[HIGH COURT OF AUSTRALIA.]

MILLER . . . . . APPELLANT;
DEFENDANT,

AND

HAWEIS . . . . . RESPONDENT.
COMPLAINANT,

ON APPEAL FROM A COURT OF PETTY SESSIONS OF VICTORIA

H. C. OF A. 1907.

MELBOURNE, *Sept.* 11, 12, 19.

Griffith C.J., Barton, Isaacs and Higgins JJ.

Appeal to High Court from State Court of Summary Jurisdiction—Court exercising federal jurisdiction—Decision of two questions either of which supports judgment—The Constitution (63 & 64 *Vict. c.* 12), *sec.* 31—*Judiciary Act* 1903 (*No.* 6 *of* 1903), *sec.* 39 (2) (*d*)—*Constitution Act Amendment Act* 1890 (*Vict.*) (*No.* 1075), *sec.* 282—*Commonwealth Electoral Act* 1902 (*No.* 19 *of* 1902).

A Court of Summary Jurisdiction of a State exercises federal jurisdiction within the meaning of sec. 32 (2) (*d*) of the *Judiciary Act* 1903, if it be necessary in the particular case for the Court to decide any question arising under the Constitution or involving its interpretation.

If, however, whether that question is answered rightly or wrongly, the Court answers another question, not arising under the Constitution or involving its interpretation, and their answer to that other question enables them to decide the case, the Court does not exercise federal jurisdiction, and therefore no appeal lies to the High Court from that decision.

On a complaint in a Court of Petty Sessions of Victoria for work and labour done concerning an election for the House of Representatives for the Commonwealth Parliament, the defence being that sec. 282 of the *Constitution Act Amendment Act* 1890 (Vict.) was a bar to the complaint, the Court held that that section was a "law relating to elections," and was consequently by sec. 31 of the Constitution adopted and applied to elections for the House of Representatives, and also held that, being so adopted and applied, it was repealed by the *Commonwealth Electoral Act* 1902, and therefore gave judgment for the complainant.

H. C. OF A. 1907.

MILLER v. HAWEIS.

Held, that in determining the second point the Court of Petty Sessions had not exercised federal jurisdiction, and therefore that no appeal lay to the High Court from their decision.

APPEAL from a Court of Petty Sessions of Victoria.

Thomas W. Haweis brought a complaint in the Court of Petty Sessions at Prahran against John Miller, who was a candidate for the Fawkner Electoral Division, at the election held on the 12th December 1906, for the House of Representatives of the Commonwealth Parliament. Haweis claimed £15 for work and labour done in issuing and distributing circulars in connection with Miller's candidature. The case was heard on 2nd May 1907, the Court of Petty Sessions being constituted by Mr. Keogh, Police Magistrate, and two honorary Justices of the Peace, and an order was made for the amount claimed.

An order *nisi* to review this decision was granted by *Barton* J., on the grounds:—

1. That the complaint was not maintainable having regard to sec. 31 of the Constitution and sec. 282 of the *Constitution Act Amendment Act* 1890 (Vict.).

2. That the jurisdiction exercised by the Court of Petty Sessions, being federal jurisdiction, was exercised in a manner contrary to the provisions of sec. 39 (2) (*d*) of the *Judiciary Act* 1903.

The order *nisi* now came on for argument.

Arthur, for the appellant. The question is whether the prohibition in the Victorian *Constitution Act Amendment Act* 1890, sec. 282, against the bringing of an action for work and labour done in and about an election, applies by virtue of sec. 31 of the Constitution to elections for the House of Representatives. The Commonwealth Parliament has not otherwise provided within the meaning of sec. 31 of the Constitution. The *Commonwealth Electoral Act* 1902 is not a complete code, and does not repeal all the State legislation, so far as by sec. 31 of the Constitution it was made applicable to federal elections, but only repeals those provisions of the State legislation which are inconsistent with it, or as to which an intention is shown that they should not apply: See *Quick and Garran's Constitution of the Australian Common-*

wealth, pp. 427, 467, 471; *State of Tasmania* v. *The Commonwealth and Victoria* (1); *Ex parte Siebold* (2). The Parliament of a State may go on making laws as to federal elections so long as they are not inconsistent with federal legislation. Sec. 282 of the *Constitution Act Amendment Act* 1890 is a law relating to elections within the meaning of sec. 31 of the Constitution: *Henningsen* v. *Williams* (3).

