[HIGH COURT OF AUSTRALIA.]

GROSGLIK - - - - - - - - - - APPELLANT ; DEFENDANT,

AND

GRANT - - - - - - - - - - RESPONDENT, COMPLAINANT,

[No. 2]

H. C. OF A. 1947.

MELBOURNE, *March* 6.

Latham C.J., Rich, Dixon, McTiernan and Williams JJ.

High Court—Appeal—Procedure—Admission of fresh evidence—Appeal from inferior court of State exercising Federal jurisdiction—Appeal to be "brought in the same manner . . . and subject to the same conditions . . as . . . prescribed by the law of the State"—The Constitution (63 & 64 *Vict. c.* 12), *s.* 73 (ii.)—*Judiciary Act* 1903-1940 (*No.* 6 *of* 1903—*No.* 50 *of* 1940), *s.* 39—*High Court Rules, Part II., Section IV., r.* 1.

The High Court will not admit fresh evidence on the hearing of an appeal. This rule applies to an appeal from a State court of petty sessions exercising Federal jurisdiction. The provision of Part II., Section IV., rule 1, of the *High Court Rules* that such an appeal shall be brought in the manner prescribed by State law for bringing an appeal to the State Supreme Court does not incorporate the provisions of a State statute which would empower the Supreme Court to admit fresh evidence on the hearing of an appeal to it.

APPLICATION.

This was an application by the respondent to the appeal, *Grosglik* v. *Grant* (heard together with *Amad* v. *Grant*), from the report of which (1) it will be seen that the appeal was by way of order to review (as prescribed by s. 150 of the *Justices Act* 1928 (Vict.) in relation to the Supreme Court of the State) from the decision of a police magistrate sitting as a court of petty sessions of Victoria (the appeal having been brought on the basis that the magistrate had exercised Federal jurisdiction) and that the High Court was informed that a written agreement which could not previously be found had been discovered by the respondent during the hearing of the appeal.

(1) *Ante*, p. 327.

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The respondent applied for leave to put the document in evidence on the hearing of the appeal. The argument of counsel appears sufficiently in the judgment hereunder.

Eustace Wilson, for the respondent, in support of the application.

Voumard, for the appellant, in opposition.

LATHAM C.J. delivered the judgment of the Court :—

We are of opinion that the court has no power to admit fresh evidence as asked by Mr. *Wilson*. He bases his submission upon the terms of Part II., Section IV., rule 1, of the High Court Rules, which provides :—" Appeals to the High Court from decisions of inferior Courts of a State in the exercise of Federal jurisdiction shall be brought in the same manner and within the same times, and subject to the same conditions, if any, as to security or otherwise, as are respectively prescribed by the law of the State for bringing appeals from the same Courts to the Supreme Court of the State in like matters."

He argues that s. 155 of the *Justices Act* 1928 (Vict.) (permitting the Supreme Court upon the return of an order to review to hear fresh evidence) is a condition prescribed by the law of the State for bringing appeals from courts of petty sessions to the Supreme Court and that it is introduced into the proceedings in this appeal by the rule to which we have referred. The appeal in this matter is given by s. 73 (ii.) of the Constitution, it being assumed that the magistrate was exercising Federal jurisdiction. That section provides—" The High Court shall have jurisdiction, with such exceptions and subject to such regulations as the Parliament prescribes, to hear and determine appeals from all judgments, decrees, orders, and sentences . . . (ii.) Of any . . . court exercising Federal jurisdiction." Section 39 of the *Judiciary Act* has introduced certain regulations and exceptions, and subject thereto it provides that wherever an appeal lies from a decision of any court or judge of a State to the Supreme Court of the State, an appeal from the decision may be brought to the High Court. Mr. *Wilson* submitted that that provision, resting upon the provision of the Constitution which we have quoted, together with the rule mentioned, operates to make the State law relevant for the purpose of the bringing of the appeal to this Court and that the bringing of an appeal includes the hearing of an appeal. It has been decided in more than one case that this rule provides a vehicle for bringing an appeal but that when the appeal is before the Court it must be dealt with in the same way

as any other appeal. We refer to *Victorian Stevedoring & General Contracting Co. Pty. Ltd. and Meakes* v. *Dignan* (1), per *Rich* J., and *Wishart* v. *Fraser* (2), per *Dixon* J. In our opinion these authorities show that the rule relied upon by Mr. *Wilson* relates only to the method of bringing appeals to the Court and does not relate to the practice which ought to be followed in the hearing of appeals by the Court. Fresh evidence cannot be admitted upon appeals to this Court (*Davies and Cody* v. *The King* (3)).

Accordingly, in our opinion, the rule does not introduce the provision of the *Justices Act* which is relied upon and the application must be refused.

Application refused.

Solicitors for the applicant: *Hall & Wilcox.*

Solicitor for the appellant (respondent to the application): *Sylvia Rothstadt.*

E. F. H.

(1) (1931) 46 C.L.R. 73, at p. 87
(2) (1941) 64 C.L.R. 470, at pp. 480, 481.
(3) (1937) 57 C.L.R. 170.