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complicated figures in order to find the amount on which the tax is to be levied.

Order accordingly.

Solicitor for the appellant, *W. H. Conwell.*

Solicitors for the respondent, *Chambers, McNab & McNab,* for *Gordon H. Castle,* Crown Solicitor for the Commonwealth.

B. L.

[HIGH COURT OF AUSTRALIA.]

BECKETT . . . . . APPELLANT;

AND

THE KING . . . . . RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF QUEENSLAND.

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SYDNEY, *Dec.* 11.

Criminal Law—Murder—Conviction of child under seventeen years of age—Sentence—Abolition of capital punishment—Statute—Interpretation—Criminal Code (Qd.) (63 *Vict. No.* 9, *Sched. I.*), *sec.* 305*—*State Children Act* 1911 *(Qd.)* (2 *Geo. V. No.* 11), *secs.* 4, 24 *—*Criminal Code Amendment Act* 1922 *(Qd.)* (13 *Geo. V. No.* 2), *secs.* 2, 3.*

KNOX C.J., ISAACS, HIGGINS, GAVAN DUFFY AND STARKE JJ.

* Sec. 305 of the *Criminal Code* (Qd.) provides that any person who commits the crime of wilful murder is liable to the punishment of death.

Sec. 4 of the *State Children Act of* 1911 (Qd.) defines the word "child" as meaning "a boy or girl under the age or apparent age of seventeen years," and the word "convicted" as meaning "found guilty or convicted of any crime or offence punishable by imprisonment." Sec. 24 provides that "If any child is convicted, the Court having cognizance of the case shall not sentence such child to imprisonment, but shall—(*a*) Commit such child to the care of the" State Children "Department; or (*b*) Order such child to be sent to a reformatory or industrial school, and to be there detained or to be otherwise dealt with under this Act"; &c.

Sec. 2 of the *Criminal Code Amendment Act of* 1922 (Qd.), which came into operation on 31st July 1922, provided that "The sentence of punishment by death shall no longer be pronounced or recorded, and the punishment of death shall no longer be inflicted." Sec. 3 amends the *Criminal Code* (*inter alia*) by repealing the words "the punishment of death" in sec. 305 and inserting in lieu thereof the words "imprisonment with hard labour for life, which cannot be mitigated or varied under section nineteen of this Code."

Held, that a child under the age of seventeen years, convicted, after the coming into operation of the *Criminal Code Amendment Act of* 1922 (Qd.), of murder, cannot be sentenced to imprisonment, but must be dealt with in accordance with sec. 24 of the *State Children Act of* 1911 (Qd.).

R. v. *Beeston*, (1915) S.R. (Qd.), 101, approved.

Decision of the Supreme Court of Queensland: *R.* v. *Beckett*, (1922) S.R. (Qd.), 287, reversed.

APPEAL from the Supreme Court of Queensland.

At the Circuit Court at Maryborough on 28th August 1922 Clive Beckett, a boy of the age of thirteen years and nine months, was convicted of wilful murder, and was sentenced to imprisonment with hard labour for life. He appealed from the sentence to the Supreme Court sitting as the Court of Criminal Appeal, and that Court, by a majority (*McCawley* C.J., *O'Sullivan* and *Blair* JJ., *Shand* and *Lukin* JJ. dissenting), dismissed the appeal: *R.* v. *Beckett* (1).

From that decision Beckett applied to the High Court for special leave to appeal; and on the hearing of the application special leave to appeal was granted, and the appeal was heard forthwith.

Salkeld, for the appellant. Sec. 24 of the *State Children Act of* 1911 applies to a conviction by the Supreme Court (*R.* v. *Beeston* (2)), and therefore applies to any conviction of a child where the penalty is imprisonment. That being so, when the *Criminal Code Amendment Act of* 1922 was passed sec. 24 of the *State Children Act* applied to a child convicted of murder, and he must be dealt with as provided in that section.

