

BARTON J. I concur.

[ISAACS J. was not present on the last day of the hearing, and took no part in the judgment.]

*Order varied by ordering that the costs of the application and of the appeal be plaintiffs' costs in the action.*

H. C. OF A.  
1912.

MARCONI'S  
WIRELESS  
TELEGRAPH  
CO. LTD.

v.  
THE COM-  
MONWEALTH.  
[No. 1.]

Solicitors, for the appellants, *Blake & Riggall*.

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

B. L.

[HIGH COURT OF AUSTRALIA.]

THE KING AGAINST WHITFELD AND OTHERS.

EX PARTE QUON TAT.

*Courts of General Sessions (Tas.)—Appellate jurisdiction—Federal matters—Prohibited immigrant—Conviction—Refusal to hear appeal—Mandamus—Judicature Act 1903 (No. 6 of 1903), sec. 39 (2)—Immigration Restriction Act 1901 (No. 17 of 1901), sec. 7.*

H. C. OF A.  
1913.

HOBART,  
Feb. 20.

By virtue of sec. 39 (2) of the *Judicature Act 1903* Courts of General Sessions of the State of Tasmania are, within the limits of their jurisdiction, invested with federal jurisdiction.

Griffith C.J.,  
Barton and  
Isaacs JJ.

As the Courts of General Sessions in Tasmania have no general appellate jurisdiction, but have merely particular appellate jurisdiction conferred upon them in several cases by particular Statutes, such Courts have no general jurisdiction to hear appeals from justices in matters of federal jurisdiction.

*Held*, therefore, that a Court of General Sessions in Tasmania has no jurisdiction to hear an appeal from a conviction by a magistrate of a person for an offence under sec. 7 of the *Immigration Restriction Act 1901*, as a conviction for an offence of that nature is not one in respect of which appellate jurisdiction has been conferred by any Statute on Courts of General Sessions in that State.



H. C. OF A. ORDER *nisi* for mandamus.

1913.

REX

v.

WHITFIELD.

EX PARTE  
QUON TAT.

The applicant, Quon Tat, was convicted by a magistrate under sec. 7 of the *Immigration Restriction Act* 1901 (No. 17 of 1901) of being a prohibited immigrant. He appealed to the Court of General Sessions at Launceston, which was constituted of Ernest Whitfeld (the Chairman) and two other justices, but they refused to hear the appeal on the ground that they had no jurisdiction. On application to a Justice of the High Court in Chambers, he obtained an order *nisi* calling upon the Chairman and the two other justices to show cause why a writ of mandamus should not issue to compel them to hear and determine the appeal.

He now sought to have that order made absolute.

*M. J. Clarke*, for the applicant. Under sec. 39 of the *Judiciary Act* a Court of General Sessions of Tasmania has federal jurisdiction within the limits of its jurisdiction: *Ah Yick v. Lehmert* (1).

The Court must look generally at the Acts passed by the Tasmanian Parliament, and see whether, in construing sec. 39 of the *Judiciary Act* in conjunction therewith, there would be a right of appeal. There is no necessity to have express words giving an appeal, if the intention to give it is clear: *R. v. Justices of Surrey* (2).

*Hall*, for the informant, was not called on.

GRIFFITH C.J. This application purports to be founded on sec. 39 (2) of the *Judiciary Act*, which 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.

This provision was considered by this Court in the case of *Ah Yick v. Lehmert* (1), where the question was as to the jurisdiction of the Court of General Sessions in Victoria. I quote a few words from my own judgment (3):—"This enactment relates to all the Courts of the States, and may be read as if all those Courts were enumerated. Let us take the Court of General Sessions of Victoria and apply the section to this Court,

(1) 2 C.L.R., 593.

(2) L.R. 5 Q.B., 87, at p. 91.  
(3) 2 C.L.R., 593, at p. 605.



and it will read thus:—‘Courts of General Sessions of the State of Victoria shall within the limits of their jurisdiction be invested with federal jurisdiction in all matters enumerated in secs. 75 and 76 of the Constitution.’ Then we have to inquire what is the jurisdiction of Courts of General Sessions in Victoria? On that inquiry we find that they have both original and appellate jurisdiction.”

Applying that to the present case, sec. 39 (2) may be read thus:—“Courts of General Sessions of the State of Tasmania shall within the limits of their appellate jurisdiction be invested with federal jurisdiction.” The question then arises: What are the limits of the appellate jurisdiction of Courts of General Sessions in Tasmania? Appellate jurisdiction must be conferred by Statute, and Courts of General Sessions have only such appellate jurisdiction as is expressly conferred on them. But we find that they have no general appellate jurisdiction, but only jurisdiction in particular cases, conferred by particular Statutes which do not cover the present case.

It is clear, therefore, that they have no appellate jurisdiction in this case.

The order *nisi* must therefore be discharged.

BARTON J. I am entirely of the same opinion. I was inclined to refuse Mr. *Clarke's* application for an order *nisi* when it came before me in vacation, but taking into consideration the nearness of these sittings and the importance of the subject matter, I thought it desirable that a final decision of the Full Court should be obtained.

ISAACS J. I am of the same opinion, and have nothing to add.

*Order nisi discharged.*

Solicitor, for the applicant, *M. J. Clarke*, Launceston.

Solicitors, for the respondent, *Law, Weston & Archer*, Launceston.

N. McG.

H. C. OF A.  
1913.

REX

v.

WHITFIELD.

EX PARTE  
QUON TAT.

Griffith C.J.