[HIGH COURT OF AUSTRALIA.]

LING PACK (OTHERWISE AH SING) . . APPELLANT;
DEFENDANT,

AND

GLEESON . . . . . RESPONDENT.
INFORMANT,

ON APPEAL FROM A COURT OF GENERAL SESSIONS OF VICTORIA.

H. C. OF A. 1913.

MELBOURNE, *March* 17.

Griffith C.J., Barton and Isaacs JJ.

Prohibited immigrant—Domicil in Australia—Evidence—Immigration Restriction Act 1901-1910 (*No.* 17 *of* 1901—*No.* 10 *of* 1910), *secs.* 3, 7.

A Chinese came from China to Australia in 1898, leaving his wife behind him. He remained in Australia about six years, not learning English, of which he acquired only an imperfect knowledge of a few words, and having no residence or house of his own. He went back to China in 1904 at the call of filial duty, remained there for eight years, and came back to Australia in 1912, still without his wife.

Held, that the evidence did not establish that he had an Australian domicil before he went to China in 1904, and, therefore, that he was properly convicted of an offence under sec. 7 of the *Immigration Restriction Act* 1901-1910 in respect of his coming to Australia in 1912.

APPEAL from a Court of General Sessions of Victoria.

In the Court of Petty Sessions at Melbourne, before P. J. Dwyer, Esq., P.M., an information was heard whereby James Gleeson charged that Ling Pack on 23rd August 1912, being an immigrant who was required and failed to pass the dictation test within the meaning of the *Immigration Restriction Act* 1901-1910, and who had entered the Commonwealth within two years

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before so failing to pass the dictation test, and, being a prohibited immigrant, was found within the Commonwealth in contravention of such Act The defendant, having been convicted, appealed to the Court of General Sessions at Melbourne, and the appeal was dismissed, and the conviction affirmed.

From this decision the defendant now appealed to the High Court on the grounds (*inter alia*) that in and prior to the year 1904 he was domiciled in Australia, and that such domicil had never been abandoned or lost by him; and that in and prior to the year 1904 he was a member of the Australian community, and never afterwards ceased to be a member thereof.

The facts are sufficiently stated in the judgment of *Griffith* C.J.

Schutt, for the appellant. The evidence shows that the appellant came to Australia with the intention of making it his permanent home, and, being here at the time of the foundation of the Commonwealth, he became one of the Australian people: *Potter* v. *Minahan* (1). His coming back in 1912 throws some light on his previous intention.

[BARTON J. referred to *Aikman* v. *Aikman* (2).]

Latham, for the respondent, was not called on.

GRIFFITH C.J. The appellant's latest version of the facts, which was accepted by the Chairman of the Court of General Sessions, and which is very likely true, is that his real name is Ah Sing, that he came from China to Australia in 1898, leaving his wife in China, that he remained for about six years in Melbourne, not learning English, of which he acquired only an imperfect knowledge of a few words, and having no residence or house of his own; that he then in 1904 went back to China at the call of filial duty, where he remained for eight years, and then came back to Australia, still without his wife. On these facts, which are substantially all the materials before us, the Court is asked to find as a fact that he had abandoned his Chinese domicil of origin, and acquired an Australian domicil, before he went to China in 1904. I find it impossible to draw any such inference.

(1) 7 C.L.R., 277. (2) 3 Macq. H.L. Cas., 854.

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Griffith C.J.

It is therefore not necessary to consider what would be the result if he had done so. What his intention was when returning to Australia it is not necessary to determine, for he must establish that he had acquired an Australian domicil before going back to China.

The appeal fails.

BARTON J. I am of opinion that the appeal must be dismissed.

ISAACS J. I agree.

Appeal dismissed.

Solicitors, for the appellant, *Fink, Best & Hall.*

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

B. L.

[HIGH COURT OF AUSTRALIA.]

CRESSWELL . . . . . APPELLANT;

AND

INCORPORATED LAW INSTITUTE OF NEW SOUTH WALES . . . . } DEFENDANTS.

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1912.

SYDNEY, *Sept.* 12.

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

Solicitor—Removal of name from roll.

The Supreme Court of New South Wales having ordered the name of a solicitor to be removed from the roll on the ground of misconduct, the High Court refused special leave to appeal.