

certainly think, however, that the order *nisi* itself should also have been stuck up, as the only means of service available.

The application is refused.

Motion dismissed.

Solicitors, for the plaintiffs, *Darvall & Horsfall.*

B. L.

H. C. OF A.
1915.
—
AUSTRAL-
ASIAN
TEMPERANCE
AND
GENERAL
MUTUAL
LIFE
ASSURANCE
SOCIETY
LTD.
v.
HOLLAND.

[HIGH COURT OF AUSTRALIA.]

IN RE EATHER v. THE KING.

Practice—High Court—Appeal from Supreme Court of State—Criminal matter— H. C. OF A.
Special leave—Judiciary Act 1903-1912 (No. 6 of 1903—No. 31 of 1912), sec. 1915.
35 (1) (b).

The High Court has, under sec. 35 (1) (b) of the *Judiciary Act 1903-1912*, an unfettered discretion to grant or refuse special leave in every case, but a *prima facie* case showing special circumstances must be made out.

The statement of the practice of the High Court in granting leave to appeal in criminal cases, as formulated in *Eather v. The King*, 19 C.L.R., 409, is not to be regarded as authoritative.

MELBOURNE,
June 15.

Griffith C.J.,
Isaacs,
Higgins,
Gavan Duffy,
Powers
and Rich JJ.

The learned Chief Justice made the following statement from the Bench :—

Since the decision of the Court in *Eather v. The King* (1) it has been ascertained that the rule of practice as formulated in that case is interpreted by the members of the Court in different senses. The case cannot, therefore, for the future be regarded as an authority.

As we interpret sec. 35 (1) (b) of the *Judiciary Act*, the Court has an unfettered discretion to grant or refuse special leave in every case, but we think that the term “special leave” connotes the necessity for making a *prima facie* case showing special circumstances.

I speak for all the members of the Court except my brother *Barton*, who is absent from the Commonwealth.

B. L.