judgment no. 2 of 1974.

(2)

IN THE PRIVY COUNCIL No. 15 of 1971

ON APPEAL

FROM THE HIGH COURT OF AUSTRALIA

B E T W E E N :

THE GEELONG HARBOR TRUST COMMISSIONERS Appellant

- and -

GIBBS BRIGHT & CO. (A FIRM) Respondent

RECORD OF PROCEEDINGS

FRESHFIELDS,
Grindall House,
25, Newgate Street,
London, EC1A 7LH

Solicitors for the Appellant

HERBERT SMITH & CO.,
62, London Wall,
London E.C2R 7JP

Solicitors for the Respondent

IN THE PRIVY COUNCIL No. 15 of 1971

ON APPEAL
FROM THE HIGH COURT OF AUSTRALIA

BETWEEN :

THE GEELONG HARBOR TRUST COMMISSIONERS Appellant

- and -

GIBBS BRIGHT & CO. (A FIRM)

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

List of documents in transcript omitted from printed record by consent of solicitors and not transmitted to the Privy Council

No.	Documents Omitted	Date
1.	Memorandum for Parliamentary Draftsman	13th August 1969
2.	Memorandum for Mr. Justice Newton	18th August 1969
3.	Affidavit (E.H.Wilson) as to appeal to High Court of Australia made pursuant to leave	12th November 1969
4.	Affidavit (R.F.L. Annois) verifying Petition	29th September 1970
5.	Affidavit (D.J. Bell) of service of Petition to the Privy Council, Notice of Intended application and affidavit (R.F.L. Annois) verifying Petition	19th October 1970

IN THE PRIVY COUNCIL No. 15 of 1971

ON APPEAL
FROM THE HIGH COURT OF AUSTRALIA

B E T W E E N :

THE GEELONG HARBOR TRUST COMMISSIONERS Appellant

- and -

GIBBS BRIGHT & CO. (A FIRM) Respondent

RECORD OF PROCEEDINGS

In the Supreme Court of Victoria

No. 1

Statement of Claim
10th March 1961

No. 1

STATEMENT OF CLAIM

The plaintiff claims -

(1) The Plaintiff is a body corporate by virtue of the Geelong Harbor Trust Act 1958.

(2) The Defendant is a firm carrying on business under the firm name or style of Gibbs Bright & Co. at 34 Queen Street Melbourne.

(3) On the 26th day of October 1958 the Motor Vessel "Octavian" in the Port of Geelong caused injury to No. 12 Beacon in the Corio Channel in the said Port.

(4) The said Beacon at the time of the said injury being caused was the property of the Plaintiff. Alternatively the said Beacon was then a work erected maintained or repaired under the provisions of the Geelong Harbor Trust Acts.

(5) The Defendant at all relevant times was the agent for the said motor vessel.

(6) In consequence of the injury to the said Beacon the Plaintiff was required to replace the same.

In the Supreme Court of Victoria

No. 1

Statement of Claim 10th March 1961 (continued)

PARTICULARS OF COST OF REPLACEMENT

Diving gear	£ 4. -. - .
Launches	185. 8. 6.
Floating crane	304. -. -.
Towage	1058. -. -.
Mobile crane	12.12. -.
Low loader and truck	12. -. -.
Materials	506. 4. 9.
Batteries	177.11. 8.
Labor	609. 2. 6.
	£2868.19. 5.
And the Plaintiff claims	£2868.19. 5.

Harwood & Pincott

Take Notice that the Plaintiff requires the above endorsement to stand as the Statement of Claim and requires Pleadings.

Delivered with the Writ.

No. 2

Amended Defence 28th August 1969

No. 2

DEFENCE (AS AMENDED)

Amended as underlined by continuous line on the 28th day of February 1969 pursuant to order of Mr. Justice Pape dated the 19th day of February 1969

Further amended as shown underlined by a broken line on the 28th day of August 1969 pursuant to Order of Mr. Justice Newton dated the 17th day of August 1969

The Defendant to the Statement of Claim endorsed on the Writ herein says -

1. It admits the allegations contained in paragraphs 1 and 2 thereof.

2. It admits that on the said date the motor vessel "OCTAVIAN" was in the Port of Geelong and that on that date No.12 beacon in the Corio Channel in the said Port was damaged but it otherwise denies each and every allegation contained in paragraph 3 thereof and it specifically denies that at any time the motor vessel "OCTAVIAN" has caused any injury to the said beacon.

3. It does not admit any allegation contained in paragraph 4 thereof.

4. It does not admit any allegation contained in paragraph 5 thereof.

5. It does not admit any allegation contained in paragraph 6 thereof.

6. (a) If any part of the damage alleged occurred upon or as a result of the motor vessel "OCTAVIAN" coming into contact with the said beacon (which is not admitted) the said damage occurred and the motor vessel "OCTAVIAN" came into contact with the said beacon -

(i) by act of God; alternatively

(ii) by inevitable accident; alternatively

(iii) without negligence or other tortious act or omission on the part of the motor vessel "OCTAVIAN" or on the part of any person for whose negligence or other tortious act or omission the defendant is liable.

(b) The Defendant will say that the provisions of Section 110 of the Geelong Harbor Trust Act 1928 (as amended) do not render the agent of any vessel liable for damage occurring upon or as a result of the vessel coming into contact with property of the Commissioners -

In the Supreme Court of Victoria

No. 2

Amended Defence 28th August 1969

(continued)

(i) by Act of God; alternatively

(ii) by inevitable accident; alternatively

(iii) without negligence or other tortious act or omission on the part of the vessel or on the part of any person for whose negligence or other tortious act or omission the agent of the vessel is liable.

7. If the motor vessel "OCTAVIAN" has caused any injury to the said beacon (which is denied) such injury was so caused by inevitable accident and without negligence or other tortious act or omission on the part of the motor vessel "OCTAVIAN" or of any person for whose negligence or other tortious act or omission the Defendant is liable.

Delivered on the 28th day of August 1969.

No. 3

Order of Mr. Justice Pape 28th February 1969

No. 3

ORDER OF MR. JUSTICE PAPE

UPON HEARING Mr. Shaw of Counsel for the Defendant and Mr. Hulme of Counsel for the Plaintiff AND UPON READING the Summons herein issued the 18th day of February 1969 by consent I DO ORDER that the Defendant have special leave pursuant to Order 54 rule 17 of the Rules of the Supreme Court to bring this summons so far as it relates to the relief sought in paragraphs 1 and 2 thereof before a Judge. I FURTHER ORDER by consent that the Defendant have leave to amend its defence within ten days of the date of this Order, in the manner set out in paragraph 1 of the said summons and that the Plaintiff have leave to deliver a reply to such amended defence within ten days of the delivery thereof. I FURTHER ORDER by consent that pursuant to Order 25 Rule 2 that the point of law which will be raised by paragraph 6 of the said defence as so amended namely whether the provisions of Section 110 of the Geelong Harbor Trust Act 1928 as amended operate to impose liability on the agent

of the vessel in the event of it being established that the collision referred to in the Statement of Claim occurred by Act of God, inevitable accident or without negligence on the part of the M.V. "OCTAVIAN" or on the part of any person for whose negligence the said agent is liable, be set down for hearing and disposal of before the trial and that such point of law be set down for hearing in the Miscellaneous Causes List to be called over in March 1969. I FURTHER ORDER that the parties have leave to apply for the reference of any further point of law which may arise as the result of what may be pleaded by the plaintiff in its reply. Costs of this application to be costs in the cause and I CERTIFY for Counsel

In the Supreme Court of Victoria

No. 3

Order of Mr. Justice Pape 28th February 1969

(continued)

PAPE J. (Sgd.)

Dated the 28th day of February 1969.

No. 4

No. 4

Reasons for Judgment of Mr. Justice Newton 19th August 1969

REASONS FOR JUDGMENT OF MR. JUSTICE NEWTON

By a consent order dated 19th February 1969 Pape J. ordered that the defendant have leave to amend its defence by substituting a new para. 6 for the existing para. 6, and His Honour further ordered pursuant to Order 25, Rule 2 of the R.S.C. that the point of law raised by the new para. 6 be set down for hearing and disposed of before the trial. The point of law came on for hearing before me, and I now have to dispose of it.

It is convenient to set out in full the Statement of Claim and the Defence (as amended by the substitution of the new para. 6). The Statement of Claim is as follows -

"(1) The Plaintiff is a body corporate by virtue of the Geelong Harbor Trust Act 1958.

(2) The Defendant is a firm carrying on business under the firm name or style of Gibbs Bright & Co. at 34 Queen Street Melbourne.

(3) On the 26th day of October 1958 the Motor

In the Supreme Court of Victoria

No. 4

Reasons for Judgment of Mr. Justice Newton 19th August 1969

(continued)

Vessel "Octavian" in the Port of Geelong caused injury to No.12 Beacon in the Corio Channel in the said Port.

(4) The said Beacon at the time of the said injury being caused was the property of the Plaintiff. Alternatively the said Beacon was then a work erected maintained or repaired under the provisions of the Geelong Harbor Trust Acts.

(5) The Defendant at all relevant times was the agent for the said motor vessel.

(6) In consequence of the injury to the said Beacon the Plaintiff was required to replace the same.

PARTICULARS OF COST OF REPLACEMENT

Diving gear	£ 4. -. -.
Launches	185. 8. 6.
Floating crane	304. -. -.
Towage	1058. -. -.
Mobile crane	12.12. -.
Low loader and truck	12. -. -.
Materials	506. 4. 9.
Batteries	177.11. 8.
Labour	609. 2. 6.
	£2868.19. 5.
And the plaintiff claims	£2868.19. 5.
	($5737.95)

The defence (as amended) is as follows -

"The defendant to the statement of claim endorsed on the Writ herein says -

1. It admits the allegations contained in paragraphs 1 and 2 thereof.

2. It admits that on the said date the motor vessel "OCTAVIAN" was in the Port of Geelong and that on that date No.12 beacon in the Corio Channel in the said Port was damaged but it otherwise denies each and every allegation contained in paragraph 3 thereof and it specifically denies that at any time the motor vessel "OCTAVIAN" has caused any injury to the said beacon.

