[HIGH COURT OF AUSTRALIA.]

WILLIAMS . . . . . APPELLANT;

AND

THE KING . . . . . RESPONDENT.

[No. 1.]

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

H. C. OF A. 1933.

SYDNEY, *Aug.* 24; *Nov.* 14.

Starke, Dixon, Evatt and McTiernan JJ.

Criminal Law—Appeal—Indictable offence against law of Commonwealth—Trial in State Court—Appeal against sentence by State Attorney-General to State Court—Competency—Commission from the Crown in right of the Commonwealth—Judiciary Act 1903-1932 (*No.* 6 *of* 1903—*No.* 60 *of* 1932), *secs.* 68 (1), (2)*, 69*—*Criminal Appeal Act* 1912-1924 (*N.S.W.*) (*No.* 16 *of* 1912—*No.* 10 *of* 1924), *sec.* 5D*

The Attorney-General of New South Wales is not entitled to appeal to the Court of Criminal Appeal of that State under sec. 5D of the *Criminal Appeal Act* 1912-1924 (N.S.W.) against a sentence for an indictable offence against a law of the Commonwealth: He does not derive such a right either from sec. 68 of the *Judiciary Act* 1903-1932 or from a commission under sec. 69 of that Act appointing him to prosecute in his name indictable offences against the laws of the Commonwealth triable in New South Wales.

Decision of the Court of Criminal Appeal of New South Wales reversed.

* The *Judiciary Act* 1903-1932 provides:—By sec. 68:—"(1) The laws of each State respecting the arrest and custody of offenders or persons charged with offences, and the procedure for—(*a*) their summary conviction; (*b*) their examination and commitment for trial on indictment; (*c*) their trial and conviction on indictment; and (*d*) the hearing and determination of appeals arising out of any such trial or conviction or out of any proceedings connected therewith . . . shall, subject to this section, apply and be applied so far as they are applicable to persons who are charged with offences against the laws of the Commonwealth committed within that State, or whose trial for offences committed elsewhere may lawfully be held therein. (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

APPLICATION for special leave to appeal, and appeal, from the Court of Criminal Appeal of New South Wales.

The applicant, Harold Roy Williams, was, on 23rd February 1933, charged at the Court of Quarter Sessions, Sydney, a Court of the State of New South Wales, upon an indictment, with making counterfeit coins, and with having in his possession without lawful authority or excuse coining instruments, contrary to the provisions of secs. 53 and 54 of the Commonwealth *Crimes Act* 1914-1932.

The indictment was in the following form: "Cecil Edward Weigall His Majesty's Solicitor-General for the State of New South Wales, who by virtue of an appointment made to him for such purpose prosecutes for His Majesty . . . at Sydney in the State aforesaid . . . charges," &c.

Williams pleaded guilty and was sentenced on each of three charges to imprisonment with hard labour for eighteen months, concurrent. An appeal was, under the purported combined authority of sec. 5D of the *Criminal Appeal Act* 1912-1924 (N.S.W.), sec. 68 of the *Judiciary Act* 1903-1932, and an appointment under secs. 69 and 71 of the latter Act, taken in the name of the Attorney-General of New South Wales against the sentences thus pronounced, on the ground that they were inadequate. The Attorney-General of New South Wales and the Solicitor-General of that State were, on 5th July 1932 and 8th January 1923, respectively, under secs. 69 and 71 of the *Judiciary Act* 1903, appointed by the Governor-General to prosecute by indictment in their names indictable offences against the laws of the Commonwealth triable within New South

(c) the trial and conviction on indictment; of offenders or persons charged with offences against the laws of the State, and with respect to the hearing and determination of appeals arising out of any such trial or conviction or out of any proceedings connected therewith, 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 lawfully be tried within the State for offences committed elsewhere." By sec. 69:—"(1) Indictable offences against the laws of the Commonwealth shall be prosecuted by indictment in the name of the Attorney-General of the Commonwealth or of such other person as the Governor-General appoints in that behalf. (2) Any such appointment shall be by commission in the King's name, and may extend to the whole Commonwealth or to any State or part of the Commonwealth."

