SUPREME COURT OF QUEENSLAND

CITATION:	*State of Queensland v Mowburn Nominees P/L* [2004] QCA 212
PARTIES:	**STATE OF QUEENSLAND** (applicant) v **MOWBURN NOMINEES PTY LTD** ACN 008 522 030 (respondent)
FILE NO/S:	Appeal No 2806 of 2004 DC No 1553 of 2003
DIVISION:	Court of Appeal
PROCEEDING:	Application for leave s 118 DCA (Civil)
ORIGINATING COURT:	District Court at Brisbane
DELIVERED ON:	25 June 2004
DELIVERED AT:	Brisbane
HEARING DATE:	7 June 2004
JUDGES:	McMurdo P, McPherson JA and Philippides J Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDERS:	**1. Application for leave to appeal granted;** **2. Appeal allowed with costs;** **3. Proceedings remitted to the District Court for rehearing and determination of appeal no BD 1553 of 2003;** **4. Certificate under s 15 of the *Appeals Costs Fund* Act 1973.**
CATCHWORDS:	APPEALS TO DISTRICT COURT– whether there is an appeal to District Court from decision of magistrate in an appeal from decision of inspector under *Stock Act 1915* – whether interpretive presumption in *Electric Light* case displaced *Magistrates Court Act* 1921 (Qld), s 45 (1) *Stock Act* 1915 (Qld), s 36 *Electric Light and Power Supply Corporation Ltd v Electricity Commission of New South Wales* (1956) 94 CLR 554, applied *Martin v Commissioner for Employees' Compensation* [1953] St R Qd 85, distinguished

National Telephone Co Ltd v Postmaster-General [1913] AC 546, applied
Wynch v Ketchell [2002] 2 Qd R 560, considered

COUNSEL: R J Douglas SC with R S Jones for the applicant
J C Bell QC with D A Kelly for the respondent

SOLICITORS: Crown Solicitor for the applicant
Thynne & Macartney for the respondent

[1] **McMURDO P:** I agree with McPherson JA's reasons for concluding that there is a right of appeal to the District Court under s 45(1)(a) *Magistrates Court Act* 1921 (Qld) from a decision of a magistrate on an appeal under s 36 *Stock Act* 1915 (Qld).

[2] Nothing in the *Stock Act* makes the appeal under s 36 of that Act to the Magistrates Court final. The magistrate in hearing the appeal exercises jurisdiction arising under s 36 of the *Stock Act*. Any right of appeal from the magistrate's decision is under s 45(1) *Magistrates Court Act* 1921 (Qld) which relevantly provides:

> "**45. (1)** Subject to this Act, any party who is dissatisfied with the judgment or order of a Magistrates Court –
> (a) in an action in which the amount involved is more than $5000;
> …
> may appeal to the District Court as prescribed by the rules."

[3] Where a statute refers a matter to the determination of a court of record it is ordinarily implied that the usual right of appeal applies to that court's decision: *National Telephone Co Ltd v H M Postmaster-General*,[1] *R M A R A Adaikappa Chettiar v R Chandrasekhara Thevar*[2] and *Electric Light and Power Supply Corporation Ltd v Electricity Commission of New South Wales*.[3]

[4] The word "action" under s 45(1) *Magistrates Courts Act* should be interpreted broadly to include appeals heard by magistrates under statutes[4] unless a further appeal is specifically prohibited by the statute.

[5] The application for leave to appeal should be granted and the appeal allowed with costs. I agree with the orders proposed by McPherson JA.

[6] **McPHERSON JA**: The respondent Mowburn Nominees Pty Ltd is a pastoral company which in or about 2002 owned a large number of cattle on a property in the Gulf country in north Queensland. As part of the campaign to eradicate bovine tuberculosis from the area, an order was made under s 30(6) of the *Stock Act 1915* for the destruction of some 8,000 or more of those cattle. Upon the order being carried out, Mowburn became entitled to monetary compensation in accordance with s 31(1) of the Act. By virtue of reg 49(4) of the Stock Regulations 1988, read with s 31(2) of the Act, the compensation is to be equivalent to “the estimated

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1 [1913] AC 546.
2 (1947) LR 74 IndApp 264.
3 (1956) 94 CLR 554, 559-560.
4 Cf the meaning given to "action" in the *Jurisdiction of Courts (Miscellaneous Amendments) Act* 1987 (Cth) in *Foodland Associated Ltd v John Weeks Pty Ltd* (1988) 80 ALR 709; the making of a claim under an arbitration clause is not, however, an action under s 60(2) *Bankruptcy Act* 1966 (Cth): *Re Brown; ex parte Taylor v QEC* (1988) 19 FCR 180.

market value of the cattle", which by reg 47 is to be decided by the Chief Inspector of Stock.

