

Appeal allowed. Conviction set aside. Respondent to pay costs of appeal and of proceedings before the Magistrates.

H. C. OF A.
1916.

SCHIFFMANN
v.
WHITTON.

Solicitor for the appellant, *W. G. Manchester.*
Solicitor for the respondent, *Gordon H. Castle*, Crown Solicitor for the Commonwealth.

B. L.

[HIGH COURT OF AUSTRALIA.]

REID APPELLANT ;

AND

CUMMING AND ANOTHER RESPONDENTS.

ON APPEAL FROM THE SUPREME COURT OF
QUEENSLAND.

Practice—High Court—Appeal from Supreme Court of a State—Complaint—Breach of statutory duty—Order by police magistrate for defendant to comply with statutory requirements—Costs awarded to complainant—Prohibition granted by Supreme Court as to the costs—Costs against complainant—Special leave to appeal to High Court—Death of respondent—Joinder of administrator—Shearers and Sugar Workers Accommodation Acts 1905-1906 (Qd.) (5 Edw. VII. No. 9—6 Edw. VII. No. 31), secs. 6, 12, 15.

H. C. OF A.
1916.

BRISBANE,
July 27.

Griffith C.J.,
Barton,
Isaacs and
Gavan Duffy JJ.

The defendant having been ordered by a police magistrate to pay certain sums for costs by an order made upon a complaint against him (the defendant) for neglecting to comply with certain requirements of the *Shearers and Sugar Workers Accommodation Acts* 1905-1906 (Qd.), the Supreme Court of Queensland made absolute an order *nisi* for prohibition in respect of some of such sums and ordered the complainant to pay part of the costs of the prohibition proceedings. After the complainant had, pursuant to special leave, instituted an appeal to the High Court from this decision the defendant died, and the complainant

H. C. OF A.
1916.

REID
v.

CUMMING.

then obtained leave to proceed with the appeal notwithstanding the defendant's death and to join the administrator of defendant's estate as respondent.

Held, that the appeal should be struck out.

APPEAL from the Supreme Court of Queensland.

On the complaint of Daniel Murray Reid, an inspector under the *Shearers and Sugar Workers Accommodation Acts 1905-1906* (Qd.), against John Cumming for neglecting to comply with certain requirements of those Acts, the defendant was, on 14th January 1915, ordered by the Police Magistrate at the Court of Petty Sessions at Boulia to provide certain accommodation in accordance with the provisions of those Acts within twelve months from the date of the order, and to pay sums amounting to £81 15s. 8d. for costs. On 11th June 1915 the Full Court of the Supreme Court of Queensland, on the application of the defendant, made absolute an order *nisi* for prohibition restraining the Police Magistrate and the complainant from further proceeding upon such conviction or order so far as it related to £40 1s. of the £80 15s. 8d. ordered to be paid for costs, and the Court also ordered the complainant to pay certain costs of and incidental to the application for prohibition.

On 18th June 1915 the High Court granted the complainant special leave to appeal against the decision of the Supreme Court, and on 2nd July security was lodged for the costs of the appeal. On 3rd December 1915 the defendant died, and subsequently the Union Trustee Co. of Australia Ltd. obtained administration of his estate. On 7th July 1916 *Griffith C.J.* granted leave to the complainant to proceed with his appeal notwithstanding the death of the defendant and to join the Union Trustee Co. of Australia Ltd. as respondents to the appeal, reserving to the Company all its rights to take any objection to the hearing of the appeal.

The appeal now came on for hearing.

Woolcock (with him *A. D. Graham*), for the appellant.

Stumm K.C. (with him *Henchman*), for the respondents. The appeal should be struck out, or the special leave rescinded: there are no sufficient parties, and there are at stake no substantial interests.

Woolcock. There is an existing claim by Cumming's Estate against the appellant for the costs of the application to the Full Court, and although the defendant has died since the leave to appeal was granted, this Court should proceed to hear the appeal: *Williams on Executors*, 10th ed., p. 1367; *R. v. Roberts* (1); *In re Harrington* (2); *Short and Mellor's Practice of the Crown Office*, 2nd ed., pp. 424-425; *Anonymous (Case 11)* (3). Further, the matter of law involved is one of great general importance as affecting the right of magistrates to award costs.

H. C. OF A.

1916.

REID

v.

CUMMING.

Stumm K.C. and *Henchman* were not called on in reply.

PER CURIAM. The appeal must be struck out. The Union Trustee Co. have no interest in the matter. The right to recover the costs awarded by the Police Magistrate was a personal right against the defendant and terminated with his death.

Appeal struck out. Appellant to pay costs of the Union Trustee Co. of Australia Ltd. of and occasioned by order for leave to proceed.

Solicitor for the appellant, *J. S. Hutcheon*, Acting Crown Solicitor for Queensland.

Solicitor for the respondents, *T. O. Cowlishaw*.

R. T. G.

(1) 2 Stra., 937.

(3) Cro. Jac., 219.

(2) (1908) 2 Ch., 687.