The *Criminal Appeal Act* 1912-1924 (N.S.W.) provides, by sec. 5D: "The Attorney-General may appeal to the Court of Criminal Appeal against any sentence pronounced by the Supreme Court or any Court of Quarter Sessions and the Court of Criminal Appeal may in its discretion vary the sentence and impose such sentence as to the said Court may seem proper."

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Wales as fully and effectually to all intents and purposes as the Attorney-General of the Commonwealth could do, and they were given and granted all the powers and authorities of the Attorney-General of the Commonwealth in relation to those offences as were capable of being granted by the commission, including the power when any person was under commitment upon a charge of any such offence to decline to proceed further in the prosecution. The Court of Criminal Appeal set the sentences aside, and in lieu thereof substituted a sentence of imprisonment with hard labour for five years.

Williams now applied for special leave to appeal to the High Court from the decision of the Court of Criminal Appeal.

Windeyer K.C. (with him *Kinkead* and *Wesche*), for the applicant. The Court of Criminal Appeal of New South Wales had no jurisdiction, either under sec. 5D of the *Criminal Appeal Act* 1912-1924 (N.S.W.) alone, or by the combined effect of that section and secs. 68 and 69 of the *Judiciary Act* 1903-1932, to entertain an appeal brought by the Attorney-General of the State on the ground of the inadequacy of the sentence awarded for an offence against a law of the Commonwealth. The question is not one of procedure. A delegated power to prosecute does not confer also a power to appeal. The Commonwealth Attorney-General has no power to delegate a right of appeal. The *Judiciary Act* confers jurisdiction on the Court of Criminal Appeal to hear appeals in respect of offences against a law of the Commonwealth only in cases where such appeals are properly instituted, that is, by the Attorney-General of the Commonwealth, and not, as here, by the Attorney-General of the State. The Court will not assume that the State Attorney-General acted as agent for the Attorney-General of the Commonwealth. Although sec. 68 of the *Judiciary Act* 1903-1932 confers jurisdiction upon State Courts to hear appeals, it does not confer upon the Attorney-General a right of appeal which previously did not exist.

[EVATT J. referred to *Whittaker* v. *The King* (1).]

A prosecution is complete immediately the sentence is pronounced. The commission to the State Attorney-General contemplates certain

(1) (1928) 41 C.L.R. 230.

powers and no more ; those powers cannot be increased by subsequent legislation. The commission was granted in July 1932 ; sec. 68 of the *Judiciary Act* 1903-1932 was not enacted until December 1932. It follows that, as the commission was granted at a time when there was not any right of appeal, there was not any intention at that time of conferring or delegating a power to appeal.

Crawford, for the respondent. Sec. 68 (1) of the *Judiciary Act* 1903-1932 is more than a procedure section, as, in addition to prescribing procedure, it confers substantive rights. The word "appeals" in sub-sec. (1) (*d*) of that section must be given its plain meaning. It should be construed, not as referring only to appeals by prisoners, but as referring to appeals as known to the law which is to be applied, e.g., as here, the *Criminal Appeal Act* 1912-1924 of New South Wales. The words of sub-sec. (1) (*d*) bring into operation the whole of the provisions, including sec. 5D, of the *Criminal Appeal Act* relating to appeals by persons convicted in a State Court of offences against laws of the Commonwealth, and they do not impose any limit as to who may appeal. It was the intention of the Federal Legislature to apply within each State the existing and well-tried laws of that State, and it must be assumed that the Legislature was cognizant of the law in New South Wales (*Seaegg* v. *The King* (1)). The appeal was properly instituted by the State Attorney-General under powers conferred upon him by secs. 68 and 69 of the *Judiciary Act* 1903-1932 and sec. 5D of the *Criminal Appeal Act* 1912-1924 (N.S.W.). A prosecution does not terminate upon conviction and passing of sentence. The right to appeal is part of the law. The matter of the inadequacy of the sentence awarded was brought under the notice of the Attorney-General of the Commonwealth, who thereupon authorized the instituting of an appeal, which was signed by the State Attorney-General. The delegation in the commission of the power to prosecute is the delegation of a power to deal with the matter until it is completed, that is, from the inception of the prosecution until the determination of any appeal arising therefrom.

