HIGH COURT OF AUSTRALIA

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Details of Filing

File Number:	S24/2024
File Title:	State of Queensland v. Mr Stradford (a pseudonym) & Ors
Registry:	Sydney
Document filed:	Form 27A - Appellant's submissions
Filing party:	Applicant
Date filed:	28 Mar 2024

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IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

No. S24/2024

BETWEEN:

STATE OF QUEENSLAND
Appellant

and

MR STRADFORD (A PSEUDONYM)
First Respondent

JUDGE SALVATORE PAUL VASTA
Second Respondent

COMMONWEALTH OF AUSTRALIA
Third Respondent

APPELLANT'S SUBMISSIONS

Filed on behalf of the Appellant

28 March 2024

PART I: CERTIFICATION

1. These submissions are in a form suitable for publication on the Internet.

PART II: ISSUES PRESENTED ON APPEAL

2. There are two issues in this appeal:

   (a) *First*, whether s 249 of the *Criminal Code* (Qld) applies to police and corrective services officers who execute an apparently valid warrant issued by the Federal Circuit Court of Australia (**Circuit Court**), and the warrant is later held to be invalid;

   (b) *Second*, whether the common law affords protection from civil liability to police and corrective services officers who act in obedience to an apparently valid warrant of commitment and imprisonment that is later held to be invalid.

PART III: SECTION 78B NOTICES

3. The appellant considers that notice is not required.

PART IV: REPORTED REASONS FOR JUDGMENT

4. *Stradford (a pseudonym) v Judge Vasta* [2023] FCA 1020.[1]

PART V: FACTS AND BACKGROUND

5. On 6 December 2018, Judge Vasta, constituting the Circuit Court, declared Mr Stradford in contempt of certain orders made by the Court, and sentenced him to a period of imprisonment of 12 months. A written order issued, which was attached to a Warrant of Commitment (the **Warrant**).

6. The Warrant directed police officers to 'take and deliver' Mr Stradford to the Commissioner of Queensland Corrective Services (the **Commissioner**) and directed the Commissioner to receive Mr Stradford into custody and keep him in accordance with the order.

7. At about 1pm on Thursday 6 December 2018, Mr Stradford was taken by officers of the Queensland Police Service to the Roma Street Watchhouse, where he remained in their custody. On 10 December 2018, he was delivered to the Brisbane Correctional Centre and into the custody of the Commissioner.[2] On 12 December 2018, the imprisonment order and the Warrant were stayed pending an appeal to the Full Court of the Family Court of Australia, and Mr Stradford was released from custody.

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[1] Reasons for judgment (**RJ**).

[2] RJ [44]-[48].

8. On 15 February 2019, the Full Court of the Family Court allowed Mr Stradford's appeal.[3] The declaration and order made by Judge Vasta were set aside on several bases, including denial of procedural fairness and prejudgment.

9. Mr Stradford sued Judge Vasta, the Commonwealth and Queensland for false imprisonment. At trial, the appellant (**Queensland**) argued that no liability attached to the officers of the Queensland Police Service or Queensland Corrective Services (**Queensland officers**) who detained Mr Stradford (or, therefore, to it[4]) because:

   (a) the common law did not impose tortious liability on persons acting in obedience to a warrant of commitment and imprisonment; and

   (b) s 249 of the *Criminal Code* (Qld) rendered the conduct of the officers lawful and so provided a statutory defence.

10. In relation to s 249, Mr Stradford accepted that if s 249 applied to warrants issued by federal courts then it would, when read with s 250, provide a defence to Queensland. For that reason, in relation to the statutory defence, the only question at trial was whether s 249 applied to warrants issued by federal courts.

11. The primary judge (Wigney J) held Queensland liable in false imprisonment. His Honour found that no defence was available to the Queensland officers at common law and that s 249 did not apply to warrants issued by federal courts.[5]

PART VI: ARGUMENT

Section 249 of the Criminal Code applies to warrants issued by federal courts

12. Justice Wigney's conclusion about s 249 turned on his construction of that provision. According to his Honour, 'the court which issues the warrant for the purposes of s 249 must be a court "in and for" Queensland, and the jurisdiction pursuant to which the warrant was issued must be jurisdiction "in and of" Queensland.'[6] His Honour founded that construction on a 'general rule of construction which effectively confines references

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[3] *Stradford v Stradford* (2019) 59 Fam LR 194.

[4] Queensland accepted that any liability arising from its officers' conduct attached to it by reason of the *Police Service Administration Act 1990* (Qld) ('PSA Act'), s 10.5 and *Corrective Services Act 2006* (Qld), s 349.

[5] RJ [544]. See also RJ [546].

[6] RJ [546].

in State enactments to State courts, proceedings and officers'[7] and on both paragraphs of s 35(1) of the ***Acts Interpretation Act*** *1954* (Qld).

13. His Honour's construction and the reasoning behind it were mistaken, for two reasons.

14. *First*, assuming that s 35(1)(b) of the *Acts Interpretation Act* and any like common law rule have work to do in relation to s 249 of the *Criminal Code*, their application has been displaced by a contrary intention. Section 249 applies in a way that is 'commensurate' with the application of the provisions of the *Criminal Code* imposing criminal liability.[8]

15. *Second*, for similar reasons, the application of s 35(1)(a) of the *Acts Interpretation Act* has been displaced by a contrary intention. So has any 'general rule of construction' that certain words are presumed to have a confined meaning related to the enacting polity.

16. Accordingly, s 249 applies to warrants, issued by a federal court, such as the Warrant that the police officers and the Commissioner executed in this case.

Section 35(1)(b), and any like common law presumption, is displaced by a contrary intention

17. Section 249 of the *Criminal Code* provides:

> **249 Execution of warrants**
>
> It is lawful for a person who is charged by law with the duty of executing a lawful warrant issued by any court or justice or other person having jurisdiction to issue it, and who is required to arrest or detain another person under such warrant, and for every person lawfully assisting a person so charged, to arrest or detain that other person according to the directions of the warrant.

18. That section needs to be read with s 250, which provides:

> **250 Erroneous sentence or process or warrant**
>
> If the sentence was passed, or the process was issued, by a court having jurisdiction under any circumstances to pass such a sentence or to issue such process, or if the warrant was issued by a court or justice or other person having authority under any circumstances to issue such a warrant, it is immaterial whether the court or justice or person had or had not authority to pass the sentence or issue the process or warrant in the particular case; unless the person executing the same knows that the sentence or process or warrant was in fact passed or issued without authority.

19. The relevant effect of reading the two provisions together is this: s 249 applies even if the warrant issued was invalid, provided that the court *could have* validly issued such a

[7] RJ [538].

[8] *Birmingham University and Epsom College v Federal Commissioner of Taxation* (1938) 60 CLR 572, 580 (Dixon J).

warrant 'in any circumstances' and provided that the person who arrested or detained another pursuant to the warrant did not know of the warrant's invalidity.

