

[HIGH COURT OF AUSTRALIA.]

MATHEWS . . . . . APPELLANT;  
DEFENDANT,

AND

BURNS . . . . . RESPONDENT.  
COMPLAINANT,

ON APPEAL FROM THE SUPREME COURT OF  
NEW SOUTH WALES.

H. C. OF A. *Industrial Arbitration—Organization—Recovery of dues—Court of summary jurisdiction—Imprisonment in default of payment—Commonwealth Conciliation and Arbitration Act 1904-1915 (No. 13 of 1904—No. 35 of 1915), sec. 68—Acts Interpretation Act 1901-1916 (No. 2 of 1901—No. 4 of 1916), sec. 26—Judiciary Act 1903-1915 (No. 6 of 1903—No. 4 of 1915), sec. 79—Small Debts Recovery Act 1912 (N.S.W.) (No. 33 of 1912), sec. 7\*—Justices Act 1902 (N.S.W.) (No. 27 of 1902), sec. 82\*.*  
1918.  
SYDNEY,  
Aug. 12.  
Isaacs,  
Gavan Duffy  
and Rich JJ.

A complaint to recover contributions alleged to be due to an organization registered under the *Commonwealth Conciliation and Arbitration Act 1904-1915* by a member thereof was heard by a Stipendiary Magistrate sitting as a Court of Petty Sessions of New South Wales, and an order was made for payment

\* Sec. 7 of the *Small Debts Recovery Act 1912* (N.S.W.) provides that Courts of Petty Sessions shall have power to hear and determine in a summary way all actions whatsoever (*inter alia*) for the recovery of any debt or liquidated demand not exceeding £30. Sec. 43 provides for execution in default of payment of money ordered by a Court of Petty Sessions to be paid.  
Sec. 82 of the *Justices Act 1902* (N.S.W.) provides that “(1) In no case shall . . . any sum of money, or costs, adjudged to be paid by any . . . order made by any justice or justices founded on . . . any other Act past or future, be or be adjudged to

be levied by distress. (2) Whenever by any . . . order it is adjudged that any . . . sum of money, or costs, shall be paid, the justice or justices making the . . . order shall therein and thereby adjudge that, in default of payment, in accordance with the terms of the . . . order, of the amount thereby adjudged to be paid as ascertained thereby, the person against whom the conviction or order is made shall be imprisoned and so kept for such period . . . as to such justice or justices seems fit, unless the said amount . . . be sooner paid.”



of a certain sum and for imprisonment in default of payment. A rule *nisi* for prohibition on the grounds that the Magistrate had no power to award imprisonment in default of payment and that the Court was not a Court of summary jurisdiction within the meaning of sec. 68 of the *Commonwealth Conciliation and Arbitration Act* was discharged by the Supreme Court.

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*Held*, that special leave to appeal to the High Court should be refused.

Special leave to appeal from the decision of the Supreme Court of New South Wales : *Ex parte Mathews*, 18 S.R. (N.S.W.), 316, refused.

#### APPLICATION for special leave to appeal.

At the Central Police Court, Sydney, before a Court of Petty Sessions constituted by a Stipendiary Magistrate, a complaint was heard whereby John Burns, on behalf of the Federated Ironworkers' Association of Australia, an organization registered under the *Commonwealth Conciliation and Arbitration Act*, sought to recover from Henry William Mathews the sum of £1 7s. for contributions and levies payable under the rules of the Association. At the hearing objection was taken on behalf of the defendant that the Court had no jurisdiction as the proceedings were for the recovery of a civil debt and that the proper Court in which to sue was the Small Debts Court. The Magistrate overruled the objection, and made an order that the defendant should pay ten shillings for Union dues, four shillings for costs, seven shillings and sixpence for a witness's expenses and twenty-one shillings professional costs, and he ordered that in default of payment the defendant should be imprisoned for seven days. The defendant then obtained a rule *nisi* for prohibition on the grounds: (1) that the Magistrate sitting as the Central Police Court had no jurisdiction to make the order; (2) that the order was bad inasmuch as it imposed imprisonment for a simple contract debt, and (3) that the Central Police Court holden under the provisions of the *Justices Act* 1902 was not a Court of summary jurisdiction within the meaning of sec. 68 of the *Commonwealth Conciliation and Arbitration Act*. The Full Court ordered that the rule *nisi* should be discharged : *Ex parte Mathews* (1).

The defendant now applied for special leave to appeal to the High Court from that decision.

*McGhie*, in support of the application. There was no power to

(1) 18 S.R. (N.S.W.), 316.



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impose imprisonment in default of payment. Even if the Magistrate might in the case of an ordinary civil debt order imprisonment in default of payment, he had no power to do so in respect of the payment of money recoverable under the *Commonwealth Conciliation and Arbitration Act*, for under sec. 79 of the *Judiciary Act* the laws of the State do not apply where the laws of the Commonwealth otherwise provide, and the *Commonwealth Conciliation and Arbitration Act* does otherwise provide (*Federated Sawmill &c. Employees' Association v. Alexander* (1)). The whole spirit of that Act is against imprisonment, which is only provided for in the case of a second offence against the Act (sec. 5). The Magistrate sitting in the Central Police Court was not a Court of summary jurisdiction within the meaning of sec. 68 of the *Commonwealth Conciliation and Arbitration Act* or of sec. 26 (d) of the *Acts Interpretation Act* 1901-1916. The proceedings should have been instituted under the *Small Debts Recovery Act* 1912 (N.S.W.), which by sec. 7 provides for execution in default of payment, and nowhere provides for imprisonment in default of payment. Sec. 82 (1) of the *Justices Act* 1902 (N.S.W.), which gives a power to award imprisonment in default of payment, does not apply to orders made under the *Small Debts Recovery Act*.

[ISAACS J. That section appears to be one of general application.]

Under sec. 68 of the *Commonwealth Conciliation and Arbitration Act* the proceeding must be brought in the particular Court of summary jurisdiction which, if the debt were recoverable under the laws of the particular State, would have jurisdiction to entertain it. [Counsel also referred to *Master Undertakers' Association of New South Wales v. Crockett* (2).]

PER CURIAM. Special leave to appeal will be refused.

*Special leave to appeal refused.*

Solicitor for the applicant, *P. J. Clines*.

B. L.

(1) 15 C.L.R., 308, at p. 313.

(2) 5 C.L.R., 389.