[HIGH COURT OF AUSTRALIA.]

THE FEDERATED SAWMILL, TIMBER-YARD AND GENERAL WOOD-WORKERS' EMPLOYES' ASSOCIATION (ADELAIDE BRANCH) . . APPELLANTS;
COMPLAINANTS,

AND

ALEXANDER . . . . . RESPONDENT.
DEFENDANT,

ON APPEAL FROM A SPECIAL MAGISTRATE OF SOUTH AUSTRALIA.

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ADELAIDE, June 10, 11; MELBOURNE, June 17.

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

State Court invested with federal jurisdiction—Limitations on jurisdiction imposed by State Act—Time for instituting proceedings—Association registered as organization—Rules—Member—Resignation—Liability for subsequent levies and dues—Judiciary Act 1903 (*No.* 6 *of* 1903) *secs.* 39, 79—*Commonwealth Conciliation and Arbitration Act* 1904-1910 (*No.* 13 *of* 1904—*No.* 7 *of* 1910) *secs.* 68, 89—*Justices Act* 1850 (*S.A.*) (*No.* 6 *of* 1850) *sec.* 10.

Where, by a Commonwealth Statute a new jurisdiction is conferred upon a State Court, the State Court is to be taken as it is found, with all its limitations as to jurisdiction, unless otherwise expressly declared.

Sec. 39 (2) of the *Judiciary Act* 1903 must be construed as relating to matters arising under federal Statutes and being of a nature analogous to those over which the several Courts of the States respectively have jurisdiction under State laws, and as also including any other matters in respect of which jurisdiction is conferred by a federal Statute, but so that in all respects other than subject-matter the provisions of the State law as to such Courts shall prevail.

Sec. 10 of the *Justices Act* 1850 (S.A.) provides that "in all cases where no time is already, or shall hereafter be, specially limited for making" any complaint before a Justice "such complaint shall be made . . . within six calendar months from the time when the matter of such complaint . . . arose."

Held, that the jurisdiction conferred by sec. 68 of the *Commonwealth Conciliation and Arbitration Act* 1904-1910 is subject to the limitation as to time contained in the above section.

Held, therefore, that a Special Magistrate of South Australia had no jurisdiction to entertain a complaint by an association which was registered as an organization under the *Commonwealth Conciliation and Arbitration Act* 1904, to recover from one of its members levies and dues which had become payable more than six months before the complaint was laid.

By the rules of an association which was registered as an organization under the *Commonwealth Conciliation and Arbitration Act*, it was provided that "no member shall discontinue his membership without giving at least three months previously written notice to the secretary of his intention so to do, nor without paying all membership subscriptions and dues owing by him to the association."

Held that the words "without paying" should be read as "without remaining liable to pay."

Held, therefore, that a person who had been a member of such an association was not liable for levies and dues made by the Association after the expiration of three months from the time when he gave written notice of his intention to discontinue his membership.

Decision of a Special Magistrate of South Australia affirmed.

APPEAL from a Special Magistrate exercising federal jurisdiction.

The Federated Sawmill, Timberyard and General Woodworkers' Employés' Association (Adelaide Branch), which were registered as an organization under the provisions of the *Commonwealth Conciliation and Arbitration Act* 1904, proceeded against John James Alexander, by complaint in a Court of summary jurisdiction constituted by a Special Magistrate of South Australia at Adelaide, to recover £1 19s. 1d., as being the amount of levies and dues alleged owing by the defendant to them in respect of a period beginning before 23rd September 1910, and extending to the date of the complaint, 26th September 1911.

Rule 5 of the Rules of the Association was as follows:—"All candidates for membership shall be proposed at a general meeting of the Association, or at a meeting of the Committee of Management, when a vote of the majority of members present shall be sufficient to secure their election. And no member shall discontinue his membership without giving at least three months

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previously written notice to the secretary of his intention so to do, nor without paying all membership subscriptions and dues owing by him to the Association."

