

H. C. OF A. RICH J. I agree with the conclusion arrived at on the ground that
1918. the issue of the summons under sec. 7 of the *Inter-State Destitute*
RENTON *Persons Relief Act* 1910 is not a judicial exercise of jurisdiction by a
v. Court within the meaning of sec. 39 (2) (d) of the *Judiciary Act*.
RENTON.

Appeal allowed. Order appealed from discharged and order of Special Magistrate restored with costs. Respondent to pay costs of appeal.

Solicitors for the appellant, *Rollison & Abbott*.

Solicitors for the respondent, *Mayo, Murray & Cudmore*.

B. L.

[HIGH COURT OF AUSTRALIA.]

BLUME APPELLANT ;

AND

THE KING RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF
QUEENSLAND.

H. C. OF A. *Crown Lands—Lease—Performance of conditions—Occupation—Continuous residence*
1918. *—Residence by bailiffs—Land Act 1910 (Qd.) (1 Geo. V. No. 15), secs. 89, 93,*
133.

MELBOURNE,
Sept. 13.

Isaacs,
Gavan Duffy
and Rich JJ.

Sec. 89 of the *Land Act of 1910* provides that “Whenever under this Act any land is selected subject to the condition of occupation during the whole term or during a specified period thereof as distinguished from the condition of personal residence, the condition of occupation shall be performed by the continuous and *boná fide* residence on the land of the selector himself or of a registered bailiff who is himself qualified to select a similar selection.” Sec. 93 provides that the Land Court may suspend the condition of occupation in respect of any selection in certain specified cases or in “any other case in which the Court thinks that it is proper so to do.” Sec. 133 provides that if it is established that the lease of a selection is liable to forfeiture “the Governor in Council may declare the lease forfeited.”

The condition of occupation of a grazing selection was being performed by means of the residence thereon of successive registered bailiffs. One of the bailiffs having terminated his employment and left the selection, a period of five weeks or more elapsed before the beginning of the residence of another bailiff, and during that period the selector was trying to find another person who would take the position of bailiff.

Held, that it might properly be determined that the residence was not continuous, and therefore that there had been a failure to comply with the condition of occupation, and that it might properly be declared that the lease was liable to forfeiture.

Decision of the Supreme Court of Queensland affirmed.

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v.
THE KING.

APPEAL from the Supreme Court of Queensland.

Charles Blume, junior, was the lessee of a grazing selection in the district of Winton, for a term of twenty-eight years from 1st July 1910, under a lease issued under the *Land Act of 1910* and subject to a condition of occupation during the whole term. Blume's usual place of residence was Winton, and the condition of occupation was performed by means of registered bailiffs. On 7th January 1916 Blume was called upon to show, before a Land Commissioner's Court, why the lease should not be declared forfeited on the ground that there had been a failure by Blume to perform the condition of occupation. The matter was heard on 5th March, and the Land Commissioner held that it had been proved to his satisfaction that there had been a failure by Blume to perform the condition of occupation. Blume appealed from the decision of the Land Commissioner to the Land Court, which reversed the decision of the Land Commissioner and found that the Crown had not made out a case for forfeiture. From that decision the Crown appealed to the Land Appeal Court, which found that between 28th August 1915, when a certain registered bailiff left the selection, and the end of 1915 the condition of occupation had not been performed and allowed the appeal, declaring that the lease was liable to be declared forfeited for failure to comply with the condition of occupation. That Court then stated a special case under sec. 36 of the *Land Act of 1910* setting out (*inter alia*) the facts already stated and the evidence, and asking whether on the facts found by the Court there was any breach of the condition of occupation, and whether there was any evidence upon which the Court could find those facts. According to the evidence given for Blume

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it appeared that one Lawrance, who was employed by Blume as a registered bailiff, occupied the selection from 1st May 1915 until 28th August 1915, when he left the service of Blume. Blume was informed at the end of September that Lawrance had gone away from the selection on 24th September. Blume immediately tried to get another registered bailiff, and, after engaging one man who did not go to the selection, he himself went to the selection, where he remained about eight or nine days at the beginning of October, and then went back to Winton. There he arranged with one Wheeler to act as his registered bailiff. Wheeler signed a bailiff's agreement, which was dated 20th November, and occupied the selection from about that date until about 12th January 1916.

The Full Court made an order dismissing Blume's appeal.

From that decision Blume now appealed to the High Court.

Mann, for the appellant. The residence by a bailiff does not cease to be continuous within the meaning of sec. 89 of the *Land Act of 1910* merely by reason of his physical absence from the selection. The circumstances under which it happened that there was for a short period no bailiff upon the selection may be taken into consideration, and, if it appears that there was a continuous intention on the part of the selector to continue residence by means of bailiffs, it should not be held that there was a failure to comply with the condition of occupation.

[ISAACS J. The facts might have justified a suspension under sec. 93, or might induce the Minister not to forfeit under sec. 133.]

Ryan A.-G. for Qd. and *Mahoney*, for the respondent, were not called upon.

PER CURIAM. The appeal must be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellant, *J. F. Fitzgerald & Walsh*, Brisbane, by *Dillon & Nichols*.

Solicitor for the respondent, *W. F. Webb*, Crown Solicitor for Queensland.

B. L.