[HIGH COURT OF AUSTRALIA.]

LORENZO . . . . . APPELLANT;
INFORMANT,

AND

CAREY . . . . . RESPONDENT.
DEFENDANT,

ON APPEAL FROM A POLICE MAGISTRATE OF NEW SOUTH WALES.

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SYDNEY, *March* 31; *April* 1, 27; *May* 2.

Knox C.J., Gavan Duffy and Starke JJ.

Constitutional Law—Legislative power of the Parliament of the Commonwealth—Making jurisdiction of Federal Courts exclusive—Investing Federal jurisdiction in State Courts—State Court exercising Federal jurisdiction—Appeal to High Court—Jurisdiction—The Constitution (63 & 64 *Vict.* c. 12), *secs.* 75, 76, 77—*Judiciary Act* 1903-1920 (*No.* 6 *of* 1903—*No.* 38 *of* 1920), *secs.* 38, 38A, 39—*Crimes Act* 1914-1915 (*No.* 12 *of* 1914—*No.* 6 *of* 1915), *sec.* 12—*Acts Interpretation Act* 1901 (*No.* 2 *of* 1901), *sec.* 26.

Criminal Law—False returns by Commonwealth officer—Intent to defraud—Evidence—Crimes Act 1914-1915 (*No.* 12 *of* 1914—*No.* 6 *of* 1915), *sec.* 74.

Held, by the High Court (*Knox* C.J., *Higgins*, *Gavan Duffy*, *Powers*, *Rich* and *Starke* JJ.), that sec. 39 of the *Judiciary Act* 1903-1920 (the Court expressing no opinion as to the provisions in sub-sec. 2 (*a*)) is a valid exercise of the powers conferred upon the Parliament of the Commonwealth, and therefore that under it an appeal will lie to the High Court from a decision of a Police Magistrate of a State upon an information charging an offence against the provisions of the *Crimes Act* 1914-1915.

Baxter v. *Commissioners of Taxation* (*N.S.W.*), 4 C.L.R., 1087, followed.

Per Higgins J.:—The objection that an Act is in excess of the powers of a Parliament arises when the Act purports to do something which the Parliament had no power to do, not when the Act does something which, in the circumstances, is useless or unnecessary. Where there is a grant of Federal jurisdiction subject to invalid conditions or restrictions, the grant may be valid and the conditions or restrictions ignored.

Sec. 74 of the *Crimes Act* 1914-1915 provides that "Any person who, being a Commonwealth officer, and employed in a capacity in which he is required or

SYDNEY, *April* 7, 8; *May* 2.
MELBOURNE, *May* 16.

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enabled to furnish returns or statements touching (*a*) any remuneration payable or claimed to be payable to himself or to any other person, . . . makes a return or statement touching any such matter which is, to his knowledge, false in any material particular, shall be guilty of an offence."

Held, by the High Court (*Knox* C.J., *Gavan Duffy* and *Starke* JJ.), that in order to constitute an offence under that section it is not necessary that there should be an intent on the part of the accused to defraud the Commonwealth.

APPEAL from a Police Magistrate of New South Wales.

Before a Police Magistrate at Goulburn in New South Wales an information was heard whereby Francis Maxwell de Frayer Lorenzo charged that Bernard John Carey, on or about 19th July 1920, being a Commonwealth officer employed in a capacity in which he was required to furnish statements touching remuneration claimed to be payable to himself, did make and furnish a statement touching certain remunerations claimed to be payable to himself, namely, a statement claiming travelling allowance for periods engaged by him in travelling on duty in connection with senior cadet parade and area administration, which statement was to his knowledge false in material particulars, which were specified. The Magistrate having dismissed the information, the informant now, by way of case stated, appealed to the High Court.

On the appeal coming on for hearing before *Knox* C.J., *Gavan Duffy* and *Starke* JJ., an objection was taken that the appeal would not lie inasmuch as sec. 39 of the *Judiciary Act* was invalid. The Court thereupon directed that the objection should be argued before a Full Bench; and it now came on for argument accordingly before *Knox* C.J., *Higgins*, *Gavan Duffy*, *Powers*, *Rich* and *Starke* JJ.

