[HIGH COURT OF AUSTRALIA.]

ADAMS (DEPUTY FEDERAL COMMISSIONER OF TAXATION (VICTORIA)) . . . APPELLANT;
INFORMANT,

AND

CHAS. S. WATSON PTY. LTD. . . . RESPONDENT.
DEFENDANT,

ON APPEAL FROM A COURT OF PETTY SESSIONS OF VICTORIA.

H. C. OF A. 1938.

MELBOURNE, *June* 3.

SYDNEY, *Aug.* 8.

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

Constitutional Law (Cth.)—State Courts—Federal jurisdiction—Time for taking proceedings prescribed by Commonwealth Act—Validity of Act—The Constitution (63 & 64 *Vict. c.* 12), *sec.* 76 (*ii.*)—*Judiciary Act* 1903-1937 (*No.* 6 *of* 1903—*No.* 5 *of* 1937), *sec.* 39 (2)—*Sales Tax Assessment Act* (*No.* 1) 1930-1935 (*No.* 25 *of* 1930—*No.* 61 *of* 1935), *sec.* 50 (2).

Justices—Jurisdiction—Limitation of time—Information for offence against Commonwealth Act—Time within which information may be laid—Commonwealth and State Acts prescribing different times—Hearing of information in one bailiwick—Offence alleged in another bailiwick—Defect in substance or in form—Amendment—Justices Act 1928 (*Vict.*) (*No.* 3708), *secs.* 85 (3), 196, 210.

Sec. 50 (2) of the *Sales Tax Assessment Act* (*No.* 1) 1930-1935, which provides that prosecutions under certain sections of that Act "may be commenced at any time," is not *ultra vires* of the Commonwealth Parliament, and it excludes in the case of such prosecutions the application of sec. 210 of the *Justices Act* 1928 (Vict.), which provides that, "if no time is specially limited for laying an information in the Act of parliament relating to such case, such information shall be laid within twelve months from the time when the matter of such information arose and not afterwards."

Per Latham C.J. and *Starke* J.: Sec. 210 of the *Justices Act* 1928 (Vict.) is not a provision limiting the jurisdiction of Courts of Petty Sessions. *Parisienne Basket Shoes Pty. Ltd.* v. *Whyte*, (1938) 59 C.L.R. 369, applied.

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Sec. 196 of the *Justices Act* 1928 (Vict.) provides that, on the hearing of any information, no objection shall be taken or allowed to the information for any defect in substance or in form, and that the court may amend the information in cases where there is such a defect.

Held that a Court of Petty Sessions sitting in one bailiwick may amend an information which alleges an offence in some other bailiwick so as to allege the offence in the former bailiwick, and may then proceed with the hearing, and, if the offence is proved to have been committed in the former bailiwick, may convict.

APPEAL, by way of order to review, from a Court of Petty Sessions of Victoria.

Chas. S. Watson Pty. Ltd. was charged with four offences against sec. 12 (2) of the *Sales Tax Assessment Act* (*No.* 1) 1930-1935 on the information of Joseph Adams, the Deputy Federal Commissioner of Taxation for Victoria. The informations alleged that on different dates in the year 1935 the respondent at Mildura, in the State of Victoria, being a registered person within the meaning of the *Sales Tax Assessment Act* (*No.* 1) 1930-1935, quoted its certificate of registration for purchases for which it was not permitted to quote the certificate. The summons issued on each information was made returnable before the Court of Petty Sessions at Melbourne in the Central Bailiwick, and the informations came on for hearing before that court.

By consent the four informations were heard together, and a plea of not guilty was entered on behalf of the defendant company to each of the informations. At the opening of the proceedings counsel for the company stated that he appeared to object to the jurisdiction of the court, and, subject thereto, to defend on behalf of the defendant. One objection taken was that the court had no jurisdiction by reason of the fact that the dates of the alleged offences were all in 1935 and that by sec. 210 of the *Justices Act* 1928 (Vict.) an information in respect of such a matter must be laid within twelve months of the time when the matter of such information arose. A further objection to jurisdiction was taken, namely, that, as the information in each case alleged an offence at Mildura, which was not in the Central Bailiwick, the court had no jurisdiction. An application was made on behalf of the informant to amend the

informations to allege an offence at Melbourne. The police magistrate said that, if he found that the real question in dispute arose within his jurisdiction, he would amend the informations. He then heard argument on the question whether sec. 210 of the *Justices Act* was an answer to the informations, and held that that section was a good defence.