Rule 19 was as follows:—"A person shall not cease to be a member of the Association unless he has given at least three months' written notice to the secretary, and has paid all fees and dues owing by him to the Association."

On 23rd June 1910 the defendant sent a written notice of his resignation of membership to the secretary of the Association, and he admitted at the hearing that he was a member until 23rd September 1910 and that he then owed 15s. 9d. for levies and dues.

The Special Magistrate having dismissed the complaint, the Association now, by special leave, appealed to the High Court.

Paris Nesbit K.C. (with him *R. G. Nesbit*), for the appellants. Although under sec. 10 of the *Justices Act* 1850 a Court of summary jurisdiction cannot entertain a complaint unless it is brought within six months from the time when the matters complained of arose, sec. 68 of the *Commonwealth Conciliation and Arbitration Act* 1904-1910 confers an independent and original jurisdiction without any limitation as to time. Sec. 10 is at most a mere procedural section. Under rule 19 of the Rules of the Association membership continues as long as levies or dues remain unpaid by a member, and the respondent is, at any rate, liable for all levies or dues made during the six months antecedent to the bringing of the complaint.

Cleland (with him *Muirhead*), for the respondent. Sec. 68 only deals with the subject matter of proceedings, in whose name they may be brought, and in what particular class of Courts they may be taken. Under sec. 79 of the *Judiciary Act* 1903 the provisions of sec. 10 of the *Justices Act* 1850 are binding, unless there is some other provision in a federal Act, and whether sec. 10 gives a jurisdiction, or merely bars the remedy of a complainant. Sec. 68 of the *Commonwealth Conciliation and Arbitration Act* contains no limitation as to time at all. The limitation of time in sec. 10 is a matter of jurisdiction: *Totten-*

ham Local Board of Health v. *Rowell* (1); *R.* v. *Slade*; *Ex parte Saunders* (2); *Morris* v. *Duncan* (3); *Mackie* v. *Fox* (4).

[GRIFFITH C.J. referred to *R.* v. *Leeds and Bradford Railway Co.* (5).

ISAACS J. referred to *West* v. *Downman* (6); *Morant* v. *Taylor* (7); *Halsbury's Laws of England*, vol. XIX., p. 591.]

Under rule 19 a member remains a member up to the expiration of three months from giving written notice of his resignation, and for the purpose of recovering levies and dues made before the expiration of that period, he remains a member afterwards, but he is not liable for levies and dues made afterwards.

The Court will not give that rule an interpretation which would work a manifest injustice, if any other meaning can be given to it: *Perry* v. *Skinner* (8).

R. G. Nesbit in reply.

Cur. adv. vult.

The following judgments were read:—

June 17.

GRIFFITH C.J. This case, although a very small sum of money is involved, raises one question of general interest and importance.

The appellants are an organization registered under the provisions of the *Commonwealth Conciliation and Arbitration Act* 1904, and the respondent was, and is alleged by the appellants to be still, a member of the organization. Sec. 68 of the Act provides that:—

"All fines fees levies or dues payable to an organization by any member thereof under its rules may, in so far as they are owing for any period of membership subsequent to the registration or proclamation of the organization, be sued for and recovered in the name of the organization in any Court of summary jurisdiction constituted by a Police, Stipendary, or Special Magistrate."

(1) 1 Ex. D., 514.
(2) (1895) 2 Q.B., 247.
(3) (1899) 1 Q.B., 4.
(4) 105 L.T., 523.
(5) 18 Q.B., 343.
(6) 14 Ch. D., 111.
(7) 1 Ex. D., 188, at p. 195.
(8) 2 M. & W., 471, at p. 476.

