

[HIGH COURT OF AUSTRALIA.]

O'MARA APPLICANT ;
 APPELLANT,

AND

HARRIS RESPONDENT.
 RESPONDENT,

H. C. OF A. *High Court—Application for special leave to appeal—Power to award costs—*
 1948. *Judiciary Act 1903-1947 (No. 6 of 1903—No. 52 of 1947) s. 26—National*
 { *Security (Landlord and Tenant) Regulations (S.R. No. 97 of 1945—S.R. No. 22*
 PERTH, *of 1948) reg. 75.**
 Sept. 8.

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

The jurisdiction of the High Court to award costs in an application for special leave to appeal from an order of the Supreme Court of a State is founded upon the provisions of the *Judiciary Act 1903-1947*, and is not affected by reg. 75 of the *National Security (Landlord and Tenant) Regulations*.

APPLICATION FOR SPECIAL LEAVE TO APPEAL.

James Andrew O'Mara made an application to the Local Court at Perth (W.A.) for an order for recovery of possession of premises in St. George's Terrace, Perth, in which Mrs. Dorothy Harris was carrying on a florist's business. Mrs. Harris claimed protection under reg. 28A of the *National Security (War Service Moratorium) Regulations* as a female dependant of a discharged member of the forces. She gave evidence that her husband worked and supported her, and there was evidence that she conducted a florist's shop. There was no evidence as to the degree in which the florist's shop contributed to her support. The evidence that the husband supported her was accepted by the magistrate, and the application was dismissed.

O'Mara appealed to the Supreme Court of Western Australia. The appeal was dismissed, and O'Mara was ordered to pay Mrs. Harris' costs.

*Regulation 75, which is contained in Part III. of the *National Security (Landlord and Tenant) Regulations*, provides :—" No costs shall be allowed

in any proceedings in relation to which this Part applies, not being proceedings in respect of an offence arising under this Part."

O'Mara applied to the High Court upon notice for special leave to appeal from this decision.

H. C. OF A.
1948.

O'MARA
v.
HARRIS

Downing, K.C. and *Miss S. M. McClemons*, for the applicant.

Unmack, for the respondent.

The judgment of the Court was delivered by :

LATHAM C.J. This is an application for special leave to appeal from a decision of the Supreme Court given upon a review of a decision of a magistrate under the *Landlord and Tenant Regulations*. The owner of premises sought to obtain possession of the premises in which the defendant respondent was carrying on a florist's business. She claimed protection under the provisions relating to female dependants of a discharged member of the forces, and the only question which arises is whether there was evidence that she was a female dependant of a discharged member of the forces. Regulation 28A of the *War Service Moratorium Regulations*, which is the relevant regulation in this respect, provides in its initial words that a female dependant of a discharged member means (a) a person . . . dependent for her support upon a person described in the rest of the regulation. She gave evidence that her husband worked and supported her, and there was also evidence that she conducted a florist's shop. There was no evidence as to the degree in which the florist's shop contributed to her support. There was affirmative evidence that her husband supported her. That evidence was accepted by the magistrate and that concludes the question of fact, in the circumstances of such a case as this, that she was dependent for her support upon a discharged member of the forces. In any event we are of opinion that the question whether there was evidence in a particular case that a person is supported by another person is not a question in relation to which special leave to appeal should be granted.

There is, however, another point affecting costs. The Supreme Court upon appeal made an order for costs. The *Landlord and Tenant Regulations* applied to these proceedings, and reg. 75 as it now stands, (the regulation having been amended since certain decisions were given in the Supreme Courts of the States) provides that no costs shall be allowed in any proceedings in relation to which this part of the Regulations applies.

Regulation 65A of the regulations provides that, except as provided in that regulation there shall be no appeal other than an appeal to the High Court in proceedings under the part from a

H. C. OF A.
 1948.
 O'MARA
 v.
 HARRIS.
 Latham C.J.
 Rich J.
 Dixon J.
 McTiernan J.

judgment or order of a court of competent jurisdiction referred to in reg. 62B of the regulations. Sub-regulation (2) in this regulation is in these terms :—" There shall be an appeal, as to questions of law only, to the Supreme Court of the State or Territory concerned from any judgment or order of a court in proceedings under this part." Accordingly, the regulations expressly provide for an appeal, on questions of law only, to the Supreme Court of a State. Thus such an appeal is a proceeding in relation to this provision of the regulations, namely, reg. 65A. It therefore falls within the prohibition of reg. 75 and the Supreme Court had no power to award costs in the appeal.

Ordinarily special leave to appeal would not be granted upon a question of costs only, but in this case there is a matter for determination of some importance in relation to the jurisdiction of the Supreme Court. There is a distinction between the jurisdiction of the Supreme Court with respect to costs under the regulations as they now stand, and the jurisdiction of the High Court in relation to such costs on an appeal or application for special leave to appeal to the High Court. Neither of these are proceedings to which the regulations apply; they are proceedings which are authorized and taken by virtue of the *Judiciary Act*. Accordingly, the Supreme Court did not have power to award costs upon the appeal in the Supreme Court, but this Court has power to award costs in relation to this application.

We are of opinion that special leave to appeal should be granted on the ground that a question of interpretation of the regulations as to costs arises. Special leave to appeal is accordingly granted and the order of the Supreme Court is varied by striking out the provision as to costs.

The appeal is allowed with respect to this question of costs.

Special leave to appeal granted. Order of Supreme Court varied by striking out the provision as to costs. No order as to costs of the application for special leave to appeal.

Solicitors for the applicant, *Hardwick, Slattery & Gibson*.
 Solicitors for the respondent, *Unmack & Unmack*.

B. McP.