From that decision the informant appealed, by way of order nisi to review, to the High Court.

Wilbur Ham K.C. and *Sholl*, for the appellant. The act relied upon as constituting the offence in this case occurred more than twelve months prior to the laying of the information, and the police magistrate conceived himself to have no jurisdiction by reason of the provisions of sec. 210 of the *Justices Act* 1928 (Vict.). He thought that because the information was laid more than twelve months after the commission of the offence, he had no jurisdiction to deal with the matter at all. As the time is limited, or marked out, or indicated, in the *Sales Tax Assessment Act*, which is the Act under which the offence arose, the twelve-months' limitation imposed by the *Justices Act* does not operate, because it only applies where no time is specially limited for laying the information under the Act relating to such cases.

Ashkanasy, for the respondent. The court should refuse to permit this point to be argued, on the grounds that in the court below the opposite view was expressly conceded.

[LATHAM C.J. It is entirely a question of law. Would it be any more than a matter of costs in this proceeding ?]

Where a point is expressly conceded in the court below the position is different from that where the point is not taken. The appellant cannot be allowed to use by way of argument a ground of appeal which was expressly conceded in the court below. To allow anything else would result in an injustice to the parties which is not capable of being cured merely by an order as to costs (*Council of the Borough of Randwick* v. *Australian Cities Investment Corporation* (1)).

(1) (1893) A.C. 322.

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[LATHAM C.J. referred to *The Annual Practice* (1938), p. 1288.

[RICH J. referred to *Gramaphone Co. Ltd.* v. *Magazine Holder Co.* (1).

[DIXON J. referred to *Bowes* v. *Chaleyer* (2).]

LATHAM C.J. The court is of the opinion that the objection should be overruled. It is entirely a question of law. I refer to *George Hudson Ltd.* v. *Australian Timber Workers' Union* (3), per *Isaacs* J., where he says: "In *Ex parte Markham* (4) the Court of Queen's Bench (*Cockburn*, C.J. and *Blackburn*, *Mellor* and *Lush* JJ.) held that a fatal objection in law may be taken in the appellate court, though not noticed before the justices, the condition being that it could not be cured by further evidence." The principles there expressed by *Isaacs* J. appear to apply completely to this case. As Mr. *Ashkanasy* has said, it is a matter which may be taken into account in considering the question of costs, but that will depend upon the view which the court takes of the whole matter.

The objection is overruled.

Wilbur Ham K.C. The expression "Act of parliament" in sec. 210 of the *Justices Act* includes any Act of the Commonwealth Parliament. You look at the Act of parliament which creates the offence. If there is a provision in it in respect of time, that provision controls the court. Under sec. 77 of the Constitution the Federal Parliament may invest a State court with Federal jurisdiction and may make such limitations on the jurisdiction as it thinks fit. Sec. 79 of the *Judiciary Act* says that the laws of all States, except as otherwise provided by the laws of the Commonwealth, shall be binding on the courts exercising Federal jurisdiction in the State. This police magistrate was exercising Federal jurisdiction in Victoria, and the laws of Victoria are applicable except in so far as otherwise provided by the law of the Commonwealth. Here is a law of the Commonwealth which otherwise provides and says that the prosecution can be taken at any time (*Federated Sawmillers, Timberyard and General Woodworkers' Employees' Association* (*Adelaide Branch*) v. *Alexander* (5)). Sec. 79 of the *Judiciary Act* authorizes the

(1) (1911) 28 R.P.C. 221, at p. 225.
(2) (1923) 32 C.L.R. 159, at p. 172.
(3) (1923) 32 C.L.R. 413, at p. 426.
(4) (1869) 34 J.P. 150.
(5) (1912) 15 C.L.R. 308, at pp. 313, 321.

