[HIGH COURT OF AUSTRALIA.]

MITCHELL . . . . . APPELLANT;
DEFENDANT,

AND

BARKER . . . . . RESPONDENT.
INFORMANT,

ON APPEAL FROM A SPECIAL MAGISTRATE OF THE NORTHERN TERRITORY.

H. C. OF A. 1918.

MELBOURNE, *March* 15.

Griffith C.J., Gavan Duffy, Powers and Rich JJ.

Northern Territory — Special Magistrate — Jurisdiction — Summary conviction — Offence against laws of Commonwealth—Appeal to High Court—The Constitution (63 & 64 *Vict. c.* 12), *secs.* 73, 122—*Judiciary Act* 1903-1915 (*No.* 6 *of* 1903—*No.* 4 *of* 1915), *sec.* 68 (2)—*Northern Territory Acceptance Act* 1910 (*No.* 20 *of* 1910), *secs.* 7, 8—*Northern Territory* (*Administration*) *Act* 1910 (*No.* 27 *of* 1910), *secs.* 5, 12—*War Precautions Regulations* 1915 (*Statutory Rules* 1915, *No.* 130; *Statutory Rules* 1916, *No.* 282), *reg.* 46 (*b*).

The jurisdiction which, before the *Northern Territory Acceptance Act* 1910 was passed, a Special Magistrate of South Australia had under sec. 68 (2) of the *Judiciary Act* with respect to the summary conviction of persons charged with offences against the laws of the Commonwealth committed within the Northern Territory, was renewed both as to subject matter and locality by sec. 8 of the *Northern Territory Acceptance Act* 1910.

Held, therefore, that a Special Magistrate of the Northern Territory had jurisdiction to entertain and determine a complaint for an offence against the *War Precautions Regulations* 1915 committed in the Territory.

APPEAL from a Special Magistrate of the Northern Territory.

At Darwin, in the Northern Territory, before a Special Magistrate on 27th September 1917, Charles Mitchell was charged under the *War Precautions Regulations* 1915, on the information of Eli Barker,

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for that he did unlawfully personate a person to whom a pass had been duly issued to enter on board a ship then moored alongside the Railway Pier at Darwin. He was convicted and fined £10, and in default was ordered to be imprisoned for two months.

On 18th October 1917, on motion by the defendant, who desired to appeal to the High Court from the conviction, the High Court ordered that notice of appeal might be served on the Commonwealth Crown Solicitor in Melbourne; and that, so far as the defendant or his solicitors and the Commonwealth Crown Solicitor could agree as to the time and place of appeal and security to be given, they might agree; and that in default of agreement application on notice to the Commonwealth Crown Solicitor might be made to the High Court or a Justice thereof, according to the jurisdiction, for directions; and that nothing contained in the order should be deemed to affect the rights of the Crown in relation to the conviction; and the Court expressly reserved to the Crown its right to object to the jurisdiction of the High Court to hear an appeal from the conviction, and its right to take steps to strike out any notice of appeal given by the defendant. The defendant now, accordingly, appealed to the High Court from the conviction.

Cleland K.C. and *Foster*, for the appellant.

Mann, for the respondent. The proper mode of appeal is by a case stated for this Court in the same way as if the appeal were from a Special Magistrate of South Australia to the Supreme Court of South Australia. If that is not so, at any rate special leave to appeal must be obtained under sec. 39 of the *Judiciary Act*. One effect of secs. 7 and 8 of the *Northern Territory Acceptance Act* 1910 is to continue the operation of the *Judiciary Act* in the Territory as it existed before the former Act was passed. The result is that the jurisdiction of the then existing Courts in the Territory was continued, that those Courts were thenceforward Courts of the Commonwealth and that the *Judiciary Act* continued in operation in relation to them just as it did before.

Cleland K.C. The Special Magistrate's Court is a Federal Court

within the meaning of sec. 73 of the Constitution, and under that section the High Court has jurisdiction to entertain an appeal from his decision. The decision in *R.* v. *Bernasconi* (1) does not conflict with that view, and, if what was said in the judgments in that case is to be taken as a decision that none of the sections in Chap. III. of the Constitution applies to a Territory of the Commonwealth, that decision should be reconsidered. The Special Magistrate had no jurisdiction to entertain the information. Before the enactment of the *Northern Territory Acceptance Act* the jurisdiction of a Special Magistrate as to offences against the laws of the Commonwealth was limited by sec. 68 of the *Judiciary Act* to offences committed in the State of South Australia, and the latter Act did not apply to a Territory unless expressly made applicable by Rules of Court (see sec. 86 (*g*)). When the Northern Territory ceased to be part of South Australia and became a Territory of the Commonwealth, sec. 68 of the *Judiciary Act* no longer operated there.