(1) (1932) 48 C.L.R. 251, at p. 255.

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Windeyer K.C., in reply. The right of the Crown to appeal exists only in New South Wales, so that if the respondent's argument be correct the Attorney-General of the Commonwealth would enjoy a right in New South Wales which he is unable to exercise in any other State. That position could not have been intended by the Federal Legislature.

Cur. adv. vult.

NOV. 14. The following written judgments were delivered :—

STARKE J. The prisoner, Harold Roy Williams, was charged on three counts upon indictment with making counterfeit coin, and with having in his possession without lawful authority or excuse coining instruments, contrary to the provisions of the *Crimes Act* 1914-1932 of the Commonwealth of Australia. He pleaded guilty, and was sentenced to imprisonment with hard labour for eighteen months on each count, concurrent. An appeal was then taken in the name of His Majesty's Attorney-General in and for the State of New South Wales to the Court of Criminal Appeal in New South Wales against the sentences so pronounced, on the ground that they were inadequate. The Court of Criminal Appeal substituted a sentence of imprisonment with hard labour for five years. Against this sentence of the Court of Criminal Appeal the prisoner now seeks special leave to appeal, on the ground that the appeal to the Court of Criminal Appeal was incompetent.

The *Judiciary Act*, sec. 69, provides that indictable offences against the laws of the Commonwealth shall be prosecuted by indictment in the name of the Attorney-General of the Commonwealth or of such other person as the Governor-General appoints in that behalf. Both the Attorney-General and the Solicitor-General of New South Wales have been appointed by the Governor-General to prosecute by indictment in their names indictable offences against the laws of the Commonwealth. The appointments are by commission in the name of His Majesty, signed by the Governor-General, and, so far as material, are in the following form: "Now therefore we do appoint you to prosecute by indictment in your name indictable offences against the laws of the Commonwealth triable within our

State of New South Wales, as fully and effectually to all intents and purposes as our Attorney-General of our Commonwealth of Australia could prosecute those offences: and we give and grant to you all such powers and authorities of our said Attorney-General in relation to those offences as are capable of being granted by this commission; including the power, when any person is under commitment upon a charge of any such offence, to decline to proceed further in the prosecution, and, if the person is in custody, by warrant under your hand to direct the discharge of the person from custody: Provided that nothing herein contained shall be construed to affect the power of our Attorney-General of our Commonwealth of Australia or of any other person appointed by us in that behalf to prosecute by indictment in his name any indictable offence against the laws of the Commonwealth triable within our said State: and we declare that this our commission shall continue in force so long as you hold the office of [Attorney-General or] Solicitor-General for our said State unless sooner revoked by our Governor-General in and over our Commonwealth of Australia."

The indictment upon which the prisoner was charged was in the following form: "Cecil Edward Weigall His Majesty's Solicitor-General for the State of New South Wales who by virtue of an appointment made to him for such purpose prosecutes for His Majesty in this behalf being present in the Court of Quarter Sessions at Sydney in the State aforesaid . . . charges," &c. Some suggestion was made that such an indictment was bad because it did not allege or disclose that the indictment was in the name of a person appointed by the Governor-General in that behalf, and might refer to an appointment under sec. 572 of the *Crimes Act* 1900 of New South Wales. But the commission to the Attorney-General and the Solicitor-General enables them to prosecute in their names. Again, where acts done are of an official nature or require the concurrence of official persons, the presumption is that they are rightly done unless the contrary is shown. Further, after a plea of guilty, and sentence, such an objection could not well be sustained. Nor could it be allowed, in the face of the provisions of the *Judiciary Act*, sec. 68, coupled with the *Crimes Act* 1900 of New South Wales, secs. 360 and 362.