E. M. Mitchell, for the appellant.

Selwyn F. Betts, for the respondent. The Police Magistrate sitting as a State Court had complete jurisdiction to deal with the information. Sec. 4 of the *Justices Act* 1902 (N.S.W.) gives justices jurisdiction in all cases where by any Act a person is made liable to imprisonment or fine upon conviction by justices; and Police Magistrates have the same jurisdiction as two or more justices (sec. 17).

[KNOX C.J. The word "Act" means an Act of the Parliament of New South Wales (*Interpretation Act of* 1897 (N.S.W.), sec. 24).] That Act was passed before Federation, and the word "Act" should now be interpreted as including Acts of the Commonwealth Parliament. Sec. 21 of the *Justices Act* gives justices a general jurisdiction as to indictable offences. If the Magistrate was exercising State jurisdiction this appeal does not lie.

Owen Dixon, for the State of Victoria, intervening. Sec. 39 of the *Judiciary Act* is invalid in whole, for the reason that the provision in sub-sec. 2 investing the Courts of the States with Federal jurisdiction in all matters in which Federal jurisdiction can be conferred upon the High Court is invalid and is not severable. The sub-section in that respect goes beyond sec. 77 of the Constitution. The Courts of the States already had jurisdiction as to a large number of those matters mentioned in sec. 76 in respect of which Federal jurisdiction could be conferred upon the High Court, and there is no power to invest the State Courts with jurisdiction which they already had. What it was sought to do by sec. 39 was not to confer a new jurisdiction but to convert a jurisdiction which already existed into Federal jurisdiction. That is not authorized by sec. 77 of the Constitution, for sub-sec. III. only authorizes an investment with jurisdiction which the State Courts have not got. Sec. 39 (1) of the *Judiciary Act* does not take away the jurisdiction of State Courts as to matters in which original jurisdiction could be conferred upon the High Court, and as the State Courts had that jurisdiction it could not be conferred upon them as Federal jurisdiction. In *Miller* v. *Haweis* (1) it was not contended that because the magistrates had to determine whether a Federal Act repealed a State Act the jurisdiction was therefore Federal: but the decision can only be justified on the ground either that the magistrates were exercising State jurisdiction or that sec. 39 was invalid. Sec. 39 of the *Judiciary Act* is also invalid because there is no power first to exclude State Courts from jurisdiction under sec. 77 (II.) of the Constitution and then to invest them with the same jurisdiction under the name of Federal jurisdiction. The scheme of sec. 77 of the Constitution was to

(1) 5 C.L.R., 89.

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enable the Parliament of the Commonwealth to create Courts and to confer jurisdiction upon them and upon State Courts, and it was not to enable the Parliament to confer upon State Courts jurisdiction derivable only from Federal authority as to matters in respect of which those State Courts already had jurisdiction. There is no power in sec. 77 (II.) to take away jurisdiction from the State Courts except for the purpose of investing it exclusively in Federal Courts. Sec. 39 of the *Judiciary Act* is invalid for the further reason that sub-sec. 2 (*a*) is invalid, as was decided by the Privy Council in *Webb* v. *Outrim* (1), and is not severable from the rest of the section. The decision in that case is inconsistent with the view that sec. 39 (2) can be read as taking away from the State Courts a jurisdiction which they never had and investing those Courts only with a jurisdiction with which there was power to invest them. To hold that sec. 39 is invalid would not necessarily mean that in all those cases in which the High Court has granted special leave to appeal from the Supreme Court where that Court was supposed to exercise Federal jurisdiction, that leave was wrongly granted; for it may be that sec. 73 (II.) extends to cases in which an appeal to the Privy Council lies of grace as well as of right (*Kamarooka Gold Mining Co. No Liability* v. *Kerr* (2)).