20. Section 35(1) of the *Acts Interpretation Act* provides:

> In an Act—
>
> (a) a reference to an officer, office or entity is a reference to such an officer, office or entity in and for Queensland; and
>
> (b) a reference to a locality, jurisdiction or other thing is a reference to such a locality, jurisdiction or other thing in and of Queensland.

21. Section 35(1)(b) of the *Acts Interpretation Act* lays down a general rule that statutes be construed as territorially limited.[9] It operates no differently from the common law presumption against extraterritoriality.[10] That presumption makes it necessary first to identify the statute's 'hinge' or 'central subject matter'. If the 'hinge' does not have a clear territorial connection, the presumption will generally require the 'hinge' to be construed as territorially limited, subject to a contrary intention.[11] But the presumption will not ordinarily apply to all elements or words in a statute.[12]

22. That process is not required if a statute provides expressly for its territorial reach. In such a case, there is no call to identify a statute's 'hinge' and it is unnecessary to consider either s 35(1)(b) or the common law presumption against extraterritoriality.[13] In those circumstances, the nature of the connection between the subject matter of the statute and Queensland as a 'geographically bounded polity'[14] has been stated by the legislature.

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[9] Note that different considerations apply to statutes creating criminal offences: *BHP Group Ltd v Impiombato* (2022) 96 ALJR 956, 970 [59] fn 96 (Gordon, Edelman and Steward JJ) ('*BHP*').

[10] *BHP* (2022) 96 ALJR 956, 971-972 [63] (Gordon, Edelman and Steward JJ). Chief Justice Kiefel and Gageler J considered the common law presumption (at least as it applies to Commonwealth legislation) to be based on a 'presumption in favour of international comity' (at 963 [23]) and to operate separately from the statutory presumption in s 21(1)(b) of the *Acts Interpretation Act 1901* (Cth). However, their Honours' approach to s 21(1)(b) likewise required statutes to be 'construed to ensure that a connection exists between the subject matter to which the statute refers, on the one hand, and the Commonwealth of Australia understood compositely as a geographically bounded polity, on the other': at 964 [36] (footnote omitted). That construction, their Honours said, 'might well be arrived at through the concurrent application of the common law presumption': at 965 [37].

[11] *BHP* (2022) 96 ALJR 956, 971 [62] (Gordon, Edelman and Steward JJ).

[12] *BHP* (2022) 96 ALJR 956, 971 [62] (Gordon, Edelman and Steward JJ). See also *O'Connor v Healey* (1967) 69 SR (NSW) 111, 114 (Jacobs JA); *Law Society of New South Wales v Glenorcy Pty Ltd* (2006) 67 NSWLR 169, 177 [37] (Mason P); *DRJ v Commissioner of Victims Rights (No 2)* (2020) 103 NSWLR 692, 721 [116] (Leeming JA) ('*DRJ*') (describing as a fallacy the view that every reference to every locality, every jurisdiction and every thing in a statutory provision must be read as a reference to that locality, jurisdiction, in and of a State).

[13] *BHP* (2022) 96 ALJR 956, 970 [59] (Gordon, Edelman and Steward JJ).

[14] *BHP* (2022) 96 ALJR 956, 964 [36] (Kiefel CJ and Gageler J).

23. Sections 12-14 of the *Criminal Code* expressly provide for the Code's territorial reach. That fact may suggest that neither s 35(1)(b), nor the common law presumption against extraterritoriality, has any work to do in relation to s 249 of the *Criminal Code*.

24. For present purposes, however, it can be assumed that s 35(1)(b) and the common law presumption do have work to do. It can also be assumed that s 35(1)(b) mandates that every reference in s 249 to a 'warrant', 'court' and 'jurisdiction'—rather than just the 'hinge' of the statute—must be presumed to be 'in and for' Queensland.[15] On that basis, s 249 can be presumed not to refer to the Circuit Court, which is 'an institution for the administration of justice in and for the Commonwealth'.[16] Exploring the correctness of these assumptions is unnecessary. That is because the *Criminal Code* manifests a contrary intention that displaces the application of s 35(1)(b) and the common law presumption.[17]

25. The process of identifying a contrary intention requires 'giving legal meaning to the statute', and hence the application of 'judge-made rules of construction'.[18] A contrary intention may appear, for example, from the reading the Act as a whole, from the necessity to avoid frustrating the purpose of the legislation, or from 'the object, subject matter or history of the enactment'.[19] Hence, in *D151 v New South Wales Crime Commission*,[20] the New South Wales Court of Appeal held the presumption was displaced having regard to the subject matter and structure of the *Crime Commission Act 2012* (NSW), as well as practical considerations relating to its operation.[21]

26. Here, context and purpose indicate that a warrant issued by a federal court is a warrant issued by 'any court, justice or other person having jurisdiction to issue it' for the purposes of s 249. That conclusion is also consistent with the deliberately broad language

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15 The assumption would appear to be inconsistent with the approach outlined in *BHP* (2022) 96 ALJR 956, 970 [62] (Gordon, Edelman and Steward JJ); *Law Society of New South Wales v Glenorcy Pty Ltd* (2006) 67 NSWLR 169, 177 [37] (Mason P); and *DRJ* (2020) 103 NSWLR 692, 721 [116] (Leeming JA). It reflects, however, the approach of Wigney J: see RJ [544].

16 Like the Federal Court: as to which, see *BHP* (2022) 96 ALJR 956, 965 [39] (Kiefel CJ and Gageler J).

17 The application of s 35, like other provisions of the *Acts Interpretation Act*, can be displaced by a contrary intention: see s 4.

18 *DRJ* (2020) 103 NSWLR 692, 721 [116] (Leeming JA).

19 *DRJ* (2020) 103 NSWLR 692, 698 [10] (Bell P). See also, *Waller v Freehills* (2009) 177 FCR 507, 520-521 [53]-[58] (the Court); *Birmingham University and Epsom College v Federal Commissioner of Taxation* (1938) 60 CLR 572, 579-580 (Dixon J); *Australian Securities Commission v Bank Leumi Le-Israel* (1995) 134 ALR 101, 123-124 (Sackville J); *Schmidt v Government Insurance Office (NSW)* [1973] 1 NSWLR 59, 66-67 (Moffitt JA, Reynolds JA agreeing).

20 (2017) 94 NSWLR 738 (*'D151'*). The question was whether s 35A of the *Crime Commission Act 2012* (NSW), which provided for leave of Supreme Court to take evidence from a person subject to a current charge for an 'offence', extended to offences against federal laws.

21 *D151* (2017) 94 NSWLR 738, 748 [33] (Basten JA). See also 695 [1] (Beazley ACJ), 760 [96] (Simpson JA).

of the provision[22] and with the principle that Parliament would not intend to bring about unreasonable or improbable consequences.[23]

27. Section 249 appears in ch 26 of the *Criminal Code*, 'Assaults and Violence to the Person Generally – Justification and Excuse'.[24] Within that chapter, s 245 defines 'assault' and s 246(1) provides that '[a]n assault is unlawful and constitutes an offence unless it is authorised or justified or excused by law'.[25] Sections 247 to 249 then provide that '[i]t is lawful' for persons charged by law with the duty of executing a sentence, process or warrant of a court, to give effect to a sentence, or to arrest or detain another person in execution of a process or warrant.[26] Section 250 makes clear that ss 247 to 249 apply where a court which has jurisdiction 'in any circumstances' but did not have authority to pass the sentence or issue the process or warrant 'in the particular case', unless the person knew the sentence, process or warrant was in fact passed or issued without authority. The balance of ch 26 concerns other justifications and excuses for offences against the person.