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The learned counsel for the prisoner were on firmer ground in contending that an appeal did not lie on the part of the Crown against a sentence for an offence against a Federal law, or, at all events, that such an appeal could not be prosecuted in the name of the Attorney-General of the State. The argument depends upon the effect of sec. 5D of the *Criminal Appeal Act* 1912 of New South Wales, and the *Judiciary Act* 1903-1932. By sec. 5D of the *Criminal Appeal Act*, the Attorney-General may appeal to the Court of Criminal Appeal against any sentence pronounced by the Supreme Court or any Court of Quarter Sessions, and the Court of Criminal Appeal may in its discretion vary the sentence and impose such sentence as to the said Court may seem proper. But *Seaegg's Case* (1) in this Court makes it clear that this section would not authorize an appeal by the Attorney-General of the State against a sentence pronounced in respect of an offence against the laws of the Commonwealth. The *Judiciary Act*, sec. 68, has been amended since that decision (see Act 1932, No. 60), and it now provides:—"(1) The laws of each State respecting the arrest and custody of offenders or persons charged with offences, and the procedure for—(*a*) their summary conviction; (*b*) their examination and commitment for trial on indictment; (*c*) their trial and conviction on indictment; and (*d*) the hearing and determination of appeals arising out of any such trial or conviction or out of any proceedings connected therewith, and for holding accused persons to bail, shall, subject to this section, apply and be applied so far as they are applicable to persons who are charged with offences against the laws of the Commonwealth committed within that State, or whose trial for offences committed elsewhere may lawfully be held therein. (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 trial and conviction on indictment; of offenders or persons charged with offences against the laws of the State, and with respect to the hearing and determination of appeals arising out of any such trial or conviction or out of any proceedings connected therewith, shall have the like jurisdiction with respect to persons who are charged with offences against the laws of the

(1) (1932) 48 C.L.R. 251.

Commonwealth committed within the State, or who may lawfully be tried within the State for offences committed elsewhere." A "like jurisdiction" is, I apprehend, a jurisdiction analogous, similar or corresponding to that of the State Court in respect of offences against the laws of the State. The section grants in respect of Federal offences a similar right of appeal to that existing in respect of offences against State law. In some of the States, as the learned counsel for the prisoner pointed out, no such right of appeal is given, but in New South Wales, as we have seen, the Attorney-General of the State may appeal to the Court of Criminal Appeal against any sentence pronounced by the Supreme Court or any Court of Quarter Sessions. Having regard, however, to the reasoning in *Seaegg's Case* (1), this section, even when coupled with the *Judiciary Act*, sec. 68, gives the Attorney-General of the State no right of appeal in respect of Federal offences. Nor, in my opinion, does his commission to prosecute by indictment in his name indictable offences against the laws of the Commonwealth triable in New South Wales confer upon him any authority or power to institute or prosecute appeals from judgments or sentences pronounced upon indictments in respect of Federal offences.

By whom, then, can the right of appeal granted in respect of sentences pronounced regarding offences against the Federal law be exercised? In my opinion, that right is exercisable by the Crown, and the proper officer to assert it is the legal adviser and representative of the Crown in the Commonwealth; in other words, the Attorney-General of the Commonwealth. But in the present case, the appeal was instituted in the name of the Honorable Henry Edward Manning, His Majesty's Attorney-General in and for the State of New South Wales. In my opinion, such an appeal was incompetent, for the Attorney-General of the State had no authority to exercise the Crown's right to appeal against sentences pronounced in respect of offences against Federal law. But we were assured at the Bar—and it was stated that the fact could be proved if need be—that the Attorney-General of the Commonwealth had authorized and requested the Attorney-General of the State to institute and prosecute the appeal.

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The objection taken on behalf of the prisoner goes then to the form of procedure, and has little real substance in it.