3. It does not admit any allegation contained in paragraph 4 thereof.

4. It does not admit any allegation contained in paragraph 5 thereof.

5. It does not admit any allegation contained in paragraph 6 thereof.

6. (a) if any part of the damage alleged occurred and it occurred upon or as a result of the motor vessel "OCTAVIAN" coming into contact with the said beacon (which is not admitted) the said damage occurred and the motor vessel "OCTAVIAN" came into contact with the said beacon -

(i) by Act of God; alternatively
(ii) by inevitable accident; alternatively
(iii) without negligence on the part of the motor vessel "OCTAVIAN" or on the part of any person for whose negligence the defendant is liable.

(b) The defendant will say that the provisions of Section 110 of the Geelong Harbor Trust Act 1928 (as amended) do not render the agent of any vessel liable for damage occurring upon or as a result of the vessel coming into contact with property of the Commissioners -

(i) by Act of God; alternatively
(ii) by inevitable accident; alternatively
(iii) without negligence on the part of the vessel or on the part of any person for whose negligence the agent of the vessel is liable.

7. If the motor vessel "OCTAVIAN" has caused any injury to the said beacon (which is denied) such injury was so caused by inevitable accident and without negligence on the part of the motor vessel "OCTAVIAN" or of any person for whose negligence the defendant is liable."

Section 110 of the Geelong Harbor Trust Act 1928 (as enacted by s 10(1)*of the Geelong Harbor Trust*(sic) (Amendment) Act 1951 (Act No.5607)) is as follows -

"110(1) The Commissioners may recover damages

In the Supreme Court of Victoria

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Reasons for Judgment of Mr. Justice Newton 19th August 1969

(continued)

in any court of competent jurisdiction from the owner master and agent of any vessel for any injury caused by such vessel or by any boatmen or other persons belonging to or employed in or about such vessel to the property or effects of the Commissioners or the banks or wharves or other works erected maintained or repaired under the provisions of this Act.

(2) The owner master or agent of any vessel shall not be relieved of any liability to the Commissioners by reason of the fact that such vessel was under compulsory pilotage at the time any injury was caused as aforesaid.

(3) Nothing in this section shall prejudice any other rights which the Commissioners may have or limit any liabilities to which the vessel or the master owner or agent thereof may be subject in respect of any injury caused by such vessel."

(This provision (subject only to very minor amendment) is now s. 108 of the Geelong Harbor Trust Act 1958).

The point of law which I have to decide is defined in the Order of Pape, J. as being -

"whether the provisions of Section 110 of the Geelong Harbor Trust Act 1928 as amended operate to impose liability on the agent of the vessel in the event of it being established that the collision referred to in the Statement of Claim occurred by act of God, inevitable accident or without negligence on the part of the M.V."Octavian" or on the part of any person for whose negligence the said agent is liable."

In my opinion, the question so posed should be answered in the negative, if one reads the words "without negligence" as meaning "without negligence or other tortious act or omission." It appears to me that if s.110 be considered without reference to authority, at least two rival interpretations present themselves.

One interpretation is in substance that if a vessel causes damage to property of the Commissioners or to works erected, maintained or repaired under the provisions of the Geelong Harbor Trust Act 1928, then s. 110 imposes upon the owner, master or agent of the vessel an absolute liability to compensate the Commissioners for the damage. I shall call this interpretation "the absolute liability interpretation."

The other interpretation is in substance that s. 110 imposes liability only where the damage results from a tortious act or omission on the part of some person connected with the vessel, for which that person would be liable to the Commissioners: in such a case s. 110 imposes upon the owner, master or agent the same liability. This liability would ordinarily in the case of the owner or agent, and sometimes in the case of the master, be a vicarious liability. I shall call this interpretation "the vicarious liability interpretation."

According to the vicarious liability interpretation, the substantial effect of s. 110 is to place upon owners, masters and agents of vessels a vicarious liability for tortious damage to property of the Commissioners, which is much wider than any vicarious liability which could exist at common law. On this view the substantial purpose of s.110 is to facilitate the recovery by the Commissioners of compensation for tortious damage to their property by extending the class of persons who can be made vicariously liable for such damage: the class includes local agents, which could be of importance in the case of foreign vessels.

In Townsville Harbour Board v. Scottish Shire Line Ltd. 1914 18 C.L.R. 306 the High Court placed the vicarious liability interpretation upon s. 196 of the Queensland Harbour Boards ct 1892. Although there are considerable verbal differences between that provision and s.110 of the Geelong Harbour Trust Act 1928 (as amended), I consider that for present purposes those differences are not of importance, and that to adopt the absolute liability interpretation of s.110 would be inconsistent with the decision of the High Court in the Townsville case.

In the Townsville case each of the three members of

In the Supreme Court of Victoria

No. 4

Reasons for Judgment of Mr. Justice Newton 19th August 1969

(continued)

the Court (Griffith, C.J., Barton J. and Isaacs, J.) considered that the majority of the House of Lords in River Wear Commissioners v. Adamson 1877 2 A.C. 743 had adopted the vicarious liability interpretation in relation to s.74 of the English Harbours, Docks, and Piers Clauses Act 1847, and that the same interpretation should therefore be placed upon s. 196 of the Queensland Act, although again there were verbal differences between the two provisions. Griffith, C.J., speaking of the decision in Adamson's case, said, "I think that the proper conclusion to be drawn from the decision is that in the opinion of the majority of the House sec. 74 of the Act did not create a new kind of liability, but merely declared that the owner of a ship should be liable for an injury done by his ship under such circumstances that someone was liable for it at common law." The relevant part of s. 74 of the English Act in terms imposed liability only upon owners, not upon owners, masters and agents, although another part imposed liability upon masters in the case of wilful act or negligence on their part.

In particular, their Honours in the Townsville case appear to have thought that the ratio of the decision in Adamson's case was to be found in the judgment of Lord Cairns, who plainly adopted the vicarious liability interpretation. But Barton, J. and Isaacs, J. appear to me to have been of the opinion that the vicarious liability interpretation was in any event correct with respect to both s.196 of the Queensland Act and s.74 of the English Act: see especially 18 C.L.R. at pp. 319-320 and 323-330. Barton, J. said in effect that the vicarious liability interpretation as opposed to the absolute liability interpretation was one "which does not involve a wide departure from ordinary principles of justice in legislation, or entail consequences which when considered in their ultimate bearings would be startling." Isaacs, J. inter alia relied upon the use of the word "injury" in s. 196 of the Queensland Act, which did not appear in s.74 of the English Act, but which does appear in s.110(1), and he also inter alia relied upon the words "by a vessel" in the expression in s.196 "injury done by a vessel", (the expression in s.110(1) being "injury caused by such vessel"):

see 18 C.L.R. at pp. 323-324; and see also as to "injury" Crofter Hand Woven Harris Tweed Co. Ltd. v. Veitch 1942 A.C. 435 at p. 442. But Griffith, C.J. and Barton, J. placed no special significance upon the words "injury done by a vessel": see 18 C.L.R. at pp. 315 and 318-9.

In The Mostyn 1927 p.25 the Court of Appeal considered that in the light of the decision in Adamson's case they ought to adopt the vicarious liability interpretation in relation to s.74 of the English Act, although only Sargant, L.J. expressed any personal concurrence in that interpretation. The Court of Appeal accordingly held that the plaintiffs failed because the damage in question had not been caused by negligence on the part of anybody connected with the vessel.

But on appeal (sub. nom. Great Western Railway Co. v. Owners of S.S. Mostyn 1928 A.C. 57) this decision of the Court of Appeal was reversed by the House of Lords by a bare majority. Viscount Dunedin and Lord Phillimore dissenting. The majority rejected the view that the ratio of Adamson's case was to be found in the judgment of Lord Cairns, and they also rejected the vicarious liability interpretation of s.74, holding that the absolute liability interpretation was correct, subject only to the general qualification (which they considered was required by Adamson's case and the precise ambit of which may still be open to debate) that there was no liability for damage caused by an abandoned derelict vessel, or (perhaps) for damage caused otherwise than by human agency or caused by an act of God. The correctness of this view of s.74 was accepted by the House of Lords in Workington Harbour and Dock Board v. Towerfield (Owners) 1951 A.C.112.

It appears to me that there is thus a direct conflict between a decision of the High Court on the one hand and two decisions of the House of Lords on the other hand, and that in those circumstances it is my duty to follow the decision of the High Court, and to place upon s.110 the vicarious liability interpretation: see Skelton v. Collins 1966 115 C.L.R. 94 especially at pp. 104, 122, 133 and 137-9.

Some independent support for my conclusion that the vicarious liability interpretation should be applied to s.110 may, I think, be found in the history of the

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Reasons for Judgment of Mr. Justice Newton 19th August 1969

(continued)

provision.

A provision corresponding to s.110 first appeared in Victoria legislation in the Melbourne Harbor Trust Act 1926 (Act No. 3496). Section 20 of that Act repealed s.153 of the Melbourne Harbor Trust Act 1915, and substituted a new s.153 which was in identical terms to s.110, save that it related to the Melbourne Harbor Trust and save that the word "boatman" in the singular was used instead of "boatmen."