28. The offences of common assault (s 335 in ch 30, 'Assaults') and deprivation of liberty (s 355 in ch 33, 'Offences against liberty') are examples of such offences. Under s 335(1), any person who unlawfully assaults another is guilty of a misdemeanour. Under s 355, any person who unlawfully confines or detains another in any place against the other person's will, or otherwise unlawfully deprives another of the other person's personal liberty, is guilty of a misdemeanour. The penalty in each case is 3 years' imprisonment.

29. Both offences apply in Queensland in the way set out in ss 12-14 of the *Criminal Code* ('Application of Code as to offences wholly or partially committed in Queensland'). Section 12(1) provides: 'This Code applies to every person who does an act in Queensland or makes an omission in Queensland, which in either case constitutes an

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[22] Particularly the words the words 'any court, justice or other person'. Broad language can support a finding that there is a contrary intention: see, eg, *B v T* [2008] 1 Qd R 33, 38 [18], [21] (Lyons J).

[23] For the relevance of consequences to statutory construction, see, eg, *Cooper Brookes (Wollongong) Pty Ltd v Commissioner of Taxation of the Commonwealth of Australia* (1981) 147 CLR 297, 320-321 (Mason and Wilson JJ); *CIC Insurance Ltd v Bankstown Football Club Ltd* (1997) 187 CLR 384, 408 (Brennan CJ, Dawson, Toohey and Gummow JJ). See also *In re Rouss* (1917) 116 NE 782, 785 (Cardozo J) cited in *Abebe v Commonwealth* (1999) 197 CLR 510, 532 [43] fn 74 (Gleeson CJ and McHugh J): 'Consequences cannot alter statutes, but may help to fix their meaning.'

[24] The source for ss 247 to 250 of the *Criminal Code* was the *Criminal Code Bill 1880* (UK), the corresponding clauses being ss 26 to 30.

[25] The offences involving assault are set out in ch 30, 'Assaults'.

[26] By making the conduct to which they apply 'lawful', ss 247-249 avoid both criminal and civil liability attaching to that conduct. As to civil liability, see s 6(1) of the *Criminal Code*.

offence'. The subsequent subsections of s 12 provide for when acts or omissions will be offences under the *Criminal Code*, notwithstanding that not all elements of the offence occurred in Queensland.

30. As this overview shows, absent lawful authority, a person who enforces in Queensland an invalid warrant of a federal court is likely to commit offences against the *Criminal Code*, particularly common assault (in s 335) and deprivation of liberty (in s 355). Section 249 provides that authority.[27] If it does not (and on Wigney J's construction, it does not), the *Criminal Code* would give rise to extraordinary consequences. First, the *Criminal Code* would potentially expose police officers and corrective services officers to criminal liability for executing apparently valid warrants of federal courts. That would occur notwithstanding judicial recognition that it is 'absurd' to suppose that officers can determine the legality of the warrants that they are charged with executing.[28] Second, and relatedly, the *Criminal Code* would tend to discourage officers from executing warrants of inferior federal courts. For this reason, to exclude federal courts from the scope of s 249 would compromise the efficient administration of justice in those courts. None of these consequences can plausibly have been intended by the legislature.

31. Further, Wigney J's construction of s 249—according to which it does not apply to a State court exercising federal jurisdiction[29]—would have extraordinary consequences for the efficient administration of justice in *State* courts. By reason of s 39 of the *Judiciary Act 1903* (Cth), a State court will exercise federal jurisdiction in a variety of circumstances, such as when one party resides interstate, where a cause or defence arises under a Commonwealth statute, or where a constitutional issue arises in the proceeding.[30] It may happen that neither the court nor the parties—let alone a corrective services or police officer enforcing the court's warrant—recognise that federal jurisdiction has been

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[27] There may be an overlap between s 249 and s 31(1)(b) of the *Criminal Code*. However, the application of s 35 of the *Acts Interpretation Act* poses the same issues for s 31(1)(b).

[28] *Painter v The Liverpool Gas Light Company* (1836) 3 Ad & E 433; 111 ER 478, 482 (Lord Denman CJ): '[I]t would be absurd that an officer charged with the execution of a warrant should have to pause and consider whether it was regularly issued or not.' See also at 484 (Williams J).

[29] 'Federal jurisdiction is authority to adjudicate derived from the *Constitution* or a Commonwealth law': *Burns v Corbett* (2018) 265 CLR 304, 347 [71] (Gageler J).

[30] *Citta Hobart Pty Ltd v Cawthorn* (2022) 96 ALJR 476, 486 [31] (Kiefel CJ, Gageler, Keane, Gordon, Steward and Gleeson JJ).

enlivened.[31] Accordingly, a construction of s 249 which would expose a person to civil and criminal liability on the basis of the 'happenstance'[32] that the court was exercising federal jurisdiction would tend to discourage officers from executing the warrants of State courts. It is difficult to understand why the legislature would have intended to produce such outcomes.

32. This is a case, like ***Birmingham University*** *and Epsom College v Federal Commissioner of Taxation*, where because an exemption 'enters into the very definition of liability', its application should be construed as 'commensurate with the application of the provisions imposing liability', rather than limited by the presumption contained in s 35(1)(b).[33] In *Birmingham University*, the *Income Tax Assessment Act 1936* (Cth) made non-residents liable to pay tax on income derived from sources in Australia, but exempted charitable institutions from liability for income tax. Relying on s 21(b) of the *Acts Interpretation Act 1901* (Cth) (an analogue of s 35(1)(b)), the Commissioner submitted that the exemption applied only to charitable institutions 'in and of the Commonwealth'. That submission was unanimously rejected. Justice Dixon observed that, as s 21(b) had no application to the liability provisions, there would be 'an inconsistency in turning to the very exemption to which the liability provisions refer and then using s 21(b) of the *Acts Interpretation Act* for the purpose of limiting the exemption.'[34] The same conclusion applies here.

33. The above matters indicate—as does the broad statutory language—that s 249 is intended to apply to the execution within Queensland of a warrant issued by *any* court (including a federal court), and irrespective of the source of the court's authority to issue the warrant.[35] Likewise, properly construed, s 249 applies to a warrant issued by any justice or other person having jurisdiction to do so, irrespective of the source of that person's

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31 See, eg, *Momcilovic v The Queen* (2011) 245 CLR 1, 80-82 [134]-[139] (Gummow J) (pointing out that the fact that the matter was in federal jurisdiction because Ms Momcilovic resided in Queensland was not apparent to the County Court).

32 Compare *DRJ* (2020) 103 NSWLR 692, 734 [169] (Leeming JA).

33 (1938) 60 CLR 572, 580 (Dixon J). See also 576 (Lantham CJ), 578-579 (Rich J), 582 (Dixon J).

