[HIGH COURT OF AUSTRALIA.]

THE COMMONWEALTH AND ANOTHER . APPELLANTS;

AND

COLE . . . . . RESPONDENT.

ON APPEAL FROM A COURT OF REQUESTS OF TASMANIA.

H. C. OF A. 1923.

MELBOURNE, *Nov.* 7.

Knox C.J., Isaacs, Higgins, Rich and Starke JJ.

High Court—Appellate jurisdiction—State Court invested with Federal jurisdiction—Court of Requests of Tasmania—Matter arising under law made by Parliament of the Commonwealth—Wrong decision of fact giving jurisdiction—The Constitution (63 & 64 *Vict. c.* 12), *secs.* 75, 76—*Judiciary Act* 1903-1920 (*No.* 6 *of* 1903—*No.* 38 *of* 1920), *sec.* 39—*Commonwealth Public Service Act* 1922 (*No.* 21 *of* 1922), *secs.* 64, 65.

On proceedings in a Court of Requests of Tasmania by a judgment creditor an order was made for the attachment of a debt owing by the Commonwealth to the judgment debtor, the Court wrongly determining that the judgment debtor was an employee in the Commonwealth Service within the meaning of sec. 64 of the *Commonwealth Public Service Act* 1922, which provides that "an order for the attachment of the salary wages or pay of any officer or employee in the Commonwealth or Provisional Service may be made by any Court of competent jurisdiction."

Held, that the matter was one arising under a law made by the Commonwealth Parliament, that the Court of Requests was invested with Federal jurisdiction in the matter by sec. 39 of the *Judiciary Act* 1903-1920, and therefore that an appeal would lie to the High Court under that section.

APPEAL from the Court of Requests of Tasmania.

Edward John Cole, who had recovered a judgment in the Court of Requests at Penguin in Tasmania against W. F. Smith for £24 17s. 2d., which was wholly unsatisfied, and who alleged that the

Commonwealth (Postal Department, the Deputy Postmaster-General, Hobart) was indebted to W. F. Smith in the sum of £1 and upwards, obtained a garnishee order nisi from that Court attaching all debts owing by the Commonwealth to W. F. Smith to answer the judgment debt and calling upon the Commonwealth to show cause why it should not pay the judgment creditor the debt due from it to the judgment debtor. On the return of the order nisi the Commonwealth took the defences that no debt by the Commonwealth was attachable in law except under the provisions of the *Commonwealth Public Service Act* 1922, and that any debt or debts due by the Commonwealth to the judgment debtor was not for salary, wages or pay of an employee within the meaning of sec. 64 of that Act. Evidence was given from which it appeared that one James Alfred Medwin had entered into a contract with the Postmaster-General of the Commonwealth for the carriage of mails to and from Loyetea and Penguin for three years for £250 per annum payable monthly, and that by special licence and authority of the Postmaster-General the contract was transferred from James Alfred Medwin to the judgment debtor. The Commissioner of the Court of Requests, holding that the judgment debtor was an "employee" within the meaning of secs. 64 and 65 of the *Commonwealth Public Service Act* 1922, made the order nisi absolute, and ordered the Commonwealth forthwith to pay into Court £24 7s. 2d., being a debt due by it to the judgment debtor, and that, in default, execution might issue for the same.

The Commonwealth and the Deputy Postmaster-General, Hobart, now appealed, by special leave, to the High Court from that decision.

Owen Dixon K.C. and *Keating*, for the appellants.

Clyne, for the respondent. The appeal to this Court is incompetent. The appeal should have been to the Supreme Court of Tasmania. Attachment of debts by garnishee proceeding is a process of execution (*White, Son & Pill* v. *Stennings* (1)), and the Commonwealth as garnishee is not a party to the proceedings. Therefore, the High Court had not original jurisdiction in the matter under sec. 75 (III.)

(1) (1911) 2 K.B., 418, at pp. 427-428.

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of the Constitution; and sec. 39 (2) of the *Judiciary Act*, by conferring Federal jurisdiction upon the Courts of the States in all matters in which the High Court has original jurisdiction, did not confer Federal jurisdiction in this matter on the Court of Requests. Nor does this matter arise under any law made by the Federal Parliament within the meaning of sec. 76 of the Constitution so as to give the Court of Requests Federal jurisdiction under sec. 39 (2) of the *Judiciary Act* in this matter as being one in which Federal jurisdiction can be conferred upon the High Court. The Court of Requests, by wrongly holding that the judgment debtor was an "employee" of the Commonwealth within the meaning of sec. 64 of the *Commonwealth Public Service Act* 1922, could not give itself Federal jurisdiction (see *Miller* v. *Haweis* (1); *Troy* v. *Wrigglesworth* (2)). [Counsel also referred to the *Local Courts Act* 1896 (Tas.) (60 Vict. No. 48), secs. 8, 9, 85, 86, 87; *Local Courts Amendment Act* 1902 (Tas.) (2 Edw. VII. No. 19), sec. 7.]

Owen Dixon K.C. This matter arose under a law made by the Commonwealth within the meaning of sec. 76 (II.) of the Constitution, for the Court of Requests purported to act under sec. 64 of the *Commonwealth Public Service Act* 1922, and the fact that that Court wrongly decided that the respondent was an employee does not affect that position (*Troy* v. *Wrigglesworth* (3)).

KNOX C.J. The only question for decision is whether this appeal is competent, for Mr. *Clyne* properly admits that if it is competent he has no reasons to offer why it should not be allowed. In my opinion this Court clearly has jurisdiction to entertain the appeal. The proceeding before the Court of Requests was one in which the present respondent founded his claim on sec. 64 of the *Commonwealth Public Service Act* 1922, and on that alone. The application being based on the provisions of that section, it appears to me that the matter before the magistrate was a matter arising under that section and, therefore, under a law made by the Parliament within the meaning of sec. 76 (II.) of the Constitution. Consequently,

(1) (1907) 5 C.L.R., 89, at p. 93. (2) (1919) 26 C.L.R., 305, at p. 313.
(3) (1919) 26 C.L.R., 305.

by sec. 39 of the *Judiciary Act* this Court has jurisdiction to hear the appeal. I think that the appeal should be allowed.

ISAACS J. I think this case is governed by *Troy* v. *Wrigglesworth* (1), and I do not think it necessary to say any more.

HIGGINS J. I am of the same opinion.

RICH J. I agree.

STARKE J. I think that the Court of Requests was invested with Federal jurisdiction by virtue of sec. 64 of the *Commonwealth Public Service Act* 1922. But the magistrate attempted to exercise that jurisdiction in a case which did not fall within provisions of the section. I agree that the appeal should be allowed.

Appeal allowed. Order appealed from discharged. Commonwealth to pay costs of appeal pursuant to its undertaking.

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

Solicitors for the respondent, *Crisp & Edwards*, Burnie, by *McNab & McNab*.

B. L.

(1) (1919) 26 C.L.R., 305.