The determination of this question involves the construction of sec. 31 of the Constitution, and therefore was a matter of federal jurisdiction. For that reason a Court of Petty Sessions constituted of a Police Magistrate and two Justices had no jurisdiction to hear it: *Judiciary Act* 1903, sec. 39 (2) (*d*). For the same reason an appeal lies to this Court.

[He also referred to *Cope* v. *Cope* (4); *Garnett* v. *Bradley* (5).]

H. Barrett, for the respondent. This matter came before the Court of Petty Sessions as a State matter. The only defences stated were sec. 282 of the *Constitution Act Amendment Act* 1890, and that there was no debt. It was not objected that it was a matter of federal jurisdiction.

The matter does not involve the interpretation of the Constitution, but merely the interpretation of the *Commonwealth Electoral Act* 1902. That Act is a complete code, and from the time it was passed the State Acts no longer applied to federal elections. Sec. 282 of the *Constitution Act Amendment Act* 1890 is not a law relating to elections, but is a law relating to procedure and to the limitation of actions.

Arthur, in reply.

Cur. adv. vult.

The judgment of the Court was delivered by

Sept. 19.

GRIFFITH C.J. This is an appeal from a Court of Petty Sessions of Victoria which was constituted by a Police Magistrate and other justices. The appeal is brought to this Court on the assumption that the matter determined by the Court of Petty Sessions

(1) 1 C.L.R., 329.
(2) 100 U.S., 371.
(3) 27 V.L.R., 374; 23 A.L.T., 92.
(4) 137 U.S., 682, at p. 686.
(5) 3 App. Cas., 944, at p. 965.

H. C. OF A. 1907.

MILLER v. HAWEIS.

was a matter of federal jurisdiction, and reliance is placed on sec. 39 (2) (*d*) of the *Judiciary Act* 1903, which provides that:—"The federal jurisdiction of a Court of summary jurisdiction of a State shall not be judicially exercised except by a Stipendiary or Police or Special Magistrate, or some Magistrate of the State who is specially authorized by the Governor-General to exercise such jurisdiction." If, therefore, the Court was exercising federal jurisdiction, it was improperly constituted; if it was not exercising federal jurisdiction, this Court cannot entertain an appeal from it. It is necessary, therefore, first of all to inquire whether the Court of Petty Sessions was exercising federal jurisdiction or not.

The complaint was for work and labour alleged to have been done by the respondent for the appellant at an election for the House of Representatives. The appellant relied on the provisions of sec. 282 of the Victorian *Constitution Act Amendment Act* 1890 that:—"No action suit or other proceeding whatsoever shall be brought or maintained whereby to charge any person upon any contract or agreement for the loan of money or the doing of any work or service or the supply of any goods for or towards or concerning or in carrying on or prosecuting any election of a member under this Act or any Act hereby repealed." The appellant maintained before the Court of Petty Sessions that under the Constitution that section was applicable to federal elections, relying on sec. 31 of the Constitution, which provides that:—"Until the Parliament otherwise provides, but subject to this Constitution, the laws in force in each State for the time being relating to elections for the more numerous House of the Parliament of the State shall, as nearly as practicable, apply to elections in the State of members of the House of Representatives." He contended that this was a law "relating to elections" within the meaning of sec. 31, and therefore became the law of Victoria with regard to federal elections. The respondent in answer to that argument said that, supposing it to be so, the Parliament of the Commonwealth had "otherwise provided" by the *Commonwealth Electoral Act* 1902. There were, therefore, two questions to be determined

This Court has defined the meaning of federal jurisdiction

more than once. For the purpose of sec. 39 of the *Judiciary Act* 1903, it means all matters over which the High Court has, under the *Judiciary Act*, original jurisdiction. The matter in the present case is said to be one over which this Court has jurisdiction under sec. 30 of the *Judiciary Act* 1903, which confers jurisdiction "in all matters arising under the Constitution or involving its interpretation."

A question of federal jurisdiction may be raised upon the face of a plaintiff's claim, as in *Baxter* v. *Commissioners of Taxation (N.S.W.)* (1), or may be raised for the first time in the defence, but as soon as the question is raised, if the jurisdiction of the State Court has been taken away, it must stay its hand. As was pointed out in *Starin* v. *New York* (2) by Chief Justice *Waite*:—"The character of a case is determined by the questions involved: *Osborne* v. *Bank of the United States* (3). If from the questions it appears that some title, right, privilege, or immunity, on which the recovery depends, will be defeated by one construction of the Constitution or a law of the United States, or sustained by the opposite construction, the case will be one arising under the Constitution or laws of the United States, within the meaning of that term as used in the Act of 1875; otherwise not."

