

TRANSCRIPT OF PROCEEDINGS

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DISTRICT COURT

Appeal No 141 of 1992

APPELLATE JURISDICTION

JUDGE BOULTON

RODNEY JOHN CLARK and SUSANNA CLARK

Appellants

and

ELKE M SELECKER

Respondent

BRISBANE

..DATE 19/01/93

ORDER

HIS HONOUR: These proceedings purport to be by way
of appeal pursuant to section 222 of the Justices' Act.

On 21 August 1992 orders were made in the Brisbane
Magistrates' Court in respect of a complaint that had
been made by the plaintiffs in that action for recovery
of possession of land. On that day orders were made that
the premises in consideration be vacated and that certain
arrears of rental be paid and costs paid by the
appellants.

The appellants proceeded to file a Notice of Appeal
on 4 September 1992, apparently oblivious of the
provisions of section 222(1) of the Justices' Act, which
provide as follows in so far as is relevant:

"An appeal under this section shall not lie unless -
(a) the fine, penalty or forfeiture exceeds the sum or
value of \$10, or the imprisonment adjudged exceeds one
month, or (b) such person has upon application made

within 28 days after the decision obtained the leave of a judge to appeal under this section."

In the circumstances of this case it was necessary under section 222(1)(b) that application be made within 28 days of 21 August 1992 to obtain the leave of the judge to appeal. That application was not made.

The appellants were no doubt acting in good faith in lodging their appeal, and at a later point of time, apparently on becoming aware of the provisions of this section, made an application before another judge of this Court, His Honour Judge Pratt, for leave. That application was made ex parte. The decisions that have been referred to here in front of me were not, on the understanding that I have of the matter, referred to Judge Pratt, and it appears to me that His Honour Judge Pratt made his decision in the absence of a proper appreciation of the provisions of section 222(1) of the Justices' Act.

Mr Wilson, appearing here for the respondent to the appeal, has drawn my attention to two reported decisions of His Honour Judge Shanahan: *Thorne v Petersen*, a case heard in the District Court in Rockhampton on 28 October 1976, 4 QLR page 215; and *McKenzie v Hall*, also a decision of Judge Shanahan of 25 November 1988, 10 QLR page 115.

The view that His Honour Judge Shanahan took was that there was no provision whatsoever for a judge in the situation in which he found himself, and that, in my view, conforms to the situation in which I find myself, to extend time for compliance with the provisions of section 222(1)(b). Mr Clark, appearing here in person, has referred to other sections in the Justices' Act which do not, in my view, entitle me to extend time under that section.

On the view I take of the matter, and despite the fact that His Honour Judge Pratt made an order granting leave, I do not have jurisdiction to entertain the appeal.

Mr Clark has asked me for an adjournment to provide further argument in relation to this particular issue. This is an issue of law. It is a fairly straightforward piece of statutory interpretation, in my view, and it seems to me to be futile and to be calculated to increase the costs in this matter to grant further adjournments to consider this particular aspect of the matter. I have therefore refused the application for an adjournment, and Mr Clark, if he is aggrieved at my decision, either in respect of the question of jurisdiction or in my refusal of the adjournment, will have to seek redress in other areas.

Mr Clark has also asked me to embark upon the making of an order to review under section 209 of the Justices' Act. Quite apart from the fact that section 209 of the Justices' Act is not available to me, there is simply no proceedings in front of me which would enable me to address that particular issue here, and I have declined to deal with any aspect of the matter other than the section 222 appeal of which I am seized.

I have declined to take any action on that head.

Mr Clark points out, correctly, that he was unaware of the challenge that would be made to the question of jurisdiction as a threshold point to the hearing of this appeal. He has therefore been surprised, seeing that he was in possession of an order of another judge of this Court, which I consider to be a nullity. From that point of view he contends that he has not had an opportunity to consider his position prior to this question being raised today. However, this is the first occasion when the appeal has come on for hearing, and Mr Wilson also validly points out that at the first available time on the hearing he raised this threshold point. That's a risk that any litigant has to take, and there does not seem to me to be any reason why Mr Wilson's client should be deprived of the costs of this abortive appeal.

I therefore find the appeal to be incompetent, and I order that the appeal be struck out as incompetent.

I order that the appellants pay the respondent's costs of and incidental to the appeal to be taxed.

I am informed that on 11 November 1992 the sum of \$3,392.95, being, as I understand it, the sum ordered to be paid at first instance, was paid into Court, that is, the Magistrates' Court, to await the determination of this appeal. This appeal having now been disposed of, there would seem to me to be no obstacle to that money being paid out to the solicitors for the respondent in satisfaction of the judgment sum. There will, of course, be other costs and so on, interest, perhaps, accrued since that time. That will await satisfaction at some later point of time.

I have been asked to order that those moneys be paid out of the Magistrate's Court, but that seems to me to be an order that should be made in the circumstances by a magistrate in the light of my determination of this matter and the comments that I have already made.
