DIVISION: Court of Appeal. Supreme Court of Victoria at Brisbane. 8th September 2006

JUDGES: McMurdo P, Keane JA and Mullins J. Separate reasons for judgment of each member of the Court, each concurring as to the orders made

ORDER: 1. Appeal dismissed
2. Appellant to pay respondent's costs of the appeal to be assessed on the standard basis

CATCHWORDS: Practice & procedure : Queensland : jurisdiction & generally : appellant made application to primary judge for declaration that respondent had no entitlement to deduct liquidated damages from various progress payments due under a construction contract - respondent opposed attempt by appellant to ask primary judge to make assumptions for the purposes of the hearing where those assumptions were contrary to other of the appellant's submissions - application refused by primary judge – whether primary judge erred in declining to declare the rights of the parties to payment of the amounts claimed by respondent as liquidated damages

LEGISLATION *Queensland Building Services Authority Act 1991* (Qld), s 67J

CASES : *Bass v Permanent Trustee Co Ltd* [1999] HCA 9; (1999) 198 CLR 334, applied
Truth About Motorways Pty Ltd v Macquarie Infrastructure Investment Management Limited [2000] HCA 11; (2000) 200 CLR 591, followed

1. **McMURDO P:** I agree with Keane JA's reasons for dismissing the appeal with costs.

2. **KEANE JA:** On 25 January 2006 in the Supreme Court of Queensland, the learned primary judge dismissed an application by Multiplex Limited ("Multiplex") for a declaration that Qantas Airways Limited ("Qantas") had no entitlement under s 67J of the *Queensland Building Services Authority Act 1991* ("the Act") to deduct liquidated damages from various progress payments due to Multiplex under a contract for the construction of a heavy maintenance hangar at Brisbane Airport ("the contract").

The question below

3. Mr Wensley QC, who appeared with Ms Kelly for Multiplex at first instance and in this Court, put Multiplex's case before the learned primary judge as follows:
"This is not a hypothetical application. What is sought from the Court is the resolution of a simple question and it is this. Pending the outcome, whatever it may be, of the disputes between the parties which are not before any Court anywhere and which are being worked through the dispute resolution process of the contract who has [sic], between Qantas and Multiplex, is entitled to hold the $7 and a half odd million which is the subject of this dispute."

4. At the outset, two things may be said about this formulation of "the question". The first is that, if this is the question, an answer favourable to Multiplex is unlikely to be found in s 67J of the Act. That section is concerned, not with the establishment of a fund to be held in trust by way of security pending the outcome of a broader dispute, but with whether moneys are payable or owed under the contract by one party to the other.

5. The Act has been amended several times in recent years, but it was common ground that the applicable version of the Act is that contained in Reprint No 7 (that is, before the commencement of the *Building and Construction Industry Payments Act 2004* (Qld)). In that Reprint, s 67J of the Act provides as follows:

"**Set-offs under building contracts**

67J.(1) *The contracting party for a building contract may reduce an amount payable under the contract by an amount owed under the contract, or use a security for the building contract, wholly or partly, to obtain an amount owed under the contract, only if -*
(a) the reduction of the amount payable or the use of the security is permitted under the contract; and
(b) the contracting party has given -
*(i) written notice (the **"first notice"**) to the contracted party for the contract advising of the proposed reduction or use and, if the amount owed can be quantified when the first notice is given, of the amount owed; and*
*(ii) if the amount owed can not be quantified when the first notice is given, a further written notice (the **"second notice"**) to the contracted party advising of the amount owed.*

(2) *The first notice must be given within 28 days after the contracting party becomes aware, or ought reasonably to have become aware, of the contracting party's right to obtain the amount owed.*

(3) *If the second notice is required to be given, it must be given within 3 business days after the contracting party becomes able to quantify the amount owed.*

(4) *If, because of subsections (1) and (2) or (1), (2) and (3), the contracting party is stopped from reducing an amount payable under a building contract by an amount owed under the contract, or from using a security for a building contract to obtain an amount owed under the contract, the contracting party for the contract is not stopped from recovering the amount owed in another way.*

(5) *In this section -*
***"amount owed"**, under a building contract, means an amount that, under the contract, and subject to its being quantified, is owed by the contracted party for the contract to the contracting party for the contract because of circumstances associated with the contracted party's performance of the contract.*
***"amount payable"**, under a building contract, means an amount that, under the building contract, is payable by the contracting party for the contract to the contracted party for the contract, including any amount payable to the contracted party from a retention amount for the contract."* (emphasis in original)

