points. Mr. *Wise* rests his case, finally, on the original agreement for a joint adventure of four persons made in August 1903, and says that an agreement must be implied for a joint adventure on the part of the three if the fourth could not be found, and that that agreement was never terminated. It is sufficient to say that that joint adventure, if any, ended with the surrender of Gander's authority; and that Zobel, in taking up the new authority, was in no way aided by the previous authority. He in no way availed himself of his position, whatever it was, under the previous authority in acquiring the new authority. He acquired it as a complete stranger might have acquired it. I also am therefore of opinion that the appeal should be dismissed.

Appeal dismissed. Appellant to pay the costs of the intervenants.

Solicitor, for the appellant, *A. Nicholson.*

Solicitors, for the respondents, *McLachlan & Murray*; *Robson & Cowlishaw.*

C. A. W.

[HIGH COURT OF AUSTRALIA.]

REX v. NEIL.

ON APPEAL FROM THE SUPREME COURT OF QUEENSLAND.

Criminal Code Act 1899 (*Qd.*) (63 *Vict. No.* 9), *sec.* 226—*Supplying drugs or instruments to procure abortion—Intention of person supplied to procure her miscarriage—Special leave to appeal.*

The applicant, J. N., was tried for having "unlawfully supplied to one E. S. certain drugs which were intended to be used by the said E. S. to procure her own miscarriage, as he the said J. N. then well knew," and was sentenced to be imprisoned, the sentence being suspended under sec. 656 of the *Criminal Code.* Counsel for the prisoner asked that the case should be taken from the jury because E. S. had given evidence that she had no

H. C. OF A. 1909.

REX v. NEIL.

intention of procuring her miscarriage. There was other evidence which, if believed, established such an intention on her part, and the intention of the prisoner was clearly established. On a Crown case reserved, the Full Court of Queensland declined to quash the conviction.

Held, that this was not a case where any substantial failure of justice could be suggested and that special leave to appeal should be refused.

MOTION for special leave to appeal. The applicant was tried before *Paul* D.C.J. Evidence was adduced for the Crown that the applicant had told the police that he had given the bottle which had contained the drugs in question to E. S., but that he had told her at the time of supplying them that they would do away with her trouble. It was admitted that he was the father of the child E. S. was quick with, and he had previously told her he would get some stuff to do away with her trouble. E. S., in her evidence, said :—" I threw it away. I did not want to get rid of my trouble. I had no intention of procuring a miscarriage. There was no miscarriage." Counsel asked that the case should be taken from the jury. *Paul* D.C.J. refused, and on the appellant being convicted, stated a case for the consideration of the Full Court, who refused to quash the conviction.

Ryan, for the applicant. Sec. 226 of the *Criminal Code* says :—" Any person who unlawfully supplies to or procures for any person any thing whatever knowing that it is *intended to be unlawfully used* . . . ." Here there was evidence that the woman did not so intend to use it. Form 159, which was used under sec. 226, said :—" Unlawfully supplied to one E. S. poison which was *intended by the said E. S.* to be unlawfully used to procure her own miscarriage, as the said J. N. then well knew." This shows necessity for intention on the woman's part.

Special leave should be granted because, though sentence was suspended because of it being a first offence, the applicant would have to go to gaol on failure to fulfil certain conditions as to good behaviour, &c.

There is a disagreement between the Full Courts of Queensland and of Victoria as to the law on the point: *Reg.* v. *Hyland* (1) refusing to follow *Reg.* v. *Hillman* (2).

(1) 24 V.L.R., 101. (2) 9 Cox C.C., 386.

H. C. OF A. 1909.

REX v. NEIL.

Per Curiam. It is not necessary to express any definite opinion upon the question sought to be raised in this case. Even if the contention is well founded, the learned Judge might properly have directed the jury that on the evidence they ought to find as a fact that the intention of the woman was proved. If they had not so found, they would have gone in the face of the evidence. It is not therefore a case where any substantial injustice can be suggested. Under these circumstances special leave to appeal ought not to be given.

Solicitors for applicant, *McGrath & Hunter* (for *D. Carey*, Rockhampton).

H. V. J.

Dist *Permanent Trustee Nominees (Canberra) Ltd. Re* [1989] 1 QdR 314

Appl *Avellino v All Aust Netball Assoc* (2004) 87 SASR 504

[HIGH COURT OF AUSTRALIA.]

MACQUEEN AND OTHERS . . . . APPELLANTS; DEFENDANTS,

AND

FRACKELTON . . . . . RESPONDENT. PLAINTIFF,

ON APPEAL FROM THE SUPREME COURT OF QUEENSLAND.

H. C. OF A. 1909.

BRISBANE, *April* 30; *May* 3, 4, 5, 6, 7, 13.

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

Voluntary association — Presbyterian Church — Presbytery — General assembly — Jurisdiction of Church tribunals — Discipline — Dismissal of Minister — Ordination vow — Action against Church tribunals and members thereof — Breach of rules of voluntary association — Consensual agreements — Jurisdiction of Civil Courts — Mandamus — Injunction — Infringement of civil rights — Costs — Liability of individual members of a Church tribunal for costs — Queensland Rules of Court, Order IV. r. 11 — Declaration of right.

The Presbyterian Church of Queensland is, in the eye of the law a voluntary association of persons, the members of which are bound by the