

HIGH COURT OF AUSTRALIA

FINNEGAN

V.

ELTON.

ORAL.
REASONS FOR JUDGMENT

Judgment delivered at Sydney.

on Tuesday, 27th April, 1948.

FINNEGAN v. ELTON

JUDGMENT

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LATHAM, C.J.

This is an appeal from an order made under section 17(2) of the Judiciary Act setting aside a notice of appeal to this Court from a decision of His Honour Mr. Justice Owen of the Supreme Court of New South Wales.

The right of appeal from such an order is not challenged. The effect of the order of the Supreme Court from which the appeal is brought, affirming, as it does, an order of a Magistrate, is to deprive the appellant, Mrs. Finnegan, of possession of certain premises under the National Security (Landlord & Tenant) Regulations with such chance, or probability, or hope of remaining in possession as the regulations give; that hope or chance or probability extends to December 1948, as these regulations are at present continued in force only until that date.

The question is whether the appellant brings herself within the provisions of section 35 of the Judiciary Act, as to this order, involving a property or civil right, or sum or matter at issue amounting to or of the value of £300.

The proper basis upon which such an estimate is to be made is to consider whether the value of the right to occupy the property, and the chance - in this case - of occupying the property, so far exceeds the rent payable that the claim of the appellant to continue in occupation at that rent is worth £300 or more.

Estimates have been submitted by the appellant in relation to this matter. The estimates of value relate to the valuation of two businesses carried on by the appellant on the premises and of the furniture and fittings used in those businesses. The value of those businesses plainly

takes into account the work, the efforts, the personality of the applicant. Those figures do not convey any information as to the value of the right to occupy the premises, which is the only matter affected by the order.

Accordingly, in our opinion, there is no evidence of the value of the occupation of these premises. The tenant pays £3 a week. Of the value of the right to occupy for an uncertain but limited period at £3 per week there is no evidence.

Accordingly, it is not shown that the judgment involves a matter of the required value and therefore there is no appeal as of right and the appeal from the order of Mr. Justice Sugerman setting aside the notice of appeal ought to be dismissed.

We think that regulation 75 does not apply to these proceedings, which are not proceedings which are provided for by the regulations; they are not proceedings which are taken by reason of or under the authority of the regulations; they arise under the Judiciary Act and they are independent of any of the particular provisions of the regulations.

Therefore, we think that there is jurisdiction to give costs of the appeal and the appeal is dismissed with costs.

Rich, J.)	
Starke, J.)	
Dixon, J.)	Concurred.
Williams, J.))	