6. It will be noted that s 67J is concerned to regulate the reduction of "an amount payable under the contract" by "an amount owed under the contract". It is concerned with amounts which are, in truth, payable or owed under the contract. It is not concerned with amounts "claimed to be owing" or with amounts "certified as payable". That it is framed in such terms may cast doubt on its utility to parties who wish to seek a summary answer to a question of the kind formulated by Mr Wensley to establish a holding position pending the final resolution of a dispute as to the amount payable or owed under the contract.

7. The second point made by reference to Mr Wesley's formulation of "the question" is that the reality of the broader dispute between the parties cannot be ignored.

8. The notice of dispute given by Multiplex on 17 March 2005 was expressly given pursuant to cl 23.7 of the contract which made provision for the resolution of disputes between the parties. The "disputes or differences" which Multiplex asserted had arisen were identified in a schedule to the notice of dispute. The schedule relevantly asserted that: "[t]he Disputes concern the following matters:-

   1. **Qantas' Representative**
   Qantas failed in its duty to ensure that there was a duly appointed Qantas' Representative acting in every respect in accordance with the Contract.
   Particulars
   The issues in relation to Qantas' Representative are:
   (a) Gary Walker is the person named in the Schedule to the Contract as Qantas' Representative, but the said Mr Walker has not performed the functions of Qantas' Representative in accordance with the Contact or at all.
   (b) Further, the said Mr Walker claims to have appointed Alisdair MacDonald Architects as Qantas' Representative in 2002.
   (c) Alisdair MacDonald Architects wrongfully has purported to exercise some of the functions of Qantas' Representative during the course of the Contract. …
   (d) Alisdair MacDonald Architects has denied that it is Qantas' Representative.
   (e) Insofar as Alisdair MacDonald Architects has purported to exercise certain functions of Qantas' Representative it has done so upon instructions from Qantas, and therefore lacks the requisite independence and fairness. Multiplex is entitled to damages by reason of all of the above matters or, alternatively, it is entitled to be remunerated on a quantum meruit basis.

   2. **Variations**
   Multiplex claims payment for additional costs and reasonable remuneration for the variation and extra work performed by Multiplex at the request of Qantas through its agent Alisdair MacDonald Architects. …

   3. **Extensions of time**
   The Extension of Time provisions in the Contract are ineffective to provide appropriate extensions of time, due to:
   (a) the failure of Qantas referred to in paragraph 1 …; …
   Multiplex's obligation under the Contract with respect to completion is therefore to bring the works to Practical Completion within a reasonable time.
   Alternatively, Multiplex is entitled to extensions of time as set out in the attached Delay Schedule and delay costs as indicated by the documents referred to therein.

   4. **Liquidated Damages**
   (a) The conduct of Qantas (as referred to in 3(a) and (3)(b) above) prevented Multiplex from achieving practical completion. As a consequence, Qantas is not entitled to Liquidated Damages.
   (b) Further, the rate of Liquidated Damages stipulated under the Contract is not a genuine pre-estimate of Qantas' loss in that it is excessive, a penalty and unenforceable.
   Multiplex claims payment of the $5,546,906.86 deducted to date as Liquidated Damages, together with interest on the amounts deducted, calculated in each case from the date of the progress payment from which the deduction was made, at the rate set out in the Queensland Building Services Authority Act 1991, Section 67P. Alternatively, Multiplex claims damages for breach of contract in the same amount. … "

9. It is clear from the notice of dispute that Multiplex's assertion that Alasdair Macdonald Architects ("AMA") was not truly Qantas' representative is integral to Multiplex's claims for extensions of time and, in turn, to its claim for the repayment of the liquidated damages deducted to date. More broadly, the notice of dispute suggests that the matters asserted in paragraph 1 of the notice of dispute have displaced the contract as the comprehensive charter of the parties' rights *inter se*. That is confirmed by the assertion that Multiplex is entitled to recover on a quantum meruit the value of the work performed by it for Qantas.

