

2/1941

HELTON

V

ALLEN.

20/6/1941

JUDGMENT.

RICH A.C.J.

DIXON J.

METTERNAN J.

WILLIAMS J.

IN THE HIGH COURT
OF AUSTRALIA
QUEENSLAND REGISTRY

Appeal No. 2 of 1941

ON APPEAL FROM THE SUPREME COURT OF QUEENSLAND
(FULL COURT)

BETWEEN

EDWIN CLAUDE HELTON

Appellant
(Defendant)

- and -

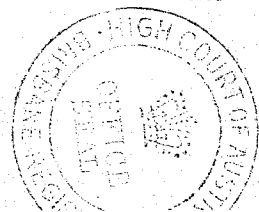
ISABELLIA ALLEN

Respondent
(Plaintiff)

BEFORE THEIR HONOURS SIR GEORGE RICH, ACTING
CHIEF JUSTICE, MR. JUSTICE DIXON, MR. JUSTICE
MCTIERNAN and MR. JUSTICE WILLIAMS

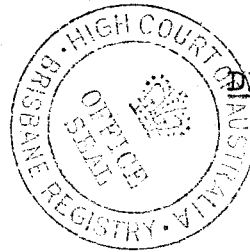
FRIDAY, THE TWENTIETH DAY OF JUNE, 1941.

T H I S A C T I O N having on the nineteenth and twentieth days of June one thousand nine hundred and forty-one come on for hearing by way of appeal from the Judgment of the Full Court of the Supreme Court of Queensland pronounced on the first day of April one thousand nine hundred and forty-one dismissing an appeal by the appellant (the defendant) from the Judgment of The Honourable Mr. Justice Macrossan S.P.J. pronounced on the fourth day of November one thousand nine hundred and forty in an action in the Supreme Court of Queensland wherein the abovenamed respondent was the plaintiff and the abovenamed appellant was the defendant AND UPON HEARING the appellant (the defendant) in person and Mr. Lynam of Counsel for the respondent (the plaintiff) THIS COURT DOTH ORDER that the said appeal be dismissed and that the respondent (the plaintiff) do recover from the appellant (the defendant) her costs of the said appeal to be taxed AND THIS COURT DOTH FURTHER ORDER that the respondent's (the plaintiff) costs of the said appeal as between Solicitor and client be paid out of the



residuary estate of Margaret Jane Roche deceased provided that any costs as between party and party recovered by the respondent (the plaintiff) against the appellant (the defendant) be paid into the said residuary estate AND UPON the respondent (the plaintiff) undertaking to assign to any administrator of the said estate her right thereunder to costs against the appellant (the defendant).

BY THE COURT



[Signature]
DISTRICT REGISTRAR

[Handwritten mark]

HILLTON v. ALLEN.

ORDER

Appeal dismissed with costs to be paid by the appellant to the respondent. But let the respondent be at liberty to retain her costs taxed as between Solicitor and client out of the residuary estate of ~~Mrs.~~ J. Roche deceased. And let any costs recovered from the appellant under this order be paid into the residuary estate.

Without calling on Mr Lynam, Rich A.C.J. delivered the following judgment

In this appeal the appellant submitted a number of grounds why the verdict of the jury could not be supported. The two grounds he pressed most strongly were that there was no evidence or no sufficient evidence that the deceased died of strychnine poisoning and that if this Court were of opinion that strychnine poisoning did cause Mrs Roche's death the only reasonable hypothesis was that she committed suicide. I have had the opportunity of re-reading the evidence in the case. It is similar to that given in the first trial and I am clearly of opinion that the evidence justified the jury's finding that the deceased died of strychnine poisoning and does not support the hypothesis of suicide. The ground relied on by the appellant as to the trial judge's directions are not sustainable. His Honour directed the jury in accordance with the principles laid down by this Court in the previous appeal. His Honour adequately summed up the evidence and his directions were sufficient. It is to be noted that although the evidence in this trial was

similar to that in the previous trial the appellant did not as on the previous occasion give evidence in rebuttal of the prima facie case ~~made~~ made against him. I agree with the judgment of the Supreme Court that the evidence in the case is sufficient to support the finding of the jury that the appellant unlawfully killed Margaret Jane Roche.

The appeal should be dismissed with costs.

Dixon J. I agree

McTiernan J. I agree

Williams J. I agree.