prosecution in this case at any time. In any case, sec. 210 of the *Justices Act* does not limit jurisdiction at all (*Parisienne Basket Shoes Pty. Ltd.* v. *Whyte* (1)). In so far as it is said that sec. 39 (2) of the *Judiciary Act* implies that the court's jurisdiction is to be taken as it is found and that this jurisdiction cannot be altered in any way, the position is that this limitation is not a matter of jurisdiction, and therefore the argument falls to the ground. Sec. 39 (2) of the *Judiciary Act* is not intended to be a limitation of the possible jurisdiction that the Federal Parliament can bestow. It is only a general provision which operates in all cases that come before it, and there is nothing to prevent the Federal Parliament from enacting sec. 50 (2) of the *Sales Tax Assessment Act*. Sec. 82 of the *Judiciary Act* expressly deals with the subject. What the Constitution authorizes Parliament to do and what Parliament has done is to confer Federal jurisdiction upon certain persons who are to be recognized and named as State courts, that is, in addition to the power conferred by sec. 39 (2) of the *Judiciary Act*. Sec. 54 authorizes prosecutions in a court of summary jurisdiction. Sec. 58 provides that, "subject to this Act," the provisions relating to summary proceedings before justices in force in the State are to apply; this recognizes possible alterations of procedure. It was never intended that sec. 39 of the *Judiciary Act* should be more than a general restriction on future grants of judicial power. If there is any conflict between sec. 50 (2) of the *Sales Tax Assessment Act* and sec. 210 of the *Justices Act*, then sec. 109 of the Constitution applies and the Federal provision prevails. On the question of venue, the respondent is a registered company with its registered office in Melbourne, but it also carries on business in Mildura, and from Mildura the company sent a letter to Melbourne quoting the certificate. The appellant made an application to the police magistrate to change the venue alleged from Mildura to Melbourne. There was jurisdiction for the magistrate to amend the information, but really there was no decision on the question of venue at all, because the magistrate held that he had no jurisdiction to hear the case.

(1) (1938) 59 C.L.R. 369, at pp. 373, 383, 388.

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Ashkanasy. Sec. 210 of the *Justices Act* provides that whenever the Court of Petty Sessions has jurisdiction, no matter how it arises, the information must be laid within twelve months. The expression "Act of parliament" in sec. 210 means specifically the Victorian Parliament. Sec. 210 is part of the complete scheme of dealing with summary offences. It is expressed to be a limit upon the time for laying an information. The Act creates machinery in secs. 20 and 25 whereby informations can be laid before a justice or police magistrate; then conditions in regard to the form of informations are laid down, and sec. 210 provides a limit as to time. Sec. 210 is part of the general scheme of the operation of the Court of Petty Sessions. Where the court is authorized by law to make an order in respect of an offence, if no time is specially limited in a Victorian Act relating to that offence, it is to be within twelve months. The Act was entrusting Courts of Petty Sessions with the power of dealing with fresh offences which had been committed within twelve months. Sec. 39 (2) of the *Judiciary Act* does not enable sec. 50 (2) of the *Sales Tax Assessment Act* to be brought in to modify the express provision in sec. 210 of the *Justices Act* (*Sawmillers' Case* (1)). That case shows that Courts of Petty Sessions, in the absence of express provision to the contrary, are taken with their limitations as to time. When they are invested with any jurisdiction in a Federal matter, that limitation as to time must apply. Therefore, unless there is some overriding effect in the Federal legislation, sec. 210 is a complete answer and the magistrate acted correctly. It is not sufficient merely to find in the *Sales Tax Assessment Act* some provision as to time. One has to find an express provision which in fact overrides and makes sec. 210 inapplicable. Sec. 50 (2) of the *Sales Tax Assessment Act* was added in 1934 for the purpose of enacting that the common-law position of no limitation of action for criminal offences should apply. Sec. 50 (2) does not specially limit the time for bringing a prosecution. Not only does that section not limit time but it says that time should be unlimited. Sec. 50 (2) does not deal at all with procedure for Courts of Petty Sessions; it merely says that offences should remain permanently offences, and then sec. 58 comes into operation and

(1) (1912) 15 C.L.R., at pp. 312, 317, 322.

