[HIGH COURT OF AUSTRALIA.]

JOHN SHARP & SONS LTD. . . . . PLAINTIFF;

AGAINST

THE SHIP *KATHERINE MACKALL* . . DEFENDANT.

H. C. OF A. 1924.

MELBOURNE, *May* 27, 28.

SYDNEY, *Aug.* 20.

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

High Court—Jurisdiction—"Admiralty and maritime jurisdiction"—Commonwealth a British possession—Action in rem on contract of affreightment—Bill reserved for royal assent—Colonial Courts of Admiralty Act 1890 (53 & 54 *Vict. c.* 27), *secs.* 2, 3, 4, 15—*Interpretation Act* 1889 (52 & 53 *Vict. c.* 63), *sec.* 18—*Admiralty Court Act* 1861 (24 *Vict. c.* 10), *sec.* 6—*The Constitution* (63 & 64 *Vict. c.* 12), *secs.* 51, 58, 60, 76 (III.), 98—*Judiciary Act* 1903-1920 (*No.* 6 *of* 1903—*No.* 38 *of* 1920), *secs.* 30, 30A.

Held, that the Commonwealth of Australia is, by virtue of sec. 18 (2) of the *Interpretation Act* 1889, a "British possession" within the meaning of sec. 2 of the *Colonial Courts of Admiralty Act* 1890, and, therefore, that the High Court, having within the Commonwealth unlimited civil jurisdiction, is a Colonial Court of Admiralty and has jurisdiction in an action by consignees against a ship, the owner of which is not domiciled in Australia, for delivery in a damaged condition of goods for which the consignees hold a bill of lading issued by the master of the ship.

Quære, whether jurisdiction in such an action is not also validly conferred upon the High Court by secs. 30 and 30A of the *Judiciary Act* 1903-1920.

Per Isaacs J.: Sec. 30A of the *Judiciary Act* 1903-1920 has no force because, having been reserved for the King's assent, sec. 60 of the Constitution was not complied with.

DEMURRER.

An action was brought in the High Court by John Sharp & Sons Ltd., a company incorporated in Victoria, against the Ship *Katherine Mackall*, of which no owner or part owner was domiciled in Australia. By the statement of claim it was alleged that about 5th July 1923 certain timber was shipped on board the *Katherine Mackall* at the port of Portland, Oregon, in the United States of America, by

Balfour Guthrie & Co.; that the master of the ship received such timber to be carried to the port of Melbourne upon the terms stated in bills of lading signed by him, and that the bills of lading contained clauses stating that the timber was shipped in good order and condition and was to be delivered in the like good order and condition to the plaintiff or its assigns; that the plaintiff at the time the timber was delivered was the owner and consignee thereof under the bills of lading; and that the timber (with a certain exception) was delivered in a damaged condition whereby the plaintiff suffered damage. The plaintiff claimed £1,583 17s.

In the defence the defendant (*inter alia*) objected, by par. 8, that the High Court had no jurisdiction over the alleged cause of action for the following reasons:—"The Commonwealth *Judiciary Act* in so far as it purports to declare the High Court a Colonial Court of Admiralty within the meaning of the Imperial Act known as the *Colonial Courts of Admiralty Act* 1890 is void as not being within the power conferred by sec. 3 and/or not having complied with the conditions prescribed by sec. 4 of the said Imperial Act. The provisions of sec. 30A of the Commonwealth *Judiciary Act* are so essential a part of the purported grant of admiralty or maritime jurisdiction to the High Court that sec. 30A being void the whole grant is void. The alleged cause of action does not come within the authority of sec. 76 of the Constitution and/or of the grant in the Commonwealth *Judiciary Act* contained."

To that particular defence the plaintiff demurred, and the demurrer now came on for argument before the Full Court.

