# SUPREME COURT OF QUEENSLAND

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| CITATION: | *Mathews v Cabrera* [2010] QCA 300 |
| PARTIES: | **MATHEWS, Russell Gordon Haig**<br>(respondent/applicant)<br>**v**<br>**CABRERA, Louis Jesus**<br>(appellant/respondent) |
| FILE NO/S: | CA No 144 of 2010<br>DC No 1280 of 2010<br>DC No 1541 of 2010 |
| DIVISION: | Court of Appeal |
| PROCEEDING: | Application for leave s 118 DCA (Criminal) |
| ORIGINATING COURT: | District Court at Brisbane |
| DELIVERED EX TEMPORE ON: | 26 October 2010 |
| DELIVERED AT: | Brisbane |
| HEARING DATE: | 26 October 2010 |
| JUDGES: | Holmes and Fraser JJA and McMeekin J<br>Separate reasons for judgment of each member of the Court, each concurring as to the order made |
| ORDER: | **Application dismissed** |
| CATCHWORDS: | APPEAL AND NEW TRIAL – APPEAL - GENERAL PRINCIPLES – RIGHT OF APPEAL – WHEN APPEAL LIES – OTHER CASES – where applicant charged with contravening a direction under the *Police Powers and Responsibilities Act* 2000 (Qld) – where Magistrates Court granted the prosecutor an adjournment to enable police to complete paperwork dismissing the charge – where applicant had sought a dismissal of the charge – where no evidence offered at a subsequent hearing and charge dismissed – whether initial decision to adjourn and subsequent decision to dismiss the charge are capable of appeal under s 222 of the *Justices Act* 1886 (Qld)<br><br>*Justices Act* 1886 (Qld), s 222<br><br>*Coulter v Ryan* [2007] 2 Qd R 302; [2006] QCA 567, cited<br>*Paulger v Hall* [2003] 2 Qd R 294; [2002] QCA 353, cited<br>*Schneider v Curtis* [1967] Qd R 300, cited |
| COUNSEL: | The applicant appeared on his own behalf<br>D Meredith appeared for the respondent |

SOLICITORS: The applicant appeared on his own behalf
Director of Public Prosecutions (Qld) for the respondent

**HOLMES JA:** On 12 April 2010, the applicant for leave to appeal appeared before a Magistrates Court charged with contravening a direction under the *Police Powers and Responsibilities Act* 2000 (Qld), that direction being to remove material from a website. However, the prosecutor sought an adjournment, informing the Court that she could not establish that the direction was given under the *Police Powers and Responsibilities Act* and asking for time to enable the police to do the paperwork. Although the applicant had sought the dismissal of the charge, the magistrate granted the adjournment. On 10 May 2010 the prosecution offered no evidence in respect of the charge and it was dismissed. The applicant filed notices of appeal under s 222 of the *Justices Act* 1886 (Qld) against, respectively, the failure to dismiss the charge and the adjournment of the hearing on 12 April 2010 and the order dismissing the charge on 10 May 2010.

The deputy registrar referred the first of those appeals, against the order of 12 April 2010, to a judge of the District Court, submitting that it should be struck out because it concerned an interlocutory order, and hence, an order not susceptible to appeal under s 222 of the *Justices Act*. The learned judge accepted that submission, which was supported by the Crown, and struck out the appeal against the order of 12 April 2010 on that basis. The grounds of the appeal against the order of 10 May 2010 said that it was brought "against the date of [the] order", and contended that the charge should have been dismissed 28 days earlier. Since the actual dismissal of the charge was not itself the subject of that appeal, it too was struck out.

The applicant now seeks leave to appeal to this Court, seeking orders that the appeal be allowed; that the dismissal of the charge be recorded as occurring on 12 April 2010; and that this Court give various instructions to the Magistrates Court as to how it should proceed.

Leave to appeal should not be granted. The applicant argues that the magistrate assumed the role of the prosecutor so as to make his decision to adjourn a nullity. That contention is not made out as a matter of fact on the transcript, nor is it good as a legal argument. The learned District Court judge, in striking out the appeal against the order of 12 April 2010, did so on the basis of authority to the effect that an appeal cannot lie under

that provision against an interlocutory order: see *Schneider v Curtis* [1967] Qd R 300; *Paulger v Hall* [2003] 2 Qd R 294; and *Coulter v Ryan* [2007] 2 Qd R 302. On those authorities, the decision clearly was correct. The date of the decision of 10 May 2010 is not, of itself, an order capable of appeal under s 222. The decision itself was patently correct in the light of the prosecutor's offering no evidence and the applicant cannot be said to be aggrieved by the making of the order, which was in his favour.

I should mention that the applicant made a further complaint that the District Court judge continued the proceeding after his telephone connection to the Court had been terminated. There is no suggestion that anything happened after that, other than the formal ruling in the matter which was available to the applicant in written form and was used by him, plainly enough, for the purposes of this application. There is nothing in that point.

I would dismiss the application.

**FRASER JA:** I agree.

**McMEEKIN J:** I agree.