34 (1938) 60 CLR 572, 580 (Dixon J).

35 It makes no difference to this analysis that when s 249 was enacted, no federal courts were yet in existence. Section 249 must be understood as 'always speaking': see, eg, *Aubrey v The Queen* (2017) 260 CLR 305, 326 [39]-[40] (Kiefel CJ, Keane, Nettle and Edelman JJ). A federal court plainly comes within the class of things that possess the essential attributes of a 'court' as understood in 1899: cf Perry Herzfeld and Thomas Prince, *Interpretation* (Lawbook Co, 2nd ed, 2020) 28 [2.30]. Moreover, if s 249 applied only to courts existing in 1899, it would exclude several State courts (including the Planning and Environment Court, the Industrial Court of Queensland, the Childrens Court of Queensland and the Mental Health Court).

authority. That intention is contrary to, and so displaces, any presumption arising from s 35(1)(b) of the *Acts Interpretation Act*.

34. The fact that, in some other places in the *Criminal Code*, the word 'court' is used in a sense confined to State courts does not alter these conclusions.[36] Provisions such as s 200 of the *Criminal Code* (which makes it an offence for persons 'employed in the public service, or as an officer of any court or tribunal' to refuse to do their duty) and s 561 (which provides that a 'Crown Law Officer may sign and present an indictment in any court of criminal jurisdiction against any person for any indictable offence') serve vastly different purposes to s 249. Their presence in the *Criminal Code* does not require that every other reference to a court in the *Criminal Code* should be read as confined to State courts. The expression 'a court order' in s 77C(1)(b)(vii) illustrates the point. Like s 249, s 77C(1)(b)(vii) provides an exemption that enters into the definition of a liability: it exempts from the category of conduct that can constitute 'consorting' with a recognised offender 'consorting with a recognised offender while the person is … complying with a court order'. The context would displace any application of s 35(1)(b) of the *Acts Interpretation Act* to the expression 'a court order'.

35. Accordingly, on the assumption that s 35(1)(b) of the *Acts Interpretation Act* and the common law presumption would otherwise apply to s 249, their operation has been displaced. Justice Wigney was wrong to have reached a contrary conclusion.

Section 35(1)(a), and any like common law presumption, is displaced by contrary intention

36. Section 35(1)(a) of the *Acts Interpretation Act* provides that in an Act, 'a reference to an officer, office or entity is a reference to such an officer, office or entity in and for Queensland'. A court is an 'entity'.[37] Assuming that s 35(1)(a) has an operation which is truly separate from s 35(1)(b),[38] it may be accepted that s 35(1)(a) gives rise to a presumption that the reference to 'court' in s 249 of the *Criminal Code* is a reference to courts 'in and for Queensland'. In short, subject to a contrary intention, s 249 would not apply to warrants issued by the Circuit Court.

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[36] For example, some provisions provide that a person convicted may be imprisoned or fined 'at the discretion of the court' (eg, ss 87, 89, 90).

[37] 'Entity' is defined in sch 1 to the *Acts Interpretation Act* to include a person and an unincorporated association. That definition is not exhaustive.

[38] For cases in which s 35(1)(a) or an analogue thereof has been given a separate operation, see, eg, *Doyle's Farm Produce Pty Ltd v Murray Darling Basin Authority* (2021) 249 LGERA 183, 191-192 [30]-[32] (Adamson J) and *Botany Municipal Council v Federal Airports Corporation* (1992) 175 CLR 453, 466-467.

37. For the reasons explained in paragraphs [25] to [35] above, however, the *Criminal Code* manifests a contrary intention that displaces the application of s 35(1)(a) of the *Acts Interpretation Act* to s 249.

38. Justice Wigney also relied upon *Seaegg v The King*[39] and *Solomons v District Court (NSW)*[40] for a 'longstanding general rule of construction which effectively confines references in State enactments to State courts, proceedings and officers'.[41] A common law rule of that kind has been described as a 'particular operation' of the presumption against extraterritorial application.[42] It is not apparent how the underlying rationale for that presumption—whether it be described as 'international comity'[43] or simply the need to confine apparently general words to matters within territorial limits[44]—would support the existence of the general rule of construction that Wigney J identified. It is not, however, necessary for this Court to decide that issue. Again, for the reasons set out above at [25] to [35], a contrary intention displaces the application of any such rule.

39. It follows that, properly construed, s 249 applies to warrants issued by a federal court. It applied to the Warrant, which was directed to police officers, including Queensland Police, and to the Commissioner. On its face, the Warrant required those persons to arrest and then detain Mr Stradford. That is what was done. As there is no suggestion that the police officers or corrective services officers knew that the warrant and order had been issued without authority, s 249 shielded those officers from criminal and tortious liability.

40. On that basis alone, the appeal should be allowed.

The common law defence for those obliged to give effect to an apparently valid warrant

41. Justice Wigney concluded that, although there was 'considerable uncertainty',[45] the authorities support the proposition that at common law, officers of the court, who were bound by their office to obey a warrant, were afforded protection from tortious liability

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[39] (1932) 48 CLR 251.

[40] (2002) 211 CLR 119.

[41] RJ [538].

[42] Perry Herzfeld and Thomas Prince, *Interpretation* (Lawbook Co, 2nd ed, 2020) 218 [9.270]. See *Seaegg v The King* (1932) 48 CLR 251, 255 (the Court) and *Solomons v District Court (NSW)* (2002) 211 CLR 119, 130 [9] (Gleeson CJ, Gaudron, Gummow, Hayne and Callinan JJ) which are frequently cited as a statement of the broader presumption, eg, in *DRJ* (2020) 103 NSWLR 692, 698 [11] (Bell P) and *D151* (2017) 94 NSWLR 738, 744-745 [19] (Basten JA).

[43] See *Karpik v Carnival Plc* (2023) 98 ALJR 45, 52 [22] (the Court).

[44] *BHP* (2022) 96 ALJR 956, 963 [27] citing *Jumbunna Coal Mine NL v Victorian Coal Miners' Association* (1908) 6 CLR 309, 363 (O'Connor J).

[45] RJ [510].

for actions taken in the enforcement of an apparently valid but actually invalid warrant.[46] Other persons obliged to assist in the execution and enforcement of warrants—including police officers and gaolers—were not.[47] His Honour considered that those cases which appeared to suggest that the immunity extended beyond ministerial officers 'may be explained on the basis of the suppressed premise of statutory protection', being the ***Constables Protection Act** 1750* (UK).[48] No common law protection accrued to the Queensland officers because they were not ministerial officers of that Court.[49]

42. For the following reasons, those conclusions were mistaken.

43. As has long been recognised,[50] an order or warrant of an inferior court made without jurisdiction is a nullity: 'it has no legal force as an order of that court'.[51] Two relevant consequences follow. First, it is not a contempt to disobey such an order.[52] 'Any person may disregard it'.[53] Second, '[w]here there is doubt about whether a judicial order of an inferior court is made within jurisdiction, the validity of the order "must always remain an outstanding question" unless and until that question is authoritatively determined by some other court in the exercise of judicial power within its own jurisdiction'.[54]

44. Consequently, where a person is charged with the duty of enforcing a warrant issued by an inferior court, the principle that an invalid warrant may be disregarded is unhelpful. Instead, a different question arises: if a warrant is apparently valid, should a person charged with its execution inquire into its validity (and refuse to execute if those inquiries suggest it is invalid), or should they obey without question? The answer to that question is determinative of the person's tortious liability. For if the policy of the law is that a person should execute an apparently valid warrant without question, then acts done in

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46 RJ [515].