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The appellants proceeded against the respondent in a Court of summary jurisdiction in South Australia constituted by a Special Magistrate for the recovery of levies and dues claimed from the respondent in respect of a period beginning before 23rd September 1910 (when it was admitted he was a member and owed the sum of 15s. 9d. for levies and dues) and extending to the date of the complaint, which was laid on 26th September 1911. The respondent contends that he ceased to be a member on the former date. With respect to the claim for the amount due before that date he relies upon the provisions of sec. 10 of the South Australian Act, No. 6 of 1850, which is a transcript of sec. 11 of the English Act 11 & 12 Vict. c. 43. He contends that under that Act a Court of summary jurisdiction has no jurisdiction to entertain a complaint unless it is laid within six months from the time when the matter of complaint arose. The appellants contend that sec. 68 of the *Commonwealth Conciliation and Arbitration Act* confers an independent original jurisdiction upon that Court in respect of the matters specified.

Sec. 39 of the *Judiciary Act* 1903 provides that the several Courts of the States shall "within the limits of their several jurisdictions, whether such limits are as to locality, subject matter, or otherwise be invested with federal jurisdiction" in certain cases. I think that this provision must be construed as relating to matters arising under federal Statutes, and being of a nature analogous to those over which such Courts respectively have jurisdiction under State laws, and as also including any other matters in respect of which jurisdiction is conferred by a federal Statute, but so that in all respects other than subject matter the provisions of the State law as to Courts of summary jurisdiction shall prevail. It cannot be disputed that if the complaint in this case arose under a State law the objection would be fatal. See, in particular, the case of *Tottenham Local Board of Health* v. *Rowell* (1) before the Court of Appeal, in which both *James* and *Mellish* L.JJ. treated the point as one of jurisdiction, as, indeed, it has always been treated in *Paley's* well known treatise on *Summary Convictions.*

The respondent also relies on sec. 79 of the *Judiciary Act,*

(1) 1 Ex. D., 514.

which expressly provides (perhaps only by way of declaration) that the laws of each State shall except as otherwise provided by the Constitution or the laws of the Commonwealth be binding on all Courts exercising federal jurisdiction in that State in all causes to which they are applicable. He contends that the Court of summary jurisdiction was therefore bound to give effect, as it did, to the provisions of sec. 10 of the Act of 1850.

The only answer that can be made to this argument is to show that sec. 68 of the *Commonwealth Conciliation and Arbitration Act* "otherwise provides."

The object of that section is on the face of it threefold—to constitute an obligation in the nature of a debt between an organization and its members, to authorize an organization to sue for recovery of the debt, and to confer jurisdiction upon State Courts of summary jurisdiction to entertain such a suit It also contains a limitation as to subject matter, namely, to levies, &c., owing for any period of membership subsequent to registration. This was necessary; for associations entitled to apply for registration as organizations included trade unions and other like associations which could not enforce claims against their members by legal process. Reliance was placed by the appellants on the word "any" before "period." But that word was necessary to discriminate between levies, &c., that might, and those that might not, be recovered under the section, *i.e.* between levies, &c, owing for, "any period subsequent" and those owing for a period antecedent to registration.

In my opinion, words so obviously necessary for that purpose cannot fairly be construed either as conferring an entirely new jurisdiction upon the Court free from limits as to time, or as creating an exception within the meaning of sec. 79 of the *Judiciary Act.* I think that when the Federal Parliament confers a new jurisdiction upon an existing State Court it takes the Court as it finds it, with all its limitations as to jurisdiction, unless otherwise expressly declared.

I think, therefore, that the claim fails as to the amount due before 23rd September 1910.

The other point in the case, which is of minor importance, depends upon the rules of the appellant organization. By

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Schedule B (*h*) to the Act of 1904, which was in force when the appellants were registered, the rules of every organization were required to provide (*inter alia*) for "(*h*) The times when, terms on which, persons may become, or cease to be members of the association, but so that no member shall discontinue his membership without giving at least three months' previous written notice to the secretary of his intention so to do, nor without paying all membership subscriptions and dues owing by him to the association;"

Rule 5 of the Association was as follows:—

"All candidates for membership shall be proposed at a general meeting of the Association, or at a meeting of the Committee of Management, when a vote of the majority of members present shall be sufficient to secure their election. And no member shall discontinue his membership without giving at least three months previously written notice to the secretary of his intention so to do, nor without paying all membership subscriptions and dues owing by him to the Association." The latter part of this rule is with one verbal exception a transcript of clause (*h*) of Schedule B.

