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WENTWORTH v ROGERS (No 5)

Court of Appeal: Kirby P, Hope and Samuels JJA

24 July; 3 October 1986

Judgments — Setting aside for fraud — Relevant principles — Necessity of alleging new facts in statement of claim — Onus of proof — Summary dismissal of statement of claim — Appeal — Costs.

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Practice — Supreme Court — Summary dismissal of action — Principles applicable — Action to set aside judgment for fraud — Untenable claim — Appeal — Costs.

Costs — Departing from general rule — Misconduct — Appeal from summary dismissal of statement of claim — Action to set aside judgment for fraud — Scandalous allegations not based in law — Refusal of indemnity costs — Party unrepresented — Absence of deliberate falsehood — No motive to delay proceedings.

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Held (dismissing an appeal): (1) A party who seeks to establish that a judgment ought to be set aside due to fraud must establish that the claim is based on newly discovered facts; that the facts are material and such as to make it reasonably probable that the claim will succeed; that they go beyond mere allegations of perjury on the part of witnesses at the trial, and that the opposing party who took advantage of the judgment is shown, by admissible evidence, to have been responsible for the fraud in such a way as to render it inequitable that such a party should take the benefit of the judgment. (538D-539G)

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Boswell v Coaks (No 2) (1894) 6 R 167 at 170, 174; *Cabassi v Vila* (1940) 64 CLR 130 at 147; *McDonald v McDonald* (1965) 113 CLR 529 at 533; *Everett v Ribbands* (1946) 175 LT 143 at 145, 146; *Birch v Birch* [1902] P 130 at 136, 137-138; *Ronald v Harper* [1913] VLR 311 at 318 and *Baker v Wadsworth* (1898) 67 LJQB 301, applied.

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Abouloff v Oppenheimer & Co (1882) 10 QBD 295, distinguished.

(2) In an application for summary dismissal of a statement of claim the question raised is whether the case sought to be put is "hopeless" or "manifestly groundless" and that question does not vary according to the nature of the claim. (536B-D)

General Steel Industries Inc v Commissioner for Railways (NSW) (1964) 112 CLR 125, applied.

McHarg v Woods Radio Pty Ltd [1948] VLR 496, explained.

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(3) An order for indemnity costs — appropriate where a trial is prolonged by deliberately false allegations of fact — was not appropriate in circumstances where although the case was without merit, it had not been commenced to prolong litigation; although the allegations made were in many matters scandalous they were not made with deliberate falsehood and the appellant/plaintiff was unrepresented.

Degmam Pty Ltd (In Liq) v Wright (No 2) [1983] 2 NSWLR 354, considered.

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CASES CITED

The following cases are cited in the judgments:

Abouloff v Oppenheimer & Co (1882) 10 QBD 295.

Baker v Wadsworth (1898) 67 LJQB 301.

Birch v Birch [1902] P 130.

Boswell v Coaks (No 2) (1894) 6 R 167; 86 LT 365.

A *Cabassi v Vila* (1940) 64 CLR 130.
Degmam Pty Ltd (In Liq) v Wright (No 2) [1983] 2 NSWLR 354.
Everett v Ribbands (1946) 175 LT 143.
General Steel Industries Inc v Commissioner for Railways (NSW) (1964) 112 CLR 125.
Gilbert (FB) (Deceased), Re the Will of (1946) 46 SR (NSW) 318; (1946) 63 WN (NSW) 176.
Harding v State of Maryland 5 Md App 230; 246 A 2d 302 (1968).
Jonesco v Beard [1930] AC 298.
B *McDonald v McDonald* (1965) 113 CLR 529.
McHarg v Woods Radio Pty Ltd [1948] VLR 496.
Perry v Meddowcroft (1846) 10 Beav 122; 50 ER 529.
Price v Stone [1964] VR 106.
Ronald v Harper [1913] VLR 311.
Shedden v Patrick (1854) 1 Macq 535.
Van Vliet v Griffiths (1978) 19 SASR 195.
Wentworth v Rogers (No 2) (Court of Appeal, 21 May 1986, unreported).
C *Wentworth v Rogers (No 3)* (1986) 6 NSWLR 642.

