

IN THE PRIVY COUNCIL

No. 22 of 1985

47/85

ON APPEAL FROM THE FULL COURT  
OF THE SUPREME COURT OF QUEENSLAND

BETWEEN:

ABEL LEMON & COMPANY PTY. LTD.  
(First Defendant)

Appellant

-and-

BAYLIN PTY. LTD.  
(Second Defendant)

Respondent

RECORD OF PROCEEDINGS

INCE AND COMPANY,  
11 BYWARD STREET,  
LONDON, E.C.3.  
(REF 43)

01-623-2011

AGENTS FOR:

CLAYTON AND COMPANY,  
WESTPAC BUILDING,  
260 QUEENS STREET,  
BRISBANE, AUSTRALIA.

(Solicitors for the Appellant)

LOVELL, WHITE & KING,  
21 HOLBORN VIADUCT,  
LONDON EC1A 2DY.  
(Ref 11/T/RJC)

01-236 6011

AGENTS FOR:

SEYMOUR NULTY & CO.  
NINTH FLOOR,  
CITICORP HOUSE,  
CNR. QUEEN & GEORGE STREET,  
BRISBANE, AUSTRALIA.

(Solicitors for the Respondent)

ON APPEAL FROM THE FULL COURT  
OF THE SUPREME COURT OF QUEENSLAND

(Writ No. 5289 of 1983 and Motion No. 364 of 1984)

BETWEEN:

ABEL LEMON & COMPANY PTY. LTD.

(First Defendant)

Appellant

-and-

BAYLIN PTY. LTD.

(Second Defendant)

Respondent

INDEX OF REFERENCE

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<u>Writ No. 5289 of 1983</u>		
1.	Writ of Summons	16 December 1983
2.	Entry of Appearance of Second Defendant	23 December 1983
3.	Entry of Appearance of First Defendant	23 December 1983
4.	Notice of Change of Solicitors <b>for Plaintiffs</b>	23 March 1984
5.	Notice of Change of Solicitors for First Defendant	3 April 1984
6.	Summons filed on behalf of Second Defendant	15 May 1984
7.	Affidavit of Charles Linley Seymour, with Exhibits "A", "B", "C1", "C2", "C3", "D1" and "D2"	15 May 1984
8.	Order of McPherson J.	17 May 1984
9.	Summons filed on behalf of First Defendant	28 May 1984
10.	Affidavit of Peter Arnold Murrell, with Exhibits "A" and "B"	28 May 1984
11.	Affidavit of Documents on behalf of First Defendant by John Julian Tenison-Woods	31 May 1984
12.	Affidavit of Michael William Jarrett, with Exhibit "A"	5 June 1984
13.	Order of Master Lee Q.C.	7 June 1984
14.	Affidavit of Documents on behalf of Second Defendant by Janiece Anne Seymour	18 June 1984
15.	Summons filed on behalf of Second, Third, Fourth and Fifth Plaintiffs	20 June 1984
16.	Affidavit of Anne-Marie Coulin, with Exhibits "A", "B" and "C"	20 June 1984

I N D E X (Contd.)LIST OF DOCUMENTS ON FILE OMITTED FROM RECORD (Contd.)

No.	Document	Date
17.	Summons filed on behalf of Second, Third, Fourth and Fifth Plaintiffs	20 June 1984
18.	Affidavit of Anne-Marie Coulin, with Exhibits "A", "B", "C" and "D"	20 June 1984
19.	Affidavit of Jennifer Mary McEwan, with Exhibits "A" and "B"	25 June 1984
20.	Notice of Change of Solicitors for First Plaintiff	25 June 1984
21.	Order of Master Weld	25 June 1984
22.	Affidavit of Anne-Marie Coulin	27 June 1984
23.	Order of Master Weld	27 June 1984
24.	Affidavit of Documents on behalf of Second, Third, Fourth and Fifth Plaintiffs	4 July 1984
25.	Affidavit of Documents on behalf of First Plaintiff by George Dennis Taylor	4 July 1984
26.	Supplementary Affidavit of Documents on behalf of Second Defendant by Peter Fabian Geraghty	5 July 1984
27.	Summons Filed on behalf of First Defendant	23 July 1984
28.	Affidavit of Peter Arnold Murrell, with Exhibits "A", "B", "C", "D", "E", "F", "G", "H", "I", "J", "K", "L", "M", "N", "O", "P", "Q" and "R"	23 July 1984
29.	Affidavit of Peter Arnold Murrell, with Exhibits "A", "B" and "C"	27 July 1984
30.	Affidavit of George Dennis Taylor	10 August 1984
31.	Affidavit of Janiece Anne Seymour	22 August 1984

I N D E X (Contd.)LIST OF DOCUMENTS ON FILE OMITTED FROM RECORD (Contd.)

No.	Document	Date
32.	Answers of First Plaintiff to Interrogatories delivered by Second Defendant	10 September 1984
33.	Entry of Demurrer	2 October 1984
34.	Notice of Entry of Demurrer	filed 3 October 1984
35.	Affidavit of Baillie Percival Walker	27 November 1984
36.	Answers of First Defendant to Interrogatories delivered by Second Defendant	29 January 1985

Motion No. 364 of 1984

1.	Notice of Motion for Leave to Appeal	19 December 1984
2.	Affidavit of Peter Arnold Murrell, with Exhibits "A", "B", "C" and "D"	30 January 1985
3.	Conditional Order for Leave to Appeal to Her Majesty in Council from Orders of Full Court of Supreme Court of Queensland	5 February 1985
4.	Notice of Payment of Security	22 February 1985
5.	Affidavit of Michael William Jarrett	25 February 1985
6.	Draft Index of Reference	

IN THE SUPREME COURT

OF QUEENSLAND

1

No. 5289 of 1983

BETWEEN: TRICON INDUSTRIES PTY. LTD.

First Plaintiff

AND: FOUR WINDS POTTERY (a firm)

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Second Plaintiff

AND: R. & J. DYBKA

Third Plaintiffs

AND: CHARLES GORDON SPARKS  
and PRUE MacFARLANE

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Fourth Plaintiffs

AND: RAY SPARKS

Fifth Plaintiff

DEFENCE OF THE ABOVE-  
NAMED FIRST DEFENDANT

AND: ABEL LEMON & COMPANY PTY. LTD.

First Defendant

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AND: BAYLIN PTY. LTD.

Second Defendant

DEFENCE OF THE ABOVENAMED FIRST DEFENDANT

Delivered the Sixteenth day of April 1984.

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1. The First Defendant admits the allegations contained in paragraphs 1(b), 4(a) and 4(b) of the Statement of Claim.

CLAYTON & COMPANY

Solicitors  
Westpac Building,  
160 Queen Street  
BRISBANE. Q. 4000  
TELEPHONE: 221 6205

2. The First Defendant does not admit the allegations contained in paragraphs 1(a), 1(c), 2, 4(c), 4(d), 4(e), 4(f), 8, 11, 14, 15 and 22 of the Statement of Claim.

