NOVA SCOTIA COURT OF APPEAL

Citation: *Homburg v. Stichting Autoriteit Financiële Markten*, 2017 NSCA 62

Date: 20170629
Docket: CA 458458
Registry: Halifax

Between:

Richard Homburg, Homburg Bondclaim Limited and Homburg Shareclaim Limited

Appellants

v.

Stichting Autoriteit Financiële Markten, De Nederlandsche Bank N.V., Belastingdienst, Theodor Kockelkoren, Marcus E. Wagemakers and the Government of the Kingdom of the Netherlands

Respondents

Judge:	The Honourable Justice Joel Fichaud
Appeal Heard:	June 13, 2017, in Halifax, Nova Scotia
Subject:	State immunity form civil lawsuit – *State Immunity Act*, R.S.C. 1985, c. S-18 – sovereign equality of states
Summary:	Homburg Invest Inc was licensed by the Respondents, Dutch regulatory agencies, to offer collective investment schemes to investors in the Netherlands. Homburg Invest offended aspects of the Dutch legal standard for offering securities, for which the Respondents sanctioned Homburg Invest. The principals of Homburg Invest sued the Dutch regulators in the Supreme Court of Nova Scotia. They claimed that the regulatory agencies' sanctions were tortious. On the Dutch regulators' motion, a judge of the Supreme Court of Nova Scotia dismissed the Homburg principals' action. The judge's reason was that, under the *State Immunity Act*, s. 3, organs of a foreign state are immune from civil action in a Canadian court. The *State Immunity Act*, s. 5, says that state immunity does not protect "commercial activity".

The judge held that the Dutch regulators' sanction did not constitute "commercial activity".
The Homburg principals appealed to the Court of Appeal.

Issues:

There were two issues:

1. Did the judge err by ruling that the Dutch regulators did not engage in "commercial activity" within s. 5 of the *State Immunity Act*?
2. Did the judge misapply the principle of sovereign equality of states?

Result:

The Court of Appeal dismissed the appeal.
The analysis for "commercial activity" under s. 5 of the *State Immunity Act* involves a contextual inquiry into the nature and purpose of the activity of the Dutch regulators. The judge applied that test without any error of law or palpable and overriding error of fact.
The judge found that the Dutch regulators committed no extraterritorial act in Canada. The judge's finding embodied no palpable and overriding error. Further, the *State Immunity Act* codifies the law and occupies the field respecting state immunity. The Dutch regulatory agencies were immune under s. 3 of that *Act*.

NOVA SCOTIA COURT OF APPEAL

Citation: *Homburg v. Stichting Autoriteit Financiële Markten*, 2017 NSCA 62

Date: 20170629
Docket: CA 458458
Registry: Halifax

Between:

Richard Homburg, Homburg Bondclaim Limited and Homburg Shareclaim Limited

Appellants

v.

Stichting Autoriteit Fianciële Markten, De Nederlandsche Bank N.V., Belastingdienst, Theodor Kockelkoren, Marcus E. Wagemakers and the Government of the Kingdom of the Netherlands

Respondents

Judges:	Fichaud, Beveridge and Farrar, JJ.A.
Appeal Heard:	June 13, 2017, in Halifax, Nova Scotia
Held:	Appeal dismissed with costs, per reasons for judgment of Fichaud, J.A., Beveridge and Farrar, JJ.A concurring
Counsel:	Ian Blue, Q.C., and Blair Mitchell for the Appellants Sheila Block and Davida Shiff for the Respondents

Reasons for judgment:

[1] Homburg Invest Inc. was a Canadian company that sought to offer collective investment schemes in the Netherlands. For this, Homburg Invest had to be licensed by the regulators of the Dutch financial markets. After obtaining its license, Homburg Invest offended the Dutch regulatory standard, and was sanctioned by the Dutch regulatory agencies.

[2] Homburg Invest's principals sued the Dutch regulatory agencies in the Supreme Court of Nova Scotia, and claimed damages in tort for losses caused by the sanction. A judge of the Supreme Court dismissed the action on the basis that the regulatory agencies were organs of a foreign state with immunity from civil action in Canadian courts, according to the *State Immunity Act* of Canada.

[3] Homburg Invest's principals appeal. The *State Immunity Act* excepts "commercial activity" from state immunity. The pivotal issue is whether the Dutch regulatory agencies' sanction against Homburg Invest was "commercial activity".

