[HIGH COURT OF AUSTRALIA.]

McGOWAN . . . . . APPELLANT;
DEFENDANT,

AND

GRIEVE . . . . . RESPONDENT.
INFORMANT,

ON APPEAL FROM A COURT OF PETTY SESSIONS OF VICTORIA.

H. C. OF A. 1918.

MELBOURNE, *March* 13.

Barton, Higgins, Gavan Duffy, Powers and Rich JJ.

War Precautions—Regulations—Offence—Military Service Referendum—False statement of fact likely to affect judgment of electors—War Precautions (Military Service Referendum) Regulations 1917 (*Statutory Rules* 1917, *No.* 290 *and No.* 304), *reg.* 42.

The appellant was convicted under the *War Precautions (Military Service Referendum) Regulations* 1917, reg. 42, of having before the Referendum polling day made a false statement of fact of a kind likely to affect the judgment of the electors.

Held, on the evidence, that the conviction should be quashed.

APPEAL from a Court of Petty Sessions of Victoria.

At the Court of Petty Sessions at Leongatha an information was heard whereby John Alexander Grieve charged that George Francis McGowan did, contrary to the *War Precautions (Military Service Referendum) Regulations* 1917, make before the polling day for the Referendum a false statement of fact of a kind likely to affect the judgment of the electors, namely, a statement to the effect that "there is no need for reinforcements as Australia has supplied sufficient men if no more men enlist to reinforce five divisions for twenty-five months and that these men were at present available

and that men were only wanted to increase the rank and pay of General Birdwood by making additional divisions for him to command." The statement complained of was made in a public speech. According to the evidence of one witness called for the informant the statement made was to the effect that "if no more men were enlisted there were enough to keep the five divisions for twenty-five months. The Government wanted to raise another division. General Birdwood would get increased pay and promotion if he got a greater number of divisions under his charge." According to the evidence of another witness the defendant said that "there was no immediate need for reinforcements. There were sufficient men available to reinforce five divisions at the rate of 7,000 men per month for twenty-five months . . . The Government did did not want reinforcements but to create new divisions so that General Birdwood could get increased rank and pay." Official figures were also objected to but accepted in evidence, from which it appeared that if no more men enlisted there were only sufficient men available to reinforce five divisions at the rate of 7,000 men per month for a little more than one year.

The Magistrate convicted the defendant, stating that he was satisfied that the statement made by the defendant was false, and he fined the defendant £10.

From that decision the defendant now appealed by way of order to review to the High Court on the grounds (*inter alia*) that the regulation in question was *ultra vires*; that it had not been proved that any false statement had been made; that the defendant had proved that he had reasonable grounds for believing and did in fact believe that the statement actually made by him was true; that certain evidence was improperly rejected, and that certain other evidence was improperly admitted.

Lazarus, for the appellant.

Starke, for the respondent.

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

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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. 1918.

HOBART, *Feb.* 18.

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

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

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.