

the provisions of sec. 38B support it. But the clause in the A B Y award under the same heading, that persons authorised by the Industrial Registrar may visit workshops for the purpose of "interviewing "employees on union matters," appears to me to be beyond the ambit of the dispute. It covers all employees, whether members of the Union or not. Employees who were not members of the Union had no benefits conferred upon them by the award, and the Union and its officers had no duty towards them. It is not established that interviewing non-unionists is part of the duty of a union or of any of its officers. In other words, this part of the A B Y award is, in my opinion, beyond the ambit of the dispute. And sec. 38B of the Act cannot be so construed as to warrant directions wholly beyond the subject of the dispute. The Arbitration Court had therefore no jurisdiction to award that any person might visit workshops for the purpose of interviewing employees on union matters. The clauses in the awards as to outdoor workers appear to me clearly within the ambit of the disputes, and I fail to appreciate the attack upon them.

4. Whether the matters so awarded constituted an industrial dispute within the meaning of the constitution and the Arbitration Act.

As to the matters awarded which were within the jurisdiction of the Court, they clearly did—*The Badge Case*, 19 A.L.R. 573; *The Clothing Label Case*, 25 A.L.R. 253. As to the matters awarded which were beyond the jurisdiction of the Court in this case, I am not called upon to express any opinion, and refrain from so doing.

Decide in the case of the A B Y award that the Commonwealth Court of Conciliation and Arbitration had no jurisdiction to award that "the several respondents shall permit any person authorised by the "Registrar or Deputy Registrar in writing to enter "from time to time the several workshops or factories "of the respondents during the midday meal for the "purpose of . . . interviewing employees on union "matters."

[Solicitors—For the applicants, Derham, Robertson and Derham; for the respondents, Blackburn and Slater.]

S. K. H.

FULL COURT — (Knox, C.J.,	{	May 27, 28; Aug. 20.
Isaacs, Gavan Duffy, Rich		
and Starke, JJ.)		
(Melbourne and Sydney.)		

JOHN SHARP AND SONS LTD., Plaintiff v. THE SHIP KATHERINE MACKALL, Defendant.
THE COMMONWEALTH, Intervenant.

Admiralty—High Court—Jurisdiction—Commonwealth—British possession—"Colonial Courts of Admiralty Act 1890," sec. 2 (1)—"Judiciary Act 1914," sec. 30 (b).

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The Commonwealth of Australia is a British possession within the meaning of the "Colonial Courts of Admiralty Act 1890," section 2 (1), and the High Court, being a Court with original unlimited civil jurisdiction, is a Colonial Court of Admiralty within the meaning of that Act.

The High Court, therefore, has jurisdiction in an action by consignees for damages against a ship for delivery, in a damaged condition, of cargo for which they hold a bill of lading issued by the master.

Semble.—*Per* Starke, J.—The High Court has such jurisdiction also by virtue of the express declaration contained in the "Judiciary Act 1903-1920," section 30A, pursuant to the "Colonial Courts of Admiralty Act 1890," and by virtue of section 30 (b) of the "Judiciary Act."

Per Isaacs, J.—Observations upon the validity of the "Judiciary Act 1914," section 3, purporting to declare the High Court a Colonial Court of Admiralty.

DEMURRER.

John Sharp and Sons Limited commenced an action in the High Court against the ship *Katherine Mackall* as defendant, alleging that the plaintiff sued as owner of and consignee under three bills of lading of certain timber carried into the port of Melbourne by the ship, and that the timber was delivered in a damaged condition, and claiming £1583 17s. for damages. It was further alleged that at the time of action there was no owner or part owner of the ship domiciled in Australia.

Paragraph 8 of the defence was as follows:—

The defendant will object that the Court has no jurisdiction over the alleged cause of action. The Commonwealth "Judiciary Act," in so far as it purports to declare the High Court a Colonial Court of Admiralty within the meaning of the Imperial Act known as the "Colonial Courts of Admiralty Act 1890," is void as not being within the power conferred by sec. 3, and/or as not having complied with the conditions prescribed by sec. 4 of the said Imperial Act.

The provisions of sec. 30A of the Commonwealth "Judiciary Act" are so essential a part of the purported grant of admiralty or maritime jurisdiction to the High Court, that sec. 30A being void, the whole grant is void. The alleged cause of action does not come within the authority of sec. 76 of the Constitution and/or of the grant in the Commonwealth "Judiciary Act" contained.