Latham K.C. (with him *Fulagar*), for the defendant. The *Colonial Courts of Admiralty Act* 1890 does not enable the Commonwealth Parliament to declare the High Court a Colonial Court of Admiralty, and that Act, either by itself or in conjunction with the provisions of the Constitution, is not applicable to the High Court. The jurisdiction to entertain an action such as the present one was first conferred by sec. 6 of the *Admiralty Court Act* 1861, and that jurisdiction cannot be exercised by the High Court unless it is a Colonial Court of Admiralty within the meaning of sec. 2 (1) of the *Colonial Courts of Admiralty Act* 1890. A Court which that

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sub-section creates a Colonial Court of Admiralty is a Court in a "British possession." That term was defined by sec. 18 (2) of the *Interpretation Act* 1889, and at the time the *Colonial Courts of Admiralty Act* 1890 was passed that definition applied to the several colonies of Australia. The establishment of the Commonwealth did not affect that position. It is impossible that the Commonwealth and the States should at the same time be "British possessions." Under sec. 107 of the Constitution each State retained the power given by sec. 3 of the *Colonial Courts of Admiralty Act* to declare its Court a Colonial Court of Admiralty. It cannot have been intended that the Commonwealth as well as the States had the power to declare its Court to be a Colonial Court of Admiralty. If the *Colonial Courts of Admiralty Act* applies to the Commonwealth, then sec. 76 (III.) of the Constitution is unnecessary, for everything that could be done under that section could be done under the *Colonial Courts of Admiralty Act*. Sec. 4 of the last-mentioned Act has not been complied with in regard to the *Judiciary Act* 1914, by which the Commonwealth Parliament purported to exercise the power conferred by sec. 76 (III.) of the Constitution. The Governor-General assented to the Act on 29th October 1914 instead of reserving it for the royal assent, as was required by sec. 4 of the *Colonial Courts of Admiralty Act*. The subsequent royal assent on 7th September 1916, which was notified in the *Government Gazette* on 16th November 1916, was ineffective, because within two years after the Act was presented to the Governor-General for his assent that assent was not made known either by speech or message to each of the Houses of Parliament or by proclamation, as required by sec. 60 of the Constitution. The effect of non-compliance with the provisions of sec. 4 of the *Colonial Courts of Admiralty Act* is that the *Judiciary Act* 1914 is invalid. The exercise by the *Judiciary Act* 1914 of the general grant of power to confer admiralty jurisdiction on the High Court does not confer on the High Court the special jurisdiction which was given by sec. 6 of the *Admiralty Court Act* 1861 (see *The Ironsides* (1); *R.* v. *Judge of the City of London Court* (2)).

(1) (1862) Lush. 458; 31 L.J. P.M. & A. 129.
(2) (1892) 1 Q.B. 273, at pp. 293-294.

H. I. Cohen K.C. (with him *Nathan*), for the plaintiff. The jurisdiction which sec. 76 (III.) of the Constitution was intended to cover was the jurisdiction which was included in the term " admiralty and maritime jurisdiction " when the Constitution was enacted, and that extended to all maritime contracts (*De Lovio* v. *Boit* (1); *Kent's Commentaries* vol. I., p. 367). The provisions of sec. 60 of the Constitution apply only to laws which by the Constitution are required to be reserved for the royal assent, for example, laws which limit the matters in which leave may be asked to appeal from the High Court to the Privy Council (sec. 74). The royal assent which sec. 4 of the *Colonial Courts of Admiralty Act* requires may be given at any time, and when given the Bill becomes law. The assent given by the Governor-General to the *Judiciary Act* 1914 was a valid act, and when it was given the law might be transmitted to His Majesty for his assent. The Commonwealth is a " British possession " within sec. 2 of the *Colonial Courts of Admiralty Act* 1890. The definition of that term in sec. 18 of the *Interpretation Act* 1889 does not exclude the idea of the Commonwealth and the States coming within it at the same time. If the Commonwealth is a British possession, that is sufficient to give the High Court jurisdiction in this case.

Owen Dixon K.C. (with him *Russell Martin*), for the Commonwealth intervening. The definition of " British possession " in sec. 18 of the *Federal Acts Interpretation Act* 1901, which is the same as that in sec. 18 of the *Interpretation Act* 1889, applies with full force to the Commonwealth. The fact that the Commonwealth came into existence after the *Colonial Courts of Admiralty Act* 1890 is immaterial. Sec. 30A of the *Judiciary Act* is purely declaratory of the law as it then stood, and its validity or invalidity can make no difference and should not now be determined. Sec. 4 of the *Colonial Courts of Admiralty Act* does not impose a condition on the giving of the royal assent, but deprives the Governor-General of the power to give his assent, and, if he wrongly gives it, there is nothing to prevent the King subsequently giving his assent. So under sec. 58 or sec. 60 of the Constitution, if the Governor-General wrongly gives his assent,

(1) (1815) 2 Gallison 398.

