here to be held in custody for Mr. Gordon. The £2,000 in question was not advanced by the New Zealand Loan & Mercantile Agency Co., Ltd., but was private finance secured from the above-mentioned gentleman who happens to be a client of this Company.

We feel sure that this matter will have your attention.

Re Letter of Credit:

You will no doubt have noted our remarks in our earlier letter, and we should appreciate your advice whether or not Mr.Brucelas has been able to

Exhibits

make the necessary amendment to eliminate any possible obstacle in negotiating the credit should the bulk of the money be utilised for a number of cattle lesser than 1,000 head. Our Bankers are of the opinion that this is quite an important matter.

Defendant's Exhibit "1.S".

Letter New Zealand Loan & Mercantile Agency Company Limited to Acme Credit Services.

We look forward to your advice regarding the arrival of the "Cap Tarifa" so that we shall be able to make the necessary arrangements concerning the inspection of the cattle and the loading dates.

6th January, 1956 - continued.

Yours faithfully,

Stock and Land Dept.

DEFENDANT'S EXHIBIT "2"
LETTER DEFENDANT'S SOLICITORS TO PLAINTIFF'S SOLICITORS.

Defendant's Exhibit "2".

Letter Defendant's Solicitors to Plaintiff's Solicitors.

JOHN WIGHT & CO.,
Solicitors. 16, Hunter Street,
Sydney.
I/MW 12th December, 1956.

12th December, 1956.

Messrs. Clayton, Utz & Co.,
Derwent House,
Cnr.Liverpool & Castlereagh Streets,
SYDNEY.

Dear Sirs,

GALE -ats- SIMONS

We refer to Plaintiff's Particulars of Cause of Action filed herein and to paragraph 5 thereof reading:-

"(5) All arrangements for the conversion of the vessel 'Cap Tarifa' for the purpose of carrying cattle from Townsville in the State of Queensland to Manila, Philippine Islands had already been made when the said vessel sailed from Noumea on the tenth day of January One thousand nine hundred and fifty-six."

Exhibits

Defendant's Exhibit "2".

Letter Defendant's Solicitors to Plaintiff's Solicitors.

12th December, 1956 - continued.

It is requested that particulars of the allegations therein be furnished.

Detail the arrangements that had been made for the conversion of the vessel for the purpose of carrying cattle.

If such arrangements or any of them were in writing identify the documents and state the parties thereto and the dates thereof.

If such arrangements were made orally, state the parties present, the positions they held, the dates and the substance of the arrangements then made.

If any written contract or contracts were signed, identify the said contracts and state the date or dates thereof and the parties thereto.

If any oral contract or contracts were made, state the date or dates thereof, the parties thereto and where made.

It is noted that in the Policies the name of the assured is given as Acme Credit Services and that in the Particulars of Cause of Action it is stated that the Plaintiff (Percy Simons) is interested to the total amount of the two policies.

This not being within the Defendant's knowledge, proof will be required that the Plaintiff is interested as claimed. If this can be furnished it will not be necessary to raise an issue thereon in the Defence.

It is assumed that time for furnishing Grounds of Defence will not run pending consideration of your reply to this request for particulars.

Yours faithfully,

(Signed) John Wight & Co.

DEFENDANT'S EXHIBIT "3".
LETTER PLAINTIFF'S SOLICITORS TO DEFENDANT'S SOLICITORS.

Exhibits

Defendant's Exhibit "3".

Letter Plaintiff's Solicitors to Defendant's Solicitors.

17th December, 1956.

Clayton, Utz & Company,
Solicitors.

Derwent House,
136, Liverpool St.
Sydney, N.S.W.
Australia.

HT/WM.

17th December, 1956.

Messrs. John Wight & Co.,
Solicitors,
16, Hunter Street,
SYDNEY.

Dear Sirs,

SIMONS v. GALE. Your Ref: 1/MW.