The plaintiff demurred to paragraph 8 of the defence.

Latham, K.C., and Fullagar for the defendant.—The "Colonial Courts of Admiralty Act 1890" is inapplicable to the High Court, either by itself or in conjunction with the Constitution. The Judiciary Acts 1914 and 1915, declaring the High Court a Court of Admiralty, purported to operate under the Constitution, sec. 76 (iii.), and also under the "Colonial Courts of Admiralty Act 1890." Under the "Admiralty Court Act 1861," sec. 6, an action *in rem* lay against a foreign ship in cases where no owner was domiciled

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in England or Wales—Roscoe Admir. Pr. (4th ed.), 486. Under the "Colonial Courts of Admiralty Act" similar jurisdiction would arise in Australia in the case of Courts constituted thereunder. Under the Judiciary Acts 1914 and 1915 it may be said that the High Court is a Court under the "Colonial Courts of Admiralty Act." The Courts exercising jurisdiction under the "Colonial Courts of Admiralty Act" were only Courts declared to be such Courts, and in the case of British possessions, where there was no declaration, the Courts of unlimited original civil jurisdiction in the possessions. In Victoria and New South Wales there were Vice Admiralty Courts, and the Act did not come into force until an Order in Council was made, and the Supreme Court of Victoria thus acquired jurisdiction by reason of its having unlimited original civil jurisdiction. If there is a declaration under the Act, then the Court declared is the only Colonial Court of Admiralty, and if the High Court is so declared, then the Supreme Courts of the States may have ceased to have jurisdiction in Admiralty, though the Vice Admiralty Courts continued. If the "Judiciary Act 1914," sec. 3, purports to be a declaration, the question arises whether the Commonwealth Legislature is a Parliament of a "British Possession"—"Interpretation Act 1889," 52 and 53 Vict., c. 63. Within a single area there could only be one British possession under that Act. In 1890 the State Legislatures were Legislatures of British possessions, and they continued so, and the States are still the only British possessions in Australia for the purpose of the "Colonial Courts of Admiralty Act 1890." The States and the Commonwealth cannot both be "British Possessions" for that purpose. Under the Constitution, sec. 107, the power in the States to declare a Colonial Court of Admiralty was preserved. But, if the Commonwealth is the unit, the effect of the Constitution would be to deprive the States of Admiralty jurisdiction. [ISAACS, J., referred to *British Rule in British Possessions Beyond the Seas*, by Sir Henry Jenkins, p. 2.] The State of Victoria was held to be a British possession and its Legislature the only Legislature at the time to be regarded for the purposes of the "Fugitive Offenders Act"—*McKelvey v. Meagher*, 12 A.L.R. 483. If the "Colonial Courts of Admiralty Act" were applicable to the Commonwealth, sec. 76 (III.) of the Constitution was unnecessary. Section 4 of the "Colonial Courts of Admiralty Act" has not been complied with, in that the Governor-General assented at the time, and the Royal assent was not given till 1916. The requirement as to reserving for assent was not complied with, and no proclamation took place, but only a *Gazette* notice by the Prime Minister. The whole of the "Judiciary Act 1914" is therefore invalid, and the High Court has derived no power from the "Colonial Courts of Admiralty Act." If the "Judiciary Act 1914" could be treated as reserved, sec. 60 of the Constitution has not been complied with, and the Court will take judicial notice

of the absence of a proclamation. The action is framed in the terms of the "Admiralty Court Act 1861," sec. 6, referring to England and Wales, and would be cognisable in a Court constituted under the "Colonial Courts of Admiralty Act." Prior to that Act the Court would not have exercised such a jurisdiction—*The Ironsides*, 1 Lush. Ad. 458, 31 L.J. P.M. & A. 129. Not being a matter of general admiralty jurisdiction, the "Vice Admiralty Courts Act 1863," 26 and 17 Vict., c. 24, sec. 10, defines the jurisdiction of those Courts without any reference to the cause of action under the Act of 1861. The words "all cases of Admiralty and Maritime jurisdiction" are copied from the United States Constitution—Willoughby on *The Constitution*, 1107. American authorities upon Admiralty matters are not recognised in England—*The Queen v. Judge of City of London Court*, (1892) 1 Q.B. p. 273 at 293, commenting upon *Delovio v. Boit*, 2 Gall. 398.

