

## [HIGH COURT OF AUSTRALIA.]

TAYLOR . . . . . APPELLANT ;

AND

THE KING . . . . . RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF  
WESTERN AUSTRALIA.*Evidence—Criminal trial—Witness—Credit—Inconsistent statements—Reading de-  
position taken before magistrate—Misdirection.* H. C. OF A.  
1918.

On the trial of a person accused of rape a witness gave evidence with which a previous statement contained in a deposition made by him before a magistrate was inconsistent. The passage in the deposition was read to him by direction of the Judge, but he adhered to his testimony as given before the jury. The Judge in his charge to the jury used the passage from the deposition as if it were evidence against the accused. The accused was convicted. On appeal to the High Court,

PERTH,  
October 18.

Barton,  
Gavan Duffy  
and Rich JJ.

*Held*, that the passage had been misapplied, and, therefore, that there had been a substantial miscarriage of justice, and that there should be a new trial.

Decision of the Supreme Court of Western Australia : *Taylor v. The King*, 20 W.A.L.R., 47, reversed.

APPEAL from the Supreme Court of Western Australia.

At the Perth Criminal Court before *Rooth J.* and a jury, Sidney George Taylor, together with another man named Docherty, was tried on an indictment with having on 28th June 1917 committed rape upon Emily Lawson. Taylor, having been convicted, appealed to the Court of Criminal Appeal on several grounds, but the appeal was dismissed : *Taylor v. The King* (1).

(1) 20 W.A.L.R., 47.

H. C. OF A.      From that decision Taylor now, by special leave, appealed to the  
1918.      High Court.

— TAYLOR      It appeared that Taylor and Docherty were soldiers, and  
v.      the defence of the former at the trial was an alibi. On the  
THE KING.      preliminary hearing of the charge against Docherty, a witness  
—      named Harrison detailed a conversation between Docherty and  
         himself, containing a statement by Docherty implicating Taylor  
         and mentioning him by name. On the trial Harrison's evidence  
         with regard to the same conversation was as follows:—"He"  
         (Docherty) "said another soldier came up. He mentioned no  
         name. Docherty said another soldier came up and asked what was  
         the matter, and he said 'all right, you're next.' " The passage from  
         his deposition was read to Harrison by direction of the learned  
         Judge, but he adhered to his testimony as given before the jury.  
         In charging the jury, his Honor dealt with this passage along with  
         and as part of the evidence.

*Haynes K.C. and Arthur Haynes, for the appellant.*

*Stow, for the respondent.*

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

In this case we have come to the conclusion that it is our duty  
to order a new trial. For the purpose of discrediting his evidence  
at the trial of Taylor, a passage from the deposition of the witness  
Harrison on the preliminary examination of the other accused,  
Docherty, was read to the jury by the learned Judge's direction.  
Assuming that this could properly be done, it is objected that the  
passage could only be used for the purpose for which it was read,  
namely, the casting of doubt upon the credit of the witness. It is  
contended that, so far as the passage was used for any other purpose,  
there was a substantial miscarriage of justice. When we turn to  
the report of his Honor's charge to the jury we find that the  
passage in question was used as if it were evidence in the case.  
Not only so, but the references to parts of the passage are inter-  
woven with the fabric of his Honor's charge in such a manner that



the minds of the jury must have found difficulty in eliminating them, if indeed that were possible, from the purely evidentiary substance of the case. We cannot say that in these circumstances the trial was free from material fault, nor can we say that the interests of justice would be conserved if we disallowed the objection. We abstain from closer particularity, because it is essential to say nothing which may possibly prejudice a second trial. Nor is it necessary to deal with other objections which have been taken.

H. C. OF A.  
1918.  
TAYLOR  
v.  
THE KING.

*Appeal allowed. Order appealed from discharged  
and case remitted to the Supreme Court for  
a new trial.*

Solicitors for the appellant, *Richard S. Haynes & Co.*

Solicitor for the respondent, *F. L. Stow*, Crown Solicitor for  
Western Australia.

N. McT.