Background

[4] Homburg Invest Inc. ("HII") was incorporated under Nova Scotia law. Its shares were listed on the Toronto Stock Exchange. Its business was real estate investment and development in Europe, Canada and the United States. From October 2000, the Appellant Mr. Richard Homburg was HII's majority shareholder, either directly or through other companies he controlled, chief executive officer and directing mind.

[5] In 2006, HII sought to operate in the Netherlands. This brought HII and Mr. Homburg into contact with the Respondents Stichting Autoriteit Financiële Markten ("AFM") and De Nederlandsche Bank N.V., Belastingdienst ("DNB").

[6] AFM is an administrative body established under Netherlands' law and is responsible to the Dutch Minister of Finance. AFM supervises the conduct of business and disclosure of information by participants in the Dutch financial market involved in savings, lending and investment. AFM also oversees securities exchanges and off-exchange markets, licenses and then supervises collective investment schemes, such as those offered by HII.

[7] DNB is incorporated under Netherlands' law, is owned by the Respondent the Government of the Netherlands, and is responsible to the Dutch Minister of Finance. DNB functions as the Dutch national bank, supervises financial institutions, and participates in the admission of enterprises to the financial markets.

[8] The record has evidence of the Netherlands' laws:

- Under the governing regulatory instrument (termed the "*Wft*"), to participate in Dutch financial markets, HII was required to obtain a license from AFM and then was subject to the standards of conduct and regulatory processes that govern licensees.

- In particular, a licensee must comply with the requirements for collective investment schemes. These include that the schemes' day-to-day policies be determined by persons whose reliability is "beyond doubt", that the operations represent controlled and sound business practices, and that the company maintain a minimum equity capital at its disposal.

- AFM and DNB oversee the licensee's ongoing compliance with these standards. AFM sees that the policies of investment firms are determined by persons whose reliability is beyond doubt, and enforces market abuse regulations. DNB sees that the collective investment scheme maintains sufficient equity and adequate controls of risk.

- The *Wft* and other Dutch legislation set out the mechanisms of enforcement. AFM and DNB may require adherence to prescribed conduct, impose a duty backed by a judicial penalty, appoint a trustee or custodian, withdraw a license, and impose an administrative fine. The affected party is notified of the intended sanction, after which the affected party may challenge the proposed action under Dutch administrative and legal procedures.

[9] HII applied to AFM for a license to offer Dutch residents the opportunity to participate in collective investment schemes involving shares and bonds. HII's application engaged the *Wft*. On March 13, 2006, HII received the license and then became subject to the ongoing regulatory authority of AFM and DNB, according to Dutch law.

[10] From then on, under AFM's regulatory mandate, AFM monitored HII's activities in the Dutch financial market.

[11] On June 7, 2009, Mr. Homburg appeared on Dutch television. He said that HII would soon issue a press statement that would be of interest to stockholders. This led to a 38.5% rise in the stock price. Five days later, HII issued a press release that announced a new strategic direction, but indicated no dividend would be paid. After the press release, HII's stock price dropped by 28.9%.

[12] AFM then investigated HII and assessed Mr. Homburg with a fine for market manipulation. Mr. Homburg disputed the fine, which was upheld by both the District Court in Rotterdam and the Dutch Trade and Industry Appeals Tribunal.

[13] During the investigation, AFM and DNB observed that HII was precariously leveraged. A deficiency in equity and disposable capital was concerning at that time of financial crisis and devalued real estate.

[14] To assist the investigation, AFM requested information from HII. These requests are within AFM's regulatory powers under Dutch law. The requested information involved HII's structure and control, the change of direction cited in the press release of June 12, 2009, and HII's cash flow forecast. HII's response was inadequate, prompting AFM to repeat its request.

[15] Eventually, AFM concluded that HII had not appropriately replied to the requests for information. On March 10, 2010, AFM gave HII a notice of intent to impose a fine for non-compliance. HII still failed to provide all the requested information. On April 29, 2010, AFM imposed a fine to be levied if HII did not provide the information within a stated period. HII sought an injunction to restrain AFM from proceeding. On September 23, 2010, the District Court of Rotterdam denied the relief, found that HII's response to AFM's requests was inadequate, and said AFM had acted reasonably by imposing the fine.