Cohen, K.C., and *Nathan* for the plaintiff.—The "Judiciary Act 1915" required no Royal assent, and it gives power to this Court in respect of all matters of Admiralty and Maritime jurisdiction as administered at the time. Prior to the Act of 1861, it appears from American cases, that jurisdiction in Admiralty covered all maritime causes and contracts—*Delovio v. Boit*, 2 Gallison 398, 1 Kents. Com. 367. Section 60 of the Constitution does not apply, save where Acts are necessarily reserved by virtue of the Constitution, as under sec. 74 or by reason of the Governor's instructions. The "Judiciary Act 1914" was in effect reserved for the Royal assent, and received that assent in 1916. Under the "Colonial Laws Validity Act" the Governor's assent had no effect—*Keith's Responsible Government in the Dominions*, vol. II., p. 1012. The Commonwealth is a British possession for the purposes of the "Colonial Courts of Admiralty Act 1890," though the States may still be British possessions for the exercise of other functions, and if the declaration made is valid, the Court has jurisdiction, and if invalid the Act of 1890 gives it jurisdiction.

Dixon, K.C., and *Martin* for the Commonwealth intervening.—If it be assumed that the "Judiciary Act 1914" is invalid for non-compliance with the "Colonial Courts of Admiralty Act" or with the Constitution, the result is the same. The Commonwealth is a British possession for the purposes of the Act of 1890. The "Interpretation Act" applies, and the definition of British possession includes the Commonwealth. The States may not come within the definition in the "Interpretation Act." but the Constitution, sec. 108, preserves to them the jurisdiction which they had before the Constitution. The Commonwealth would have power to declare the Supreme Courts to be Courts under the Act of 1890, and possibly has done so under the Judiciary Acts. If the declaration is not in force, the Act of 1890 confers jurisdiction if the Commonwealth is a British

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possession. Failing this, power is drawn from the Constitution, sec. 76 (III.), to confer complete jurisdiction over the subject-matter, independent of the Imperial connection. An action upon a contract of affreightment falls within the words "Maritime jurisdiction"—the "Judiciary Act," sec. 30 (a). Section 4 of the "Colonial Courts of Admiralty Act" of 1890 imposes no condition precedent in relation to the Royal assent, but only disqualifies the Governor from assenting, and the Royal assent may be given notwithstanding that the bill has not been reserved. If the Governor fails to reserve a bill under sec. 58 of the Constitution, the Sovereign may still act. Section 76 (III.) of the Constitution justifies the Court in entertaining the action. The words "Admiralty and Maritime jurisdiction" were for the purpose of avoiding the limitations of the word Admiralty, and including all matters pertaining to maritime law. The "Admiralty Court Act 1861" makes this matter one of Admiralty jurisdiction in England. The history of Maritime jurisdiction appears in 1 Holdsworth's *History of the Law of England* (2nd ed.), 530, 548 to 553. The Common Law Courts claimed that in cases where those Courts obtained jurisdiction, the Admiralty Courts had none. Jurisdiction in respect of agreements was denied. In 1840 and 1861 jurisdiction was conferred. Matters of Maritime jurisdiction differed from Admiralty jurisdiction, which varied from time to time. The phrase "Admiralty and maritime jurisdiction" has been considered in America as including all matters arising on the high seas—Roscoe's *Admir. Pr.* (4th ed.), 7 and 8; *Ex parte Easton*, 95 Sup. Ct. Rep. 68, 72. This is a matter which was accustomed to be dealt with in Admiralty jurisdiction. The jurisdiction in Vice Admiralty prior to the Act of 1840 appears in Forsyth's *Cases on Constitutional Law*, p. 90. The commission expressly includes these matters—*The Elizabeth*, 1 Hag. 226. It might be said that, even though jurisdiction existed over the subject-matter, the remedy is not *in rem*. If the declaration in the "Judiciary Act" is not effective under the "Colonial Courts of Admiralty Act 1890," Parliament may still be regarded as having, so far as Australia is concerned, empowered this Court to exercise all the powers prescribed in the Act of 1890.

Latham, K.C., in reply.—The Act of 1861 was an addition to the former Admiralty jurisdiction—*Turner v. Mersey Docks*, (1892) P. at 285, 299. The Act of 1861, sec. 6, was repealed by Imperial "Administration of Justice Act 1920," sec. 5, 10 and 11 Geo. V., c. 81.

Cur. adv. vult.

