[HIGH COURT OF AUSTRALIA.]

AUSTRALIAN RED CROSS SOCIETY. INFORMANT, } APPELLANT AND APPLICANT,

AND

BEAVER TRADING COMPANY PROPRIETARY LIMITED AND OTHERS . DEFENDANTS, } RESPONDENTS.

H. C. OF A. 1947.

SYDNEY, *Dec.* 17-19.

Rich, Dixon and Williams JJ.

High Court—Procedure—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"—National security—Landlord and tenant—Ejectment—Decision of magistrate—Appeal to High Court—Case stated—Competency of appeal—Special leave—The Constitution (63 & 64 *Vict. c.* 12), *s.* 73 (*ii.*)—*Judiciary Act* 1903-1946 (*No.* 6 *of* 1903—*No.* 10 *of* 1946), *s.* 39 (2) (*b*), (*c*)—*National Security* (*Landlord and Tenant*) *Regulations* (*S.R.* 1941 *No.* 275—1947 *No.* 31), *regs.* 58, 62B (1), (2), 65A (1), (2)—*High Court Rules, Part II., Section IV., r.* 1—*Landlord and Tenant Act* 1899 (*N.S.W.*) (*No.* 18 *of* 1899—*No.* 35 *of* 1937), *s.* 31 (2)—*Justices Act* 1902-1947 (*N.S.W.*) (*No.* 27 *of* 1902—*No.* 3 *of* 1947), *ss.* 101-111.

Landlord and Tenant—Tenancy—Termination—Hardship to lessor or lessee "or any other person"—National Security (*Landlord and Tenant*) *Regulations* (*S.R.* 1945 *No.* 97—1947 *No.* 31), *reg.* 63 (*a*), (*b*).

An appeal by way of case stated from the decision of a magistrate to the Supreme Court of New South Wales is not an admissible procedure under Part IV. of the *Landlord and Tenant Act* 1899 (N.S.W.), therefore such an appeal does not lie as of right to the High Court under Section IV. of the High Court Appeal Rules and s. 39 (2) (*b*) of the *Judiciary Act* 1903-1946 but the High Court may, under par. (*c*) of s. 39 (2), grant special leave to appeal from such a decision.

Part III. of the *National Security* (*Landlord and Tenant*) *Regulations* does not lay down a complete code of procedure under Federal law. It presupposes the existence of remedies under State law and adopts, adapts and controls them.

Robertson v. *Manders*, (1947) 47 S.R. (N.S.W.) 437; 64 W.N. (N.S.W.) 127, referred to.

The words " or any other person " in sub-regs. (*a*) and (*b*) of reg. 63 of the *National Security* (*Landlord and Tenant*) *Regulations* include all individuals and ascertainable classes of the community who would be prejudiced by the tenant losing possession or the landlord failing to obtain possession.

CASE STATED and APPLICATION FOR SPECIAL LEAVE.

Informations laid by Howard Linton Pitt, as agent for the Australian Red Cross Society, on 17th June 1947, under reg. 58 of the *National Security* (*Landlord and Tenant*) *Regulations* and s. 23 of the *Landlord and Tenant Act* 1899 (N.S.W.) alleged that each of the seven defendants, namely, Beaver Trading Co. Pty. Ltd., Robert Blau—trading as Robert Blau (Australia), J. G. James Pty. Ltd., A. F. Kellett, William Liddell & Co. Ltd., William Ritchie—trading as William Rubenstein, and Thomas Sidney May and Ronald Sidney May—trading as T. S. May & Son, held from the Australian Red Cross Society by virtue of a tenancy from week to week different specified portions of that land and premises situate in the Central Police Office Petty Sessions District in the State of New South Wales and known as 73 York Street, Sydney, and that each of the said tenancies was determined by a notice to quit on or about 26th May 1947, and that such land and premises at the date of the said informations was actually occupied by each of the said seven defendants and that each of the said seven defendants neglected to quit and deliver up possession thereof, and that the Australian Red Cross Society the landlord as aforesaid then had lawful right as against each of the said seven defendants to the possession of such land and premises, and thereupon the informant prayed that the said landlord, the Australian Red Cross Society, might be put into possession of the said land and premises under and by virtue of the statute and regulations in such case made and provided.

By consent of the parties all the cases were heard together, and after hearing the parties and the evidence adduced by them the magistrate, on 19th September 1947, dismissed each of the informations.

