

H. C. OF A.
1918.

McGOWAN
v.
GRIEVE.

This case raises two questions, one as to whether the conviction is supported by the evidence, which was challenged on various grounds, and the other as to the validity of the regulation. The latter question has not been argued before us, and we do not deal with it. As to the former question, it is purely one of evidence, and on the facts before us we think that the Magistrate was wrong and that the appeal should be allowed.

*Appeal allowed with costs. Order nisi absolute.
Conviction quashed.*

Solicitor for the appellant, *M. Lazarus*.

Solicitor for the respondent, *Gordon H. Castle*, Crown Solicitor for the Commonwealth.

B. L.

[HIGH COURT OF AUSTRALIA.]

PIERCE APPELLANT;
DEFENDANT,

AND

COOPER RESPONDENT.
PLAINTIFF,

ON APPEAL FROM THE SUPREME COURT OF
TASMANIA.

H. C. OF A. *Practice—High Court—Appeal from Supreme Court of State—Appealable amount—
1918. Special leave—Judiciary Act 1903-1915 (No. 6 of 1903—No. 4 of 1915), sec. 35.*

HOBART,
Feb. 18.

Griffith C.J.,
Barton,
Gavan Duffy
and Rich J.J.

An action was brought in the Supreme Court of a State to recover £1000 damages in respect of an alleged wrongful and illegal entry on land valued at over £300. The jury found a verdict for the plaintiff for £250, which, on appeal, was upheld by the State Full Court. The only remedy, if any, which the defendant could obtain on appeal was a new trial.

Held, that an appeal did not lie to the High Court without special leave.

Special leave to appeal from the Supreme Court of Tasmania refused.

APPEAL from the Supreme Court of Tasmania.

H. C. OF A.

1918.

PIERCE

v.

COOPER.

An action was brought in the Supreme Court by Ernest Alfred Cooper against William Rossendell Pierce. By the declaration the plaintiff alleged that, by an agreement dated 13th December 1915 made between the defendant and the plaintiff, it was agreed that the defendant should sell and the plaintiff should buy the fruit crop on an orchard of the defendant for the sum of £200, and that the plaintiff should lease from the defendant the orchard for a term of five years from 1st May 1916 on certain terms; that all conditions were fulfilled and all things happened necessary to entitle the plaintiff to maintain the action in respect of the matters hereinafter mentioned; and that the defendant on or about 23rd January 1917 wrongfully and illegally entered into and took possession of the whole of the land and evicted the plaintiff and still remained in possession thereof, whereby the plaintiff lost various moneys paid by him and the value of the labour expended and materials used by him in connection with the land, and had been deprived of the issues and profits and the beneficial use, occupation and enjoyment of the land. The plaintiff claimed £1,000 for damages. The defendant pleaded (*inter alia*) that he did not promise as alleged; not guilty; that the plaintiff had failed to carry out certain conditions of the agreement and had committed certain acts of waste, and that the defendant thereupon after due notice entered peaceably upon the land; and that he did what was complained of by the plaintiff's leave. The land in question was under the *Real Property Act* of 1862.

The action was heard before *Ewing J.* and a jury, who, in answer to certain questions put to them, found (*inter alia*) that the defendant did not take proper steps to cancel the lease and contract and take possession until after 23rd January 1917; that the defendant on 23rd January 1917 ordered the plaintiff to leave the premises, and at the same time threatened him with violence if he did not go or if he returned, and struck with a stick the plaintiff's horse and his servant; that the plaintiff did not agree to surrender his lease, and that the plaintiff did not fail to observe the covenants in the lease; and they awarded £250 damages.

The defendant moved before the Full Court for judgment on the

H. C. OF A.
1918.
PIERCE
v.
COOPER.

grounds (*inter alia*) that the plaintiff was a tenant at will only, that the tenancy was determined on 22nd January 1917 and that, such tenancy being determined, the plaintiff had no right of action; and that there was no evidence of actual damage. He also moved for a new trial on the ground (*inter alia*) that there was no evidence of a forcible taking of possession.

The Full Court ordered that the verdict should stand.

From that decision the defendant appealed to the High Court.

Lodge, for the appellant.

[GRIFFITH C.J. The verdict being for £250 only, how can the defendant appeal without special leave?]

The judgment involves a claim to property of the value of over £300. The only remedy the defendant can expect to get is a new trial, and as the claim is for £1,000 damages there is involved a civil right amounting to over £300. If special leave is necessary, then it should be granted. There is an important question of the construction of the *Real Property Act*. The Supreme Court has held that an estate or interest in land under that Act can be created by an instrument not in the form prescribed. Unless such an interest was created, the plaintiff was only a tenant at will. On the evidence that tenancy at will was determined. Even if it was not determined, the action was framed as one for trespass to land, and all that the plaintiff could properly recover was nominal damages.

Hodgman, for the respondent, was not called on.

The judgment of the COURT, which was delivered by GRIFFITH C.J., was as follows:—

Special leave will be refused. The appeal will be struck out with £21 costs.

Appeal struck out with £21 costs.

Solicitors for the appellant, *Roberts & Allport*.

Solicitors for the respondent, *Page, Hodgman & Seager*.

B. L.