It may be convenient to set out the provisions of the new s.153. They were as follows -

> "153. (1) The Commissioners may recover damages in any court of competent jurisdiction from the owner master and agent of any vessel for any injury caused by such vessel or by any boatman or other persons belonging to or employed in or about such vessel to the property or effects of the Commissioners or the banks or wharfs or other works erected maintained or repaired under the provisions of the Melbourne Harbor Trust Acts.
>
> (2) The owner master or agent of any vessel shall not be relieved of any liability to the Commissioners by reason of the fact that such vessel was under compulsory pilotage at the time any injury was caused as aforesaid.
>
> (3) Nothing in this section shall prejudice any other rights which the Commissioners may have or limit any liabilities to which the vessel or the master owner or agent thereof may be subject in respect of any injury by such vessel."

This provision has been retained in the Melbourne Harbor Trust legislation ever since, subject only to very minor amendment, and is now to be found in s.s. 150 and 151 of the Melbourne Harbor Trust Act 1958, s.150 reproducing sub-sections (1) and (2) of the 1926 enactment and s. 151 reproducing sub-section (3).

Section 21 of the Melbourne Harbor Trust Act 1926

repealed s.154 of the Melbourne Harbor Trust Act 1915, and substituted a new s.154 in the following terms -

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Reasons for Judgment of Mr. Justice Newton 19th August 1969

(continued)

"154. Where any sum has been paid to the Commissioners by or recovered from the owner master or agent of any vessel as damages for any injury under the last preceding section such owner master or agent (as the case may be) may if the injury was due to the negligence of some person other than such owner master or agent recover from such person such sum (together with the costs of levying and recovering the same) in any court of competent jurisdiction:

Provided that nothing in this section shall deprive any licensed pilot of the benefit of any statutory limitation of his liability."

This provision has also been retained in the Melbourne Harbor Trust legislation ever since, and is now to be found in s.152 of the Melbourne Harbor Trust Act 1958. No such provision was included in the Geelong Harbor Trust legislation by the Geelong Harbor Trust (Amendment) Act 1951, which enacted s.110, nor has any such provision been included in the Geelong Harbor Trust legislation by any later Act. Prior to the Melbourne Harbor Trust Act 1926 ss.153 and 154 of the Melbourne Harbor Trust Act 1915 were in the following terms -

"153. (1) The owner of every vessel shall be and he is hereby made answerable for all trespasses damages spoil or mischief that are done by such vessel or by any of the boatmen or other persons belonging to or employed in or about the same by any means whatsoever to any of the property or effects of the Commissioners or the banks or other works erected maintained or repaired under the provisions of this Act.

(2) The owner of every such vessel shall for every such trespass damage spoil or mischief so committed as aforesaid upon conviction of the person so committing the same before a court of petty sessions pay to the secretary of the Commissioners such damages satisfaction and compensation as shall be

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No. 4

Reasons for Judgment of Mr. Justice Newton 19th August 1969

(continued)

ascertained fixed and determined by such court together with all costs charges and expenses attending such conviction.

(3) Such damages satisfaction and compensation shall not exceed the sum of Twenty pounds besides the costs of such conviction.

(4) In case such damages satisfaction or compensation and such costs charges and expenses are not paid on demand the same shall be recoverable in the same manner as any penalty is by this Act directed to be recovered.

(5) In case such damage exceeds the sum of Twenty pounds the said owner may be sued by the Commissioners for such damages satisfaction or compensation.

154. (1) Every such boatman or other person so offending as last aforesaid shall be answerable for and shall repay all such damages satisfaction and compensation as are so ascertained fixed and determined and recovered as aforesaid with all the costs of levying and recovering thereof to his master or such owner.

(2) In case of nonpayment thereof on demand on oath made by such master or owner of the payment made by him of such damages satisfaction compensation and costs and that the same have been demanded of such boatmen or other person respectively but that the same have not been repaid (such oath to be made before any justice) the amount thereof shall be recovered in like manner as any penalty is hereby directed to be levied and recovered by warrant under the hand of such justice."

Prior to the enactment of the Geelong Harbor Trust (Amendment) Act 1951 ss. 110 and 111 of the Geelong Harbor Trust Act 1928 were in the same terms as ss. 153 and 154 of the Melbourne Harbor Trust Act 1915. And ss. 110 and 111 of the Geelong Harbour Trust Act 1915 had been in like terms. Section 10(2) of the Geelong Harbor Trust

(Amendment) Act 1951 repealed s .111 of the Geelong Harbor Trust Act 1928, but no new provision was substituted for it.

Harbor Boards legislation was first enacted in Victoria by the HarborBoards Act 1927 (Act No.3560). Sections 109 and 110 of that Act were, so far as material, in identical terms to ss. 153 and 154 of the Melbourne Harbor Trust Act 1915, as enacted by the Melbourne Harbor Trust Act 1926. These provisions have been retained in the Harbor Boards legislation ever since: see ss. 109 and 110 of the Harbor Boards Act 1928, and ss. 109 and 110 of the Harbor Boards Act 1958: see also s.47 of the Portland Harbor Trust Act 1958 (as amended).

It is, I think, unnecessary to examine the scope and effect of s.153 of the Melbourne Harbor Trust Act 1915 in its original form, save to draw attention to two matters. In the first place, the section imposed liability only on owners of vessels, not also upon masters or agents; secondly, a contention that the section on its natural interpretation imposed absolute liability upon owners (i.e. that what I have called "the absolute liability interpretation" applied) would, in my opinion, not have been easy to sustain.

The new s.153, which was enacted by s.20 of the Melbourne Harbor Trust Act 1926, imposed liability on masters and agents of vessels as well as upon owners. And in my opinion the Victorian Parliament in 1926 must be taken to have intended that what I have called "the vicarious liability interpretation" should apply to the new s.153 i.e. that the owner, master or agent of a vessel should be liable only for damage which was caused by a tortious act or omission on the part of some person connected with the vessel. For in 1926 the principally relevant authority upon such a provision, so far as concerned Victoria, was the decision of the High Court in the Townsville case; indeed that decision then held the field. And the Townsville case was a strong authority in favour of the vicarious liability interpretation. The decision of the House of Lords in The Mostyn was not given until 19th December 1927. Hence, if it had been intended that what I have called "the absolute liability interpretation" should apply, I think that the new s.153 would have been very differently worded: for example, some such words

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(continued)

as "whether or not wrongful or tortious at common law" could have been inserted immediately after the words "for any injury."

Indeed the fact that those responsible for the drafting of the new s.153 had the Townsville case in mind is strongly indicated by sub-section (2). For in the Townsville case the actual decision of the High Court was that where the damage was caused by the negligence of a compulsory pilot, the owner was not liable, Griffith, C.J. being of the opinion that the compulsory employment of a pilot was equivalent to vis major (18 C.L.R. at p. 316), Barton, J. being of a somewhat similar opinion (18 C.L.R. at p. 320), and Isaacs, J., who disagreed with the vis major view, being of the opinion that since by Queensland Act of Parliament the pilot could not himself be civilly liable, no vicarious liability could attach to the owner under s.196 of the Queensland Harbour Boards Act 1892 (18 C.L.R. especially at pp.326-7 and 329-330) In 1926 the relevant Victorian provision as to the civil liability of pilots appears to have been s.69 of the Marine Act 1915, which provided that "no pilot shall be liable for neglect or want of skill beyond the amount of One hundred pounds and the amount of pilotage payable to him in respect of the voyage on which he is engaged": compare s.69 of the Marine Act 1928 and s.69 of the Marine Act 1958. In my opinion by s.s.(2) of the new s.153 the Victorian Parliament in 1926 sought simply to exclude this particular aspect of the decision in the Townsville case, without affecting the application to the new s.153 of the general principle of that decision, namely that what I have called "the vicarious liability interpretation" was correct. Indeed if the absolute liability interpretation had been intended to apply to the new s.153 there would have been little reason for s.s.(2). In my view, the purpose and effect of s.s.(2) was to make the owner, master or agent of a vessel vicariously liable for damage caused by the negligence of a compulsory pilot, notwithstanding that the liability of the pilot himself was limited by statute: see too the proviso to the new s.154.

I do not regard s.s.(3) of the new s.153 of the Melbourne Harbor Trust Act 1915 as affecting my

conclusion that the Victorian Parliament in 1926 intended the vicarious liability interpretation to apply. I regard s.s.(3) as having been enacted ex abundanti cautela, perhaps to make it clear that the owners, masters and agents were not absolved as against the Commissioners from liability for their personal torts where no question of vicarious liability arose, and perhaps also to make it clear that they remained liable according to ordinary common law principles for any loss or damage wrongfully caused to the Commissioners by vessels, which was of a sort falling outside the type of injury referred to in s.s.(1).

If I am right in the conclusion that the vicarious liability interpretation was intended by the Victorian Parliament to apply to s.153 of the Melbourne Harbor Trust Act 1915 as enacted by s.20 of the Melbourne Harbor Trust Act 1926 then there seems to me to be good reason for placing the same interpretation upon all like provisions which have subsequently been enacted or re-enacted by the Victorian Parliament, including s.110 of the Geelong Harbor Trust Act 1928 (as enacted by the Geelong Harbor Trust (Amendment) Act 1951). I think that this is so notwithstanding the decisions of the House of Lords in The Mostyn supra and the Towerfield case supra, especially since the decision of the High Court in the Townsville case has never been over-ruled or questioned by the Privy Council or by the High Court itself: compare Craies on Statute Law 6th ed. (1963) pp. 140-145 and R. v. Reynhoudt 1962 107 C.L.R. 381.