In reply to your letter of 12th inst. we have to advise that the arrangements for the conversion of the vessel "Cap Tarifa", as referred to in Paragraph 5 of the Particulars of Cause of Action, were made orally between Mr. J.H. Trevis on behalf of the Plaintiff and Brown & Broad Limited of Brisbane on or about the 14th December 1955, confirmed by subsequent letters from that Company to Mr.Trevis dated 15th December 1955 and 30th December 1955. For further particulars thereon we enclose copies of the following documents evidencing the arrangements made (the originals being available for your inspection if necessary) :-

1. Declaration by J.H. Trevis made 5th December, 1956.
2. Declaration by K.S.Boal made 2nd November 1956.
3. Letter, Brown & Broad Limited to Trevis dated 15th December 1955.
4. Further Declaration by J.H.Trevis made 5th December 1956.
5. Copy of letter from Trevis to Brown & Broad Limited dated 21st December 1955.
6. Further Declaration by J.H.Trevis made 5th December 1956.
7. Declaration by F.R.B. Cook made 2nd November 1956.
8. Declaration by R.F.Dark made 2nd November 1956.

Exhibits

Defendant's Exhibit "3".

Letter Plaintiff's Solicitors to Defendant's Solicitors.

17th December, 1956 - continued.

9. Further letter from Brown & Broad Limited to Trevis dated 30th December 1955.
10. Further letter from Brown & Broad Limited dated 31st July 1956.
11. Further letter from Brown & Broad Limited dated 14th August 1956 with Memorandum attached.

We have to point out that the Plaintiff was at all material times the sole Registered Proprietor of Acme Credit Services.

In the light of the above information, we would be obliged if you would now file Grounds of Defence without delay.

Yours faithfully,
CLAYTON, UTZ & COMPANY.
(Sgd.) W.H. TUCK.

Defendant's Exhibit "3A".

Statutory Declaration of J.H.Trevis.

5th December, 1956.

DEFENDANT'S EXHIBIT "3A"
STATUTORY DECLARATION OF J.H.TREVIS

COPY OF STATUTORY DECLARATION

I, JOHN HENRY TREVIS of 152 Frederick Street, Rockdale in the State of New South Wales, do solemnly and sincerely declare as follows :-

On the 14th December, 1955 I telephoned Brown & Broad Ltd., Brisbane and spoke to Mr. Boal.

I said "This is Trevis speaking. I am the Secretary of Acme Credit Services in Sydney. My firm has been approached by a Mr. Brucelas to advance him money to purchase a ship called the "Cap Tarifa". Brucelas has advised me to contact you. The ship is to sail from Noumea to Brisbane to be fitted with cattle stalls. We are arranging an insurance policy to cover us in the venture and a warranty in the policy requires that we make all arrangements to fit the ship. Would your firm undertake to fit the ship for the carriage of cattle."

Mr. Boal replied "We do the fitting of nearly all ships in the Port of Brisbane and we have fitted ships for the carriage of cattle. We will carry out the work depending on when the ship arrives in Brisbane."

Exhibits

I said "The ship is due to arrive in Brisbane approximately the first week in January and the itinerary is such that it can spend up to five weeks in the Brisbane river."

Defendant's Exhibit "3A".

Boal said "Wait a moment while I check on work expected about that period" and after a delay he continued "After looking over the work in hand about that time we will fit the ship if it arrives about that time."

Statutory Declaration of J.H.Trevis.

5th December, 1956 - continued.

I said "Can I have a quotation."

Boal said "Brown & Broad do not give firm quotations because of the unknown quantity of material wages etc."

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the "Oaths Act 1900 - 1953."

Subscribed and Declared at) Sydney this Fifth day of) December One thousand nine) hundred and fifty-six) (Sgd.) J.H. Trevis.

Before me

(Sgd.) J. Fell, J.P.

DEFENDANT'S EXHIBIT "3B"
STATUTORY DECLARATION of K.S. BOAL

Defendant's Exhibit "3B".

Commonwealth of Australia
STATUTORY DECLARATION

Statutory Declaration of K.S. Boal.

I, KEVIN SAMUEL BOAL, of 57 Heussler Terrace, Milton DO SOLEMNLY AND SINCERELY DECLARE that on the 14th December, 1955, I received a telephone call from Mr. Trevis of Acme Credit Services, Sydney.