At the request of the informant, who alleged that he was aggrieved by the said determinations as being erroneous in point of law, the magistrate stated a case which was substantially as follows:

At the hearing of the said informations the following facts were admitted:—

1. That in each case a tenancy existed between each of the seven defendants and the Australian Red Cross Society;

H. C. OF A. 1947.

AUSTRALIAN RED CROSS SOCIETY v. BEAVER TRADING CO. PTY. LTD.

2. That each tenancy was properly determined by the notice to quit given in accordance with the *National Security* (*Landlord and Tenant*) *Regulations* ;
3. That in each case the subject premises were situated within the jurisdiction of the Court ;

and the magistrate found the following facts to be proved :

4. That in each case the premises were reasonably required for occupation by the lessor Society in connection with its trade, profession, calling, or occupation (*National Security* (*Landlord and Tenant*) *Regulations*, reg. 58) ;
5. That in each case no reasonably suitable alternative accommodation was available for occupation by the several lessees (*National Security* (*Landlord and Tenant*) *Regulations*, reg. 63) ;
6. That in each case hardship would be caused to each of the lessees by the making of an ejectment order (*National Security* (*Landlord and Tenant*) *Regulations*, reg. 63) ;
7. That in each case hardship would be caused to the lessor by a refusal to make an order (*National Security* (*Landlord and Tenant*) *Regulations*, reg. 63) ;
8. That in the case of Thomas Sidney May and Ronald Sidney May trading as T. S. May & Son, Ronald Sidney May (one of the joint tenants) was a " protected person " within the meaning of reg. 30 of the *National Security* (*War Service Moratorium*) *Regulations*.

It was contended, *inter alia*, on behalf of the seven defendants (i) that the question resolved itself into consideration of the hardship (if any) that would be occasioned to the Society by a refusal to make ejectment orders and the hardship that would be occasioned to all the defendants by the making of orders ; (ii) that in considering the question of hardship to the lessor or any other person (*National Security* (*Landlord and Tenant*) *Regulations*, reg. 63) the magistrate was bound as a matter of law to find : (*a*) that the Australian Red Cross Society being a corporation whose activities were not carried on for profit could not as a Society suffer any hardship ; and (*b*) that the " other persons " mentioned in reg. 63 (*a*) must be limited to the employees of the Society.

For the Australian Red Cross Society reg. 63 was exhaustively examined on the question of hardship and it was particularly stressed that the Court must take into consideration : (1) all other relevant matters ; (2) hardship to the lessor ; and (3) hardship to any other person. It was contended that under the heading of " all

other relevant matters" the magistrate must take into consideration: (*a*) that the supply of serum and blood was a matter of vital importance as affecting the welfare of the community; (*b*) that the supply of serum (particularly) and blood (in a lesser degree) was insufficient to meet the demands of the community; (*c*) that under present conditions the supply of serum and blood could not be increased; (*d*) that with larger and more commodious premises the supply of serum and blood could be increased; and (*d*) that under existing conditions there was actual danger to life. Under the heading of "hardship to the lessor" it was contended that the magistrate must consider the fact that the Society under present conditions (lack of space &c.) was unable adequately to meet the demand for serum and blood, whilst under the heading of "hardship to any other person" it was contended that "any other person" must be taken to include: (*a*) employees of the lessor Australian Red Cross Society; (*b*) donors of blood; (*c*) persons who might suffer from an inadequate or contaminated supply of serum and blood; and (*d*) the community at large.

The magistrate came to the following conclusions:

1. That the Society was providing in its "blood bank" activities a service of very great (perhaps vital) importance to the welfare of the community;
2. That it was highly desirable that the various branches of that service should be housed in the one premises;
3. That the premises at 374 George Street, Sydney, where blood was taken from donors, were very much overcrowded and the space available there was inadequate for the work that was carried out there;
4. That serum (particularly) and blood were both in short supply;
5. That larger premises could possibly result in a larger number of blood donors and a consequently greater output of serum and blood;
6. That donors of blood suffered inconvenience through the congested state of the premises at 374 George Street; and
7. That the community would be greatly benefited by the increased output of serum and blood.

The magistrate therefore found that the premises at 73 York Street, Sydney, were reasonably required by the Society for occupation in connection with its trade, profession, calling or occupation.

He also found that due to the fact that no reasonably suitable alternative accommodation was available each of the seven defendants would suffer hardship if an ejectment order was made against

H. C. OF A. 1947.

AUSTRALIAN RED CROSS SOCIETY v. BEAVER TRADING CO. PTY. LTD.

it or him. At least six of the defendants would be faced with the complete loss of their business, while the seventh if not faced with complete loss would suffer great loss and very serious inconvenience.