provides that the procedure in Courts of Petty Sessions should apply. The provisions of secs. 39 (2) and 79 of the *Judiciary Act* are also applicable. When Parliament talked of a court of summary jurisdiction under the *Sales Tax Assessment Act*, it was talking of a court which was already invested with Federal jurisdiction under sec. 39 (2) of the *Judiciary Act*. Where the Federal Parliament invests a State court with Federal jurisdiction it takes the State court as it finds it (*In re Hancock's Golden Crust Pty. Ltd.'s Trade Mark* (1)). Under the vesting power of the Constitution there is no power in the Federal Parliament to control the procedure or jurisdiction of a State court (*Le Mesurier* v. *Connor* (2)). A Court of Petty Sessions at Melbourne is a court with a particular jurisdiction, and the procedure is the very essence of the existence of the court. The information which brings a person before the court must be laid within twelve months of the commission of the offence, and that is a matter of jurisdiction. You cannot alter the authority and procedure of a court in any respect; all you can do is to put a new subject matter in. That is what is meant by the words " investing any court of a State with Federal jurisdiction " in sec. 77 (iii.) of the Constitution. On the question of venue, it was not within the power of the magistrate to proceed to hear the facts with a view to the substitution of a new information against the defendant who was not present. All the magistrate could do at this stage was to dismiss the information. He was wrong in refusing to dismiss it on the ground that it was laid in the wrong bailiwick. He could not amend the information, and he had no other power to deal with this information than to dismiss it.

Wilbur Ham K.C., in reply.

Cur. adv. vult.

The following written judgments were delivered :— Aug. 8.

LATHAM C.J. The respondent company was charged with four offences against sec. 12 (2) of the *Sales Tax Assessment Act* (*No.* 1) 1930-1935 in that it did at Mildura quote its certificate of registration for purchases for which it was not permitted to quote the certificate.

(1) (1929) V.L.R. 17. (2) (1929) 42 C.L.R. 481, at pp. 495, 496, 516, 523.

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Each summons issued upon the information required the defendant to appear at Melbourne in the Central Bailiwick to answer the information. Sec. 50 (2) of the *Sales Tax Assessment Act* provides that a prosecution in respect of any offence against sec. 12 of the Act may be commenced at any time. The informations alleged that the offences were committed at Mildura in 1935. The informations were laid on 4th March 1938. The cases were called on before a Court of Petty Sessions at Melbourne constituted by a police magistrate in accordance with sec. 39 (2) of the *Judiciary Act* 1903-1937. Sec. 39 (2) invests State courts with Federal jurisdiction in matters in which original jurisdiction can be conferred upon the High Court and therefore in matters arising under any law made by the Commonwealth Parliament (See Constitution, sec. 76 (ii.)). This jurisdiction is conferred upon State courts " within the limits of their several jurisdictions, whether such limits are as to locality, subject matter, or otherwise." The *Justices Act* 1928 (Vict.), sec. 210, provides that where a Court of Petty Sessions is authorized to make an order in respect of any offence or where any offence or act is punishable by summary conviction, if no time is specially limited for laying an information in the Act of parliament relating to such case, such information shall be laid within twelve months from the time when the matter of the information arose and not afterwards. The defendant did not plead to the charges, but objected to the jurisdiction of the court. The police magistrate dismissed the informations upon the ground that sec. 210 of the *Justices Act* was a provision limiting the jurisdiction of the court and that therefore the court had no jurisdiction under sec. 39 (2) of the *Judiciary Act*. The informant has appealed to this court by way of order to review. The defendant company contends that the decision of the police magistrate was right on the ground stated by him.

The words " Act of parliament " in sec. 210, it is contended, refer only to State Acts of parliament, and therefore do not include such a provision as sec. 50 (2) of the Federal *Sales Tax Assessment Act*. Then, it is said, sec. 210 of the *Justices Act* must apply, because it imposes a limit upon the jurisdiction of the State court which is accepted by the Commonwealth Parliament by the terms of sec. 39 (2) of the *Judiciary Act*, there being no relevant State statute

specially limiting the time for laying an information in the case of a prosecution under the Federal *Sales Tax Assessment Act*.

If sec. 210 of the *Justices Act* is not an Act limiting the jurisdiction of the State court the argument for the defendant fails. In my opinion sec. 210 is not such a provision. The effect of sec. 210 is not to deprive the court of jurisdiction but to provide a defendant with a defence against an information which is out of time. The decision of this court in *Parisienne Basket Shoes Pty. Ltd.* v. *Whyte* (1) is fatal to the defendant's contention. In that case it was held that a similar provision providing for a period of limitation for the laying of informations under the *Factories and Shops Act* 1928 was not a provision affecting the jurisdiction of the court. The reasoning in that case is fully applicable to the present cases. I am therefore of opinion that the decision of the magistrate upon this point was wrong.