2nd November, 1956.

Mr. Trevis said, "I am the Secretary of Acme Credit Services, a finance Company in Sydney. We have been asked to loan money to a Mr.Brucolas to purchase a ship called the "Cap Tarifa." The ship is to sail to Brisbane to be fitted for the carriage of cattle. We are arranging an insurance policy to cover us, and the policy makes it necessary to make all arrangements for the fitting. Will Brown & Broad fit the ship to carry cattle?"

Exhibits

Defendant's Exhibit "3B".

Statutory Declaration of K.S.Boal.

2nd November, 1956 - continued.

I said, "Brown & Broad fit nearly all boats in the Port of Brisbane and have fitted ships for carrying cattle. We will fit the ship but it depends on when it arrives in Brisbane."

Mr. Trevis said, "It is due to arrive about the first week in January and can be in the Port some five weeks."

I checked on work due about that time and said, "I have checked on work due and we can fit the ship if it arrives about that time."

Mr. Trevis said, "Can we have a quotation."

I said, "Brown & Broad do not give firm quotations as materials, wages etc. vary."

I reported the arrangements I had made with Mr. Trevis to Mr. Dark the Manager of my Department who confirmed same.

On the 21st December, 1955, Mr. Trevis again telephoned me.

Mr. Trevis said, "We will have to pay over the money for the "Cap Tarifa" at any time and I would like to have it re-affirmed that Brown & Broad have arranged to fit the ship."

I said, "We will fit the ship to carry cattle if it arrives about the first week in January."

Mr. Trevis said, "We will send you some specifications of the ship and possibly a plan. See if you can let us have a quotation."

I said, "I do not think Brown & Broad will carry out the work except at cost plus 10%. If you like I will see what our Foreman, Mr. Cook says."

I spoke to Mr. Dark and Mr. Cook re Trevis' request for a firm quotation and they decided the work could only be carried out at the usual cost plus 10%.

AND I MAKE THIS SOLEMN DECLARATION BY VIRTUE OF THE STATUTORY DECLARATIONS ACT 1911-1950 CONSCIENTIOUSLY BELIEVING THE STATEMENTS CONTAINED THEREIN TO BE TRUE IN EVERY PARTICULAR

K. S. BOAL.

Declared at Brisbane, the 2nd day of November 1956

Before me,

R.M. REVIE, J.P.

DEFENDANT'S EXHIBIT "3C".

(Similar Document to Exhibit "1.H" at pages 56-57 Record).

Exhibits

Defendant's Exhibit "3C".

Letter from Brown & Broad Limited to J. H. Trevis.

15th December, 1955.

Exhibits

Defendant's Exhibit "3D".

Statutory Declaration of J.H.Trevis.

5th December, 1956.

DEFENDANT'S EXHIBIT "3D". STATUTORY DECLARATION OF J.H.TREVIS

I, JOHN HENRY TREVIS of 152 Frederick Street, Rockdale in the State of New South Wales, do solemnly and sincerely declare as follows:-

I telephoned Mr. Boal of Brown & Broad Ltd., on 21.12.55.

I said "Trevis of Acme Credit Services calling. The arrangements have just about been completed to make the loan to Mr. Brucelas and we will be called upon to make payment at any time. At this stage we have not paid the money and I would like to recheck that everything is arranged for Brown & Broad to fit the ship."

Boal replied "We have booked the Cap Tarifa for about the first week in January to fit it to carry cattle."

I said "We would still like a firm quotation if possible and I am forwarding you some details of the ship and a plan if I can obtain one in the next few days."

Boal said "I don't think we will depart from our usual custom of charging at cost plus 10%, but send the information and I will see what we can do after consulting our foreman, Mr. Cook."

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the "Oaths Act 1900-1953."

Subscribed and declared at Sydney this Fifth day of December One thousand nine hundred and fifty-six

(Sgd.) J.H. Trevis.

Before me,

J. Fell, J.P.

DEFENDANT'S EXHIBIT "3E".

(Similar Document to Exhibit "1.I" at pages 57-58 Record).

Exhibits

Defendant's Exhibit "3E".

