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Daily Composite Insurance, Banking, Construction & Government A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Bechara trading as Bechara and Company v Bates (NSWCA) - costs - Chorley exception - lump sum costs order in favour of self-represented respondent barrister granted against applicant (I B C G)

Glad Corporate Services v Taskin (NSWSC) - subpoena - documents produced by third parties - no grounds to withhold inspection of documents - both parties granted access to documents (I B)

Butterfield v Duyker (NSWSC) - real property - possession - defence to plaintiff's claim struck out - plaintiff granted leave to seek default judgment (B)

State of New South Wales v Malek Fahd Islamic School Ltd (NSWSC) - pleadings - judicial review - claim for recovery of funding provided to defendant under s21(1) *Education Act 1990* (NSW) - cross-claimants to serve further draft cross-claim on cross-defendants (I)

Hutton v RLX Operating Company Pty Ltd (QSC) - summary judgment - pleadings - plaintiff injured when he drove into six horses which had escaped from sales yard - first defendant sublessee awarded judgment on part of claim alleging breach of statutory duty (I)

Zorostar Pty Ltd v Arian Investments Pty Ltd (WASC) - real property - extension of caveat on basis of claimed unpaid vendor's lien refused (B)

HSBC Bank Australia Ltd v Mavaddat [No 2] (WASC) - judgments and orders - mortgage - summary judgment against second defendant in respect of loan and possession order not set aside (B)

Summaries With Link (Five Minute Read)

Bechara trading as Bechara and Company v Bates [2016] NSWCA 294

Court of Appeal of New South Wales

Beazley P; Meagher & Payne JJA

Costs - Chorley exception - Court dismissed appellant's summons in which she sought to appeal against judgment and orders of Adamson J - respondent barrister was self-represented as counsel instructed by solicitors - respondent sought gross sum costs order under s98(4)(c) *Civil Procedure Act 2005* (NSW) for solicitors' costs and disbursements, excluding counsel's fees and counsel's fees for professional work respondent performed - whether Court could make costs order in respect of a self-represented barrister - ss3 & 98 *Civil Procedure Act 2005* (NSW) - s91 *Evidence Act 2005* (NSW) - s26 *Judiciary Act 1903* (Cth) - ss4 & 364 *Legal Profession Act 2004* (NSW) - ss6, 172 & 178 *Legal Profession Uniform Law* (NSW) - Pt 7 Div 3 *Legal Profession Uniform Law Application Act 2014* (NSW) - *Supreme Court Act 1970* (NSW) - held: self-represented litigants generally unable to claim professional costs - Chorley exception applied when self-represented litigant was a solicitor - no authority in High Court or a Court of Appeal whether Chorley exception applies to self-represented barrister - in absence of submissions by applicant, applicant taken to have conceded order for costs of self-represented barrister - lump sum costs order in respondent's favour made.

[Bechara](#) (I B C G)

Glad Corporate Services v Taskin [2016] NSWSC 1532

Supreme Court of New South Wales

Slattery J

Subpoena - plaintiffs/cross-defendants (the Glad parties) formerly employed defendants/cross-claimants (Taskin parties) - Glad parties issued subpoenas to third parties, claiming subpoenaed documents likely to assist their case - subpoena recipients had produced documents - Glad parties sought access to documents - Taskin parties sought to set aside subpoenas on basis material was irrelevant without legitimate forensic purpose - *Corporations Act 2001* (Cth) - Pt 3.6 *Evidence Act 1995* (NSW) - *Uniform Civil Procedure Rules 2005* (NSW) - held: no basis established for withholding from inspection documents produced - access to documents sought granted to both parties.

[Glad](#) (I B)

Butterfield v Duyker [2016] NSWSC 1531

Supreme Court of New South Wales

Davies J

Real property - possession - plaintiffs sought possession of land for sum outstanding under loan agreement - *Uniform Civil Procedure Rules 2005 (NSW) - Collier v Moreland Finance (1989) 6 BPR 97* - held: defendant had no defence to plaintiff's claim - defence struck out - not appropriate to give plaintiff leave to replead in circumstances where he failed twice to appear at Court and did not dispute substantial part of claim - plaintiff granted leave to seek default judgment.

[Butterfield](#) (B)

State of New South Wales v Malek Fahd Islamic School Ltd [2016] NSWSC 1529

Supreme Court of New South Wales

Beech-Jones J

Pleadings - in substantive proceedings plaintiff sought recovery of funding provided to defendant under s21(1) *Education Act 1990 (NSW)* - defendant sought to file Second Further Amended Statement of Cross-Claim - cross-defendant resisted grant of leave and sought to strike out existing cross-claim - held: some parts of proposed cross-claim permitted - some parts of existing cross-claim struck out - cross-claimants to serve further draft cross-claim on cross-defendants.