It was further argued on behalf of the defendant that sec. 50 (2) of the *Sales Tax Assessment Act* is invalid. This argument was based upon the proposition that the Commonwealth Parliament, in empowering State courts to deal with Federal matters, must take them with all their limitations or restrictions or attributes as it finds them. Therefore, even if sec. 210 was not a provision affecting jurisdiction, it was a restriction upon the power of the court, or at least an attribute of the court, which the Commonwealth Parliament had to accept and leave unchanged if it chose to invest the court with Federal jurisdiction. The result would be that sec. 50 (2) of the *Sales Tax Assessment Act* would represent an ineffective attempt of the Commonwealth Parliament to regulate proceedings in State courts and that, so far as it purported to apply to Courts of Petty Sessions in Victoria, it would, by reason of sec. 210 of the *Justices Act*, be invalid.

The *Sales Tax Assessment Act* is certainly not based upon this suggested principle. Sec. 58 recognizes and adopts the practice and procedure of State courts, but it purports to do so only "subject to this Act" and, therefore, subject to sec. 50 (2).

But the view suggested is not supported by authority. Even in relation to matters affecting jurisdiction (and a *fortiori* in relation

(1) (1938) 59 C.L.R. 369.

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to a provision such as sec. 210 of the *Justices Act*, not affecting jurisdiction), this court has adopted a contrary view. In *Federated Sawmill, Timberyard and General Woodworkers' Employees' Association (Adelaide Branch)* v. *Alexander* (1) this question was considered and it was held that, where by a Commonwealth statute a new jurisdiction is conferred upon a State court, that court is to be taken as it is found, with all its limitations as to jurisdiction, *unless otherwise expressly declared* (2). In sec. 50 (2) of the *Sales Tax Assessment Act* the Commonwealth Parliament has expressly declared that prosecutions under sec. 12 of the Act may be commenced at any time. This is a declaration which excludes the application of sec. 210 of the *Justices Act* in the case of such prosecutions. It follows from the principle enunciated in the case cited that this declaration is effective and that it would be effective even if sec. 210 were held to be a provision affecting the jurisdiction of Courts of Petty Sessions.

The defendant supported the argument that sec. 50 (2) was invalid by reference to *Le Mesurier* v. *Connor* (3). It was urged that in that case it was decided, notwithstanding the *Sawmillers' Case* (1), that, when the Commonwealth Parliament invested a State court with Federal jurisdiction, the Parliament must necessarily adopt that court as it found it in State law with all its limitations, whatever they might be, whether relating to jurisdiction or to other matters. But *Le Mesurier's Case* (3) is not authority for so wide a proposition. It relates to the constitution and organization of a court, and decides that the Commonwealth Parliament cannot, in purporting to adopt a State court as a judicial instrument, change the character or constitution of that instrument. For example, the Commonwealth Parliament could not make additional appointments to the State judiciary by proposing to invest State courts with Federal jurisdiction and then selecting, for the purpose of exercising that jurisdiction, persons who were not members of the State tribunals. The Commonwealth Parliament cannot change the nature of an existing State court as a judicial organism or bring about the creation of a new court by such means. The creation of Federal courts is controlled by sec. 72 of the Constitution, and this provision

(1) (1912) 15 C.L.R. 308.
(2) (1912) 15 C.L.R., at pp. 313, 321.
(3) (1929) 42 C.L.R. 481.

cannot be evaded (for example, as to tenure of judges) by attempting to change the constitution of a State court in the course of investing it with Federal jurisdiction. These are the principles which underlie *Le Mesurier's Case* (1), and they have no application where Federal legislation does not pretend to deal with the constitution and organization of a court. The decision rests upon the distinction between structure and function. The Commonwealth Parliament cannot change the structure of a State court, but it may confer new functions upon such a court. This principle has no application to the present case. In my opinion sec. 50 (2) of the *Sales Tax Assessment Act* is valid.

The defendant, however, supports the order of the police magistrate dismissing the prosecutions upon another ground, namely, "that the court was sitting as a Court of Petty Sessions in the Central Bailiwick and the offence was alleged to have occurred in a different bailiwick over which the court had no jurisdiction." The court was sitting at Melbourne in the Central Bailiwick, and the offence was charged in the informations as having occurred at Mildura, which is in the Midland Bailiwick.

The *Justices Act* 1928 provides, in sec. 12, that justices of the peace "shall be assigned to keep the peace in each bailiwick, and such justices may be so assigned by a commission under the seal of the State in the form contained in the Third Schedule to this Act or to the like effect."