E. M. Mitchell. Assuming that an offence under the Commonwealth *Crimes Act* is not punishable under the law of New South Wales and without resorting to sec. 39 of the *Judiciary Act*, the Police Magistrate had Federal jurisdiction under sec. 12 of the *Crimes Act* aided by the definition of "Court of summary jurisdiction" in sec. 26 of the *Acts Interpretation Act*. There was then a right of appeal under sec. 37 of the *High Court Procedure Act* or under sec. 73 of the Constitution. Sec. 39 of the *Judiciary Act* is valid. Even if the words "in which original jurisdiction can be conferred upon it" in sub-sec. 2 were invalid, the rest of the subsection might still stand. But the sub-section with those words included is within the powers conferred by sec. 77 of the Constitution. The three matters in respect of which sec. 77 gives power to legislate are independent of one another, and the power in respect

(1) (1907) A.C., 81; 4 C.L.R., 356. (2) 6 C.L.R., 255.

of each is unqualified and expressly extends to the matters mentioned in sec. 76, that is, matters in which original jurisdiction can be conferred upon the High Court. The Parliament could then enact a law in the terms of sec. 77 (III.), that is, a law investing certain Courts of the States with Federal jurisdiction as to matters (*inter alia*) in which the Parliament might confer original jurisdiction upon the High Court. It cannot matter that a Court has jurisdiction under two separate grants. What is given by sec. 39 (2) is not the old jurisdiction which the State Courts had, but a new jurisdiction concurrent with the jurisdiction of the High Court. When under sec. 77 (II.) the jurisdiction of Federal Courts is made exclusive of that of the State Courts, the jurisdiction which State Courts theretofore had then comes to an end, and does not remain dormant. That is what was done by sec. 39 (1) of the *Judiciary Act*. Then by sec. 39 (2) a new jurisdiction is conferred upon the State Courts; and the fact that one of the conditions or restrictions upon that grant of jurisdiction, namely, that contained in sec. 39 (2) (*a*), may be invalid is not sufficient to invalidate the grant of jurisdiction.

Owen Dixon. Sec. 12 of the *Crimes Act* is not a grant of jurisdiction, but assumes that a jurisdiction has been granted. That section cannot be construed without regard to what was done in sec. 39 of the *Judiciary Act*.

Cur. adv. vult.

April 27.

The appeal was now argued on the merits before the original Court.

E. M. Mitchell. The case of *Hardgrave* v. *The King* (1) does not support the proposition that an intent to defraud was necessary to constitute an offence against sec. 74 of the *Crimes Act*. The offence is proved when it is shown that the statement was false to the knowledge of the accused.

Selwyn F. Betts. It is not contended by the respondent that a fraudulent intent was necessary to constitute the offence. There was no evidence that the statement made was false to the knowledge of

(1) 4 C.L.R., 232.

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the respondent. The statements made at the military inquiry were not admissible (reg. 713 (7) of the *Australian Military Regulations* 1916 (Statutory Rules 1916, No. 166).

[KNOX C.J. That regulation does not apply to civil tribunals but only to military tribunals (*R.* v. *Colpus* (1)).]

Cur. adv. vult.

May 2. KNOX C.J. announced that the Full Bench was of opinion that sec. 39 of the *Judiciary Act* was within the powers of the Commonwealth Parliament, and, therefore, that the appeal was competent; and that the reasons would be given on a subsequent day.

THE COURT as originally constituted then delivered the following written judgment upon the appeal:—The respondent was charged under sec. 74 of the Commonwealth *Crimes Act* 1914 with making a return touching a matter within the meaning of that section which was false to his knowledge in certain particulars. The Magistrate dismissed the information on the ground that there was no *mens rea* on the part of the respondent. An appeal was brought by way of case stated to this Court. The reference in the case stated to *Hardgrave* v. *The King* (2), read with the evidence tendered by way of defence, satisfies us that the Magistrate was of opinion that in order to obtain a conviction it was necessary for the informant to prove an intent on the part of the respondent to defraud the Commonwealth. We are clearly of opinion that the decision of the Magistrate in this respect was erroneous. The offence under sec. 74 is complete if the person charged makes a return which is false to his knowledge in a material particular under the circumstances mentioned in the section whatever may be his intention, and there was evidence before the Magistrate that the statements complained of were false and that the respondent knew them to be so. The case must be remitted to the Magistrate. On the hearing he will be at liberty to entertain any ground of defence other than that intent to defraud the Commonwealth was a necessary ingredient of the offence.