47 RJ [515].

48 RJ [515].

49 RJ [411], [514].

50 *Parisienne Basket Shoes Pty Ltd v Whyte* (1938) 59 CLR 369, 389 (Dixon J) ('*Parisienne Basket Shoes*'); *The Case of the Marshalsea* (1613) 10 Co Rep 68b; 77 ER 1027, 1038-1039.

51 *New South Wales v Kable (No 2)* (2013) 252 CLR 118, 140 [56] (Gageler J) ('*Kable (No 2)*').

52 *Kable (No 2)* (2013) 252 CLR 118, 140 [56] (Gageler J).

53 *Pelechowski v Registrar, Court of Appeal (NSW)* (1999) 198 CLR 435, 445 [27] citing *Attorney-General (NSW) v Mayas Pty Ltd* (1988) 14 NSWLR 342, 357 (McHugh JA).

54 *Kable (No 2)* (2013) 252 CLR 118, 140 [56] (Gageler J), citing *Parisienne Basket Shoes* (1938) 59 CLR 369, 391 (Dixon J).

execution must be treated as acts done 'in the execution of justice, which are compulsive',[55] in relation to which no liability can arise.

45. The cases concerning the common law prior to the enactment of the *Constables Protection Act* answered the question above in a variety of ways.

46. The cases begin with *The Case of the* ***Marshalsea*** (1613),[56] in which the defendants were officers of the Court who had enforced a warrant against persons who were outside the Court's jurisdiction. Lord Coke CJ said:[57]

> [W]hen a Court has jurisdiction of the cause, and proceeds *inverso ordine* or erroneously, there the party who sues, or the officer or minister of the Court who executes the precept or process of the Court, no action lies against them. But when the Court has not jurisdiction of the cause, there the whole proceeding is *coram non judice* and actions will lie against them without any regard of the precept or process.

47. The defendants attempted to rely on the rule that 'a person who does an act by command of a judge is not considered to act from a wrongful motive, because it is his duty to obey'.[58] That was rejected, because 'it is not of necessity to obey him who is not Judge of the cause, no more than it is a mere stranger'.[59] The applicable rule was, instead, that 'a judgment given by an improper judge is of no moment'.[60]

48. The corollary of that reasoning was, of course, that officers of the court were obliged to inquire into the validity of a warrant before enforcing it. Indeed, in *Read v Wilmot* (1672), a case in which a capias had issued without a summons first returned, Lord Hale CJ concluded that 'ministers to the Courts below must see that things be duly done'.[61]

49. Constables stood in no different position from 'ministerial officers'. On the contrary, they *were* ministerial officers:[62]

> A constable was at common law a subordinate officer to the "Conservators of the Peace", and … [subsequently] to a Justice of the Peace… [T]he constable is the proper officer to a Justice

55 *Dr Drury's Case* (1610) 8 Co Rep 141; 77 ER 688, 691; *Commissioner of Railways (NSW) v Cavanough* (1935) 53 CLR 220, 225 (Rich, Dixon, Evatt and McTiernan JJ).

56 (1613) 10 Co Rep 68b; 77 ER 1027.

57 *Marshalsea* (1613) 10 Co Rep 68b; 77 ER 1027, 1038.

58 *Marshalsea* (1613) 10 Co Rep 68b; 77 ER 1027, 1030 ('*quicumque jussu judicis aliquid fecerit, non videtur dolo malo fecisse quia parere necesse est*').

59 *Marshalsea* (1613) 10 Co Rep 68b; 77 ER 1027, 1039.

60 '*Judicium a non suo judice nullius est momenti*'.

61 (1672) 1 Vent 220; 86 ER 148.

62 *Hawkins' Pleas of the Crown* (1716-1721) Book II, c 10, 62, c 26, 249. See, to the same effect, JF Archbold, *The Justice of the Peace and Parish Officer* (1840) vol 1, 115-116 (where a justice issued a warrant directed to all constables, it could be executed by any constable within the jurisdiction of that justice) and *Morse v James* (1738) Willes 122, 128 (where constables are treated as an example of court officers).

> of the Peace, and bound to execute his warrants... [W]here a statute authorises a Justice of the Peace to convict a Man of a Crime, and to levy the Penalty by Warrant of Distress, without saying to whom such warrant shall be directed, or by whom it shall be executed, the Constable is the proper officer to serve such warrant, and is indictable for disobeying it.

50. The strict approach adopted in cases like *Read v Wilmot* was plainly hard on court officers, constables and others bound to obey the orders of inferior courts, but it was not applied consistently. One difficulty was that, whereas in *Marshalsea* it may have been reasonable to expect the court officers to know that the plaintiff was not a person within the King's Household,[63] in many cases the existence of a defect in the court's jurisdiction was unknowable at the time the officer was required to enforce the order. Hence, in ***Webb** v Batcheler* (1675), a constable executing a warrant was held to have a good defence to an action in trespass. Lord Hale CJ is reported to have said:[64]

> …it would be too hard if an officer should be bound to examine the regularity of the proceedings of a justice of peace, for antiently justices of the peace granted out no warrants but after indictments found; but now they do upon complaint made to them upon oath, and yet the constable cannot examine whether oath was made or not.

51. Those considerations appear to have informed the statement of the Court of Common Pleas in ***Olliet** v Bessey* (1682), that an officer who executed the process of an inferior court was not liable:[65]

> for when the King had granted such a particular jurisdiction…it shall be intended that it may be exercised without unavoidable danger or prejudice of the necessary officers thereof. And it being impossible for them to know whether the cause of action did arise within their jurisdiction, it is not agreeable to any rules of justice, to make them liable to the action of the defendant, if it did not arise there.

52. In ***Gwinne** v Pool* (1692), Lord Hale's judgment in *Read* was criticised[66] and *Marshalsea* was explained on the basis that '[i]t must be an apparent Fault in the…officer to meddle with any Persons who are not within the Verge, when they can have to ease a Recourse to the Roll'.[67] But the same conclusion could not be reached in *Gwinne*, where the fact which divested the court of jurisdiction could not have been known to the officer.

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63 See, editorial notes to *Marshalsea* as reported at *Marshalsea* (1613) 10 Co Rep 68b; 77 ER 1027, 1040 (distinguishing *Olliet v Bessey* (1682) T Jones' Rep 214; 84 ER 1223 on this basis).

64 [1826] ER 691; (1826) Freem KB 407; 89 ER 302. The same case is reported at 1 Vent 273.