The following additional cases were cited in argument:
Flower v Lloyd (1877) 6 Ch D 297.
Gamser v Nominal Defendant [1976] 1 NSWLR 520.
Hip Foong Hong v Neotia & Co [1918] AC 888.
Kingston's (Duchess) Case (1776) 1 East PC 468; 20 State Tr 355; 2 Smith LC 12th ed 754.
Ladd v Marshall [1954] 1 WLR 1489; [1954] 3 All ER 745.
D *Luxford v Reeves* [1941] VLR 118.
McCann v Parsons (1954) 93 CLR 418.
Nicholls v Carpenter [1974] 1 NSWLR 369.
Robinson v Smith [1915] 1 KB 711.

APPEAL

This was an appeal from a decision of Young J summarily dismissing the
E appellant's statement of claim which sought to impugn a judgment against the appellant on the ground of fraud.

The appellant in person.

S D Rares, for the respondent.

Cur adv vult

3 October 1986

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KIRBY P. Young J, in the Equity Division, struck out the appellant's statement of claim. She has appealed against this order. The hearing of the appeal was expedited by the Court. Young J offered two reasons for the course which he took. The first was that, notwithstanding a great deal of material in the statement of claim and in bulky documentation proffered by the appellant in support of it, there was no basis upon which he could find
G that there was a reasonable chance that the appellant would succeed in the proceedings, according to principles which he outlined in his judgment. Secondly, he concluded that references in the statement of claim to persons, not parties to the litigation, including judges, officers of the Crown, police and hospital authorities were "scandalous" within the *Supreme Court Rules* 1970, Pt 65, r 5. In the light of the absence of the cause of action, however, the second reason merely added weight to his Honour's view that the

appellant had no case to go to trial. In this appeal the appellant challenges his Honour's conclusions. A

Approach to the appeal:

It is appropriate to state at the outset a number of general and particular considerations affecting the approach to be taken to the appeal.

First, the remedy of the peremptory termination of a claim brought to the courts, by the striking out of the statement of claim, is one to be used with caution and only in the clearest of cases. Various formulae are typically used to justify the exceptional course which Young J took. They include the conclusion that the claim is "manifestly groundless", and that to allow it to proceed "would involve useless expense": *General Steel Industries Inc v Commissioner for Railways (NSW)* (1964) 112 CLR 125 at 138. B

Young J was inclined to the opinion that a qualification existed upon this general rule of restraint. Where, as in the present case, the statement of claim sought to impugn a judgment on the ground of fraud, his Honour felt that the public interest in the finality of litigation permitted the courts to take a different approach. He referred to *McHarg v Woods Radio Pty Ltd* [1948] VLR 496 at 498. I do not read Herring CJ's judgment in that case as questioning or qualifying the restraints generally accepted before providing such drastic relief as summary dismissal. The existence of a previous judgment and the need, in the public interest, to bring litigation of issues to a close, may make the task of the court, in an application to strike out a statement of claim, easier to perform. But the test remains the same. Is the case sought to be put "hopeless" or "manifestly groundless"? It is in determining this question that the rules devised to protect finality become relevant. The question itself, for the peremptory procedure invoked, is not altered by the nature of the claim. C D

Secondly, it is important to remember that, involved in the order under challenge, is the exercise by a single judge of a discretion committed to him by law. Furthermore, it is a discretion in a matter of practice or procedure. Drastic and final as the consequence may be for the party affected, it is important for an appeal court to limit its intervention to cases where it is shown, or sufficiently appears, that the trial judge has fallen into some error of principle in the exercise of his discretion. Although the "self-imposed" restraints accepted by courts of appeal may be less strict than those adopted in applications for leave to appeal from interlocutory orders, they are none-the-less stringent, for otherwise a court of appeal would effectively become the place in which these decisions were canvassed and determined: see *Re the Will of F B Gilbert (Deceased)* (1946) 46 SR (NSW) 318 at 323; 63 WN 176 at 179; cf *Wentworth v Rogers (No 3)* (1986) 6 NSWLR 642. E F

Thirdly, the appellant being a litigant now appearing in person, care must be taken to ensure that this significant disadvantage does not deprive her of the opportunity to have her claim, if any, determined according to law. Persons unfamiliar with the rules of pleading and the technicalities which surround the drafting of a statement of claim in adequate and permissible legal form are inevitably, if unrepresented, at a disadvantage. Courts should approach the peremptory termination of the litigation with special care to ensure that, within the possibly ill expressed and unstructured statement of the legal claim sought to be ventilated, there is no viable cause of action G