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his assent is void, but the King is not deprived of power to set the matter right. If the Commonwealth is not a "British possession," then sec. 76 (III.) of the Constitution enables the Parliament to confer complete jurisdiction in this matter. An action on a contract of affreightment is included in "admiralty and maritime jurisdiction" within the meaning of that section, and the remedy by an action *in rem* is given by sec. 30 of the *Judiciary Act*. The use of the words "admiralty and maritime jurisdiction" in sec. 76 (III.) was intended to prevent argument that the power was restricted to the common law jurisdiction of the Courts of Admiralty. It was intended to give power to confer jurisdiction with respect to all matters which were known among English-speaking lawyers as matters pertaining to admiralty or to maritime law. The *Admiralty Court Act* 1861 made this particular subject matter part of the maritime jurisdiction in England (see *Holdsworth's History of the Law of England*, 2nd ed., vol. I., pp. 530, 548, 552; *Roscoe's Admiralty Practice*, 4th ed., pp. 7, 8; *Ex parte Easton* (1); *Forsyth's Cases and Opinions on Constitutional Law*, p. 90; *The Elizabeth* (2)).

Latham K.C., in reply, referred to *Turner* v. *Mersey Docks and Harbour Board* (3); *Administration of Justice Act* 1920 (10 & 11 Geo. V. c. 81), sec. 21.

Cur. adv. vult.

Aug. 20.

The following written judgments were delivered:—

KNOX C.J. AND GAVAN DUFFY J. The question for decision in this case is whether the High Court has jurisdiction in an action in which the cause of action consists of a claim by consignees against a ship for delivery in damaged condition of certain timber for which the consignees held a bill of lading issued by the master.

Sec. 2 (1) of the *Colonial Courts of Admiralty Act* 1890 is in the following words, namely:—"Every Court of law in a British possession, which is for the time being declared in pursuance of this Act to be a Court of Admiralty, or which, if no such declaration is in force in the possession, has therein original unlimited civil jurisdiction,

(1) (1877) 95 U.S. 68, at pp. 70, 72. (2) (1824) 1 Hag. Adm. 226.
(3) (1892) P. 285. at p. 299.

shall be a Court of Admiralty, with the jurisdiction in this Act mentioned, and may for the purpose of that jurisdiction exercise all the powers which it possesses for the purpose of its other civil jurisdiction, and such Court in reference to the jurisdiction conferred by this Act is in this Act referred to as a Colonial Court of Admiralty. Where in a British possession the Governor is the sole judicial authority, the expression 'Court of law' for the purposes of this section includes such Governor."

For the defendant it is admitted—rightly, we think—that, if the High Court is a "Colonial Court of Admiralty" within the meaning of this section, it has jurisdiction to entertain the action. By sec. 3 of the *Judiciary Act* 1914 the High Court was declared to be a Colonial Court of Admiralty within the meaning of the Imperial Act known as the *Colonial Courts of Admiralty Act* 1890. It is not denied that the Court has, within the Commonwealth, original unlimited civil jurisdiction as defined in the *Colonial Courts of Admiralty Act*. It follows that, if the Commonwealth of Australia is a British possession within the meaning of that Act, the High Court is a Colonial Court of Admiralty either by force of sec. 3 of the *Judiciary Act* 1914, if that section be valid, or, if not, then by force of that portion of sec. 2 of the Imperial Act which provides that "if no such declaration is in force in the possession every Court of law in a British possession which has therein original unlimited civil jurisdiction" shall be a Colonial Court of Admiralty. The first question for decision, therefore, is whether the Commonwealth of Australia is a "British possession" within the meaning of the *Colonial Courts of Admiralty Act* 1890.

