

whose faith is attacked has a right to reply, and the occasion is privileged.] There is no allegation that these articles of ours attack defendant's faith. Assuming that defendant has a right to reply, then all the information about the Catholic faith and federation is mere surplusage. The plea should assert that the publication was limited to members of the organisation.

Cohen for the defendant.—There is a community of interest between ourselves and the other members of the Catholic Federation. The article complained of purports to be written by one member of the Catholic Federation to other members. Defendant was under a duty to write as he did.

HODGES, J.—This summons asks that this defence be set aside, on the ground that it discloses no answer to the plaintiff's claim. Paragraph (7) alleges that if the defendant printed and published the words complained of, "such words were printed and published on a privileged occasion, *bonâ fide*, and without malice." That, in a general way, is a sufficient statement or allegation of a privileged occasion. It does not say, nor is there any indication, whether the communication is privileged. It only alleges a privileged occasion, and the communication would only be privileged provided it was such as the jury esteemed proper to be made on the occasion. The Court has to say whether the occasion is privileged, and the jury has to say whether the communication is privileged. I think the defence so far raises the defence of a privileged occasion. The summons goes on to allege "that such paragraph discloses no answer to the plaintiff's claim, and is unnecessary"—I do not know what is meant exactly by "unnecessary"—"and tends to prejudice, embarrass and delay the fair trial of the action." As Higinbotham, C.J., once said, good pleading does tend to embarrass the other side, but I feel some difficulty in understanding how that general allegation embarrasses the trial of the action. I can understand it in connection with the particulars, but the paragraph appears to be well pleaded.

I come then to the particulars, to see if they fairly support the privileged occasion. The defendant says he is a member of the Catholic faith and of an organisation known as the Catholic Federation. These two bodies one would *primâ facie* say were likely to be nearly identical in creed, and so the defendant alleges he is a member of a certain faith which has a certain federation, and he says that the words "were printed and published (if at all) . . . in defence or furtherance of certain doctrines, tenets principles, aims and objects of the said faith and/or federation . . ." He alleges, therefore, that his publication was in a journal which was circulating among members of a certain religious belief, and he says it was published solely in defence of certain doctrines, tenets, &c., of that faith. I take it that

that is an allegation of how his interest arises, and of how the interest of the persons he is addressing exists. He has an interest because he is a member of that faith and Federation. These persons have an interest because they are all members of that faith or Federation, and so he, a person interested, addresses primarily persons interested. I think that fairly raises the question of privilege, provided the communication complained of is in answer to an attack. And although the defence does not say that these articles of the plaintiff attacked the faith of the defendant, still, unless they did attack it, the alleged libel could not be an "answer," and so I take it that the particulars fairly indicate that the articles did attack, and that the defendant's communication was an answer to that attack. That, I think, raises *primâ facie* a question of privilege, and raises it properly. Whether or not it may turn out that the newspaper circulates so widely as to get rid of the privilege or to show malice is for the jury, and not for the Court, to say. I therefore think the question of privilege is properly raised. The summons will be dismissed, and I grant leave to appeal.

Summons dismissed.

[Solicitors—For the plaintiff, Snowball and Kaufmann; for the defendant, H. H. Hoare.]. T. C. B.

High Court of Australia.

FULL COURT—Barton, A.-C.J.,

Isaacs, Gavan Duffy, Powers

and Rich, J.J.)

(Sydney.)

Sept. 1, 2, 3,

5, 1913.

MAYBURY and Another, Defendants Appellants v. PLOWMAN, Plaintiff Respondent.

Criminal law—Power of arrest—Apprehension of person trespassing upon enclosed land—Statute—Construction of consolidating Act—Generalia specialibus non derogant—"Crimes Act (N.S.W.) 1900" (No. 40), sec. 352 — "Inclosed Lands Protection Act (N.S.W.) 1901" (No. 33), secs. 4, 6.

Section 352 (1) (a) of the "Crimes Act 1900" (N.S.W.), which repeals and consolidates section 429 of the "Criminal Law Amendment Act 1883," provides—"Any constable or other person may without warrant apprehend (a) any person in the act of committing or immediately after having committed an offence punishable whether by indictment or on summary conviction under any Act."

