HIGH COURT OF AUSTRALIA

H. L. D'Emden

Vs.

F. Pedder

(Griffith, C.J., Barton and O'Connor, JJ.)

24th April, 1904

Griffith, C.J.

This appeal, although the pecuniary amount at stake is insignificant, involves constitutional questions of great importance. The appellant, who is the Deputy Postmaster-General for the State of Tasmania, was summoned before justices at Hobart on a complaint charging him with giving to the paying officer of the Commonwealth a receipt liable to duty, namely, a receipt for salary due from the Commonwealth to him for the month of March, 1903, such receipt not being duly stamped. The facts were admitted, but the liability of the receipt in question to duty was denied. The justices convicted the appellant, and adjudged him to pay a fine of 1s. and 7s. 6d. for costs, to be levied by distress, and, in default of distress, adjudged him to be imprisoned in the gaol at Hobart with hard labour for seven days. A case was thereupon stated to the Supreme Court of Tasmania, submitting the question whether stamp duty is payable under the *Tasmanian Act* (2 Edw. VII., No. 30), by the appellant in respect of a receipt given by him in Tasmania to the paying officer of the Commonwealth, for his salary for a given period as an officer of the Civil Service of the Commonwealth stationed in Tasmania. The Supreme Court, by a majority (*Dodds*, C.J., and *McIntyre*, J.), dismissed the appeal, *Clark*, J., dissenting. The material provisions of the *Tasmanian Act* are as follows:—Sec. 3 prescribes that from 1st January, 1903, there shall be levied, in respect of the instruments mentioned in the Schedule, the stamp duties therein set down. The Schedule, so far as material, is in these words: "For every receipt where the sum received amounts to £5 and under £50 - - - 2d." Sec. 5 provides that if any person gives a receipt liable to duty not duly stamped he shall be liable on conviction to a penalty not exceeding £5, which, under another Statute, may be enforced by distress or imprisonment.

The main question for determination may be regarded under two aspects—(1) Whether the Tasmanian *Stamp Act* should be construed as applying, in terms, to receipts given by Commonwealth officers for their salary; and (2) if so, whether such a law is within the competence of the State legislature. The greater portion of the argument before us was addressed to the second aspect of the question. It was contended that the Act, if so construed, operates as an interference, by way of taxation and consequent control, with a federal agency or instrumentality; that it attempts to impose a condition which must be complied with by the officer before he can receive the salary allotted to him by the Commonwealth; and that such a condition cannot be constitutionally imposed by a State; that the imposition of a stamp duty on a receipt for a federal salary is, in effect, taxation of the federal salary, which taxation, it was urged, was not within the competence of the State; that the receipt is the property of the Commonwealth, and, therefore, not taxable; and, further, that the Act, so construed, would be inconsistent with the Federal Appropriation Act, by which, it was said, the officer's salary was fixed.

With regard to the last contention it is sufficient to point out that it is not the Appropriation Act which actually fixes the salaries of public officers. They are not mentioned in the Act. Its operation is rather to authorize the payment, for salaries and other purposes, of sums not exceeding those specified in the Schedules to the Act, which include in a lump sum the total anticipated expenditure under the several divisions and subdivisions. The salaries which it is proposed to pay are specified in the Estimates and voted in Committee of Supply. But we agree in the contention that, in considering the validity of legislation under the Constitution, the substance and not the form of the legislation is to be regarded, and that the stamp duty in question is, in substance, a diminution *pro tanto* of the remuneration of the federal officer, just as a tax on bills of lading for goods exported is in substance an export tax on the export of the goods themselves. With regard to the contention that the receipt in question is exempt from State taxation under sec. 114 of the *Constitution*, as being property of the Commonwealth, we think that the receipt, although undoubtedly it may be described as the property of the Commonwealth for the purposes of a prosecution—say, for stealing—is not property of the kind intended in that section, which appears rather to refer to taxation imposed upon property *qua* property.