It is perhaps curious that the Geelong Harbor Trust Act 1928 (as in force after the new s.110 had been enacted in 1951) did not include a provision corresponding to s.154 of the Melbourne Harbor Trust Act 1915 (as enacted by the Melbourne Harbor Trust Act 1926). It occurs to me that a possible explanation for this is that it was thought that in addition to any contractual rights of indemnity which might exist, the provisions of s.3 of the Wrongs (Tort-feasors) Act 1949 (Act No. 5382), which came into operation on 1st January 1950 would apply where the injury had been caused by the negligence or other wrongful act of some person other than the owner, master or agent in question, so as to enable the owner, master or agent to obtain contribution or indemnity from that person: see now s.24 of the

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(continued)

Wrongs Act 1958: compare Lister v. Romford Ice and Cold Storage Co. Ltd. 1957 A.C. 555 at pp. 579-580 and 584-5; Harvey v. R.G. O'Dell Ltd. 1958 2 Q.B. 78 at p.107; McManaway v. Aird 1947 N.Z.L.R. 90; and Glanville Williams, Joint Torts and Contributory Negligence (1951) pp. 6-9. If this explanation be right, it may itself lend support to the view that the Victorian Parliament in 1951 intended that the vicarious liability interpretation should apply to s.110.

It is unnecessary for me to discuss the question whether, if my conclusions be right, the Statement of Claim discloses a cause of action; see the Townsville case 18 C.L.R. at pp. 316 and 319. This question is not before me and may depend upon whether s.110 affects the burden of proof, so as to require the Plaintiff only to establish in the first place that the relevant injury was caused by the vessel or by some person or persons belonging to or employed in or about the vessel, the burden being on the defendant to prove absence of negligence or other wrongful act or omission causing the injury. I express no opinion upon this matter.

Subject to any submissions which Counsel may make as to the form of the Order, I propose to make an Order in the form set out in Precedent 19 of Atkins's Encyclopaedia of Court Forms and Precedents in Civil Proceedings 1st ed. vol. 10 p.133, containing a declaration that the provisions of s.110 of the Geelong Harbor Trust Act 1928 (as amended by s.10(1) of the Geelong Harbor Trust (Amendment) Act 1951) do not operate to impose liability on the agent of the vessel in the event of it being established that the collision referred to in the Statement of Claim occurred by act of God, or inevitable accident, or without negligence or other tortious act or omission on the part of the M.V. "OCTAVIAN", and also containing a declaration that the foregoing declaration is without prejudice to the question whether the burden lies upon the plaintiff to establish that the said collision occurred by reason of negligence or other tortious act or omission on the part of the M.V. "OCTAVIAN".

The first declaration travels slightly beyond para. 6(a) and (b) of the amended defence, in

particular the reference to "other tortious act or omission". I therefore tentatively propose to give leave to the defendant to re-amend the defence within 14 days, the plaintiff to have leave to deliver a reply within 14 days of the delivery of any re-amended defence. I have assumed that the references in the declarations to negligence or other tortious act or omission on the part of the M.V. "OCTAVIAN" will be taken to mean negligence or other tortious act or omission on the part of any person employed in or about that vessel; compare the Townsville case supra 18 C.L.R. at pp.322-3. As at present advised I see no reason for referring in the declaration to persons for whose negligence the agent is liable, since para. 3 of the Statement of Claim alleges simply that the injury in question was caused by the "OCTAVIAN". But as earlier indicated, I am prepared to leave the precise form of the declaration to Counsel. If Counsel can agree upon any form of declaration which gives effect to my conclusions, I shall readily adopt it, even if it differs from the form which I have just set out.

I wish to thank Counsel for their memorandum regarding their enquiries from the Parliamentary draftsman, and also to thank Mr. Finnemore for his researches in the matter. But I think, if I may say so, that the results of those enquiries and researches throw little light upon the problems with which I have sought to deal, and, further, that such little light is by law inadmissible.

As to costs, subject to any submissions which Counsel may now make, I tentatively propose to order that the costs of this application be taxed and paid by the Plaintiff. I shall, in any event, certify for Counsel.

Note - After discussion with Counsel, His Honour ordered that the costs of the hearing before him should be reserved, and His Honour pursuant to section 35(1)(a) of the Judiciary Act granted to the plaintiff leave to appeal to the High Court of Australia. His Honour further intimated that Counsel should try to agree upon the precise form of the Order, and that failing such agreement the form of the Order would be settled by His Honour at a further hearing. His Honour said that the Order could grant liberty to apply.

In the Supreme Court of Victoria

No. 5

Order of Mr. Justice Newton 19th August 1969

No. 5.

ORDER OF MR. JUSTICE NEWTON

THE POINT OF LAW raised by the Defence of the Defendant as amended pursuant to the Order of his Honour Mr. Justice Pape made herein on 19th February 1969 and by such Order directed to be set down and argued before the Judge sitting in the Miscellaneous Causes List coming on for hearing before me on the 11th, 12th and 13th days of August 1969 UPON HEARING Mr. S.E.K. Hulme one of Her Majesty's Counsel for the plaintiff and Mr. W.E. Paterson of Counsel for the Defendant AND UPON READING the said order of His Honour Mr. Justice Pape AND UPON READING the pleadings herein AND THIS MATTER STANDING IN JUDGMENT and judgment being given on the 19th day of August 1969 IT IS DECLARED that the provisions of Section 110 of the Geelong Harbor Trust Act 1928 (as amended by Section 10(1) of the Geelong Harbor Trust (Amendment) Act 1951) to not operate to impose liability on the agent of a vessel for injury caused by such vessel to the property of the Plaintiff where the collision in which such injury is done occurs as a result of act of God or inevitable accident or without negligence or other tortious act or omission on the part of any person employed in or about the vessel AND IT IS FURTHER DECLARED that this determination is made without prejudice to the question whether the burden lies upon the plaintiff to establish that such collision occurred by reason of negligence or other tortious act or omission on the part of any person employed in or about the vessel OR upon the Defendant to establish that it did not so occur AND I DO FURTHER ORDER that the Defendant have leave to amend its Defence within 14 days by adding thereto after the word "negligence" wherever occurring in paragraphs 6(a) and 6(b) thereof the words "or other tortious act or omission" if it be so advised AND that if the Defence is so amended the Plaintiff have leave to deliver a Reply within fourteen days of the delivery of any such amended Defence AND I DO FURTHER ORDER that the Plaintiff have leave pursuant to Section 35(1) of the Judiciary Act to appeal to the High Court of Australia against this determination

AND I DO FURTHER ORDER that the costs of this hearing be reserved AND I CERTIFY that this was a matter proper for the attendance of Counsel.

(Sgd) H.R. NEWTON J.

Judge.

In the Supreme Court of Victoria

No. 5

Order of Mr. Justice Newton 19th August 1969

(continued)

No. 6

Affidavit of K.H.MacKinlay as to Value 4th September 1969

No. 6

AFFIDAVIT OF KENNETH HAMILTON MACKINLAY AS TO VALUE

I KENNETH HAMILTON MACKINLAY of 11 Balmoral Crescent North Geelong in the State of Victoria make oath and say -

1. I am the Manager (Engineering) of the Geelong Harbor Trust Commissioners.

2. I am informed and verily believe that on the 26th day of October 1958 the motor vessel "OCTAVIAN" in the Port of Geelong damaged Number 12 Beacon in the Corio Channel in the said Port

3. Shortly after the said Beacon was damaged as aforesaid in my then capacity as Chief Engineer I caused the said damage to be repaired and I kept records and costed the repairs as follows -

PARTICULARS OF COST OF REPLACEMENT AS AT DATE THEREOF

Diving gear	£ 4. -. -.
Launches	185. 8. 6.
Floating crane	304. -. -.
Towage	1058. -. -.
Mobile crane	12.12. -.
Low Loader and truck	12. -. -.
Materials	506. 4. 9.
Batteries	177.11. 8.
Labour	609. 2. 6.
	£2868.19. 5.

In the Supreme Court of Victoria

No. 6

Affidavit of K.H.MacKinlay as to Value 4th September 1969 (continued)

4. The cost of replacements as above set out was the fair and reasonable cost at the date of replacement of repairing the damage to the said Number 12 Beacon and accordingly is the amount claimed by the abovenamed Plaintiff in its Statement of Claim.

SWORN at Geelong in the State of Victoria this fourth day of September 1969) (SGD) K.H.MACKINLAY

Before me:

E.H. WILSON (SGD)
Notary Public
Geelong.

AFFIDAVIT OF KENNETH HAMILTON MACKINLAY AS TO VALUE

In the High Court of Australia

No. 7

Notice of Appeal 9th September 1969

No. 7

NOTICE OF APPEAL

TAKE NOTICE that the High Court of Australia will be moved by way of appeal at the sittings of the High Court for the hearing of appeals appointed to commence in Melbourne in the State of Victoria on the 7th day of October 1969 or so soon thereafter as Counsel can be heard, by Counsel on behalf of the abovenamed Appellant for an Order that the judgment of the Supreme Court of the State of Victoria made and pronounced on the 19th day of August 1969 pursuant to the Order of his Honour Mr. Justice Pape made on the 19th day of February 1969 in Action No. 20 of 1961 wherein the abovenamed Appellant was Plaintiff and the abovenamed Respondent was Defendant by which order it was ordered pursuant to Order 25 Rule 2 of the Rules of the Supreme Court of Victoria that a point of law raised by the pleadings in the said action be set down for hearing and disposed of before the trial of the said action in which judgment it was declared that the provisions of Section 110 of the Geelong Harbor Trust Act 1928 (as amended by Section 10(1) of the Geelong Harbor Trust (Amendment) Act 1951) do not operate to impose liability on the agent of the vessel for injury caused by such vessel to the property or effects

of the Appellant where the collision in which such injury is done occurs by act of God or inevitable accident and without negligence or other tortious act or omission on the part of any person employed in or about the vessel and that the costs of and incidental to the hearing of the said point of law be reversed and set aside and that in lieu thereof an order or declaration be made that the provisions of Section 110 of the Geelong Harbor Trust Act 1928 (as amended by Section 10(1) of the Geelong Harbor Trust (Amendment) Act 1951) do operate to impose liability on the agent of a vessel for injury caused by such vessel to the property or effects of the Appellant notwithstanding that the collision in which such injury is done occurs by act of God or inevitable accident and without negligence or other tortious act or omission on the part of any person employed in or about such vessel AND that the Respondent pay the Appellant's costs of the said proceedings in the Supreme Court of the State of Victoria and of this appeal.