It is therefore clear that the powers of a justice are, by his commission, limited to a particular bailiwick. Sec. 14 of the Act provides that every police magistrate shall by virtue of his office be a justice of and for every bailiwick. This provision has no further effect than would be produced by a series of separate appointments of a police magistrate as a justice for each bailiwick. Accordingly it has been held that a police magistrate sitting in one bailiwick cannot deal with cases arising in another bailiwick (*Martin* v. *Conant* (*Keogh, garnishee*) (2)). It is, therefore, contended that in the case now under consideration the police magistrate had no authority whatever to deal with the charges, not even by amending the informations or by adjourning the hearing of them to Mildura.

(1) (1929) 42 C.L.R. 481.

(2) (1898) 19 A.L.T. 216.

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The general rule laid down in *Martin* v. *Conant* (*Keogh, garnishee*) (1) has not been successfully attacked by the appellant. The *Justices Act* recognizes that prima facie a justice can discharge his functions only in the bailiwick to which he is assigned, and the same rule must apply to a police magistrate. In each bailiwick in which he sits, he acts as a justice by virtue of his appointment to that bailiwick by the operation of sec. 14. He cannot sit in one bailiwick and, because he is a justice for another bailiwick, deal in the former bailiwick with a case arising in the latter. But the rule has been modified in certain cases by express provisions in the *Justices Act*. Secs. 30 and 31 expressly empower a justice to perform certain acts in respect of offences committed outside the bailiwick to which he is assigned. These acts are specified in sec. 31. They do not include the hearing of an information with respect to an offence committed in another bailiwick unless the conditions prescribed in sec. 31 (*f*) are fulfilled. Those conditions have not been fulfilled in these cases. The proviso to sec. 30 recognizes the general rule that a justice cannot act outside of the bailiwick to which he is assigned by requiring that, in the case of judicial acts, the justice, even when he is acting under the extended powers conferred by secs. 30 and 31, must, at the time when he does those acts, be within the limit of the bailiwick or bailiwicks to which he has been assigned.

The informant contended that certain provisions of the *Justices Act* enabled the police magistrate to overcome the obstacle created by the fact that the offences were alleged in the informations to have been committed at Mildura in the Midland Bailiwick, whereas the police magistrate was sitting in the Central Bailiwick. Sec. 85 (3) provides that no variance between an information and the evidence as to the place at which an offence is alleged to have been committed shall be deemed material *if* it is proved that the offence was in fact committed within the jurisdiction of the court by which the information is heard and determined. Sec. 85 (4) gives a power of amendment which can be used in such cases. But these provisions plainly assume that an information exists with which the court has power to deal. The effect of sec. 85 (3) is that, if the offence is alleged to have been committed at one place within a bailiwick in

(1) (1898) 19 A.L.T. 216.

which the court has jurisdiction, but the evidence shows that it was committed at another place within the same bailiwick, that fact shall not be deemed to be material and an amendment can be made. But the section does not deal with the case of an information charging an offence not alleged to have been committed at any place within the bailiwick in which the justices are exercising their functions.

The informant also relied upon sec. 86 of the *Justices Act*. Under sec. 86 a matter may be adjourned to what may be called a nearer court, and even to a court in another bailiwick if it is nearer within the meaning of the section. But this section also assumes that the court is dealing with a matter arising within the bailiwick in which the court is sitting. It does not purport to enable a court to do any act in relation to an offence which is charged as having been committed in another bailiwick.

Sec. 211 gives jurisdiction with respect to matters which arise upon the boundaries of bailiwicks in which the court is sitting. The section also extends the jurisdiction of a Court of Petty Sessions to enable it to deal with an offence begun in the bailiwick in which the court is sitting and completed in another bailiwick, or vice versa. But this section does not empower a court sitting in one bailiwick to deal with offences which the information alleges to have been committed in another bailiwick. This section is required only by reason of the general rule that the jurisdiction of any Court of Petty Sessions is limited to a particular bailiwick, namely, the bailiwick to which the justices composing the court have been assigned and within which, prima facie, they must exercise any of their powers. Thus, in my opinion, none of these sections assists the informant.