[State of New South Wales](#) (I)

Hutton v RLX Operating Company Pty Ltd [2016] QSC 248

Supreme Court of Queensland

McMeekin J

Summary judgment - pleadings - plaintiff injured when he drove into six horses which had escaped from salesyard onto highway - horses belonged to third defendant who had brought them to salesyard for purposes of horse event which second defendant organised - first defendant was sublessee of salesyard - first defendant sought summary judgment under r 293 *Uniform Civil Procedure Rules 1999 (Qld)* or to strike out paragraphs of statement of claim under r171 - ss9, 28 & 60 *Local Government Act 2009 (Qld)* - held: first defendant awarded judgement on part of statement of claim alleging breach of statutory duty - paragraphs of statement of claim struck out.

[Hutton](#) (I)

Zorostar Pty Ltd v Arian Investments Pty Ltd [2016] WASC 348

Supreme Court of Western Australia

Beech J

Real property - caveat - plaintiff sought extension of caveat's operation over property owned by first defendant - plaintiffs had jointly purchased property - plaintiff acquired 30% interest and defendant 70% interest - plaintiff transferred its interest to defendant - plaintiff claimed it had not been paid for its interest and had unpaid vendor's lien sustaining the caveat - s138C *Transfer of Land Act 1893 (WA)* - held: Court not persuaded plaintiff's claim of non-payment of 30% interest sufficiently meritorious to justify caveat's extension - application dismissed.

[Zorostar](#) (B)

HSBC Bank Australia Ltd v Mavaddat [No 2] [2016] WASC 344

Supreme Court of Western Australia

Master Strk

Judgments and orders - summary judgment - mortgage - second defendant sought suspension of enforcement of judgment entered summarily against her in relation to loan and possession order under s15 *Civil Judgments Enforcements Act 2004* (WA) - second defendant contended her circumstances gave rise to 'difficulty and hardship beyond the usual hardship' mortgagor would suffer delivering up possession - held: Court not satisfied special circumstances existed to justify exercise of discretion - no stay granted in circumstances where second defendant could not provide alternative security of payment of judgment debt.

[HSBC](#) (B)

Old Pardon, the Son of Reprieve

By [Banjo Paterson](#)

You never heard tell of the story?
Well, now, I can hardly believe!
Never heard of the honour and glory
Of Pardon, the son of Reprieve?
But maybe you're only a Johnnie
And don't know a horse from a hoe?
Well, well, don't get angry, my sonny,
But, really, a young un should know.

They bred him out back on the `Never',
His mother was Mameluke breed.
To the front -- and then stay there -- was ever
The root of the Mameluke creed.
He seemed to inherit their wiry
Strong frames -- and their pluck to receive --
As hard as a flint and as fiery
Was Pardon, the son of Reprieve.

We ran him at many a meeting
At crossing and gully and town,
And nothing could give him a beating --
At least when our money was down.
For weight wouldn't stop him, nor distance,
Nor odds, though the others were fast,
He'd race with a dogged persistence,



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And wear them all down at the last.

At the Turon the Yattendon filly
Led by lengths at the mile-and-a-half,
And we all began to look silly,
While HER crowd were starting to laugh;
But the old horse came faster and faster,
His pluck told its tale, and his strength,
He gained on her, caught her, and passed her,
And won it, hands-down, by a length.

And then we swooped down on Menindie
To run for the President's Cup --
Oh! that's a sweet township -- a shindy
To them is board, lodging, and sup.
Eye-openers they are, and their system
Is never to suffer defeat;
It's 'win, tie, or wrangle' -- to best 'em
You must lose 'em, or else it's 'dead heat'.

We strolled down the township and found 'em
At drinking and gaming and play;
If sorrows they had, why they drowned 'em,
And betting was soon under way.
Their horses were good 'uns and fit 'uns,
There was plenty of cash in the town;
They backed their own horses like Britons,
And, Lord! how WE rattled it down!

With gladness we thought of the morrow,
We counted our wagers with glee,
A simile homely to borrow --
'There was plenty of milk in our tea.'
You see we were green; and we never
Had even a thought of foul play,
Though we well might have known that the clever
Division would 'put us away'.

Experience 'docet', they tell us,
At least so I've frequently heard,
But, 'dosing' or 'stuffing', those fellows
Were up to each move on the board:



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They got to his stall -- it is sinful
To think what such villains would do --
And they gave him a regular skinful
Of barley -- green barley -- to chew.