A which, with appropriate amendment of the pleading and a little assistance from the court, could be put into proper form. If this can be done, the court should avoid the summary termination of the proceedings for this will prevent the Court from examining any merits of the case, once the statement of claim is struck out. Unrepresented litigants present our courts with significant difficulties. Particularly is this so where the court is as busy as the duty judge in the Equity Division typically is. The appellant complained that she was limited in oral presentation of her case before Young J. But it is clear B from his judgment that his Honour had before him all of the material which was later placed before this Court. He admitted the material, over the objection of the respondent. He considered it, although not convinced that much of it was strictly admissible. He did so in order to approach the case in the way most favourable to the appellant and to test the material on which she relied in order to see whether, additionally to the statement of claim, there might be derived from it a cause of action. If such a viable cause of C action could be found, although not stated properly in the statement of claim, it could give rise to leave to amend and the avoidance of the peremptory termination of the litigation sought by the respondent.

Young J recognised the stringency of the test to be applied by him. Although he suggested a qualification in cases such as the present which I would not be prepared to accept, I see nothing in the way he approached the statement of claim or the additional material presented by the appellant D which indicates a significant departure from the stringent criteria which he was required to apply. On the contrary, after extending considerable latitude to the appellant, his Honour considered, but dismissed, the possibility of further amendment. By the application of the law to the facts upon which the appellant sought to base her claim, his Honour concluded that her case was hopeless and should be terminated. I do not consider that in so concluding on the material before him, his Honour showed any error of principle such as E requires the intervention of this Court.

Setting aside judgments for fraud:

It has already been sufficiently indicated that the appellant's statement of claim, which contains twenty-eight paragraphs and comprises some forty-two pages, seeks an order that the verdict of a jury, and the judgment entered by Maxwell J on 18 December 1985 pursuant to that verdict, should be set aside F on the ground, essentially, that the verdict and judgment were procured by fraud. Various other orders were sought. But that is the essence of the case. The proceedings which gave rise to the statement of claim were originally commenced in this Court. They were remitted to the Equity Division for reason given, on behalf of the Court, by Mahoney JA in *Wentworth v Rogers (No 2)* (Court of Appeal, 21 May 1986, unreported). The litigation has a long history. On its face it arises out of an incident said to have taken place at the home of the appellant and her then husband, the respondent, on G 29 January 1977. The appellant commenced criminal proceedings by information charging the respondent with various offences of aggravated assault. On these charges, and following intervention of the Court, the respondent was ultimately committed for trial. An application for No Bill was refused by the Attorney-General. At his trial before Ward DCJ and a jury in the District Court, the respondent was found not guilty of the charges. He was discharged

on 26 July 1985. Later that year, civil litigation brought by the appellant against the respondent came before Maxwell J and a jury of four. The respondent, after his discharge by the criminal jury, obtained the leave of the Court to add a cross-claim for damages for malicious prosecution. At the conclusion of the civil trial, the jury returned with a verdict for the defendant in the action and a verdict for the cross-claimant (the present respondent) in the cross-claim. The cross-claimant was awarded substantial damages. A

The appellant has appealed from the judgment entered by Maxwell J pursuant to the jury's verdict. Her appeal was to have been heard in May 1986. She then commenced proceedings, supplementary to the appeal, to have the judgment set aside on the ground that it was obtained by fraud. Such proceedings are well-established in our law. They are independent of the appeal and equitable in origin and nature. That is the principal reason why this Court declined to consolidate the attack on the judgment for fraud with the appeal and required it to be tried separately in the Equity Division of the Court. When Young J received the matter by remission from this court, he directed that a statement of claim be filed. This was subsequently done and the appellant verified it. It was later amended with the leave of the Court. It was the amended statement of claim, as verified, which was the subject of the motion by the respondent that gave rise to his Honour's peremptory orders now under challenge. B C

It is useful to state a number of principles which are established by law and which govern proceedings of the kind which the appellant wishes to bring. D

First, the essence of the action is fraud. As in all actions based on fraud, particulars of the fraud claimed must be exactly given and the allegations must be established by the strict proof which such a charge requires: *Jonesco v Beard* [1930] AC 298 at 301; *McHarg v Woods Radio Pty Ltd* (at 497).