I have had some doubt whether, in these circumstances, this Court should interfere. The procedure, however, adopted in this case tends to divert the due and orderly administration of the law into an irregular course, which might be drawn into an evil precedent in future. Special leave to appeal should therefore be granted, the appeal allowed, and the order of the Court of Criminal Appeal discharged. Such a determination would leave the original sentence standing, subject, of course, to any appeal that the Attorney-General of the Commonwealth might yet institute on the ground of the inadequacy of that sentence.

DIXON J. The applicant was prosecuted on indictment for an offence against the laws of the Commonwealth. He was tried before a Court of Quarter Sessions and was convicted and sentenced to imprisonment. The Attorney-General of the State of New South Wales thereupon appealed to the Supreme Court, as the Court of Criminal Appeal, against the sentence on the ground that it was inadequate, and upon that appeal the sentence was increased. Special leave to appeal is now sought against the order increasing the sentence.

Unless it has been given by the joint operation of sec. 68 (2) of the Commonwealth *Judiciary Act* 1903-1932 and sec. 5D of the New South Wales *Criminal Appeal Act* 1912, the Supreme Court has no jurisdiction upon an appeal on the part of the prosecution to increase a sentence pronounced upon a conviction for an indictable offence against the laws of the Commonwealth. Sec. 68 (2) of the *Judiciary Act* 1903-1932 provides that the several Courts of a State exercising jurisdiction with respect to the hearing and determination of appeals arising out of the trial or conviction on indictment, or out of any proceedings connected therewith, 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. By sec. 5D of the *Criminal Appeal Act* of New South Wales, the Attorney-General of the State is authorized to appeal against any sentence

to the Court of Criminal Appeal, which may impose such sentence as it thinks proper. Assuming, without deciding, that the combined effect of these provisions is to allow an appeal by the prosecution against the sentence imposed on a prisoner convicted of an indictable offence against Federal law, it is, in my opinion, clear that the appeal is not given by the legislation to the Attorney-General of the State. By sec. 69 of the *Judiciary Act* 1903-1932 indictable offences against the laws of the Commonwealth must be prosecuted by indictment in the name of the Attorney-General of the Commonwealth or of such other person as the Governor-General may appoint in that behalf. Sec. 71 enables the Attorney-General of the Commonwealth, or a person so appointed in that behalf, to decline to proceed in such a prosecution. These provisions are inconsistent with the continuance of any authority which otherwise might exist in the State law officers as such to commence or maintain in State jurisdiction prosecutions for offences against Federal law. The Attorney-General of the State can, therefore, have no interest in the judgment pronounced imposing the sentence appealed against. It is true that sub-sec. (1) (*d*) of sec. 68 of the *Judiciary Act* 1903-1932 applies the laws of the State with respect to the procedure for the hearing and determination of appeals arising out of the trial or conviction on indictment, or out of any proceeding connected therewith, of offenders against the laws of the States. But the qualification contained in the words occurring in the sub-section, "so far as they are applicable," excludes the application of so much of the State law as gives the appeal to the State Attorney-General. For these reasons I think that the appeal instituted in the Supreme Court as the Court of Criminal Appeal by the State Attorney-General as such was incompetent.

It appears, however, that the present holder of the office of Attorney-General for New South Wales has been appointed under secs. 69 and 71 of the *Judiciary Act* 1903-1932 by the Governor-General by a commission in the King's name. It is said that it can be shown that the appeal was in fact instituted with the approval of the proper officers of the Commonwealth, and we are asked to allow the notice of appeal to be amended or to refuse this application on the ground that the objection could have been cured

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by amendment. To amend the proceedings by substituting the individual name of the present State Attorney-General and describing him as a person appointed by a commission under sec. 69 of the *Judiciary Act* would only raise a new question. For it is not clear that his appointment would enable him to institute the appeal. The substitution by the Supreme Court of the Attorney-General of the Commonwealth as the appellant would have been proper only if that Court had been satisfied that the law officers of the Commonwealth had intended to undertake responsibility for the proceeding. In fact, when the objection was taken in the Supreme Court, nothing but the commission seems to have been laid before the Court. Moreover, inspection of the indictment shows that objections not altogether unarguable might be made to it, founded upon similar considerations, and the applicant might well have sought an opportunity of raising these as a condition of such an amendment, if it had been applied for in the Supreme Court. But in fact no application was made in that Court on behalf of the Attorney-General of the Commonwealth to substitute him as the appellant. As it stood, the appeal was, in my opinion, incompetent.