65 (1682) T Jones' Rep 214; 84 ER 1223, 1224. See, to like effect, *Cotes v Michill* (1681) 3 Lev 20.

66 'This would be to make such under officers to be men of more understanding that those in the Superior Courts; and that they might be better able to make a right judgment of what process is lawful for them to execute, and what not': *Gwinne v Poole* in *The Reports and Entries of Sir Edward Lutwyche* (1718) 292.

67 *The Reports and Entries of Sir Edward Lutwyche* (1718) 293-294. The 'Verge' was an area of twelve miles in all directions from the King's residence, over which the Court of the Marshalsea had jurisdiction. However, an action for trespass within the Verge could only be brought in the Court if one of the parties was

53. Two lines of cases emerged as these principles were applied throughout the eighteenth, nineteenth and twentieth centuries.

54. *First*, there were cases, echoing *Olliet* and *Gwinne*, in which it was reasoned that a person bound to execute was not to be held liable for acts done in execution of an apparently valid warrant. In ***Moravia*** *v Sloper* (1737), Lord Willes CJ observed that 'the inferior officer is punishable as a minister of the Court if he do not obey [its] commands; and it would be unjust that a man should be punished if he does not do a thing and should be liable to an action if he does'.[68] Such an officer was in a different position from those *not* bound: 'a plaintiff may sue if he please in the Courts of Westminster-Hall and then he will be safe, but if he will sue in an Inferior Court he is bound at his peril to take notice of the bounds and limits of its jurisdiction'.[69]

55. That reasoning hinged on the co-existence of a person's duty to execute the warrant and his incapacity to assess the court's jurisdiction. As such, it was not limited to cases involving the 'ministerial officers' of courts. *Olliet* had suggested that it applied also to gaolers,[70] a point later confirmed in *Henderson v Preston* (1888)[71] and *Demer v Cook* (1909).[72] In *Smith v Collis* (1910), Cullen CJ observed that these cases made 'absolutely clear' that 'the discharge of the governor's duties would become impossible if he were called upon to decide upon the validity of a warrant good on the face of it, and his duty is simply to obey and not to question'.[73]

56. The same principle was applied to garnishees. In ***London*** *v Cox* (1867), Willes J remarked of a garnishee who 'without collusion, and in ignorance of the want of jurisdiction, has paid under compulsion of the attachment, and is afterwards sued by [their] own creditor':[74]

of the King's Household. See, Douglas Greene, 'The Court of the Marshalsea in Late Tudor and Stuart England' (1976) 20(4) *American Journal of Legal History* 267, 270.

68 (1737) Willes 30; 125 ER 1039, 1042.

69 *Moravia* (1737) Willes 30; 125 ER 1039, 1042. Also held to be liable were the plaintiff's attorney Batten (who 'may be supposed to know' the jurisdiction of the court better than the plaintiff) and the 'mere stranger' Sloper ('for if a man will thrust himself into an office…he must take care to be sure that he is in the right').

70 *Olliet* (1682) T Jones' Rep 214; 84 ER 1223, 1223.

71 (1888) 21 QBD 362, 366 (Lord Esher, M.R).

72 (1909) 88 LT 629, 631 (Lord Alverstone CJ).

73 (1910) SR (NSW) 800, 813. The same view would later be taken in *Robertson v The Queen* (1997) 92 A Crim R 115, 122, 124-5 (Steyler J, Malcolm CJ and Franklyn J agreeing).

74 (1867) LR 2 HL 239, 269.

> In such a case…the garnishee, not being party or privy to the wrong, and paying honestly in obedience to process of law apparently valid, has the same protection as an officer who executes process apparently regular, without knowing of the want of jurisdiction; and who, not being in a condition to resist, is protected, not because the proceeding was well founded, but notwithstanding it was ill founded.

57. *Second*, there was a line of cases—particularly in the eighteenth century—which, echoing *Marshalsea*, held that to justify their execution of a warrant, constables and other officers could not rely on the warrant alone, but were required to show that the justice had 'general jurisdiction of the cause'.[75] The result was that an officer bound to enforce a court's processes was required to 'take notice' of the court's jurisdiction before he did so. The courts applying this approach frequently recognized its 'hard' consequences. In ***Shergold*** *v Holloway* (1734), the magistrate was held to have had 'general jurisdiction of the cause', but no power to issue a warrant to arrest. The 'tithingman' who executed the warrant to arrest was liable, for 'though it might be hard to say that a tithingman should know the law better than the justice, yet it being a general law, everyone is obliged to take notice of it'.[76] A similar case was ***Perkin*** *v Proctor and Green* (1768).[77] There, commissioners of bankruptcy declared a victualler to be a bankrupt. Subsequently, the Court of the Kings Bench held that a victualler was not liable to a commission of bankrupt. The defendants, who in the meantime had acted on the commission and taken possession of the plaintiff's alehouse and goods, were held liable in trespass. The Court, citing *Marshalsea*, held that where an inferior court assumes a jurisdiction it has not, 'action in trespass lies against the officer who executes the process, because the whole proceeding is coram non Judice.' The Court of the Kings Bench concluded:[78]

> [A]lthough it may be thought hard to adjudge a man a trespasser in a case heretofore doubtful, yet the law cannot bend to particular cases, and it is more for the general utility to suffer particular hard cases than to give usurped authority any effect at all; the hardship of particular cases is thereby most amply compensated to the public.

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[75] It is not clear whether this concept, sometimes described as 'jurisdiction over the subject matter', equates to modern conceptions of jurisdiction as explained in *Craig v South Australia* (1995) 184 CLR 163 and *Kirk v Industrial Court (NSW)* (2010) 239 CLR 531. Note, in *Perkin v Proctor and Green* (1768) 2 Wils KB 382; 95 ER 874, 876 it was said that 'there must be jurisdiction of the process as well as of the person and cause'.

[76] (1734) Sess Cass 154; 93 ER 156, 157.

[77] (1768) 2 Wils KB 382; 95 ER 874.

[78] (1768) 2 Wils KB 382; 95 ER 874, 877.

58. This approach was not limited to constables, as the reliance on *Marshalsea* demonstrates. In *Smith v Bouchier* (1734)[79] it was applied to explain the liability of the moving party, 'judge, gaoler, officer and all of them'.[80]

59. By 1750, it appears to have been recognised that it was detrimental to the administration of justice to require an officer to 'take notice' of the jurisdiction of an inferior court before enforcing its processes. That was the basis for the enactment of the *Constables Protection Act*. The Act predates the recording of parliamentary debates in Hansard,[81] but the reasons for its enactment are recorded by Chitty:[82]

> At common law a constable was bound to take notice of the jurisdiction of the magistrates; that is, it was incumbent upon him to inquire and ascertain whether the justice had jurisdiction or power in the matter in which such justice by his warrant to the constable required his services; and was responsible as a trespasser &c, although he strictly executed the warrant according to its tenor, if the magistrate had no jurisdiction. This was a great hardship on the constable, because on the one hand he was bound to execute the warrant if legal, and on the other hand he acted at his peril in obeying it if illegal. This repressed the confidence and zeal of a constable in executing a warrant; and therefore the legislature interposed, and effectual shelter is now given to the constables executing and *strictly acting in obedience* to a justice's warrant, although the justice had *no jurisdiction* in the matter.

