

[HIGH COURT OF AUSTRALIA.]

WESTCOTT . . . . . APPELLANT;  
PETITIONER,

AND

WESTCOTT . . . . . RESPONDENT.  
RESPONDENT,

ON APPEAL FROM THE SUPREME COURT OF  
NEW SOUTH WALES.

*Practice—High Court—Appeal from Supreme Court of a State—Special leave—  
Appeal as of right—Failure to lodge security within prescribed time—Special  
circumstances—Rules of the High Court 1911, Part II., Sec. III., r. 12.*

H. C. OF A.  
1918.

SYDNEY,  
Dec. 5.

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

The fact that a person who had a right to appeal from a decision of the Supreme Court of a State to the High Court and had given notice of such appeal was unable, through poverty, to provide the funds necessary for an application to reduce or dispense with security for the costs of the appeal until it was practically too late to make such an application before the time for giving such security had elapsed is not, by itself, a special circumstance which will justify the granting of special leave to appeal.

Special leave to appeal from the decision of the Supreme Court of New South Wales (*Gordon J.*) refused.

APPLICATION for special leave to appeal.

In a petition brought by Hilda Cornwallis Westcott against Edmund Arthur Westcott in the Supreme Court of New South Wales in its matrimonial causes jurisdiction for dissolution of marriage on the ground of desertion, *Gordon J.* dismissed the petition on the ground that desertion had not been proved. Notice of appeal to the High Court from that decision was filed by the

H. C. OF A. petitioner on 4th July 1918, and was served on that day, but no  
1918. security was given as prescribed by rule 12 of Section III. of Part II.  
WESTCOTT of the *Rules of the High Court* 1911.

*v.*  
WESTCOTT. The petitioner now applied for special leave to appeal to the  
High Court from the decision of the Supreme Court. In support of  
the application an affidavit was filed which stated that the applicant  
had been prevented by her poverty from providing the funds neces-  
sary for the purpose of applying to the High Court to reduce or  
dispense with security for costs in the proposed appeal until the  
prescribed time for giving security had almost elapsed, that the  
affidavit proposed to be used in support of such application to  
reduce or dispense with security only reached the applicant's solicitor  
in Sydney on 4th October, and that the delay was due to the want  
of funds referred to.

*Hardwick*, for the applicant. The facts disclosed by the affidavit  
constitute special circumstances which will justify the Court in  
granting special leave to appeal (*Delph Singh v. Karbowsky* (1)).

During argument the COURT intimated that the decision from  
which special leave to appeal was sought was one upon a question  
of fact, and that no special circumstances had been shown such as  
would justify the Court in granting special leave to appeal.

PER CURIAM. Special leave to appeal must be refused.

*Special leave to appeal refused.*

Solicitors for the applicant, *Teece & Co.*

C. A. W.