(1) (1917) 1 K.B., 574. (2) 4 C.L.R., 232.

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May 16.

THE FULL BENCH delivered the following written reasons :—

KNOX C.J., GAVAN DUFFY, POWERS, RICH AND STARKE JJ. This was a special case under the provisions of the *Justices Act* 1902. It appeared that the respondent had been prosecuted on an information under sec. 74 of the Commonwealth *Crimes Act* 1914 charging him with making and furnishing a false statement. The information was heard at Goulburn by a Police Magistrate of the State of New South Wales, and was dismissed by him on the ground of absence of *mens rea* on the part of the respondent. When the special case came before the Chief Justice and *Gavan Duffy* and *Starke* JJ. an objection was taken that the appeal would not lie, and, as the objection questioned the validity of sec. 39 of the *Judiciary Act* and demanded its interpretation if valid, the Court directed it to be argued before a Full Bench. These questions have already been before the Court in *Baxter* v. *Commissioners of Taxation* (*N.S.W.*) (1), and we agree in the conclusions arrived at in that case.

Sec. 75 of the Constitution gives to the High Court original jurisdiction in certain matters therein specified. Sec. 76 enables Parliament to confer original jurisdiction on the Court in certain other matters. Sec. 77 is as follows: "With respect to any of the matters mentioned in the last two sections the Parliament may make laws—(I.) defining the jurisdiction of any Federal Court other than the High Court; (II.) defining the extent to which the jurisdiction of any Federal Court shall be exclusive of that which belongs to or is invested in the Courts of the States; (III.) investing any Court of a State with Federal jurisdiction."

Part VI. of the *Judiciary Act* deals with the original jurisdiction mentioned in secs. 75 and 76 of the Constitution. Secs. 38, 38A and 39 (1) purport to exercise the power conferred by sec. 77 (II.) of the Constitution. Sec. 38 makes the jurisdiction of the High Court in respect to certain specified matters exclusive of the jurisdiction of the several Courts of the States. Sec. 38A makes the jurisdiction of the High Court exclusive of the jurisdiction of the Supreme Courts of the States in respect of the matters therein mentioned. Sec. 39 (1) makes the jurisdiction of the High Court exclusive of the jurisdiction of the Courts of the States

(1) 4 C.L.R., 1087.

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in all matters not covered by sec. 38 or 38A except as provided by the second sub-section. Sec. 39 (2) purports to exercise the power conferred by sec. 77 (III.) of the Constitution, and, subject to certain conditions and restrictions set out in the sub-section, invests the several Courts of the States with Federal jurisdiction in all matters comprised in secs. 75 and 76 except the jurisdiction made exclusive in the High Court by sec. 38A.

If the provisions of sec. 39 are valid, the effect of the first sub-section was to take away from the Courts of the States any jurisdiction they possessed to deal with such of the matters enumerated in secs. 75 and 76 of the Constitution as were within the original jurisdiction of the High Court, and the effect of the second sub-section was to confer on them a new jurisdiction to deal with all the matters enumerated in those sections except those comprised in sec. 38A, whether such matters were within the original jurisdiction of the High Court or not.