Section 6 (1) of the "Inclosed Lands Protection Act 1901," which repeals and consolidates section 3 of the "Inclosed Lands Protection Act 1854," provides that—"Any person found committing any offence against this Act and who refuses when required to do so to give his name and place of abode may be apprehended by the owner occupier or person in charge of the inclosed lands upon or in relation to which the offence was committed and delivered to the custody of the nearest con-

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"stable to be taken before a justice to be dealt with according to law."

Held, that a person committing an offence punishable under the "Inclosed Lands Protection Act 1901," could be arrested under the general powers conferred by section 352 of the "Crimes Act 1900," there being no inconsistency between the powers conferred by that section, and the special power of arrest conferred by section 6 of the "Inclosed Lands Protection Act 1901," in respect of persons committing an offence against the last-mentioned Act.

Decision of the Supreme Court of New South Wales, *Plowman v. Maybury*, 13 S.R. 34, reversed.

APPEAL BY LEAVE FROM THE SUPREME COURT OF NEW SOUTH WALES.

The respondent brought an action against the appellants to recover damages for assault and false imprisonment. The declaration alleged that the defendants assaulted the plaintiff, and gave him into custody to a constable, and caused him to be imprisoned upon a charge of unlawfully trespassing upon certain lands, after having been removed therefrom.

The second plea alleged that the defendants (who were respectively the sheriff and his bailiff) removed the plaintiff from the land in question, of which he refused to give up possession, in pursuance of a writ of *habere facias* directed to the sheriff, that the plaintiff afterwards broke and entered the land (then being inclosed lands within the meaning of the "Inclosed Lands Protection Act 1901"), whereupon the defendant King (the bailiff) gave the plaintiff into the custody of a constable to be taken before a justice to be dealt with according to law, which said giving into custody was the alleged trespass.

The plaintiff demurred to this plea upon the following grounds (*inter alia*):—

4. That sec. 352 (1) (a) of the "Crimes Act 1900" is not applicable to offences committed against the "Inclosed Lands Protection Act 1901."

5. That the plea did not state any facts entitling the bailiff to give the plaintiff into custody.

The Supreme Court upheld the fourth ground of the demurrer, and from that decision the defendants brought this appeal.

Broomfield for the defendants the appellants.—The "Criminal Law Amendment Act 1883," by sec. 429, conferred a general power of arrest for offences created by any Act, and was applicable to offences made punishable by the "Inclosed Lands Protection Act 1854," notwithstanding sec. 3 of the latter Act. These Acts have now been consolidated, and no doubt the consolidation of the "Inclosed Lands Protection Act" was subsequent in date to the consolidation of the "Crimes Act." But the inversion in the order of date of the two Acts under the scheme of consolidation does not alter their construction. Even if this circumstance were relevant to their construction, there is no necessary inconsistency between the two sections now in question, and it cannot, therefore, be assumed that the Legislature, by enacting sec. 6 of

the "Inclosed Lands Protection Act 1901," intended, either expressly or by implication, to repeal sec. 352 of the "Crimes Act 1900," in so far as it was applicable to offences created by the "Inclosed Lands Protection Act."

Alroy Cohen for the respondent.—The Legislature in 1854 enacted a special provision dealing with the apprehension of persons committing offences punishable under the "Inclosed Lands Protection Act." The general powers of arrest subsequently conferred by sec. 429 of the "Criminal Law Amendment Act 1883" did not affect this special provision—*In re Smith's Estate, Clements v. Ward*, 35 Ch. D. 589. It cannot be assumed that by a general Act subsequently passed the Legislature intended to derogate from the special provision expressly dealing with and regulating the procedure applicable to this offence. Therefore, prior to the consolidation, the power of arrest for this offence was governed by sec. 3 of the Act of 1854. Even if this were not so prior to the consolidation, the Acts must now be construed in the order in which they were passed, and the special provision contained in sec. 6 of the "Inclosed Lands Protection Act 1901" is inconsistent with and impliedly repeals the general power of arrest conferred by the "Crimes Act 1900." The plea does not allege that the bailiff was the owner, occupier or person in charge, and therefore is no justification for the arrest under sec. 6.