The whole of the said judgment or order is complained of or appealed against on the following grounds -

1. That the whole of the said judgment or order was wrong in law.

2. That the learned judge was in error in holding that the provisions of Section 110 of the Geelong Harbor Trust Act 1928 (as amended by the Geelong Harbor Trust (Amendment) Act 1951) do not operate to impose liability on the agent of a vessel for injury caused to the property or effects of the Appellants by such vessel notwithstanding that the collision in which such injury is done occurs as a result of act of God or inevitable accident and without negligence or other tortious act or omission on the part of any person employed in or about such vessel.

3. That the learned judge ought to have held that the provisions of Section 110 of the Geelong Harbour Trust Act 1928 (as amended by the Geelong Harbor Trust (Amendment) Act 1951) do operate to impose liability on the agent of a vessel for injury caused to the property or effects of the Appellants by such vessel notwithstanding that the collision in

In the High Court of Australia

No. 7

Notice of Appeal 9th September 1969

(continued)

which such injury is done occurs as a result of act of God or inevitable accident and without negligence or other tortious act or omission on the part of any person employed in or about such vessel.

4. That the learned judge erred -

(a) in holding that the verbal differences between Section 196 of the Queensland Harbour Boards Act 1892 and Section 110 of the Geelong Harbor Trust (Amendment) Act 1928 (as amended by the Geelong Harbor Trust (Amendment) Act 1951) were not of sufficient importance as not to require the application to the said Section 110 of the interpretation given to the said Section 196 by this Honourable Court in Townsville Harbour Board v. Scottish Shire Line Ltd. (1914) 18 C.L.R.306.

(b) in holding that the adoption of the interpretation of the said Section 110 sought by the Appellant would be inconsistent with the decision of this Honourable Court in Townsville Harbor Board v. Scottish Shire Line Ltd. (1914) 18 C.L.R. 306.

(c) in holding that there was a direct conflict between the principles enunciated in the decision of this Honourable Court in Townsville Harbour Board v. Scottish Shire Line Ltd. (1914) 18 C.L.R. 306 and the decisions of the House of Lords in Great Western Railway Co. v. Owners of S.S. Mostyn (1928) A.C. 57, and Workington Harbour and Dock Board v. Towerfield Owners (1951) A.C.112.

(d) in proceeding on the basis that there were two or two principal rival interpretations of the said Section 110 in support of one or other of which the cases decided on other corresponding provisions were to be gathered.

(e) in placing insufficient weight on the fact that Section 110(2) of the Geelong Harbor Trust Act 1928 provides inter alia that the agent of a vessel is not relieved of any liability to the Appellant by reason of the fact that such vessel was under compulsory pilotage at the time injury is caused by such

vessel to the property or effects of the Appellant.

(f) in holding that the failure to leave in the Geelong Harbor Trust Act 1928 after 1951 a provision corresponding to Section 151 of the Melbourne Harbor Trust Act 1958 was explained by the existence in Victoria of the provisions contained in Section 2 of the Wrongs (Tortfeasors) Act 1949 and that such failure lent support to the view that the said Section 110 does not apply to the case of collision occurring as a result of Act of God or inevitable accident and without negligence or other tortious act or omission on the part of any person employed in or about the vessel concerned.

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No. 7

Notice of Appeal 9th September 1969

(continued)

DATED the ninth day of September 1969.

Harwood & Pincott
Solicitors to the Appellant.

To the Respondent

And to its Solicitors
Messrs. Middleton, McEacharn, Shaw & Birth.

And to The Prothonotary,
Supreme Court, Melbourne.

No. 8

No. 8

Statement of Agreed Facts

STATEMENT OF AGREED FACTS.

The Plaintiff is and was at all material times a body corporate; the defendant is and was at all material times a firm.

On 26th October 1958 the m.v. "OCTAVIAN" was berthed at Refinery Pier Geelong when she was struck by a wind squall and in consequence broke loose and struck Number 12 Beacon in Corio Channel. The "OCTAVIAN" was securely moored prior to breaking adrift and the accident resulted from the extreme severity of the squall, coupled with a sudden change in wind direction. The wind force rose almost instantaneously from 30 miles per hour to 79 miles per hour and simultaneously the wind direction changed

In the High Court of Australia

No. 8

Statement of Agreed Facts

(continued)

from west-south-west to west.

This combination of circumstances was unusual in the Port of Geelong. At no time was the master or any of the crew of or anyone connected with the m.v. "OCTAVIAN" negligent or careless.

Number 12 Beacon was on the 26th day of October 1958 the property of the plaintiff and a work erected maintained and repaired under the provisions of the Geelong Harbor Trust Act. As a result of being struck by the m.v. "OCTAVIAN", Number 12 Beacon needed replacement. The reasonable cost of its replacement was £2,868/18/5.

No. 9

Reasons for Judgment of His Honor the Chief Justice Barwick 17th June 1970

No. 9

REASONS FOR JUDGMENT OF HIS HONOR THE CHIEF JUSTICE BARWICK

The principal question in this appeal is whether a section of a statute means what its words seem plainly to say or whether these words are subject to limitations or exceptions unexpressed by the legislature but to be declared by the Court in order to implement a policy of the legislature divined by the Court from the words of the statute and their impact, if applied without qualification, upon the previously existing general law.

There is a subsidiary question, namely, whether if it is thought that the legislature meant what the words of the statute seem plainly to say, the reasoning of an earlier decision of this Court not resulting in such a construction ought none the less, merely because of the lapse of time, to be accepted and followed.

The appellant is constituted a body corporate by the Geelong Harbour Trust Act 1928-1951 (the Act) and empowered thereby to erect and maintain, amongst other things, wharves and beacons in the Port of Geelong in the State of Victoria. According to an agreed statement

of facts, to the origin of which I shall later refer, it was possessed in October 1958 of a beacon in the Corrio Passage of the Port of Geelong, known as No. 12 Beacon. On the 26th October, 1958 the motor vessel "Octavian" of which the respondent was the agent within the meaning of s. 110 of the Act, was securely moored to a wharf in the said port. During that day the wind rose, as it is said, instantaneously, from 30 m.p.h. to 79 m.p.h. and simultaneously veered from west south west to west. Such a combination of circumstances was unusual in that port. As a result, the vessel broke loose due to the severity of the squall and came against No. 12 Beacon causing injury to it. It is agreed that no act or omission of any person associated with the vessel which ought to have been done or omitted caused or contributed to the collision of the vessel and the beacon.

The appellant sued the respondent in the Supreme Court of Victoria alleging that the vessel caused injury to its beacon and claimed £2,868.19.5. ($5,537.95), being the cost of its necessary replacement. The appellant's action was founded exclusively on the provisions of s.110 of the Act as amended to 1951. That section is in the following terms:

> "110. (1) The Commissioners may recover damages in any court of competent jurisdiction from the owner master and agent of any vessel for any injury caused by such vessel or by any boatmen or other persons belonging to or employed in or about such vessel to the property or effects of the Commissioners or the banks or wharves or other works erected maintained or repaired under the provisions of this Act.
>
> (2) The owner master or agent of any vessel shall not be relieved of any liability to the Commissioners by reason of the fact that such vessel was under compulsory pilotage at the time any injury was caused as aforesaid.
>
> (3) Nothing in this section shall prejudice any other rights which the Commissioners may have or limit any liabilities to which the vessel or the master owner or agent thereof may be subject in respect of any injury caused by

In the High Court of Australia

No. 9

Reasons for Judgment of His Honor the Chief Justice Barwick 17th June 1970

(continued)

such vessel".

The respondent, amongst other defences in its amended statement of defence, asserted that -

"6. (a) If any part of the damage alleged occurred upon or as a result of the motor vessel "Octavian" coming into contact with the said beacon (which is not admitted) the said damage occurred and the motor vessel "Octavian" came into contact with the said beacon -

(i) by act of God; alternatively
(ii) by inevitable accident; alternatively
(iii) without negligence or other tortious act or omission on the part of the motor vessel "Octavian" or on the part of any person for whose negligence or other tortious act or omission the defendant is liable.

(b) The defendant will say that the provisions of Section 110 of the Geelong Harbor Trust Act 1928 (as amended) do not render the agent of any vessel liable for damage occurring upon or as a result of the vessel coming into contact with property of the Commissioners -

(i) by Act of God; alternatively
(ii) by inevitable accident; alternatively
(iii) without negligence or other tortious act or omission on the part of the vessel or on the part of any person for whose negligence or other tortious act or omission the agent of the vessel is liable.

7. If the motor vessel "Octavian" has caused any injury to the said beacon (which is denied) such injury was so caused by inevitable accident and without negligence or other tortious act or omission on the part of the motor vessel "Octavian" or of any person for whose negligence or other tortious act or omission the defendant is liable."

On 28th February, 1969 it was ordered by consent of the parties that the point of law

raised by the amended defence namely "whether the provisions of s.110 of the Act operate to impose liability on the agent of the vessel in the event of it being established that the collision referred to in the statement of claim occurred by Act of God, inevitable accident or without negligence on the part of any person for whom the agent responsible" be set down for hearing and disposal before the trial of the action.

