

[HIGH COURT OF AUSTRALIA.]

IN RE REGINALD STANLEY'S APPLICATION FOR A
TRADE MARK.

H. C. OF A. *Practice—Patent—Application to Court for indulgence—Attendance of Commissioner
1908. of Patents—Costs.*

MELBOURNE,
April 28.

Isaacs J.

Where an applicant for a patent applies to the High Court for an indulgence on notice to the Commissioner of Patents it is the duty of the Commissioner to attend the hearing, and the applicant, whether he is or is not successful, must pay the costs of the Commissioner.

IN CHAMBERS. MOTION.

On 11th January 1905 an application was made by Reginald Stanley, who resides in England, by his agents, Collison & Co., for a patent for an invention entitled "Improvements in combined apparatus for grinding or crushing, washing and separating ores." The complete specifications were lodged on 9th October 1905, and accepted on 18th October 1905. On 20th October 1905 the agents were informed by the Commissioner of the acceptance, and were requested to forward five additional copies of the specification.

On 3rd January 1906 the acceptance fee of £2 was paid. On 11th May 1906 the time for sealing the letters patent expired, and on 22nd May 1906 an advertisement was published in the *Gazette* to the effect that the application had lapsed. On 22nd August 1906 the agents for the applicant were informed that the application had lapsed. On 4th December 1906 an application was made to the Commissioner to revive the application, but was on 12th December refused.

An application was now made to the High Court by motion on behalf of the applicant and on notice to the Commissioner for an

order extending the time for sealing letters patent under the application, and for such other order as to the Court should seem fit.

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Mann, for the applicant.

Schutt, for the Commissioner.

ISAACS J., by consent, ordered that the applicant should within seven days lodge five additional copies of the specification, and that thereupon the time for sealing the letters patent should be extended until the expiration of six months from the date of the order.

Mann. The Commissioner should not be allowed costs. He was informed that counsel for the applicant would place before the Court any matters which he should desire, and that his attendance by counsel was unnecessary.

ISAACS J. I think the applicant should pay the costs. The application is for an extension of time by way of an indulgence. The Commissioner has acted in discharge of his public duty and strictly under the terms of the Regulation. That is not now challenged as being illegal, and I have not now to decide that. The applicant has allowed a considerable period of time to elapse since he admittedly had knowledge of the lapsing of his application—if it ever did in law lapse. Now, when he comes here, the Court cannot do its duty to the public and protect public interests in respect of the desired monopoly without the presence of the officer who is charged by law with the administration of the Patents Office. I do not think he would do his duty to the Court if he stayed away from the Court. A question might arise at any moment as to which his assistance would be desired. He himself might not see it, and the parties might not, but when the affidavits were read the Court might see it, and desire the Commissioner to give some information or to obtain it for the Court. Therefore I think the Commissioner should attend under all circumstances, and his costs of coming here are

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part of the necessary expenses of the applicant. Under these circumstances I think I should not be doing right if the public officer were not allowed his costs, not as a penalty on the applicant, but as part of his expenses of obtaining the necessary attendance of the public officer. I therefore order the applicant to pay the costs of the Commissioner, which I fix at £5 5s.

Application granted. Applicant to pay costs of Commissioner.

Solicitors, for applicant, *Waters & Crespin.*

Solicitor, for Commissioner, *C. Powers*, Commonwealth Crown Solicitor.

B. L.

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LEVER BROS. LTD. APPELLANTS;

AND

G. MOWLING & SON RESPONDENT.

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Practice—Appeal from Supreme Court of State—Extension of time for giving notice—Rules of the High Court 1903, Part I., Order XLV., r. 6; Part II., Section I., r. 4, Section III., r. 4.

MELBOURNE,
Feb. 27.
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Semble, Rules of the High Court 1903, Part I., Order XLV., r. 6, does not apply to an appeal from the Supreme Court of a State, and the High Court has no jurisdiction to extend the time for giving notice of such an appeal.

Griffith C.J.
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IN CHAMBERS.

SUMMONS.

This was an application by Lever Brothers Ltd., who proposed to appeal from a decision of the Supreme Court of Victoria, in a