Letter J.H. Trevis to Brown & Broad Ltd.

21st December, 1955.

Exhibits

Defendant's Exhibit "3F".

Statutory Declaration of J.H.Trevis.

5th December, 1956.

DEFENDANT'S EXHIBIT "3F". STATUTORY DECLARATION OF J.H.TREVIS

I, JOHN HENRY TREVIS of 152 Frederick Street, Rockdale in the State of New South Wales do solemnly and sincerely declare as follows :-

I telephoned Brown & Broad on 23.12.55 and spoke to Mr. Cook.

I said "Has Mr. Boal spoken to you regarding giving Acme Credit Services a quotation for fitting the "Cap Tarifa" for the carriage of cattle."

Cook said "He has, but Brown & Broad will not give a firm quotation. We will charge the work at cost plus 10%."

I said "We would have preferred a quotation for a definite amount but we will accept the quotation at cost plus 10%."

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act 1900 - 1953.

Subscribed and Declared at) Sydney this Fifth day of) December One thousand nine) hundred and fifty-six) (Sgd.) J.H.Trevis.

Before me,

(Sgd.) J.Fell, J.P.

Defendant's Exhibit "3G".

Statutory Declaration of F.R.B.Cook.

2nd November, 1956.

DEFENDANT'S EXHIBIT "3G" STATUTORY DECLARATION OF F.R.B. COOK

I, FRANCIS ROY BADEN COOK of Frederick Street, Toowong DO SOLEMNLY AND SINCERELY DECLARE that about the 21/12/1955, I was present when Mr. Boal of our Sales Department consulted Mr. Dark, the Manager of that Department in relation to the giving of a firm quotation to fit the ship "Cap Tarifa" for the carriage of cattle. We decided a firm quotation could not be given but the work would be charged at cost plus 10%.

Exhibits

Defendant's Exhibit "3G".

Statutory Declaration of F.R.B.Cook.

2nd November, 1956 - continued.

Mr. Trevis of Acme Credit Services telephoned me on 23/12/1955. Mr. Trevis said, "Have you been consulted by Mr. Boal in relation to giving a quotation for fitting the "Cap Tarifa".

I said, "Yes, but we will not give a firm quote but will charge the work at cost plus 10%".

Mr. Trevis said, "We would have preferred a firm quote, but will accept the work at cost plus 10%".

I attended the "Cap Tarifa" on its arrival in Brisbane on the 16/1/1956 to arrange to commence the work.

Mr. Trevis was present. Mr. Trevis said, "There has been a hitch in arrangements because another partner in the venture has arrived in Australia, and may not allow the venture to proceed."

I said, "That's all right - let me know when you are ready."

I attended several conferences with representatives from the Bureau Veritas, Navigation Department and Mr. Trevis regarding the fitting of the "Cap Tarifa".

Mr. Trevis later informed me that the proposition had been cancelled.

Mr. Trevis said, "Mr. Howell, the other partner is not willing to fit new engines in the ship and has cancelled the deal."

AND I MAKE THIS SOLEMN DECLARATION BY VIRTUE OF THE STATUTORY DECLARATIONS ACT 1911-1950 CONSCIENTIOUSLY BELIEVING THE STATEMENTS CONTAINED THEREIN TO BE TRUE IN EVERY PARTICULAR

R. COOK.

DECLARED at Brisbane the 2nd day of November, 1956 Before me,

R.M. REVIE,
J.P.

Exhibits

Defendant's Exhibit "3H".

Statutory Declaration of R.F. Dark.

2nd November, 1956.

DEFENDANT'S EXHIBIT "3H"
STATUTORY DECLARATION of R.F. DARK.

I, REGINALD FRANCIS DARK, of 38 Killawarra Road, Ashgrove DO SOLEMNLY AND SINCERELY DECLARE that Mr. K.S. Boal of my department reported to me on the 14th December, 1955, that he had received a telephone call from Mr. Trevis of Acme Credit Services in Sydney in relation to the fitting of the "Cap Tarifa" for the carriage of cattle and that Mr. Trevis had asked Brown & Broad Ltd., to book the boat in for fitting and required a quotation.