Rule 19 was as follows:—

"A person shall not cease to be a member of the Association unless he has given at least three months' written notice to the secretary, and has paid all fees and dues owing by him to the Association."

On 23rd June 1910 the respondent sent his written notice of resignation of membership to the secretary. He then owed 9s. 9d. and no more for dues, but more was claimed from him by the appellants. He did not, however, pay or tender that amount, and has never paid it.

Under these circumstances the appellants contend that he is still a member, and will continue to be a member until he pays up all amounts due by members for the time being until he makes actual payment of the total amount. The amount claimed on this basis is 16s. 2d. No doubt rule 19 read by itself is susceptible of that interpretation. But it must, I think, be read in conjunction with rule 5. It is not likely that one rule would be intended to be read for the purpose of stating to entering

members the conditions of discontinuance of membership, while another and harsher rule is contained in the same document to read against them if they attempt to exercise the right ostensibly held out by rule 5.

In my opinion a reasonable construction of clause (*h*) of Schedule B and of rule 5 is that a member must give three months' notice of resignation, during which he will continue to be a member, and liable as such for all dues, and that he cannot by resignation escape that liability. In other words, "without paying" may be read as "without remaining liable to pay." I do not think that it should be construed as imposing a perpetual fetter upon a workman, who is perhaps unable to pay, so that his debt will go on accumulating from week to week until better fortune comes to him, while, being, as it is called, "unfinancial," he is disentitled to any benefits. Such a construction would lead to such manifest injustice, and is so unlikely to have been intended, that I think it should be rejected if any other is fairly open on the language. In my opinion the construction which I have stated is fairly open, and I think that rule 19 must be construed in the same way.

This conclusion is much fortified when regard is had to the provisions of the Act itself. Sec. 60 provides that the Court may cancel the registration of an organization if (*inter alia*) its rules do not provide reasonable facilities for the admission of new members, or impose unreasonable conditions upon the continuance of their membership. I read "upon" as meaning "as to." It was, therefore, evidently not contemplated that the rule required by clause (*h*), whatever its construction, should operate to impose unreasonable conditions upon withdrawal. For reasons already given I think that the construction sought to be put upon the rule by the appellants would impose unreasonable conditions. Moreover, as I have already pointed out, the Act provides for the registration of existing trade unions as organizations. It could not, in my opinion, have been intended that a trade union should be obliged to alter its rules so as to impose such a condition as to withdrawal from membership as that contended for as a condition precedent to the right of registration as an organization.

I think, therefore, that the respondent ceased to be a member

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on 23rd September 1910 when his three months' notice expired, and is not liable for the dues payable by members after that date. The appeal should therefore be dismissed.

BARTON J. The first question argued was whether the proceedings were barred by lapse of time except as to sums alleged to have become due after 26th March 1911, that is, due within six months of the beginning of proceedings.

I think the answer to this question depends on sec. 68 of the *Commonwealth Conciliation and Arbitration Act* 1904, and sec. 79 of the *Judiciary Act* 1903, when read in relation to the *Justices Act* of South Australia, 1850, No. 6, sec. 10. That the tribunal was a Court of summary jurisdiction is made clear by sec. 11 and other sections of that Act, and admittedly the Special Magistrate was exercising federal jurisdiction. Sec. 79 of the *Judiciary Act* is in comprehensive terms. Under it Courts exercising federal jurisdiction in any State are, except as otherwise provided by the Constitution or the laws of the Commonwealth, bound by the laws of that State, including the laws relating to procedure, evidence, and the competency of witnesses, in all cases to which such laws are applicable. There is no doubt, then, about the applicability of the time limit imposed by the 10th section of the *Justices Act*, whether it be regarded as a substantive law or a mere regulation of procedure, unless something is to be found in federal legislation which makes different provision in that regard. Sec. 10 is not a mere regulation of procedure. It limits the jurisdiction of the Court: *Tottenham Local Board of Health* v. *Rowell* (1). Then is there anything in any federal Statute which prevents the application of that section? No such provision was adduced, unless it is to be found in that part of sec. 68 of the *Conciliation and Arbitration Act*, which prescribes that the sums payable to an organization may be sued for and recovered "in so far as they are owing for any period of membership subsequent to the registration or proclamation of the organization." It was contended that so long as the indebtedness was incurred after registration the proceedings might be taken at any time after the claim arose, were it even twenty

