

[HIGH COURT OF AUSTRALIA.]

THE KING APPELLANT ;

AND

BRADLEY RESPONDENT.

THE KING APPELLANT ;

AND

LEE RESPONDENT.

ON APPEAL FROM THE COURT OF CRIMINAL APPEAL
OF VICTORIA.

H. C. OF A. *Criminal Law—Court of General Sessions (Vict.)—Jurisdiction—Offences against the*
1935. *King's prerogative or government—Coinage offences—Crimes Act 1914-1932*
 (No. 12 of 1914—No. 30 of 1932), Part IV.—Justices Act 1928 (Vict.) (No.
MELBOURNE, *3708), sec. 187*.*
Nov. 27.

Latham C.J.,
Rich, Starke,
Dixon and
McTiernan JJ.

An offence relating to the coinage, under Part IV. of the Commonwealth *Crimes Act 1914-1932*, is not an offence against the King's prerogative or government within the meaning of sec. 187 (iv.) of the *Justices Act 1928 (Vict.)*. Such an offence is accordingly triable by a Court of General Sessions.

Decision of the Court of Criminal Appeal of Victoria reversed.

* Sec. 187 of the *Justices Act 1928 (Vict.)* provides :—" Any one of such Chairmen " of General Sessions " with or without any one or more justices of the peace may without any further commission or authority than this Act hold any Court of General Sessions of the Peace and inquire or hear determine

and adjudge all indictable offences (whether committed within or without the bailiwick in which such Court is sitting) save and except (iv.) Offences against the King's title prerogative person or government or against either House of Parliament."

APPEAL from the Court of Criminal Appeal of Victoria.

James Michael Bradley and Edward Lee were charged with the offence that on 30th August 1935 at Aspendale in the central bailiwick of the State of Victoria they "did contrary to the *Crimes Act* 1914-1932 of the Commonwealth of Australia without lawful authority or excuse have in their possession certain coining instruments to wit two plaster moulds one of the said moulds being adapted to make the resemblance of one side of an Australian florin the other said mould being adapted to make the resemblance of one side of an Australian threepence."

The accused were tried at the Court of General Sessions at Melbourne and were both found guilty of the offence charged. Bradley was sentenced to four years' imprisonment with hard labour and Lee was sentenced to five years' imprisonment with hard labour. Bradley and Lee both appealed to the Court of Criminal Appeal of Victoria and objected that the Court of General Sessions had no jurisdiction to deal with the indictment. This ground of appeal was based upon the contention that sec. 187 of the *Justices Act* 1928 (Vict.) excluded from the jurisdiction of Courts of General Sessions "offences against the King's title prerogative person or government or against either House of Parliament," and that the offence charged came within the description of an offence against the King's prerogative or government. The Court upheld this contention and quashed the convictions.

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

Wilbur Ham K.C. (with him *L. Little*), for the appellant. Although sec. 187 of the *Justices Act* 1928 (Vict.) excludes the jurisdiction of the Court of General Sessions in cases of offences against the King's prerogative, person or government the Judges of the Full Court were misled in supposing that the English practice was as they had stated. The *Quarter Sessions Act* 1842 (5 & 6 Vict. c. 38), sec. 1, excepts from the jurisdiction of Quarter Sessions felonies punishable by penal servitude for life. The result was that coining offences punishable by penal servitude for life were not triable at Quarter Sessions (*Archbold's Criminal Pleading, Evidence and Practice*, 29th ed.