This was done and the point of law was disposed of on 19th August, 1969 by a declaration made by the Supreme Court that the provisions of s .110 of the Act as amended do not operate to impose liability on the agent of a vessel for injury caused by such vessel to the property of the appellant where the collision in which such injury is done occurs as a result of an act of God or inevitable accident or without negligence or other tortious act or occurrence on the part of any person employed in or about the vessel.

The learned judge who constituted the Supreme Court regarded himself as bound by the decision of this Court in Townsville Harbour Board v. Scottish Shire Line Ltd. (1914) 18 C.L.R. 306 to hold that s.110 did not impose unqualified liability upon the agent of a vessel which caused injury to the installations of the appellant. However, he expressed his own opinion of the construction of the section to be in the same sense.

The appellant now appeals to this Court by special leave. The undesirability of dealing with a point of law upon a hypothetical basis before the relevant facts are found or admitted needs no emphasis. Consequently at the Court's instance, a statement of agreed facts was made available to the Court for the purpose of the disposal of this appeal. I have already indicated the relevant facts so agreed. It is apparent from this statement that no question of an act of God in fact arises in the action. Further it is clear that the respondent's vessel was not in any situation comparable to that of the "Natalian" in the case of River Wear Commissioners v. Adamson (1877) L.R.2 App. Cas. 743. The substantive question which does arise in the action is whether the section imposes liability upon the owner or agent of a vessel only in circumstances where some action in tort would

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Reasons for Judgment of His Honor the Chief Justice Barwick 17th June 1970

(continued)

otherwise lie against some person for the injury caused to the beacon, or imposes liability upon the agent or owner, without any such qualification, where a vessel in fact causes injury to the property of the appellant.

This Court, unlike the House of Lords when deciding the meaning of s. 74 of the Harbours, Docks, and Piers Clauses Act 1847 in Great Western Railway Co. v. Owners of s.s. Mostyn (1928) A.C. 57, is not bound by any authoritative construction of the words of the section it is called upon to construe. It is quite free so far as precedent is concerned to place its own construction upon the section. However, it has the great assistance of the discussion in England of not dissimilar words in other Acts: and there is the decision of this Court in Townsville Harbour Board v. Scottish Shire Line Ltd. (supra).

Section 74 of the Harbours, Docks, and Piers Clauses Act 1847 (U.K.) was in the following terms :

> "The owner of every vessel or float of timber shall be answerable to the undertakers for any damage done by such vessel or float of timber, or by any person employed about the same, to the harbour, dock, or pier, or the quays or works connected therewith, and the master or person having the charge of such vessel or float of timber through whose wilful act or negligence any such damage is done shall also be liable to make good the same; and the undertaker may detain any such vessel or float of timber until sufficient security has been given for the amount of damage done by the same: Provided always, that nothing herein contained shall extend to impose any liability for any such damage upon the owner of any vessel where such vessel shall at the time when such damage is caused be in charge of a duly licensed pilot, whom such owner or master is bound by law to employ and to put his vessel in charge of."

It was construed in the case of River Wear Commissioners v. Adamson (supra) by Quain J.

sitting at the Durham Assizes as imposing absolute liability on the owner of a vessel which, after its crew had been withdrawn from it during a gale off the English coast, was lifted by the wind and tide against a pier the property of the River Wear Commissioners who were entitled to the benefit of s. 74. This decision was reversed on appeal, various reasons being given by the Lord Justices: see (1876) L.R.1 Q.B.D. 546. On the matter coming before the House of Lords, the decision of the Court of Appeal was affirmed: see (1877) L.R. 2 App. Cas. 743.

I have no need to discuss the various and inharmonious reasons given for the conclusion in that case that the owners of the vessel were not liable. Those reasons were discussed in detail in Great Western Railway Co. v. Owners of s.s. Mostyn (supra). But, if I may say so with due respect to those who have and may yet think otherwise, in my opinion, the House of Lords did not decide in River Wear Commissioners v. Adamson (Supra) that S.74 was subject to the exception of an act of God causing or contributing to the injury to the Harbour installations. Nor, in my opinion, did the House declare that the Act only imposed liability on an owner of a vessel causing injury where someone was liable for that injury at common law.

In Townsville Harbour Board v. Scottish Shire Line Ltd. (supra) this Court was called upon to construe S.196 of the Harbour Boards Act of the State of Queensland which was in terms substantially identical with s.74 of the Harbours, Docks and Piers Clauses Act 1847. A vessel owned by the Scottish Shire Line injured a wharf the property of the Townsville Harbour Board, which was a Harbour Board within the meaning and operation of the section of the Queensland Act. The vessel was under compulsory pilotage at the time. Griffith C.J. and Barton J. by applying what they considered to be the decision in River Wear Commissioners v. Adamson (supra) held that the owners of the vessel were not liable for the injury done whilst the vessel was in the charge of the pilot. Griffith C.J. at p.314 thought "that the proper conclusion to be drawn from the decision is that in the opinion of the majority of the House s.74 of the Act did not create a new kind of liability, but merely declared that the owner of a ship should be liable for an injury done by his

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No. 9

Reasons for Judgment of His Honor the Chief Justice Barwick 17th June 1970

(continued)

ship under such circumstances that someone was liable for it at common law." Barton J. seems to have treated the opinion of Lord Cairns L.C. in the English case as being the interpretation placed by the House on the English section (see p. 318): and, in any case, like Isaacs J. (see p.330) was prepared to accept Lord Cairns' view as the correct construction of the section. Accordingly the Court unanimously held that the Queensland section did not impose liability on the owner in the circumstances of the case.

But in so far as that construction was the result of an opinion that there was a decision of the House of Lords in the same sense as Lord Cairns' opinion in River Wear Commissioners v. Adamson (supra) it is now clear that the House of Lords in deciding Great Western Railway co. v. Owners of s.s. Mostyn (supra) did not regard River Wear Commissioners v. Adamson (supra) as approving any such construction. Viscount Haldane in a very full analysis of the speeches in River Wear Commissioners v. Adamson (supra) concluded that there was no majority view in favour of the construction of s.74 proposed by Lord Cairns. Viscount Dunedin issued a timely warning against constructing a ratio decidendi by adding opinions together and agreed with Lord Herschell's view expressed in The Arrow Shipping Company Ltd. v. The Tyne Improvement Commissioners (The "Crystal") (1894) A.C.508 that "you cannot extract from the judgments in River Wear Commissioners v. Adamson (supra) such a ratio decidendi as is binding," It may perhaps be said that it is not wholly clear from the speeches in Great Western Railways Co. v. Owners of s.s. Mostyn (supra) for what proposition the House regarded the decision in River Wear Commissioners v. Adamson (supra) as binding upon it. But it is clear that the majority held that there was no decision of the House in the sense of Lord Cairns' speech. Viscount Haldane said that the House was bound "to hold that the section in question is not to be read literally but as applying where the damage complained of has been brought about by a vessel under the direction of the owner or his agents whether negligent or not. The decision further exempts the owner when the vessel is not under

such control but is for instance derelict." Viscount Dunedin said that the judgment itself was binding but did not say what the judgment necessarily involved (p.74). Lord Shaw thought the decision limited to its very special facts, namely that "of a derelict ship from which all human agency had been withdrawn." Lord Phillimore was prepared to treat Lord Cairns' view as having been adopted by a majority of the House and thus as constituting the ratio decidendi of the judgment. I think Lord Blanesburgh treated the decision as holding that damage done by a vessel as the result of an act of God was exempted from the operation of the section. For other views of members of the House of Lords as to the basis of the decision in River Wear Commissioners v. Adamson (supra) and that of Great Western Railway Company v. Owners of s.s. Mostyn (supra) see Workington Harbour and Dock Board v. Towerfield (Owners) (1951) A.C. 112 per Lord Porter at p.135 per Lord Normand at p.146 and per Lord Radcliffe at p.157. But as I mentioned earlier this Court is under no necessity to decide what in terms of precedent the House decided in River Wear

LINE 28

(supra) - it was clear that the basis of the reasoning of this Court in Townsville Harbour Board v. Scottish Shire Line Ltd. (supra) was not endorsed by the House of Lords.

It may be mentioned, however, that in Great Western Railway Co. v. Owners of s.s. Mostyn (supra) the House of Lords . . .

v. Adamson (supra) a majority of their Lordships, as it seems to me, confined it to a decision on its own facts not establishing any general principle.

I have carefully studied all the various reasons given in the various Courts for the decisions to which I have referred. They seem to me to cover every argument pro and con the construction of a section in terms of s.74 of the Harbours, Docks and Piers Clauses Act. There is no need to recount them. That section provided that the owner should be

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Reasons for Judgment of His Honor the Chief Justice Barwick 17th June 1970

(continued)

"answerable" for damage done by a vessel and imposed liability upon a master for wilful or negligent conduct in relation to the damage done. Section 110 of the Act provides that the harbour authority may "recover damages"; it speaks of "injury caused" and groups owner, agent and master together without differentiation. It does not contain a provision which gives to the owner, agent and master who has had to pay the Harbour authority a right to recover from the person wrongfully causing the damage though some such provisions in comparable Victorian statutes do so. But it seems to me that none of those differences in detail has any substantial effect upon the construction of the principal provision.