60. The policy of the statute was to 'relieve the constable of liability for obeying a bad warrant, thus placing the blame where it belongs, namely, on the justice'.[83]

61. The necessary corollary of the protection from liability conferred by the *Constables Protection Act* was the removal of any requirement for a constable to pause to consider the court's jurisdiction. That point was explained in *Entick v Carrington* (1765):[84]

> When the legislature excused the officer from the perilous task of judging, they compelled him to implicit obedience; which was but reasonable: so that now he must follow the dictates of his warrant, being no longer obliged to inquire, whether his superior had or had not any jurisdiction.

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79 (1734) 2 Str 993; 93 ER 989. *Smith* was a case in which the proceeding was 'coram non judice' because the moving party had sworn to his 'suspicion' rather than his 'belief'.

80 *Perkin* (1768) 2 Wils KB 382; 95 ER 874, 876 explaining *Smith v Bourchier* (1734) 2 St R 993; 93 ER 1081.

81 There was no official Hansard until 1909: John Vice and Stephen Farrell, *The History of Hansard* (House of Lords Hansard and House of Lords Library, 2017) 27. Prior to 1803 records of parliamentary proceedings were recorded in an ad-hoc manner by the media and in the Journal of the House of Lords and the Journal of the House of Commons. However, these journals recorded the business of, and decisions made by, the Houses of Parliament, and were not explanatory of the Bills being debated. The Journal of the House of Lords 1746-1752 only briefly mentions the Justices of Peace, Safety Bill (the title of the Bill prior to the Short Titles Act 1896) being committed to the House and passed.

82 Joseph Chitty, *A Summary of the Office and Duties of Constables* (Shaw and Sons, 2nd ed) 120 (emphasis in original). The second edition was published prior to 1844 (the publication date of the third edition).

83 Mark Aronson and Harry Whitmore, *Public Torts and Contracts* (Sydney Law Book Co, 1982) 149. See *Jones v Vaughan and Hall* (1804) 5 East 445; 102 ER 1141.

84 (1765) 19 State TR 1030, 1062.

62. The good sense of that policy was recognized in ***Painter*** *v The Liverpool Gas Light Company* (1836). The defendant, which had brought a complaint before a justice, was sued for trover of goods seized under a warrant issued by the justice. The warrant was 'illegal' because the plaintiff had not been summoned to answer the complaint before being convicted. The defendant's attempt to draw an analogy between its position and that of a constable was rejected. The difference was one of principle, albeit a principle reflected in the *Constables Protection Act*. Lord Denman CJ observed:[85]

> A warrant is a justification to officers, because they are not to canvas the legality of the process they have to execute. Acts of Parliament have been passed for their protection, founded on that principle; and it is a just one; for it would be absurd that an officer charged with the execution of a warrant should have to pause and consider whether it was regularly issued or not.

63. The defendant's case was therefore to be distinguished from *Webb* and *Gwinne*. Justice Patterson considered that an officer was not 'entitled to set up his private opinion against that of the justice as to the goodness of the warrant. He is bound to obey it, and is, therefore, protected in doing so'.[86] Justice Williams made the same point: 'It would be wild work if the officer were entitled to scan the warrant delivered to him, for the purpose of ascertaining whether it was regular or not under the circumstances of the case'.

64. Essentially the same point would again be made by Gavan Duffy CJ, Rich and Dixon JJ in ***Corbett*** *v The King* (1932). An officer, their Honours said, 'is not protected from liability because it is his duty to execute a bad warrant.' Nobody has that duty. Instead, 'the protection is conferred upon him because "the public interest requires that officers who really act in obedience to the warrant of a magistrate should be protected".'[87] That statement of the 'public interest', taken from *Price v Messenger*,[88] reflected the policy of the *Constables Protection Act*. The better view is, however, that it also reflected the common law. Hence, in ***Andrews*** *v Marris*, an action for false imprisonment decided in January 1841, the Court of the Kings Bench could say that a ministerial officer to Caistor Court of Requests was protected for these reasons:[89]

> He is…bound to execute [the commissioner's] warrants, and having no means whatever of ascertaining whether they issue upon valid judgments or are otherwise sustainable or not. There would therefore be something very unreasonable in the law if it placed him in the

[85] (1836) 3 Ad & E 433; 111 ER 478, 482.
[86] *Painter* (1836) 3 Ad & E 433; 111 ER 478, 484 (emphasis added).
[87] (1932) 47 CLR 317, 328.
[88] *Price v Messenger* (1800) 2 Bos. & P. 158, 161; 126 ER 1213, 1215
[89] *Andrews* (1841) 1 QB 3; 113 ER 1030, 1036.

> position of being punishable by the Court for disobedience, and at the same time suable by the party for obedience to the warrant.

65. ***Morrell*** *v Martin* was decided in November 1841, by the Court of Common Pleas.[90] It was not a trespass case, but concerned a constable's liability in replevin for the return of goods, to which the *Constables Protection Act* had been held not to apply.[91] The Court held that, at common law, a constable could justify their trespass under a warrant of a justice of the peace, only if he showed that the justice had jurisdiction over the subject-matter upon which the warrant is granted. This was held to be the 'sounder construction', 'notwithstanding the inference' to be derived from several cases relied on by the defendant. One key reason for that conclusion was that the enactment of the *Constables Protection Act* 'necessarily implie[d]…that at common law, and before the statute, the want of jurisdiction in the justice took away the protection of the constable who executed the warrant.'[92] That reasoning failed to consider, however, whether the principle which underpinned those common law cases (being that an officer must 'take notice' of an inferior court's jurisdiction) continued, in 1841, to apply. *Painter* and *Andrews* suggest that it did not. Moreover, if the reasoning in *Morrell* had been correct in relation to the common law of trespass in 1841, *Andrews* would have been decided differently.[93]

66. The existence of the *Constables Protection Act* was also treated as determinative of the content of the common law in New South Wales in 1909, in *Feather v Rogers*.[94] Justice Cohen held that 'at common law the defendant would have had no answer to the action', and that this was 'perfectly patent from the [*Constables Protection Act*]'.[95] Acting Chief Justice Simpson reasoned similarly. As to the principle underpinning the common law, his Honour said:[96]

> It is no doubt very hard upon police officers who are bound to execute the warrants of Justices, that they should be made liable for so doing on the ground that the Justice issuing the

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90 (1841) 3 Man & G 581; 133 ER 1273.

91 In *Fletcher v Wilkins* (1805) 6 East 283, 285-6 it was explained that replevin was an action 'in rem'. The exclusion of replevin from the *Constables Protection Act* therefore left unaltered the position stated in *Dr Drury's Case* that, at common law, if money, goods or chattels are taken under a judgment later reversed, those things shall be restored to the plaintiff: *Dr Drury's Case* (1610) 8 Co Rep 141; 77 ER 688, 691.