The matter has more than a formal significance because responsibility for proceedings on behalf of the Crown in right of the Commonwealth must be taken by the officers to whom by law it belongs and no proceedings should be entertained which appear upon their face to be taken upon some other responsibility. I think we should not allow the proceedings to stand.

The question does not appear to me to arise at present whether sec. 68 (2) of the *Judiciary Act* 1903-1932 operates upon sec. 5D of the New South Wales *Criminal Appeal Act* in such a way as to enable the Attorney-General of the Commonwealth to appeal to the Court of Criminal Appeal against a sentence imposed upon a prisoner convicted in New South Wales on indictment of an offence against the laws of the Commonwealth ; but I do not wish to be understood as assenting to the view that the legislation does not have this operation.

In my opinion special leave to appeal should be granted. The appeal should be allowed, and the order of the Supreme Court increasing the sentence should be discharged.

EVATT AND MCTIERNAN JJ. In the case of *Seaegg* v. *The King* (1), this Court held that nowhere in the *Judiciary Act* 1903-1927 was there conferred upon the Supreme Court of New South Wales jurisdiction to hear an appeal, under the *Criminal Appeal Act* 1912 (N.S.W.), by a person convicted before a New South Wales Court upon an indictment charging an offence against the laws of the Commonwealth. It was further determined that the only right of appeal possessed by a person so convicted was as provided in sec. 72 of the *Judiciary Act* 1903-1927.

In that case, the appellant sought to rely upon sec. 68 (2) of the *Judiciary Act*, which provides that the several Courts of a State exercising jurisdiction with respect to " the trial and conviction on indictment " of persons charged with offences against the laws of that State should " have the like jurisdiction " with respect to persons charged with offences against the laws of the Commonwealth committed within the State. But it was decided that the words of sec. 68 (2) would not naturally be understood to refer to a jurisdiction to hear appeals from convictions on indictment.

The decision in *Seaegg* v. *The King* (1) was pronounced on September 21, 1932, and on December 5th, 1932, Act No. 60 of 1932 was passed.

This Act amends sec. 68 (1) by making the State laws governing " the procedure " for the hearing and determination of appeals arising out of the trial on indictment or the conviction thereon or the proceedings connected therewith apply to persons charged with offences against the laws of the Commonwealth committed within that State.

Sec. 68 (2) is amended so as to confer upon that Court of a State which exercises jurisdiction with respect to the hearing and determination of appeals arising out of any trial on indictment or conviction thereon or the proceedings connected therewith the " like jurisdiction " with respect to persons charged with offences against the laws of the Commonwealth committed within that State.

The present case concerns a person, the applicant, who was sentenced by a Chairman of Quarter Sessions in respect of three offences specified in the Commonwealth *Crimes Act* 1926. Having

(1) (1932) 48 C.L.R. 251.

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pleaded guilty, the applicant was duly sentenced. The Attorney-General of the State of New South Wales then appealed to the Supreme Court of that State sitting as a Court of Criminal Appeal under the *Criminal Appeal Act* 1912. The Court assumed jurisdiction, and increased the sentence from eighteen months to five years.

Sec. 5D of the *Criminal Appeal Act* enables the Attorney-General of New South Wales to appeal against any sentence pronounced by the Supreme Court or any Court of Quarter Sessions. And it is contended for the respondent that the amendment to the *Judiciary Act* by Act No. 60 of 1932 had the effect, not only of enabling the Crown to appeal against the sentence imposed by the Court of Quarter Sessions in this case, but of enabling the Attorney-General of New South Wales himself to exercise such right of appeal as under sec. 5D of the *Criminal Appeal Act*.