[7] Mowburn was dissatisfied with the amounts determined by the Chief Inspector and it exercised the right conferred by s 36(2) of appealing against his decision. There was in fact a series of decisions arising out of successive orders for destruction of various groups of cattle forming Mowburn's herd and decisions or determinations of value in respect of each of them. All of the appeals came before a Magistrates Court constituted by Mr Quinlan in Brisbane. After hearing expert evidence and submissions of counsel for Mowburn and for the Department of Primary Industries, he decided the appeal and fixed the total amount of compensation payable in a sum of $6,385,497, which was more than that decided by the Chief Inspector.

[8] The difference between this and the value as fixed by the Chief Inspector is, I understand, related principally to an increase in the market value ascribed to certain of the cows considered as breeders and not simply as meat for consumption; but, whether or not that was or is the only issue, the Department of Primary Industries decided to appeal against Mr Quinlan's decision and filed a notice of appeal to the District Court. The appeal in due course came before a Judge of the District Court, who, instead of determining it, concluded that there was no right of appeal to that Court from the magistrate's decision and ordered that the appeal be struck out with costs. Against that decision, the Department of Primary Industries, now describing itself as the State of Queensland, applies pursuant to s 118(3) of the *District Court Act 1967*, for leave to appeal to this Court.

[9] To understand the question before us, it is necessary to start with the statutory provisions under which the appeal was taken to the Magistrates Court in the first instance. After providing in s 31 of the *Stock Act* and the regulations for the payment of compensation for stock destroyed pursuant to s 30 and for the method of calculating their value, s 36 provides for an appeal to a Magistrates Court. Section 36(2) confers such a right of appeal on a person aggrieved by a decision, which is defined in s 36(1)(a) to include a decision made under the Act by a "public official", an expression in turn defined in the statutory dictionary in the Act to include the Chief Inspector of Stock. Successive subsections of s 36 prescribe the time within which and the Magistrates Court at which jurisdiction to hear the appeal is to be exercised: ss 36(3) to (6). By s 36(7) and s 36(8), an appeal under s 36 is started by filing with the clerk of court a written notice of appeal specifying the grounds of appeal and the facts relied on, and serving it on the Chief Executive of the Department of Primary Industries.

[10] Section 36(9) adds that an appeal is to be by way of rehearing and subs (10) authorises the magistrate hearing it to give directions in relation to it. That power was we were told in fact exercised here by requiring the parties to deliver points of claim and defence. Subs (11) of s 36 provides that for the purposes of the appeal, the Magistrates Court "has all the powers and functions of the person whose decision is the subject of the appeal"; that is, in this case the Chief Inspector of Stock. Section 36(12) says that if on appeal the Court reverses or varies the decision, the Court's decision is taken for the purposes of the Act to be that of the person whose decision was the subject of appeal. Some attempt was made by Mr Bell QC for Mowburn to argue that this meant that the Chief Inspector was now seeking to appeal against what under s 36(12) had now become his own decision.

In my opinion, however, the function of this and the preceding subsection is no more than to ensure as is common in the case of appeals that the appellate court has the powers of the tribunal or person appealed from and so can effectively substitute its own decision or order for that given below. The current analogue in the Court of Appeal is UCPR 766(1)(a) and (b), which replaced O 70, rr 10 and 11 of the *Rules of the Supreme Court*. Without an express provision to that effect, there might be no means of giving operative legal effect to a decision rendered by the magistrate on appeal.