10. On the appeal, Multiplex originally sought to place before this Court an amended notice of dispute. That attempt was not pressed by the appellant in argument. That reticence was appropriate. For this Court to act upon the new notice of dispute would be fundamentally inconsistent with this Court's function as a court of appeal. It is the function of this Court to correct errors which have occurred at first instance. It is no part of this Court's function to exercise original jurisdiction to determine issues which have not been raised, much less determined, at first instance.

11. It appears that Multiplex made its application for the declaration on the footing that, because Qantas asserted that AMA had been appointed as its representative for the purpose of certifying claims under the contract, and, because Multiplex was prepared, for the sake of the argument on the application, to accept that this assertion

was correct, it was, therefore, for the purposes of this application, common ground between the parties that AMA had been duly appointed as Qantas' representative and had effectively certified claims by Multiplex for progress payments.

The decision at first instance

12. The primary judge was not prepared to proceed on that basis to determine the substantive issues relating to Qantas' entitlement to deduct liquidated damages from progress payments. His Honour noted that Multiplex asserted that it is "entitled to be remunerated on a quantum meruit basis", and took the view that: "it is [Multiplex's] own contention in the broader dispute that valid certifications have not taken place. That may be an alternative argument but, nevertheless, it is a position which [Multiplex] has left open and is inconsistent with the relief it is seeking."[1]

13. His Honour held that the facts on which Multiplex was seeking the declaration as to its rights in respect of deductions of progress payments: *"may or may not turn out to be the true facts or at least facts which may be found should the broader dispute between the parties ever come to a judicial determination or for that matter be determined by some other tribunal*."[2]

14. His Honour was also concerned that the substantive question posed by Multiplex was not ripe for determination because of factual disputes relating to the deduction of liquidated damages under s 67J of the Act.

[15. Accordingly, the primary judge dismissed Multiplex's application. Multiplex appeals to this Court, contending (as a necessary preliminary to its arguments as to its substantive entitlements) that the primary judge erred in dismissing the application.

The parties' arguments on the preliminary issue

16 In its Outline of Argument, Multiplex's submission was put in terms that the "learned primary judge refused to hear the application". That formulation of Multiplex's submission involves an unfortunate misstatement of the nature of the decision against which Multiplex seeks to appeal.

17 It is clear that the primary judge did not refuse to hear Multiplex's application. Rather, his Honour heard the application and decided to dismiss it on the basis that the court should decline to exercise the power to declare the rights of parties to a dispute where the factual basis for the declaration is hypothetical or where the rights so declared may be only provisional, depending on the outcome of further litigation or some other form of dispute resolution.

18. Multiplex contends that his Honour erred in concerning himself at all with the circumstance that the application before him was merely one part of a wider dispute, there being no formal pleadings before his Honour which articulated those disputes in conformity with the rules of court. But this contention ignores the fact that Multiplex's own notice of dispute established the existence and terms of a range of disputes of which Multiplex is avowedly determined to seek a resolution (by arbitration or judicial decision unless the disputes are earlier resolved by agreement). Multiplex argued that the courts cannot recognise a dispute between the parties unless it has been formally commenced and articulated in accordance with the procedures laid down for litigation or arbitration. But to argue in this way is to put the cart before the horse. Curial procedures exist to resolve disputes. They, therefore, assume the prior existence of disputes which are apt to be resolved as a justiciable controversy,[3] or the "subject matter for determination", by the exercise of judicial power.[4] In the present case, the nature and extent of the dispute between the parties was established before the learned primary judge by Multiplex's own notice of dispute.

19. Multiplex also contends that the learned primary judge misunderstood the factual basis on which its application came before his Honour. Multiplex asserts that his Honour erred in proceeding on the footing that Multiplex's position was that AMA was not validly appointed as certifier under the contract. Multiplex argued in this Court that "it is entirely consistent for Multiplex to challenge AMA's appointment as Qantas' representative and maintain at the same time AMA's authority to 'determine and issue progress certificates'". This is said to be because Multiplex accepts that a letter from Qantas to AMA dated 23 October 2002 constituted a source of authority for AMA so to act in the alternative to some more formal mode of appointment. Multiplex contends that its reference to this letter in its submissions to his Honour rebutted the suggestion that Multiplex disputed the validity of AMA's appointment as Qantas' representative to certify progress payments under the contract.