By sub-sec. 2 of sec. 18 of the Imperial *Interpretation Act* 1889 (52 & 53 Vict. c. 63) the expression "British possession" is defined as meaning "any part of Her Majesty's dominions exclusive of the United Kingdom, and where parts of such dominions are under both a central and local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one British possession." If the first part of the definition stood alone, there could, we think, be no doubt that each Australian State and the Commonwealth as a whole would be a "part of Her Majesty's dominions," and therefore a British possession. As the definition

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stands, we think the Commonwealth is a British possession within the second part of the definition. It is clear that parts of Australia, namely, the States, are under both a central and a local legislature.

It was not argued that the *Colonial Courts of Admiralty Act* contained any indication of intention that the expression "British possession" when used therein should not have the meaning assigned to it by the *Interpretation Act* 1889. If the expression be given that meaning, the Commonwealth is a British possession, and it follows that the High Court is a Colonial Court of Admiralty.

In this view it is not necessary to deal with the objection that the *Judiciary Act* 1914 was not reserved or otherwise dealt with in accordance with sec. 4 of the *Colonial Courts of Admiralty Act*.

In our opinion the ground of defence set up in par. 8 of the statement of defence is bad in law.

ISAACS J. This case arises on an objection in law—in effect, a demurrer—by the defendant to the statement of claim. The action is brought for damage to timber carried, under bill of lading signed by the master of the ship, on the American schooner *Katherine Mackall*, trading between the port of Portland, Oregon, and Melbourne, Australia. The owners are not in Australia, and the jurisdiction attaches, if at all, by reason of the presence of the ship, which is made the defendant and arrested as in the ordinary course of admiralty proceedings. The objection in law is, in effect, that this Court has no such jurisdiction, for the following reasons: (1) Sec. 30A of the Commonwealth *Judiciary Act* is void because the enactment inserting it (Act No. 11 of 1914) was not reserved for His Majesty's pleasure as required by sec. 4 of the *Colonial Courts of Admiralty Act* 1890 (53 & 54 Vict. c. 27); (2) the cause of action alleged does not come within the authority of sec. 76 (III.) of the Constitution and sec. 30 of the *Judiciary Act*, as amended by No. 4 of 1915, sec. 2.

The ordinary civil jurisdiction is, *ex concessis*, unavailable in the circumstances. As to the maritime personality of "the Ship" see *Townsville Harbour Board* v. *Scottish Shore Line Ltd.* (1). The questions of law which emerge are two of great importance, and

(1) (1914) 18 C.L.R. 306, at p. 324.

are :—(a) Has this Court jurisdiction to entertain this action, by virtue simply of sec. 30 of the *Judiciary Act*, as amended, which confers original jurisdiction on the High Court " in all matters of admiralty or maritime jurisdiction " ? (b) Is this Court a " Colonial Court of Admiralty " within the meaning of the Imperial Act mentioned ?

It is contended by the plaintiff and by the Commonwealth as intervenant that it is such a Court for either or both of two reasons. The first is that sec. 30A of the *Judiciary Act* so declares (Act No. 11 of 1914, sec. 3). The second is that, if that declaration fails for any reason, then, since the High Court has " original unlimited civil jurisdiction " within the meaning of sec. 15 of the Imperial Act, sec. 2 of the same statute constitutes the High Court a Colonial Court of Admiralty with the full jurisdiction defined in sub-sec. 2 of that section.

With respect to the jurisdiction conferred by sec. 30 (*b*), namely, " in all matters of admiralty or maritime jurisdiction," it is not necessary now to pronounce an opinion. I confess the matter is far from simple. I do not feel impressed with the judgment of *Story* J, in *De Lovio* v. *Boit* (1), even supported by the case of *Insurance Co.* v. *Dunham* (2). In 1862, that is, after the British Parliament had thought it necessary to legislate for such a claim as the present, Dr. Lushington was pressed, in the case of *The Don Francisco* (3), with the American practice. He said *in arguendo* :—" The Admiralty Courts in America exercise a much wider jurisdiction than the Admiralty Court here. They disregard all the authorities since James I., which have limited the operations of this Court ; they claim to do all things set forth in my patent." In the judgment (4) the learned Judge said : " The American Courts assume to themselves an extended jurisdiction which (however in former times it might have been exercised here) has, by a series of decisions of the Courts of common law, for a very long space of time been denied to the Court of Admiralty of this country." In 1891 Lord *Esher*, in *R.* v. *Judge of the City of London Court* (5), expressly says that

(1) (1815) 2 Gallison 398.
(2) (1870) 11 Wall. 1.
(3) (1862) Lush. 468, at p. 471.
(4) (1862) Lush., at p. 473.
(5) (1892) 1 Q.B. at pp. 293-294

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the doctrine of *Story* J. in *De Lovio* v. *Boit* (1) has never been accepted in England.