Broomfield in reply.

Reference was also made to—*Laurie of England*, vol. IX, pp. 290, 306; *Derecourt v. Corbishley*, 5 El. & Bl. 188; *Griffith v. Taylor*, 2 C.P.D. 194; *Williams v. Permanent Trustee Co. of New South Wales*, (1906) A.C. 249; *Bennett v. Minister for Works*, 15 A.L.R. 320; *Nolan v. Clifford*, 1 C.L.R. 429; *Dean of Ely v. Bliss*, 11 L.J. Ch. 351; *Goodwin v. Phillips*, 7 C.L.R. 1; *Tungamah Shire v. Merrett*, 18 A.L.R. 511; *Barker v. Edger*, (1898) A.C. 748.

Cur. adv. vult.

BARTON, A.C.J., read the following judgment:—The appellants in this case, who are the Sheriff for the State and one of his bailiffs, were sued by the plaintiff, now respondent, for assault and false imprisonment in giving the plaintiff into custody to a constable who took him to a police station, and there caused him to be imprisoned on a charge of having unlawfully trespassed on certain lands "after having been removed therefrom." The second plea is as follows:—[His Honour stated the plea as above set out.]

The plaintiff demurred to this plea, and the Full Court of this State held it bad on the fourth ground noted in the demurrer, namely, "that sec. 352 (1) (a) of the 'Crimes Act 1900' is not applicable to offences committed against the 'Inclosed Lands Protection Act 1901.'"

No question is raised, of course, as to the Sheriff's right to dispossess the plaintiff in the original execution of the writ. It is the plaintiff's subsequent arrest

and detention that is the subject of this action. Upon the pleadings it must be taken as true that the plaintiff broke and entered the land, which was inclosed land within the meaning of the Act, that he was without lawful excuse, and that the consent of Palmer or of the defendants to his re-entry had not been given. The plea therefore sets up that the plaintiff committed an offence against sec. 4 of the "Inclosed Lands Protection Act" as consolidated, and the defendants maintain that sec. 352 (1) (a) of the "Crimes Act" justifies the apprehension, and the taking before a Justice of the Peace to be dealt with, of any person in the act of committing or immediately after having committed that offence, since it is an offence punishable on summary conviction under an Act, within the meaning of sec. 352 (1) (a).

The first "Inclosed Lands Protection Act" was 18 Vict. No. 27, passed in 1854, and the Act of 1901 is a consolidation of that and an intervening Statute which amended the Act of 1854 in some particulars not material to this case. The "Crimes Act 1900" is a consolidation of the "Criminal Law Amendment Act 1883" and some intervening Statutes, and sec. 352 of the Act of 1900 contains substantially a repetition of sec. 429 of the Act of 1883.

The first question that arises is as to the effect of sec. 429 of the Act of 1883 upon secs. 4 and 6 of the "Inclosed Lands Protection Act" as consolidated, which were secs. 1 and 3 of the original Act. The judgment under appeal turns upon the application of the principle involved in the maxim "*generalia specialibus non derogant*" to cases in which the Legislature, after having dealt specially with a particular matter, has afterwards passed an enactment in general terms wide enough to repeal, or supersede, or qualify the original provision. In the case of *In re Smith's Estate, Clements v. Ward*, 35 Ch. D. 589, Stirling, J., stated the rule in terms which the learned Chief Justice has quoted in the Supreme Court, and which I need not repeat. But I wish to quote a passage from the judgment of Wood, V.C., in *Fitzgerald v. Champneys*, 2 J. & H. 31 at p. 54, quoted by Stirling, J., in the case cited—35 Ch. D. 589 at p. 595—as follows:—"The reason in all these cases is clear. In passing the special Act, the Legislature had their attention directed to the special case which the Act was meant to meet, and considered and provided for all the circumstance of that special case; and, having so done, they are not to be considered by a general enactment passed subsequently, and making no mention of any such intention, to have intended to derogate from that which, by their own special Act, they had thus carefully supervised and regulated."