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3. As to paragraph 3 of the Statement of Claim:-

(a) the First Defendant admits that the Second Defendant was the owner of a building situated at Millway Street, Kedron;

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- (b) save as aforesaid the First Defendant does not admit the allegations in paragraph 3 of the Statement of Claim. 1
4. As to paragraph 5 of the Statement of Claim:-
- (a) the First Defendant denies the allegations in paragraphs 5(c) and (d) so far as they relate to the First Defendant; 10
- (b) save as aforesaid, the First Defendant does not admit the allegations in paragraph 5 of the Statement of Claim.
5. As to paragraph 6 of the Statement of Claim:- 20
- (a) the First Defendant admits that it had on its premises certain swimming pool chemicals;
- (b) save as aforesaid the First Defendant does not admit the allegations contained in paragraph 6 of the Statement of Claim. 30
6. As to paragraph 8 of the Statement of Claim, the First Defendant admits that fire broke out in the building referred to in paragraph 3 hereof.
7. The First Defendant denies the allegations contained in paragraphs 7, 9, 10, 12, 13, 15 and 21 of the Statement of Claim. 40
- 8.(a) Further or alternatively, if (which is denied) fire began in the First Defendant's premises it began accidentally and the First Defendant will rely on the provisions of 14 Geo. IIIc. 78 Section 86; 50
- (b) Alternatively, the fire was caused by arson by a stranger.
9. The First Defendant does not plead to the allegations contained in paragraphs 16, 17, 18, 19 60

and 20 of the Statement of Claim.

10. Save as aforesaid the First Defendant denies each and every allegation contained in the Statement of Claim.

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Solicitors for the First Defendant

This pleading was settled by Mr. H.G. Fryberg of Queen's Counsel and Mr. G.A. Thompson of Counsel.

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The Plaintiffs are required to reply to the within Defence within fourteen (14) days otherwise the pleadings will be deemed to be closed and all material statements of fact in the Defence will be deemed to have been denied and put in issue.

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IN THE SUPREME COURT OF QUEENSLAND

No. 5289 of 1983

BETWEEN:

TRICON INDUSTRIES PTY. LTD.

First Plaintiff

AND:

FOUR WINDS POTTERY

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Second Plaintiff

AND:

R. & J. DYBKA

Third Plaintiffs

AND:

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CHARLES GORDON SPARKS and PRUE MacFARLANE

Fourth Plaintiffs

AND:

RAY SPARKS

Fifth Plaintiff

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AND:

ABEL LEMON & COMPANY PTY. LTD.

First Defendant

AND:

BAYLIN PTY. LTD.

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Second Defendant

NOTICE CLAIMING INDEMNITY OR CONTRIBUTION

AND OTHER RELIEF

TO:

ABEL LEMON & COMPANY PTY. LTD., First Defendant

TAKE NOTICE that this action has been brought

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by the Plaintiffs against the Second Defendant. In it the Plaintiffs claim against the Second Defendant damages for negligence or in the alternative for damages for breach of contract as appears by the

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11:15am  
1/5/84

ICE CLAIMING INDEMNITY OR CONTRIBUTION AND OTHER RELIEF

FOUR NULTY & Solicitors, Floor, Corp House, Queen & rge Streets, SBANE.

221 5033

LM:CMD  
11ap84[i]  
Baylin]

endorsement on the Writ of Summons, a copy whereof is served herewith.

1. The Second Defendant claims against you to be indemnified against the Plaintiffs' claim and the costs of this action on the grounds that:

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(a) There was a lease between the First and Second Defendants dated the twentyfirst day of July, 1981;

(b) Pursuant to the said lease the First Defendant was required to indemnify the Second Defendant against all damages, losses and costs and expenses which the Second Defendant may sustain, expend or be put to by reason of any neglect or default on the part of the First Defendant to observe any of the covenants under the said lease agreement;

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(c) The First Defendant was in breach of covenants under the said lease agreement;

(d) The Second Defendant has suffered loss and damage as a result of the said breaches;

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2.(a) In the alternative the First Defendant had stored on its property dangerous chemicals which if they escape would be likely to cause loss and damage;

(b) The said chemicals did ignite and as a result a fire occurred;

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(c) The said fire caused loss and damage to the subject property referred to in paragraph 3 of the Statement of Claim;

(d) In addition and as a result of the said fire the Second Defendant may be liable for other loss or damage suffered by the Plaintiffs herein and for which the First Defendant is liable.

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3.(a) Further or in the alternative, the First Defendant owed a duty of care to the Second Defendant to take all reasonable care in the storage of the said chemicals;

(b) In addition thereto the Second Defendant may be liable for other loss or damage suffered by the Plaintiffs herein and for which the First Defendant is liable to indemnify the Second Defendant.

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(c) The First Defendant was in breach of its said duty and as a result the Second Defendant has suffered loss and damage;

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(d) In addition thereto the Second Defendant claims damages against the First Defendant for any loss and damage arising as a result of the matters referred to in paragraph 3(c) hereof.

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DATED the 30th day of April, 1984.

*Deegan Kelly Co*  
Solicitors for the Second Defendant

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IN THE SUPREME COURT OF QUEENSLAND

No. 5289 of 1983

BETWEEN:

TRICON INDUSTRIES PTY. LTD.

First Plaintiff

AND:

FOUR WINDS POTTERY

Second Plaintiff

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AND:

R. & J. DYBKA

Third Plaintiffs

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AND:

CHARLES GORDON SPARKS and PRUE MacFARLANE

Fourth Plaintiffs

AND:

RAY SPARKS

Fifth Plaintiff

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STATEMENT OF CLAIM

AND:

ABEL LEMON & COMPANY PTY. LTD.

First Defendant

AND:

BAYLIN PTY. LTD.

Second Defendant

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MOUR NULTY & Solicitors, Floor, icorp House, Queen & rge Streets, SBANE, QLD.

STATEMENT OF CLAIM OF SECOND DEFENDANT

DELIVERED to the First Defendant on the 30<sup>th</sup> day of April 1984.

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1. (a) The First Defendant is and was at all material times a company duly incorporated;

(b) The Second Defendant is and was at all material times a company duly incorporated;

2. The Second Defendant was at all material times

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(Baylin)

11/5/84

the owner of a large industrial building situate at 7 Millway Street, Kedron in the State of Queensland.

a. 3.(a) Part of that building was occupied by the First Defendant;

(b) The First Defendant was the tenant of the Second Defendant of part of that building pursuant to a lease or agreement for lease between them;

4. On or prior to the nineteenth day of December, 1982, the First Defendant had on its premises as aforesaid a quantity of chemicals namely hydrochloric acid, cyanuric acid, sodium dichlor, calcium hypochlorite, sodium hypochlorite, soda ash, sodium bicarbonate, and diatomaceous earth.