But it is said that the provisions of sec. 39 are not valid, and several reasons have been advanced in support of that contention. It was admitted that sec. 39 (1) would be a legitimate exercise of the power contained in sec. 77 (II.) of the Constitution were it not for the alleged exception contained in sec. 39 (2), but it was declared to be invalid because of that exception. In support of this view Mr. *Dixon* argued that by reason of the exception the sub-section did not operate as a real exclusion because it gave back all that it took away, namely, the power to deal with certain matters in respect of which the High Court had original jurisdiction. He also argued that the attempt to attach conditions to the exclusion was not within the power of Parliament and made the exclusion itself invalid. He said that although sec. 77 (II.) of the Constitution enables Parliament to prescribe that the whole or any portion of the judicial power of the Commonwealth with respect to the matters mentioned in secs. 75 and 76 shall be exercised by any Federal Court to the exclusion of the Courts of the States, it does not enable Parliament to render the exercise of any part of such power by the Courts of the States subject to conditions. In other words, the exclusion of the State Courts must be absolute with respect to the area in which it operates, not conditional. We think these objections rest on a

misconception of the effect of sec. 39. When that section was enacted the Courts of the States could deal with the matters mentioned in secs. 75 and 76 of the Constitution only by virtue of the jurisdiction which "belonged" to them within the meaning of sec. 77 (II.), because the Federal Parliament had not at that time "invested" them with any jurisdiction for that purpose. The intention of the Legislature was to take away the jurisdiction which belonged to these Courts because it was not always amenable to the control of the High Court, and to replace it by a new jurisdiction which could be made subject to such conditions and restrictions as Parliament wished to impose. Had the Legislature first made a grant of jurisdiction under sec. 77 (III.) and then under sec. 77 (II.) made exclusive in the High Court all the jurisdiction of the State Courts except that included in the grant, there could have been no doubt as to the validity of the exclusion. We think this in substance is what they have done, though they have exercised their power under sec. 77 (II.) and (III.) not in the order we have suggested but in the order of the sub-sections, namely, first the power of exclusion and then that of investiture. The effect of the first sub-section of sec. 39 is to exclude the State Courts from the exercise of any jurisdiction with respect to the matters mentioned in secs. 75 and 76 of the Constitution except in so far as jurisdiction is conferred by the second sub-section by virtue of the provisions of sec. 77 (III.).

Next it is argued that the second sub-section is invalid because it purports to confer on State Courts a jurisdiction which they already possess. Jurisdiction, it is said, is a power to adjudicate, and a Court cannot be invested with a power to adjudicate which it already possesses. It is true that sub-sec. 2 of sec. 39 purports to invest the Courts of the States with a power to adjudicate with respect to many matters which were already within their competence notwithstanding the exclusion contained in the first sub-section. That exclusion operates only on matters with respect to which the High Court has original jurisdiction, and there are matters comprised in sec. 76 of the Constitution in respect of which jurisdiction might have been conferred upon the High Court but has not in fact been conferred upon it because Parliament has not chosen to exercise its full power under the section. But in our opinion there is no reason

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to say that the investiture is therefore bad either wholly or in part. The phrase "Federal jurisdiction" as used in secs. 71, 73 and 77 of the Constitution means jurisdiction derived from the Federal Commonwealth. It does not denote a power to adjudicate in certain matters, though it may connote such a power; it denotes the power to act as the judicial agent of the Commonwealth, which must act through agents if it acts at all. An agent may have a valid authority from a number of independent principals to do the same act. A State Court must recognize the laws of the Commonwealth and be guided by them in exercising its State jurisdiction, and precisely the same duty or a diverse duty may fall upon it by virtue of a grant of Federal jurisdiction under sec. 77 (III.). But even if the duty to be performed under the two jurisdictions be identical, the two jurisdictions are not identical: they are not one but several. When Federal jurisdiction is given to a State Court and the jurisdiction which belongs to it is not taken away, we see no difficulty in that Court exercising either jurisdiction at the instance of a litigant. The position of such Courts is no more anomalous than that of the Courts of Australia and other parts of the British Empire which have administered law and equity in distinct proceedings before the same tribunal.