The judgment of the COURT, which was delivered by GRIFFITH C.J., was as follows :—

This appeal, which is from a decision of a Special Magistrate of the Northern Territory, is brought on the assumption that his Court is a Federal Court within the meaning of sec. 73 of the Constitution—an assumption which is, at least, open to very great doubt. In *R.* v. *Bernasconi* (1) this Court held that the group of sections comprised in Chap. III. of the Constitution do not apply to a Territory of the Commonwealth. If that is right in its largest sense, the Special Magistrate's Court is not a Federal Court, and no appeal lies to this Court. It may be that a distinction may some day be drawn between Territories which have and those which have not formed part of the Commonwealth. But the Court, as now constituted, cannot say so. It is to be noted that while the *Papua Act* 1905 expressly gives an appeal to this Court, the *Northern Territory Acceptance Act* does not do so, while the *Northern Territory (Administration) Act* gives an appeal to the Courts of South Australia. On the other hand, whether the Court is a Federal Court or not, it is

(1) 19 C.L.R., 629.

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quite clear that sec. 8 of the *Northern Territory Acceptance Act* 1910 gave it ample jurisdiction to deal with all cases which it could have dealt with before the creation of the Territory, and this appeal, so far as it is based on the ground that the Special Magistrate had no jurisdiction, must fail.

The jurisdiction which the Magistrate exercised was that given by sec. 68 (2) of the *Judiciary Act*, which provides that "The several Courts of a State exercising jurisdiction with respect to (*a*) the summary conviction . . . of offenders or persons charged with offences against the laws of the State shall have the like jurisdiction with respect to persons who are charged with offences against the laws of the Commonwealth committed within the State, or who may lawfully be tried within the State for offences committed elsewhere." This tribunal, while the Northern Territory was part of South Australia, had jurisdiction to deal with all offences against the laws of the Commonwealth committed within South Australia. This was a prosecution for an offence against the laws of the Commonwealth committed in the Territory. But Mr. *Cleland* says that when the Territory ceased to be part of South Australia these words were no longer applicable. The jurisdiction conferred was a jurisdiction both as to subject matter and as to locality. So far as the jurisdiction as to subject matter is concerned it is not affected by the change in its source, and so far as regards locality the jurisdiction was not diminished by the change in the political status of the Territory. The old jurisdiction, both as to locality and as to subject matter, was renewed by sec. 8 of the *Northern Territory Acceptance Act*. So that either this Court has no jurisdiction to entertain the appeal or the Magistrate had jurisdiction to deal with the charge. As to the merits there are none, and the conviction was quite right. It would therefore be idle to adjourn this appeal for further argument before a Full Bench on the abstract question whether the Magistrate's Court was a Federal Court, for, *quacumque viâ*, the Magistrate had jurisdiction, and the appeal must be discharged.

As to the penalty, that is a matter as to which we are not in a position to say whether it was or was not too high. But if there

is any ground for an appeal to the mercy of the Government, that course is still open. The only order we can make is to dismiss the appeal with costs.

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Appeal dismissed with costs.

Solicitor for the appellant, *F. Kelly*, Adelaide (for *R. I. D. Mallam*, Darwin), by *McCay & Thwaites*.

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

B. L.

[HIGH COURT OF AUSTRALIA.]

MEARES . . . . . APPELLANT;

AND

THE ACTING FEDERAL COMMISSIONER OF TAXATION . . . . . } RESPONDENT.

ON APPEAL FROM BARTON J.

Income Tax—Assessment—Dividends from company—Payment out of accumulated profits—Amount carried forward to credit of profit and loss account—Income Tax Assessment Act 1915-1916 (*No.* 34 *of* 1915—*No.* 39 *of* 1916), *sec.* 14 (*b*).

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The term "profit and loss account" in the last proviso to sec. 14 (*b*) of the *Income Tax Assessment Act* 1915-1916 means an account showing the transactions of a company during a given period in which are entered on one side amounts received, and on the other the expenditure incurred during the same period in producing those receipts. The difference shows the profit or loss for that period. It is not a necessary part of the account that it should show how the profit, if any, has been or is intended to be disposed of.

An amount is "carried forward by a company to the credit of the profit and loss account," within the meaning of that proviso, when a balance of profit of any period is grouped with the receipts proper of the next succeeding