92 *Morrell* (1841) 3 Man & G 581; 133 ER 1273, 1278.

93 *Andrews* and *Morrell* cannot be reconciled on the ground that *Andrews* concerned a 'court officer' and *Morrell* concerned a constable. In *Morrell*, other than the *Constables Protection Act*, the Court's reasons turned on the holding that 'the law on this subject [is] correctly laid down in the second resolution in the case of *The Marshalsea*': at 133 ER 1273, 1279. *Marshalsea* concerned court officers, as did *Andrews*.

94 (1909) 9 SR (NSW) 192.

95 *Feather v Rogers* (1909) 9 SR (NSW) 192, 198. See also 200 (Rogers J).

96 *Feather v Rogers* (1909) 9 SR (NSW) 192, 197.

> warrant exceeded his jurisdiction. It is very hard on laymen that they should have to take the risk of the warrant being irregular. It is more important, however, that the law should be upheld, notwithstanding the liability of constables and other persons.

67. Those reasons echoed the policy rationale offered long before in *Shergold* and in *Perkin*. Simpson ACJ failed to recognise, however, that the *Constables Protection Act* was enacted not merely to relieve the 'hardship' of individual officers.[97] Rather, it was founded on the 'principle' that officers 'are not to canvas the legality of the process they have to execute'.[98] That is, the Act reflected a broader public interest. Unless the common law principle can now be said to be that officers *are* to canvas the legality of the process they are to execute, *Feather v Rogers* should not be followed.

68. This review of the history reveals that although the common law has always accepted that 'a person who does an act by command of a judge is not considered to act from a wrongful motive, because it is his duty to obey',[99] the courts have struggled to apply this principle in cases where it is later revealed that the command was issued without authority. One potential answer to the conundrum is to impose, in effect, strict liability on those tasked with enforcing the order on the basis that 'the law should be upheld'. At times, the cases leaned toward this approach. Yet it was not suitable to the purpose of upholding the law, for—as other cases recognised—it is impossible for a person enforcing an inferior court's process to know whether the court has exceeded its jurisdiction. That is because a question about the validity or invalidity of an inferior court's order is a question 'that can be resolved to finality only in the exercise of judicial power'.[100] To require court officers, police officers or gaolers to attempt to predict how such a question might be resolved is liable to undermine the administration of justice.[101]

69. Those public interest considerations concerning the administration of justice underpinned the *Constables Protection Act*. The same considerations now also underpin the common law. In the common law of Australia, there has been no revival of a police officer's, or gaoler's, duty to canvas the validity of every inferior court order they are required to

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[97] *Feather v Rogers* (1909) 9 SR (NSW) 192, 197.

[98] *Painter* (1836) 3 Ad & E 433; 111 ER 478, 482 (Lord Denman CJ).

[99] *Marshalsea* (1613) 10 Co Rep 68b; 77 ER 1027, 1038-9 ('*qui jussu judicii aliquod fecerit, non videtur dolo malo fecisse quia parere necesse est*').

[100] *Kable (No 2)* (2013) 252 CLR 118, 141 [59] (Gageler J).

[101] An example of a court officer's attempt to 'uphold the law' is *In re Sheriff* (1860) 175 ER 1039. A judge of the Crown Court had ordered that a courtroom be cleared. After 'deliberation', the High Sheriff concluded that the order was 'illegal'. He considered it his duty to 'command his officers not again to obey such orders from the Court', but his assessment of the legality of the order was mistaken and he was fined £500.

execute. The common law requires, instead, that such officers execute an apparently valid warrant without question.[102]

70. The Queensland officers in this case 'really act[ed] in obedience to the warrant'[103] issued by Judge Vasta. For that reason, the public interest, reflected in the common law, requires that they should be protected.

PART VII: ORDERS SOUGHT

71. The appellant seeks the following orders:
    (a) Appeal allowed.
    (b) Orders 2 and 4 made by Wigney J on 30 August 2023 be set aside insofar as they relate to the appellant, and in lieu thereof order that the first respondent's claim for damages against the appellant be dismissed.
    (c) No order as to costs.

PART VIII: ESTIMATE OF TIME

72. The appellant estimates 2.5 hours will be required for presentation of its oral argument.

Dated: 28 March 2024.

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[102] The officers of QPS who detained Mr Stradford held the rank of Senior Constable and Constable. Those officers retain all the duties of a constable at common law: PSA Act, s 3.2(2). Section 796(2) of the *Police Powers and Responsibilities Act 2000* (which imposes a duty on police officers to obey a 'lawful warrant' or order of the court) must be understood in that context. This duty has existed in the legislation since the establishment of a centralised police force in the Australian colonies: *Sydney Police Act 1833* (NSW) s 4; *Police Act 1838* (NSW) s 4; *Police Regulation Act 1852* (NSW) s 9; *Police Act 1863* (Qld) s 13; *Police Act 1937* (Qld) ss 20-23. The *Police Act 1937* (Qld) was repealed by the PSA Act. Officers of Queensland Corrective Services hold an equivalent duty under statute: *Corrective Services Act 2006* (Qld) s 6.

[103] *Price v Messenger* (1800) 2 Bos. & P. 158, 161; 126 ER 1213, 1215.

IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

BETWEEN:

STATE OF QUEENSLAND
Appellant

and

MR STRADFORD (A PSUEDONYM)
First Respondent

JUDGE SALVATORE PAUL VASTA
Second Respondent

COMMONWEALTH OF AUSTRALIA
Third Respondent

ANNEXURE TO THE APPELLANT'S SUBMISSIONS

Pursuant to *Practice Direction No 1 of 2019*, the appellant sets out below a list of statutory provisions referred to in these submissions.

No.	**Description**	**Version**	**Provisions**
1.	*Acts Interpretation Act 1901* (Cth)	Current	s 21(b)
2.	*Judiciary Act 1903* (Cth)	Current	s 39
3.	*Acts Interpretation Act 1954* (Qld)	Current	ss 4, 35(1)
4.	*Criminal Code Act 1899* (Qld)	Current	s 6(1)
5.	*Criminal Code* (Qld)	Current	ss 12-14, 77C(1)(b)(vii), 87, 89, 90, 200, 245-250, 335, 355, 561

Filed on behalf of the appellant — 28 March 2024

Document No: 16098116

No.	Description	Version	Provisions
6.	*Corrective Services Act 2006* (Qld)	Current	ss 6, 349
7.	*Police Service Administration Act 1990* (Qld)	As at 1 December 2018 to 11 September 2019	ss 3.2(2), 10.5
8.	*Police Powers and Responsibilities Act 2000* (Qld)	Current	s 796(2)
9.	*Sydney Police Act 1833* (NSW)	As enacted	s 4
10.	*Police Act 1838* (NSW)	As enacted	s 4
11.	*Police Regulation Act 1852* (NSW)	As enacted	s 9
12.	*Police Act 1863* (Qld)	As enacted	s 13
13.	*Police Act 1937* (Qld)	As enacted	ss 20-23
14.	*Constables Protection Act 1750* (UK)	As enacted	