The following judgments were given:—

KNOX, C.J., and GAVAN DUFFY, J.—The question for decision in this case is whether the High Court has jurisdiction in an action in which the cause of action consists of a claim by consignees against a ship for delivery in damaged condition of certain timber, for which the consignees held a bill of lading issued

by the master. Section 2 (1) of the "Colonial Courts of Admiralty Act 1890" is in the following words, viz.:—"2 (1). Every Court of law in a British possession which is for the time being declared in pursuance of this Act to be a Court of Admiralty or which if no such declaration is in force in the possession has therein original unlimited civil jurisdiction shall be a Court of Admiralty with the jurisdiction in this Act mentioned and may for the purpose of that jurisdiction exercise all the powers which it possesses for the purpose of its other civil jurisdiction and such Court in reference to the jurisdiction conferred by this Act is in this Act referred to as a Colonial Court of Admiralty. Where in a British possession the Governor is the sole judicial authority the expression 'court of law' for the purposes of this section includes such Governor."

For the defendant it is admitted—rightly, we think—that if the High Court is a "Colonial Court of Admiralty" within the meaning of this section, it has jurisdiction to entertain the action. By sec. 3 of the "Judiciary Act 1914" the High Court was declared to be a Colonial Court of Admiralty within the meaning of the Imperial Act known as the "Colonial Courts of Admiralty Act 1890." It is not denied that the Court has within the Commonwealth original unlimited civil jurisdiction as defined in the "Colonial Courts of Admiralty Act." It follows that if the Commonwealth of Australia is a British possession within the meaning of that Act, the High Court is a Colonial Court of Admiralty, either by force of sec. 3 of the "Judiciary Act 1914," if that section be valid, or, if not, then by force of that portion of sec. 2 of the Imperial Act which provides that "if no such declaration is in force in the possession every court of law in a British possession which has therein unlimited civil jurisdiction shall be a Colonial Court of Admiralty. The first question for decision, therefore, is whether the Commonwealth of Australia is a "British possession" within the meaning of the "Colonial Courts of Admiralty Act 1890."

By sub-sec. (2) of sec. 18 of the Imperial "Interpretation Act 1889" (52 and 53 Vict., c. 63), the expression "British possession" is defined as meaning "any part of Her Majesty's dominions exclusive of the United Kingdom, and where parts of such dominion are under both a central and local legislature all parts under the Central legislature shall for the purposes of this definition be deemed to be one British possession." If the first part of the definition stood alone, there could, we think, be no doubt that each Australian State and the Commonwealth as a whole would be a "part of Her Majesty's dominions," and therefore a British possession. As the definition stands, we think the Commonwealth is a British possession within the second part of the definition. It is clear that parts of Australia, viz.,

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the States, are under both a central and a local Legislature.

It was not argued that the "Colonial Courts of Admiralty Act" contained any indication of intention that the expression "British possession" when used therein should not have the meaning assigned to it by the "Interpretation Act 1889." If the expression be given that meaning, the Commonwealth is a British possession, and it follows that the High Court is a Colonial Court of Admiralty.

In this view, it is not necessary to deal with the objection that the "Judiciary Act 1914" was not reserved or otherwise dealt with in accordance with sec. 4 of the "Colonial Courts of Admiralty Act."

In our opinion, the ground of defence set up in paragraph 8 of the Statement of Defence is bad in law.

ISAACS, J.—This case arises on an objection in law—in effect a demurrer—by the defendant to the Statement of Claim. The action is brought for damage to timber carried under bill of lading signed by the master of the ship on the American schooner *Katherine Mackall*, trading between the port of Portland, Oregon, and Melbourne, Australia. The owners are not in Australia, and the jurisdiction attaches, if at all, by reason of the presence of the ship, which is made the defendant, and arrested as in the ordinary course of Admiralty proceedings. The objection in law is in effect that this Court has no such jurisdiction, for the following reasons:—

1. Section 30A of the Commonwealth "Judiciary Act" is void, because the enactment inserting it (Act No. 11 of 1914) was not reserved for His Majesty's pleasure, as required by sec. 4 of the "Colonial Courts of Admiralty Act 1890" (53 and 54 Vict., ch. 27).

2. The cause of action alleged does not come within the authority of sec. 76 (III.) of the Constitution and sec. 30 of the "Judiciary Act" as amended by No. 4 of 1915, sec. 2.

The ordinary civil jurisdiction is *ex concessis* unavailable in the circumstances. As to the maritime personality of "the ship"—see *Townsville Harbour Board Case*, 20 A.L.R. at p. 255. The questions of law which emerge are two of great importance and are:—

(a) Has this Court jurisdiction to entertain this action, by virtue simply of sec. 30 of the "Judiciary Act" as amended, which confers original jurisdiction on the High Court "in all matters of Admiralty or maritime jurisdiction?"