It is true that there is only one instance in which the "Inclosed Lands Protection Act 1854" authorised the giving of the offender into custody, namely, sec. 3, sub-sec. (1). There it is provided that—"Any

"person found committing any offence against this Act and who refuses when required to do so to give his name and place of abode may be apprehended by the owner occupier or person in charge of the inclosed lands upon or in relation to which the offence was committed and delivered to the custody of the nearest constable to be taken before a Justice to be dealt with according to law." That section certainly does provide with particularity for the circumstances under which a person offending against its provisions may be apprehended and brought to justice, and it is argued that, as between that provision and sec. 429 of the Act of 1883, the rule in question applies. Sec. 429 dealt with a very wide range of offences, namely, all offences "punishable whether by indictment or on summary conviction under any Act." But in respect of arrests its terms may well stand together with those of the "Inclosed Lands Act 1854." Its object is the authorisation of arrest without warrant with regard to a very large class of offences, one of which a person apprehended is in the act of committing, or has just committed. It does not, however widely read, purport to repeal or modify the special provision, nor do I think it could have any such effect. It merely adds to the means of bringing the offender to justice. Why should the Legislature be supposed to have intended to exclude cases under the "Inclosed Lands Act" from the category of offences in which a "constable or other person" might apprehend without warrant? Would an intention to include them be an intention to "derogate" from the special provision?

Unless some reason can be found in sec. 429, or in the context and purview of the Act in which it finds a place, or in other legislation, for limiting the effect of the words employed to describe the offences included, I see no reason why it should be held not to apply to a case under secs. 1 and 3 of the "Inclosed Lands Act." That no such limitation is to be found in sec. 429 itself is obvious, and I cannot find it in any other section of the Act of 1883. As to its purview, that Act seems to me to have been an attempt to embrace the whole of the criminal law, whether by way of the definition, or the creation, or the punishment of offences. In many instances it merely affixes more specific punishment to existing offences without altering their character or quality; in others it creates new criminal responsibilities; in others again it gives definition, as well as method and measure of punishment. But in one and another of these ways it seems to me to endeavour to provide a statutory compendium of criminal law. These are reasons why sec. 429 should include, rather than exclude, cases under any section of the "Inclosed Lands Act."

So far, then, as the matter rests between the "Inclosed Lands Protection Act 1854" and the "Criminal Law Amendment Act 1883," I find no sufficient reason to uphold the fourth ground of demurrer, on which the case was decided below.

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The question arises whether the matter is affected by the inverted order in which consolidation took place. For, while the "Criminal Law Amendment Act 1883" was passed years after the original "Inclosed Lands Protection Act," the consolidation of the criminal Statute law took place in the year preceding the similar treatment of the inclosed lands legislation. The learned Chief Justice and his colleagues thought that, by taking this course, the Legislature evinced an intention "that the right of arrest in the case of a person found trespassing on inclosed lands was to depend on the specific and particular provisions laid down in the enactment dealing with that subject," and that "the position in which the legislation now stands resolves this question in favour of the contention set up by the plaintiff"—13 S.R. (N.S.W.) 34 at p. 43.

Of course, the construction of a consolidating Act depends on disclosed intention like the construction of any other Act. But when two Acts have led to a definite state of the law in relation the one to the other of them, I am not sure that a change in their order affected by mere consolidation must needs be taken in all cases to alter that state of the law, in the absence of any internal indication of intention to make that or any other change. Whether it was really intended to alter the law must depend on the effect in each case of the inversion of the order in which the provisions stand.

As between sec. 352 (1) (a) of the "Crimes Act 1900" and secs. 4 and 6 of the "Inclosed Lands Protection Act 1901," I do not think the Legislature has shown an intention that the right of arresting trespassers on inclosed lands must be regulated exclusively by the provisions of the special Act, so as to effect a suspension of the provision in the "Crimes Act" as to that class of offenders. I think that after, as well as before, the consolidation, the two provisions have been consistent the one with the other. They are complementary as regards such trespassers. The provision in the Act of 1901 may fairly be regarded as an additional protection to owners and occupiers of inclosed lands. My own view of the relation of the provisions *inter se* as they stood before consolidation, and as they stand since, is that the difference is that between A plus B and B plus A.

So far, then, as the case depends on the grounds which were argued below, I think the appeal should be allowed.