[11] While s 36 confers a right of appeal from a decision of the Chief Inspector to a Magistrates Court, it says nothing about any further appeal from a decision of that Court to the District Court. Since a right of appeal, if it exists at all, is always a creature of statute, it might be thought that no right of appeal was conferred against a Magistrates Court decision given on an appeal to that court under s 36 of the *Stock Act*. Indeed, s 43(1) of the *Magistrates Court Act 1921* expressly provides that, subject to that Act, all judgments and orders made by a Magistrates Court are to be final and conclusive. The only general provision for an appeal from that court is contained in s 45(1) of the *Magistrates Court Act*, which provides that any party dissatisfied with the judgment or order of a Magistrates Court -

> "(a) in an action in which the amount involved is more than $5000
>
> …
>
> may appeal to the District Court as prescribed by the rules".

It is said that this is of no assistance to the would-be appellant here because Mowburn's claim for compensation, though more than $5,000, was not "in an action". It was, indeed, not made in a court at all, but under s 31(1) of the *Stock Act* and the provisions of the Stock Regulations directly to the Chief Inspector himself.

[12] There is, however, more than one basis for rejecting this process of reasoning. In the first place it overlooks the decision of the House of Lords in *National Telephone Co Ltd v Postmaster-General* [1913] AC 546, and the approval it received from the High Court in *Electric Light & Power Supply Corporation Ltd v Electricity Commission of New South Wales* (1956) 94 CLR 554, at 559-560, as well as the many subsequent decisions in which it has since been applied in Australia. In the *Electric Light* case their Honours set out a number of passages, described as "well-known", from the speeches of their Lordships in the House of Lords. I will content myself here with that of Lord Parker of Waddington, in which his Lordship said ([1913] AC 546, 562):

> "Where by statute matters are referred to the determination of a court of record with no further provision, the necessary implication is, I think, that the court will determine the matters, as a court. Its jurisdiction is enlarged, but all the incidents of such jurisdiction, including the right of appeal from its decision, remain the same."

The statements quoted by the High Court from speeches of the other Law Lords are to similar effect, and conclude with a passage from an Indian appeal to the Privy Council, in which Lord Simonds said that the true rule was that where " a legal right" is in dispute and the ordinary courts are seised of it, those courts are governed by their ordinary rules of procedure, and an appeal lies, if authorised by those rules "notwithstanding that the legal right claimed arises under a special statute which does not in terms confer a right of appeal" : *RMARA Adaikappa Chettiar v R Chandrasekhara Thevar* (1947) LR 74 IA 264.

[13] In commenting on what the High Court in the *Electric Light* case characterised as a legislative "presumption", their Honours went on (94 CLR 554, 560) to say:

> "When the legislature finds that a specific question of a judicial nature arises but that there is at hand an established court to the determination of which the question may be appropriately submitted, it may be supposed that if the legislature does not mean to take the court as it finds it with all its incidents including the liability to appeal, it will say so."

That is the state of affairs that prevails here. The specific question of a judicial nature that arose here was the correct method of assessing the amount of compensation payable to Mowburn under s 31 of the *Stock Act* for the stock destroyed, which, in accordance with the Act and regulations, fell to be determined primarily by reference to its market value. Before us, it was submitted by Mowburn that the Chief Inspector's original determination of the value of the stock was a decision of an administrative nature. So perhaps it may have been; but, once the appeal was instituted, it became a judicial question, which was submitted for determination to an established court in the form of the Magistrates Court. That being so, it followed by force of the interpretative presumption that all the incidents of proceedings in that court applied, including the liability to an appeal, to the decision of the magistrate on that appeal. Examples of the application of the rule or presumption in particular cases are legion; but as a recent instance I may perhaps mention the decision of the Full Court in *Minister for Industrial Affairs v Civil Tech Pty Ltd* (1997) 69 SASR 348; and, for one not dissimilar to the present, *Bopark Building (No 8) Pty Ltd v Minister for Lands* (1967) 85 WN (Pt 1) NSW 655, in which a question of the value of land under a particular statute was made the subject of reference and appeal to the Land and Valuation Court. See also *Roy Morgan Research Centre Pty Ltd v Commissioner of State Revenue, Victoria* (2001) 207 CLR 72, 81, 91-92.

