

Friday, 14 August 2015

## Weekly Construction Law Review A Daily Bulletin listing Decisions of Superior Courts of Australia

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### Executive Summary (1 minute read)

**AusNet Transmission Group Pty Ltd v Federal Commissioner of Taxation** (HCA) - taxation - income tax - payments were of a capital nature and therefore not tax deductible under s8-1 *Income Tax Assessment Act 1997* (Cth) - appeal dismissed

**Coles v Dormer** (QSC) - copyright infringement - conversion - reproduction of house plans and construction of house - remedies - injunction

### Summaries With Link (Five Minute Read)

**AusNet Transmission Group Pty Ltd v Federal Commissioner of Taxation [2015] HCA 25**

High Court of Australia

French CJ; Kiefel, Bell, Gageler & Nettle JJ

Taxation - income tax - State of Victoria embarked on privatisation of publicly owned electricity supply industry in 1993 - in 1997 State-owned electricity transmission company incorporated under *Electricity Industry Act 1993* (Vic) sold its assets to appellant including transmission licence held by company under Act - whether payments by appellant of statutory charges imposed on company as holder of licence transferred to appellant and thereafter payable by appellant were payments of capital or of a capital nature within of s 8-1(2)(a) *Income Tax Assessment Act 1997* (Cth) - held (by majority): primary judge and majority in Full Court of the Federal Court were correct to conclude charges paid by appellant were capital in nature and were therefore not tax deductible under s8-1 - appeal dismissed.

[AusNet](#)



[From Benchmark Thursday, 6 August 2015]

**Coles v Dormer [2015] QSC 224**

Supreme Court of Queensland

Henry J

Copyright infringement - conversion - remedies - plaintiff alleged defendants converted house plans in which he held copyright by assignment from building designer to their own use and infringed copyright by reproducing or substantially reproducing plans and constructing house substantially based on those plans - ss14, 21, 31, 32, 35, 36, 78, 115, 116 & 196 *Copyright Act 1968* (Cth) - whether building designer was owner of copyright - effectiveness of purported assignment - whether infringement of copyright or conversion - held: infringement of copyright and conversion established - plaintiff entitled to injunction though not in form contemplated when proceedings began - judgment for plaintiff.

[Coles](#)

[From Benchmark Thursday, 6 August 2015]

# Benchmark

## A Song of Rain

By C.J. Dennis

Because a little vagrant wind veered south from China Sea;  
Or else, because a sun-spot stirred; and yet again, maybe  
Because some idle god in play breathed on an errant cloud,  
The heads of twice two million folk in gratitude are bowed.

Patter, patter ... Boolconmatta,  
Adelaide and Oodnadatta,  
Pepegoona, parched and dry  
Laugh beneath a dripping sky.  
Riverina's thirsting plain  
Knows the benison of rain.  
Ararat and Arkaroola  
Render thanks with Tantanoola  
For the blessings they are gaining,  
And it's raining -- raining -- raining!

Because a heaven-sent monsoon the mists before it drove;  
Because things happened in the moon; or else, because  
High Jove,  
Unbending, played at waterman to please a laughing boy,  
The hearts through all a continent are raised in grateful joy.

Weeps the sky at Wipipee  
Far Farina's folk are dippy  
With sheer joy, while Ballarat  
Shouts and flings aloft its hat.  
Thirsty Thackaringa yells;  
Taltabooka gladly tells  
Of a season wet and windy;  
Men rejoice on Murrindindie;  
Kalioota's ceased complaining;  
For it's raining -- raining -- raining!

Because a poor bush parson prayed an altruistic prayer,  
Rich with unselfish fellow-love that Heaven counted rare;  
And yet, mayhap, because one night a meteor was hurled  
Across the everlasting blue, the luck was with our world.

On the wilds of Winininnie  
Cattle low and horses whinny,

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Frolicking with sheer delight.  
From Beltana to The Bight,  
In the Mallee's sun-scorched towns,  
In the sheds on Darling Downs,  
In the huts at Yudnapinna,  
Tents on Tidnacoordininna,  
To the sky all heads are craning --  
For it's raining -- raining -- raining!

Because some strange, cyclonic thing has happened -- God  
knows where --  
Men dream again of easy days, of cash to spend and spare.  
The ring fair Clara coveted, Belinda's furs are nigh,  
As clerklings watch their increments fall shining from the  
sky.

Rolls the thunder at Eudunda;  
Leongatha, Boort, Kapunda  
Send a joyous message down;  
Sorrows, flooded, sink and drown.  
Ninkerloo and Nerim South  
Hail the breaking of the drouth;  
From Toolangi's wooded mountains  
Sounds the song of plashing fountains;  
Sovereign Summer's might is waning;  
It is raining -- raining -- raining!

Because the breeze blew sou'-by-east across the China  
Sea;  
Or else, because the thing was willed through all eternity  
By gods that rule the rushing stars, or gods long aeons  
dead,  
The earth is made to smile again, and living things are fed.

Mile on mile from Mallacoota  
Runs the news, and far Baroota  
Speeds it over hill and plain,  
Till the slogan of the rain  
Rolls afar to Yankalilla;  
Wallaroo and Wirrawilla  
Shout it o'er the leagues between,  
Telling of the dawning green.  
Frogs at Cocoroc are croaking,



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Booboorowie soil is soaking,  
Oodla Wirra, Orroroo  
Breathe relief and hope anew.  
Wycheproof and Wollongong  
Catch the burden of the song  
That is rolling, rolling ever  
O'er the plains of Never Never,  
Sounding in each mountain rill,  
Echoing from hill to hill ...  
In the lonely, silent places  
Men lift up their glad, wet faces,  
And their thanks ask no explaining --  
It is raining -- raining -- raining!

[C.J. Dennis](#)

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