Lastly it is said that the investiture was bad because the conditions and restrictions attached to the exercise of jurisdiction by the State Courts are invalid, and that, as the jurisdiction would not have been given if those conditions could not be enforced, the whole investiture fails. The Privy Council has already decided in *Webb* v. *Outrim* (1) that clause (*a*) of sec. 39 (2) is invalid so far as it may extend to take away the right to appeal to the King in Council; but no reason has been adduced before us for saying that Parliament cannot, when investing the Courts of a State with Federal jurisdiction, limit the exercise of that jurisdiction as in sec. 39 (2) (*b*), (*c*) and (*d*). In our opinion the suggested invalidity in clause (*a*) would not be sufficient to destroy the other provisions of the section. We agree with what has been said on this subject by our brother *Isaacs* in *Baxter* v. *Commissioners of Taxation* (*N.S.W.*) (2):—"Inability to cut off access to the Privy Council from the Supreme Court still leaves

(1) (1907) A.C., 81; 4 C.L.R., 356. (2) 4 C.L.R., at pp. 1144-1145.

open to litigants the option to appeal to the High Court whether the Supreme Court jurisdiction be State or Federal. If then, as was plainly the case, the object of the Federal Parliament was to ensure, as far as it legally could, that cases of a constitutional nature should find their ultimate solution in the High Court, why should the Legislature refrain from pursuing its object in regard to the inferior Courts, from which, without the investing of Federal jurisdiction, no appeal at all would lie to the High Court? To attribute an intention to the Federal Parliament, at once so senseless and opposed to the admitted purpose of the section, is to furnish an answer to the argument itself. A strict examination of the wording of the section is equally fatal to the contention. The expressions 'conditions and restrictions' in the connection in which they are found cannot be meant as conditions or restrictions of jurisdiction in the vitally destructive sense attributed to them, any more than so called conditions of sale of land are conditions in the sense that, if any one is broken in any particular, the whole sale is necessarily at an end. There was abundant reason for investing the Supreme Court with Federal jurisdiction quite apart from the question of appeal to the Privy Council. Once the jurisdiction became Federal the Commonwealth Parliament could at will regulate the procedure and control the method and extent of relief, and, indeed, under sec. 79 of the Constitution could even prescribe the number of Judges by whom the invested jurisdiction should be exercised. So far as sub-sec. 2 (*a*) is concerned it assumes that a decision has been given which, apart from a possible but not inevitable appeal of some kind, would be of full force and effect. Its provisions, even if valid, are necessarily of later application than the determination of the Court appealed from, and are plainly a mere continuation of the effort to secure complete Federal control of the subject matter and not a *sine quâ non* of all Federal intervention. If this portion of the enactment be eliminated, there still remains a consistent perfect working set of provisions, as complete as the Federal power can make them, and capable of useful and beneficial operation."

In our opinion sec. 39 is valid, and an appeal lies under it in this State.

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Higgins J.

HIGGINS J. This is an appeal from a New South Wales Police Magistrate against an order dismissing a charge laid under sec. 74 of the Commonwealth *Crimes Act* 1914. Objection is taken by the State of Victoria (which had leave to intervene) that no appeal lies to this Court. It is urged that no appeal lies to this Court except under sec. 39 (2) (*b*) of the *Judiciary Act*; and that sec. 39 is wholly invalid. Sec. 39 (2) (*b*) provides that wherever an appeal would lie from the decision of a State Court to the State Supreme Court, an appeal may be brought to the High Court.

The ground on which it is urged that sec. 39 is invalid is that it purports to invest State Courts with Federal jurisdiction "in all matters in which the High Court has original jurisdiction or in which original jurisdiction can be conferred upon it"; and that, as the States have already, by virtue of sec. V. of the *Constitution Act*, jurisdiction in many matters which come within this description, the investment with Federal jurisdiction by sec. 39 is void, and the whole section void, as inseparable in its parts. It is not now contended that under sec. 4 of the New South Wales *Justices Act* 1902 the Police Court had jurisdiction, apart from sec. 39, to apply this *Crimes Act*. This argument seems to me to be a curious perversion of the doctrine of *ultra vires*. If an Act of Parliament vest a piece of land in a man in whom it is vested already, the Act is not void (in the sense of exceeding the Parliament's powers); it is merely unnecessary, at the worst—for the time. This objection of excess of powers arises as to an Act when the Act purports to do something which the Parliament had no power to do, not when the Act does something which, in the circumstances, is useless. No authority has been cited for the novel doctrine that a section is invalid because it purports to do something that is unnecessary. To bestow white paint upon a lily is different in essence from trespass on another man's grounds. To grant Federal jurisdiction to try a case where there is already State jurisdiction to try it, is different in essence from granting that which is beyond the grantor's powers to grant.