(1) 1 Ex. D., 514.

years. But the words do not convey any such unreasonable meaning. They merely make it clear that summary proceedings are not to include claims for debts of this kind when incurred before registration in respect of membership of a body afterwards registered. As the argument for the appellants on this point is not sound, it follows that the time limit of the *Justices Act* 1850, sec. 10, applies, and that the proceeding is barred so far as it relates to sums alleged to have been due before 26th March 1911.

I have not discussed sec. 39 (2) (*d*) of the *Judiciary Act* in this connection, simply because the matter seems to me to be clear without it. But I also agree with what his Honor has said as to that section. The proceeding for recovery of such sums as these is a matter arising under a law made by the Parliament (see sec. 76 of the Constitution). It is therefore a matter in which original jurisdiction can be conferred upon the High Court. Therefore the Court before which this claim was brought had by sec. 39 (2) of the *Judiciary Act* been invested with federal jurisdiction, but only within the limits of its State jurisdiction. Under these circumstances the Special Magistrate was bound by the limits of his State jurisdiction as to time.

Then comes the second question, which depends primarily upon the construction of the 19th rule of the Association. It will be observed that the claim of money due since 26th March 1911 relates to a period much later than the expiration of three months from the date of the respondent's letter of resignation. That letter was dated 23rd June 1910, and the three months therefore expired on 23rd September of the same year. If he was not a member after that date then the claim of the appellants fails altogether. But the appellants maintain that the respondent remains a member so long as he owes anything by way of dues and subscriptions. This amounts to a contention that if a member gives the three months' notice required, but at its expiration owes any sum, large or small, which he is unable to pay, or if there is claimed against him a sum of which he admits, and offers to pay, part as justly due, but objects to pay the rest as an unjust or extortionate demand, he cannot escape from membership even after the end of the three months until he has paid up all the

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original claim, and with it all dues and subscriptions assessed against continuing members in the meantime.

Such a contention will require clear and unmistakable words to support it.

By sec. 55 (2) of the *Commonwealth Conciliation and Arbitration Act* the conditions to be complied with by associations applying to be registered under that Act as organizations are those set out in Schedule B. That Schedule prescribes certain matters for which the rules of the Association must provide. The appellant Association was registered in 1906. At that time paragraph (*h*) of the Schedule, since amended, read thus: "The times when, terms on which, persons may become, or cease to be members of the Association, but so that no member shall discontinue his membership without giving at least three months' previous written notice to the secretary of his intention so to do, nor without paying all membership subscriptions and dues owing by him to the Association."

Of the Rules of the appellant organization those material to the present appeal are No. 5 and No. 19, which I need not repeat.

These rules were in existence when the respondent became a member, and remained in force at the time of his letter of resignation.

It will be observed that rule 5 provides in its first part for the mode of admitting persons as members, and in its second part for the terms on which they may relinquish membership. The second part of the rule is an exact copy of the proviso to paragraph (*h*) of Schedule B, which begins with the word "but." As the copying must have been done advisedly, one cannot but infer that the words in the rule were intended to bear the same meaning as those in the Schedule to the Act, whatever that meaning might be. In other words, they are an obvious and literal compliance with the requirement of the Statute in that regard.