It is not conceivable that, in framing the Australian Constitution, the content of "admiralty and maritime jurisdiction" was intended by the people of Australia and the British Parliament, with reference to a subject so Imperial in character, to follow American doctrine in direct opposition to established English precedent. But that by no means disposes of the matter. Sec. 76 of the Constitution recognizes that "matters of admiralty and maritime jurisdiction" are or may be distinct from "matters arising under this Constitution," &c., and from "matters arising under any laws made by the Parliament." If it became necessary to determine this case upon sec. 76 (III.) of the Constitution and sec. 30 (*b*) of the *Judiciary Act*, there are some very difficult questions to answer. They are not inevitable questions in this case, and the Constitution (by sec. 51 (I.) and (XXXIX.) and sec. 98) undoubtedly gives great scope for relevant legislation. It is not, therefore, to be supposed the constitutional power to confer jurisdiction on this Court in matters of admiralty and maritime law is a power in respect of merely a stereotyped common law admiralty jurisdiction, which at the date of the Constitution had already been extended for more than forty years in England.

Were the decision of this case dependent on the provision in sec. 76 (III.) of the Constitution with the statutory exercise of the power, there would be a field of inquiry by no means clear. Among relevant English authorities other than those already mentioned, there would be the important cases of *The Zeta* (2), *Owners of s.s. Devonshire* v. *Owners of Barge Leslie* (3), *The Marlborough Hill* v. *Alex. Cowan & Sons Ltd.* (4) and *The Tubantia* (5). Among American cases that might be read with some advantage are *American Insurance Co.* v. *Canter* (6), *United States* v. *Bevans* (7) and *The Steamer St. Lawrence* (8). One relevant point for consideration would be whether and how far sec. 30 (*b*) of the *Judiciary Act* could and did

(1) (1815) 2 Gallison 398.
(2) (1893) A.C. 468.
(3) (1912) A.C. 634, at pp. 642-643.
(4) (1921) 1 A.C. 444, at p. 448.
(5) (1924) P. 78, at p. 86.
(6) (1828) 1 Pet. 511, at pp. 545-546.
(7) (1818) 3 Wheat. 336, at pp. 388-389.
(8) (1861) 1 Black 522, at pp. 526, 527.

at a stroke validly adopt Imperial legislation on the subject of admiralty jurisdiction. There is no need at present to explore the possibilities of this branch of the arguments.

The second question concerns the jurisdiction of the Court by virtue of the *Colonial Courts of Admiralty Act* 1890. It appears in the first place that the Commonwealth Act of 1914, No. 11, was assented to by the Governor-General on 29th October 1914. Strictly speaking, it should have been reserved for the King's personal assent in accordance with sec. 4 of the Imperial Act. On 7th September 1916 His Majesty gave his royal assent to the law, and this fact was notified by publication of a copy of the King's Order in Council in the *Commonwealth Government Gazette* on 16th November 1916. It was on the part of the defendant objected that the Bill, having been assented to in the first place by the Governor-General, could not be said to have been subsequently " reserved " either within the meaning of sec. 4 of the *Colonial Courts of Admiralty Act* 1890 or within the meaning of sec. 58 of the Constitution. Consequently, so ran the argument, the King's assent was nugatory and the so-called Act is void. This contention regards sec. 4 of the Act of 1890 as a rigid enumeration of three several conditions mutually exclusive of each other and of all other methods. It assumes that one of these three methods must be definitely adopted before any other course is taken, the sanction being invalidity. The three conditions are: (1) Prior approval of the Sovereign; (2) reservation for the Sovereign's pleasure, and (3) a suspending clause until His Majesty's pleasure is signified. Avowedly (1) and (3) do not apply. But, as to (2), the argument advanced is that, the Bill having been assented to by the Governor-General in fact, he was *functus officio* and thereafter he could not " reserve " the Bill for the signification of the King's pleasure. The contention cannot be sustained. Sec. 4 of the Act of 1890 is not intended as a weakening of the royal prerogative or the common law of the Constitution as to the King's relation to his appropriate legislature. The Act is dealing with a subject concerning the whole Empire, and by sec. 4 retains, as a condition of a new and very extensive Imperial grant of legislative power to the dominions, a right of Imperial oversight in respect of the legislation. That condition is the royal approval, guided, of course,