Mr. Boal discussed this matter with me after discussions with our foreman, Mr. Cook, I confirmed with Mr. Trevis by letters dated the 15th and 30th December, 1955, that Brown & Broad would carry out the necessary work to fit the "Cap Tarifa" for the carriage of cattle.

AND I MAKE THIS SOLEMN DECLARATION BY VIRTUE OF THE STATUTORY DECLARATIONS ACT 1911 - 1950 CONSCIENTIOUSLY BELIEVING THE STATEMENTS CONTAINED HEREIN TO BE TRUE IN EVERY PARTICULAR.

R. DARK.

Declared at Brisbane the 2nd day of November, 1956 Before me,

R.M. REVIE, J.P.

Defendant's Exhibit "3I".

Letter from Brown & Broad Ltd., Brisbane to J.H.Trevis.

30th December, 1955.

DEFENDANT'S EXHIBIT "3I".
LETTER FROM BROWN & BROAD LTD. TO J.H. TREVIS

30th December, 1955.

Mr.J.H.Trevis,
226-228 Liverpool Street,
EAST SYDNEY, N.S.W.

Dear Sir,

We acknowledge receipt of your letter of the 21st instant giving certain details of the ship "Cap Tarifa" and that you are forwarding a plan of the boat.

As mentioned in our letter of the 15th December the work on this ship could be carried out, but we emphasise again that we are unable to give a firm quote for the job.

Yours faithfully,
BROWN & BROAD LTD.

R. DARK,
Sales Manager.

Exhibits

DEFENDANT'S EXHIBIT "3J".
LETTER FROM BROWN & BROAD LTD., to J.H. TREVIS

Defendant's Exhibit "3J".

Letter from Brown & Broad Ltd., to J.H. Trevis

31st July 1956.

31st July, 1956.

Mr. J. Trevis,
226 - 228 Liverpool Street,
EAST SYDNEY.

Dear Sir,

Further to our previous correspondence, statutory declaration and our telephone conversation re the fitting of the ship "Cap Tarifa" with stalls for the carriage of cattle, I would like to confirm with you that this Company considers that the arrangements made with you to perform the above work were definite and because of such arrangements, this Company's Foreman (Mr.Roy Cook) did attend the vessel on its arrival at Brisbane for the purpose of obtaining the necessary particulars as to the number of men and the quantity of material required for the work to be performed.

When Mr. Cook was with you on the arrival of the vessel, you informed him that because of altered circumstances the work of preparing the ship for the carriage of cattle would not be proceeded with.

With reference to your enquiry regarding the fact that this Company would not give you a firm quotation for the work, our reply is that it is not possible because of the varied factors which exist in this type of work, for instance -

1. The work involved in preparing and cleaning the hold etc., before installation can be proceeded with varies considerably.

2. The amount of work which would have to be performed at different rates of pay(ordinary, time and a half and double time) according to the arrival and departure of the ship.

3. The availability of the required number of men if the port is busy thereby extending work into overtime hours and many other such factors.

From the above, you can readily understand that we can only carry out this work on the basis of labour cost plus 10% plus material.

Trusting this will satisfy your enquiries.

Yours faithfully,
BROWN & BROAD LTD.
R.M.Revie,
Secretary.

Exhibits

Defendant's Exhibit "3K".

Letter from Brown & Broad Ltd., to J.H. Trevis.

14th August, 1956.

DEFENDANT'S EXHIBIT "3K".
LETTER FROM BROWN & BROAD LTD., to J.H. TREVIS

14th August, 1956.

Mr. J. Trevis,
226 - 228 Liverpool Street,
EAST SYDNEY.

Dear Sir,

Further to my letter of the 31st July, 1956, I would like to add that this Company has for over 40 years, been carrying on this business of ship fitting and dunnaging in the Port of Brisbane and our ability to fit the S.S."Cap Tarifa" for the carriage of cattle could be accepted with every confidence. In fact we perform by far the major portion of this type of work here and service such Companies as :-

Dalgety & Co., Ltd.
Ellerman & Bucknall (Aust.) Pty., Ltd.
McArthur Shipping & Agency Co., Pty., Ltd.
McDonald Hamilton & Co., Ltd.
Gibbs Bright & Co.
Shaw Savill & Albion Co., Ltd.
Blue Star Line.
Wills Gilchrist & Sanderson Pty., Ltd.
Burns Philp & Co., Ltd.

