

No 13 of 1936

IN THE HIGH COURT OF AUSTRALIA.

Woods

v.

The Deputy Commr  
of Repatriation

REASONS FOR JUDGMENT.

Judgment delivered at Melbourne  
on 5<sup>th</sup> January, 1937

DIXON J.

These are two applications in two independent actions brought by Robert Henry Woods. He appears before me in person to oppose the applications. In each case he sued the Deputy Commissioner of Repatriation. The defendant applies to have the actions summarily dismissed or stayed.

In the first action the plaintiff complains of defamation. It is quite plain, both on the writ and on the statements which Mr Woods has made to me, that the defamation of which he complains is to be found in a letter or alleged letter from the gentleman who occupied the office of Minister for Repatriation. It may also be the case that he relies on some oral defamation which he alleges was contained in a statement made before a Special Magistrate of the Repatriation Department. I will deal with that action first.

The application is to stay or dismiss it. It appears that Mr Woods was certified under the Lunacy Act 1928 and was discharged on parole under sec.93, and it negatively appears that no ultimate discharge was made under sec.98. The application to stay or dismiss the action is based, in effect, on three grounds -

- (1) that there is no jurisdiction in this Court to entertain it ;
- (2) that it could not be brought except with the aid of a next friend or on the authority of the Master in Equity ; and
- (3) that there is no substance in it as appears from the writ itself and the affidavits.

In my opinion there is no jurisdiction in this Court to entertain the action. The Deputy Commissioner of Repatriation is not sued under sec.75 (3) of the Constitution on behalf of the Commonwealth, and there is no other head of jurisdiction under which the action can be brought.

It is, I think, also correct that without further enquiry the action should not be permitted to proceed having regard to the status of Mr Woods.

Further, the Deputy Commissioner or the Commissioner, or the

Repatriation Commission itself for that matter, is not legally responsible for statements contained in the correspondence of the Minister, and there is no reason to suppose that the Deputy Commissioner or the Commission would be responsible for what was said at the proceeding before the Special Magistrate. Apart from the question of privilege, I therefore think that, on the merits, the action would inevitably fail.

In that action a small sum of £7.17.5d is mentioned, but it is not made the subject matter of any claim. I propose to deal with it in connection with the other action.

The second action arises out of the detention of Mr Woods under the Lunacy Act. In the first place, for certain periods of time sums of money were withheld from him and, according to the affidavits filed on behalf of the defendant, were paid to the Deputy Commissioner as a trustee, appointed, presumably under regulation 7 of the regulations under the Australian Soldiers Repatriation Act 1920-1935. According to the affidavits those sums of money were paid over by the Deputy Commissioner as such trustee, but Mr Woods has orally informed me that a less weekly sum was paid to him for a longer interval of time than is set out in the affidavit. He says that, for a period ending in January 1935, £2.2.0d a week was paid to him, although according to the affidavit at least £4.0.0d was paid.

The other claims in the action relate to the loss of some property including letters which, according to the oral statements of Mr Woods, were (as he has been informed by his landlady) taken from his lodging house by the police at a time when he was removed to a place of detention or supervision. Again, in my opinion, there is no jurisdiction to entertain an action against the Deputy Commissioner. Again I think that, even if there were jurisdiction, in view of the status of Mr Woods, he should not be permitted to prosecute the action alone, at any rate without further enquiry.

As to the substance of the action, I think that there is nothing which would connect the Deputy Commissioner or any officer of the Commission or of the Commonwealth with the loss

of the articles of the plaintiff's property, if they are lost, or make the defendant, the Commission, or the Commonwealth responsible for such loss.

As to the alleged underpayments of pension, the matter stands on a different footing. An action would not, in my opinion, lie against the Deputy Commissioner for pension moneys, but, possibly, an action would lie against the Commonwealth. At any rate, if one had been instituted against the Commonwealth and there had been some real reason to suppose that an underpayment might have taken place, I would not be prepared to stop it at this stage. On the other hand, unless there is some strong reason to suppose that a mistake has occurred in the weekly sums paid, I am not prepared to take positive steps to amend the proceedings and make the Commonwealth a party in an order to allow the action to proceed, that is assuming the difficulty arising from Mr Woods' status can be overcome. Vouchers have been signed. They are not produced, but the course I propose to take is to allow the defendant to file an affidavit exhibiting the vouchers for my inspection.

As to the small amount, which I think is £7.17.5d, a peculiar position arises. The Commission deducted that amount on the ground that at a prior date Mr Woods had been imprisoned for assault and that, therefore, a less sum of money was payable to him than he had received in fact because he was in an establishment maintained at the public expense. He denies that he was the person who was imprisoned. It is such a trifling sum that I am not prepared to amend the writ in order to enable him to proceed in relation to it alone. But the Commonwealth ought not to retain the sum unless the Commission is completely satisfied on the subject of the identity of the person concerned.

I will make no order in the second action, No 14 of 1936, at present pending the filing of the affidavit. But if it is shown <sup>by</sup> that affidavit that receipt of those sums of money has been acknowledged by Mr Woods, I shall deal with it as I now propose to deal with the first action, No 13. That action will be dismissed out of Court on the ground of want of jurisdiction. Unless the defendant specifically asks for it, I do not propose to make any order as to costs.

Mr Moore. We do not ask for costs.