During the argument before us reference was made to the fifth ground of demurrer, which, it was suggested by my learned brother Gavan Duffy, covered a possible defect in the plea. Sec. 352 gives the power of apprehension to "any constable or other person," who is authorised also to take the offender before a Justice to be dealt with according to law. The act justified in the plea is that the defendant King "gave the plaintiff into the custody of a constable to be taken before a Justice to be dealt with according to

law, which said giving into custody is the alleged trespass." It is worthy of consideration whether this statement in the plea sufficiently claims the protection of sec. 352. It is questioned whether the giving of the plaintiff into the custody of a constable to be taken before a Justice is the precise thing warranted by that section. As this question is not the point upon which the demurrer was argued, and was not urged by the plaintiff in argument either here or below, and as, moreover, the parties, owing to the late stage at which it arose, had not sufficient opportunity to debate it thoroughly, we do not propose to decide it now.

The appeal will be allowed. Mr. Broomfield undertaking on behalf of the defendants, on the suggestion of the Court, either to amend his plea substantially, or to amend formally in such manner as to allow the plaintiff to raise any sufficient ground of demurrer, apart from that now decided, the defendants not to be subject to any costs of amendment.

Under the circumstances, we do not think we should allow any costs of this appeal.

The order of the Full Court will be discharged, and the demurrer overruled; the costs of appeal and of the demurrer to be costs in the cause.

ISAACS, J., read the following judgment of himself, GAVAN DUFFY and RICH, JJ.:—The Supreme Court of New South Wales held the second plea bad on the ground that sec. 6 of the "Inclosed Lands Protection Act 1901" alone applies to the facts alleged in the plea; and this for two reasons. The first reason given is that, the particular offence in question having been dealt with specially by Parliament in that section, it cannot be supposed that the general Act (represented now by sec. 352 of the "Crimes Act 1900") at any time effected a repeal of the special enactment. The second reason is, that eventually the "Inclosed Lands Protection Act 1901" is the later, and therefore must be taken to have superseded any possible repeal of its predecessors by the general enactment at any given moment, and to stand now as the ultimate legislative provision.

It was argued that sec. 352, sub-sec. 1 (a) does not apply to any offence except one created, or at least regulated, by the "Crimes Act" itself, thus excluding an offence under the "Inclosed Lands Protection Act 1901." The material words are—"An offence punishable whether by indictment or on summary conviction under any Act." If these words mean "punishable under any Act," the argument cannot be sustained. In that case, numbers of trivial offences would undoubtedly be included, but unless there be some controlling context, the natural meaning of the language used as applied to the subject-matter must be followed. Moreover, the powers given by the section, though considered necessary, are not supposed to be abused. English corresponding sections (such as 24 and 25 Vict., c. 96, sec. 103) used the phrase

"by virtue of this Act," and so with several other enactments on the subject—see Russell on *Crimes* (6th ed.) vol. III. pp. 77 *et seq*—and the difference is marked. Further, other sections of the "Crimes Act" tell strongly against the supposition that sec. 352 is limited as suggested. For instance, there is sec. 3, which applied, so far as they are applicable, certain other sections "to all offences whether at common law or by Statute whensoever committed and in whatsoever Court tried."

Among the sections so applied are those comprised in Part X. First, however, we will take in order some other sections. Sec. 6 refers to sentences passed by "any Court or Judge or Justice under this or any other Act or at common law."

Sec. 7 makes certain provisions as to possession, "where by this or any other Act the felonious receiving of any property or its possession without lawful cause or excuse is expressed to be an offence."

Sec. 8 defines "public place" in cases "where by this or any other Act any offence conduct or language in a public place . . . is made punishable or a person guilty thereof is made liable to apprehension."

Part X., is read in conjunction with sec. 3, and having regard to other sections mentioned and to be mentioned presently, indicates that the Legislature were providing in that Part facilities for bringing to justice offenders against the criminal law generally, and were not making any distinction between offenders merely because their offences were dealt with by some other Act.

Succeeding sections, such as 344, 345, 394, 402, 407 and many others, indicate a wider outlook than that contended for.