[14] To the extent that a statutory reference to a court of a question in dispute expressly or impliedly otherwise provides, the provisions of reference, and not the presumption, must of course prevail. This was the very question that arose in the *Electric Light* case. There a statute, described in the reasons in *Electric Light* as the *Purchase Act*, provided for the undertakings of two privately owned electricity companies to be compulsorily acquired at a valuation to be determined under sub-ss (1) and (2) of s 3 of the Act by the Land and Valuation Court. On delivering his decision, Sugerman J was requested in accordance with s 17 of the Act constituting that Court to state a case on a question of law for the decision of the Supreme Court. His Honour declined to do so, holding that it was not available in a matter such as that before him. Subject to that procedure, the decision of the Land and Valuation Court was, like that of the Magistrates Court here under s 43(1) of the *Magistrates Court Act*, declared to be final and conclusive. Among the problems facing the claimants in the *Electric Light* case was that, by the terms of the *Purchase Act*, the companies were to go out of existence once the Court's determination was made, so that they could not, it was urged, then be parties to proceedings such as the contemplated case stated. "It is not unfair", said their Honours in the High Court (94 CLR 554, 562):

> "… to describe these points as verbal. The case stated is an incident, or at all events a projection, of the proceedings arising from the reference and, when sub-ss (1) and (2) of s 3 [of the *Purchase Act*] place the determination of the value under the jurisdiction of the

> court, this might well be taken to mean that the question should be decided by applying the procedure laid down for arriving at a judgment correct in law and fact in cases in the court."

In the result it was held that the request for the case stated was properly made and erroneously refused.

[15] In principle, the reasoning and conclusion in the *Electric Light* case must apply here unless there is something in the applicable statutory provisions sufficient to displace the right to appeal to the District Court. As to that, it is principally if not exclusively the provisions of the *Stock Act* and not of the *Magistrates Court Act* that are determinative. As was said in *Electric Light* (94 CLR 554, at 560) in reference to the *Purchase Act* in that case:

> "In the absence of express words to the contrary or of reasonably plain intendment the inference may safely be made that it [the *Purchase Act*] takes it [the Court] as it finds it with all its incidents …".

There is nothing in s 36 of the *Stock Act* expressly to the effect that the ordinary right of appeal from the Magistrates Court to the District Court is excluded. Nor is there anything to that effect implicit in its terms. I do not consider that the detailed provisions in s 36(4) to (12) of the *Stock Act* are capable of being regarded as exhaustively prescribing the incidents of or processes by which the proceedings on appeal before the Magistrates Court are to be conducted and concluded. Some matters on such an appeal are plainly left to the ordinary rules of practice and procedure prevailing in the Magistrates Court. The only identifiable obstacle, if any, to the application of the interpretive presumption is to be found, not in the *Stock Act*, but in s 45(1)(a) of the *Magistrates Court Act*. As we have seen, the right of appeal to the District Court conferred by it is given "in an action in which the amount involved is more than $5,000 …". The question is whether the reference there to an "action" is fatal to the application of the interpretive presumption.

[16] On a strict view of the word "action" as meaning a proceeding to enforce a right at common law, the procedure by way of appeal to the Magistrates Court envisaged by s 36(2) of the *Stock Act* is not an action. It is, as that provision declares it to be, an appeal from a decision or determination in this instance of the value of a right to compensation conferred by the statute itself, which is not to say that it can not for the purpose of s 36(2) be treated as being an action. The value or amount, once quantified in that way, would qualify as a debt due under a statute which, if not paid, would be recoverable as such in a court of law. To deny to the proceedings for its quantification in court the character of an "action" would be to ascribe to that word in s 45(1)(a) of the *Magistrates Court Act* both a dominant as well as an unnecessarily technical meaning. It is one that was rejected by this Court in *Wynch v Ketchell* [2002] 2 Qd R 560, 567. There Thomas JA, with the assent of Davies and Williams JJA, preferred to regard it as "a generic term", as Street J described it in *Re W Carter Smith, ex p Commissioners for Taxation* (1908) 8 SR (NSW) 246, 249, which his Honour said "includes every sort of legal proceeding"; or as Kennedy LJ considered it meant in *Johnson v Refuge Assurance Company Limited* [1913] 1 KB 259, 264, "any proceeding in the nature of a litigation between a plaintiff and a defendant". In *Wynch v Ketchell* [2002] Qd R 560, 570-571, s 45(1)(a) was held to permit an appeal to the District Court from a decision given in an application to reverse an order under s 9(2) of the *Crimes Act 1914* for the

forfeiture of goods seized under the *Excise Act 1901* (Cth). That, one might think, is further removed from the nature of an action than are the proceedings here.