S/A.

5. Such chemicals so stored were dangerous, in that inter-mixing of them or contact with another or others was likely to result in spontaneous ignition and a fire or explosion.

6. On the nineteenth day of December, 1982 a fire broke out in the First Defendant's said premises.

7. Such fire was caused by a spontaneous ignition of the First Defendant's chemicals.

8. Such fire escaped throughout the premises of the Second Defendant.

9. Such fire and its escape into those premises caused:

- (a) Damage to building
- (estimated cost of reconstruction) \$325,000.00

S/A.

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- (b) Permanent loss of use of lettable area due to Brisbane City Council Ordinance (details not yet available) 1
- (c) Professional costs viz. architects, legal (details not yet available) 10
- (d) Loss of Rent:
  - First Defendant \$1,350.00 per month
  - Cooperware \$1,625.00 per month 20
  - Foligno \$1,500.00 per month

10. Further or alternatively, the fire and its escape were caused by the negligence of the First Defendant in:

- (a) Failing to prevent the chemicals from coming into contact with one another; 30
- (b) Failing to store the chemicals in sound, firm and strong containers;
- (c) Storing the chemicals in close proximity to one another; 40
- (d) Failing to have all the chemicals in such a way as to prevent breakage of their containers;
- (e) Storing the chemicals in premises not properly adapted for that purpose. 50

11. Further or alternatively the Second Defendant relies on the principle of res ipsa loquitur.

12. The First Defendant was bound by the following terms of the lease agreement:

- "(j) Duly and punctually to comply with and observe all statutes now or hereafter in force and all ordinances regulations and by-laws thereunder and orders and regulation of all other relevant authorities relating to the demised premises or to the business of the Lessee carried on therein and all requirements and orders lawfully given or made by any public body or authority relating to the demised premises within the time required by the notice of order PROVIDED THAT the Lessee shall not be obliged to effect any structural alterations to the existing improvements or conveniences on the said land or premises or to erect new conveniences on the said land or premises or to erect new additional or substitutional sanitary conveniences on the said land unless and then only so far as the same shall be occasioned by the nature of the business from time to time carried on upon the demised premises or in the manner or method of carrying on such business or the number and sex of persons employed therein. 1  
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- (k) To indemnify the Lessor and to hold the Lessor always indemnified against all damages losses costs and expenses which the Lessor may sustain expend or be put to by reason or on account of any neglect or default on the part of the Lessee to observe and perform any of the covenants or agreements on the part of the Lessee herein contained or hereby implied. 40
- (l) Not to use or permit the demised premises to be used for any purpose other than for assembly, storage and/or processing of merchandise during the normal course of business of the Lessee. The Lessee will at all times give to the Lessor a faithful and true account of the nature of the business carried on by the Lessee and the times during which the demised premises have been kept open for business and in any proceedings in relation to the demised premises the same onus shall be upon the Lessee to prove that the demised premises were used in 50  
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accordance with this covenant and not otherwise.

(u) Not to use or permit to be used any chemical burning fluids oil acetylene or alcohol in lighting the premises or for any business or other purpose nor to do nor permit anything to be done in the demised premises nor to bring nor keep anything therein that may in any way make void or voidable or lead to an increased rate of premium being payable in respect of any policy or policies of insurance on the said buildings or on any property kept therein or that may tend to obstruct or interfere with the rights of other tenants (if any) or in any way injure or annoy them or conflict with any laws or regulations relative to fires health or otherwise or with the rules or regulation of any lawful authority or with any act of Parliament or regulation thereunder for the time being in force or with any insurance policy upon the said building or any part thereof or any contents therein. If the Lessee shall commit a breach of this sub-clause then in addition to and without prejudice to any other rights and remedies vested in the Lessor the Lessee shall forthwith without demand pay to the Lessor any increased premium."

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13. In breach of the said terms of the lease agreement the First Defendant:

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(a) Stored dangerous chemicals or liquids on its leased premises inadequately and contrary to S.49G of the "Local Government Act, 1936-1972" and Regulations thereto;

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(b) Used the said premises for storage of chemicals other than in the normal course of business;

(c) Stored upon the said premises chemicals in such a manner that may have made void or

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voidable or lead to an increased rate of premium being payable in respect of the policy of the Second Defendant.

14. Further or alternatively, the fire and its escape and the loss and damage thereby suffered by the Second Defendant were caused by the breaches pleaded in paragraph 13 hereof.

In the premises the Second Defendant claims:

- (a) Damages together with interest pursuant to the Common Law Practice Act, 1867 - 1982.
- (b) Indemnity against the Plaintiff's claim.

*Supers, Wally Co*

Solicitors for the Second Defendant

This pleading was settled by Mr. Callinan of Queen's Counsel and Mr. Forde of Counsel.

The First Defendant is required to plead to the within Statement of Claim within twentyeight days from the time limited for appearance or from the delivery of the Statement of Claim whichever is the later, otherwise the Second Defendant may obtain judgement against it.

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IN THE SUPREME COURT

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OF QUEENSLAND

No. 5289 of 1983

BETWEEN:

TRICON INDUSTRIES PTY. LTD.

First Plaintiff

AND:

FOUR WINDS POTTERY

Second Plaintiff

AND:

R. & J. DYBKA

Third Plaintiffs

AND:

CHARLES GORDON SPARKS and PRUE MacFARLANE

Fourth Plaintiffs

AND:

RAY SPARKS

Fifth Plaintiff

AND:

ABEL LEMON & COMPANY PTY. LTD.

First Defendant

AND:

BAYLIN PTY. LTD.

Second Defendant

DEFENCE

Delivered the 1st day of May 1984.

1. The Second Defendant admits the facts set out in paragraphs 1(b) and (c), 3, 4(a), (b), 7, 8 and 9 of the Statement of Claim.

2. The Second Defendant does not admit the facts set out in paragraphs 1(a), 2, 4(e) and (f), 5(b), 11(c), (d), (e), (f) and (g) of the Statement of Claim.

*M. Gordon Sparks*  
*11.15am*  
*1/5/84*

DEFENCE

SEYMOUR NULTY &  
CO., Solicitors,  
9th Floor,  
Citicorp House,  
Cnr. Queen &  
George Streets,  
BRISBANE, QLD.

Tel: 221 5033

CLS:CMD:LM[14Mar  
98](DefBaylin)

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3. In relation to paragraphs 1(a), 4(c) and 5(a) of the Statement of Claim admits that it had an agreement for lease between itself and GEORGE DENNIS TAYLOR trading as "Cooperware" (hereinafter referred to as "the tenant") which carried on business as a pottery ware manufacturer on its said premises.

