

[IN CHAMBERS.]

R. v. POTTAGE.

HOOD, J.

1917
June 12

Criminal law—Larceny—Appeal—Bail—Special circumstances—Appeal not heard for two months—Crimes Act 1915 (No. 2637), ss. 605, 608.

Bail will not be granted, under sec. 605 of the *Crimes Act 1915*, except in special circumstances; but where it appears that an appeal to the Full Court from a conviction on a charge of larceny and from the sentence will not be heard for two months, sufficient cause is shown to justify bail being granted.

APPLICATION TO ADMIT TO BAIL.

The prisoner was convicted on a charge of larceny before the Supreme Court on 31st May 1917, and sentenced to six months' imprisonment with hard labour.

On 9th June 1917 the prisoner gave notice of his intention to appeal to the Full Court against the conviction and the sentence, under Part V. of the *Crimes Act 1915*.

The application was made on notice, supported by an affidavit by Joseph Barnett, the solicitor for the prisoner, which stated the above facts, the grounds of appeal, the belief that bail could be found, and the improbability of the appeal being heard before 2nd August following.

Shelton in support—This application is made under sec. 605 of the *Crimes Act 1915*. Sec. 608 gives power to any Judge of the Supreme Court to grant bail. The English practice is stated in *Ross's The Court of Appeal*, p. 73, which requires special circumstances to be shown before bail will be granted. The Full Court will not sit before 2nd August; the prisoner should not be detained in goal for that time pending the hearing of the appeal.

Woinarski, K.C., to oppose—Very special circumstances must be shown before the Court will grant bail: *R. v. Edgar Gordon (a)*. In this case no special grounds have been shown.

Hood, J. The general rule is that bail will not be granted except in special circumstances. In this case the prisoner was sentenced on 31st May, and the next sittings of the Full Court will not be held before August. He was also on bail before trial, and his sentence is not a long one. In these circumstances I think

(a) [1911] 7 Cr. Ap. R. 182.

HOOD, J. bail should be granted on the prisoner entering into a bond for
 1917 100l., with two sureties for 100l. each, the sureties to be approved
 R. v. POTTAGE. by the police.

Application granted.

Solicitor for the prisoner: *J. Barnett.*

Solicitor for the Crown: *Guinness*, Crown Solicitor.

H. D. W.

[IN CHAMBERS.]

HODGES, J.

In the Will of ROSS, deceased.

1917
 May 21.

STEWART v. STEWART.

Will—Interpretation—Gift for donee's own use—Gift over of "what is left"—Life estate and remainder—No repugnancy or uncertainty.

A testator, who was a marksman, and who left real and personal estate, made his will in the following terms:—"After payment of all my just debts funeral and testamentary expenses I give devise and bequeath unto my wife M. R. all my real and personal estate for her own use and at her death what real and personal estate is left to be equally divided between my two grandchildren J. S. and A. S." J. S. and A. S. were appointed executors.

Held, that M. R. took a life estate and interest only in the testator's property, and that subject thereto it belonged to J. S. and A. S. absolutely.

ORIGINATING SUMMONS.

A testator, who died on 4th April 1915, left a will in the following terms:—"This is the last will and testament of me. John Ross 'Dunfield' Seville County of Evelyn State of Victoria. After payment of all my just debts funeral and testamentary expenses I give devise and bequeath unto my wife Margaret Ross all my real and personal estate for her own use and at her death what real and personal estate is left to be equally divided between my two grandchildren John Ross Stewart and Alfred Edward Stewart. And I hereby appoint the said John Ross Stewart and Alfred Edward Stewart executors of this my will."

The testator signed the will with his mark. Probate of the will was granted to the said executors on 5th July 1915.

All the beneficiaries referred to in the will survived the testator. His widow, Margaret Ross, died intestate on 18th