

Solicitor, for the plaintiff, *The Crown Solicitor for the Commonwealth.*

Solicitor, for the defendant, *The Crown Solicitor for New South Wales.*

H. C. OF A.
1906.

THE COM-
MONWEALTH

v.

THE STATE OF
NEW SOUTH
WALES.

C. A. W.

[HIGH COURT OF AUSTRALIA.]

MILLARD v. THE KING.

ON APPEAL FROM THE SUPREME COURT OF
NEW SOUTH WALES.

Practice—Special leave to appeal in criminal cases—Point not taken below.

The High Court will not grant special leave to appeal in a criminal case unless some point of great general importance is involved, which, if wrongly decided, might seriously interfere with the administration of criminal justice.

Special leave to appeal in a criminal case on a point that was not taken by the prisoner's advocate at the trial, and was neither reserved by the presiding Judge for the consideration of the Supreme Court, nor argued by counsel before that Court, was refused.

Special leave to appeal to the High Court from the decision of the Supreme Court; *Rex v. Millard*, 23 N.S.W. W.N., 8, refused.

H. C. OF A.
1906.

SYDNEY,
April 27.

Griffith C.J.,
Barton and
O'Connor JJ.

MOTION for special leave to appeal.

The prisoner was convicted, under sec. 125 of the *Crimes Act* 1900, of larceny as a bailee of £5 entrusted to him for the purpose of being paid over to the Advances to Settlers Board in Sydney. Certain points were taken by the prisoner's advocate at the trial, but were over-ruled by the presiding Judge, who, however, reserved them for the consideration of the Supreme Court, and stated a case under sec. 470 of the *Crimes Act*. The question for the

H. C. OF A.
1906.

MILLARD
v.
THE KING.

Court was whether there was evidence to go to the jury of a felonious intent on the part of the prisoner. No question was raised either at the trial or before the Supreme Court as to there having been a bailment of the money stolen.

The Supreme Court held that there was evidence of felonious intent and sustained the conviction.

It was for special leave to appeal from this decision that the present application was made.

The facts are not material to this report.

Noble, for the applicant, moved for special leave to appeal on the grounds: (1) that as a matter of law the evidence for the Crown was insufficient to support the indictment or the finding of the jury; and (2) that there was no evidence to show that the accused took the money with a felonious intent to convert it to his own use or to that of any other person than the owner thereof. The evidence only proved that the accused received the money and did not pay it back when asked for it, though he had sufficient money to his credit to meet the claim. There must be some specific act of conversion shown.

[GRIFFITH C.J.—Was the accused a bailee?]

I submit not. [He then referred to the evidence.]

[GRIFFITH C.J.—The only point reserved is was there evidence of a felonious intent to go to the jury.]

O'CONNOR J.—They may have thought the defence was all moonshine.]

There must be some act inconsistent with the terms of the bailment, and the onus is on the Crown to establish it: *Reg. v. Jackson* (1); *Meux v. Lloyd* (2); *Guilford v. Sims* (3); *Reg. v. Cooper* (4).

April 27th.

GRIFFITH C.J. This Court is very reluctant to grant special leave to appeal in criminal cases, and will not do so unless some point of great general importance is involved, which, if wrongly decided, might seriously interfere with the administration of criminal justice. In the present case the only point that can

(1) 9 Cox C.C., 505.
(2) 2 C.B.N.S., 409.

(3) 13 C.B., 370.
(4) L.R. 2 C.C.R., 123.

fairly be said to be open to discussion is the question whether the appellant was or was not a bailee of the money in question. If he was a bailee there was ample evidence that he fraudulently converted the money to his own use. But the point whether he was a bailee or not was never distinctly taken. It was not taken by his advocate at the trial; it was not reserved by the learned Judge for the consideration of the Full Court; nor was it argued by learned counsel who appeared before that Court. That is a sufficient reason why we should not allow it to be raised now. We do not assume the functions of a general Court of appeal in criminal cases, such as, it has been suggested, should be established in England. We do not think that we ought to allow the point to be raised here for the first time, especially when it was not a point that learned counsel came here to raise.

We therefore think that special leave to appeal should be refused.

Leave refused.

Solicitor, for applicant, *H. A. Moss.*

C. A. W.

HIGH COURT OF AUSTRALIA.]

ROBERTSON AND OTHERS APPELLANTS ;

AND

THE COMMISSIONER OF STAMP }
DUTIES, NEW SOUTH WALES } RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF
NEW SOUTH WALES.

H. C. OF A.
1906.

SYDNEY,

April 4, 5, 9.

*Stamp Duties Act (N.S. W.) (No. 27 of 1898), sec. 18—Assessment for stamp duty—
Appeal to Supreme Court—Case stated by Commissioner—Costs awarded to
successful appellant—Taxation—Qualifying witnesses—Scale to be applied—
Rules of the Supreme Court of 22nd December 1902, rr. 408, 420.*

Griffith C.J.,
Barton and
O'Connor JJ.