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4. In relation to paragraph 6 and 14 of the said Statement of Claim the Second Defendant admits that the First Defendant stored a quantity of chemicals on its premises on and prior to the 19th December, 1982 but was unaware of their nature.

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5. In relation to paragraph 10 of the Statement of Claim the Second Defendant says that such fire escaped into the premises occupied by the tenant.

6. In relation to paragraph 11, the Second Defendant admits that the escape of the said fire caused the destruction of or damage to chattels in the possession and/or control of the tenant and the suspension of the business carried on by the said tenant causing loss of profits and goodwill.

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7. In relation to paragraph 15, the Second Defendant says that the said storage was in breach of the terms of the lease between itself and the tenant.

8. In relation to paragraph 16 the Second Defendant does not admit it knew of the presence of the chattels in the possession of the tenant.

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9. In relation to paragraph 19(a) of the Statement of Claim the Second Defendant admits that it was an implied term of the agreement under which the tenant was to occupy the premises that:

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(a) The said premises were reasonably fit for the occupation by the tenant;

(b) The Second Defendant would not interfere with the tenant's quiet enjoyment of the said premises.

10. The Second Defendant denies the allegations contained in paragraphs 5(c) and (d), 17, 18(a) (b), (c) and (d), 19(c) and 20 of the Statement of Claim.

11. In relation to paragraphs 21 and 22 of the Statement of Claim the Second Defendant admits that the tenant suffered loss and damage and the loss of business records.

12. Further, or alternatively, the Second Defendant was in breach of no relevant duty of care owed to the Plaintiff.

13. Clause 13.02 of the said agreement for lease provides as follows:-

"OCCUPATION AT RISK OF LESSEE: The Lessee agrees to occupy and use the demised premises at the risk of the Lessee and the Lessor shall not in any circumstances be liable to the Lessee for any damage to the plant, equipment, fixtures, fittings, merchandise, stock-in-trade or any other property of any description of or in the possession of the Lessee and contained in, about or near the demised premises occasioned by water, heat, fire, electricity, vermin, explosion, tempest, riot, civil commotion, bursting pipes or by the entry of water from any source whatsoever or by the operation of any fire equipment nor for any loss of profits or other damage whatsoever resulting therefrom and notwithstanding that the same may occur by reason of any defect in the construction of the building containing the demised premises or any part thereof or of any of the appurtenances, plant, equipment or air conditioning therein PROVIDED ALWAYS that nothing herein contained shall be deemed to derogate from the obligation of the Lessor to construct the building in accordance with the terms of the Agreement for Lease."

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14. Further or in the alternative, the Second Defendant says that if it prima facie is in breach of the said Agreement and/or negligent (which is denied) then by reason of Clause 13.02 of the said agreement with the tenant it is not liable for any such damage as alleged.

15. Save as aforesaid the Second Defendant denies each and every allegation contained in the Statement of Claim.

*Seymour, Huley & Co*  
Solicitors for the Second Defendant

This pleading was settled by Mr. Callinan of Queens's Counsel and Mr. Forde of Counsel.

The Plaintiffs are required to reply to the within Defence within fourteen days otherwise the pleadings will be deemed to be closed and all material statements of fact in the Defence will be deemed to have been denied and put in issue.

IN THE SUPREME COURT  
OF QUEENSLAND

No. 5289 of 1983

BETWEEN: TRICON INDUSTRIES PTY. LTD.

First Plaintiff

AND: FOUR WINDS POTTERY

Second Plaintiff

AND: R. & J. DYBKA

Third Plaintiff

AND: CHARLES GORDON SPARKS and  
PRUE Mac FARLANE

Fourth Plaintiff

AND: RAY SPARKS

Fifth Plaintiff

AND: ABEL LEMON & COMPANY PTY. LTD.

First Defendant

AND: BAYLIN PTY. LTD,

Second Defendant

REPLY OF THE PLAINTIFFS TO THE DEFENCE OF  
THE FIRST DEFENDANT

Delivered the 6<sup>th</sup> day of June, 1984.

1. As to paragraph 8 (a) of that Defence, the Plaintiffs say that the provisions of 14 George III Chapter 78, Section 86:

- (a) Do not apply in Queensland;
- (b) In the alternative, do not apply in the circumstances of this case, as alleged in the Statement of Claim and hereunder.

2. The chemicals referred to in paragraph 6 of the Statement of Claim were kept on the First Defendant's premises in such condition that, if they ignited, the resulting fire would be likely to spread to that part of

the building occupied by the First Plaintiff.

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3. The First Defendant, in keeping such chemicals on its premises, was doing so in the course of some non-natural use of its premises.

4. Save as aforesaid the Plaintiffs join issue on the Defence of the First Defendant.

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*Carter Gurneo*

Solicitors for the Plaintiffs.

This Pleading was settled by Mr. McGill of Counsel.

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IN THE SUPREME COURT OF QUEENSLAND

No. 5289 of 1983.

BETWEEN:

TRICON INDUSTRIES PTY. LTD.

First Plaintiff

AND:

FOUR WINDS POTTERY

10

Second Plaintiff

AND:

R. & J. DYBKA

Third Plaintiff

AND:

CHARLES GORDON SPARKS and PRUE MacFARLANE

Fourth Plaintiff

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AND:

RAY SPARKS

Fifth Plaintiff

AND:

ABEL LEMON & COMPANY PTY. LTD.

First Defendant

AND:

BAYLIN PTY. LTD.

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Second Defendant

DEFENCE OF THE ABOVENAMED FIRST DEFENDANT TO THE STATEMENT OF CLAIM OF THE ABOVENAMED SECOND DEFENDANT.

Delivered the Seventh day of June, 1984.

1. The First Defendant admits the allegations contained in paragraphs 1(a), 2, 3(a), and 3(b) of the Second Defendant's Statement of Claim.

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2. The First Defendant does not admit the allegations contained in paragraph 1(b) of the Second Defendant's Statement of Claim.

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3. As to paragraph 4 of the Second Defendant's Statement of Claim :

(a) The First Defendant admits that it had on its premises certain swimming pool chemicals;

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ICE OF THE  
NAMED FIRST  
DANT TO THE  
EMENT OF  
I OF THE  
NAMED  
ND DEFENDANT

CON & COMPANY  
citors  
Floor  
pac Building  
Queen Street  
BANE Q.

PHONE: 2216205  
ERENCE: RM:JC:



(b) Save as aforesaid the First Defendant does not admit the allegations contained in paragraph 4 of the Second Defendant's Statement of Claim.

4. As to paragraph 9 of the Second Defendant's Statement of Claim :

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(a) The First Defendant admits that the Second Defendant has suffered loss in consequence of a fire on 19th December, 1982;

(b) Save as aforesaid, the First Defendant denies the allegations contained in paragraph 9 of the Second Defendant's Statement of Claim.