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(1934), pp. 91, 1483). This exception is not contained in sec. 187 of the *Justices Act* 1928. The Full Court was in error in supposing that, after the law was reduced into statutory form, the offence was against the prerogative and not against the statute. When a matter which was an offence against the prerogative is reduced into statutory form, the offence is then against the statute and ceases to be an offence against the prerogative (*Attorney-General v. De Keyser's Royal Hotel* (1); *Moore v. Attorney-General for the Irish Free State* (2)). Sec. 51 (XII.) of the Federal Constitution gives the Commonwealth Parliament power to legislate with respect to currency and legal tender. The Federal Parliament exercised that power by the *Coinage Act* 1909. Sec. 4 of that Act empowers the Treasurer to issue silver and bronze coins. The Federal *Crimes Act* provides sanctions for being in possession of coining instruments. Sec. 68 of the *Judiciary Act* provides that the laws of each State respecting the arrest and custody of offenders or persons charged with offences and the procedure for their trial and conviction on indictment shall apply so far as they are applicable to persons who are charged with offences against the laws of the Commonwealth committed within that State, and 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 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. The *Crimes Act* 1928 (Vict.), sec. 302, makes it an offence to be in possession of coining tools.

[LATHAM C.J. referred to *Chitty's Prerogatives of the Crown* (1820), p. 196; *Emperor of Austria v. Day and Kossuth* (3).]

Clyne (with him *Fazio*), for the respondent Bradley. The proceeding in this case is clearly a proceeding affecting the prerogative of the Crown, which in regard to coinage is still extant. All the Acts in Australia and in England are made subject to the prerogative

(1) (1920) A.C. 508, at pp. 526, 538, 554, 561, 567, 568.

(2) (1935) 51 T.L.R. 504, at p. 507.

(3) (1861) 3 DeG.F. & J. 217; 45 E.R. 861.

of the Crown. The *Coinage Act* 1861 (24 & 25 Vict. c. 99) consolidated the previous *Coinage Acts*. The *Coinage Act* 1870 (33 Vict. c. 10) further consolidated and amended the law relating to coinage. These Acts did not oust the prerogative of the Crown and in no sense impaired the inherent right of the Sovereign to coin money for his subjects. The *Coinage Act* 1870 (33 Vict. c. 10), sec. 11, recognizes the Crown's prerogative. All the statutes point to the fact that the right of coinage is still existing in the Crown, and all the books of authority assume that the right of coinage is still a matter of the prerogative (*Bacon's Abridgment* (1832), vol. 6, p. 413; *Hawkins' Pleas of the Crown* (1824), vol. 1., p. 43; *East's Pleas of the Crown* (1803), vol. 1., p. 158; *Archbold's Criminal Pleading, Evidence and Practice*, 29th ed. (1934), p. 1098; *Mixed Money Case* (1); *Hampden's Case* (2)). Throughout the history of English law offences against the coinage are offences against the prerogative, and that is so in spite of the various statutes dealing with coinage. Secs. 280 and 302 of the *Crimes Act* 1928 (Vict.) refer to the "King's gold or silver coin," which shows clearly that the offence is against the King's prerogative. The English *Coinage Act* 1870 and the Federal *Coinage Act* 1909 do not disturb the prerogative, which cannot be taken away except by clear words or necessary implication (*Cushing v. Dupuy* (3); *Maritime Bank v. The Queen* (4); *In re Bateman's Trust* (5); *Bonanza Creek Gold Mining Co. Ltd. v. The King* (6); *Nadan v. The King* (7)). In this case there is no clear language in the *Coinage Act* 1909 which takes away the prerogative of the Crown. The mint is still His Majesty's mint and the legal right of the Crown to make coins still exists. These offences are offences against the government within the meaning of sec. 187 (iv.) of the *Justices Act* 1928. If the statute assists the prerogative, this is an offence against the government. The matter of issuing coins is a matter for the government of the Commonwealth (*R. v. Hynes* (8)). An offence which is one against any power committed to the government is within the prohibition of sec. 187 (iv.) of the *Justices Act* 1928.

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(1) (1605) 2 St. Tri. 114.

(2) (1637) 3 St. Tri. 826.

(3) (1880) 5 App. Cas. 409.

(4) (1888) 17 S.C.R. (Can.) 657, at pp. 660, 661.

(5) (1873) L.R. 15 Eq. 355.