Regarding the hardship to the Society if ejectment orders were refused the magistrate found as a matter of law:

1. That the only hardship a corporate body could suffer was "financial" hardship; and
2. That the words "or any other person" in reg. 63 (1), although very wide, must mean "other person connected in some way with the lessor" and that such "person" must be "some ascertainable and definite person."

The magistrate held that "donors of blood" as they attended and gave their blood voluntarily could not be said to be "persons connected with the Australian Red Cross Society" and further that they could not be said to be "ascertainable and definite persons." He was also of opinion that under present conditions they were experiencing inconvenience but could not be said to be suffering "hardship." He also held that the "community at large" did not for the same reason come within the meaning of "any other person."

On the whole of the facts the magistrate found that the hardship to the seven defendants if ejectment orders were made was much greater than the hardship that would be occasioned to the Society if orders were refused, and in the exercise of his discretion in each case he refused to make an order and dismissed the informations.

The question for the determination of the High Court was whether the magistrate's determination dismissing the informations was erroneous in point of law.

Upon the matter coming on for hearing before the High Court counsel for the respondent tenants took an objection to the competence of the appeal upon the ground that an appeal did not lie as of right, at all events by case stated, from the decision of the magistrate.

The relevant statutory provisions and regulations are sufficiently set forth in the judgments hereunder.

Dec. 17.

A. R. Taylor K.C. (with him *Reynolds*), for the respondents in support of the objection. Before 14th March 1947 the State courts exercised State jurisdiction in ejectment subject to the restrictions imposed by the *National Security* (*Landlord and Tenant*) *Regulations*, but since that date in New South Wales courts of petty sessions have been vested with Federal jurisdiction. The seven informations were

dismissed. The appellant relies upon s. 39 of the *Judiciary Act* 1903-1946 and s. 101 of the *Justices Act* 1902-1947 (N.S.W.). The appellant does not come within the scope of s. 39 (2) (*b*) of the *Judiciary Act* 1903-1946 because the appellant had no right of appeal to the Supreme Court. The *Landlord and Tenant Act* 1899 (N.S.W.) provides a summary method of ejectment and Part IV. provides its own code of procedure. Section 31 provides for a right of appeal from justices. A landlord whose complaint has been dismissed is not a person who "feels aggrieved" within the meaning of that section. The purpose of s. 31 is the protection of tenants. The statutes 14 Vict. No. 43 and 45 Vict. No. 4 were in existence at the date of the enacting of the *Landlord and Tenant Act* 1899 (N.S.W.). The legislature deliberately chose prohibition (*Ex parte Dwyer* (1); *Robertson* v. *Manders* (2) and see also *Wishart* v. *Fraser* (3) and *Grayndler* v. *Cunich* (4)).

Wallace K.C. (with him *Brereton*), for the appellant. Section 73 (ii.) of the Constitution provides for an appeal as of right from any court exercising Federal jurisdiction "with such exceptions and subject to such regulations as the Parliament prescribes." The only exception or regulation provided by Parliament is in s. 39 (2) (*b*) of the *Judiciary Act* 1903-1946 to the intent that where an appeal lies from any court of a State to the Supreme Court of that State, an appeal from such court exercising Federal jurisdiction may be brought to the High Court. It is not necessary that such appeal should lie by virtue of State law. Regulation 65A (2) of the *National Security* (*Landlord and Tenant*) *Regulations* expressly provides for an appeal to the Supreme Court by an unsuccessful landlord, whether such appeal lay prior to the regulation or not; and the procedure was by stated case (*Robertson* v. *Manders* (2)). Even though the appeal so provided was on a point of law only, the appeal to the High Court would be a full appeal. Section IV. of the High Court Appeal Rules cannot apply in such a way as to restrict or remove a right of appeal under the Constitution: those rules can only regulate procedure. In any event, procedure by way of stated case was the procedure adopted in like case in the Supreme Court (*Robertson* v. *Manders* (2)), and the Appeal Rules have been complied with. Alternatively, reg. 62B of the *National Security* (*Landlord and Tenant*) *Regulations* confer Federal jurisdiction independently of the opening words of s. 39 (2) (*b*) of the *Judiciary Act*

(1) (1908) 8 S.R. (N.S.W.) 329.
(2) (1947) 47 S.R. (N.S.W.) 437; 64 W.N. (N.S.W.) 127.
(3) (1941) 64 C.L.R. 470.
(4) (1939) 62 C.L.R. 573.