20. Multiplex also now asserts that its claims for damages or recovery on a quantum meruit arise, not from the failure of an effective certification procedure, but from wrongful instructions by AMA that Multiplex should carry out work, or on the basis that Multiplex made claims which an independent and fair representative would have allowed, but which AMA, on Qantas' instructions, did not.

21. Qantas submits that these assertions of Multiplex to this Court involve a change of position from that adopted before the primary judge. Qantas' submission is, in my respectful opinion, clearly correct in relation to the change in the basis stated by Multiplex for its claim for damages or for recovery on the value of work on a quantum meruit. Multiplex's notice of dispute clearly asserts, albeit in general terms, an entitlement which is consistent only

[1] *Multiplex Ltd v Qantas Airways Ltd*, unreported, SC No 3914 of 2005, 25 January 2006.
[2] *Multiplex Ltd v Qantas Airways Ltd*, unreported, SC No 3914 of 2005, 25 January 2006.
[3] *Truth About Motorways Pty Ltd v Macquarie Infrastructure Investment Management Limited* (2000) 200 CLR 591 at 605 - 606 [31].
[4] *Truth About Motorways Pty Ltd v Macquarie Infrastructure Investment Management Limited* (2000) 200 CLR 591 at 629 [99], 631 [105]. See also *Abebe v The Commonwealth of Australia* (1999) 197 CLR 510 at 523 - 534 [22] - [47], 570 [164], 585 - 586 [215] - [218].

with a claim to remuneration otherwise than under the contract. That asserted entitlement, and the factual basis on which it is propounded, is inconsistent with its attempt to invoke s 67J to establish that it is entitled to recover an amount payable under the contract without deduction of amounts owed under the contract.

22. Furthermore, it may also be said that, when one refers to the transcript of the argument before the learned primary judge, and the written submissions which were before his Honour and which have been included in the appeal record, one looks in vain for a plain statement that Multiplex does accept, for all purposes concerned with the dispute between the parties, that AMA was validly appointed as Qantas' representative, as opposed to accepting an appointment limited to the function of certification. The absence of a plain statement to that effect is particularly telling having regard to the clear invitation by his Honour to Multiplex to make its position clear.

23. In the course of argument before the learned primary judge, Mr Holt SC, who appeared with Ms Burke of Counsel for Qantas, objected to his Honour that Multiplex: *"want you to assume facts contrary to their contended facts in their notices of dispute and acknowledging that those disputes still exist and are out there but you needn't be concerned with them"*.

    The primary judge responded: "*But it will be all right if when Mr Wensley stands up he says, 'I don't want you to assume those facts any more. We make these admissions which are binding on my client for all purposes'.*"

    Mr Holt's rejoinder was: "*Well, if he can say that. He hasn't said it yet and his outline is contrary to that.*"

24. Mr Wensley, no doubt on instructions from the appellant, refrained from making the unequivocal statement of position which the primary judge had invited. Nor, in the proceedings at first instance, was it said that Multiplex does not seek to be remunerated on a quantum meruit for all of its work for Qantas.

25. In these circumstances, it cannot be said that his Honour erred in law in declining to determine the application which Multiplex brought before him.

26. Mr Wensley's argument reflected the approach which was available on a demurrer under the rules which were the precursor to the *Uniform Civil Procedure Rules 1999* (Qld) ("the UCPR"). That approach was not available in this case. Where a court determines and declares the rights of parties to a dispute, it either establishes the facts itself or acts upon the footing that the facts necessary for the determination of the parties' rights are established; otherwise, the court is not determining the parties' rights but is merely providing legal advice. That is not the court's function. Furthermore, the factual basis to which the court applies the law to resolve the controversy between the parties must be stable; otherwise, the integrity of the exercise of judicial power may subsequently be called into question in proceedings between the same parties. Subject to statute, there can be only one set of "true facts" to which the law may be applied to determine the rights of the parties to a dispute. As a result, the court should not accept invitations which may well lead to the appearance that it speaks with a "forked tongue".