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5. As to paragraph 12 of the Second Defendant's Statement of Claim :

(a) The First Defendant admits the said lease agreement contained the terms alleged therein.

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(b) The First Defendant says that it was a term of the said lease agreement that nothing contained therein should prevent the First Defendant from storing in its premises swimming pool chemicals or any other product material or commodity incidental to the conduct of the First Defendant's business as importer and merchant.

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At the trial of this action the First Defendant will refer to the said lease agreement for its full terms meaning and effect.

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6. As to paragraph 13 of the Second Defendant's Statement of Claim :

(a) The First Defendant denies that it stored any

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chemicals in its premises other than swimming pool chemicals and other products materials and commodities incidental to the conduct of the First Defendant's business as importer and merchant.

(b) Save as aforesaid the First Defendant denies the allegations contained in paragraph 13 of the Second Defendant's Statement of Claim.

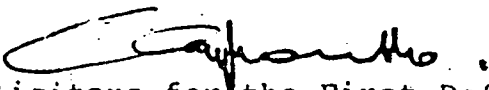
7. The First Defendant denies the allegations contained in paragraphs 5,6,7,8,10,11 and 14 of the Second Defendant's Statement of Claim.

8.(a) Further or alternatively, if (which is denied) fire began in the First Defendant's premises it began accidentally and the First Defendant will rely on the provisions of 14 Geo. III c. 78 Section 86.

(b) Alternatively, the fire was caused by arson by a stranger.

9. Further or alternatively, if (which is denied) the fire was caused by ignition of the First Defendant's swimming pool chemicals, the Second Defendant knew or ought to have known that the storage of such chemicals involved the risk of fire and the Second Defendant in leasing the premises to the First Defendant voluntarily consented to accept such risk.

10. Save as aforesaid the First Defendant denies each and every allegation contained in the Second Defendant's Statement of Claim.

  
Solicitors for the First Defendant

This pleading was settled by Mr. G.A. Thompson of Counsel.

4.

The Second Defendant is required to reply to the  
within Defence within fourteen (14) days otherwise  
the pleadings will be deemed to be closed and all  
material statements of fact in the Defence will be  
deemed to have been denied and put in issue.

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IN THE SUPREME COURT

OF QUEENSLAND

Writ No. 5289 of 1983

Writ issued the Sixteenth day of December, 1983.

BETWEEN: TRICON INDUSTRIES PTY. LTD.

First Plaintiff

AND: FOUR WINDS POTTERY (a firm)

Second Plaintiff

AND: R. & J. DYBKA

Third Plaintiffs

AND: CHARLES GORDON SPARKS and  
PRUE MacFARLANE

Fourth Plaintiffs

AND: RAY SPARKS

Fifth Plaintiff

AND: ABEL LEMON & COMPANY PTY. LTD.

First Defendant

AND: BAYLIN PTY. LTD.

Second Defendant

AMENDED STATEMENT OF CLAIM

Delivered the \_\_\_\_\_ day of June, 1984

1. (a) The First Plaintiff is and was at all material times a company duly incorporated, carrying on business under the business name "Cooperware"

(b) The First Defendant is and was at all material times a company duly incorporated.

(c) The Second Defendant is and was at all material times a company duly incorporated.

2. The Second Plaintiff is and was at all material times a firm carrying on business as potteryware

00am  
27/6/84

DEED  
MENT OF  
M

R CAPNER

CO.  
TORS,  
INE PARADE,  
ORT. Q.4215  
75) 328 711

SS FOR  
VICE  
R CAPNER

TORS,  
EEN STREET,  
NE. Q.4000  
07) 221 1833

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manufacturers.

3. The Second Defendant was at all material times the owner of a large industrial building situated at 7 Millway Street, Kedron in the State of Queensland. 1

4. As at the 19th day of December 1982:

- (a) Part of that building was occupied by the First Defendant; 10
- (b) The First Defendant was the tenant of the Second Defendant of part of that building pursuant to a lease or agreement for lease between them;
- (c) Another part of that building (hereinafter called "the First Plaintiff's premises"), adjacent to the part occupied by the First Defendant, was occupied by the First Plaintiff. 20
- (d) One George Dennis Taylor was the tenant of the Second Defendant of the First Plaintiff's premises pursuant to an agreement for lease between them; 30
- (e) Part of the premises so held by the said George Dennis Taylor were sublet to the Second Plaintiff and/or the Third Plaintiffs;
- (f) There were lawfully on the First Plaintiff's premises chattels owned by the First Plaintiff, chattels owned by the Second Plaintiff, chattels owned by the Third Plaintiffs jointly, chattels owned by the Fourth Plaintiffs jointly, and chattels owned by the Fifth Plaintiff. 40

5. At all material times: 50

- (a) The First Plaintiff carried on business as a potterware manufacturer on the First Plaintiff's premises;
- (b) The Second Plaintiff carried on its business on that part of the First Plaintiff's premises sublet 60

to it;

(c) That the First Plaintiff so carried on business there was known to the First and Second Defendants

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(d) That the Second Plaintiff so carried on business there was known to the First and Second Defendants

6. On and prior to the 19th day of December 1982 the First Defendant had on its premises as aforesaid a quantity of chemicals namely hydrochloric acid, cyanuric acid, sodium dichlor, calcium hypochlorite, sodium hypochlorite, soda ash, sodium barcarbonate, and diatomaceous earth.

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7. Such chemicals so stored were dangerous, in that intermixing of them was likely to result in spontaneous ignition and a fire or explosion.

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8. Such chemicals were kept on the First Defendant's premises in such condition that, if they ignited, the resulting fire would be likely to spread to the First Plaintiff's premises.

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9. The First Defendant, in keeping such chemicals on its premises, was doing so in the course of some non-natural use of its premises.

10. On the 19th day of December 1982 a fire broke out in the First Defendant's premises.

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11. Such fire was caused by spontaneous ignition of the First Defendant's chemicals.

12. Such fire escaped into the First Plaintiff's premises

13. Such fire and its escape into the First Plaintiff's premises caused:

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(a) The destruction of or damage to chattels owned by the First Plaintiff;

(b) The suspension of the First Plaintiff's business causing loss of profits and goodwill;

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- (c) The destruction of and damage to chattels owned by the Second Plaintiff; 1
- (d) The suspension of the Second Plaintiff's business, causing loss of profit and goodwill;
- (e) The destruction of or damage to chattels owned by the Third Plaintiff;
- (f) The destruction of or damage to chattels owned by the Fourth Plaintiffs; 10
- (g) The destruction of or damage to chattels owned by the Fifth Plaintiff.

14. In the premises the First Defendant is liable for the loss and damage so suffered by the Plaintiffs. 20

15. In the alternative, such loss and damage was caused by the negligence of the First Defendant, particulars of which are as follows:

- (a) Keeping such chemicals in close proximity of each other; 30
- (b) Failing to take any or any adequate care in the handling of such chemicals;
- (c) Failing to take any or any adequate precautions to prevent fire from occurring or to prevent or slow its spread; 40
- (d) Keeping dangerous chemicals in premises not suited for their storage.