Secondly, it must be shown, by the party asserting that a judgment was procured by fraud, that there has been a new discovery of something material, in the sense that fresh facts have been found which, by themselves or in combination with previously known facts, would provide a reason for setting aside the judgment: see Lord Selborne LC in *Boswell v Coaks (No 2)* (1894) 6 R 167 at 170, 174; 86 LT 365 at 366, 368; *Cabassi v Vila* (1940) 64 CLR 130 at 147; *McDonald v McDonald* (1965) 113 CLR 529 at 533; *Everett v Ribbands* (1946) 175 LT 143 at 145, 146; *Birch v Birch* [1902] P 130 at 136, 137-138; *Ronald v Harper* [1913] VLR 311 at 318. This rule has an ancient lineage: see, eg, *Shedden v Patrick* (1854) 1 Macq 535 at 615, 622; *Halsbury's Laws of England*, 4th ed, vol 26, par 560 at 285. It is based upon a number of grounds. There is a public interest in finality of litigation. Parties ought not, by proceeding to impugn a judgment, to be permitted to relitigate matters which were the subject of the earlier proceedings which gave rise to the judgment. Especially should they not be so permitted, if they move on nothing more than the evidence upon which they have previously failed. If they have evidence of fraud which may taint a judgment of the courts, they should not collude in such a consequence by refraining from raising their objection at the trial, thereby keeping the complaint in reserve. It is their responsibility to ensure that the taint of fraud is avoided and the integrity of the court's process preserved. E F G

Thirdly, mere suspicion of fraud, raised by fresh facts later discovered, will not be sufficient to secure relief: *Birch v Birch* (at 136, 139); *McHarg v*

Woods Radio Pty Ltd (at 498); *Ronald v Harper* (at 318). The claimant must establish that the new facts are so evidenced and so material that it is reasonably probable that the action will succeed. This rule is founded squarely in the public interest in finality of public litigation and in upholding judgments duly entered at the termination of proceedings in the courts.

Fourthly, although perjury by the successful party or a witness or witnesses may, if later discovered, warrant the setting aside of a judgment on the ground that it was procured by fraud, and although there may be exceptional cases where such proof of perjury could suffice, without more, to warrant relief of this kind, the mere allegation, or even the proof, of perjury will not normally be sufficient to attract such drastic and exceptional relief as the setting aside of a judgment: *Cabassi v Vila* (at 147, 148); *Baker v Wadsworth* (1898) 67 LJQB 301; *Everett v Ribbands* (at 145, 146). The other requirements must be fulfilled. In hard fought litigation, it is not at all uncommon for there to be a conflict of testimony which has to be resolved by a judge or jury. In many cases of contradictory evidence, one party must be mistaken. He or she may even be deceiving the court. The unsuccessful party in the litigation will often consider that failure in the litigation has been procured by false evidence on the part of the opponent and the witnesses called by the opponent. If every case in which such an opinion was held gave rise to proceedings of this kind, the courts would be even more burdened with the review of first instance decisions than they are. For this reason, and in defence of finality of judgments, a more stringent requirement than alleged perjury alone is required.

Fifthly, it must be shown by admissible evidence that the successful party was responsible for the fraud which taints the judgment under challenge. The evidence in support of the charge ought to be extrinsic: cf *Perry v Meddowcroft* (1846) 10 Beav 122 at 136-139; 50 ER 529 at 534, 535. It is not sufficient to show that an agent of the successful party was convicted of giving perjured evidence in the former proceeding, the result of which it is sought to impeach. It must be shown that the agent, in so acting, was in concert with the party who derived the benefit of the judgment: *Ronald v Harper* (at 318); *Shedden v Patrick* (at 643).

Sixthly, the burden of establishing the components necessary to warrant the drastic step of setting aside a judgment, allegedly affected by fraud or other relevant taint, lies on the party impugning the judgment. It is for that party to establish the fraud and to do so clearly. In summary, he or she must establish that the case is based on newly discovered facts; that the facts are material and such as to make it reasonably probable that the case will succeed; that they go beyond mere allegations of perjury on the part of witnesses at the trial; and that the opposing party who took advantage of the judgment is shown, by admissible evidence, to have been responsible for the fraud in such a way as to render it inequitable that such party should take the benefit of the judgment.