[16] On November 12, 2010, AFM and DNB notified HII that they would give a joint instruction, pursuant to the *Wft*, aimed at improving serious shortcomings in HII's internal controls. In response, HII submitted a proposal to improve its controls. AFM and DNB determined that the proposal was inadequate. On April 22, 2011, AFM and DNB issued a formal instruction to HII. The Affidavit of Kristel J.H. van der Sanden, a senior supervisor with AFM, explains the reasons for the formal instruction:

> 67. … The AFM was of the opinion that there were serious inadequacies in HII's control of business conduct. The operations of HII or, in any event, the interests

> of the shareholders and bondholders were at risk because the liquidity, solvency and continuity of HII were under strong pressure. For that reason, AFM believed it to be important that measures had to be adopted that are needed to bring the business conduct (in particular the control of risks) in order. DNB concluded that, in view of the importance of the financial soundness and controlled business conduct of HII, measures would have to be adopted necessary to restore the financial soundness of HII and the controlled business conduct and the integrity (within the meaning of section 3:17, Wft), in order to safeguard the continuity of the business and the interests of the investors in HII in the long term.

[17] The *Wft*, and the Dutch Decree on Conduct of Business Supervision of Financial Undertakings under the *Wft*, require that a person in control of policy making for a financial enterprise have reliability that is "beyond doubt". HII had designated Mr. Homburg as the controlling individual.

[18] AFM was concerned about proceedings for tax offences that involved Mr. Homburg, and Mr. Homburg's failure to inform AFM of those proceedings. In a Reliability Survey, Mr. Homburg had said he was not involved in any proceedings that could lead to a tax penalty. Under the *Wft*, any changes to these answers must be reported. Mr. Homburg became involved in a number of investigations of tax-related offences and did not notify AFM of these investigations. Some of the investigations were later withdrawn or dismissed and some were settled on terms. Others, involving misreporting, were upheld and resulted in substantial tax assessments and penalties.

[19] On March 11, 2010, AFM notified HII of its intent to instruct that Mr. Homburg cease to act as policymaker for HII. Mr. Homburg unsuccessfully challenged this decision through Dutch administrative processes and in the courts of the Netherlands. On May 25, 2011, the District Court in Rotterdam declined HII's motion for an injunction. The Court said:

> Between the parties [AFM and HII] it was not in doubt that AFM, based on the fiscal and regulatory issues, could reasonably have concluded that Richard Homburg's reliability was no longer beyond doubt.

[20] On November 22, 2011, AFM revoked the license of HII to sell participating units of its investment scheme in the Netherlands.

[21] Two months earlier, in September 2011, HII commenced proceedings in Canada under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36.

HII restructured in June 2013. HII's legal successor was Geneba Properties NV. On March 7, 2014, AFM issued Geneba a license under the *Wft*.

[22] On April 23, 2015, Mr. Homburg, Homburg Bondclaim Limited and Homburg Shareclaim Limited (together "the Homburg Claimants") sued AFM, DNB, the Government of the Kingdom of the Netherlands and AFM's officers, Messrs. Theodor Kockelkoren and Marcus Wagemakers (together the "Dutch Authorities"). The two corporate plaintiffs claimed as assignees of the former bondholders and shareholders of HII. The lawsuit was filed in the Supreme Court of Nova Scotia. The Notice of Action pleaded torts described as malfeasance in public office, unlawful means and conspiracy. The Homburg Claimants say the Dutch Authorities' actions have caused loss of their investments in HII, approximating $200 million.

[23] On July 8, 2015, the Dutch Authorities moved for an order dismissing the Notice of Action. The motion, in the Supreme Court of Nova Scotia, cited Rule 4.07 ("Lack of jurisdiction" by the court), the *State Immunity Act*, R.S.C. 1985, c. S-18, and the principle of sovereign immunity. The Dutch Authorities said the Supreme Court of Nova Scotia had no jurisdiction to hear this claim against organs of a foreign state and, in the alternative, pleaded *forum non conveniens*.

[24] On November 1-3, 2016, Justice Michael Wood heard the motion. The parties filed affidavits and two witnesses were cross-examined.

