Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Rieken v. *The Bench of Justices for the Yorke Peninsula Licensing District; and on the Appeal of Keam and others* v. *The Bench of Justices for the Adelaide Licensing District, from the Supreme Court of South Australia; delivered the 20th July* 1908.

Present at the Hearing:

LORD ROBERTSON.

LORD ATKINSON.

LORD COLLINS.

SIR ARTHUR WILSON.

[*Delivered by Lord Collins.*]

The question sought to be raised by these Appeals is whether the Supreme Court of South Australia, in making absolute a Rule for Prohibition at the instance of the Appellants—the Relators—against the Respondent Justices, was justified in refusing to order the Respondents to pay the Appellants' costs.

The case was argued on both sides on the footing that the jurisdiction of the Australian Court over costs in Prohibition is the same as that of the Courts having jurisdiction at home. The Appellants contended that the Australian Court had virtually declined jurisdiction to award costs against the Respondents by holding (by a majority) that they had no power to do so unless the Respondents were personally guilty of misconduct, which the Court negatived. The

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Respondents, on the other hand, contended that there had been no declining of jurisdiction on the part of the Court, but that they in fact merely exercised the jurisdiction conferred upon them by declining in their discretion to visit with costs Justices who had, in the public interest, assisted the Court by instructing Counsel in a matter of considerable difficulty to argue their view of the case.

The Respondents further contended that the appeal was for costs only, and that this Board ought not to entertain it.

No doubt that rule is firmly established, *Wilson* v. *Reg.*, L.R., 1 P.C., at p. 408 *per* Cairns, L.J. The rule is thus stated by Lord Brougham in *Inglis* v. *Mansfield*, 3 Cl. and Fin. at p. 371 :—

> " The rule with respect to costs in this House, as " well as in the Privy Council and the Court of " Chancery, is, that you cannot appeal for costs alone ; " but you can bring an appeal on the merits ; and if " that is not a colourable ground of appeal for the " purpose of introducing the question of costs to the " Court called upon to review the case, the Court of " Review will treat that, not as an appeal for costs, " but will, in affirming the judgment given in the " Court below, consider the question of costs as if it is " fairly raised."

The rule is stated somewhat more favourably for the Appellants in *Yeo* v. *Tatem*, L.R., 3 P.C., at p. 702 :—

> " Where there has been a mistake upon some " matter of law that governs or affects costs—some " matter that involves the due application of principles " of law—the party prejudiced is entitled to have the " benefit of correction by appeal."

But even tried by this standard the cases now under appeal do not seem to their Lordships to involve a mistake in any matter of law. There was nothing amounting, in their opinion, to a declining of jurisdiction by the majority of the

Court. They exercised jurisdiction by refraining to visit with costs Justices who, in their opinion, had done no more than their duty in instructing Counsel to show cause, and it is no argument against the soundness of that discretion that the course they took coincided with the practice which is usually followed in this country in such cases; *see* Short and Mellor, p. 229, Ed. 1908.

Their Lordships will humbly advise His Majesty that the Appeals ought to be dismissed. The Appellants must pay the costs of their respective Appeals.