16. At all material times the Second Defendant:

- (a) Knew, or;
- (b) Ought to have known; 50

That the First Defendant was storing dangerous chemicals on the premises occupied by it.

17. Such storage was in breach of the terms of the lease between the First Defendant and the Second Defendant. 60

18. The Second Defendant knew of or could reasonably have foreseen the presence on the First Plaintiff's premises of the chattels of the First, Second, Third, Fourth, and Fifth Plaintiffs.

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19. In the premises the loss and damage suffered by the Plaintiffs was caused or contributed to by the negligence of the Second Defendant particulars of which are as follows:

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(a) Allowing the First Defendant to store dangerous chemicals in its said premises, notwithstanding that such premises were not suitable for the storage of dangerous chemicals;

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(b) Failing to take any or any reasonable steps to prevent the First Defendant from storing dangerous chemicals in the said premises;

(c) Failing to take any precautions to prevent the outbreak or spread of fire within the said building;

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(d) Failing to warn the Plaintiffs or any of them of the presence of the dangerous chemicals in the First Defendant's premises.

20. The Plaintiffs claim the following special damages:

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(a) The First Plaintiff:

(i) Loss of stock \$98,000.00

(ii) Loss of plant and equipment \$25,000.00

(iii) Additional costs incurred as a result of the fire \$21,000.00

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(iv) Loss of profits during the period when the business did not operate because of the fire \$58,000.00.

(b) The Second Plaintiff:

(i) Loss of stock \$5,590.00

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- (ii) Loss of raw materials \$ 19,000.00 1
- (iii) Loss of plant and equipment \$143,000.00
- (iv) Additional expenses caused by fire \$ 43,750.00
- (v) Loss of profits during the period when the business was suspended \$ 7,680.00 10
- (c) The Third Plaintiffs:
  - Value of chattels lost \$ 80,400.00
- (d) The Fourth Plaintiffs:
  - Value of chattels lost \$ 26,525.00
- (e) The Fifth Plaintiff:
  - Value of chattels lost \$ 10,800.00 20

22. The First Plaintiff also lost business records and list of customers.

AND the Plaintiffs claim damages together with interest thereon pursuant to Section 72 of the Common Law Practice Act 1867 - 1981. 30

*Carter Capner & Co.*

Solicitors for the First Plaintiff

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*Quinlan, Hetherington & Trevelyan*  
Solicitors for the Second, Third, Fourth and Fifth Plaintiffs

This pleading was settled by Mr. McGill of Counsel. 50

The address for service of the Plaintiffs is at the offices of its solicitors, Messrs. Carter Capner & Co., Level 23 T & G Building, 141 Queen Street, Brisbane aforesaid.

Each Defendant is required to plead to the within Statement of Claim within 28 days from the time limited for appearance of from the delivery of the Statement of Claim whichever is the later, otherwise the Plaintiffs may obtain judgement against them. 60

IN THE SUPREME COURT

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OF QUEENSLAND

No. 5289 of 1983

BETWEEN:

TRICON INDUSTRIES PTY. LTD.

First Plaintiff

AND:

FOUR WINDS POTTERY

Second Plaintiff

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AND:

R. & J. DYBKA

Third Plaintiffs

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AND:

CHARLES GORDON SPARKES and PRUE MacFARLANE

Fourth Plaintiffs

DEMURRER

AND:

RAY SPARKS

Fifth Plaintiff

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*M. J. ...  
27/9/84*

AND:

ABEL LEMON & CO. PTY. LTD.

First Defendant

FOUR NULTY &  
Solicitors,  
floor,  
corp House,  
Queen and  
ge Streets,  
BANE.

AND:

BAYLIN PTY. LTD.

Second Defendant

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221 5033  
Box 40124

DEMURRER

Delivered the 27th day of September, 1984.

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The Second Defendant demurs to the First Defendant's Defence as to the matters alleged in paragraph 8(a) and says that the same is bad in law on the following grounds:-

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- (a) 14 GEO III c.78 Section 86 was repealed by the Sydney Buildings Act 1837;

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(b) That the said Imperial Act once repealed was not revived by the repeal of the said Sydney Building Act 1837 by the New South Wales Termination of Application Act 1973 (Queensland) and Schedule thereto.

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*Seymour, Huley & Co*

Solicitors for the Second Defendant

This pleading was settled by Mr. Callinan of Queen's Counsel and Mr. Forde of Counsel.

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The First Defendant is required to set this Demurrer down for argument within ten (10) days otherwise judgment will be given against it on the matters demurred to.

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*Seymour, Huley & Co*

Solicitors for the Second Defendant

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IN THE SUPREME COURT  
OF QUEENSLAND  
FULL COURT  
BETWEEN:

No. 5289 of 1983

TRICON INDUSTRIES PTY. LTD.

First Plaintiff 10

AND:

FOUR WINDS POTTERY

Second Plaintiff

AND:

R. & J. DYBKA

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Third Plaintiffs

AND:

CHARLES GORDON SPARKS  
and PRUE MACFARLANE

Fourth Plaintiffs

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AND:

RAY SPARKS

Fifth Plaintiff

AND:

ABEL LEMON & CO. PTY. LTD.

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First Defendant

AND:

BAYLIN PTY. LTD.

Second Defendant

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JUDGMENT - KELLY J.

Delivered the *Fourteenth* day of *December* 1984.

The question for determination on this demurrer is whether

the provisions of s. 86 of the Fires Prevention (Metropolis) Act 1774 (14 Geo. III c. 78) are applicable in Queensland. The section was part of the law which under. 24 of The Australian Courts Act, 1828 (9 Geo. IV c. 83) was originally in force in New South Wales (Hazelwood v. Webber (1934) 52 C.L.R. 268, at p. 275). The provisions of s. 86 were then repeated in s. 74 of a New South Wales statute, the Sydney Building Act 1837, and this operated as an implied repeal of the British enactment so far as it applied to New South Wales (Hazelwood v. Webber (supra), at p. 275).

Upon the territory of Queensland becoming a separate colony by Letters Patent of 6th June 1859, the Sydney Building Act 1837 then continued in force in Queensland pursuant to cl. 20 of the Order in Council of the same date and the operation of that Act was further continued in Queensland by s. 33 of the Constitution Act of 1867.