He munched it all night, and we found him
Next morning as full as a hog --
The girths wouldn't nearly meet round him;
He looked like an overfed frog.
We saw we were done like a dinner --
The odds were a thousand to one
Against Pardon turning up winner,
'Twas cruel to ask him to run.

We got to the course with our troubles,
A crestfallen couple were we;
And we heard the `books' calling the doubles --
A roar like the surf of the sea;
And over the tumult and louder
Rang `Any price Pardon, I lay!'
Says Jimmy, `The children of Judah
Are out on the warpath to-day.'

Three miles in three heats: -- Ah, my sonny,
The horses in those days were stout,
They had to run well to win money;
I don't see such horses about.
Your six-furlong vermin that scamper
Half-a-mile with their feather-weight up;
They wouldn't earn much of their damper
In a race like the President's Cup.

The first heat was soon set a-going;
The Dancer went off to the front;
The Don on his quarters was showing,
With Pardon right out of the hunt.
He rolled and he weltered and wallowed --
You'd kick your hat faster, I'll bet;
They finished all bunched, and he followed
All lathered and dripping with sweat.

But troubles came thicker upon us,



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For while we were rubbing him dry
The stewards came over to warn us:
'We hear you are running a bye!
If Pardon don't spiel like tarnation
And win the next heat -- if he can --
He'll earn a disqualification;
Just think over THAT, now, my man!

Our money all gone and our credit,
Our horse couldn't gallop a yard;
And then people thought that WE did it!
It really was terribly hard.
We were objects of mirth and derision
To folk in the lawn and the stand,
And the yells of the clever division
Of 'Any price Pardon!' were grand.

We still had a chance for the money,
Two heats still remained to be run;
If both fell to us -- why, my sonny,
The clever division were done.
And Pardon was better, we reckoned,
His sickness was passing away,
So he went to the post for the second
And principal heat of the day.

They're off and away with a rattle,
Like dogs from the leashes let slip,
And right at the back of the battle
He followed them under the whip.
They gained ten good lengths on him quickly
He dropped right away from the pack;
I tell you it made me feel sickly
To see the blue jacket fall back.

Our very last hope had departed --
We thought the old fellow was done,
When all of a sudden he started
To go like a shot from a gun.
His chances seemed slight to embolden
Our hearts; but, with teeth firmly set,
We thought, 'Now or never! The old 'un



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May reckon with some of 'em yet.'

Then loud rose the war-cry for Pardon;
He swept like the wind down the dip,
And over the rise by the garden,
The jockey was done with the whip
The field were at sixes and sevens --
The pace at the first had been fast --
And hope seemed to drop from the heavens,
For Pardon was coming at last.

And how he did come! It was splendid;
He gained on them yards every bound,
Stretching out like a greyhound extended,
His girth laid right down on the ground.
A shimmer of silk in the cedars
As into the running they wheeled,
And out flashed the whips on the leaders,
For Pardon had collared the field.

Then right through the ruck he came sailing --
I knew that the battle was won --
The son of Haphazard was failing,
The Yattendon filly was done;
He cut down the Don and the Dancer,
He raced clean away from the mare --
He's in front! Catch him now if you can, sir!
And up went my hat in the air!

Then loud from the lawn and the garden
Rose offers of `Ten to one ON!'
`Who'll bet on the field? I back Pardon!'
No use; all the money was gone.
He came for the third heat light-hearted,
A-jumping and dancing about;
The others were done ere they started
Crestfallen, and tired, and worn out.

He won it, and ran it much faster
Than even the first, I believe
Oh, he was the daddy, the master,
Was Pardon, the son of Reprieve.



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He showed 'em the method to travel --
The boy sat as still as a stone --
They never could see him for gravel;
He came in hard-held, and alone.

.....

But he's old -- and his eyes are grown hollow;
Like me, with my thatch of the snow;
When he dies, then I hope I may follow,
And go where the racehorses go.
I don't want no harping nor singing --
Such things with my style don't agree;
Where the hoofs of the horses are ringing
There's music sufficient for me.

And surely the thoroughbred horses
Will rise up again and begin
Fresh races on far-away courses,
And p'raps they might let me slip in.
It would look rather well the race-card on
'Mongst Cherubs and Seraphs and things,
'Angel Harrison's black gelding Pardon,
Blue halo, white body and wings.'

And if they have racing hereafter,
(And who is to say they will not?)
When the cheers and the shouting and laughter
Proclaim that the battle grows hot;
As they come down the racecourse a-steering,
He'll rush to the front, I believe;
And you'll hear the great multitude cheering
For Pardon, the son of Reprieve.

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