(6) (1916) 1 A.C. 566, at p. 580.

(7) (1926) A.C. 482, at p. 494.

(8) (1880) 6 V.L.R. (L.) 292; 2 A.L.T. 45.

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There was no appearance for the respondent Lee.

Wilbur Ham K.C., in reply. The arguments put forward by the respondents were dealt with in *Attorney-General v. De Keyser's Royal Hotel* (1). Offences against the government cover such crimes as sedition, mutiny, subverting the government and so forth, and do not cover such crimes as offences against coinage.

The following judgments were delivered :—

LATHAM C.J. In this case special leave to appeal from a judgment of the Full Court of Victoria sitting as a Court of Criminal Appeal was granted by this Court.

The accused persons, Bradley and Lee, were presented for that they “did contrary to the *Crimes Act* 1914-1932 of the Commonwealth of Australia without lawful authority or excuse have in their possession certain coining instruments to wit two plaster moulds one of the said moulds being adapted to make the resemblance of one side of an Australian florin the other said mould being adapted to make the resemblance of one side of an Australian threepence.” This offence is alleged in the terms of secs. 53 and 51 of the Commonwealth *Crimes Act* 1914-1932. The prisoners were tried in a Court of General Sessions at Melbourne. The *Justices Act* 1928, sec. 187, gives jurisdiction to that Court by providing that the Courts of General Sessions shall have authority to “inquire of hear determine and adjudge all indictable offences (whether committed within or without the bailiwick in which such Court is sitting) save and except the offences following.” Then follow certain classes of offences. The fourth exception is expressed in these terms : “(IV.) Offences against the King’s title prerogative person or government or against either House of Parliament.”

It was objected that the offence with which the prisoners were charged was an offence against the King’s prerogative or government. The Full Court decided that the objection was sound, and accordingly the convictions were quashed.

The decision of the Full Court is based on two grounds. In the first place it is said that a similar exception exists in the case of

Courts of Quarter Sessions in England, and that the text books recognize that coinage offences are not within the jurisdiction of those Courts. It has been pointed out, however, that the references made by the Full Court do not support this proposition, and that the exception of certain offences from the jurisdiction recognized in the books is due to the fact that those offences were formerly punishable by transportation for life and since by penal servitude for life and that the exception is based on that ground only. Courts of Quarter Sessions have exercised unchallenged jurisdiction in the case of other coinage offences for many years.

The second ground of the decision of the Full Court is that, apart from the authority which, it was suggested, was derived from English practice, this is an offence against the King's prerogative. It is well settled that the *jus monetæ* is a royal right and part of the prerogative, and that that has been so for many centuries. It is clear that in Australia sec. 51 (xii.) of the Constitution authorizes the Commonwealth Parliament to legislate with respect to this prerogative of the King. It is contended that the offence charged is an offence against the prerogative, and therefore excluded from the jurisdiction of Courts of General Sessions. In this case the prisoners were charged with a breach of a specific section of a specified statute. It is because of the provision contained in that statute that they became liable to a particular penalty. It is a statutory offence. There is, in my opinion, a clear distinction between a right the enforcement of which depends upon the enforcement of a particular statute and a right which is dependent on a prerogative of the King. In *Attorney-General v. De Keyser's Royal Hotel* (1) it has been declared by the highest authority that, when a statute deals with a subject matter which was formerly within the prerogative, rights and duties relating to that subject matter depend upon the statute and not upon the prerogative. Lord *Atkinson* says:—"Those powers which the Executive exercises without Parliamentary authority are comprised under the comprehensive term of the prerogative. Where, however, Parliament has intervened and has provided by statute for powers, previously within the prerogative, being exercised in a particular manner and subject to the limitations

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and provisions contained in the statute, they can only be so exercised” (1). And on the next page his Lordship, after saying that the expression that the prerogative becomes “merged” in the statute is not happily chosen, says: “I should prefer to say that when such a statute, expressing the will and intention of the King and of the three estates of the realm, is passed, it abridges the Royal prerogative while it is in force to this extent: that the Crown can only do the particular thing under and in accordance with the statutory provisions, and that its prerogative power to do that thing is in abeyance.” It appears to me that the principle there laid down is conclusive of this case, that the offence with which the prisoners were charged depends on the terms of the statute, and not upon any considerations affecting the prerogative, and that therefore the objection taken fails.