[17] It is difficult to see why the conclusion in *Wynch v Ketchell* should not apply here. Section 36(2) confers a right of appeal to the Magistrates Court against the decision of the Chief Inspector on the issue of value of the stock destroyed. According to the interpretive presumption recognised in *Electric Light*, that right of appeal imports all the applicable incidents of a proceeding in that Court including the right of appeal to the District Court unless there is something in s 36(2) to displace that presumption. There is nothing in s 36(2) that does so. The only obstacle that is pointed to is the presence of the word "action" in s 45(1)(a) of the *Magistrates Court Act*. Even if it is permissible to look to it to rebut the presumption, it as *Wynch v Ketchell* accepted includes every sort of legal proceedings, and so is fairly capable of comprehending proceedings like these in which Mr Quinlan determined the amount of compensation due under s 31 of the *Stock Act*. Those proceedings were in fact conducted before the magistrate in the same way as other litigation *inter partes*.

[18] Apart from *Wynch v Ketchell*, the only decision of authority in which a similar question has been considered in Queensland is *Martin v Commissioner for Employees' Compensation* [1953] StRQd 85. There the employment of a Commonwealth employee who had been receiving workers' compensation for an injury was terminated along with his right to continue to receive such compensation. He appealed to a State magistrate, who, however, adjourned or "deferred" hearing the appeal until the employee underwent a medical examination provided for in the *Commonwealth Employees Compensation Act* 1930-1948. Against this refusal (as it was) to hear his appeal, the employee sought under s 20 of the *Commonwealth Act* to appeal to the Supreme Court. He relied on s 11(3) of the *Magistrates Court Act* 1921, which, like the current s 45(1(a) conferred a right of appeal against a judgment or order of the Magistrates Court in an "action" involving a specified amount. On a preliminary point, Mack J held [1953] St R Qd 85, 90, that the word "action" in that provision was "not used in its widest sense", and that it was narrower in its scope than s 4, which was the section of that Act that conferred jurisdiction on the Court in civil matters. His Honour reasoned that:

> "The Magistrates Court is a common law court of limited jurisdiction and I cannot find any words in s 11 which contemplate or indictate that matters there referred to may be other than those giving jurisdiction to the magistrate as stated in s 4."

The matters in s 4 did not include a claim for workers compensation.

[19] In *Wynch v Ketchell* [2002] 2 Qd R 560, 568, Thomas JA speaking on behalf of the Court of Appeal disagreed with, and to that extent must be taken to have overruled, the decision of Mack J in so far as it concluded that the words in s 4 were narrower than those in s 11(3), or, as it now is, s 45(1)(a) of the *Magistrates Court Act*. His Honour added that in any event:

> "The jurisdiction which was exercised in the present matter of course did not arise under s 4 of the Magistrates Court Act; it arose under s 9 of the *Crimes Act*."

In the same way the jurisdiction exercised here by Mr Quinlan arose under s 36(2) of the *Stock Act*, and not under the provisions of either s 4 or s 11 of the *Magistrates*

Court Act. In reference to *Martin v Commissioner*, Thomas JA nevertheless remarked that the decision of Mack J, which was that the appeal heard by the magistrate under s 20 of the Commonwealth Act was not an "action", was "plainly a correct decision (cf *Goward v The Commonwealth* (1957) 97 CLR 355, 359)". Reference to the reasons in *Goward v The Commonwealth* at that page shows, however, that in the course of the application for special leave in that case the applicant had "accepted" the view adopted by Mack J in *Martin v Commissioner* that s 11(3) of the *Magistrates Court Act 1921* was not large enough to embrace a proceeding before the magistrate under s 20 of the *Commonwealth Employees' Compensation Act* 1930. Their Honours therefore had no need to consider the interpretative presumption recognised in the *Electric Light* case, which was not referred to in the special leave application before the High Court. In dismissing the application for special leave, they therefore had no occasion to pass upon the correctness or otherwise of the decision in *Martin v Commissioner* and they did not do so.