The appellant, who is an educated and intelligent woman, had a clear appreciation not only of the rules which apply to the case which she is seeking to mount but also of the reasons which have constrained the courts to treat cases of this kind as exceptional, thereby defending judgments entered and bringing to finality of expensive and painful litigation. She did not contest most of the rules, set out above. Most of her written and oral

submissions were directed to distinguishing an application such as the present from an appeal, such as she wishes concurrently to pursue, challenging the judgment of Maxwell J pursuant to the jury's verdict. Her submissions were also, in large part, directed to establishing the utility of the Court's retaining an inherent jurisdiction, in the interests of justice, to prevent any judgment of a court being secured by fraud. The Court is fully aware of the distinction between the proceedings now under consideration and the appeal which will later be heard. Whilst it is true that the Court has a large inherent jurisdiction, so far as challenges to judgments on the ground that they were procured by fraud is concerned, that jurisdiction has been exercised for more than a century by courts of equity, and upon principles built up over many years. Those principles are sensible. Some of them are stated in judgments of the High Court of Australia which are binding on this Court. No reason has been shown to develop an entirely new jurisprudence for approaching judgments allegedly affected by perjury or conspiracy. No warrant has been established to justify a novel approach to the present claim. The principles long developed by courts of equity for dealing with judgments allegedly procured through fraud or other taint, provide an entirely appropriate legal category within which to consider the present case and the statement of claim which the appellant has filed in support of the relief she seeks.

Must the facts be "fresh" and "newly discovered"?

The one principle, stated above, which the appellant challenged most vigorously was that it was necessary for her to show that the evidence upon which she relies in support of the claim of fraud amounted to "fresh facts" which had been newly discovered since the trial which concluded in the judgment under attack. The appellant referred to a number of cases which, she said, cast doubt upon that suggested principle. She referred to *Abouloff v Oppenheimer & Co* (1882) 10 QBD 295, where the English Court of Appeal held that a foreign judgment, obtained by fraud, by a party in a suit in the foreign court could not afterwards be enforced by him in an action brought in an English court. It was held that this was so, despite the fact that the question whether fraud has been perpetrated had been investigated in the foreign court and even where it was decided by that court that fraud had not been committed. Lord Coleridge CJ, in words upon which the appellant strongly relied, said (at 303):

> "… Where a fraud has been successfully perpetrated for the purpose of obtaining the judgment of a Court, it seems to me fallacious to say, that because the foreign court believes what at the moment it has no means of knowing to be false, the court is mistaken and not misled; it is plain that if it had been proved before the foreign court that fraud had been perpetrated with the view of obtaining its decision, the judgment would have been different from what it was.
>
> I think, therefore, on the broad ground that no man can take advantage of his own wrong, and that it is a principle of law that no action can be maintained on the judgment of a court either in this country or in any other, which has been obtained by the fraud of the person seeking to enforce it, that the defence is good …."

That was a decision in a suit to enforce a judgment entered by the District Court of Tiflis, in the then Empire of Russia. There is no doubt that the

A decision supports a contention that, although fraud has been actually considered in the court giving judgment and rejected, the judgment might nonetheless be impeached in order to prevent a continuance of the fraud. However, for a number of reasons, the case does not determine the approach to be taken in the present appeal. First, it is, as are other cases relating to fraud in respect of foreign judicial decision, properly seen as exception to the rule defensive of judgment of domestic courts. There may be reasons of
B principle for applying a different rule to the judgments of foreign courts, given the great variety of judicial systems which operate and the entitlement of domestic courts to reserve to themselves an assessment of the integrity of the process upon which the judgment was based. On the other hand, the reasoning might be no more than a reflection of the attitudes of the English judiciary at the apogee of the British Empire. Certainly, the decision, and others like it, have been criticised and the difference of approach remarked: cf
C Spencer Bower and Turner, *The Doctrine of Res Judicata*, 2nd ed (1969) at 324.

Secondly, within a few years of *Abouloff*, and in the context of judgments of the English courts, the House of Lords in *Boswell's* case laid down, in the clearest possible terms, that the action to set aside a judgment on the ground that it had been procured by fraud must be based upon something newly discovered, after the first trial. It must not amount to a challenge to a matter canvassed in that trial.

D Thirdly, decisions of the High Court of Australia, which bind this Court, as the English Court of Appeal does not, make it plain that the rule in *Boswell* is part of the law of Australia: see *Cabassi v Vila* (at 147); *McDonald v McDonald* (at 533).