But, in order that the jurisdiction of a Court which starts with jurisdiction may be ousted, the case must be such that it is necessary to determine a question of federal jurisdiction in order to decide the case. A very similar rule is well settled in the United States with regard to a class of cases in which under the Judiciary Acts of that republic an appeal lies to the Supreme Court from the highest Court of State. The point is not quite the same as that now before us, but it is very analogous. I will refer to one of the later cases in which the rule has been stated. I read from the judgment in *Hale* v. *Akers* (4):—"In *Murdock* v. *City of Memphis* (5), this Court announced, as one of the propositions which flowed from the provisions of the second section of the Act of February 5th 1867, 14 Stat., 386," (the *Judiciary Act*) "embodied in sec. 709 of the Revised Statutes of 1874, and

(1) 4 C.L.R., 1087, at p. 1136.
(2) 115 U.S, 248., at p. 257.
(3) 9 Wheat., 737, at p. 824.
(4) 132 U.S., 554, at p. 564.
(5) 20 Wall., 590, 636.

H. C. OF A. 1907.

MILLER v. HAWEIS.

still in force, that even assuming that a federal question was erroneously decided against the plaintiff in error, the Court must further inquire whether there was any other matter or issue adjudged by the State Court, which is sufficiently broad to maintain the judgment of that Court, notwithstanding the error in deciding the issue raised by the federal question; and that, if that is found to be the case, the judgment must be affirmed, without inquiring into the soundness of the decision on such other matter or issue. This principle has since been repeatedly applied. In *Jenkins* v. *Lowenthal* (1), where two defences were made in the State Court, either of which, if sustained, barred the action, and one involved a federal question and the other did not, and the State Court in its decree sustained them both, this Court said that, as the finding by the State Court of the fact which sustained the defence which did not involve a federal question was broad enough to maintain the decree, even though the federal question was wrongly decided, it would affirm the decree, without considering the federal question or expressing any opinion upon it, and that such practice was sustained by the case of *Murdock* v. *City of Memphis* (2)." After citing a number of cases in which the principle had been applied, the judgment continues :—" It appears clearly from the opinion of the Supreme Court" (*i.e.*, of the State) "that it was not necessary to the judgment it gave that the words 'taking the direction of the Arroyo Seco' should be construed at all. It is, therefore, of no consequence whether or not that Court was wrong in its conclusions as to the meaning of the Huichica grant." That doctrine is, as I said, not the same as this, but it is very similar.

We must, therefore, inquire in this case whether it was necessary for the Court of Petty Sessions, in order to give effect to the respondent's claim against the appellant, to decide any question arising under the Constitution or involving its interpretation. It was necessary to interpret sec. 31 of the Constitution to discover whether sec. 282 of the *Constitution Act Amendment Act* 1890 of Victoria was a law relating to elections, because only such laws were adopted by sec. 31. The Court of Petty Sessions appears to have thought that that law was adopted, following a

(1) 110 U.S., 222.

(2) 20 Wall., 590.

decision of *Hood* J. But, whether they decided that question rightly or wrongly, another question remained to be determined before judgment could be given against the appellant, viz., whether that provision, assuming it to have been adopted by sec. 31 of the Constitution, had been repealed by the *Commonwealth Electoral Act* 1902, that is to say, whether the Commonwealth Parliament had otherwise provided. But that was not a question of the interpretation of sec. 31 of the Constitution; it was a question of the interpretation of the Act relied upon as repealing the Victorian Act. The Court of Petty Sessions thought that the *Commonwealth Electoral Act* 1902 repealed sec. 282 so far as it related to Commonwealth elections. The Court had jurisdiction to construe that Act, and they construed it in that way. Their conclusion may have been right or wrong, but it was not upon a matter of federal jurisdiction. The Court of Petty Sessions as a Court exercising State jurisdiction had authority to determine that question, and, having that authority, might determine the question rightly or wrongly, and we have no jurisdiction to review its decision. It follows also that the Court was not improperly constituted. The appeal must be dismissed.

Appeal dismissed with costs.

Solicitors, for appellant, *Maddock & Jamieson*, Melbourne.
Solicitor, for respondent, *Claude I. Lowe*, Melbourne.

B. L.