

8/1924



In the High Court
of Australia

Gabriel
v.
Sun Kow

Reasons for judgment:-

1. Isaacs A.C.J.; Gavan
Duffy & Starke JJ.

District Registry
Adelaide



CHINA

HIGH COURT OF AUSTRALIA.

COURT COPY.

GABRIEL V GEORGE GUN KOW.

JUDGMENT.

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MR. JUSTICE ISAACS.

MR JUSTICE GAVAN-DUFFY

MR JUSTICE STARKE.

GABRIEL. V GEORGE ~~GUN~~ KOW.

ARGUMENT.

...

MR. JUSTICE ISAACS.

MR. JUSTICE GAVAN-DUFFY.

MR. JUSTICE STARKE.

This is an appeal in federal jurisdiction from the decision of a Stipendiary Magistrate in Adelaide dismissing a complaint by the appellant against the respondent under the Immigration Act 1901-1920. The complaint was under subsec. 2 of sec. 5 of the Act.

During the case the prosecution endeavoured to shew that the respondent entered the Commonwealth as one of the crew of a ship called the "Pequot" in April 1923, the dictation test having been applied on the 29th of May 1924.

The Magistrate held the evidence insufficient because (1) the prosecution had failed to produce the ships articles, (2) the prosecution had failed to prove the Pequot had entered the Commonwealth at all, and (3) there was no proof that the defendant if a member of the crew, had entered the Commonwealth as a member of the crew.

In short the Magistrate held so far as the facts actually proved were concerned that the prosecution failed for want of evidence.

Then as some evidence had been given, though not sufficient to support a conclusion one way or the other, he held that subsec. 3 of sec. 5 of the Act had no application.

The decision in Ah Mook's Case governs the present case.

The Appeal will be allowed. ✓ The order of dismissal

set aside. ~~and a new order made.~~