

[HIGH COURT OF AUSTRALIA.]

THE COMMONWEALTH OF AUSTRALIA . . . APPELLANT;  
GARNISHEE,

AND

DALTON . . . . . RESPONDENT.  
JUDGMENT CREDITOR,

ON APPEAL FROM A COURT OF REQUESTS OF TASMANIA.

H. C. OF A. *Attachment of Debts—Garnishee proceedings—Wages due to employee of Common-*  
1924. *wealth—Jurisdiction of Court of Requests (Tas.)—Local limits of jurisdiction*  
—*Commonwealth Public Service Act 1922 (No. 21 of 1922), sec. 64—Judiciary*  
MELBOURNE, *Act 1903-1920 (No. 6 of 1903—No. 38 of 1920), sec. 39—Local Courts Act 1896*  
Mar. 11, 12. *(Tas.) (60 Vict., No. 48), secs. 19, 85, 86—Local Courts Amendment Act 1902*  
*(Tas.) (2 Edu. VII., No. 19), secs. 7, 8.*

Knox C.J.,  
Isaacs,  
Gavan Duffy,  
Rich and  
Starke JJ.

Under sec. 64 of the *Commonwealth Public Service Act 1922*, which provides that an order for the attachment of the salary, wages or pay of any officer or employee in the Commonwealth Service may be made by any Court of competent jurisdiction, such an order may be made by a Court of a State which has jurisdiction to make similar orders as between subject and subject, and therefore may be made by a Court of Requests of Tasmania.

For the purposes of sec. 39 (2) of the *Judiciary Act* the Commonwealth is within the limits as to locality of the jurisdiction of a Court of Requests of Tasmania, the jurisdiction of which in attachment proceedings is by sec. 85 of the *Local Courts Act 1896* (Tas.) (substituted by sec. 7 of the *Local Courts Amendment Act 1902* (Tas.)) limited to cases where the person indebted to the judgment debtor is within the jurisdiction of the Court.

APPEAL from a Court of Requests of Tasmania.

J. J. Dalton, having obtained a judgment in the Court of Requests at Hobart against T. Fahey, an employee in the Postal Department

of the Commonwealth, for a certain sum of which £4 remained unpaid, obtained a garnishee order nisi in that Court for the attachment of all debts due and owing or accruing due from the Commonwealth to Fahey. On the return of the order nisi the Commonwealth took the defence that the Court of Requests had no jurisdiction to make the order against the Commonwealth. The Court of Requests made the order nisi absolute with costs.

From that decision the Commonwealth now appealed to the High Court.

*Keating*, for the appellant. The words "any Court of competent jurisdiction" in sec. 64 of the *Commonwealth Public Service Act* 1922 mean any Court which has jurisdiction to entertain proceedings against the Commonwealth, and not any Court which has jurisdiction in garnishee proceedings between subjects. That section should not be construed as a submission by the Commonwealth to inferior Courts of the States. Assuming that the debt is one which the judgment debtor could enforce against the Commonwealth, he could only do so in the High Court or the Supreme Court (sec. 56 of the *Judiciary Act*), and it should not be inferred that the intention of the Commonwealth Parliament was, by sec. 64 of the *Commonwealth Public Service Act*, to give to the judgment creditor a wider right than the judgment debtor would have. [Counsel referred to *Cribb v. Mood and Commissioner for Railways* (1); *Washer v. Elliott* (2); *Simpson v. Blues* (3); *Smith v. Brown* (4); *Aitken v. Godkin* (5).] Sec. 39 (2) of the *Judiciary Act* is not a submission by the Commonwealth to the jurisdiction of State Courts, and if it were not for sec. 56 of that Act the Supreme Courts of the States would not have had jurisdiction over the Commonwealth (*Commonwealth v. Miller* (6)). The requirement in sec. 85 of the *Local Courts Act* 1896 (substituted by sec. 7 of the *Local Courts Amendment Act* 1902) that the affidavit in support of the garnishee order nisi shall contain a statement that the garnishee is within the jurisdiction of the Court creates a limit as to locality of the jurisdiction

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(1) (1921) 15 Q.J.P.R., 97.

(2) (1876) 1 C.P.D., 169, at p. 176.

(3) (1872) L.R. 7 C.P., 290, at pp. 296, 299.

(4) (1871) L.R. 6 Q.B., 729, at p. 737.

(5) (1868) 5 W.W. & ÆB. (L.), 216, at

p. 218.

(6) (1910) 10 C.L.R., 742, at p. 748.

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 1924. *Judiciary Act*, and the Commonwealth cannot be said to be within  
 { that limit.

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*Latham K.C.* (with him *Clayton Davis*), for the respondent. The intention of sec. 64 of the *Commonwealth Public Service Act* is to confer upon a Court which has jurisdiction to make garnishee orders between individuals power to make such orders against the Commonwealth, subject to all the limits to which that Court is subject when making such orders against individuals. The limit as to locality of that jurisdiction applies to the Commonwealth as well as to individuals. The test in that respect as to whether that Court has jurisdiction is whether the order will protect the garnishee from having to pay the debt twice (*Swiss Bank Corporation v. Boehmische Industrial Bank* (1)). The Commonwealth for the purposes of local limits of the jurisdiction of State Courts is in each State; it is present in every part of the geographical limits of the Commonwealth.

The following written judgments were delivered:—

KNOX C.J. The question for decision is whether the Court of Requests in Tasmania has jurisdiction to make a garnishee order against the Commonwealth.

