

40/81

HOUSE OF LORDS

WAUGH v BRITISH RAILWAYS BOARD

Lord Wilberforce, Lord Simon of Glaisdale, Lord Edmund-Davies, Lord Russell of Killowen and Lord Keith of Kinkel

10, 17, 21 May, 12 July 1979

[1979] UKHL 2; [1980] AC 521; [1979] 2 All ER 1169; [1979] 3 WLR 150; [1980] CR 521

DISCOVERY – LEGAL PROFESSIONAL PRIVILEGE – ACCIDENT REPORT – REPORT OBTAINED FOR PURPOSE OF ADVICE FROM SOLICITOR CONCERNING ANTICIPATED LITIGATION AND FOR PURPOSE OF IMPROVING SAFETY MEASURES – BOTH PURPOSES OF EQUAL RANK AND WEIGHT – WHETHER PREPARATION OF REPORT FOR ADVICE AND USE IN LITIGATION MUST BE DOMINANT PURPOSE IF DOCUMENT IS TO BE PRIVILEGED FROM PRODUCTION.

HELD: Appeal allowed. The court was faced with two competing principles, namely that all relevant evidence should be made available for the court and that communications between lawyer and client should be allowed to remain confidential and privileged. In reconciling those two principles the public interest was, on balance, best served by rigidly confining within narrow limits the privilege of lawfully withholding material or evidence relevant to litigation. Accordingly, a document was only to be accorded privilege from production on the ground of legal professional privilege if the dominant purpose for which it was prepared was that of submitting it to a legal adviser for advice and use in litigation. Since the anticipated litigation was merely one of the purposes and not the dominant purpose for which it was prepared, the board's claim of privilege failed and the report would have to be disclosed.

Dictum of Barwick CJ in *Grant v Downs* [1976] HCA 63; (1976) 135 CLR 674; 11 ALR 577; 51 ALJR 198, adopted;

Birmingham & Midland Motor Omnibus Co Ltd v London & North Western Railway Co (1913) 3 KB 850; 57 Sol Jo 752; 109 LT 64; 83 LJKB 474; and

Ankin v London and North Eastern Railway Co [1930] 1 KB 527; (1920) All ER 65; and

Ogden v London Electric Railway Co (1933) All ER 896; (1933) 49 TLR 542; 149 LT 476, overruled;

Grant v Downs [1976] HCA 63; (1976) 135 CLR 674; 11 ALR 577; 51 ALJR 198, not followed.