C. E. Weigall, for the Crown. *R.* v. *Beeston* (2) was wrongly decided. Sec. 24 of the *State Children Act of* 1911 is not so clear and unambiguous as to require an interpretation which has the effect of repealing by implication a number of sections of the *Criminal Code*, such as sec. 678. It should be limited either to convictions before the Children's Court created by the *Children's Courts Act of* 1907 or to convictions before that Court or before justices under the *Justices Act of* 1886. The *State Children Act* will be given a reasonable effect if the word "Court," wherever it is used in the Act, is interpreted as not including the Supreme Court. Even if *R.* v.

(1) (1922) S.R. (Qd.), 287. (2) (1915) S.R. (Qd.), 101.

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Beeston (1) was rightly decided, the word "mitigated" in sec. 3 of the *Criminal Code Amendment Act of* 1922 is not governed by the words "under section nineteen of this Code," but refers to mitigation generally. Sec. 24 of the *State Children Act* is as much special legislation as is the *Criminal Code Amendment Act*, and should be construed as unaffected by that Act (see *Halsbury's Laws of England*, vol. XXVII., p. 152; *Nairn* v. *University of St. Andrews* (2)).

Salkeld, in reply.

KNOX C.J. In this case I agree substantially with the reasons given by *Lukin* J. for the conclusion at which he arrived. Under the *Criminal Code* of Queensland certain offences were, until recently, punishable by death; certain others were punishable by imprisonment. In that state of the law the *State Children Act of* 1911 was passed, which provides by sec. 24, as expanded by the definitions of "child" and "convicted" in the interpretation clause, sec. 4, that "if any boy or girl under the age of seventeen years is found guilty or convicted of any crime or offence punishable by imprisonment, the Court having cognizance of the case shall not sentence such child to imprisonment, but shall" proceed in accordance with the section. At that stage it was clear, I think, that any conviction in any Court for any offence punishable by imprisonment could only result in the consequences provided in sec. 24 if the offence were committed by a boy or girl under seventeen years of age. At that time, there being certain offences punishable by death, it may be assumed that sec. 24 did not apply to those offences.

In *R.* v. *Beeston* (1) the Court of Criminal Appeal held, rightly in my opinion, that the provisions of sec. 24 applied to verdicts and convictions in the Supreme Court as well as to convictions before Courts of Petty Sessions. In giving their reasons for that decision the learned Judges invited the attention of Parliament to the extraordinary results which might follow from the interpretation which they felt constrained to put upon sec. 24. But when in 1917 the Parliament of Queensland amended the *State Children Act of* 1911, the suggestions made by the Judges in *R.* v. *Beeston* were apparently

(1) (1915) S.R. (Qd.), 101. (2) (1909) A.C., 147, at p. 161.

ignored, and sec. 24 was left exactly as it was, although certain other sections were amended. Then in 1922 an Act was passed "to abolish capital punishment and to amend the *Criminal Code* and other enactments accordingly." By sec. 2 of that Act the punishment of death was abolished, and by sec. 3 (xiv.) it was provided that in sec. 305 of the *Criminal Code* the words "the punishment of death" should be repealed, and in lieu thereof the words "imprisonment with hard labour for life, which cannot be mitigated or varied under section nineteen of this Code." The present appellant was convicted of the crime of wilful murder in August of this year, the Act to abolish capital punishment having been assented to on 31st July. It follows that by reason of that Act capital punishment could not be inflicted on the appellant and the punishment to which he was liable was imprisonment. Under those circumstances it appears to me that the appellant comes exactly within the description contained in sec. 24 of the *State Children Act of* 1911: he was a boy under the age of seventeen years who was found guilty of a crime punishable by imprisonment.

For these reasons I am of opinion that the sentence passed upon the appellant must be quashed.

ISAACS J. I agree. I think that the case of *R.* v. *Beeston* (1) was well decided, and on the substance of the case I agree with the reasons given by *Lukin* J.

HIGGINS J. I also agree with the judgment of the Chief Justice.

GAVAN DUFFY J. I agree.

STARKE J. I agree.

Appeal allowed. Sentence quashed. Appellant to remain in custody until order of the Court of Criminal Appeal of Queensland. Matter remitted to that Court to be dealt with according to law consistently with this decision.

B. L.

(1) (1915) S.R. (Qd.), 101.