It was further contended that these offences were offences against the government, within the meaning of that expression in sec. 187 of the *Justices Act* 1928. It was found difficult to suggest any general rule which, while resulting in these being offences against the government, would prevent many other acts being offences against the government because they interfere in some manner with the administration of government departments or the exercise of the prerogative by a Minister. In my opinion, this is not the meaning of the phrase. The meaning of the phrase is well illustrated (though I do not say that it is defined) by the classification in the Commonwealth *Crimes Act*, where Part II., headed “Offences against the Government,” deals with such offences as sedition. The exception in the *Justices Act* is intended to cover offences of that type.

For these reasons I am of opinion that this appeal should succeed.

RICH J. I agree that the Court of General Sessions had jurisdiction to try the offences upon which the prisoners were convicted.

I do not think statutory crimes in connection with counterfeiting are offences against the prerogative under sec. 187 (iv.) of the *Justices Act* 1928 (Vict.), whatever may be the present relation of the prerogative power of the Crown to the currency, nor do I think they fall within the description, offences against the government.

(1) (1920) A.C., at p. 538.

STARKE J. I agree. I add a reference to the statute 5 & 6 Vict. c. 38, which defines the jurisdiction in England of justices in General and Quarter Sessions of the Peace. It enacts that justices shall not try any person for treason, murder or capital felony or for any felony which when committed by a person not previously convicted of felony is punishable by transportation beyond the seas for life, now penal servitude (see *Stone's Justices Manual*, 65th ed. (1933), pp. 232, 1523-1526), or certain other offences, including offences against the Queen's title, prerogative, person or government or against either House of Parliament.

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Many coinage offences are not triable at Sessions in England because of the exception from jurisdiction of the felonies already mentioned, and when English text books state that a coinage offence is not triable at Sessions the statement is referable to that exception and not to the exception of offences against the Queen's prerogative. The jurisdiction of justices in Sessions in England to try other coinage offences has never been doubted and has been often exercised (*Archbold, Criminal Pleading*, 25th ed. (1918), pp. 1432, 1433).

The exception as to felonies, other than felonies punishable with death, was not copied in the *Justices Act* 1928 (Vict.), sec. 187, but this omission does not appear to have been brought to the attention of the learned Judges of the Full Court and doubtless led to misapprehension on their part.

DIXON J. I agree that the appeal should be allowed.

Since the passing of 5 & 6 Vict. c. 38, which first excluded from the jurisdiction of Courts of Quarter Sessions offences against the Sovereign's title, prerogative, person or government, or against either House of Parliament, it appears to have been taken for granted that coinage offences were triable at Quarter Sessions, subject to any particular exclusion depending upon the nature of the penalty imposed. It may be conceded that the nature of the power to coin money, as well as the history of coinage offences, gives ground for the contention that they are all offences against the prerogative in this sense that, although offences provided by statute, the statutory provisions creating them are designed to protect the prerogative. To coin

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money and use it as currency was an exercise of the prerogative power of the Crown. From early times the making of counterfeit money was considered treason at common law. Such offences were regarded, "not as mere frauds fraught with grave harm to the community, but also and chiefly as the invasion of a specially royal right which our Kings had jealously guarded, and any tampering with the King's image and superscription on seal or coin was assimilated to an attack upon his person" (*Pollock and Maitland, History of English Law* (1895), vol. 2, p. 503). Counterfeiting the King's money was expressly included in the statute of Edward III., 25 Edw. III., stat. 5, c. 2.

