

Ex parte AUSTRALIAN SPORTING CLUB LTD.; *Re* DASH AND ANOR.

1947. In Banco: Jordan C.J., Davidson and Street JJ.

March 17, 1947.

Traffic—Motor Vehicle—Race on public street—Approval of Commissioner of Police—Refusal—Appeal to court of petty sessions—Jurisdiction—Mandamus—Motor Traffic Act, 1909 No. 5, s. 4B (1) (a), (b), (3)—Amendment Act, 1937 No. 29, s. 2 (1).

Where an appeal is allowed by statute from the decision of an executive authority to a court which is authorised to exercise a jurisdiction which is both executive and original, the court is not restricted to examining the material which the executive authority had before him, but is entitled and required to consider such relevant materials as the parties desire to produce.

Meaning of "appeal," considered.

Victorian Stevedoring and General Contracting Co. Pty Ltd. v. Dignan (1931) 46 C.L.R. 73, distinguished.

MANDAMUS.

The facts appear sufficiently from the judgment of the Chief Justice.

Langsworth, for the applicant.

Holmes, for the respondent, Commissioner of Police, and to admit service on the respondent magistrate.

March 17.

JORDAN C.J. This is the return of a rule *nisi* for a common law mandamus to require a magistrate to proceed with the hearing of an appeal under s. 4B (3) of the Motor Traffic Act, 1909-1937, against a refusal of the Commissioner of Police to approve of a race between motor vehicles on public streets. Section 4B (3) provides that there shall be an appeal to a court of petty sessions holden before a stipendiary or police magistrate against such a refusal. The learned magistrate held that he had no jurisdiction to entertain the appeal except upon the footing that he was entitled to look at nothing except the material placed before the Commissioner and the Commissioner's decision on that material, because the section did not provide that the appeal was to be a rehearing.

The word "appeal" may be used in two connections. It may refer to an appeal from one judicial tribunal to another; such an appeal may be an appeal *stricto sensu* or an appeal by way of rehearing, in which latter case the jurisdiction exercised by the appellate tribunal is in part original; or the word may refer to an appeal from an executive authority to some other executive authority or to a Court. If such an appeal is to a Court, the jurisdiction which it exercises is not appellate but original: *Federal Commissioner of Taxation v. Munro* (1); *McCaughey v. Commissioner of Stamp Duties*.(2)

(1) (1926) 38 C.L.R. 153 at 181.

(2) (1945) 46 S.R. 192 at 207.

In the present case the appeal is from a decision of an executive authority to a Court which *pro hac vice* is authorised to exercise a jurisdiction which is both executive and original. This being so, the magistrate was not restricted to examining the material which the Commissioner had before him, but was entitled and required to consider such relevant material as the parties desired to produce. The learned magistrate was evidently led to take the course which he did upon a consideration of the case of *Victorian Stevedoring and General Contracting Co. Pty Ltd. v. Dignan* (1), and a supposition that the principles stated there were of general application. If his Worship's attention had been drawn to the fact that in the present case the appeal is not from a Court but from an executive authority, a type of case to which quite different considerations are applicable, I have no doubt that he would have come to a different conclusion. In the result, I think that the course which he has taken amounts in law to a constructive failure to exercise jurisdiction.

For these reasons, I think that the rule *nisi* should be made absolute, but as the Police raised no objection to the facts being gone into fully before the magistrate, I think that there should be no order as to costs.

DAVIDSON, J. I am of the same opinion, and have nothing to add.

STREET, J. I agree.

Rule absolute. No order as to costs.

Solicitor for the applicant: *Gerald W. Mitchell.*

Solicitor for the respondent: *F. P. McRae* (Crown Solicitor).

R. v. JEFFRIES.

1946. Court of Criminal Appeal: Jordan C.J., Davidson and Street JJ.

Oct. 11, 30, 1946.

Criminal Law—Evidence—Other similar acts—Guilt and guilty knowledge—Interrogation by police—Delay between arrest and charge—Warning—Confession—Admissibility—Duties of police.

At the trial of J. and C. together at Quarter Sessions, upon a charge of indecent, assault upon one another and two charges of buggery together, evidence was given by the Crown (1) of previous sodomitical practices by J.; (2) of a letter received by J. from a third party and signed, "I remain, Your loving boy, Pedro. XX"; and (3) of a verbal confession made by J. to police officers who had kept him in custody between his being arrested and charged for over two hours during which, after having warned him that he need not answer question asked by them as whatever he said might be given in evidence, they cross-examined him at length and pushed him to the floor upon his grabbing at certain written confessions made by C. produced by them to J. Both J. and C. were convicted and sentenced. Upon appeal by J. :—

Held (by Davidson and Street JJ., Jordan C.J. dissenting), (1) that on a charge of this type of offence the evidence as to J.'s previous sodomitical practices and of the letter was evidence, not only of J.'s guilty knowledge, but also of the commission of the offences charged; (2) that the evidence of J.'s confession was admissible