The Supreme Court Act of 1867 was assented to on the same date as was the Constitution Act of 1867 and commenced on 31st December 1867. Section 20 of the Supreme Court Act provided as follows:

"20. Laws of England to be applied in the administration of justice. 9 Geo. 4 c. 83 s. 24. Provided and be it declared and enacted that all laws and statutes in force within the realm of England at the time of the passing of the Imperial Act of the ninth year of King George the Fourth chapter eighty-three (not being inconsistent herewith or with any law or statute now in force in this Colony) shall be applied in the administration of justice in the Courts of Queensland so far as the same can be applied within the said colony

**Proviso not to extend to Queensland Imperial Acts not now in force there.** But nothing herein shall have the effect of extending to Queensland the operation of any Imperial Act not now extending to Queensland or of diminishing the present jurisdiction power or authority of the said Supreme Court or of the judges

or any judge thereof."

The effect of the proviso was that the operation of s. 86 of the Fires Prevention (Metropolis) Act 1774 was not extended to Queensland as even though it was in force within the realm of England at the passing of The Australian Courts Act 1828, it did not then, that is, when the Supreme Court Act commenced on 31st December 1867, extend to Queensland because it had been impliedly repealed by the enactment of s. 74 of the Sydney Building Act 1837 which was in force in Queensland at the date of the commencement of the Supreme Court Act.

In Kellett v. Cowan (1906) St.R.Qd. 116, which was a decision of the Full Court, it was stated by Cooper C.J. that s. 86 of the Fires Prevention (Metropolis) Act 1774 was then in force. However this statement, although apparently accepted by the other members of the Court, was merely obiter as the provision relates to a fire begun accidentally whereas the Court took the view that this was not the case in that instance and that the loss suffered by the appellant resulted from the respondent's negligence. It had been wrongly assumed in argument by both counsel that the Imperial Act was still in force and no reference was made to the Sydney Building Act 1837 and it would seem that this view of the law was adopted by Cooper C.J. per incuriam. In the circumstances this Court is not bound by Kellett v. Cowan to proceed on the basis that the Fires Prevention (Metropolis) Act 1774 was in force in Queensland in 1906 and in my view it is clear that it was not then in force.

The Sydney Building Act 1837 was repealed by the New South Wales Acts (Termination of Application) Act 1973, s. 2 of which provided that the New South Wales Acts specified in the Schedule,

which included the Sydney Building Act 1837, insofar as such 1  
Acts apply in Queensland, cease to apply in and for Queensland.  
There was a savings provision in s. 3 which, so far as is here  
relevant, was in the following terms:

"The repeal by this Act of the Acts specified in the  
Schedule does not -

- (a) revive anything not in force or existing  
at the commencement of this Act;" 10

For the respondent it was submitted that upon the repeal  
of the Sydney Building Act 1837 the Fires Prevention (Metropolis)  
Act 1774 revived because of the common law rule that if an Act  
of Parliament, which repeals former statutes, be repealed by 20  
an Act which contains nothing in it that manifests the intention  
of the legislature that the former laws shall continue repealed,  
the former laws will by implication be revived by the repeal  
of the repealing statute (Tattle v. Grimwood (1826) 3 Bing. 493,  
at p. 496; 130 E.R. 603, at p. 605). In Marshall v. Smith (1907) 30  
4 C.L.R. 1617, Barton J., at pp. 1634-1635, and Higgins J., at  
p. 1646, accepted this statement of the rule as a presumption  
which will be rebutted if the last repealing statute shows an  
intention that the statute first repealed shall continue so  
repealed. The submission was that no such intention was to 40  
be found in s. 3 of the New South Wales Acts (Termination of  
Application) Act 1973.

In my opinion the correct view is that such an intention  
is to be found in that section and that consequently s. 86 of  
the Fires Prevention (Metropolis) Act 1774 was not revived by 50  
the repeal of the Sydney Building Act 1837. This was held in  
Hazelwood v. Wepper (supra) to be the position in New South  
Wales where the statute of 1837 had been repealed by the City

of Sydney Improvement Act 1879. In referring to that repeal, the Court said, at p. 276:

"It appears to be correct that the repeal would not revive the Imperial provision which the repealed statute had, in its application to New South Wales, previously repealed. For sec. 4 of the Acts Shortening Act (22 Vict. No. 12), uses the term 'enactment,' a term apt to include Acts of the British Parliament in force by virtue of 9 Geo. IV. c. 83. The Act of 1774 may, therefore, be regarded as not in force in New South Wales."

I would consider that because of the express provisions of s. 3 of the New South Wales Acts (Termination of Application) Act 1973 it is not necessary to have recourse to s. 19 of the Acts Interpretation Act 1954-1977 and to consider whether, without those express provisions, the difference between the meaning of the term "Act" in the Acts Interpretation Act and that of the term "enactment" in the Acts Shortening Act of New South Wales is such that the decision in Hazelwood v. Webber (supra) could not be applied on the question of revival. For the reasons which I have given, in my opinion that decision can be so applied and it is authority for the proposition that a statutory provision which alters the common law rule as to the revival of a former law by the repeal of a repealing statute applies to a repeal of that former law by implication and that, although not referred to in Hazelwood v. Webber, the New South Wales decisions to the contrary in Te Kloot v. Te Kloot (1894) 15 L.R.(N.S.W.) D. 1 and Aarons v. Rees (1898) 15 W.N.(N.S.W.) 88 should not be followed.

The fact that s. 86 of the Fires Prevention (Metropolis) Act 1774 was apparently still in force in the United Kingdom at the time of the commencement of the New South Wales Acts (Termination of Application) Act 1973 is irrelevant. In my

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view the words "in force or existing" in s. 3 of the latter Act must be read as referring to Queensland.

It may be that consideration should now be given to the enactment of a statutory provision having the effect of s. 86 of the Fires Prevention (Metropolis) Act 1774 as it would seem to be as desirable now as it was in 1774 that the common law rule as to liability which was modified by that legislation should be so modified.

In my opinion the demurrer should be allowed with costs.

IN THE SUPREME COURT  
OF QUEENSLAND

No. 5289 of 1983

BETWEEN:

TRICON INDUSTRIES PTY. LTD.

First Plaintiff

AND:

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FOUR WINDS POTTERY

Second Plaintiff

AND:

R. & J. DYBKA

Third Plaintiffs

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AND:

CHARLES GORDON SPARKES and PRUE MacFARLANE

Fourth Plaintiffs

AND:

RAY SPARKS

Fifth Plaintiff

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AND:

ABEL LEMON & CO. PTY. LTD.

First Defendant

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AND:

BAYLIN PTY. LTD.

Second Defendant

JUDGMENT 98  
SUPREME COURT  
OF QUEENSLAND  
07. JAN. 1985  
FILED  
BRISBANE

SEYMOUR NULTY &  
CO., Solicitors,  
9th floor,  
Citicorp House,  
Cnr. Queen and  
George Streets,  
BRISBANE.