It is clear that the amendment to sec. 68 of the *Judiciary Act* was passed so as to get over the difficulties pointed out in *Seaegg's Case* (1), and thereby enable a person convicted on indictment within New South Wales in respect of Commonwealth offences to appeal to the Court of Criminal Appeal as though he had been convicted within New South Wales on indictment in respect to offences other than those against Commonwealth law.

To this end, Federal jurisdiction is invested in the Court of Criminal Appeal by the amendment to sec. 68 (2), and the procedure relating to appeals to the Court of Criminal Appeal is made applicable by the amendment to sec. 68 (1). But it does not follow that it was intended by Parliament to give the Crown a right of appeal against the sentence imposed. Such an intention would usually be expressed very clearly, and an appeal against a sentence is, we understand, not accorded to the Crown by any State law excepting that of the State of New South Wales, although in every State of the Commonwealth a person convicted on indictment is given a right of appeal to the local Court of Criminal Appeal.

The question whether the Crown is, by the Act No. 60 of 1932, given an appeal against a sentence, also involves a determination whether the appeal against a sentence given to the Attorney-General under sec. 5D of the *Criminal Appeal Act* 1912 of New South Wales

(1) (1932) 48 C.L.R. 251.

is accurately described as an "appeal arising out of any such trial or conviction or out of any proceedings connected therewith." And it may well be contended that a mere right to question the adequacy of a sentence, though no objection is being raised to anything done in the course of the trial or as to the propriety of the conviction or as to the validity of any other proceedings related thereto, hardly comes within the words or intendment of the amending *Judiciary Act*.

We desire, however, to leave this question open for consideration should the matter arise again in the future, because, even if the Crown is, by No. 60 of 1932, given a right of appeal against the adequacy of a sentence, the question arises whether the person to exercise it is the Attorney-General of the Commonwealth or the Attorney-General of the State of New South Wales.

In our opinion, the Act No. 60 of 1932 gives no countenance to the theory that the grant of analogous jurisdiction to State Courts exercising Federal jurisdiction involves a general transfer by the proper officer of the Commonwealth to the corresponding officer of the State of any of the powers and duties in relation to the prosecution of offences which Commonwealth law has conferred upon the former. This view is reinforced by sec. 69 (1) of the *Judiciary Act*, which provides that indictable offences against the laws of the Commonwealth shall be prosecuted by indictment in the name of the Attorney-General of the Commonwealth, or of such other person as the Attorney-General appoints in that behalf.

Assuming, therefore, that the Crown in right of the Commonwealth is entitled, by the combined effect of No. 60 of 1932, and sec. 5D of the *Criminal Appeal Act* of New South Wales, to appeal against the adequacy of a sentence, the person who alone can exercise this right of appeal is the Attorney-General of the Commonwealth, and not the Attorney-General of the State of New South Wales.

This view is fatal to the appeal brought to the Court of Criminal Appeal in the present case, because it was so brought by the Attorney-General of New South Wales.

It was suggested, somewhat faintly, that sec. 69 of the *Judiciary Act*, under which a commission issued appointing the present Attorney-General of New South Wales to prosecute by indictment in his name indictable offences committed in New South Wales

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against Commonwealth laws, might warrant his bringing the present appeal to the Supreme Court. This is not so, because neither sec. 69 nor the commission of appointment itself authorizes the taking of proceedings by way of appeal after an offence has been prosecuted to conviction and sentence.

Special leave to appeal should be granted, the appeal allowed, the order of the Court of Criminal Appeal discharged, and the sentence imposed by the Court of Quarter Sessions restored.

Application for special leave to appeal granted. Appeal allowed. Order of the Court of Criminal Appeal discharged.

Solicitor for the applicant, *J. Yeldham.*

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

J. B.