27. In ***Bass v Permanent Trustee Co Ltd***,[5] Gleeson CJ, Gaudron, McHugh, Gummow, Hayne and Callinan JJ emphasised the importance of a stable factual basis to which the law may be applied if a declaration of rights between the parties to a dispute is to have sufficient utility and finality to call for the exercise of judicial power. Their Honours said:

    "It is true that some have seen the use of the declaratory judgment as little more than the giving of an advisory opinion (Foster, 'The Declaratory Judgment in Australia and the United States', *Melbourne University Law Review*, vol 1 (1958) 347, at p 373). **However, one crucial difference between an advisory opinion and a declaratory judgment is the fact that an advisory opinion is not based on a concrete situation and does not amount to a binding decision raising a res judicata between parties.** Thus, the authors of one recent text on declaratory judgments (Zamir & Woolf, *The Declaratory Judgment*, 2nd ed (1993)) emphasise that, **where the dispute is divorced from the facts, it is considered hypothetical and not suitable for judicial resolution by way of declaration or otherwise.** They say (Zamir & Woolf, *The Declaratory Judgment*, 2nd ed (1993), p 132):

    'If ... the dispute is not attached to specific facts, and the question is only whether the plaintiff is *generally* entitled to act in a certain way, the issue will still be considered theoretical. The main reason for this is that there may be no certainty that such a general declaration will settle the dispute finally. Subsequent to that declaration a person (the defendant himself or someone else) may be adversely affected by a particular act of the plaintiff. It may then be doubtful whether this act is covered by the declaration. In such a case the affected person will probably be entitled to raise the issue again on its special facts. Indeed, such a declaration will in effect be a mere advisory opinion.' (emphasis in original)

    As the answers given by the Full Court and the declaration it made were not based on facts, found or agreed, they were purely hypothetical. At best, the answers do no more than declare that the law dictates a particular result when certain facts in the material or pleadings are established. What those facts are is not stated, nor can they be identified with any precision. They may be all or some only of the facts. What facts are determinative of the legal issue involved in the question asked is left open. **Such a result cannot assist the efficient administration of justice. It does not finally resolve the dispute or quell the controversy. Nor does it constitute a step that will in the course of the proceedings necessarily dictate the result of those proceedings.** Since the relevant facts are not identified and the existence of some of them is apparently in dispute, the answers given by the Full Court may be of no use at all to the parties and may even mislead them as to their rights. Courts

[5] (1999) 198 CLR 334 at 356 - 358 [48] - [52] (citations footnoted in original).

have traditionally declined to state - let alone answer - preliminary questions when the answers will neither determine the rights of the parties nor necessarily lead to the final determination of their rights. **The efficient administration of the business of courts is incompatible with answering hypothetical questions which frequently require considerable time and cause considerable expense to the parties, expense which may eventually be seen to be unnecessarily incurred. The procedure adopted in the present case is far removed from that concerned with demurrers, a form of procedure which assumes the truth of a particular set of facts. If the 'facts' which are the basis of an answer to a legal question are identified, that answer will have utility for the parties provided that no other evidence could add to or qualify those 'facts'. In such a case, the parties' rights will be determined when the evidence finally determines the existence or non-existence of those 'facts'. Because that is so, demurrers have been much used in determining the rights of parties to litigation. The demurrer proceeds upon identified facts and enables a court to declare whether or not they provide a cause of action or a defence or reply to another party's pleading. Unlike the present case, however, a demurrer assumes that the pleadings exhaust the universe of relevant factual material.** The utility of demurrers is, however, heavily dependent on the pleadings containing all the relevant facts. When the parties are uncertain whether further investigation will reveal further factual material, the utility of the demurrer is diminished.

It cannot be doubted that **in many cases the formulation of specific questions to be tried separately from and in advance of other issues will assist in the more efficient resolution of the matters in issue. However, that will be so only if the questions are capable of final answer and are capable of being answered in accordance with the judicial process.**

Preliminary questions may be questions of law, questions of mixed law and fact or questions of fact. **Some questions of law can be decided without any reference to the facts. Others may proceed by reference to assumed facts, as on demurrer or some other challenge to the pleadings. In those cases, the judicial process is brought to bear to give a final answer on the question of law involved. Findings of fact are made later, if that is necessary.** Where a preliminary question is a pure question of fact that, too, can be answered finally in accordance with the judicial process if the parties are given an opportunity to present their evidence and, also, to challenge the evidence led against them." (emphasis added)

28. In the present case, the substantive issue which Multiplex sought to have determined by his Honour assumes that there are amounts payable to Multiplex under the contract. That assumption is distinctly contradicted by Multiplex's notice of dispute.

