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Daily Banking A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Chand v Commonwealth Bank of Australia (NSWCA) - contract - bank failed to implement redemption request in relation to investments - investor was cause of prospective loss - appeal dismissed

Cassegrain v Gerard Cassegrain & Co Pty Ltd (in liq) (NSWSC) - equitable compensation - transfer of shares at undervalue - Referee's report adopted - defendants to pay equitable compensation

Perpetual Ltd v Latham (QSC) - service - claim for possession of land and for debt - order for substituted service by post granted

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Summaries With Link (Five Minute Read)

Chand v Commonwealth Bank of Australia [2015] NSWCA 181

Court of Appeal of New South Wales

Bathurst CJ, Beazley P & Ward JA

Contract - appellant claimed against bank for loss sustained following bank's failure to implement redemption request in relation to investments he made through bank's subsidiary - investments rated high risk and were highly geared - primary judge concluded appellant was not entitled to more than nominal damages for bank's admitted breach of contract because no actual loss suffered and prospective loss could have been entirely avoided by appellant - primary judge dismissed claim - causation - mitigation - held: primary judge correctly analysed bank's liability for actualisation of prospective loss - cause of prospective loss becoming real was appellant's deliberate, voluntary and informed decision not to issue further redemption request - appeal dismissed.

[Chand](#)

Cassegrain v Gerard Cassegrain & Co Pty Ltd (in liq) [2015] NSWSC 851

Supreme Court of New South Wales

Bergin CJ in Eq

Equitable compensation - Referee's report - parties disagreed whether report of referee should be adopted - report concerned inquiry into existence and quantum of loss to company due to transfer of shares at undervalue for purposes of making orders for equitable compensation - Referee determined that defendants were required to pay \$2,596,039 in equitable compensation - liquidator sought order that report be adopted pursuant to r20.24 *Uniform Civil Procedure Rules 2005* and sought orders including order for payment of compensation - held: Court not satisfied there was any requirement imposed on Referee by Court in respect of date for assessment of equitable compensation - contentions concerning market for shares failed - no error in valuation of property - complaints regarding Referee's analysis and conclusions in respect of evidence not made out - Referee's approach to loss to company not a reason to reject report - Court not satisfied Referee erred in exercise of discretion - report adopted - defendants to pay equitable compensation.

[Cassegrain](#)

Perpetual Ltd v Latham [2015] QSC 190

Supreme Court of Queensland

Jackson J

Service - substituted service - claim for possession of land and for debt - application under Ch 13, Pt 6 *Uniform Civil Procedure Rules 1999* for order for substituted service - applicant's agent had attempted to serve originating process personally on first defendant at her residence on six separate occasions - held: it was impracticable to serve documents in way required under r105 - more probable than not that if documents served by post they would come to first defendant's attention - appropriate that requirements for personal service be dispensed with -



in lieu of personal service, sealed copies of claim and statement of claim together with a sealed copy of order to be served on first defendant by post pursuant to r116 - service to be deemed to be effected four days after the documents served by posting them.

[Perpetual](#)



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from Beachy Head

By Charlotte Smith

On thy stupendous summit, rock sublime!
That o'er the channel reared, half way at sea
The mariner at early morning hails,
I would recline; while Fancy should go forth,
And represent the strange and awful hour
Of vast concussion; when the Omnipotent
Stretched forth his arm, and rent the solid hills,
Bidding the impetuous main flood rush between
The rifted shores, and from the continent
Eternally divided this green isle.
Imperial lord of the high southern coast!
From thy projecting head-land I would mark
Far in the east the shades of night disperse,
Melting and thinned, as from the dark blue wave
Emerging, brilliant rays of arrowy light
Dart from the horizon; when the glorious sun
Just lifts above it his resplendent orb.
Advances now, with feathery silver touched,
The rippling tide of flood; glisten the sands,
While, inmates of the chalky clefts that scar
Thy sides precipitous, with shrill harsh cry,
Their white wings glancing in the level beam,
The terns, and gulls, and tarrocks, seek their food,
And thy rough hollows echo to the voice
Of the gray choughs, and ever restless daws,
With clamor, not unlike the chiding hounds,
While the lone shepherd, and his baying dog,
Drive to thy turfy crest his bleating flock.

The high meridian of the day is past,
And Ocean now, reflecting the calm Heaven,
Is of cerulean hue; and murmurs low
The tide of ebb, upon the level sands.
The sloop, her angular canvas shifting still,
Catches the light and variable airs
That but a little crisp the summer sea,
Dimpling its tranquil surface.

[Charlotte Smith](#)



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