[HIGH COURT OF AUSTRALIA.]

CARBERRY . . . . . APPELLANT;
DEFENDANT,

AND

COOK . . . . . RESPONDENT.
COMPLAINANT,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1906.

SYDNEY, *May* 25.

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

Practice—Appeal to High Court—Special leave—Decision of Supreme Court plainly right—Justices Act (*N.S.W.*) (*No.* 27 *of* 1902), *sec.* 20—*Liquor Act* (*N.S.W.*) (*No.* 18 *of* 1898), *sec.* 107—*Jurisdiction of Justices—Nearest Court of Petty Sessions—Judicial notice.*

Sec. 107 of the *Liquor Act* 1898 provides that the Court of Petty Sessions nearest to the place where an offence was committed shall, except in certain cases, have jurisdiction to hear and determine informations and complaints. A publican was charged at the Court of Petty Sessions in a country town with having committed an offence in that town. The magistrate dismissed the information on the ground that the onus was on the complainant to show that the Court of Petty Sessions was the nearest to the place where the offence was committed and no such evidence had been given.

The Supreme Court held on appeal that the magistrate should have taken judicial notice of the fact that the Court of Petty Sessions was the nearest, and also that by sec. 20 of the *Justices Act* 1902 the onus lay on the defendant to prove the contrary.

Special leave to appeal from this decision was refused by the High Court on the ground that the decision as to the question of judicial notice was plainly right, and therefore no question as to the construction of sec. 20 of the *Justices Act* was involved.

Special leave to appeal from the decision of the Supreme Court: *Cook* v. *Carberry*, 23 N.S.W. W.N., 75, refused.

H. C. OF A. 1906.

CARBERRY v. COOK.

MOTION for special leave to appeal from a decision of the Supreme Court of New South Wales.

The applicant. the keeper of a public house at Glen Innes, a small town in New South Wales, was charged at the Court of Petty Sessions, Glen Innes, with keeping his house open after the time prescribed by the *Liquor Acts* 1898 and 1902. At the conclusion of the evidence the applicant's solicitor took the objection that no evidence had been given to show that the Court was the nearest Court of Petty Sessions to the place where the offence was committed, and the information did not contain any allegation to that effect. The magistrate dismissed the information on that ground.

On an appeal by way of special case the Supreme Court, (consisting of *Darley* C.J., *Cohen* and *Pring* JJ.) by a majority (*Pring* J. dissenting), held that the decision of the magistrate was erroneous. *Darley* C.J., was of the opinion that the magistrate should have taken judicial notice of the situation of the Court, and also that by virtue of sec. 20 of the *Justices Act* 1902, in the absence of evidence to the contrary, the magistrate must be presumed to have acted within his jurisdiction. *Cohen* J. rested his decision on sec. 20 of the *Justices Act*. *Pring* J. was of the contrary opinion. He thought that sec. 20 did not apply, and that the magistrate was right in declining to take judicial notice of the situation of the Court: *Cook* v. *Carberry* (1).

It was for special leave to appeal from this decision that the present application was made.

A. Thompson, for the applicant. The decision involves an important principle of law, whether a justice is entitled to take judicial cognizance of the geographical position of places within his jurisdiction. It was held in *Ex parte Smith* (2), that he had not such power. Sec. 20 of the *Justices Act* 1902 has no application to a case of this kind. The construction of that section is therefore involved. [He referred to *Ex parte Martin* (3).]

GRIFFITH C.J. The question whether sec. 20 of the *Justices Act* 1902 can be applied before the conviction or order has been

(1) 23 N.S.W. W.N., 75.
(2) (1904) 4 S.R. (N.S.W.), 110; 21 N.S.W. W.N., 26.
(3) 21 N.S.W. W.N., 123.

made is a purely abstract question so far as the present case is concerned. The applicant was charged with committing an offence at Glen Innes, and it was necessary by sec. 107 of the *Liquor Act* 1898 that the charge should be heard before the nearest Court of Petty Sessions. This Court is now solemnly asked to say that the magistrate sitting in the Court of Petty Sessions at Glen Innes ought not to take judicial notice of the fact that that Court is the nearest Court of Petty Sessions to Glen Innes. I am of opinion that the decision of the Supreme Court on that point was plainly right. No doubt, justices ought to satisfy themselves that they are acting within their jurisdiction; and if at the close of the case for the complainant an objection is taken that the matter does not appear to be within their jurisdiction, they ought to hear evidence, and satisfy themselves of the fact, and if necessary, re-open the case for that purpose.

I am of opinion, therefore, that the application for special leave should be refused.

BARTON and O'CONNOR JJ. concurred.

Special leave refused.

Solicitor, for the applicant, *P. P. Abbott* by *Cresswell & Hobbs.*

C. A. W.