With reference to the estimated time to complete your job, I have contacted our Foreman and he was of the opinion that it could have been completed in approximately four weeks. I would also advise that on occasions we have worked the clock around in order to allow ships to sail on schedule and the same procedure could have been carried out in your case if it had been necessary.

We have, on occasions, had to send a few men to sea with ships in order to complete the work before arrival at North Queensland Ports and then fly these men back to Brisbane.

In reply to your enquiry as to when work on your vessel would have been commenced, I can assure you that after Mr. Cook had obtained all the information regarding material and labour, that he would have put the work in hand immediately.

Enclosed please find memo from Mr. Boal re telephone conversation he had with you in this matter.

Trusting this will make the position quite clear.

Yours faithfully,
BROWN & BROAD LTD.

R.M. Revie,
Secretary.

DEFENDANT'S EXHIBIT "3L".
MEMORANDUM FROM K.S. BOAL
TO MR. REVIE ENCLOSED WITH EXHIBIT 3K.

Exhibits

Defendant's Exhibit "3L".

Memorandum from K.S.Boal to Mr. Revie enclosed with Exhibit 3K.

14th August, 1956.

BRISBANE,
14th August, 1956.

MEMO MR. REVIE.

Re: S.S. "CAP TARIFA"

In reply to your enquiries regarding telephone conversations that I had with Mr. Trevis re the fitting up of the above vessel with stalls for the carriage of cattle, I can clearly recall advising Mr. Trevis that this Company would be able to handle the job as we were fully experienced in this type of work and provided the ship arrived in Brisbane about the first week in January.

When Mr. Trevis asked for a quotation for the work involved, I replied that we could not give one nor could we indicate what the cost would be as we had not previously fitted this ship for the carriage of cattle. I also pointed out that even with ships that we had fitted previously we did not give quotations because costs could differ on the same ship to the extent of overtime or extra work involved.

Mr. Trevis again enquired about a quotation if he was able to forward us a plan of the vessel. My reply was that the only way we could quote for this type of work was on the basis of cost plus 10%.

Yours faithfully,

K.S. BOAL.

Exhibits

Defendant's Exhibit 5.

Notice of Cessation of use of business name "Acme Credit Services".

13th June 1956.

DEFENDANT'S EXHIBIT 5.
NOTICE OF CESSATION OF USE OF BUSINESS NAME "ACME CREDIT SERVICES"

BUSINESS NAMES ACT, 1934. (SECTION 11.)

NOTICE OF CESSATION OF BUSINESS OR ABANDONMENT OF THE USE OF A BUSINESS NAME.

L.S.

NOTICE IS HEREBY GIVEN that the firm, individual or corporation registered under the business name of ACME CREDIT SERVICES has abandoned the use of such business name.

(a) SIGNED at Sydney on the thirteenth day of June, 1956.

Percy Simons
(Usual Signature)

Before me,
W. H. Tuck,
Solicitor,
Sydney.

(b) SIGNED at . on the day of . 19 .

.....
(Usual Signature)

Before me

(c) SIGNED by . The Secretary a Director of . Company Limited on the . day of 19 .

.....
(Usual Signature)

IN THE PRIVY COUNCIL No. 2 of 1958

ON APPEAL

FROM THE SUPREME COURT OF NEW SOUTH WALES

B E T W E E N:-

PERCY SIMONS trading as
Acme Credit Services (Plaintiff)
Appellant

- and -

ANTHONY EUGENE MIDDLETON GALE
(Defendant) Respondent

RECORD OF PROCEEDINGS

BOTTERELL & ROCHE,
Baltic Chambers,
24, St. Mary Axe,
London, E.C.3.
Appellant's Solicitors.

INCE & CO.,
10/11, Lime Street,
London, E.C.3.
Respondent's Solicitors.