In my opinion, the words of s.110 are in themselves unambiguous and intractable: and I can find no ground for construing them otherwise than in their plain and unqualified sense, even though the section was passed by the legislature at a time when absolute liability for acts done or omitted was not as familiar a concept as it is today. "The Harbour authority may recover damages from the owner, agent or master of a vessel" which in fact causes injury to the harbour installations. In my opinion, there is no warrant for any judicial gloss upon the words, whatever the judicial view may be as to the rightness of imposing such an unqualified liability upon the owner, agent or master. But, for my own part, I see nothing unreasonable or harsh in requiring those associated with a vessel, either by proprietorship, or agency, or control to make good damage done by the vessel to harbour installations. None of the various reasons given in the reported decisions including the decision of this Court for qualifying the words of the section persuade me to the view that the legislature in enacting the section in its actual terms intended any qualification of the words it employed in enacting the section. I share with great respect Lord Gordon's view in River Wear Commissioners v. Adamson (supra) of the proper approach to the construction of such a section and his conclusion as to the meaning of the section with which he had to deal. Further, if I might say so, again with great respect, I entirely agree with the speech of Viscount Haldane both in his analysis of the reasons given in River Wear

Commissioners v. Adamson (supra) and in his construction of the section then under consideration had he been free altogether of the authority of that case. Also I respectfully agree with the views expressed by Lord Radcliffe in Workington Harbour and Dock Board v. Towerfield (Owners) (supra) at pp. 158-160 of the report. Indeed as Lord Shar said in his speech in Great Western Railway Co. v. Owners of s.s. Mostyn (supra)

> "Nearly every judge who has spoken upon the subject, not only in Adamson but in the various cases thereafter in which Adamson has been referred to, has admitted that, while the restriction of liability enforced by this House has, of course, to be deferred to, yet the imposition of unrestricted and comprehensive liability appears, nevertheless, to be in entire accord with the plain and express words of the statute."

To qualify the unambiguous language of s.110 so as to effect some supposed policy of the legislature would, in my opinion, not be construing the words of the legislature but on the contrary be an attempt to legislate.

It was said that a provision corresponding to s.110 had been enacted by the Victoria Legislature after the decision of the House of Lords in River Wear Commissioners v. Adamson (supra) and before the decision of the House in Great Western Railway Co. v. Owners of s.s. Mostyn (supra) and that therefore s.110 should be construed as being procedural only, the legislature being supposed to have been familiar with the decision in River Wear Commissioners v. Adamson (supra). But in the case of a statute with such clear words, the legislative history, which at best in these times may be but a frail guide, can have no definitive weight. And in any case, as Viscount Haldane points out in his speech in Great Western Railway Co. v. Owners of s.s. Mostyn (supra), s.74 of the Harbours, Docks and Piers Clauses Act upon the concession made by Lord Cairns himself, could not have been properly regarded as merely a procedural section. On any view, it imposed liability (p.67 of the report). Hav ing regard to what is generally conceded to be the unsatisfactory nature of the decision in that case (see The Arrow Shipping Company Ltd. v. The Tyne Improvement Commissioners (The "Crystal") (supra): Great Western Railway Co. v. Owners of s.s. Mostyn (supra) and Workington Harbour and Dock Board v. Towerfield

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(Owners) (supra), the case is not one in which a clearcut construction has been given to an Act. It is at best doubtful just what the legislature may be supposed to have concluded from the judicial reasoning. There is no warrant for supposing that the legislature took any different view of the decision in River Wear Commissioners v. Adamson (supra) than did the majority of the House of Lords in Great Western Railway Co. v. Owners of s.s. Mostyn (supra). Such a view is of no assistance in the resolution of this case.

I turn now to the subsidiary question, for in my opinion, the reasoning of the members of this Court in the case of Townsville Harbour Board v. Scottish Shire Line Ltd. (supra) is insupportable. The actual decision of the Court has no present bearing because of the provisions of s.110(2) of the Act. Thus, we are not here concerned with the reversal of a prior decision. The question here is whether we should accept reasoning, with which we do not agree, simply because it was employed many years ago to reach a decision which as a decision is not relevant to this case.

I have already outlined the reasoning of the Justices of this Court. It was based upon a view of the reasoning in River Wear Commissioners v. Adamson (supra) which is now seen and since 1928 has been seen by the House of Lords to be clearly untenable. It was not based on any reasoning or consideration particularly applicable to Australian conditions. No doubt whilst it may be said that, logically, the Justices' reasoning in Townsville Harbour Board v. Scottish Shire Line Ltd. (supra) would warrant the conclusion that the language of the statute presently under consideration ought to be read as subject to unexpressed exceptions or qualifications, all that was necessary for the conclusion reached by the Court in that case was the acceptance of the view that s.74 did not apply in the case of an abandoned ship regarded as a ship not under the control of its owner or master, a ship under pilotage being approximated to the situation of such a ship. Thus the limited view of River Wear Commissioners v. Adamson (supra) taken by the majority of their Lordships in Great Western Railway Co. v. Owners of s.s. Mostyn (supra) and by Lord Porter in Workington Harbour and Dock

Board v. Towerfield (Owners) (supra) was enough to sustain the decision of this Court in Townsville Harbour Board v. Scottish Shire Line Ltd. (supra) if a ship under compulsory pilotage was equated with a ship of which the owner or master had ceased to have any control. But undoubtedly the section then under consideration was construed as being procedural only and not as imposing liability.

It was said in argument that because the decision of this Court in Townsville Harbour Board v. Scottish Shire Line Ltd. (supra) has stood unchallenged in Australia since 1914, it should be assumed that the community has acted upon the construction then placed on such words as are now found in s.110 and also that the legislature not having intervened was content with the construction which had been placed by the Court upon the comparable section of the Queensland statute. But to this submission I think there are a number of what to my mind are conclusive answers.

The construction placed upon s.196 of the Harbours Act 1892 of the State of Queensland did not affect the title to property or any matter of conveyancing. Insofar as it might bear upon the conduct of ship owners or of their business it could, in my opinion, only affect the insurance of marine risks. Certainly conduct in the handling of ships could not be affected by the reasoning of the Justices of this Court. Insurance against such risks as damage to harbour installations is in general an annual affair and the negotiation of such contracts of insurance can scarce found a claim to the continuance of an insupportable construction of such plain words as those of the statute here under consideration.

But, in any case, it is very difficult, in my opinion, to determine what view a reasonable ship owner or his insurer and their respective advisers would take of this Court's reasoning after the decision of the House of Lords in 1928 of the case of Great Western Railway Co. v. Owners of s.s. Mostyn (supra). From that time, the validity of the reasoning of this Court could scarcely have been beyond question in the mind of any ship owner or insurer or in those of their advisers. It was disowned by the House of Lords and cannot be said to have stood unchallenged for any

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(continued)

considerable time. The very uncertainty of determining precisely to what conclusion the earlier reasoning ought properly to lead, as is the case here, should afford ground for deciding according to what the Court now thinks to be the right construction of the statute.

The House of Lords is no longer bound by its prior decisions. See the Lord Chancellor's announcement (1966) 1 W.L.R. 1234. Having regard to what has been said in the English cases to which I have referred it seems to me that if occasion arises in the House of Lords to reconsider River Wear Commissioners v. Adamson (supra) it is likely that the House would not even support the limited qualification of the words of the statute which that case is said to support. In such a matter of maritime interest as the construction of a statute relating to the liability of owner, agent and master for damage to harbour installations there is still much to be said, in my opinion, for the desirability of uniformity of the relevant law. To accept and act upon the reasoning of this Court in Townsville Harbour Board v. Scottish Shire Line Ltd. (supra) does little to maintain any such uniformity, for quite apart from whatever River Wear Commissioners v. Adamson (supra) might have decided the reasoning of this Court is clearly at odds with that of the majority of the Lords in Great Western Railway Co. v. Owners of s.s. Mostyn (supra).

In my opinion, for all of these reasons, the circumstances of this case could not be brought within those which would persuade this Court to refrain from departing from reasoning of which it does not approve. The Court, in my opinion within limits of the kind mentioned by the Lord Chancellor in his announcement to which I have referred, should be ready to depart from the reasoning of an earlier case where it is convinced that that reasoning is clearly wrong and that the rights of the citizens should not for the future be tied to conclusions founded upon it. In my opinion, the earlier reasoning was plainly erroneous. We should not now accept it. There is, in my opinion, no reason why we should perpetuate error, rather than declare what we consider is the meaning of the statute.

Indeed, there is good reason to act upon our own clear opinion of the statute which we are required to construe.

In my opinion, the appeal should be allowed and it should be declared that s.110 entitled the appellant to recover from the owner, agent or master damages for any injury in fact caused to its property by the "Octavian." It will be observed that in so declaring I hold the section to be unqualified in any respect, not accepting that such facts as formed the basis of the decision in River Wear Commissioners v. Adamson (supra) constitute an exception to the operation of the section.

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No. 10

No.10

Reasons for Judgment of His Honor Mr. Justice McTiernan & His Honor Mr. Justice Menzies 17th June 1970

REASONS FOR JUDGMENT OF HIS HONOR MR. JUSTICE McTIERNAN AND HIS HONOR MR. JUSTICE MENZIES

Statutory provisions corresponding with s.110 of the Geelong Harbour Trust Act 1928, as amended, have over a period of nearly one hundred years, engaged the attention of the courts, the problem being whether such legislation imposes liability independently of fault. In River Wear Commissioners v. Adamson (1877) 2 App.Cas. 743, Lord Cairns said of s.74 of the Harbours Docks and Piers Act, 1847 - a section corresponding with that here under consideration, - that it was procedural only dealing with the mode in which a right of action already provided by the common law should be asserted but not creating a new and extended liability. In 1914 this court adopted the same construction of s.196 of the Harbour Boards Act, 1892 (Qld.); Townsville Harbour Board v. Scottish Shire Line Limited (1914) 18 C.L.R. 306.