But, if we are to examine the position more in detail, sec. 39 (1) takes away from the State Courts jurisdiction in matters in which the High Court has jurisdiction—except as provided in sec. 39 (2).

The State Courts were, by sec. 39 (1), excluded from such jurisdiction as "belonged" to them to apply certain Federal laws (as part of the corpus of law applicable to the facts) in pursuance of sec. 77 (II.) of the Constitution. The jurisdiction had previously belonged to the State Courts by virtue of sec. V. of the *Constitution Act*. The words "except as provided in this section" are merely equivalent to a warning that some grant of jurisdiction is to be made by the following sub-sections. The exclusion might equally be in one Act and the grant in a subsequent Act; as was made plain in *Baxter's Case* (1). Then the grant is made by sec. 39 (2), in the wide words already stated under sec. 77 (III.) of the Constitution. Even if the grant purported to confer jurisdiction from a Federal source where the State Court had already jurisdiction from a State source, that fact would not make the Federal grant void. A donee of a power under a settlement may also have power under a will, as to the same property; as an engine may get power from two boilers.

The only real difficulty arises from the words making the grant "subject to the following conditions and restrictions." Of the four (so-called) "conditions and restrictions," one, sec. 39 (2) (*d*), is a clear condition—prescribing that if the jurisdiction be exercised it must be exercised by a Police Magistrate, &c. The other three are not, to my mind, conditions or restrictions at all—I mean conditions or restrictions on the *investing* with Federal jurisdiction. They are provisions as to appeals from the State Courts after they have exercised the Federal jurisdiction; and they would more fittingly appear as substantive enactments, valid or not, as to appeals. In the case of *Webb* v. *Outrim* (2) the Judicial Committee held that condition (*a*) was an invalid attempt to interfere with the right to appeal from the Supreme Court to the Judicial Committee. "Condition" (*b*), allowing an appeal from a State inferior Court direct to the High Court, seems to be already embodied in the Constitution; for the Constitution enables the High Court to hear appeals from any Court "exercising Federal jurisdiction" (sec. 73). "Condition" (*c*) is perhaps covered by the same sec. 73. But, in any case, if any of these "conditions or restrictions" are void, it by no means follows

(1) 4 C.L.R., 1087. (2) (1907) A.C., at p. 91.

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that the grant of Federal jurisdiction is void. The grant of jurisdiction, then, remains operative without the burden of the alleged conditions or restrictions. As in the case of ordinary powers (and these constitutional cases are really applications of the law as to powers), if there be an appointment to an object of a power subject to a charge for an unauthorized purpose, the appointee takes the appointed gift free from the charge (*In re Jeaffreson's Trusts* (1)). Where there is a complete execution of a power and something added which is improper, the execution of the power is good, and the excess void (*Alexander* v. *Alexander* (2); and see *In re Farncombe's Trusts* (3); *Farwell on Powers*, 2nd ed., pp. 298-301, 382).

The position would be, of course, quite different, were the gift (here, the gift of jurisdiction to the State Court) to take effect only on the happening of a certain event: in such a case the gift never takes effect unless and until the event happen.

In my opinion the objections to the hearing of this appeal fail.

Appeal allowed. Case remitted to Police Magistrate, who on the rehearing will be at liberty to entertain any ground of defence other than that intent to defraud the Commonwealth was a necessary ingredient of the offence.

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

Solicitors for the respondent, *Betts & Son*, Goulburn, by *Garland, Seaborn & Abbott.*

Solicitor for the State of Victoria, *E. J. D. Guinness*, Crown Solicitor for Victoria.

B. L.

(1) L.R. 2 Eq., 276. (2) 2 Vcs., 640, at p. 644.
(3) 9 Ch. D., 652.