Tel: 221 5033  
D.X. Box 40124

CLS:CMD  
CS8 21d84[ii]  
[JudgBaylin]

FULL COURT

BEFORE THEIR HONOURS MR. JUSTICE KELLY, MR. JUSTICE

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MACROSSAN AND MR. JUSTICE RYAN

THE FOURTEENTH DAY OF DECEMBER, 1984

The Second Defendant having on the 27th  
September, 1984 demurred to the First Defendant's  
Defence

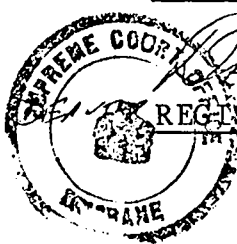
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IT IS THIS DAY ADJUDGED that the said demurrer be allowed and that the Second Defendant recover against the First Defendant its costs of the said demurrer, to be taxed.

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BY THE COURT



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IN THE SUPREME COURT OF QUEENSLAND

Motion No. 364 of 1984

IN THE MATTER of the Rules regulating Appeals to Her Majesty in Council from the State of Queensland (Imperial Order in Council of 18th October, 1909)

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- and -

IN THE MATTER of an application for leave to appeal to Her Majesty in Council by ABEL LEMON & COMPANY PTY. LTD. from the orders of the Full Court of the Supreme Court of Queensland in Action No. 5289 of 1983 between TRICON INDUSTRIES PTY. LTD., the First Plaintiff AND OTHERS AND ABEL LEMON & COMPANY PTY. LTD., First Defendant and BAYLIN PTY. LTD., Second Defendant.

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FILE

999  
SUPREME COURT OF QUEENSLAND  
- 4 MAR 1985  
FILED BRISBANE

ORDER

Filed on behalf of the Applicant)

THE FULL COURT BEFORE THEIR HONOURS, MR. JUSTICE ANDREWS S.P.J., MR. JUSTICE KELLY AND MR. JUSTICE SHEPHERDSON

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THE TWENTY-FIFTH DAY OF FEBRUARY, 1985

UPON MOTION this day made unto this Court by Mr.

Thompson of Counsel on behalf of the abovenamed ABEL & COMPANY PTY. LTD. (the Applicant) and

UPON HEARING Mr. Thompson of Counsel on behalf of the abovenamed ABEL LEMON & COMPANY PTY. LTD. (the

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Applicant) and Mr. Forde of Counsel on behalf of the abovenamed BAYLIN PTY. LTD. (the Respondent) and

UPON READING the Notice of Motion filed herein on the Nineteenth day of December, 1984, the Affidavit of PETER ARNOLD MURRELL filed herein on the Thirtieth

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day of January, 1985 and the Affidavit of MICHAEL WILLIAM JARRETT filed herein by leave this day, and

the Order of the Full Court of the Supreme Court of Queensland made the Fifth day of February, 1985, and

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LAYTON & COMPANY  
Solicitors,  
Westpac Building,  
60 Queen Street,  
BRISBANE QLD 4000  
Telephone 321 6205  
850b/55-57

UPON the Applicant by their Counsel undertaking that the Applicant will with all reasonable speed take all necessary steps for the purpose of procuring the despatch of the record to England.

THIS COURT DOTH ORDER that the Applicant be granted final leave to Appeal to Her Majesty in Council from the Judgment and Orders of the Full Court of the Supreme Court of Queensland made in ACTION No. 5289 of 1983 whereby

1. It was ordered that the demurrer of the Second Defendant to the Defence of the First Defendant, be allowed and
2. It was ordered that First Defendant pay to the Second Defendant its costs of the demurrer to be taxed.

and

THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the costs of and incidental to the Notice of Motion abide the event unless Her Majesty in Council should otherwise Order and

THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the costs of and incidental to this Motion be paid by the Applicant in the event of the said Appeal not being proceeded with or being dismissed for want of prosecution.



BY THE COURT  
*[Signature]*  
DEPUTY REGISTRAR

IN THE PRIVY COUNCIL

NO.                      of 1985

ON APPEAL

FROM THE FULL COURT

OF THE SUPREME COURT

OF QUEENSLAND

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(Writ No. 5289 of 1983 and  
Motion No. 364 of 1984)

BETWEEN:

ABEL LEMON & COMPANY PTY. LTD.

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Appellant  
(First Defendant)

AND:

BAYLIN PTY. LTD.

Respondent  
(Second Defendant)

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CERTIFICATE OF THE REGISTRAR  
OF THE SUPREME COURT OF QUEENSLAND AT BRISBANE  
CERTIFYING THE RECORD OF PROCEEDINGS

I, ROBERT HORE, Registrar of the Supreme Court of  
Queensland at Brisbane DO HEREBY CERTIFY that this record  
contains a true copy of all pleadings, proceedings,  
Judgments and Orders had or made in this action so far as  
the same have relation to the matter of an Appeal to her  
Majesty in Council in which ABEL LEMON & COMPANY PTY. LTD.  
is the Appellant and BAYLIN PTY. LTD. is the Respondent  
from the Judgment of the Full Court of the Supreme Court of  
Queensland, pronounced in this action on the Fourteenth  
day of December, 1984, and an index of reference of all  
papers and documents in the said action (except documents

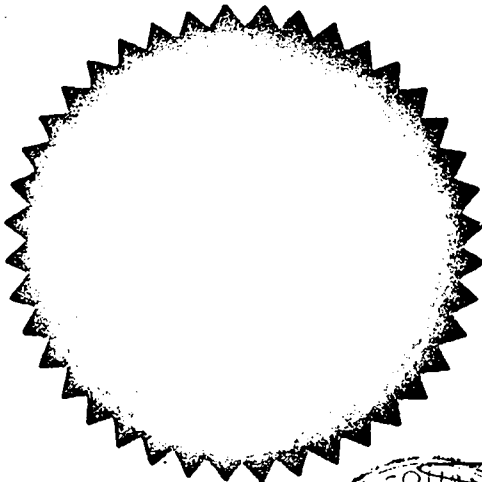
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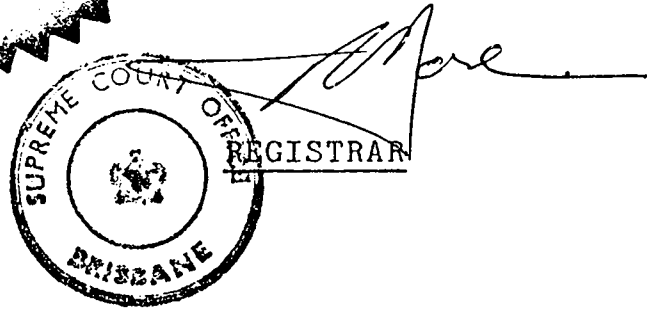
of a merely formal character or otherwise immaterial for the purposes of the said Appeal) and a list of the said formal and immaterial documents which have been omitted.

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I have hereunto affixed my Seal of Office and also the Seal of the Supreme Court of Queensland in the State of Queensland this *TWENTY-SECOND* day of *APRIL*, One thousand, nine hundred and eighty-five.

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