The present question is whether we should now depart from this long standing decision and treat the section now under consideration as imposing liability independently of fault of the ship or those responsible for it, so that, even if the damage done by the "Octavian" to number twelve beacon in the port of Geelong was the result of inevitable accident or Act of God, the defendants, the Ship's agents, are liable under the section to

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Reasons for Judgment of His Honor Mr. Justice McTiernan & His Honor Mr. Justice Menzies 17th June 1970

(continued)

make good the damage.

In our opinion we should adhere to the construction that has stood for so long. It may be that, when that construction was first adopted , the idea that culpability was the true basis of tortious liability was more firmly held than it is today, and, it is probable, that this idea influenced Lord Cairns more than it would a court now facing the problem for the first time. It is true too that River Wear Commissioners v. Adamson (supra), although it still stands, has not worn very well; cf. Great Western Railway Company v. Owners of s.s. Mostyn (1928) A.C.57, and Worthington Harbour and Dock Board v. Towerfield (Owners) (1951) A.C.112.

Nevertheless in Australia a decision of this court has stood without question for over fifty years and has, inevitably, been present to the minds of those responsible for legislation made during this time, including the Act now under consideration. Moreover, commerce has, no doubt, been conducted on the footing of the correctness of what this court has decided.

In developing branches of the law a court of appeal, not absolutely bound by previous decisions, should not be too closely fettered by what has been decided earlier, but the construction of legislation seems to us to be a part of the law where change, by court order, carries no premium. In this field reform is best left to Parliament by means of amending legislation with prospective effect only.

We propose to follow the earlier decision of this court and therefore to dismiss the appeal from Newton J., who properly regarded himself as bound by Townsville Harbour Board v. Scottish Shire Line Limited (supra), notwithstanding the subsequent decisions of the House of Lords to which reference has already been made.

Reasons for Judgment McTiernan & Menzies J.J.

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No.11

Reasons for Judgment of His Honor Mr. Justice Kitto 17th June 1970

REASONS FOR JUDGMENT OF HIS HONOR MR. JUSTICE KITTO

In Townsville Harbour Board v. Scottish Shire Line Ltd.(1914)18C.L.R. 306 this Court held that s. 196 of the Harbour Boards Act 1892 (Qld.) should be understood in a sense similar to that which Lord Cairns had attributed to s.74 of the Harbours, Docks and Piers Act, 1847 (U.K.) in River Wear Commissioners v. Adamson (1877) 2 App. Cas. 743, with the result that what was literally an imposition of unrestricted liability on the owner of a vessel for any injury caused by the vessel to the works or property of a Harbour Board should be understood as proceeding upon, and accordingly limited to accord with, an assumption that the damage was of a kind for which compensation could be recovered at common law against some person, that is to say damage occasioned by negligence or wilful misconduct, and not by vis major or act of God.

This decision has stood for more than half a century, and not a little legislation in the several States has been framed by draftsmen who have had it before them.

We are here concerned with s.110 of the Geelong Harbour Trust Act 1928 (Vict.) as enacted by an amending Act of 1951 a section of the same general character as the Queensland section though not in identical terms. On its face s.110 seems plainly to have been enacted with the Townsville case prominently in mind, for the actual decision in that case, that injury caused to a wharf by a vessel while in the charge of a compulsory pilot was caused by vis major and therefore not within the section, was displaced by sub-s.(2), while nothing was done to displace the general proposition that injury by vis major in any other form was outside the section. In 1958 the Victorian Parliament repealed the section and re-enacted it without substantial alteration as s.108 of the Geelong Harbour Trust Act 1958.

In these circumstances I think we should hesitate long before holding, as the appellant invites us to hold, that the construction adopted in the Townsville case should be departed from. If there is any significant difference between s.110

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Reasons for Judgment of His Honor Mr. Justice Kitto 17th June 1970

(continued)

and the Queensland section it tends in favour of the construction rather than against it, for the introductory words, "The Commissioners may recover damages.....from the owner master and agent of any vessel for any injury.....", seem specially apt to reflect an intention that damages for which someone is liable shall be recoverable against the owner, master or agent even if he is not that someone himself. But it is enough to say that at least s.110 is not more favourable to the Commissioners (except as regards a case of compulsory pilotage) than was the Queensland section.

It may be, as was suggested in the argument, that in the Townsville case the members of the Court were mistaken in so far as they treated the view of Lord Cairns as the view of the majority of their Lordships. But the fact is that their Honours adopted Lord Cairns's opinion not merely as a matter of authority but as being in their judgment correct. In the face of such great diversity of opinion as appears in the later cases of Great Western Railway Co. v. Owners of s.s. Mostyn (1928) A.C.57 and Workington Harbour and Dock Board v. Towerfield (Owners) (1951) A.C. 112, it would be presumptuous to offer an opinion of my own as to the true effect of the River Wear case or to say what construction I should have placed upon s.110 if there had been no authorities to consider. In my opinion the proper course to take is to adhere to the construction which in this country has been settled for so long. A legislature whose intention is different may easily give effect to it by enacting a different provision. The case with which this may be done gives, in my opinion, compelling significance to the fact that it has not been done yet.

I would dismiss the appeal.

Reasons for Judgment Kitto J.

In the High Court of Australia

No. 12

No. 12

Reasons for Judgment of His Honor Mr. Justice Owen 17th June 1970

REASONS FOR JUDGMENT OF HIS HONOR MR. JUSTICE OWEN

I have had the opportunity of reading the judgment prepared by the Chief Justice and am in general agreement with the reasons he has given for allowing the appeal. I agree, therefore, with the order which he proposes.

Reasons for Judgment Owen J.

No. 13

No. 13

Order of the Court dismissing Appeal 17th June 1970

ORDER OF THE COURT DISMISSING APPEAL

BEFORE THEIR HONOURS THE CHIEF JUSTICE SIR GARFIELD BARWICK, MR. JUSTICE McTIERNAN, MR. JUSTICE KITTO, MR. JUSTICE MENZIES AND MR. JUSTICE OWEN.

WEDNESDAY THE 17th DAY OF JUNE 1970

THIS APPEAL from the judgment and order of the Supreme Court of the State of Victoria given and made by His Honor Mr. Justice Newton on the 19th day of August 1969 coming on for hearing before the Court at Melbourne on the 5th and 6th days of March 1970 UPON READING the Transcript Record of Proceedings and the Statement of Agreed Facts and UPON HEARING Mr. Hulme of Queens Counsel and Mr. Hooper of Counsel for the Appellant and Mr. Patterson of Queens Counsel and Mr. Shaw of Counsel for the respondent THIS COURT DID ORDER on the said 6th day of March 1970 that this appeal should stand for judgment and the same standing for judgment this day accordingly at Sydney THIS COURT DOTH ORDER that this appeal be and the same is hereby dismissed AND THIS COURT DOTH FURTHER ORDER that it be referred to the proper officer of this Court to tax and testify the costs of the respondent of this appeal and that such costs when so taxed and certified be paid by the appellant to the respondent AND THIS COURT DOTH HEREBY BY CONSENT FURTHER ORDER that the sum of one hundred dollars paid into Court as security for costs be paid out to the appellants

In the High Court of Australia

No. 13

Order of the Court dismissing Appeal 17th June 1970 (continued)

or to their solicitors being Messrs. Harwood & Pincott of 77 Moorabool Street, Geelong.

By the Court

(Sgd) A.N. Gamble

PRINCIPAL REGISTRAR

No. 14

Order Granting Leave to Appeal to Her Majesty in Council 17th December 1970

No. 14

ORDER GRANTING LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

AT THE COURT AT BUCKINGHAM PALACE

THE 17th DAY OF DECEMBER 1970

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

Lord President — Mr. Amery

Mrs. Secretary Thatcher — Mr. Chataway

Mr. Secretary Thomas — Mr. Ennals

Mr. Secretary Carr

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 14th day of December 1970 in the words following viz:-

> "WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of the Geelong Harbor Trust Commissioners in the matter of an Appeal from the High Court of Australia between the Petitioners and Gibbs Bright & Co. (a Firm) Respondents setting

In the High Court of Australia

No. 14

Order Granting Leave to Appeal to Her Majesty in Council 17th December 1970

(continued)

forth that the Petitioners seek special leave to appeal from a Judgment and Order of the High Court of Australia dated the 17th June 1970 that in proceedings brought by the Petitioners against the Respondents in the Supreme Court of Victoria a point of law was ordered to be disposed of before the trial of the action and that by Judgment and Order dated the 19th August 1969 the said Supreme Court ruled on the said point of law: that the Petitioners appealed to the High Court of Australia against the Judgment and Order of the Supreme Court of Victoria and by a Judgment dated the 17th June 1970 the High Court dismissed the Appeal with costs: And humbly praying Your Majesty in Council to grant the Petitioners special leave to appeal from the said Judgment of the High Court of Australia dated the 17th June 1970 and for further or other relief:

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioners to enter and prosecute their Appeal against the Judgment of the High Court of Australia dated the 17th June 1970:

"AND Their Lordships do further report to Your Majesty that the proper officer of the said High Court ought to be directed to transmit to the Registrar of the Privy Council without delay a certified copy of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same".

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor-General or Officer administering the Government of the Commonwealth of Australia for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

W.G. AGNEW

IN THE PRIVY COUNCIL No. 15 of 1971

O N A P P E A L

FROM THE HIGH COURT OF AUSTRALIA

B E T W E E N :

THE GEELONG HARBOR TRUST COMMISSIONERS Appellant

- and -

GIBBS BRIGHT & CO. (A FIRM) Respondent

RECORD OF PROCEEDINGS

FRESHFIELDS,
Grindall House,
25, Newgate Street,
London, EC1A 7LH

Solicitors for the Appellant

HERBERT SMITH & CO.,
62, London Wall,
London E.C2R 7JP

Solicitors for the Respondent