In many respects statute law now regulates the coinage. But the coining of money may still depend in England upon the prerogative as regulated by statute. (See *Halsbury*, 2nd ed., vol. 6, p. 549, note *h.*) The power of the Commonwealth, however, over coinage arises under sec. 51 (XII.) of the Constitution, which confers a legislative power. The *Coinage Act* 1909, passed in the exercise of that power, is the only source of authority for the Commonwealth to coin and issue money. Its authority in no way rests upon the King's prerogative. But under that Act (sec. 5) British coins are legal tender in Australia. For this reason it is suggested that money current in Australia does not depend exclusively on statutory authority. So much of it as is minted in England may rest ultimately upon an exercise of the prerogative. The offences created by Part IV. of the Commonwealth *Crimes Act* 1914-1932 include the counterfeiting and clipping of money minted in England. It is said, therefore, that these offences are designed to protect the prerogative on which the minting and issuing of such money finally depend. It may be matter for surprise that no one in England has ever raised the contention that coinage offences are outside the jurisdiction of Quarter Sessions because offences against the Sovereign's prerogative or government. But the fact is that such offences have not been considered of that nature. The expression "offences against the prerogative" is open to more than one meaning. It does not necessarily mean violations of penal laws which uphold the exercise of the prerogatives of the Crown or relate to things done under it.

Offences existed at common law, simply because the prerogative itself required the subject to refrain from doing various acts. Probably the offences of that kind which survive are few in number. They include disobedience of proclamations commanding the observance of duties arising under the common law, and of other proclamations good at common law, perhaps offences which exist in virtue of proclamations validly made in time of war, and offences in relation to treasure trove (see *Chitty, Prerogatives of the Crown* (1820), and *R. v. Thomas and Willett* (1)). If the expression "offences against the prerogative" is confined to such offences, it clearly would not extend to coinage offences under statute. There is some difficulty in confining the expression to that meaning, because it occurs in conjunction with the words "against the Queen's . . . person or government or against either House of Parliament." These words appear to describe the tendency of the offence and not the legal source from which it arises. But, hitherto, statutory offences have not been considered excluded as offences against the prerogative. The statutory description is nearly a hundred years old. When a long course of practice has been established under an old statute relating to judicial proceedings, and books of practice are uniform in stating it as law, it is very undesirable that Courts should take an opposite view. I find in *Pritchard's Quarter Sessions* (1875) that coinage offences are described under the title "Misdemeanours triable at Quarter Sessions." The earlier work on Quarter Sessions by *Dickinson* (1845) treats them as there triable. Many editions of *Archbold's Criminal Pleading* have indicated that, except when the punishment took them outside the jurisdiction, they were triable at Quarter Sessions. In Victoria, as I understand, it has been the constant practice, both before the Commonwealth *Crimes Act* and since, to try this class of crime at General Sessions. As the statute is susceptible of a construction which supports that practice, I think that construction should be adopted.

In my opinion the expression occurring in sec. 187 (iv.) of the *Justices Act* 1928 (Vict.) should be understood as referring to offences against the law which forms part of the law of the prerogative. I

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do not think that coinage offences are included in the words offences against the government.

For these reasons I am of opinion that the appeal should be allowed and the criminal appeals remitted to the Full Court.

McTIERNAN J. The *Coinage Act* of the Commonwealth is the only source of the Governor-General's power, as representative of the King, to make and issue coins. The offences charged are against statutory provisions enacted under the constitutional legislative power over coinage or that incident thereto. Such offences are not "against the King's prerogative" (see *Attorney-General v. De Keyser's Royal Hotel* (1)). There is nothing else that I would wish to add. I agree that the appeal should be allowed.

Appeal allowed. Matter remitted to the Court of Criminal Appeal to be dealt with in accordance with law.

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

Solicitor for the respondent *Bradley, Vincent Nolan*.

H. D. W.

(1) (1920) A.C. 508.