[25] On November 17, 2016, Justice Wood issued a Decision (2016 NSSC 317) that concluded:

> [56] For the above reasons I am satisfied that all the defendants are entitled to rely on the sovereign immunity set out in s. 3 of the *State Immunity Act*. In light of this conclusion it is not necessary to deal with the *forum non conveniens* argument. I will grant an order dismissing this proceeding on the basis that the Court does not have jurisdiction over the defendants.

[26] Later I will discuss the judge's reasons.

[27] On December 15, 2016, the Supreme Court of Nova Scotia issued an Order dismissing the Notice of Action.

[28] The Homburg Claimants appealed to this Court.

Issues

[29] The Homburg Claimants' factum submits:

1. The judge failed to carry out the required contextual analysis of the Dutch Authorities' actions to determine whether those actions were "commercial activity" under s. 5 of the *State Immunity Act*; and
2. The judge misapplied the principle of sovereign equality of states.

Standard of Review

[30] On an appeal from the decision of a judge, this Court applies correctness to issues of law, including those that are extractable from issues of mixed fact and law. We apply palpable and overriding error to issues of either fact or mixed fact and law with no extractable legal error. Palpable and overriding means the error is clear and affected the outcome.

First Issue – State Immunity Act

[31] The *State Immunity Act* says:

> **State immunity**
>
> 3(1) Except as provided by this *Act*, a foreign state is immune from the jurisdiction of any court in Canada.
>
> **Court to give effect to immunity**
>
> (2) In any proceedings before a court, the court shall give effect to the immunity conferred on a foreign state by subsection (1) notwithstanding that the state has failed to take any step in the proceedings.

[32] Section 2 says "foreign state" includes "any agency of the foreign state", defined as "any legal entity that is an organ of the foreign state but that is separate from the foreign state". AFM and DNB are agencies of a foreign state.

[33] Under s. 4, state immunity may be waived where a foreign state takes a step in the proceedings. By s. 4(3)(a), a motion that claims immunity, *i.e.* the motion to Justice Wood, is not a waiver.

[34] There is no state immunity for the foreign state's "commercial activity":

> **Commercial activity**
>
> 5. A foreign state is not immune from the jurisdiction of a court in any proceedings that relate to any commercial activity of the foreign state.

Section 2 defines "commercial activity":

> "commercial activity" means any particular transaction, act or conduct or any regular course of conduct that by reason of its nature is of a commercial character.

[35] The Homburg Claimants rely on the exception for "commercial activity".

[36] The Homburg Claimants' motion brief to Justice Wood acknowledged that the Dutch Defendants acted for a regulatory purpose:

> 61. **Purpose:** The Defendants made these demands because they believed that Mr. Homburg's *properness* [italics in memorandum] as a policy maker for HII was in doubt and HII was not being managed prudently. Their purpose was to exercise legal authority that *Wft* granted them in the public interest of the Netherlands. The purpose of their actions was therefore regulatory.

[37] Justice Wood (para. 48) cited this acknowledgement.

[38] At the appeal hearing, counsel for the Homburg Claimants at one point said he withdrew the acknowledgement in para. 61 of the motion brief. In my view, the outcome is the same with or without the acknowledgement.

[39] The Homburg Claimants' appeal factum explains their submission on the "commercial activity" exception:

> 37. … The primary meaning of "commercial" is: "[o]f, pertaining to, or engaged in commerce" [citing the *Shorter Oxford English Dictionary*]. Thus a "commercial activity" is any act or conduct that by reason of its nature is of a character that "pertains to" commerce. "Commerce" is "buying and selling; the exchange of merchandise or services, esp. on a large scale" [citing the *OED*]. Based upon these definitions, HII was engaged in commerce. Any corresponding actions by the Respondents to manage HII were therefore "commercial activity".

[40] With respect, the analysis is not that linear. Every regulator of financial markets affects commercial enterprises. That bare fact does not make the financial regulator a free-standing commercial actor. The test involves a full contextual inquiry into the nature and purpose of the regulator's activity.