[20] The decision in *Martin* has nevertheless now stood for more than 50 years and it would in my opinion be wrong to overrule it in circumstances like these in which its correctness does not directly arise for determination. In reaching his conclusion in that case, it appears to me that Mack J was to some extent influenced by the constitutional principle in *Alexander's Case* (1912) 15 CLR 308, 313, that, when investing federal jurisdiction in a State court, the Commonwealth Parliament necessarily takes the State court as it finds it. No such constitutional issue or doctrine arises in a case like this, in which the reference of the matter to the State Magistrates Court is effected by the express terms of s 36(2) of the *Stock Act*, which of course is a State statute. By investing the Magistrates Court with jurisdiction to hear an appeal under that provision the Queensland Parliament necessarily enlarged its jurisdiction, which is something that federal legislation could not do. The jurisdiction and incidents of an appeal under s36(2) now fall to be considered in the light of that circumstance.

[21] In my opinion, the question for decision here is reduced to deciding whether or not the presumption recognised in *Electric Light* is to be applied to s 36(2) of the *Stock Act.* It is right to point out that in *Martin v Commissioner for Employees' Compensation* [1953] St R Qd 85, 88-89, Mack J referred to some of the passages in the speeches in *National Telephone Company Ltd v Postmaster-General* [1913] AC 546, 552, 562, later considered by the High Court. His Honour did not, however, have the benefit of the judicial exegesis given to those passages by their Honours in the *Electric Light* case, which had of course not then been decided. At best for the respondent *Mowburn*, the question to be determined here involves choosing between, on one hand, the interpretative presumption that all the incidents, including the right of appeal to the District Court, are to apply to the proceedings referred by s 36(2) of the *Stock Act* to the Magistrates Court; and, on the other hand, to the presence in the provision conferring the right of appeal in the *Magistrates Court Act* of the expression "in an action" which, considered in a technical sense, may not be entirely appropriate to a determination of what is described as an "appeal" under s 36(2).

[22] In my view the choice between the two alternatives must, in the light of what was said and decided in the *Electric Light* case, come down in favour of the presumption. There is nothing in s 36(2) to exclude the expectation arising from it that the ordinary right of appeal to the District Court is available in proceedings in

the Magistrates Court determined under that provision. Section 36, including s 36(2), attained its present form by re-enactment effected in 1993 by s 7 of the *Stock Amendment Act* (no 52 of 1993), at a time when the interpretative presumption had been well settled by a decision of the High Court for 35 years or more. The person who drafted its provisions must be presumed to have known of its existence. He or she nevertheless took no steps to exclude its application or operation. To say that the appeal envisaged by s 36(2) is not an "action" in the technical sense of that word is to say that the presumption that a further appeal is intended may be rebutted by the slightest ineptitude in the language not of the *Stock Act* itself, which gives rise to the presumption, but of the *Magistrates Court Act*. That, in my opinion, does not accord with the strength or cogency of the presumption as expressed and illustrated in the *Electric Light* case and the many later decisions to which it has been applied. Stated in another way, referring the matter of the Chief Inspector's decision for review by the Magistrates Court, s 36(2) has the effect of treating the proceedings on that appeal as an "action" for the purpose of applying the procedure and incidents of proceedings in that Court including the right of appeal to the District Court.

[23] In the result, my opinion is that the application for leave to appeal should be granted and the appeal allowed with costs. The proceedings must be remitted to the District Court for rehearing and determination of appeal no BD 1553 of 2003. The matter is clearly one in respect of which a certificate should issue under s 15 of the *Appeals Costs Fund Act 1973* and I would order accordingly. Although the respondent Mowburn sought before us to uphold the decision of the learned judge in the District Court, it itself did not advance any submission at the hearing in the District Court that the appeal was incompetent. Before this Court, both parties consented to the appeal being returned for hearing and determination by the Judge before whom it came below, who had fully heard the appeal before concluding that an appeal to that Court was not authorised.

[24] **PHILIPPIDES J:** I have had the considerable advantage of reading the reasons for judgment of McPherson JA. I respectfully agree for the reasons stated therein that leave to appeal should be granted and that the appeal ought to be allowed.