(b) Is this Court a "Colonial Court of Admiralty" within the meaning of the Imperial Act mentioned?

It is contended by the plaintiff and by the Commonwealth as intervenant, that it is such a Court for either or both of two reasons. The first is that sec. 30A of the "Judiciary Act" so declares—Act No. 11 of 1914, sec. 3. The second is, that if that declaration fails for any reason, then, since the High Court has "original unlimited civil jurisdiction" within

the meaning of sec. 15 of the Imperial Act, sec. 2 of the same Statute constitutes the High Court a Colonial Court of Admiralty with the full jurisdiction defined in sub-sec. (2) of that section.

With respect to the jurisdiction conferred by sec. 30 (b), namely, "in all matters of Admiralty or maritime jurisdiction," it is not necessary now to pronounce an opinion. I confess the matter is far from simple. I do not feel impressed with the judgment of Story, J., in *De Lovio v. Boit*, 2 Gallison 398 (1815), even supported by the case of *Insurance Co. v. Dunham*, 11 Wall. 1. In 1862, that is after the British Parliament had thought it necessary to legislate for such a claim as the present, Dr. Lushington was pressed in the case of the *Don Francisco*, Lush. 468 at p. 471, with the American practice. He said in *arguendo*—"The Admiralty Courts in America exercise a much wider jurisdiction than the Admiralty Court here. They disregard all the authorities since James I. which have limited the operations of this Court; they claim to do all things set forth in my patent." In the judgment (p. 473) the learned Judge said—"The American Courts assume to themselves an extended jurisdiction which (however in former times it might have been exercised here) has, by a series of decisions of the Courts of Common Law, for a very long space of time been denied to the Court of Admiralty of this country." In 1891, Lord Esher, in *The Queen v. Judge of City of London Court*, (1892) 1 Q.B. at pp. 293-294, expressly says that the doctrine of Story, J., in *De Lovio v. Boit* (*supra*), has never been accepted in England.

It is not conceivable that in framing the Australian Constitution the content of "Admiralty and maritime jurisdiction" was intended by the people of Australia and the British Parliament, with reference to a subject so imperial in character, to follow American doctrine in direct opposition to established English precedent. But that by no means disposes of the matter. Section 76 of the Constitution recognises that "matters of Admiralty and Maritime jurisdiction" are or may be distinct from "matters arising under the Constitution, &c.," and from "matters arising under any laws made by the Parliament." If it became necessary to determine this case upon sec. 76 (III.) of the Constitution and sec. 30 (b) of the "Judiciary Act," there are some very difficult questions to answer. They are not inevitable questions in this case, and the Constitution, by sec. 51 (I.) and (XXXIX.) and sec. 98, undoubtedly gives great scope for relevant legislation. It is not, therefore, to be supposed the constitutional power to confer jurisdiction on this Court in matters of Admiralty and Maritime law, is a power in respect of merely a stereotyped Common Law Admiralty jurisdiction, which at the date of the Constitution had already been exercised for more than forty years in England. Were the decision of this case dependent on the provision in sec. 76 (III.) of the Constitution, with the statutory exercise of the power, there would be

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a field of inquiry by no means clear. Among relevant English authorities other than those already mentioned there would be the important cases of the *Zeta*, (1893) A.C. 468; the *Devonshire*, (1912) A.C. at pp. 642 and 643; the *Marlborough Hill*, (1921) 1 A.C. at 448; and the *Tubantia*, (1924) P. at p. 86. Among American cases that might be read with some advantage are *American Insurance Co. v. Canter*, 1 Peters, at pp. 545, 546; *United States v. Bevans*, 3 Wheat., at pp. 388, 389; and the *St. Lawrence*, 1 Black, at pp. 526-527. One relevant point for consideration would be whether and how far sec. 30 (b) of the "Judiciary Act" could and did at a stroke validly adopt Imperial legislation on the subject of Admiralty jurisdiction. There is no need at present to explore the possibilities of this branch of the arguments.

