H. C. OF A. 1906.

BUCHANAN v. BYRNES.

Appeal allowed. Judgment appealed from reversed. Judgment to be entered for plaintiff for £899 4s. 11d. and costs of the action. Respondent to pay the costs of the appeal.

Solicitor, for appellant, *W. S. Buchanan*, Townsville.

Solicitors, for respondent, *Roberts, Leu & Barnett*, Townsville.

N. G. P.

[HIGH COURT OF AUSTRALIA.]

EX PARTE GORDON.

H. C. OF A. 1906.

MELBOURNE, *March* 29.

Griffith C.J., Barton and O'Connor JJ.

Judiciary Act 1903 (*No.* 6 *of* 1903), *sec.* 39 (2) (*b*)—*Rules of High Court*, 22*nd August*, 1904, *Part II.*, *sec.* III., *rule* 1—*Justices Act* 1902 (*N.S.W.*) (*No.* 27 *of* 1902), *sec.* 112—*Practice—Appeal to High Court from Court of State exercising federal jurisdiction—Statutory prohibition—Decision primâ facie wrong.*

The Court will construe sec. 39 (2) (*b*) of the *Judiciary Act* liberally in favour of a party desiring to appeal.

Therefore, where a rule *nisi* for a prohibition was sought in respect of a decision of an inferior Court of New South Wales exercising federal jurisdiction, that being the mode provided by sec. 112 of the *Justices Act* 1902 (N.S.W.), for appeal to the Supreme Court from a decision of such an inferior Court, the High Court will not necessarily require to be satisfied that the decision was *primâ facie* wrong, although it is the practice in New South Wales for the Supreme Court to insist on being so satisfied under similar circumstances.

APPLICATION for rule *nisi* for a prohibition.

Ernest Gordon, master of the steamship "Moldavia," was at the Police Court, Sydney, on 9th March 1906, convicted of the offence

of being the master of a vessel from which a prohibited immigrant entered the Commonwealth, contrary to the *Immigration Act* 1901, and was fined £100.

Motion was now made to the High Court on behalf of Gordon for a rule *nisi* for a prohibition to the magistrates.

Pollock in support. By sec. 112 of the *Justices Act* 1902 (N.S.W.), a party convicted of an offence by justices may appeal to the Supreme Court by way of rule *nisi* for a prohibition. By Rules of High Court of 22nd August, 1904, Part II., sec. III., rule 1, the same mode of appeal is to be adopted in appealing to the High Court from a decision of that inferior Court when exercising federal jurisdiction.

[He then stated the grounds of the rule *nisi*, which are not material to this report.]

The judgment of the Court was delivered by

March 29.

GRIFFITH C.J. Sec. 39 (*b*) of the *Judiciary Act* 1903 provides that in cases where federal jurisdiction is vested in a State Court, whenever an appeal lies from the decision of that Court to the Supreme Court of the State, an appeal from the decision may be brought to the High Court. In this case the matter was heard by a magistrate exercising federal jurisdiction, and from his decision an appeal lies to the Supreme Court, and therefore under that section an appeal may be brought to the High Court. Under the Rules of Court, Part II., sec. III., r. 1, (Rules of 22nd August, 1904), the appeal to the High Court in such a case is to be brought in the same manner as is prescribed by the law of the State for bringing appeals from the same Court to the Supreme Court of the State in like matters. One mode of appealing in New South Wales in such a case is to move for a rule *nisi* for a prohibition under sec. 112 of the *Justices Act* 1902 (No. 27 of 1902). In granting rules *nisi* for a prohibition it is usual for the Supreme Court to satisfy itself that the correctness of the decision is open to doubt, and it is not uncommon to refuse a rule *nisi*. Without saying that we will grant a rule *nisi* in every case in which it is asked for, we think we should be somewhat liberal in the interpretation of sec. 39 (*b*) of the *Judiciary Act*

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1903, considering that, by the adoption of another form of appeal, an appeal might be brought without the leave of this Court. Without expressing any opinion as to the merits we think we should grant a rule *nisi*.

Rule nisi granted.

Solicitors, *Malleson, Stewart, Stawell, & Nankivell*, Melbourne.

B. L.

[HIGH COURT OF AUSTRALIA.]

HILL . . . . . APPELLANT;
PLAINTIFF,

AND

ZIYMACK . . . . . RESPONDENT.
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1906.

SYDNEY *April* 6, 9, 10.

Griffith C.J., Barton and O'Connor JJ.

Action for conversion—Ownership of goods—Question of fact—Conflict of evidence—Verdict of jury conclusive.

In an action for conversion, the whole question for the jury was whether the goods were the property of the plaintiff or the defendant. There was a conflict of evidence, and the jury found a verdict for the plaintiff.

Held, that, although there was strong evidence upon which the jury might have found a verdict the other way, the verdict was one which reasonable men properly understanding the evidence could find, and should not be disturbed.