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by those who are the Sovereign's Imperial advisers. Subject to any other limitation or restriction, a Bill passed by the legislature of a British possession conformably with sec. 3 of the Act and assented to by the King is a valid and binding law, whether the Governor-General or the Governor has or has not strictly followed the directions of sec. 4. Sec. 4 prevents the Bill from becoming law unless the King's personal assent or pleasure be signified. But, once that is done, it is a valid Act of the Colonial Parliament authorized by the Imperial statute, and has full force of law. It is not vitally necessary to pursue this particular branch of the matter further. It is not out of place to point out that sec. 4 of the Act of 1890 is little more than a legislative requirement for the purpose of ensuring the practice detailed with great clearness and explanation in *Clark's Colonial Law* (1834), at pp. 41 *et seqq.*

Another objection to the Act was one going much deeper, namely, that the Commonwealth is not a British possession within the meaning of the *Colonial Courts of Admiralty Act* 1890. That I deal with presently in connection with sec. 2 of the Act. In the meantime I complete my opinion as to sec. 30A of the *Judiciary Act*. Although the other objections raised to that section are placed aside, there remains, in my opinion, one fatal objection to it. The grant of legislative power in the Act of 1890 assumes a "colonial law" enacted in accordance with the Constitution of the possession. Sec. 15 defines "colonial law" as "any Act, ordinance, or other law having the force of legislative enactment in a British possession and made by any authority, other than the Imperial Parliament or Her Majesty in Council, competent to make laws for such possession." The question then is: Has this "provision 30A" the force of legislative enactment as a law made by the Commonwealth Parliament, which by sec. 1 of the Constitution includes the Sovereign as well as the two Houses? I treat the Bill of 1914 as one reserved for the King's pleasure and as having duly received his pleasure. But I find in sec. 60 of the Constitution a definite negative provision cutting down the common law, declaring unequivocally that a proposed law so reserved "shall not have any force unless and until within two years from the day on which it was presented to the Governor-General for the" Sovereign's "assent the

Governor-General makes known, by speech or message to each of the Houses of the Parliament, or by proclamation, that it has received the " Sovereign's " assent." That condition was apparently not fulfilled. The Commonwealth, intervenant, produced what, I understand, was the only public declaration by the Governor-General of the King's assent, namely, a publication in the *Commonwealth Government Gazette* for 16th November 1916, for general information, of a copy of the Order of His Majesty in Council of 7th September 1916. The Order in Council recited that the Bill of 1914 had been " transmitted for the signification of His Majesty's pleasure thereon " and that His Majesty by that Order and with the advice of His Majesty's Privy Council declared " His assent to the said Bill." That is all. There are two obstacles in the way of that being sufficient to satisfy the conditions of sec. 60 of the Constitution : (1) It is not a speech or a message to the Houses of Parliament or a proclamation, and (2) it is beyond the period of two years, because the Governor-General's original assent was on 29th October 1914. The period of two years' limitation cannot be exceeded by repeated presentations, for such a course would nullify sec. 60.