H. C. OF A. 1947.

AUSTRALIAN RED CROSS SOCIETY v. BEAVER TRADING CO. PTY. LTD.

Dec. 18.

1903-1946, and s. 73 (ii.) of the Constitution operates directly, subject to no exception or regulation.

The following written judgment was delivered by :—

RICH, DIXON AND WILLIAMS JJ. This appeal is brought by way of case stated from a decision of a magistrate dismissing informations by the appellant society as landlord against the respondents as its tenants praying that the appellant society might be put into possession of the land and premises occupied by the respondents. The questions in the appeal turn upon the *National Security* (*Landlord and Tenant*) *Regulations*. The respondents have taken an objection to the competence of the appeal upon the ground that no appeal lies as of right, at all events by case stated, from the decision of the magistrate.

The *Landlord and Tenant Regulations* have been amended by Statutory Rules 1947 No. 31, which came into operation on 14th March 1947. The proceedings were instituted after that date. The effect of reg. 58, so far as material, is to prohibit a lessor of prescribed premises giving any notice to terminate the tenancy or taking proceedings to recover possession of the premises from the lessee unless upon certain prescribed grounds and unless proceedings to recover possession are taken in what is called a court of competent jurisdiction. By reg. 62B (1) it is provided that for the purposes of reg. 58 in the State of New South Wales courts of competent jurisdiction shall be courts of summary jurisdiction. Relying presumably upon s. 6 (3) (*c*) of the *Defence* (*Transitional Provisions*) *Act* 1946, reg. 62B (2) proceeds to provide that the court of a State thus specified shall, subject to Part III. of the regulations and within the limits of its jurisdiction (other than limits as to the value or rent of premises) be vested with Federal jurisdiction in proceedings under this part. Regulation 65A (1) provides that, except as provided in that regulation, there shall be no appeal (other than an appeal to the High Court) in proceedings under this part from a judgment or order of a court of competent jurisdiction referred to in reg. 62B. Sub-regulation (2) of reg. 65A goes on to provide that there shall be an appeal as to questions of law only to the Supreme Court of the State concerned from any judgment or order of a court in proceedings under Part III. of the regulations.

The appellant, in appealing as of right by way of case stated, has assumed that Section IV. of the Appeal Rules of this Court governs the procedure, and that s. 39 (2) (*b*) of the *Judiciary Act* 1903-1946 gives an appeal as of right. The jurisdiction of the Court to entertain an appeal rests, of course, upon s. 73 (ii.) of the Constitution,

which provides that the High Court shall have jurisdiction, with such exceptions and subject to such regulations as Parliament prescribes, to hear appeals from orders of any court exercising Federal jurisdiction. No exception has been made which would cover this case, and we do not think that there can be any question of the Court's jurisdiction to entertain an appeal. But the question whether the appellant is entitled to invoke the jurisdiction as of right is another matter. Section 39 (2) (*b*) of the *Judiciary Act*, upon which the appellant rests, provides in effect that where the leading part of s. 39 (2) (*b*) vests a State court with Federal jurisdiction, then if an appeal lies from a decision of any court of a State to the Supreme Court of the State, an appeal from its decision may be brought to the High Court. Paragraph (*c*) of s. 39 (2) provides that the High Court may grant special leave to appeal to the High Court from any decision of any court of a State notwithstanding that the law of the State may prohibit any appeal from such court. If s. 39 (2) applies to the case it therefore seems clear that, supposing there is no appeal as of right, we may nevertheless grant special leave to appeal pursuant to par. (*c*) of s. 39 (2). The respondents' reason for denying that under par. (*b*) of s. 39 (2) an appeal lies as of right is that, according to the respondents' submission, in such a case as this no appeal lies from the decision of the magistrate to the Supreme Court, at all events by way of case stated.