But granting that sec. 352, if it were the only legislative provision for apprehending offenders, would apply to this particular offence, the question is, does it so apply, having regard to sec. 6 of the "Inclosed Lands Protection Act 1901." We attach no importance in the present case to the fact that the "Crimes Act" is a consolidation. It takes effect from the day it passed, and its true construction depends on its language as applied to the subject-matter considered as at that date—see *Bennett v. Minister for Public Works* (N.S.W.), 15 A.L.R. 320. In *Administrator of Bengal v. Prem Lal Mullick*, L.R. 22 I.A. at p. 116, Lord Watson, for the Judicial Committee, said—"The respondent maintained this singular proposition, that, 'in dealing with a consolidating Statute, each enactment must be traced to its original source, and when that is discovered must be construed according to the state of circumstances which existed when it first became law. The proposition has neither reason nor authority to recommend it. The very object of consolidation is to collect the statutory law bearing upon a particular subject, and to bring it down to date, in order that it may form a useful code ap-

plicable to the circumstances existing at the time 'when the consolidating Act is passed.'"

The virtue of the demurrer really depends on whether the "Inclosed Lands Protection Act 1901" overrides the primary provision of the "Crimes Act." In *Goodwin v. Phillips*, 7 C.L.R. 1 at p. 16, it is observed—"The latest expression of the will of Parliament must always prevail;" and so, if the true interpretation of the later Act is that its provisions are to be exhaustive, all earlier enactments inconsistent with them are repealed by implication, because the second set are substituted for the first. But, if there is no such intention to be gathered from the later Act, and if its actual provisions can be regarded as consistent with the earlier legislation, then there is no necessary implication of repeal, and, consequently, no repeal.

The two sections now under consideration, are, in our opinion, not only consistent, but are mutually assistant to repress the offence dealt with in the later Act.

The "Crimes Act," sec. 352, enables any person whatsoever without warrant to arrest a person actually committing, or immediately after having committed, an offence, but requires that, after apprehension, he shall be taken, with any property found on him, before a Justice to be dealt with according to law. But for the offence of trespassing on inclosed lands without consent and without lawful excuse, and on the offender's being asked for and refusing to give his name and address, some extra security may well have been thought necessary by the Legislature. As our brother Powers suggested, there are districts in New South Wales where a constable is within easy distance, while the nearest Justice may be many miles away. What more natural than that authority should be given to the person whose property is invaded to apprehend the invader, and hand him to the nearest constable, the law leaving it to the latter to bring the offender before the Justice. Nor is the utility of the provision in that view confined to distant places; it may operate with advantage even in populous neighbourhoods; and so has been left general.

We can see no inconsistency between the two provisions, nor any reason why the second should be regarded as a substitute for the first. If it is, the Legislature has made no provision whatever for the apprehension of such an offender by a constable even though he is found in the very act of committing the offence, and even though he refuses to give his name and address; and further, it makes no provision for apprehending him by anybody where he is found "immediately after committing the offence." The "Inclosed Lands Protection Act," while making by secs. 4 and 5 certain comparatively slight matters offences, is evidently designed for the prevention of greater ones probably contemplated by such intruders, and sec. 6 is a means to that end, by empowering the immediate handing over to a constable of a person

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acting so suspiciously. We are unable to assent to the view taken by the learned Judges of the Supreme Court that the necessary implication of sec. 6 of the later Act is a complete abrogation of sec. 352 so far as concerns the offences aimed at specially by the "Inclosed Lands Protection Act 1901."

During the argument it was pointed out that the plea alleged that the defendant King delivered the plaintiff into the custody of a constable, and not that the defendant was personally proceeding to bring him before a Justice.

This is a phase not dealt with by the learned Judges of the Supreme Court, and not argued or suggested by learned Counsel there. It raises, however, a most important question as to whether this case is or is not within the protection of sec. 352.

Discussion as to the form of the plea and of the relevant point of demurrer, coupled with the fact of this question being now raised for the first time, indicates that it would be unsafe to attempt to dispose of it at once. Consequently, in the circumstances, we agree with the course proposed by the learned presiding Justice.

POWERS, J.—I concur in the judgment of the Court.

Appeal allowed. Order appealed from discharged, and demurrer overruled. Costs of appeal and of demurrer to be costs in the cause.