Sec. 64 of the *Commonwealth Public Service Act* 1922 provides that an order for the attachment of the salary, wages or pay of any officer or employee in the Commonwealth Service may be made by any Court of competent jurisdiction. It is admitted that the amount in respect of which the order under appeal was made is salary, wages or pay of an officer in the Commonwealth Service; it is admitted also that the order appealed from would be within the jurisdiction of the Court of Requests if the garnishee were a subject. These admissions dispose of the matter. The expression "Court of competent jurisdiction" in sec. 64 of the *Commonwealth Public Service Act*, in my opinion, means a Court having jurisdiction to make similar orders as between subject and subject. The Court of Requests, being such a Court, is invested within the limits of its jurisdiction with Federal jurisdiction by sec. 39 (2) of the *Judiciary Act*. It was faintly

(1) (1923) 1 K.B., 673.

suggested that the limit as to residence of the garnishee imposed by the Tasmanian *Local Courts Act* might prevent an order being made against the Commonwealth, but in my opinion this contention is quite untenable.

The appeal should be dismissed, and the costs as between solicitor and client be paid by the Commonwealth pursuant to its undertaking.

ISAACS AND RICH, JJ. The Tasmanian *Court of Requests* at Hobart made an order as under sec. 64 of the *Commonwealth Public Service Act* 1922 attaching the salary of a Federal officer in favour of a judgment creditor. The order proceeded to give further directions, but as to these nothing is said, because the single point raised by the Commonwealth is the competency of the Court to make an order for attachment of the salary at all. Sec. 64 of the *Commonwealth Public Service Act* enacts : “ An order for the attachment of the salary wages or pay of any officer or employee in the Commonwealth or Provisional Service may be made by any Court of competent jurisdiction.” Two matters are clear from the provisions of that section : (1) salary and pay of officers and employees are by legislative direction made subject to attachment ; and (2) since attachment there implies proceeding against the Commonwealth, the Commonwealth submits to the exercise of the necessary jurisdiction. All that remains is to determine whether the Court of Requests is a “ Court of competent jurisdiction.” Sec. 64 does not determine that. It assumes a competent Court. Then, by what law is the competency of the Court to be judged for the purposes of sec. 64 ? Certainly by Federal law. And as sec. 64 itself does not create any standard of curial competency, does not designate any particular Court or class of Courts and does not confer jurisdiction on all Courts indiscriminately, it follows that the section assumes a standard existing elsewhere in Federal law. Assuming that standard, sec. 64 in effect says that, to the ordinary competency of any Court to make an order for attachment to answer judgment debts, there is added the power to make such an order against the Commonwealth in respect of the salary, wages or pay of a Commonwealth officer. It is in sec. 39 of the *Judiciary Act* that we find the relevant Federal law regulating the competency of State Courts in respect of attachment orders. Sub-sec. 2 says : “ The

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several Courts of the States shall within the limits of their several jurisdictions, whether such limits are as to locality, subject matter, or otherwise, be invested with Federal jurisdiction, in all matters in which the High Court has original jurisdiction or in which original jurisdiction can be conferred upon it, except as provided in the last preceding section," &c. The last preceding section is now sec. 38A, which relates only to the jurisdiction of the Supreme Court in matters arising as to limits *inter se* of the Constitutional powers of the Commonwealth and those of any other State or States. The original jurisdiction possessed by the High Court by virtue of sec. 75 (III.) of the Constitution is therefore—except in cases coming within sec. 38A of the *Judiciary Act* (and this is not one of those cases)—conferred on all State Courts "within the limits of their several jurisdictions."

To find the limits of the jurisdiction of a State Court, we have to examine its constitution, which determines its character, the subject matter with which it is authorized to deal, the locality within which it may act or in respect of which it may adjudicate, the persons over whom its authority extends, and any other prescribed regulations limiting its exercise of judicial power. The totality of these provisions mark out the area of curial jurisdiction, and therefore define the limits of the jurisdiction as adopted by the Federal Parliament for the purposes of Federal jurisdiction. The Federal jurisdiction conferred by sec. 39 (2) automatically covers the area occupied by State jurisdiction so adopted, and does not exceed those limits.

Whether the limits of jurisdiction of the Court of Requests include the necessary power of granting orders of attachment of the relevant nature, must be ascertained, in the first place, by reference to Tasmanian legislation. The two relevant enactments are the *Local Courts Act* 1896 and its amending statute of 1902, No. 19. That Court, having regard to its character and functions as conferred by law and all the provisions defining the exercise of its jurisdiction, is a Court which, apart from one suggested feature, raises no controversy as to disqualifying limitation. That feature is contained in sec. 85 as enacted in the Act of 1902. The judgment creditor has to file an affidavit stating (*inter alia*) that the person indebted to the judgment debtor is "within the jurisdiction of the Court." The question was

raised whether the limits of jurisdiction included the present case—that is, whether the Commonwealth could be said to be “within the jurisdiction of the Court,” and so justify the affidavit required by the Tasmanian Act. There exists a very powerful body of authority both in England and Australia that a corporation may be regarded as within the territorial jurisdiction of a Court for purposes of service if it there carries on business, notwithstanding the fact that the abstract entity called the corporation is also present in other parts of the world. With much greater force may the Commonwealth, considered politically and juridically, be said to be wherever the Commonwealth extends geographically. The Commonwealth from a legal standpoint is the King in right of the Commonwealth, and the King is juridically present in every part of his Dominion.

The appeal should therefore be dismissed.

GAVAN DUFFY J. and STARKE J. agreed that the appeal should be dismissed.

*Appeal dismissed. Costs as between solicitor and client to be paid by the Commonwealth pursuant to its undertaking.*

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

Solicitors for the respondent, *A. B. & C. Crisp, Gill & Harvey*.

B. L.

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