We pass to the other grounds for the contention that the law is not within the competence of the State Legislature. The Commonwealth *Audit Act 1901* (No. 4 of 1901) makes provision for the collection and payment of public moneys, and the audit of public accounts, By sec. 34, sub-sec. 6, it is enacted that "... at the time of paying any account every public accountant shall obtain a receipt under the hand of the person to whom the same is payable, or under the hand of some person or banker authorized in writing by such-mentioned person for the amount so paid." Sec. 46 provides that "no sum shall be allowed in any account to have been duly received or paid without a written voucher for the actual receipt or payment of every sum so claimed to be allowed" unless by special order of the Governor-General. The paying officer is a "public accountant" within the meaning of the Act. It is, therefore, part of his duty to obtain a receipt, as it is part of the duty of the officer receiving his salary to give a receipt; and the receipt, when given, becomes a necessary part of the Commonwealth accounts for audit purposes, and a record of the department of the Commonwealth charged with the duty of making the payment. These provisions as to receipts and vouchers obviously relate to the conduct of the departmental affairs of the Commonwealth Government, and therefore, so far as the Postal Department is concerned, they fall within the words of sec. 52 of the *Constitution*, by which the Federal Parliament has exclusive power to make laws for the peace, order, and good government of the Commonwealth with respect to—"II. Matters relating to any department of the public service the control of which is by the Constitution transferred to the Executive Government of the Commonwealth." The Department of Posts and Telegraphs was transferred to the Commonwealth, under the powers conferred by sec. 69, on 1st March, 1901. It was not disputed by the respondent's counsel that the exclusive power of the Federal Parliament extended to authorize the enactment of these provisions; but it was said that the powers reserved to the States by sec. 107 of the *Constitution* extended to direct taxation, that the imposition of stamp duty upon receipts given on the payment of money is an ordinary form of direct taxation, that a federal officer giving such a receipt for his salary is in no different position from any other recipient of money from a debtor in the State, and that the provisions of the Constitution as to the exclusive authority of the Commonwealth Parliament ought to be read subject to this power of the States, whether regarded as a power expressly reserved, or as one impliedly reserved from the nature and necessity of the case.

In considering the respective powers of the Commonwealth and of the States it is essential to bear in mind that each is, within the ambit of its authority, a sovereign State, subject only to the restrictions imposed by the Imperial connection and to the provisions of the Constitution, either expressed or

necessarily implied. That this is so as regards the Commonwealth, apart altogether from the express provisions of the Constitution, appears too plain to need elaborate argument. It is only necessary to mention the maxim, *quando lex aliquid concedit, concedere videtur et illud sine quo res ipsa valere non potest*. In other words, where any power or control is expressly granted, there is included in the grant, to the full extent of the capacity of the grantor, and without special mention, every power and every control the denial of which would render the grant itself ineffective. This is, in truth, not a doctrine of any special system of law, but a statement of a necessary rule of construction of all grants of power, whether by unwritten constitution, formal written instrument, or other delegation of authority, and applies from the necessity of the case, to all to whom is committed the exercise of powers of government.