The second question concerns the jurisdiction of the Court by virtue of the "Colonial Courts of Admiralty Act 1890." It appears in the first place that the Commonwealth Act of 1914 (No. 11) was assented to by the Governor-General on 29th October, 1914. Strictly speaking, it should have been reserved for the King's personal assent in accordance with sec. 4 of the Imperial Act. On 7th September, 1916, His Majesty gave his Royal assent to the law, and this fact was notified by publication of a copy of the King's Order in Council in the *Commonwealth Government Gazette* on 16th November, 1916. It was on the part of the defendant objected that the bill, having been assented to in the first place by the Governor-General, could not be said to have been subsequently "reserved," either within the meaning of sec. 4 of the "Colonial Courts of Admiralty Act 1890" or within the meaning of sec. 58 of the Constitution. Consequently, so ran the argument, the King's assent was nugatory and the so-called Act is void. This contention regards sec. 4 of the Act of 1890 as a rigid enumeration of three several conditions mutually exclusive of each other and of all other methods. It assumes that one of these three methods must be definitely adopted before any other course is taken, the sanction being invalidity. The three conditions are—(1) Prior approval of the Sovereign, (2) reservation for the Sovereign's pleasure, and (3) a suspending clause until His Majesty's pleasure is signified.

Avowedly (1) and (3) do not apply. But as to (2), the argument advanced is that, the bill having been assented to by the Governor-General in fact, he was *functus officio*, and thereafter he could not "reserve" the bill for the signification of the King's pleasure. The contention cannot be sustained. Section 4 of the Act of 1890 is not intended as a weakening of the Royal prerogative of the Common Law of the Constitution as to the King's relation to his appropriate Legislature. The Act is dealing with a subject concerning the whole Empire, and by sec. 4 retains as a condition of a new and very extensive Imperial grant of legislative power to the Dominions, a right of Imperial oversight in respect of the legislation.

That condition is the Royal approval, guided, of course, by those who are the Sovereign's Imperial advisers. Subject to any other limitation or restriction, a bill passed by the Legislature of a British possession conformably with sec. 3 of the Act and assented to by the King, is a valid and binding law whether the Governor-General or the Governor has or has not strictly followed the directions of sec. 4. Section 4 prevents the bill from becoming law unless the King's personal assent or pleasure be signified. But once that is done, it is a valid Act of the Colonial Parliament authorised by the Imperial Statute, and has full force of law.

It is not vitally necessary to pursue this particular branch of the matter further. It is not out of place to point out that sec. 4 of the Act of 1890 is little more than a legislative requirement for the purpose of ensuring the practice detailed with great clearness and explanation in Clark's *Colonial Law* (1834), at p. 41 and following pages.

Another objection to the Act was one going much deeper, namely, that the Commonwealth is not a British possession within the meaning of the "Colonial Admiralty Courts Act 1890." That I deal with presently in connection with sec. 2 of the Act. In the meantime, I complete my opinion as to sec. 30A of the "Judiciary Act." Although the other objections raised to that section are placed aside, there remains, in my opinion, one fatal objection to it. The grant of legislative power in the Act of 1890 assumes a "colonial law" enacted in accordance with the Constitution of the possession. Section 15 defines "colonial law" as any Act, ordinance or other "law" having the force of legislative enactment in a British "possession and made by any authority other than "the Imperial Parliament or Her Majesty in Council "competent to make laws for such possession.

The question then is: Has this "provision 30A" the force of legislative enactment as a law made by the Commonwealth Parliament which by sec. 1 of the Constitution includes the Sovereign as well as the two Houses? I treat the bill of 1914 as one reserved for the King's pleasure and as having duly received his pleasure. But I find in sec. 60 of the Constitution a definite negative provision cutting down the Common Law, declaring unequivocally that a proposed law so reserved "shall not have any force "unless and until within two years from the day on "which it was presented to the Governor-General for "the Sovereign's assent the Governor-General makes "known by speech or message to each of the Houses "of the Parliament or by proclamation that it has "received the (Sovereign's) assent." That condition was apparently not fulfilled. The Commonwealth intervenant produced what I understand was the only public declaration by the Governor-General of the King's assent, namely, a publication in the *Commonwealth Government Gazette* for 16th November, 1916, for general information of a copy of the order of His

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Majesty in Council of 7th September, 1916. The Order in Council recited that the bill of 1914 had been "transmitted for the signification of His Majesty's pleasure thereon," and that His Majesty, by that order and with the advice of His Majesty's Privy Council, declared "his assent to the said bill." That is all.

