

[HIGH COURT OF AUSTRALIA.]

THE KING

AGAINST

RENNIE AND OTHERS.

EX PARTE KNIGHT.

*Children's Courts—Jurisdiction—Defence—Offences by cadets under 17 years of age* H. C. OF A.  
*—Defence Act 1903-1912 (No. 20 of 1903—No. 5 of 1912), secs. 110, 135 (10)—* 1913.  
*Children's Court Act 1906 (Vict.) (No. 2058), secs. 2, 4, 12, 13, 14—Acts Inter-*  
*pretation Act 1901 (No. 2 of 1901), sec. 26.* MELBOURNE,

Oct. 14.

By the *Children's Court Act 1906* (Vict.) jurisdiction is given to Children's Courts in respect of offences by children under the age of 17 years.

Isaacs,  
 Gavan Duffy  
 and Powers, JJ.

*Held*, that offences against sec. 135 of the *Defence Act 1903-1912*, committed by cadets over the age of 16 years and under the age of 17 years, may be prosecuted in Children's Courts in Victoria, notwithstanding the provisions of sec. 135 (10) of the *Defence Act*.

MANDAMUS.

At a Children's Court held at Malvern in the State of Victoria, an information came on for hearing, whereby Ernest Knox Knight charged that Sydney Arthur Wallace, a cadet, who was over 16 years and under 17 years of age, committed a certain offence against the *Defence Act 1903-1912*. The special magistrates, James Rennie and Laurence Doyle, having held that they had no jurisdiction to hear the case by reason of the defendant being over the age of 16 years, the informant obtained an order *nisi* for a *mandamus* to the magistrates to hear and determine the information.

*J. R. Macfarlan* moved the order absolute. Under the *Children's Court Act 1906* a Children's Court has jurisdiction in



H. C. OF A. 1913. THE KING v. RENNIE; EX PARTE KNIGHT. respect of children under the age of 17 years: See secs. 2, 12 (1), (3), 13, 14. The fact that by sec. 135 (10) of the *Defence Act* 1903-1912 offences committed by cadets under the age of 16 years are, where practicable, to be prosecuted in Children's Courts, does not prevent the prosecution in Victoria of cadets who are over that age in those Courts; for by sec. 110 offences may be prosecuted in any Court of summary jurisdiction, and in Victoria Children's Courts are such Courts in respect of boys under the age of 17 years.

*Mann*, for the magistrates, showed cause. No meaning can be given to sec. 135 (10) unless it is to be implied that offences by cadets over the age of 16 years are not to be prosecuted in Children's Courts. The jurisdiction of Children's Courts as to children under 17 years of age is not exclusive, but there is an option as to whether prosecutions shall be instituted in those Courts or in Courts of Petty Sessions: See secs. 12 and 14 of the *Children's Court Act* 1906.

The judgment of the Court was delivered by

ISAACS J. The question raised in this case is remarkably simple. An offence under the *Defence Act* 1903-1912 was charged against a lad over the age of 16 years and under the age of 17 years for failing without lawful excuse to attend compulsory drill. The proceeding was taken in the Children's Court at Malvern, and the magistrates thought that they had no jurisdiction, by reason of the construction which they placed upon sec. 135 (10) of that Act, which provides that "In places where Children's Courts exist, offences against this section committed by cadets under the age of 16 years shall be prosecuted in such Courts as far as is reasonably practicable." The offence charged was an offence against that section. The Act by sec. 110 provides that "A prosecution for an offence against this Act or the Regulations may be brought in any Court of summary jurisdiction." Those words would include the Children's Court for this reason, that by sec. 26 of the *Acts Interpretation Act* 1901 "Court of summary jurisdiction," in any Act, unless the contrary intention appears, means "any justice or justices of the peace or other magistrate of



the Commonwealth or part of the Commonwealth, or of a State or part of a State, sitting as a Court for the making of summary orders or the summary punishment of offences under the law of the Commonwealth or of a State or by virtue of his or their commission or commissions or any Imperial Act.”

The *Children's Court Act* 1906 of Victoria, which establishes and regulates Children's Courts, by sec. 4 provides that “The Governor in Council may appoint for any city town or place any person or any police magistrate and may also appoint any one or more justices of the peace of the bailiwick in which such city town or place is situate to be a special magistrate or special magistrates and to exercise the jurisdiction of a Children's Court under this Act.” Therefore, unless some words are found in the Commonwealth *Defence Act* giving a different meaning to the words “Court of summary jurisdiction” as used in that Act, the Malvern Children's Court would answer the description. Now, that reduces the question to this: Does sec. 135 (10) declare in effect that where the alleged offender is over the age of 16 years Children's Courts have no jurisdiction? In our opinion it does not so declare. The general provision in sec. 110 is clear, and sec. 135 (10) is a mere direction for an obvious purpose—for the sake of the offender—to proceed in that particular Court where it is reasonably practicable, and there are no words either in that phrase or in any other part of the section which limit the general jurisdiction given by sec. 110, under the general words of which the Court would have jurisdiction. That seems to be the position; and the order *nisi* for a mandamus will, therefore, be made absolute. As it is a case of public officers there will be no costs.

*Order nisi for mandamus absolute.*

Solicitor, for the applicant, *Gordon H. Castle*, Crown Solicitor for the Commonwealth.

Solicitor, for the defendants, *Guinness*, Crown Solicitor for Victoria.

B. L.

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