But sec. 196 of the *Justices Act* goes further than any of the sections mentioned. That section provides that, on the hearing of any information, no objection shall be taken or allowed to the information for any defect in substance or in form, and that the court may amend the information in cases where there is such a defect. In the present case there is, in my opinion, a defect in substance in the information. That defect is that the offences charged are offences at Mildura and the court in Melbourne has no power to deal with such offences. The court under sec. 196 has power, upon application

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made, to amend the informations in these cases so that they will allege that the offences were committed at Melbourne. The court may then proceed with the hearing. If the offences are proved to have been committed in Melbourne, the court may convict. If the conditions referred to in sec. 211 (for example, offences begun at Mildura and completed in Melbourne) are shown to exist, the court may still convict. If, however, it is shown that the offences, if committed at all, were committed at Mildura, the court must dismiss the informations unless the defendant makes an application under sec. 86 for adjournment to Mildura and the court grants the application.

There are provisions in sec. 60 of the *Sales Tax Assessment Act* and sec. 68 (4) of the *Judiciary Act* which are similar in character to sec. 196 of the *Justices Act*. Under these sections, also, I am of opinion that the police magistrate has power to amend the informations in these cases. Thus, the second ground upon which the orders dismissing the informations have been supported cannot, in my view, be regarded as established.

In the proceedings before the police magistrate the solicitor for the prosecutor conceded that the words "Act of parliament" in sec. 210 of the *Justices Act* meant "Act of Parliament" of the State of Victoria, and that they could not be construed so as to cover any provision in a Federal statute. It was contended for the defendant that therefore, if the informant succeeded upon these appeals, no costs should be allowed to the informant. It is not, however, necessary to consider this aspect of the cases, because the informant succeeds upon other grounds.

The orders nisi should be made absolute with costs, and the cases should be remitted to the Court of Petty Sessions at Melbourne.

RICH J. It is unnecessary for me to say more than that I consider that sec. 50, sub-sec. 2, of the *Sales Tax Assessment Act* (*No.* 1) 1930-1935 is valid and that it excludes sec. 210 of the *Justices Act* 1928 (Vict.). I agree with the order proposed.

STARKE J. The defendant was charged upon four informations with quoting his certificate other than as prescribed contrary to the provisions of the *Sales Tax Assessment Act* (*No.* 1) 1930-1935, sec. 12 (2), and the regulations thereunder.

The proceedings were instituted in the Court of Petty Sessions at Melbourne in pursuance of secs. 53 and 54 of the Act, and sec. 50 (2)

enacts that a prosecution in respect of an offence against sec. 12 (2) may be commenced at any time. But the informations were dismissed on the ground that Courts of Petty Sessions in Victoria were not invested with any Federal jurisdiction, except as to subject matter, beyond the limits possessed as a State court; in this case, within twelve months from the time when the matter of the information arose (*Judiciary Act*, sec. 39 (2); *Justices Act* 1928 (Vict.), sec. 210). Apparently the decision is founded upon the observations of *Griffith* C.J. in *Federated Sawmill, Timberyard and General Woodworkers' Employees' Association (Adelaide Branch)* v. *Alexander (Sawmillers' Case)* (1): "I think that when the Federal Parliament confers a new jurisdiction upon an existing State court it takes the court as it finds it, with all its limitations as to jurisdiction, unless otherwise expressly declared." But the provision of sec. 210 is not a limitation upon the jurisdiction of the Court of Petty Sessions (*Parisienne Basket Shoes Pty. Ltd.* v. *Whyte* (2)). And, even if it were for the purposes of sec. 39 (2) of the *Judiciary Act*, still the Parliament of the Commonwealth has by sec. 50 (2) of the *Sales Tax Assessment Act (No.* 1) 1930-1935 otherwise expressly declared. No doubt can exist as to the competence of the Commonwealth to pass the provisions of secs. 12, 50 (2), 53 and 54 of that Act. The decision dismissing the informations on that ground cannot, therefore, be supported.

It was sought to uphold the decision upon another ground. The informations charge that the offence was committed at Mildura in the Central Bailiwick of the State of Victoria but were made returnable in Melbourne. They came on for hearing in Melbourne before a police magistrate, who has authority to act of and for every bailiwick (*Justices Act* 1928, sec. 14). But, though the information charges the offence at Mildura in the Central Bailiwick, it was said, and apparently correctly, that Mildura was not in the Central Bailiwick (*Supreme Court Act* 1928, secs. 56 and 57). But though a police magistrate is a justice for every bailiwick, yet, it was said, he may not sit in one bailiwick and deal with cases arising in another (*Martin* v. *Conant (Keogh, garnishee)* (3); and see Mr. *W. Paul's* book on *Justices of the Peace* (1936), p. 198; cf. *Justices Act*, secs. 30 and 31). The argument may be right, but I express no opinion upon it or whether it goes to the jurisdiction of the magistrate, for the informant

(1) (1912) 15 C.L.R., at p. 313. (2) (1938) 59 C.L.R. 369.
(3) (1898) 19 A.L.T. 216.