Section 31 (2) of the *Landlord and Tenant Act* 1899 of New South Wales gives to any person who feels aggrieved by any order, adjudication or warrant made or issued under the provisions of Part IV. of that Act, a remedy in the nature of an appeal by way of statutory prohibition under the *Justices Act* 1902-1947 (N.S.W.). It appears from *Ex parte Dwyer* (1), that this provision has been construed as displacing what otherwise might have been the general operation of the *Justices Act* to confer a right of appeal upon a party aggrieved by a decision in a proceeding under the *Landlord and Tenant Act*. *Ex parte Dwyer* (2) was concerned with an attempted appeal to Quarter Sessions, and not with a recourse to a proceeding by case stated under s. 101 of the *Justices Act*, but it depended upon the view that the appointment by a particular statute of a special remedy operated in accordance with the maxim *generalia specialibus non derogant* to exclude the general remedies given by the *Justices Act*. It is said, moreover, that under s. 31 (2) of the *Landlord and Tenant Act* it is considered that a landlord who fails to obtain an order against a tenant for the recovery of possession is not a person who is aggrieved by an order, adjudication or warrant

(1) (1908) 8 S.R. (N.S.W.), at p. 331. (2) (1908) 8 S.R. (N.S.W.) 329.

H. C. OF A. 1947.

AUSTRALIAN RED CROSS SOCIETY v. BEAVER TRADING CO. PTY. LTD.

Rich J. Dixon J. Williams J.

made or issued under Part IV. of the *Landlord and Tenant Act*. No direct authority was, however, produced adopting this view of the application of the State statute.

It is not desirable that we should deal with matters of procedure and practice under State law further than we need when they are involved indirectly as they are here. We shall therefore limit ourselves to the question of the case stated as an admissible procedure in proceedings under Part IV. of the *Landlord and Tenant Act*. We take *Ex parte Dwyer* (1) supported as it is by the observations of *Jordan* C.J. in his reference to that case in *Robertson* v. *Manders* (2), as showing that a case stated is not an admissible mode of appeal in such proceedings. In so far, therefore, as the appellant is compelled to rely on a right of appeal given by State law to warrant the form of appeal it has taken, it appears to us that it cannot bring itself within Section IV. of the Appeal Rules or s. 39 (2) (*b*) of the *Judiciary Act*. It was suggested, however, that it was not compelled to rely upon the provisions of State law for the purpose of justifying its appeal by way of case stated.

It is first suggested that its proceeding is under Part III. of the *Landlord and Tenant Regulations* without reference at all to the provisions of the New South Wales *Landlord and Tenant Act*. We think this view is not correct. Part III. of the *Landlord and Tenant Regulations* assumes the existence of procedure under State law by which a landlord may recover possession of premises from his lessee or obtain an order of ejectment of the lessee therefrom. It then proceeds to regulate such proceedings and to confer a Federal jurisdiction to act in pursuance of the regulations. But Part III. does not lay down a complete code of procedure under Federal law. It presupposes the existence of remedies under State law and, so to speak, adopts, adapts and controls them.

It was then suggested that under reg. 65A (2) a positive right of appeal is given to a landlord as well as to a tenant independently of State law, and that the language of s. 39 (2) (*b*) of the *Judiciary Act* is sufficiently wide to apply to a Federal right of appeal to the Supreme Court so given and, so to speak, transmute it into a right of appeal to the High Court. We doubt whether a regulation such as reg. 65A (2), expressed with reference to a limited right of appeal to the Supreme Court, should be given an effect which produces an unlimited right of appeal to the High Court by the application of par. (*c*) of sub-s. (2) of s. 39. But, in any case, the suggestion, ingenious as it is, does not overcome the difficulty that Section IV. of

(1) (1908) 8 S.R. (N.S.W.) 329.

(2) (1947) 47 S.R. (N.S.W.), at p. 438; 64 W.N., at p. 129.

the Appeal Rules is by its language made dependent for its operation upon the existence of a procedure under State law for appealing to the Supreme Court. When, in *Robertson* v. *Manders* (1), *Jordan* C.J. speaks of reg. 65A necessitating, in its context, the application of ss. 101 to 111 of the *Justices Act* to appeals upon questions of law as far as practicable, we understand his Honour as laying it down that the procedure by case stated should be adopted as a matter of practice, because it is a suitable procedure and is in use in the like case. That is something different from what rule 1 of Section IV. of the Appeal Rules of this Court contemplates when it refers to the manner, times and conditions *prescribed by the law* of the State for bringing appeals to the Supreme Court in like matters.

