

[HIGH COURT OF AUSTRALIA.]

SEAEGG . . . . . APPELLANT ;

AND

THE KING . . . . . RESPONDENT.

ON APPEAL FROM THE COURT OF CRIMINAL APPEAL OF  
NEW SOUTH WALES.

*Appeal—Offence against laws of Commonwealth—Indictment by Commonwealth Attorney-General—Trial in State Court—Conviction—Appeal to State Court of Criminal Appeal—Jurisdiction—Judiciary Act 1903-1927 (No. 6 of 1903—No. 9 of 1927), secs. 39 (2)\*, 68 (2)\*, 69-77—Criminal Appeal Act 1912 (N.S.W.) (No. 16 of 1912), sec. 5\*.*

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The provisions of secs. 39 (2) and 68 (2) of the *Judiciary Act* 1903-1927 did not confer upon a State Court of Criminal Appeal jurisdiction to hear an appeal, brought before it under the provisions of a State Act, by a person convicted in a State Court upon an indictment filed by the Commonwealth Attorney-General in respect of an offence against the laws of the Commonwealth. The right of appeal of a person so convicted is only as provided in sec. 72 of the *Judiciary Act* 1903-1927.

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—  
Rich, Dixon,  
Evatt and  
McTiernan JJ.

Decision of the Court of Criminal Appeal of New South Wales : *R. v. Seaegg*, (1932) 32 S.R. (N.S.W.) 640, affirmed.

\* The *Judiciary Act* 1903-1927 provides, by sec. 39, as follows :—“(1) The jurisdiction of the High Court . . . shall be exclusive of the jurisdiction of the several Courts of the States, except as provided in this section. (2) The 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 . . . subject to the following conditions, and restrictions . . . (b) Wherever an appeal lies from the decision of any Court or Judge of a State to the Supreme Court of the State, an appeal from the decision may be brought to the High Court. (c) The High Court may grant special leave to appeal to the High Court from any decision of any Court or Judge of a State notwithstanding that the law of the State may prohibit any appeal from such Court or Judge.” By sec. 68 (2) :—“The several Courts of a State exercising jurisdiction with respect to—(a) the summary conviction; or (b) the examination and commitment for trial on indictment, or (c) the

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APPEAL from the Court of Criminal Appeal of New South Wales. The appellant, Phillip Seaegg, was convicted at the Court of Quarter Sessions, Sydney, a Court of the State of New South Wales, upon an indictment in the name of the Attorney-General of the Commonwealth, pursuant to the provisions of sec. 69 of the *Judiciary Act* 1903-1927, filed in the said Court, of an offence against sec. 56 (a) of the Commonwealth *Crimes Act* 1914-1928 in that he had in his possession counterfeit coins, knowing them to be counterfeit, with intent to utter them. An appeal by Seaegg to the Court of Criminal Appeal of New South Wales, under sec. 5 of the *Criminal Appeal Act* 1912 (N.S.W.), was dismissed by that Court on the ground that it had no jurisdiction to entertain an appeal by an offender convicted upon indictment before a State Court of an offence against the laws of the Commonwealth: *R. v. Seaegg* (1).

From this decision Seaegg now, by special leave, appealed to the High Court.

*Curlew*, for the appellant. When the Commonwealth Legislature, by sec. 68 (2) (c) of the *Judiciary Act* 1903-1927, gave jurisdiction to State Courts to deal with offences against the laws of the Commonwealth it gave all the incidences of such jurisdiction including the right of appeal to the appellate Courts set up by the respective States. The Court of Criminal Appeal of New South Wales established by the *Criminal Appeal Act* 1912 (N.S.W.) was not a new tribunal but was the continuation of a Court and procedure which were in existence prior to the *Judiciary Act* 1903-1927. (See secs. 428, 470, 471 and 474 of the *Crimes Act* 1900 (N.S.W.), repealed by sec. 23 of the *Criminal Appeal Act* 1912 (N.S.W.).) The jurisdiction conferred upon the State Courts by secs. 428, 470, 471 and 474 of the *Crimes Act* 1900 (N.S.W.) was "picked up" and retained by sec. 39 (2) of the *Judiciary Act* 1903-1927. If the

trial and conviction on indictment, of offenders or persons charged with offences against the laws of the State shall have the like jurisdiction with respect to persons who are charged with offences against the laws of the Commonwealth committed within the State, or who may be lawfully tried within the State for offences committed elsewhere." By sec. 72 :—“(1) When any person is indicted for any

indictable offence against the laws of the Commonwealth, the Court before which he is tried shall on the application by or on behalf of the accused person made before verdict, and may in its discretion either before or after judgment without such application, reserve any question of law which arises on the trial for the consideration of a Full Court of the High Court, or if the trial was had in a Court of a State of

(1) (1932) 32 S.R. (N.S.W.) 640.

decision of the Court of Criminal Appeal is correct, then a person convicted in a State Court of an indictable offence against the laws of the Commonwealth has no right of appeal.

