

IN THE HIGH COURT OF AUSTRALIA

MONAHAN

V.

MONAHAN.

REASONS FOR JUDGMENT

Judgment delivered at *Sydney*

on *6 December* *1948*

MONAHAN V. MONAHAN

JUDGMENT

WILLIAMS J.

JUDGMENT

WILLIAMS J.

This is a summons for directions by the wife in an appeal by her from a judgment of the Supreme Court of the Australian Capital Territory dismissing her suit for dissolution of marriage. Under sec. 51(1)(a) of the Seat of Government Supreme Court Act 1933-1945 the appellant has an appeal of right from this judgment to the High Court. Sec. 51 provides that the provisions of the Rules, from time to time in force, made under the High Court Procedure Act 1903 and the Judiciary Act 1903 or under those Acts as subsequently amended shall apply to appeals to the High Court from judgments of the Supreme Court as if those appeals were appeals from judgments of the Supreme Court of a State. The Rules which apply to appeals from judgments of the Supreme Court of a State are contained in section III of the Rules of this Court. Rule 12 relates to the giving of security for the costs of an appeal. It provides so far as material that within one month after the service of the notice of appeal or within such further time as the Court or a Justice allows the appellant shall give the prescribed security for the costs of the appeal..... as soon as the prescribed security is given the appeal shall be deemed to be duly instituted. This Rule does not prescribe any amount to be given as the security for the costs of an appeal from the Supreme Court of a State. The amount of the security to be given in appeals from the Supreme Courts of the States is prescribed by section 35 of the High Court Procedure Act 1903-1933. Sub-section (1) of this section provides that in any appeal to the High Court, security shall not except under an order of the Court be required to be given by a party appellant, except in the case of appeals from a judgment of the Supreme Court of a State or some other Court of a State from which at the establishment of the Commonwealth an appeal lay to the Queen in Council. Sub-section (3) provides that the amount of the security shall unless otherwise ordered by the High Court or a

Justice be fifty pounds.

The present appeal is therefore an appeal with respect to which the High Court Procedure Act directs that no security shall be required except under an order of the High Court. Section 51 of the Seat of Government Supreme Court Act adopts the provisions of the Rules of this Court from time to time in force relating to appeals from judgments of the Supreme Courts of the States. The section gives the Rules statutory force, so that, if they contained a provision prescribing the amount of the security to be lodged on appeals, such a provision might well operate as an implied repeal of the direction in section 35 of the High Court Procedure Act in the case of appeals to the High Court from the Supreme Court of the Australian Capital Territory. But the Rules are silent on the point, and in my opinion the direction in section 35 of the High Court Procedure Act still applies to such appeals. No security is therefore required in the case of an appeal from the Supreme Court of the Australian Capital Territory unless security is ordered to be given by this Court. Usually such an order would only be made on the application of the respondent. The respondent did not appear on this summons and the point of substance has not been fully argued. I may be wrong on this point, and it will be better to make an order that security be given. Usually, no doubt, the order would be that security be given amounting to £50, but, in view of the affidavit of means filed by the appellant and of the fact that the respondent has not applied for security, I will in this case order that the amount be £1. If I am right in thinking that no security is required unless an order is made by the High Court, this will operate as an order to give security. If, on the other hand I am wrong, the order will operate as an otherwise order within the meaning of section 35(3) of the High Court Procedure Act. I therefore order that the appellant pay £1 into the Supreme Court of the Australian Capital Territory within 7 days from the date of this order and that thereupon the

appeal shall be deemed to be duly instituted. I have already dealt with the other directions asked for in the summons.