

H. C. OF A. 1917.  
 ~~~~~  
 CAIN  
 v.  
 CAIN.  
 ———

In the course of argument the COURT intimated that it was of opinion that special leave should not be granted since an appeal from the decision of the Full Court would not determine the real question in dispute between the parties, which was whether the Magistrate's decision was right. That question could be determined by instituting fresh proceedings before the Magistrate.

PER CURIAM. Special leave to appeal must be refused.

*Special leave to appeal refused.*

Solicitor, *William Charles Moseley.*

C. A. W.

---

[HIGH COURT OF AUSTRALIA.]

IN RE THE TRADE MARK OF RYAN LEWIS & COMPANY  
 PROPRIETARY LIMITED.

EX PARTE THE AUTOTONE COMPANY.

H. C. OF A. 1918.  
 ~~~~~  
 MELBOURNE,  
 May 17.

*Practice—High Court—Affidavit—Authentication of foreign affidavit—Notary public—Judiciary Act 1903-1915 (No. 6 of 1903—No. 4 of 1915), sec. 79—Acts Interpretation Act 1901 (No. 2 of 1901), sec. 26—Evidence Act 1905 (No. 4 of 1905), sec. 12—Evidence Act 1915 (Vict.) (No. 2647), sec. 116.*

Gavan Duffy J.

An affidavit made in the United States of America purported to be signed and sworn before a notary public of that country, who affixed his signature and official seal. The fact that the person named as the notary public held such office and his signature were verified under the seal of the Supreme Court of the State of New York, and by a British pro-consul under the seal of the British Consulate-General at New York.

*Held*, that the affidavit might be received in evidence in the High Court without further authentication, and might, therefore, be filed in the Registry of the Court.



## MOTION.

A motion to the High Court was made on behalf of the Autotone Co., a corporation created under the laws of the State of New York in the United States of America and carrying on business in New York, to rectify the Register of Trade Marks by expunging therefrom a certain trade mark of Ryan Lewis & Co. Proprietary Ltd. The last mentioned company, which had been registered in Victoria, had been dissolved.

An affidavit in support of the motion was made by Carl E. Peck of New York in the United States, and was signed and sworn by him at New York before Max J. Bernheim, a notary public of New York County, whose signature and official seal appeared at the foot of the affidavit. The signature of Bernheim and the fact that he was a notary public in and for the County of New York were certified by the Clerk of the Supreme Court of the State of New York for the County of New York under the seal of the Supreme Court of that State, and by the British Pro-Consul at New York under the seal of the British Consulate-General at New York. Both these certificates were attached to the affidavit. The Registrar of the High Court refused to file the affidavit.

*Braham*, in support of the motion. The affidavit may be used in evidence, and therefore may be filed. Under sec. 79 of the *Judiciary Act* 1903-1915, which provides that the laws of each State, including the laws as to evidence and competency of witnesses, shall, except as otherwise provided by the Constitution or the laws of the Commonwealth, be binding on all Courts exercising federal jurisdiction in that State—which includes the High Court (sec. 26 of the *Acts Interpretation Act* 1901),—sec. 116 of the *Victorian Evidence Act* 1915 applies. The last mentioned section provides (*inter alia*) that affidavits may be sworn and taken in any place outside Victoria before any person having authority to administer oaths in that place, and that, in the case of a person purporting to have that authority by the law of a foreign country, such authority may be verified by (*inter alios*) a British pro-consul exercising his function in that place or by the certificate of the superior Court of such place, and that if such authority purports to be so verified the affidavit shall be admissible

H. C. OF A.  
1918.

IN RE TRADE  
MARK OF  
RYAN LEWIS  
& CO. PROPRIETARY  
LTD.

EX PARTE  
AUTOTONE  
CO.



H. C. OF A.  
1918.  
IN RE TRADE  
MARK OF  
RYAN LEWIS  
& CO. PRO-  
PRIETARY  
LTD.  
EX PARTE  
AUTOTONE  
Co.

for all purposes without further proof of the seal or signature or of the judicial, official or other character of the person before whom the affidavit is sworn and taken. [Counsel also referred to *Evidence Act* 1905, sec. 12; *High Court Procedure Act* 1903, sec. 22.] An affidavit purporting to be sworn before a foreign notary public may, at common law, be received in evidence without further authentication (*Brooke's Notary*, 6th ed., p. 26).

There was no appearance in opposition to the motion.

GAVAN DUFFY J. I allow the affidavit to be filed.

Solicitors, *Braham & Pirani*.

B. L.

[HIGH COURT OF AUSTRALIA.]

THE FEDERATED SEAMEN'S UNION OF  
AUSTRALASIA . . . . .

AND

THE BELFAST AND KOROIT STEAM  
NAVIGATION COMPANY LIMITED  
AND OTHERS . . . . .

APPLICANTS ;

RESPONDENTS.

H. C. OF A.  
1918.  
MELBOURNE,  
March 21, 22,  
26.  
Higgins J.  
IN CHAMBERS.

*Industrial Arbitration—Organization—Membership, how constituted—Condition precedent—Payment of entrance fee.*

The rules of an organization provided that the entrance fee should be one pound together with the first quarter's contribution of six shillings and one shilling for a book; that a person might become a probationary member upon application to a branch secretary and upon satisfactory proof of competence to perform his work and of good character; that he might be rejected within six months for certain offences, and, if not rejected within six months, would then become a full member.

Held, that payment of the entrance fee was not a condition precedent to membership.