There are two obstacles in the way of that being sufficient to satisfy the conditions of sec. 60 of the Constitution—(1) It is not a speech or a message to the Houses of Parliament or a proclamation; and (2) it is beyond the period of two years, because the Governor-General's original assent was on 29th October, 1914. The period of two years' limitation cannot be exceeded by repeated presentations. For such a course would nullify sec. 60.

That leaves to be considered the third position, namely, the jurisdiction of this Court by the direct operation of the Act of 1890 on the Court as having "original unlimited civil jurisdiction." It is not contested or contestable that this Court is of that character, having regard to the definition of the term by sec. 15. Assuming the inefficacy of sec. 30A of the "Judiciary Act," then "no such declaration is in force in the possession," provided, however, "the Commonwealth of Australia" as a political organism is a "British possession" within the meaning of sec. 2 of the Act of 1890. The argument for the defendant denies that proviso. It does not deny that if a similar Act were to be passed to-morrow the Commonwealth would be within it. But it says in effect that in 1890 there was no Commonwealth, and the ambit of the legislation was completely filled so far as Australia is concerned by the colonies as then existing, and they cannot be added to now by the Commonwealth. Canada, says the defendant, is in a different position, because it received its Constitution in 1867, and the Act of 1890 may well have contemplated both Dominion and Provinces. That, in my opinion, is not a sound argument. The "Colonial Courts of Admiralty Act 1890" used the term "British possession" without definition, because in 1889 the "Interpretation Act" (52 and 53 Vict., c. 3) was passed to obviate the necessity of particular definition in every Act. Section 18 for that Act and "every Act passed after the commencement of (that) Act," declared that, unless the contrary intention appears, certain expressions should have assigned meanings, including (2) the expression "British possession" shall mean "any part of Her Majesty's dominions exclusive of the United Kingdom and where parts of such dominions are under both a central and local legislature all parts under the central legislature shall for the purposes of this definition be deemed to be one British possession." To adapt a vivid and illuminating expression of Lord Robertson, in *Goster v. Headland*, (1906) A.C. at p. 289, the "Interpretation Act" "lies in wait, as it were, for Acts which may be passed." There is no contrary intention in the Act of 1890. The assigned meaning in the Act

of 1889 is one which regards "a possession" as a political organism having a Legislature of its own. The definitions in sec. 15 of "representative legislature" and of "colonial law" most distinctly support this construction. The defendant's argument on this point not only excludes the Commonwealth, but would apparently exclude also the Union of South Africa and the Irish Free State. It is to my mind an argument entirely inadmissible, as opposed alike to the literal words of the "Interpretation Act 1889" and to the inherent nature of the relations of the constituent political units of the Empire.

For this reason, the objection in law should, in my opinion, be overruled.

RICH, J.—I agree that the defendant's demurrer should be overruled.

STARKE, J.—The question is whether this Court has jurisdiction to entertain an action *in rem*, under its Admiralty jurisdiction, against the schooner *Katherine Mackall* (whose owner is not domiciled in Australia), in respect of a claim by the owner and consignee of certain timber carried into the port of Melbourne, for that the timber was not delivered in good order and condition, but in a damaged state, in breach of the terms of the bill of lading—see "Admiralty Court Act 1861," 24 Vict., c. 6.

The arguments at the Bar did not convince me that the jurisdiction could not be supported upon the express grant to this Court of original jurisdiction in all matters of Admiralty and Maritime jurisdiction, pursuant to sec. 76 of the Constitution—see "Judiciary Act 1903-20," sec. 30. Nor did they convince me that the provision in sec. 30A of the "Judiciary Act," declaring the High Court to be a Colonial Court of Admiralty within the meaning of the "Colonial Courts of Admiralty Act 1890," 53 and 54 Vict., c. 27, was invalid. Unless sec. 4 of this last-mentioned Act invalidates the provision in sec. 30A of the "Judiciary Act"—which I doubt—then the Governor-General assented to the law in the King's name, and did not reserve it for His Majesty's pleasure. The provision thus became law, and its confirmation by the King himself simply allayed doubts as to its validity, or was intended to have that effect. But as at present advised, I do not think that sec. 60 of the Constitution ever operated upon the Act (1914, No. 11). The bill containing sec. 30A was never reserved for the Royal pleasure, as perhaps it ought to have been under the Act 53 and 54 Vict., c. 27.

I agree, however, with the other members of the Court in thinking that, if the jurisdiction fails under secs. 30 and 30A of the "Judiciary Act," still it is sustained by the provisions of the "Colonial Courts of Admiralty Act," sec. 2, declaring that every Court of law in a British possession which has therein unlimited civil jurisdiction shall be a Court of Admiralty with the jurisdiction therein mentioned in case

no declaration has been made as provided in the earlier part of the section.