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applied to amend the information by charging the commission of the offence at Melbourne. The police magistrate resolved to hear evidence before dealing with the application for amendment. But he never dealt with the application, because he dismissed the information on the ground already stated. The magistrate had ample power to make the amendment, if he thought fit, both under the Federal and the State law (*Judiciary Act*, secs. 68 (4), 79; *Sales Tax Assessment Act* (*No.* 1) 1930-1935, sec. 60; *Justices Act*, sec. 196).

The appeal must be allowed and the information remitted to the Court of Petty Sessions at Melbourne to be dealt with according to law.

DIXON J. This is an appeal under sec. 39 (2) (*b*) of the *Judiciary Act* 1903-1937 against an order of a Court of Petty Sessions dismissing an information. The information was for an offence against sec. 12 of the *Sales Tax Assessment Act* (*No.* 1) 1930-1935. It was dismissed on the ground that sec. 210 of the Victorian *Justices Act* 1928 applied and the prosecution had not been commenced within the time limited by that section. In my opinion the application of sec. 210 of the State Act is clearly excluded by sub-sec. 2 of sec. 50 of the *Sales Tax Assessment Act* (*No.* 1), of the validity of which I entertain no doubt. The decision under appeal was, therefore, erroneous. But in support of the order of dismissal another point was taken on behalf of the respondent. The information stated Mildura as the place where the offence was committed, but the summons was returnable at Melbourne. Before the police magistrate constituting the Court of Petty Sessions at Melbourne the defendant company, it is said, appeared only to object to his jurisdiction. The objection included the ground that on the face of the proceedings it appeared that the offence charged was alleged to have been committed outside the bailiwick in which the magistrate was then sitting. A police magistrate is a justice of and for every bailiwick (sec. 14 of the *Justices Act* 1928 (Vict.)). But Mr. *Paul*, in his book on *Justices of the Peace* (1936), at p. 198, says: "Although a police magistrate is a justice for every bailiwick, yet, when he is sitting in any particular bailiwick, say bailiwick A, it is thought that he is, for the time being, sitting then and there in his capacity as a justice for bailiwick A, and not in his capacity as a justice for any other bailiwick, and that his jurisdiction is limited

by that consideration accordingly." This view accords with that of *Hood* J. in *Martin* v. *Conant* (*Keogh, garnishee*) (1).

The informant applied to amend the information by substituting Melbourne for Mildura as the place where the offence was committed. The magistrate was told, in effect, that the locality of the offence turned on the question whether it was committed when a letter was dispatched in Mildura or received in Melbourne. Perhaps the case may turn out to be one in which an offence was begun in one bailiwick and completed in another, so that, under sec. 211, it may be dealt with in either bailiwick. The magistrate said that he would inquire into the question where the matter arose and amend the information if he found that the place was Melbourne. Perhaps the stricter course would have been to amend first and then, if it turned out that Mildura was the place, to act under sec. 86 if the conditions for the application of that section were satisfied and otherwise to dismiss the information. I cannot see that the powers of amendment given by secs. 85 (3) and 196 of the *Justices Act* 1928, by sec. 68 (4) of the *Judiciary Act* 1903-1937, or by sec. 60 of the *Sales Tax Assessment Act* (*No.* 1) 1930-1935 are affected by the failure of the defendant to appear otherwise than to object to jurisdiction.

In my opinion the appeal should be allowed with costs, the order of the Court of Petty Sessions should be set aside and the information remitted to be dealt with according to law. Costs of the first hearing to be in the discretion of the magistrate.

McTIERNAN J. I agree with the judgment of my brother *Dixon*.

Appeal allowed and order absolute in each case with costs. Orders of Court of Petty Sessions set aside. Informations remitted to Court of Petty Sessions at Melbourne. Cost of first hearings to be dealt with by that court.

Solicitor for the appellant, *H. F. E. Whitlam*, Crown Solicitor for the Commonwealth.

Solicitors for the respondent, *Rogers & Rogers*.

H. D. W.

(1) (1898) 19 A.L.T. 216.