And, without recourse to this doctrine of universal application, the express terms of the Constitution lead to the same conclusion. The words of sec. 51, "The Parliament shall subject to this Constitution have power to make laws for the peace order and good government of the Commonwealth with respect to" the several matters enumerated, are not used for the first time in that instrument. The same, or almost exactly similar, words were used in the Constitutions of the Australian and Canadian Colonies, and it has always been held that under the authority conferred by them the colonial legislatures had within the territory subject to their jurisdiction sovereign authority, absolute and uncontrolled except so far as it was restricted by the Constitution itself. See *Powell v. Apollo Candle Co.*, (1885) 10 App. Cas., 282. Now, when a particular form of legislative enactment which has received authoritative interpretation, whether by judicial decision or by a long course of practice, is adopted in the framing of a later Statute, it is a sound rule of construction to hold that the words so adopted were intended by the legislature to bear the meaning which has been so put upon them. This consideration alone is sufficient to show that the Commonwealth has, with respect to all matters enumerated in the Constitution as within the ambit of its authority, sovereign power, subject only to the limitations already mentioned. But a right of sovereignty subject to extrinsic control is a contradiction in terms. It must, therefore, be taken to be of the essence of the Constitution that the Commonwealth is entitled, within the ambit of its authority, to exercise its legislative and executive powers in absolute freedom, and without any interference or control whatever except that prescribed by the Constitution itself. There is, however, a large class of cases with respect to which a similar power is for a time reserved to the States. With respect to these matters there is, consequently, a possibility of conflicting legislation. This contingency is dealt with by sec. 109 of the *Constitution*, which provides that when a law of a State is inconsistent with a law of the Commonwealth the latter shall prevail, and the former shall to the extent of the inconsistency be invalid. This sentence may be thus expanded, supplying the *verba subaudita*: "When a law of a State otherwise within its competency is inconsistent with a law of the Commonwealth on the same subject, such subject being also within the legislative competency of the Commonwealth, the latter shall prevail." With respect, however, to matters within the exclusive competence of the Federal Parliament no question of conflict can arise, inasmuch as from the point at which the quality of exclusiveness attaches to the federal power the competency of the State is altogether extinguished. It follows that when a State attempts to give to its legislative or executive authority an operation which, if valid, would fetter, control, or interfere with, the free exercise of the legislative or executive power of the Commonwealth, the attempt, unless expressly authorized by the Constitution, is to that extent invalid and inoperative. And this appears to be the true test to be applied in determining the validity of State laws and their applicability to federal transactions.

We have had the benefit of considering numerous decisions of the Supreme Court of the United States of America upon analogous questions arising under the *United States Constitution*, beginning with the celebrated case of *McCulloch v. Maryland* (4 Wheat., 316), decided in 1819, in which

Chief Justice *Marshall*, delivering the unanimous judgment of the Court, enunciated the doctrines which have ever since been accepted as establishing upon a firm basis the fundamental rules governing the mutual relations of that great Republic and its constituent States. The Attorney-General for Tasmania did not, indeed, suggest that that case was not good law in the United States, but he endeavoured to distinguish the provisions of the *United States Constitution* from those of the Constitution of this Commonwealth by referring to secs. 107, 108, and 109 of the *Constitution*. He was not, however, able to point out any material difference between the provisions of those sections and the provisions of the Tenth Amendment of the *United States Constitution*. And we are equally unable to discover any such difference. Some cases were cited to us in which it has been suggested that decisions upon the construction of the *United States Constitution* afford no guidance in the construction of other Federal Constitutions, such as that of the Canadian Dominion and that of this Commonwealth. In the case of *Bank of Toronto v. Lambe* (12 A.C., 575) in which the case of *McCulloch v. Maryland* had been cited before the Judicial Committee of the Privy Council, the committee, so far from depreciating the authority of that case, intimated their willingness to follow the guidance of the great American Chief Justice in a similar case, but pointed out that the principles laid down in *McCulloch v. Maryland* threw no light on the question then before them, which was whether a particular form of taxation fell within the express words of the Dominion Constitution, by which the exclusive power to impose direct taxation was conferred upon the provincial legislatures. It is not easy, indeed, to discover the purpose for which *McCulloch v. Maryland* was there cited. We are not, of course, bound by the decisions of the Supreme Court of the United States. But we all think that it would need some courage for any Judge at the present day to decline to accept the interpretation placed upon the *United States Constitution* by so great a Judge so long ago as 1819, and followed up to the present day by the succession of great jurists who have since adorned the Bench of the Supreme Court at Washington. So far, therefore, as the *United States Constitution* and the Constitution of the Commonwealth are similar, the construction put upon the former by the Supreme Court of the United States may well be regarded by us in construing the Constitution of the Commonwealth, not as an infallible guide, but as a most welcome aid and assistance.

