

H. C. OF A.
1911.

WOOLF
v.
WILLIS.

Appeal allowed. Order appealed from discharged. Order that the bill of costs be referred back to the Taxing Master for taxation.

Solicitor, for the appellant, *J. Woolf*.

Solicitors, for the respondent, *Major & Armstrong*.

B. L.

Appl
Green v
Lynch (1983)
70 FLR 206

[HIGH COURT OF AUSTRALIA.]

THE KING AND THE COMMONWEALTH . PLAINTIFFS;

AND

THOM SING AND ANOTHER . . . DEFENDANTS.

H. C. OF A. *Practice—Procedure—Prosecution for offence against laws of the Commonwealth—*
1911. *Recognizance, authority of justice of the peace to take—Judiciary Act 1903 (No.*
6 of 1903), sec. 68.

MELBOURNE,
Sept. 22, 26.

Griffith C.J.
IN CHAMBERS.

Where a person is charged with an offence against the laws of the Commonwealth committed within a State, the taking of a recognizance is a matter of procedure within sec. 68 (1) of the *Judiciary Act* 1903, in the execution of which a justice of the peace may act, and is not a judicial exercise of jurisdiction within sec. 68 (3).

SUMMONS for liberty to enter final judgment.

An action was brought in the High Court by the King and the Commonwealth against Henry Thom Sing and Lew You to recover £50, being the amount of a bond entered into by the defendants to secure the appearance of one Ah Chin at the Police Court, Launceston, on the adjourned hearing of an information against Ah Chin charging him with being a prohibited immigrant found within the Commonwealth in contravention of the *Immigration Restriction Acts* 1901-1906.

The information was heard by a Police Magistrate of the State of Tasmania, who fixed the amount of the bail and approved of the two sureties, the defendants.

The bond was taken and acknowledged before James J. Madden, a justice of the peace of the State of Tasmania for the District of Launceston. Ah Chin did not appear at the adjourned hearing of the information, and the bond was thereupon estreated. Other facts are stated in the judgment hereunder.

The plaintiffs now by summons applied for liberty to enter final judgment.

Mann, for the plaintiffs.

Starke, for the defendants.

Cur. adv. vult.

GRIFFITH C.J. read the following judgment :—This is an action to recover £50, the amount of an estreated recognizance or bond given by the defendants for the due appearance of one Ah Chin upon the adjourned hearing of a charge of being a prohibited immigrant. The charge came on for hearing at Launceston before a Police Magistrate and was adjourned, bail being allowed in two sureties in the amount of £50 each. The Police Magistrate approved of the defendants as such sureties. On the same day the defendants attended at the Police Court, Launceston, and executed the bond in the presence of a justice of the peace for Tasmania, who attested their execution.

Ah Chin did not appear on the adjournment, and the bond was duly estreated.

The only answer that is now set up to the plaintiffs' claim is that the bond was not duly acknowledged because it was not acknowledged before a Police Magistrate. This argument is based on sec. 68 of the *Judiciary Act*, which provides (1) that State laws respecting the procedure for the summary conviction of offenders and for holding accused persons to bail shall apply and be applied as far as applicable to persons charged with offences against the laws of the Commonwealth committed within the State; (2) that the several Courts of a

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H. C. OF A. State exercising jurisdiction with respect to summary conviction of persons charged with offences against the laws of the State shall have like jurisdiction with respect to persons charged with offences against the laws of the Commonwealth; (3) that such jurisdiction shall not be judicially exercised with respect to the summary conviction of any person except by a Stipendary or Special or Police Magistrate or some Magistrate of the State specially authorized by the Governor-General.

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 Griffith C.J.

It is contended that a justice of the peace not coming within this category is not authorized to take a recognizance.

The Act regulating summary convictions in Tasmania (19 Vict. No. 8) is a transcript of the English Act 11 and 12 Vict. c. 43, sec. 17 authorizes the justices upon adjournment of the hearing of a charge to discharge the defendant "upon his entering into a recognizance with or without a surety or sureties conditioned for his appearance at the time and place to which such hearing or further hearing shall be adjourned." There is nothing to say that he must enter into it before the justice by whom the bail is allowed, and it is not the practice in Tasmania to require him to do so. In my opinion the taking of a recognizance is a matter of procedure within the first paragraph of sec. 68, in the execution of which any member of the Court, *i.e.* any justice, may act, and is not the judicial exercise of jurisdiction within the third paragraph.

I think therefore that the objection fails and that the order asked for must be made.

Leave to sign final judgment with costs.

Solicitor, for the plaintiffs, *C. Powers*, Commonwealth Crown Solicitor.

Solicitors, for the defendants, *Nolan & Nolan*, for Matthew J. Clarke, Launceston.

B. L.