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*Bavin K.C.* (with him *Nicholas*), for the respondent. It is shown by later sections in the Act that sec. 39 (2) of the *Judiciary Act* is not ambulatory. It only conferred jurisdiction on such State Courts as were in existence at the time of its enactment. This view is borne out by sec. 77 (III.) of the Constitution. Appeal, and the procedure therefor, in the case of indictable offences against the laws of the Commonwealth are provided for in sec. 72 of the *Judiciary Act*. Although it showed that appellate jurisdiction was vested in Courts existing at the time the *Judiciary Act* was passed, *Ah Yick v. Lehmert* (1) is not an authority for the proposition that appellate jurisdiction vests in Courts established by a State subsequent to the passing of the Act.

[DIXON J. referred to *George Hudson Ltd. v. Australian Timber Workers' Union* (2).]

By the adoption of the view now contended for, uniformity is secured in the matter of appeals from State Courts exercising Federal jurisdiction; otherwise if sec. 39 (2) is ambulatory, and confers appellate jurisdiction upon any Court a State might choose to establish, then appeals in cases involving Federal law might be dealt with in any tribunal set up by a State irrespective of whether the Commonwealth approved or not. Such wide powers are neither sanctioned nor contemplated by the Commonwealth Constitution. Even assuming that the Court of Criminal Appeal has jurisdiction under sec. 39 (2) it can only be exercised in the manner prescribed

a Full Court of the Supreme Court of the State. (2) If the accused person is convicted, and a question of law has been so reserved before judgment, the Court before which he was tried may either pronounce judgment on the conviction and respite execution of the judgment, or postpone the judgment until the question has been considered and decided. . . . (3) The presiding Judge is thereupon required to state in a case signed by him the question of law so reserved with the special circumstances upon which it arose."

The *Criminal Appeal Act* 1912 (N.S.W.) provides, by sec. 5 (1), that

"a person convicted on indictment may appeal under this Act to the Court" of Criminal Appeal "(a) against his conviction on any ground which involves a question of law alone; and (b) with the leave of the Court, or upon the certificate of the Judge of the Court of trial that it is a fit case for appeal against his conviction on any ground of appeal which involves a question of fact alone, or question of mixed law and fact, or any other ground which appears to the Court to be a sufficient ground of appeal, and (c) with the leave of the Court against the sentence passed on his conviction."

(1) (1905) 2 C.L.R. 593.

(2) (1923) 32 C.L.R. 413.

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 1932. *Josephson v. Walker* (2) ).

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It is suggested in *Ah Yick v. Lehmert* (4) that sec. 68 of the *Judiciary Act* confers Federal jurisdiction in cases not covered by sec. 39, but that can only be on the assumption that there was a common law in the Commonwealth apart from statutory law (*R. v. Whitfield*; *Ex parte Quon Tat* (5) ). Sec. 72 is not limited to the class of case dealt with by sec. 68, and therefore applies to any class of case dealt with by any part of the *Judiciary Act*, including sec. 39. The nature of the appeal given by sec. 5 of the *Criminal Appeal Act* 1912 is different from the appeal given by sec. 72 of the *Judiciary Act*. Although the words "with respect to" appearing in sec. 68 (2) are perhaps wide enough to include any State Courts which exercise jurisdiction in the several matters therein referred to, they do not operate to avoid the provisions of sec. 72.

[EVATT J. The provisions of sec. 75 of the *Judiciary Act* seem to be quite inconsistent with the provisions of the *Criminal Appeal Act* and the Rules thereunder.]

[DIXON J. referred to *Le Mesurier v. Connor* (6).]

That decision is an authority in support of the view that the Federal Legislature could not confer in advance appellate jurisdiction on any tribunal a State might see fit to establish.

*Curlewis*, in reply.

[DIXON J. This Court cannot entertain an appeal from the verdict (see *R. v. Snow* (7) ).]

*Cur. adv. vult.*

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THE COURT delivered the following written judgment:—

The question for determination upon this appeal is whether a prisoner convicted upon indictment of an offence against the laws of the Commonwealth before a Court of Quarter Sessions may appeal to the Supreme Court of New South Wales as a Court of Criminal

(1) (1898) A.C. 387.

(2) (1914) 18 C.L.R. 691.

(3) (1931) 45 C.L.R. 188.

(4) (1905) 2 C.L.R., at p. 607.

(5) (1913) 15 C.L.R. 689.

(6) (1929) 42 C.L.R. 481, at pp. 499  
*et seq.*

(7) (1915) 20 C.L.R. 315.

