

HIGH COURT OF AUSTRALIA

GLEESON CJ,
GAUDRON, McHUGH, GUMMOW, KIRBY, HAYNE AND CALLINAN JJ

MURRANDOO BULANYI MUNGABAYI YANNER APPELLANT

AND

GRAEME JOHN EATON RESPONDENT

Yanner v Eaton [No 2] [1999] HCA 69
21 December 1999
B52/1998

ORDER

Respondent to pay appellant's costs in the Court of Appeal of the Supreme Court of Queensland and in this Court.

Notice: This copy of the Court's Reasons for Judgment is subject to formal revision prior to publication in the Commonwealth Law Reports.

CATCHWORDS

Yanner v Eaton [No 2]

Practice and procedure – Costs – Whether successful appellant entitled to costs of appeals in summary criminal proceedings.

Justices Act 1886 (Q), ss 214, 273(2).

GLEESON CJ, GAUDRON, McHUGH, GUMMOW, KIRBY, HAYNE AND CALLINAN JJ.

1 On 7 October 1999, orders were made in this matter allowing the appeal to this Court, setting aside the orders of the Court of Appeal of the Supreme Court of Queensland made on 27 February 1998 and in lieu ordering that the order nisi of Williams J dated 28 November 1996 be discharged. Orders were made that the Attorneys-General who had intervened in the matter pay the appellant the additional costs incurred by him by reason of their intervention and that the question of the other parties' costs in respect of the proceedings in this Court and in the Court of Appeal be reserved. Directions were made giving leave to the parties to file submissions on the reserved questions of costs and they have done so.

2 The issue is whether the appellant (who had been prosecuted summarily under the *Fauna Conservation Act* 1974 (Q)) should have his costs (in this Court and in the Court of Appeal) having succeeded in proceedings by way of order to review¹ instituted by the informant to challenge the dismissal of the charges against the appellant.

3 Section 214 of the *Justices Act* 1886 (Q) provided that:

"The court or Judge may make such order as to costs as the court or Judge deems just."

There was, therefore, undoubted power in the Court of Appeal to order costs in the proceedings before that Court and it was not suggested that this Court lacked power to make an order dealing with the costs of the appeal in this Court.

4 In *Latoudis v Casey*², the Court considered the circumstances in which a successful defendant to a prosecution heard summarily should have an order for costs of those summary proceedings. It was held that, subject to some exceptions and qualifications that are not now relevant, if there is discretion to make such an order, that discretion would ordinarily be exercised in favour of a successful defendant. (The order made by this Court in *Latoudis* was that the police informant pay the costs of the summary prosecution in a Magistrates Court, of the subsequent

1 The order to review was dealt with by the Court below under Pt 9 Div 1 of the *Justices Act* 1886 (Q). The order nisi had been granted before the commencement of the *Courts Reform Amendment Act* 1997 (Q) which repealed that division of the *Justices Act*. Section 273(2) of the *Justices Act* provided that the proceedings might be dealt with as if the division had not been repealed. (Nothing was said by either the appellant or the respondent to turn on the limited life of 2 years given to s 273 by s 273(3).)

2 (1990) 170 CLR 534.

Gleeson CJ
Gaudron J
McHugh J
Gummow J
Kirby J
Hayne J
Callinan J

2.

proceedings, by way of order to review in the Supreme Court of Victoria and of the appeal from that decision to this Court.)

- 5 No order for costs was sought or made in the Magistrates Court in this case; the only order was that the appellant was found not guilty and discharged. Even so, the appellant having succeeded in this Court and having been entitled to succeed in the Court of Appeal, the costs in this Court and in the Court of Appeal should follow the event. The facts that the case may have been seen as important, or as raising issues having effects beyond the immediate parties, lead to no different conclusion. We would order that the respondent pay the appellant's costs in the Court of Appeal of the Supreme Court of Queensland and of the appeal to this Court

