

[HIGH COURT OF AUSTRALIA.]

THE KING

AGAINST

SNOW.

H. C. OF A. *Criminal Law—Trial before High Court—Costs of trial—Jurisdiction to order*
 1919. *convicted person to pay costs—Judiciary Act 1903-1915 (No. 6 of 1903—No.*
 ~~~~~ *4 of 1915), secs. 2, 26.*

ADELAIDE,  
 Oct. 2.

Barton, Isaacs,  
 Gavan Duffy  
 and Rich JJ.

The High Court has jurisdiction under sec. 26 of the *Judiciary Act* 1903-1915 to order a person who has been tried and convicted on indictment before that Court to pay the costs of the trial.

## QUESTION RESERVED.

At the conclusion of the trial before the High Court of Francis Hugh Snow, *Isaacs J.* stated the following facts and reserved the following question for the Full Court :—

1. This was a prosecution on indictment of Francis Hugh Snow for trading with the enemy contrary to the *Trading with the Enemy Acts*.

2. The accused was convicted, and by my judgment I sentenced him to pay a fine of £2000.

3. I stated that if I had the legal power I would order, and subject to the reservation of the question hereinafter mentioned, did order, as part of the said judgment, the accused also to pay the costs of the trial.

4. At the request of Sir *Josiah Symon K.C.*, of counsel for the accused, I agreed to reserve, and do hereby reserve, for the consideration of the Full Court the following question, namely, whether I had the legal power to order the accused to pay the costs of the trial as aforesaid.

*Piper K.C.* (with him *Blackburn*), for the accused. Although the language of sec. 26 of the *Judiciary Act* is very wide, the whole of the Act should be looked at in determining whether the section was

intended to deal with the costs of criminal trials. It should also be borne in mind that the pre-existing rule throughout the States generally was that the Courts had no power to direct the costs of criminal trials to be paid by convicted persons. If sec. 26 has the wide meaning suggested, the provision in sec. 64 giving power to award costs would be unnecessary so far at least as suits to which the Commonwealth is a party are concerned. Sec. 26 should be limited to proceedings to which subjects alone are parties.

H. C. OF A.  
1919.  
THE KING  
v.  
SNOW.

*Cleland K.C.* and *F. Villeneuve Smith K.C.*, for the Crown, were not heard.

BARTON J. The sections in Part IX. of the *Judiciary Act* have very properly been brought before the Court by counsel for the accused; but, having regard to the definitions in sec. 2 of that Act, and to the largeness of sec. 26, I do not think that the contention which has been rather suggested than urged by Mr. *Piper* can prevail. A "suit" is an action or original proceeding between parties, and sec. 64 is limited to that kind of proceeding. "Cause" is a larger word than "suit," and includes also criminal proceedings. "Matter" is larger still, and includes all proceedings which are included in "suit" and "cause," and more: it includes all proceedings before the Court. Then we find that the scope of sec. 26 extends to "all matters." In those the High Court has jurisdiction to award costs, and we find no other section which qualifies or controls, at least in any relevant way, that jurisdiction, which, not qualified or controlled, must, in my opinion, be exercisable according to judicial discretion. That being so, it seems to me that my brother *Isaacs* was right in awarding costs. The question must, therefore, be answered in the affirmative.

ISAACS, GAVAN DUFFY and RICH JJ. concurred.

*Question answered in the affirmative.*

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

Solicitors for the accused, *Bakewell, Stow & Piper*.

B. L.