Defendant's objection in law to Statement of Claim overruled. Defendant to pay costs of objection in law and of argument. Demurrer overruled.

[Solicitors—For the plaintiff, Pavey, Wilson and Cohen; for the defendant, Moule, Hamilton and Kiddle; for the Commonwealth, G. H. Castle, Federal Crown Solicitor.] S. K. H.

Supreme Court.

FULL COURT — (Schutt, Mann } Sept. 1, 2,
and McArthur, JJ.) 3, 12.

REX v. BROWN.

Criminal law — Joint offence — Joint presentment—False pretences—Practice.

Where two persons join in making a false pretence with a view of obtaining so much money for one of them, and so much money for the other of them, then, although individually each of them, as a result of the joint false pretence, receives his money independently of the other, and at a different time, they may be presented on a joint presentment on a charge of obtaining money by false pretences.

CRIMINAL APPEAL.

The prisoners, Arthur Brown and Samuel Bernard Helwig, were jointly presented on a presentment which set out that "the Attorney-General of our Lord the King presents that Arthur Brown and Samuel Bernard Helwig, at Drouin . . . on or about the 31st day of January, 1924, with intent to defraud, obtained the sum of £6 13s. 6d. from the Equitable Life Assurance Co. of Queensland Limited by falsely pretending that one Henry James Little had been medically examined by the said Samuel Bernard Helwig." There were two other counts stated in similar terms, one charging the obtaining of £3 19s. 5d. in respect of a similar false pretence concerning the medical examination of one Henry Dedman, and the other charging the obtaining of £3 17s. 3d. in respect of a similar false pretence concerning the medical examination of one Frederick William Cock.

The prisoner Arthur Brown was chief inspector and organiser in Victoria of the Company, which was a life assurance Company. His duties were to supervise the outdoor and field staff of the Company, and to organise the field staff in Victoria. He had also to assist the officers of the Company in completing proposals for insurance, and to give the necessary instructions as to the conduct of their business. The prisoner Samuel Bernard Helwig was a legally qualified medical practitioner, out of practice, and not an officer of the Company.

The evidence at the trial disclosed the following facts:—Proposals for insurance on their lives were made by Henry James Little, Henry Dedman and Frederick William Cock. In each case a medical report, signed by Helwig, was forwarded to the Company substantially to the following effect:—"I hereby certify that the abovenamed — appeared before me, and in my presence subscribed for answers forming the personal statement hereto affixed the signature to which I have attested. Founding my opinion on this personal statement aforesaid, and on my examination of the proponent, of which the particulars are detailed above, I believe his constitution to be sound, his health to be good, and his habits to be sober and active. I place him in Class 1 according to the classification hereunder."

The medical report referred to details of the results of the medical examination, and was forwarded to the Company by the prisoner Brown. In fact no medical examination at all was made by the prisoner Helwig, and the medical report was altogether fraudulent. There was evidence at the trial that the prisoners Brown and Helwig were acting in concert in sending to the Company this false medical report, and that they did it, Brown in expectation of his commission, and Helwig in expectation of a fee. Brown expected and was paid three several commissions of £5 12s. 6d., £2 18s. 5d., and £2 16s. 3d. in respect of these three proposals; and Helwig expected and was paid three several sums of £1 1s. in respect of the three proposals. Brown and Helwig were paid their respective remunerations at different dates and independently of each other.

The specific sums of money charged in the presentment as having been fraudulently obtained were, in each count, arrived at by adding together Brown's commission and Helwig's fee.

The prisoners were convicted on all three counts. The appellant Arthur Brown was sentenced to imprisonment for nine months on each count (concurrent).

The prisoner Arthur Brown now sought leave to appeal against his conviction on various grounds, of which one only is here material, viz., that the conviction was wrong in law, since on the facts of the case a joint offence could not be committed. This ground referred to the fact that, assuming the false pretence to have been jointly made, the money had not been jointly obtained, since it was obtained by Brown and Helwig respectively at different times and in different circumstances.

Brennan for the appellant.

Cur. adv. vult.

SCHUTT, J., read the judgment of the Court:—Applications for leave to appeal against conviction and sentence. The prisoner was, together with one Helwig, presented upon three charges of having, with intent to defraud, obtained certain moneys from an assurance company by falsely pretending that certain