[HIGH COURT OF AUSTRALIA.]

BROWN . . . . . APPELLANT;
DEFENDANT,

AND

COURTNEY . . . . . RESPONDENT.
INFORMANT,

ON APPEAL FROM THE SUPREME COURT OF WESTERN AUSTRALIA.

H. C. OF A. 1917.

SYDNEY, *April* 12.

Barton A.C.J., Isaacs and Rich JJ.

Justices—Appeal—Evidence—Depositions—Justices' notes of evidence—Justices Act 1902 (*W.A.*) (2 *Ed. VII., No.* 11), *secs.* 148, 183, 189, 191.

Sec. 148 of the *Justices Act* 1902 (W.A.) provides (*inter alia*) that when a conviction is made by justices all parties interested therein shall be entitled to demand and have copies of the depositions. Sec. 183 provides that a person who is summarily convicted may appeal to a Judge of the Supreme Court. Sec. 189 provides that a copy of the complaint, depositions, the conviction, and "other proceedings before the justices" shall be transmitted to the Court to which the appeal is made. Sec. 191 provides that "if the Court to which the appeal is made so orders, or the parties so agree, the appeal shall be by way of rehearing; but otherwise the appeal shall be heard and determined upon the evidence and proceedings before the justices."

On an appeal to the Supreme Court of Western Australia from a conviction by a magistrate, no depositions in writing having been taken, the Court admitted in evidence the magistrate's notes of the evidence. The appellant was also allowed to call, and did call, oral evidence on his own behalf. The appeal having been dismissed,

Held, that special leave to appeal to the High Court should be refused.

Special leave to appeal from the Supreme Court of Western Australia (*McMillan* C.J.) refused.

APPLICATION for special leave to appeal.

At the County Court of Petty Sessions at Perth an information was heard whereby Richard Edmond Courtney, Commandant of

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the 5th Military District, charged that George Henry Brown aided a certain member of the Defence Force to desert. No depositions in writing were taken, but the Police Magistrate took written notes of the evidence. No evidence was given for the defence. Brown, having been convicted, appealed to the Supreme Court pursuant to the *Justices Act* 1902. The appeal came on for hearing before *McMillan* C.J. Counsel for the prosecution having intimated that he intended to rely on the evidence as contained in the Magistrate's notes, counsel for the defendant objected to this course being taken. From the affidavit in support of the present application it appeared that the learned Chief Justice thereupon stated that the Judges of the Supreme Court had met together and decided that where no depositions in writing had been taken they would admit as evidence the notes of the Magistrate. The Magistrate's notes were admitted in evidence, and, by permission of the Court, evidence was called for the defendant. After the hearing of that evidence the appeal was dismissed and the conviction confirmed.

The defendant now applied for special leave to appeal from that decision.

Mason, for the appellant. Under the *Justices Act* 1902 the only evidence admissible is the depositions. See secs. 148, 183, 189, 191. In the absence of depositions the only course was to direct a rehearing under sec. 191.

[ISAACS J. It was the defendant's appeal, and he could have brought the evidence before the Court by affidavit.]

In view of the fact that the learned Chief Justice stated that the same course would be adopted in all cases where no depositions had been taken, special leave should be granted.

[ISAACS J. No substantial injustice was done to the defendant as he was allowed to call evidence for his defence.]

PER CURIAM. Special leave to appeal will be refused.

Special leave to appeal refused.

Solicitors for the appellant, *Richard S. Haynes & Co.*, Perth, by *John Williamson & Sons.*

B. L.