

[HIGH COURT OF AUSTRALIA.]

ALEXANDER STEWART & SONS LIMITED . PLAINTIFF ;

AND

HENRY MACNAMARA ROBINSON (ACTING }
 COLLECTOR OF CUSTOMS, BRISBANE) . } DEFENDANT.
 [No. 2.]

Practice—High Court—Costs—Taxation—Action in Supreme Court of State exercising Federal jurisdiction—Special case directed to be argued before High Court—Taxation in High Court—Costs of proceedings before Supreme Court—Instructions for brief in action—Costs of sending counsel to another State—Questions of law—Special circumstances—Judiciary Act 1903-1920 (No. 6 of 1903—No. 38 of 1920), sec. 18.

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Mar. 22, 23.

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IN CHAMBERS.

Where in an action in the Supreme Court of a State exercising Federal jurisdiction a special case stated by the parties is directed by a Judge of that Court to be argued before the Full Court of the High Court under sec. 18 of the *Judiciary Act*, the costs in relation to the proceedings before the High Court must be taxed by the proper officer of the High Court, and the costs in relation to the proceedings before the Supreme Court must be taxed before the proper officer of the Supreme Court.

The taxing officer of the High Court having allowed the costs of drawing instructions or observations for counsel on the special case and also the costs of drawing instructions for brief in the action,

Held, that the allowance of the latter costs should be set aside as they were in relation to the action whilst in the Supreme Court.

The costs incurred in sending counsel from one State to argue a pure matter of law before the High Court sitting in another State will not be allowed on taxation unless very special circumstances are proved.

SUMMONSES to review taxation.

An action had been brought in the Supreme Court of Queensland, exercising Federal jurisdiction, by Alexander Stewart & Sons Ltd.

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against Henry Macnamara Robinson, Acting Collector of Customs at Brisbane, in which the parties had concurred in stating a special case for the opinion of the Court. The case was ordered by Chubb J. to be argued before the Full Court of the High Court, and that Court determined that the costs of the case and action should be paid by the defendant (*Alexander Stewart & Sons Ltd. v. Robinson* (1)). The costs were carried in for taxation before the District Registrar of the High Court in Brisbane, who taxed them. Objections were lodged by both parties to the taxation, the nature of which, so far as is material, is stated in the judgment hereunder. Each party took out a summons to review the taxation, which now came on for hearing.

Kelly, for the plaintiff.

Owen Dixon, for the defendant.

Cur. adv. vult.

Mar. 23.

STARKE J. delivered a written judgment which, so far as is material to this report, was as follows:—An action was brought in the Supreme Court of Queensland in which the questions of law arising thereon were stated in the form of a special case, and Chubb J. ordered that the case be argued before this Court (see *Judiciary Act*, sec. 18). One of the questions stated by the case was by whom should the costs of the case and the action be paid. This Court determined that the costs should be paid by the defendant. Apparently pursuant to this order, costs were carried in for taxation before the District Registrar of this Court in Brisbane, who taxed the same. Objections to the taxation were lodged by both parties, and the matter comes before me on summonses to review the taxation.

Costs in relation to proceedings before this Court can properly be taxed by its officers, but costs in relation to proceedings before the Supreme Court of the State should be taxed before the proper officer of the Supreme Court. Most of the items objected to were in relation to proceedings before this Court, and these items were properly before me on the summonses to review. I deal with them in the first place.

Counsel's fee on brief.—This item relates to the fee paid to junior counsel, who was sent specially from Brisbane to take part in the argument of the case in Melbourne. The Registrar reduced the item claimed, but allowed the reduced amount on the authority of *Commissioner of Income Tax (Qd.) v. Bank of New South Wales* (1). The expenses of sending legal advisers to another State may, no doubt, be allowed as costs if a litigant of ordinary prudence would reasonably have incurred them to secure a proper presentation of his case to the Court (see *Norton v. Herald* (2); *Western Australian Bank v. Royal Insurance Co.* (3); *Commissioner of Income Tax (Qd.) v. Bank of New South Wales* (1)). But in this case the matters to be dealt with were purely matters of law, and in such a case the party claiming the expense must, in my opinion, satisfy the Court of very special circumstances (see *Western Australian Bank v. Royal Insurance Co.* (3)). I think there were such circumstances in this case. The matter was urgent, and this Court, on 26th October 1920, fixed 3rd November in Melbourne for the hearing of the special case. A heavy list of cases for hearing in Sydney in November and December rendered this date necessary if the case were to be heard within a reasonable time. The action had been brought on the advice of Queensland counsel, who were therefore conversant with all its details. Written opinions and correspondence would not, I think, have given the party full advantage of the advice that he had obtained in Queensland. Personal consultations with the learned counsel who was to lead the case were essential, or at least reasonable, in the special circumstances of the case. The District Registrar was therefore justified, in my opinion, in allowing the challenged item, and I see no reason to doubt the propriety of the amount allowed by him.

Instructions for brief.—The District Registrar allowed the plaintiff the costs of drawing instructions or observations to counsel on the special case, but he also allowed instructions for brief in the action. The latter instructions are in relation to the action whilst in the Supreme Court of Queensland, and should be carried

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(1) 18 C.L.R., 207.

(3) 7 C.L.R., 385.

(2) 17 C.L.R., 76.

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in for taxation before the proper officer of that Court, and, if necessary, reviewed in that Court. The District Registrar of this Court ought not, in my opinion, to have allowed this item. I set aside his allowance of the same, and remit it to him with a direction that it should not be allowed as part of the costs of the proceedings in this Court. Probably the item can be carried in for taxation before the taxing officer of the Supreme Court and be subject to review in that Court. I must leave the parties to exercise their rights in respect of this item as they may be advised.

The parties will abide their own costs of the summonses, for neither has wholly succeeded.

Order accordingly.

Solicitors for the plaintiff, *Hawthorn & Lightoller*, Brisbane, by *Derham, Robertson & Derham*.

Solicitors for the defendant, *Chambers, McNab & McNab*, Brisbane, by *Gordon H. Castle*, Crown Solicitor for the Commonwealth.

B. L.