What then is the meaning of the condition imposed by paragraph (*h*) of Schedule B? The appellants say that both it and rules 5 and 19 have the meaning I have described above as their contention. But if that is so the appellants impute to Parliament an intention I can scarcely imagine it to have entertained. The contention would lead to so obvious an injustice, and would make

the paragraph or a rule framed to comply with it, so cruel an instrument of tyranny and oppression, that some more reasonable interpretation must be sought. And it is found, if we read the words "without paying" in a modified sense. What they mean is, I think, not an enforced retention of membership after the expiration of the notice until payment be made, but a continuing liability, although the resignation has taken effect, to pay everything due up to the end of the three months, on pain of an order to pay in a proceeding under sec. 68, which precedes Schedule B, and cannot have been overlooked when the Schedule was framed. Thus a member would not only be liable to pay all that had accrued up to the date of his letter of resignation, but all that might accrue between that date and the expiration of the three months, and the liability, but not the membership, would continue after, and notwithstanding, the expiration of that period. The membership might be terminated on due notice, though the liability for everything up to the expiration of the notice could not be ended except by payment. But the membership being over, fresh contributions and levies could not be made on the ex-member. In this sense "paying" would be read as "being still bound to pay," or "having to pay." This construction may I think be fairly arrived at within the principle expressed by the Court of Exchequer, per *Parke* B. in *Perry* v. *Skinner* (1), where words in a Statute, which if construed in their ordinary sense would have led to a manifest injustice, were so varied and modified by the Court "as to avoid that which it certainly could not have been the intention of the legislature should be done."

Rule 5, as I have pointed out, is evidently an endeavour to conform to the intention of Parliament by using identical language, and must be construed accordingly.

Then is rule 19 intended to produce any other result? It can scarcely be supposed that it was intended to frame two inconsistent rules, both in negative or prohibitive form, on the question of the termination of membership. The choice is between giving them the same meaning, which reduces any error of drafting to mere harmless tautology, and giving them meanings at variance

(1) 2 M. & W., 471, at p. 476.

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with one another without any guidance as to which ought to be applied. The latter cannot be the true construction, if there is any reasonable means of escaping from it. Whatever therefore be the reasonable meaning of rule 5, I think rule 19 must be read in the same sense: and that sense must be in conformity with the meaning of paragraph (*h*) of Schedule (*B*) of the Statute, of which I have given what appears to me the most probable construction. It follows that on the expiration of the three months succeeding his written notice Alexander was no longer a member, and therefore the sums claimed as having become due after that date are not recoverable from him.

For these reasons, I think that the Special Magistrate came to the correct conclusion, and that the appeal must be dismissed.

ISAACS J. With respect to rule 19, which is not happily worded, I think on the whole it means this: Cessation of membership is subject to two requirements: first, at least three months' previous notice in writing, and next, liability, notwithstanding such cessation, to pay all fees and dues owing up to the expiration of the notice. The appellants' interpretation involves a mutual entanglement resulting in perpetual involuntary membership, with undiminished benefits on one side, and increasing arrears on the other. The situation is from a practical standpoint impossible. Now, in addition to reading the rule in conjunction with the other rules of the organization, *Lindley* L.J. said in *Sibun* v. *Pearce* (1) regarding building society rules: —"You may construe a rule by reference to the Act of Parliament;" and looking to the circumstance that the rule in question was an intended compliance with the scheduled requirement of the Act of 1904, I am assisted to the conclusion I have stated.

Then comes the much more important question of sec. 10 of the Act No. 6 of 1850. That section as shewn by *Morant* v. *Taylor* (2) applies to "every kind of decision pronounced judicially by a justice in a civil matter." Sec. 68 of the *Commonwealth Conciliation and Arbitration Act* 1904 enables all fines, fees, levies, and dues owing for any period of membership subsequent to registration or proclamation to be sued for and recovered

(1) 44 Ch. D., 354, at p. 370. (2) 1 Ex. D., 188, at p. 195.

in the name of the organization in a Court of summary jurisdiction.

