

H. C. OF A.
1931.

Items 203 and 205. I make no order.

Items 248-250. I consider this was a proper case for the attendance

CLARK, TAIT
& Co.
v.

on taxation of the Melbourne solicitor.

FEDERAL
COMMISSIONER OF
TAXATION.

The item as to Mitchell's fees and expenses was properly not pressed.

Rich J.

I allow the objections specified and refer the matter back to the taxing officer to vary his certificate accordingly. There will be no order as to costs.

Order accordingly.

Solicitors for the appellants, *Whiting & Byrne*.

Solicitor for the respondent, *W. H. Sharwood*, Crown Solicitor for the Commonwealth.

H. D. W.

[HIGH COURT OF AUSTRALIA.]

TAYLOR APPELLANT;
INFORMANT,

AND

THORN RESPONDENT.
DEFENDANT,

H. C. OF A.
1932.

Public Service (Cth.)—Postal employee—Offence—Wilfully delaying postal article—Omission to deliver—Intention to deliver at later time—Post and Telegraph Act 1901-1923 (No. 12 of 1901—No. 17 of 1923), sec. 109.

MELBOURNE,
Sept. 23.

Gavan Duffy
C.J., Rich,
Starke, Dixon,
Evatt and
McTiernan JJ.

Sec. 109 of the *Post and Telegraph Act 1901-1923* provides that "Any person employed by or under the Department or in the conveyance of mails who negligently loses or who wilfully detains or delays . . . any mail or any postal article shall be liable to a penalty not exceeding twenty-five pounds."

The respondent, a postman, inadvertently failed to deliver a letter and, having discovered his omission, did not return and deliver it, but took it

back to the post office with the intention of delivering it in the ordinary course next day. H. C. OF A.

1932.

Held, that he was not guilty of wilfully delaying the letter contrary to the provisions of sec. 109 of the *Post and Telegraph Act*.

TAYLOR

v.

THORN.

ORDER to Review.

George Leslie Taylor laid an information against Silas Albert Thorn alleging that he being employed by the Post and Telegraph Department did wilfully delay six postal articles, to wit letters, contrary to sec. 109 of the *Post and Telegraph Act* 1901-1923. The information was heard before the Court of Petty Sessions at Prahran. It appeared in evidence that the respondent was a postman employed at the Prahran post office. On the evening of 25th May 1932 six undelivered letters were found in the pocket of the respondent's coat at the post office. On being questioned he gave the explanation, which he repeated in evidence, that he had, when delivering letters that afternoon, inadvertently overlooked the letters in question when passing the houses to which they were addressed, that he noticed them before completing his round, but decided not to return and deliver them, but to complete his round and take them out again with him and deliver them next morning. The Police Magistrate accepted this explanation and dismissed the case.

During the hearing of the information it was contended on behalf of the defendant that it was necessary for the informant to prove *mens rea*, in the sense of an intent to tamper with the letters.

An order nisi to review the decision of the Magistrate was obtained by the informant from *Dixon J.*, who made it returnable before the Full Court.

Coppel, for the informant, to move the order absolute. The decision of the respondent, when he discovered the letters in his possession undelivered, not to turn back and deliver them involved a delay until the next morning. He knew that that result would ensue, but deliberately refrained from returning and delivering the letters. The delay in those circumstances was wilful.

[GAVAN DUFFY C.J. According to that argument, if he had turned back he would have wilfully delayed the other letters. The section cannot be intended to place him in such a dilemma.]

H. C. OF A.
1932.
TAYLOR
v.
THORN.

That is not necessarily the case, as he was not under any obligation to deliver the letters at any particular time during that afternoon.

C. Gavan Duffy, for the respondent, was not called upon.

The following judgments were delivered :—

GAVAN DUFFY C.J. In this case we all think the appeal should be dismissed. The Magistrate has come to the conclusion that the postman had not in his mind the purpose of delaying the letter in question, and the evidence justifies that conclusion. We think sec. 109 is aimed at cases where persons employed by or under the Department or in the conveyance of mails have for their object the delay or detention of a letter or other postal article and act in pursuance of that object.

EVATT J. I should like to add that, in order to prove the offence of wilfully delaying a postal article, it is not necessary to prove any intention of interfering or tampering with the article.

Order nisi discharged.

Solicitor for the appellant, *W. H. Sharwood*, Crown Solicitor for the Commonwealth.

Solicitor for the respondent, *N. H. Sonenberg*.

H. D. W.