Still another suggestion is that reg. 62B operates to confer Federal jurisdiction quite independently of s. 39 of the *Judiciary Act*. The consequence might be that upon the Federal jurisdiction so conferred s. 73 (ii.) of the Constitution operated so that the Court's jurisdiction to allow an appeal existed, but nevertheless there was no legislation giving a right of appeal or to regulate the Court's authority to admit an appeal by requiring that special leave should be a condition. We think that a general survey of Part III. of the *Landlord and Tenant Regulations* shows that it was not intended to establish a new Federal jurisdiction entirely independent of the Federal jurisdiction which, before the amendments made by Statutory Rule No. 31 of 1947, s. 39 (2) operated to confer: see *Grosglik* v. *Grant* [No. 1] (2) [No. 2] (3).

The regulations create a "matter", that is a controversy, question or claim of right, which would fall within s. 76 of the Constitution. Section 39 (2) would apply to such a matter. The procedure invokes State jurisdiction to some extent, or rather what would otherwise be State jurisdiction if it was not for s. 39. The purpose of s. 39 is to cover the whole ground in such a case, and we do not think that Part III. of the *Landlord and Tenant Regulations* should be construed as making a provision completely independent of that operation. Rather it is ancillary to or explanatory of, if not supplementary to, s. 39.

We are therefore of opinion that the case is governed by s. 39 (2) of the *Judiciary Act* and that the appellant has not succeeded in bringing itself within par. (*b*) of that sub-section and Section IV. of the Appeal Rules. His case nevertheless falls within par. (*c*) and is one in which we are authorized to grant special leave to appeal if we think fit.

(1) (1947) 47 S.R. (N.S.W.), at p. 440; 64 W.N., at p. 129.
(2) (1947) 74 C.L.R. 327.
(3) (1947) 74 C.L.R. 355.

H. C. of A. 1947.

AUSTRALIAN RED CROSS SOCIETY v. BEAVER TRADING CO. PTY. LTD.

Dec. 19.

Counsel for the Australian Red Cross Society then applied for special leave to appeal and argument ensued on the merits.

Wallace K.C. (with him *Brereton*), for the applicant.

A. R. Taylor K.C. (with him *Reynolds*), for the respondents.

The following judgment was delivered by :—

RICH, DIXON AND WILLIAMS JJ. In consequence of our decision that an appeal as of right was incompetent we heard an application for special leave when the questions of law and the facts of the case were fully discussed.

The case is essentially one of fact, the crucial issue being the comparative hardship caused to the lessees or any other person by the making of the order and that caused to the lessor or any other person by the refusal to make the order.

The stipendiary magistrate has held and there is ample evidence to support his finding that in the case of each tenant no reasonably suitable accommodation is available for his occupation. The appellant, on the other hand, has accommodation in which it is managing to carry on its business of providing a blood bank. The accommodation is distributed over a number of different premises, and it is plainly desirable that the whole of the work should be done in the one place. The main premises in George Street where the blood is extracted from the donors is overcrowded and there is a dangerous amount of dust, but the appellant has nevertheless been able to carry on its work and by the exercise of great care to do so with safety.

The rival cases of hardship are therefore between serious inconvenience to the appellant and grave business loss and possibly ruin to the tenants. In these circumstances the magistrate held that the balance of hardship lay with the tenants and this finding is justified by the evidence. It is true that he held in addition that hardship in the regulations in the case of a corporation meant financial hardship, and that in the case of the appellant hardship was confined to its employees. We cannot agree with this construction of the regulations. The words " or any other person " in reg. 63 (*a*) and (*b*) are words of wide import and they include all individuals and ascertainable classes of the community who would be prejudiced by the tenant losing possession or the landlord failing to obtain possession. In relation to the appellant as lessor they would include all persons on the present list of blood donors who are inconvenienced in giving their blood, and all those sick persons who

are at present prejudiced because they require a transfusion of blood but cannot obtain it because there is insufficient blood due to the scarcity of blood donors. But the magistrate also considered the facts on the basis of the construction which we adopt of the regulations; and, as we understand his reasons, held that the hardship to the donors was one of inconvenience and that the evidence of prejudice to the interests of sick persons was too remote because it was only speculation to hold that this inconvenience was causing less donors to give blood than there would be if they could give their blood in more comfortable surroundings.

We think therefore that no sufficient reasons exist for interfering with the exercise by the magistrate of his discretion on the grounds that he misdirected himself in law or that no weight or no sufficient weight was given to relevant circumstances, and that special leave to appeal should be refused.

There will be no order as to costs.

Special leave to appeal refused. No order as to costs.

Solicitors for the appellant-applicant, *Stephen, Jaques & Stephen.*

Solicitors for the respondents, *Dawson, Waldron, Edwards & Nicholls.*

J. B.