[Solicitors—For the appellants, J. R. Baxter Bruce; for the respondent, H. C. G. Moss.] C. E. W.

FULL COURT—(Barton, A.-C.J.,	July 28, 29,
Gavan Duffy and Rich, JJ.)	30; Aug. 13,
(Sydney.)	1913.

MALICK and Another, Appellants v. LLOYD.
(Official Assignee), Respondent.

*Bill of sale—Meaning of — Document purporting to assign personal chattels in existence and after-acquired property—Non-registration—Bankruptcy of grantor—Validity of title of grantee as against official assignee of grantor to goods acquired by grantor after execution of security—"Bills of Sale Act 1898" (N.S.W.) (No. 10), secs 3, 5.**

By section 3 of the "Bills of Sale Act 1898" (N.S.W.), "bill of sale" includes bills of sale, assignments, transfers, declarations of trust without transfer, and other assurances of personal chattels, and also powers of attorney, authorities or licences to take possession of personal chattels as security for any debt . . . Section 5 provides that no bill of sale shall have any validity as against the official assignee or trustee of a bankrupt estate unless duly registered in accordance with the Act.

In 1910 *C* gave the appellants a bill of sale over her furniture and stock in trade, including after-acquired pro-

perty. On 4th April, 1912, the appellants entered into possession under the bill of sale. None of the goods seized by the appellants were in *C*'s possession when the bill of sale was executed. On 30th April, 1912, a sequestration order was made against *C*, and the respondent was appointed the official assignee of her bankrupt estate, and claimed to be entitled to the goods seized by the appellants under the bill of sale, upon the ground that the bill of sale had not been validly registered under the Act.—

Held, that an assignment of after-acquired property does not require registration as a bill of sale, and that the appellants had a valid title to the goods seized as against the official assignee.

Decision of Street, J., *In re Catip*, 12 S.R. 552, reversed, upon a ground not raised in the Court below.

APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES IN BANKRUPTCY.

The respondent, the official assignee of the estate of Hilda Catip, a bankrupt, had obtained an order from Street, J., Judge in Bankruptcy, declaring that a bill of sale executed by the bankrupt, under which certain goods had been seized by the appellants prior to the sequestration order, was void as against the official assignee, and that the respondent was entitled to the goods, upon the ground that the bill of sale had not been duly registered under the provisions of the "Bills of Sale Act 1898." The bill of sale purported to assign goods in the possession of the grantor, and also after-acquired property. None of the goods seized by the appellants were in the possession of the grantor at the date of the execution of the bill of sale.

Further facts appear in the judgment.

Campbell, K.C., and *Maughan* for the appellants.—The bill of sale was validly registered. Assuming it was not registered, in so far as it operated as an assignment of after-acquired property, it did not require registration. Such an assignment is not a bill of sale within the meaning of sec. 3 or 5 of the "Bills of Sale Act 1898."

Loxton, K.C., and *R. K. Manning* for the respondent.—The definition of "bill of sale" in sec. 3 is not exclusive, and sec. 5 should be construed in the same way as sec. 31 (1) of the "Bankruptcy Acts Amendment Act 1896," which included an assignment of after-acquired property. Reference was made to—*In re Isaacson, Ex parte Mason*, (1895) 1 Q.B. 333; *Bruce and Sons v. McCluskey*, 1 A.L.R. 76, 21 V.L.R. 262; *Thomas v. Kelly*, 13 A.C. 506; *R. v. Kershaw*, 6 El. & Bl. 999; *R. v. Hermann*, 4 Q.B.D. 284.

Maughan in reply.

Our. adv. vult.

BARTON, A.-C.J., read the following judgment of the Court:—Hilda Catip is the wife of Moses Catip, and in October, 1910, was living with him at 13 Adelaide Street, Woollahra. The appellants are a firm trading in Sydney as merchants, supplying country storekeepers. On 28th October, 1910, Mrs. Catip gave the appellants a bill of sale over her furniture at her place of residence, and "all and singular the stock-in-trade and plant of the said mort-

* Cf. the "Instruments Act 1896" (No. 1423) (Victoria), sec. 12.