Appeal according to the provisions contained in the *Criminal Appeal Act* 1912 of New South Wales. Sec. 5 of this statute enacts that a person convicted on indictment may appeal under the Act to the Court of Criminal Appeal against his conviction or against the sentence passed on his conviction. "Indictment" is defined to include any information presented or filed as provided by law for the prosecution of offenders. We do not think that the State enactment by these general words intends to refer to prosecutions on indictment preferred by the law officers of the Commonwealth for offences against the laws of the Commonwealth. Such prosecutions are governed by the special provisions contained in secs. 69-77 of the *Judiciary Act* 1903-1927, which deal not only with the manner in which they shall be instituted and the jurisdiction in which they shall be tried, but with the nature and extent of the appeal from a conviction and the power of the Court hearing that appeal. Apart from the general rule of construction requiring an interpretation which would restrain the general words so that they would not apply to Federal proceedings so regulated and would confine the State enactment to State proceedings, the State statute contains specific references to the Attorney-General of the State and to the Minister of Justice which place its meaning beyond doubt (see secs. 13, 16, 24 and 17 (2) ) and show that the right of appeal it confers is limited to convictions upon indictment preferred according to State law.

The appellant was convicted upon an indictment in the name of the Attorney-General of the Commonwealth filed in the Court of Quarter Sessions pursuant to sec. 69 of the *Judiciary Act* 1903-1927. To avail himself of the provisions contained in the New South Wales *Criminal Appeal Act*, the appellant must, therefore, have recourse to some law of the Commonwealth which extends the operation of the State enactment and applies it to the conviction of offenders against the Federal law. Sec. 39 (2) of the *Judiciary Act* 1903-1927 is relied upon for this purpose. That sub-section provides that the 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, subject to certain exceptions,

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conditions and restrictions not presently material. It is said that this provision operates to confer a Federal jurisdiction on the State Courts in relation to Federal offences coextensive with their State jurisdiction in relation to State offences and, thus, that, as the Supreme Court received under the *Criminal Appeal Act* 1912 of New South Wales the jurisdiction of a Court of Criminal Appeal over State offences, it automatically obtained the same jurisdiction over Federal offences. Sec. 39 (2) does confer upon State Courts Federal jurisdiction coextensive with their State jurisdiction in respect of matters which are, or may be placed, within the original jurisdiction of this High Court: but something further appears to be required to make the State *Criminal Appeal Act* apply to Federal prosecutions. It has not, so far, been decided that sec. 39 (2) can operate to increase or vary the subject matter of the jurisdiction. In the present instance, the subject matter is confined to appeals against convictions upon indictment preferred under State law. It may well be that sec. 39 (2) cannot convert the jurisdiction over that subject matter into a Federal jurisdiction over a different subject matter, viz., appeals against convictions upon indictment preferred pursuant to sec. 69 of the Federal *Judiciary Act* 1903-1927. But in any case we think we ought not to construe sec. 39 (2) as operating to give by reference to State law another and different jurisdiction over the very same subject as the *Judiciary Act* 1903-1927 itself specially provides for, viz., appeal from conviction. That sec. 39 (2) was not intended to introduce such a jurisdiction by way of appeal is made clear by the presence in the Act of special provisions expressly conferring a right of appeal against such convictions, although a limited right of appeal. Secs. 72 to 77 of the *Judiciary Act* are headed "Appeal," and contain a code of procedure for an appeal by way of case stated upon a point of law raised at the trial. These special provisions confer a different and narrower right of appeal and different but perhaps wider remedies. We think that we ought not to construe the general words of sec. 39 (2) as capable of importing a new jurisdiction by way of appeal from conviction upon indictment which, in effect, would supersede these provisions. It is next said that sec. 68 (2) of the *Judiciary Act* 1903-1927 operates to give the appellant the right of appeal described by the *Criminal*

*Appeal Act* 1912 of New South Wales against his conviction under Federal law. This sub-section provides that the several Courts of a State exercising jurisdiction with respect to the trial and conviction on indictment of offenders or persons charged with offences against the laws of the State shall have the like jurisdiction with respect to persons who are charged with offences against the laws of the Commonwealth committed within the State. Does the Supreme Court, as a Court of Criminal Appeal, exercise jurisdiction with respect to the trial and conviction on indictment of offenders? The words would not naturally be understood to refer to a jurisdiction to hear appeals from such convictions, and we think that the presence in the enactment of the special provisions contained in secs. 72-77 again operates to preclude such an interpretation. It follows that the Supreme Court was right in holding that the appellant could not appeal to it except under the provisions of sec. 72 of the *Judiciary Act*.

The appeal should be dismissed.

*Appeal dismissed.*

Solicitor for the appellant, *J. H. Yeldham*.

Solicitor for the respondent, *W. H. Sharwood*, Commonwealth Crown Solicitor.

J. B.

[NOTE.—Since this decision was pronounced the *Judiciary Act* 1932 (No. 60 of 1932), assented to on 5th December 1932, amending sec. 68 of the *Judiciary Act* 1903-1927, has been passed.—*Ed. C.L.R.*]

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