The respondent contends that sec. 79 of the *Judiciary Act* 1903 qualifies the jurisdiction so conferred by sec. 68, because it adopts as binding on federal Courts, all State laws, which of course include an enactment of limitation, in all cases to which such laws were applicable. *Morant* v. *Taylor* (1) shows that sec. 10 is applicable to every case in summary jurisdiction of justices. Sec. 79 is based on sec. 721 of the United States Revised Statutes, which was originally passed in 1789. It declares that:—"The laws of the several States, except where the Constitution, treaties or Statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at common law, in the Courts of the United States, in cases where they apply." That section was applied from the earliest times so as to include State Statutes of limitation in causes involving rights arising under State laws, but tried in federal Courts. The Federal Circuit Courts, however, were until 1894 nearly equally divided as to whether the same rule applied where the right arose under a federal law. In that year, the Supreme Court of the United States in *Campbell* v. *Haverhill* (2) held that it did. That was the case of infringement of patent arising under congressional law. The decision has been followed in 1899 in *Brady* v. *Daly* (3), a case of copyright, and again as lately as 1906 in *Chattanooga Foundry and Pipe Works* v. *City of Atlanta* (4), an action for damages under the federal *Anti-Trust Act*. Therefore sec. 10 of the local Statute applies in the present case unless it is either expressly or by necessary implication otherwise provided by the Constitution or Commonwealth law. It is urged for the respondent that the words of sec. 68 are designedly unlimited and amount to a contrary provision. It is said that the words "owing for any period of membership subsequent to the registration or proclamation of the organization" amount to an indication that no such limit was to be observed. But that cannot hold. Those words were inserted to prevent any question arising as to recovery in respect of any prior period. They can have, and indeed more properly have, a meaning consistent with the general provisions of sec. 79 of the *Judiciary*

(1) 1 Ex. D., 188.
(2) 155 U.S., 610, at pp. 614 *et seq.*
(3) 175 U.S., 148, at p. 158.
(4) 203 U.S., 390, at p. 397.

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Act; and therefore should not be read as an implicitly contrary provision. The legislative mind, however, as appears by a later section in the *Conciliation and Arbitration Act*, is quite clear on the point. Sec. 89 provides:—"For the purposes of this Act, a State Court or Magistrate, whose jurisdiction is limited, as to area, subject matter, or parties, to any part of a State, shall be deemed to have jurisdiction throughout the State. Provided that on the hearing of any proceeding in a Court of summary jurisdiction for the recovery of any penalty, fine, fee, levy, or due, the Court, if in the interests of justice it thinks fit, may adjourn the hearing to a Court of summary jurisdiction to be held at some other place in the same State." This ends any suggestion of implied intention on the part of the Commonwealth Parliament to confer by the words of sec. 68 an unlimited jurisdiction in all respects upon the State Courts.

The jurisdiction of Courts of summary jurisdiction and of magistrates is frequently limited in various ways. See *Paley on Summary Convictions*, 8th ed., pp. 16 *et seq.* One limitation is locality, and that may be as to the area within which the Court may sit, or the magistrate may act, or as to subject matter, as for instance, where the cause of action arises, or as to parties, as, for instance, having reference to the residence of the defendant.

Other limitations include amount, and time, the latter exemplified by sec. 10 of the State Act.

Sec. 89 of the *Conciliation and Arbitration Act* takes up one form of limitation only, namely locality, as applied to area, subject matter, and parties, and is significantly silent as to the rest.

Dealing expressly with limitation of jurisdiction, confining itself to one, and passing by the rest unnoticed, the latter, including that as to time, must in view of the distinct provisions of sec. 79 of the *Judiciary Act* be taken as intentionally left to continue in operation.

The appeal must therefore be dismissed.

Appeal dismissed with costs.

Solicitors, for the appellants, *Nesbit & Nesbit.*

Solicitor, for the respondent, *C. M. Muirhead.*

B. L.