That leaves to be considered the third position, namely, the jurisdiction of this Court by the direct operation of the Act of 1890 on the Court as having " original unlimited civil jurisdiction." It is not contested or contestable that this Court is of that character, having regard to the definition of the term by sec. 15. Assuming the inefficacy of sec. 30A of the *Judiciary Act*, then " no such declaration is in force in the possession," provided, however, " the Commonwealth of Australia " as a political organism is a " British possession " within the meaning of sec. 2 of the Act of 1890. The argument for the defendant denies that proviso. It does not deny that, if a similar Act were to be passed to-morrow, the Commonwealth would be within it. But it says, in effect, that in 1890 there was no Commonwealth, and the ambit of the legislation was completely filled so far as Australia is concerned by the colonies as then existing, and they cannot be added to now by the Commonwealth. Canada, says the defendant, is in a different position, because it received its Constitution in 1867, and the Act of 1890 may well have contemplated both Dominion and Provinces. That, in my opinion, is not a sound

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argument. The *Colonial Courts of Admiralty Act* 1890 used the term "British possession" without definition because in 1889 the *Interpretation Act* 1889 (52 & 53 Vict. c. 63) was passed to obviate the necessity of particular definition in every Act. Sec. 18, for that Act and "every Act passed after the commencement of" that "Act," declared that, unless the contrary intention appears, certain expressions should have assigned meanings, including (2) the expression "British possession" shall mean "any part of Her Majesty's dominions exclusive of the United Kingdom, and where parts of such dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one British possession." To adapt a vivid and illuminating expression of Lord *Robertson* in *Coster* v. *Headland* (1), the *Interpretation Act* "lies in wait, as it were, for Acts which may be passed." There is no contrary intention in the Act of 1890. The assigned meaning in the Act of 1889 is one which regards a "possession" as a political organism having a legislature of its own. The definitions in sec. 15 of "representative legislature," and of "colonial law," most distinctly support this construction. The defendant's argument on this point, not only excludes the Commonwealth, but would apparently exclude also the Union of South Africa and the Irish Free State. It is, to my mind, an argument entirely inadmissible, as opposed alike to the literal words of the *Interpretation Act* 1889 and to the inherent nature of the relations of the constituent political units of the Empire.

For this reason the objection in law should, in my opinion, be overruled.

RICH J. I agree that the defendant's demurrer should be overruled.

STARKE J. The question is whether this Court has jurisdiction to entertain an action *in rem*, under its admiralty jurisdiction, against the schooner *Katherine Mackall* (whose owner is not domiciled in Australia), in respect of a claim by the owner and consignee of certain timber carried into the port of Melbourne, for that the

(1) (1906) A.C. 286, at p. 289.

timber was not delivered in good order and condition but in a damaged state in breach of the terms of the bill of lading (see *Admiralty Court Act* 1861 (24 Vict. c. 10, sec. 6)).

The arguments at the Bar did not convince me that the jurisdiction could not be supported upon the express grant to this Court of original jurisdiction in all matters of admiralty and maritime jurisdiction, pursuant to sec. 76 of the Constitution (see *Judiciary Act* 1903-1920, sec. 30). Nor did they convince me that the provision in sec. 30A of the *Judiciary Act* declaring the High Court to be a Colonial Court of Admiralty within the meaning of the *Colonial Courts of Admiralty Act* 1890 (53 & 54 Vict. c. 27) was invalid. Unless sec. 4 of this last-mentioned Act invalidates the provision in sec. 30A of the *Judiciary Act*—which I doubt—then the Governor-General assented to the law in the King's name, and did not reserve it for His Majesty's pleasure. The provision thus became law, and its confirmation by the King himself simply allayed doubts as to its validity, or was intended to have that effect. But, as at present advised, I do not think that sec. 60 of the Constitution ever operated upon the Act No. 11 of 1914. The Bill containing sec. 30A was never reserved for the royal pleasure, as perhaps it ought to have been under the Act 53 & 54 Vict. c. 27.

I agree, however, with the other members of the Court in thinking that, if the jurisdiction fails under secs. 30 and 30A of the *Judiciary Act*, still it is sustained by the provisions of the *Colonial Courts of Admiralty Act*, sec. 2, declaring that every Court of law in a British possession which has therein unlimited civil jurisdiction shall be a Court of Admiralty with the jurisdiction therein mentioned in case no declaration has been made as provided in the earlier part of the section.

Defendant's objection in law to the statement of claim overruled. Defendant to pay costs of objection in law and of the argument.

Solicitor for the plaintiff, *E. M. Flannagan.*

Solicitor for the defendant, *Moule, Hamilton & Kiddle.*

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

B. L.