[41] In *Kuwait Airways Corp. v. Iraq*, [2010] 2 S.C.R. 571, Justice LeBel for the Court adopted the test from Justice La Forest's reasons, for the majority, in *Re Canada Labour Code*, [1992] 2 S.C.R. 50:

> [31] In Canadian law, La Forest J. … made it clear that the Canadian commercial activity exception requires a court to consider the entire context, which includes not only the nature of the act, but also its purpose:
>
> > It seems to me that a contextual approach is the only reasonable basis of applying the doctrine of restrictive immunity. The alternative is to attempt the impossible – an antiseptic distillation of a "once-and-for-all" characterization of the activity in question, entirely divorced from its purpose. It is true that purpose should not predominate, as this approach would convert virtually every act by commercial agents of the state into an act *jure imperii*. However, the converse is also true. Rigid adherence to the "nature" of an act to the exclusion of purpose would render innumerable government activities *jure gestionis*. [p. 73]
>
> [32] After this, La Forest J. stressed Parliament's intention to confirm the restrictive theory of state immunity expressed in the *SIA* and the need for a contextual analysis focussed on the activity itself.
>
> > I view the Canadian *State Immunity Act* as a codification that is intended to clarify and continue the theory of restrictive immunity, rather than to alter its substance. The relevant provisions of the Act, ss. 2 and 5, focus on the nature and character of the activity in question, just as the common law did. [pp. 73-74]

[42] In *Re Canada Labour Code*, Canadian support staff at an American military base in Canada sought certification of a union under the *Canada Labour Code*. The United States Government claimed immunity under the *State Immunity Act*. One issue was whether the "commercial activity' exception in s. 5 applied. Under the heading "The Nature of the Activity", Justice La Forest said:

> While bare employment contracts are primarily commercial in nature, the management and operation of a military base is undoubtedly a sovereign activity.
>
> …
>
> In the result, the "activity" at Argentia has a double aspect. It is at once sovereign and commercial. The question becomes, do the certification proceedings "relate" to the commercial aspect of the activity? …
>
> Section 5 of the *State Immunity Act* requires that the proceedings in question relate [Justice LaForest's underling] to the activity in issue. For me, it is not enough that the proceedings merely "touch on" or "incidentally affect" the hiring of civilian labour at the base. Acceptance of such a minimal requirement would

> broaden the "commercial activity" exception to the point of depriving sovereign immunity of any meaning. … A more substantial connection is needed. …

[43] Justice La Forest's reasons help to explain "nature of the activity". Where the activity has both sovereign and commercial aspects, the court asks which aspect is more substantial. Only a "substantial" commercial connection will trigger the exception in s. 5 of the *State Immunity Act*.

[44] In this case, Justice Wood (para. 44) quoted *Kuwait Airways* and *Re Canada Labour Code*, and said "all of the circumstances must be considered, including the nature of the action and its purpose". As to the nature of the activity, he said:

> [51] The nature of the defendants' actions must also be considered. AFM issued written instructions to a company which had obtained a license to participate in Dutch financial markets. In applying for this license HII agreed that it would be subject to regulation by the defendants. The instructions in issue are permitted under Dutch law and directed to the steps which must be taken by HII to come into compliance with that country's regulatory requirements.
>
> [52] A financial regulator with the authority to determine who may act as policymaker for a license holder will take actions that may impact on the management of that entity. That is the nature of a regulated industry. This is not the sort of influence that intrudes so far into the management sphere that sovereign immunity is lost. The state is not engaging in commercial activities or otherwise trying to protect its own financial interests. It is engaged in the sovereign action of regulating and protecting participants in its own financial markets.

As to purpose, Justice Wood said:

> [48] … I am satisfied on the evidence before me that everything done by AFM and DNB in relation to HII was for the purpose of regulation and supervision of that company as a licensed participant in Dutch financial markets. …

[45] In my view, Justice Wood correctly summarized the test, involving a contextual inquiry into the nature and purpose of the activity. His application of the test involved neither an extractable error of law, nor a palpable and overriding error of fact.

[46] We have Dutch regulators of the Netherlands' domestic financial market applying Dutch securities standards to a Canadian company that sought to offer an investment scheme directly to residents of the Netherlands. The Dutch Authorities'

activity had a virtually exclusive sovereign aspect, namely the regulation of the internal Dutch securities market. Any impact felt by HII, in Canada or elsewhere, was a by-product of HII's participation in the Dutch market. Neither the nature nor the purpose of the Dutch Authorities' activity was commercial under s. 5 of the *State Immunity Act*.

[47] I would dismiss this ground of appeal.

