

[HIGH COURT OF AUSTRALIA.]

TRIVETT AND ANOTHER . . . APPELLANTS;

AND

McDONALD AND ANOTHER . . . RESPONDENTS.

ON APPEAL FROM THE SUPREME COURT OF
NEW SOUTH WALES.

H. C. OF A. *Trade Union—Trustees of union—Misapplication of union funds—Proceedings by*
 1919. *Registrar—No fraud or criminality charged—Civil or criminal remedy—Juris-*
 SYDNEY, *diction to order repayment—Trade Union Act 1881 (N.S.W.) (45 Vict. No. 12),*
sec. 13.
 April 11.

Griffith C.J.,
 Barton
 and Rich J.J.

Sec. 13 of the *Trade Union Act 1881* (N.S.W.) provides that "If any officer . . . of a trade union . . . by false representation or imposition obtain possession of any moneys . . . of such trade union or having the same in his possession wilfully withhold or fraudulently misapply the same or wilfully apply any part of the same to purposes other than those expressed or directed in the rules of such trade union . . . the Court of summary jurisdiction . . . upon a complaint made by any person on behalf of such trade union or by the Registrar may by summary order order such officer . . . to deliver up all such moneys . . . to the trade union or to repay the amount of money applied improperly . . . and in default of . . . repayment of such amount of money . . . the said Court may order the said person so convicted to be imprisoned with or without hard labour for any time not exceeding three months."

Held, that proceedings under the section are of a criminal nature, and therefore that trustees of a trade union who were proceeded against under the section could not, in the absence of fraud or criminal intention, be ordered to repay money which had been applied by them to purposes other than those expressed or directed in the rules of the union.

Decision of the Supreme Court of New South Wales : *Ex parte McDonald*, 18 S.R. (N.S.W.), 383, affirmed.

APPEAL from the Supreme Court of New South Wales.

H. C. OF A.

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TRIVETT

v.

McDONALD.

An information was laid under sec. 13 of the *Trade Union Act* 1881 by John Burt Trivett, Registrar of Trade Unions, against G. W. McDonald and H. Leighton, the trustees of the Amalgamated Society of Carpenters and Joiners, a trade union registered under that Act, charging that the defendants, having moneys of the said trade union in their possession, wilfully and unlawfully did apply part of them, to wit, the sum of £100, to purposes other than those expressed or directed in the rules of the said trade union. The rules of the union provided that in any branch or district a special fund might be raised for the purpose of affiliation to a Trades Council or contributing to a fund for local purposes by a majority of members at a duly convened meeting. Rule 9 (4) provided that "should a surplus remain after the purposes for which a levy has been imposed are fulfilled it shall be disposed of as members of the branch or district, as the case may be, may determine at a meeting summoned for that purpose." A local levy was made in the Sydney district of the union, and after the special purpose had been provided for there was a surplus remaining. At a duly convened meeting of the union a resolution was carried that the sum of £100 be donated from the local levy fund to the No-Conscription Council. A cheque for this sum in favour of the No-Conscription Council, and signed by the respondents as trustees of the union, was drawn on the union's account in the Government Savings Bank and paid to the credit of the Political Labour League Executive of New South Wales in the Commonwealth Bank. The information was heard at the Central Police Court at Sydney before Mr. M. S. Love, S.M., who convicted the defendants, and ordered each of them to repay the sum of £50, to be paid into Court, and to pay costs, in default to be imprisoned for three months with hard labour.

The defendants applied to the Supreme Court for a prohibition, and on 23rd August 1918 the rule for a prohibition was made absolute: *Ex parte McDonald* (1).

Against this decision the appellants now, by special leave, appealed to the High Court.

(1) 18 S.R. (N.S.W.), 383.

H. C. OF A. *Alec Thomson*, for the appellants.
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Blacket K.C. (with him *Watt* and *Bathgate*), for the respondents, moved to rescind the special leave to appeal. At the time when special leave to appeal was obtained a material section, namely, sec. 17 (52E) of the *Industrial Arbitration (Amendment) Act* 1918 (No. 16 of 1918), was not brought to the notice of the Court, and was not considered by the Court. The present proceedings should have been brought under that section, and not under sec. 13 of the *Trade Union Act*.

PER CURIAM. The motion to rescind special leave will be dismissed.

Alec Thomson. The question turns on the jurisdiction of the Magistrate to hear the matter. No fraud or criminality was charged against the trustees. They were obeying a mandate of the members of the union, who passed a resolution directing them to apply the money in the way in which they did. The Supreme Court held, following two English cases (*Barrett v. Markham* (1) and *Madden v. Rhodes* (2)), that it was essential for the Magistrate's jurisdiction that there should be fraud or criminality. The section provided a mode of execution. It was quite open to the Legislature to provide such means of execution, and it was quite possible in this case to summon the defendants before a Court of Petty Sessions and to ask for no more than an order for repayment. The section was composite. It provided both a criminal and a civil remedy. [Counsel referred to *Barrett v. Markham* (1); *Madden v. Rhodes* (2); *Cope v. Crossingham* (3); *Vernon v. Watson* (4); *R. v. Truscott* (5).]

[RICH J. referred to *Scott v. Wilson* (6).]

Blacket K.C. and *Watt* and *Bathgate* were not called upon.

GRIFFITH C.J. The Supreme Court came to their decision on authority. I agree with it, and would have come to the same

(1) L.R. 7 C.P., 405.

(2) (1906) 1 K.B., 534.

(3) (1909) 2 Ch., 148.

(4) (1891) 2 Q.B., 288.

(5) 81 L.T., 188.

(6) 9 T.L.R., 492.

decision independent of authority. The section deals with an offence, and in my opinion the Supreme Court were right in coming to the conclusion they did.

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BARTON J. I concur.

RICH J. I concur.

Appeal dismissed with costs.

Solicitor for the appellants, *J. V. Tillett*, Crown Solicitor for New South Wales.
Solicitor for the respondents, *J. B. Moffatt*.

C. A. W.

[HIGH COURT OF AUSTRALIA.]

THE MINISTER FOR HOME AND TERRI- }
TORIES } PLAINTIFF ;

AGAINST

LAZARUS DEFENDANT.

Cons
Taxation,
Federal
Commissioner
of v Murry
(1998) 72
ALJR 1065

Cons
FCT v Murry
(1998) 193
CLR 605

Land—Acquisition by Commonwealth—Federal Territory—Compensation—Time of assessment—Goodwill of business carried on on land—Seat of Government Acceptance Act 1909 (No. 23 of 1909), sec. 10—Seat of Government (Administration) Act 1910 (No. 25 of 1910), sec. 10—Lands Acquisition Act 1906 (No. 13 of 1906), secs. 5, 29.

Sec. 10 of the *Seat of Government Acceptance Act* 1909 as amended by sec. 10 of the *Seat of Government (Administration) Act* 1910 provides that “The provisions of the *Lands Acquisition Act* 1906 shall apply to the acquisition by the Commonwealth, for any public purpose, of any land owned in the Territory by any person: Provided that, in determining the compensation to which the owner is entitled under that Act, the value of the land shall be taken not to exceed the unimproved value of the land, or the interest therein

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SYDNEY,
April 28 ;
May 1.
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Barton, Isaacs
and Rich JJ.