There may be other bases upon which the judgment in *Abouloff v Oppenheimer & Co* can be distinguished. It is not necessary to pause longer to consider these. If the case is now authority for anything, it is authority for
E the rule governing respect for foreign judgments. The applicable law as well as reasons of principle grounded in the public interest in finality of litigation, make it plain that the test to be applied in this Court for such an action as the appellant seeks to maintain, challenging as it does a judgment of this Court, is whether, since the judgment under attack, fresh facts have come to notice which satisfy the other requirements already stated. The legal arguments to the contrary urged by the appellant were correctly rejected by Young J.

F [His Honour then considered the suggested "fresh facts" in a manner not calling for report.]

Conclusions and orders:

The result is that an examination of the evidence to which the appellant has pointed, and all of it, fails to disclose the slightest suggestion of the cause of action which the appellant would have to establish in order to procure the setting aside of the judgment entered by Maxwell J on the ground that it had
G been procured by fraud. Eight of the ten witnesses whose perjury at the trial is alleged to give rise to an entitlement to have the judgment set aside (whether on the ground of fraud or perjury or otherwise) gave evidence in the criminal trial. The appellant was therefore on notice of their evidence. Neither she, nor those representing her at the civil trial, there alleged perjury on their part. Neither she nor those representing her claimed in the civil trial

that there was a fraudulent conspiracy designed to procure a tainted verdict. Such allegations were never put to the respondent although he was cross-examined at considerable length. The appellant may or may not have justifiable complaints about the conduct of the civil trial. That is not the Court's present concern. Such complaints will be considered, in due course, at the hearing of her appeal. So far as concerns her amended statement of claim, it is my view that Young J was right to strike it out. Parts of it are scandalous, containing baseless and unsupported allegations of conspiracy on the part of judges, Crown officers, hospital employees and others, unsustained even by a scintilla of evidence. The rest of it is reliant upon evidence which, when examined, came into existence, or was known to the appellant before the judgment under attack was entered. All of it is contained in a rambling, verbose and irregular document. Although, the appellant being unrepresented, leave would readily be given to amend if there were a prospect that a viable case could be mounted, there is no such prospect. The appellant's case is hopeless. This was repeatedly demonstrated by the material which she placed before the Court and upon which she relied. To permit the continuance of the proceedings would not only be a burden on the Court, the public and other litigants, it would be an unnecessary harassment of the respondent. Moreover, it would do no good to the appellant herself. She should direct such remaining litigious energy as she has to her appeal which will be dealt with in due course by the Court.

Costs:

The respondent sought an order for costs on an indemnity basis, seeking thereby to be protected from the necessary solicitor and client costs incurred by him in resisting this unmeritorious claim on numerous occasions both in the Court of Appeal and before the Equity Division. Reference was made to the decision of Holland J in *Degmam Pty Ltd (In Liq) v Wright (No 2)* [1983] 2 NSWLR 354. In that case Holland J held that, where an unsuccessful party had prolonged a trial by deliberately false allegations of fact, an appropriate order for costs might be made on an indemnity basis, save for costs unreasonably incurred by the successful party. That is the order which the respondent sought here.

Although, as has now been found, this case was without merit, I am not convinced that it was brought for the purpose of prolonging the litigation. On the contrary, I am sure that the appellant, misguidedly, considered that it would be a speedy way to conclude the litigation. Furthermore, I do not consider that the appellant has been deliberately false with the Court nor that she has made allegations which she believes or knows to be false. It is true that some of the allegations made are scandalous, resting as they do on a most flimsy and unconvincing basis. All of the other allegations were not, in law, sufficient to give rise to the cause of action which the appellant sought to advance in her statement of claim. But consideration must be given to the fact that in *Degmam* the party criticised was legally represented whereas here the appellant has done her best, unaided, to find her way through a relatively unfamiliar area of the law, not without its complications. In all of the circumstances, I consider that it will be sufficient to make the normal costs order.

A The order which I therefore propose is that the appeal be dismissed with costs.

HOPE JA. I agree with the orders proposed by Kirby P and with his reasons.

SAMUELS JA. I agree in the judgment of Kirby P and with the orders he proposes.

Appeal dismissed

B Solicitors for the respondent: *Henry Davis York*.

B A GRAY,
Barrister.

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