29. Multiplex's equivocation on this issue was such that, to say the least, the learned primary judge did not err in law in declining to determine the question on a factual basis which Multiplex reserved the right *later to disown. As was said in the joint judgment in Bass v Permanent Trustee Co Ltd.*[6] *"It is contrary to the judicial process and no part of judicial power to effect a determination of rights by applying the law to facts which are neither agreed nor determined by reference to the evidence in the case."*

30. Statute law or the rules of court may cut down the general effect of this last observation - insofar as one is not concerned with the judicial power of the Commonwealth - by mechanisms which facilitate the preliminary determination of discrete issues, such as, for example, r 482 to r 486 of the UCPR. But Multiplex did not seek to invoke such a procedure.[7]

31. It is not necessary to conclude that the learned primary judge would have erred in law had he proceeded to purport to declare the rights of the parties. For the reasons set out above, it is sufficient to conclude that it cannot be said that it was wrong in law for his Honour to decline to seek to declare the rights of the parties to payment of the amounts claimed by Qantas as liquidated damages. In my opinion, it was open to his Honour to regard that exercise as hypothetical.

The merits of Multiplex's claim

32. Having regard to my view that his Honour did not err in law in declining to determine whether the amounts payable to Multiplex under the contract had been lawfully reduced under s 67J of the Act, it is undesirable that I should express a concluded view upon the merits of Multiplex's substantive arguments in that regard. I would, therefore, content myself with the observation that the merits of Multiplex's arguments were not so clear as to cast doubt upon his Honour's refusal, as a matter of discretion, to decline to declare the parties' rights.

33. In this regard, the appellant's first argument was that, because the amounts by which the amounts payable under the contract were reduced exceeded, by the GST calculated upon the liquidated damages, the amount which Qantas was truly owed, the amount which was truly owing to Qantas as liquidated damages could not be withheld from progress payments. Multiplex's proposition was that an excessive reduction of the amount payable to Multiplex works as an automatic forfeiture of the contractual right to make a reduction of the amount which is truly owed to Qantas. It is difficult to attribute such a punitive intention to the legislature, especially in the absence of express words to that effect, and bearing in mind the provisions of s 67P of the Act. Section 67P expressly allows for generous compensation to a builder who has not been paid a progress amount which was required to be paid to it on the due date in accordance with the contract.

[6] (1999) 198 CLR 334 at 359 [56].

[7] See also *Malika Holdings Pty Ltd v Stretton* (2001) 204 CLR 290 at 308 - 309 [61], *Woolcock Street Investments Pty Ltd v CDG Pty Ltd* (2004) 216 CLR 515 at 524 - 525 [7].

34. The appellant's second argument involved reading s 67J(2) as requiring a first notice to be given within 28 days from the date when Qantas became aware that Multiplex would inevitably become obliged to pay liquidated damages. That argument draws little support from the language of s 67J(2) of the Act; which speaks of the owner's awareness of its "right to obtain the amount owed", not of its "potential right" or its "right in the future to obtain the amount owed". The 28 days referred to in s 67J(2) does not begin to run until a time after the right of the owner to recover some amount from the builder has actually accrued.

35. Moreover, s 67J is concerned with a wide variety of circumstances in which an amount may become owing by the builder to the owner. In the particular case of liquidated damages, the quantification of the amount owed is effected by the contract itself, so that the amount owed is quantified by the contract as and when the right to obtain that amount arises. So far as liquidated damages are concerned, it may be that a second notice under s 67J(3) is not required to be given.

36. I emphasise that these observations are not intended to preclude the agitation of these arguments by Multiplex in the future. I have made these observations only to make the point that the learned primary judge's exercise of discretion did not involve a refusal to remedy a clear injustice.

37. Further in this regard, it may be observed that there was no reason to suppose that the refusal of the declaratory relief sought by Multiplex will occasion any prejudice to Multiplex, should its substantive entitlement ultimately be vindicated, that cannot be remedied by an order under s 67P of the Act.

Conclusion and orders

38. It has not been shown that his Honour erred in law in declining to determine the substantive issue posed by Multiplex's application.

39. The appeal must be dismissed.

40. Multiplex must pay Qantas' costs of the appeal to be assessed on the standard basis.

41. **MULLINS J:** I agree with Keane JA.

R N Wensley QC, with R M Kelly, for the appellant instructed by Mallesons Stephen Jaques
R A Holt SC, with S M Burke, for the respondent instructed by McCullough Robertson