Second Issue – Sovereign Equality of States

[48] The Homburg Claimants rely on the sovereign equality of states and cite the passage from *R. v. Cook*, [1998] 2 S.C.R. 597, para. 131:

> 131 … [A] state cannot take measures on the territory of another state by way of enforcement of national laws without the consent of the latter. …

[49] The Homburg Claimants' factum (para. 24) submits that measures taken by AFM and DNB occurred on Canadian territory. They point to the Dutch Authorities' notices of sanctions addressed to HII in Canada. They also allege that those sanctions "caused the break-up of HII and the loss of the Appellants' investment" in Canada. The factum (para. 25) submits that the sovereign equality of states principle "deprived the Respondents of any authority to require Richard Homburg or HII to do anything in Canada, and removed any legal force or legal imprimatur from their actions".

[50] Justice Wood disagreed and, respectfully, so do I. The submission fails factually and legally.

[51] First, the facts. Justice Wood said:

> [48] … I am satisfied on the evidence before me that everything done by AFM and DNB in relation to HII was for the purpose of regulation and supervision of that company as a licensed participant in Dutch financial markets. …
>
> [54] … In any event, I am not satisfied the defendants have, in fact, undertaken any action in Canada. They issued an instruction to a licensee which happens to be a Canadian company. If HII refused to comply AFM might choose to invoke a fine or withdraw their license but neither of those actions would take place in Canada. It was HII's decision whether to follow AFM's instruction. If it chose not to do so its ability to participate in the Dutch financial markets might be impacted. There is nothing to suggest HII would be prevented from otherwise carrying on business in Canada or any other jurisdiction.

[52] The judge's findings are well-supported by evidence, embody no palpable and overriding error, and accompany no extractable legal error.

[53] HII, a Canadian company, chose not to incorporate a Dutch subsidiary. Instead, HII sought and obtained its own Dutch license to offer securities directly to residents of the Netherlands on the Dutch financial market. Consequently, notices from the Dutch Authorities, regulating HII's activity in the Netherlands, were sent to HII in Canada. The address on the envelope did not make the Dutch Authorities' activity extraterritorial.

[54] The question is: what were the Dutch Authorities regulating? The answer is: HII's activity in the Netherlands, involving HII's investment schemes offered to Dutch residents through the Dutch financial market.

[55] The Homburg Claimants then say that, whatever the regulators' purpose, HII felt the effect in Canada. With respect, given the facts of this case, that distinction is meaningless. Any effect, wherever it was felt, stemmed from HII's choice to operate in the Netherlands. As Justice Wood found, based on the evidence, if HII had elected not to comply with the directives of AFM and DNB, then its activity in the Netherlands would be curtailed, but "there is nothing to suggest HII would be prevented from otherwise carrying on business in Canada or any other jurisdiction". The Dutch Authorities did not take measures in Canadian territory, as posited in *R. v. Cook*.

[56] Neither is there a legal framework for the Homburg Claimants' separate submission of sovereign equality. The motion to Justice Wood sought an order that the Supreme Court of Nova Scotia has no jurisdiction to entertain the action. The issue was whether the Dutch Authorities are immune from this tort claim in a Canadian court. The immunity landscape is occupied by the *State Immunity Act*. In *Kazemi (Estate) v. Islamic Republic of Iran*, [2014] 3 S.C.R. 176, Justice LeBel for the majority said:

> [54] In my view, the *SIA* [*State Immunity Act*] is a complete codification of Canadian law as it relates to state immunity from civil proceedings. In particular, s. 3(1) of the *Act* exhaustively establishes the parameters for state immunity and its exceptions.
>
> …
>
> [56] With all due respect, I am of the view that the *SIA* provides an exhaustive list of exceptions to state immunity. For that reason, reliance need not, and indeed cannot, be placed on the common law, *jus cogens* norms or international law to

> carve out additional exceptions to the immunity granted to foreign states pursuant to s. 3(1) of the *SIA*. …

[57] The outcome of the appeal turns on the *State Immunity Act*, that I have discussed in the analysis of the First Issue.

[58] I would dismiss this ground of appeal.

Conclusion

[59] I would dismiss the appeal.

[60] The costs award in the Supreme Court was $40,000. I would order the Appellants, jointly and severally, to pay to the Respondents appeal costs of $16,000 all inclusive.

Fichaud, J.A.

Concurred: Beveridge, J.A.

Farrar, J.A.