There is, indeed, another consideration which gives additional weight to the authority of the United States decisions with regard to matters in which the two Constitutions are similar. We have already, in discussing the language of sec. 51 of the *Constitution*, referred to the inference to be drawn from the fact that a legislature has deliberately adopted in its legislation a form of words which has already received authoritative interpretation. We cannot disregard the fact that the Constitution of the Commonwealth was framed by a Convention of Representatives from the several colonies. We think that, sitting here, we are entitled to assume—what, after all, is a fact of public notoriety—that some, if not all, of the framers of that Constitution were familiar, not only with the *Constitution of the United States*, but with that of the Canadian Dominion and those of the British colonies. When, therefore, under these circumstances, we find embodied in the Constitution provisions undistinguishable in substance, though varied in form, from provisions of the *Constitution of the United States* which had long since been judicially interpreted by the Supreme Court of that Republic, it is not an unreasonable inference that its framers intended that like provisions should receive like interpretation.

We should be prepared, therefore, if it were necessary, and if we found ourselves unable otherwise to come to a clear conclusion, to accept the doctrines laid down in the judgment of the Supreme Court of the United States, delivered by *Marshall*, C.J., in *McCulloch's Case*, in 1819 (and since that time often spoken of by that Court as axiomatic), as applicable to the interpretation of the Constitution of the Commonwealth. "The people of a State give to their government a right of taxing themselves and their property, and, as the exigencies of government cannot be limited, they

prescribe no limits to the exercise of this right, resting confidently on the interest of the legislator, and on the influence of the constituents over their representative, to guard them against its abuse. But the means employed by the government of the Union have no such security, nor is the right of a State to tax them sustained by the same theory. Those means are not given by the people of a particular State, not given by the constituents of the legislature, which claims the right to tax them, but by the people of all the States. They are given by all, for the benefit of all; and, upon theory, should be subjected to that government only which belongs to all. It may be objected to this definition, that the power of taxation is not confined to the people and property of a State. It may be exercised upon every object brought within its jurisdiction. This is true. But to what source do we trace this right? It is obvious, that it is an incident of sovereignty, and is co-extensive with that to which it is an incident. All subjects over which the sovereign power of a State extends, are objects of taxation; but those over which it does not extend, are, upon the soundest principles, exempt from taxation. This proposition may almost be pronounced self-evident. The sovereignty of a State extends to everything which exists by its own authority, or is introduced by its permission; but does it extend to those means which are employed by Congress to carry into execution power conferred on that body by the people of the United States? We think it demonstrable that it does not. Those powers are not given to the people of a single State. They are given by the people of the United States, to a government whose laws, made in pursuance of the Constitution, are declared to be supreme. Consequently, the people of a single State cannot confer a sovereignty which will extend over them. If we measure the power of taxation residing in a State, by the extent of sovereignty which the people of a single State possess, and can confer on its government, we have an intelligible standard applicable to every case to which the power may be applied. We have a principle which leaves the power of taxing the people and property of a State unimpaired; which leaves to a State the command of all its resources, and which places beyond its reach all those powers which are conferred by the people of the United States on the government of the Union, and all those means which are given for the purpose of carrying those powers into execution. We have a principle which is safe for the States, and safe for the Union. We are relieved, as we ought to be, from clashing sovereignty; from interfering powers; from a repugnancy between a right in one government to pull down what there is an acknowledged right in another to build up; from the incompatibility of a right in one government to destroy what there is a right in another to preserve. We are not driven to the perplexing inquiry, so unfit for the judicial department, what degree of taxation is the legitimate use, and what degree may amount to the abuse of the power. The attempt to use it on the means employed by the government of the Union, in pursuance of the Constitution, is itself an abuse, because it is the usurpation of a power which the people of a single State cannot give. We find, then, on just theory, a total failure of this original right to tax the means employed by the government of the Union, for the execution of its powers. The right never existed, and the question whether it has been surrendered, cannot arise. But, waiving this theory for the present, let us resume the inquiry, whether this power can be exercised by the respective States, consistently with a fair construction of the Constitution? That the power to tax involves the power to destroy; that the power to destroy may defeat and render useless the power to create; that there is a plain repugnance, in conferring on one government a power to control the constitutional measures of another, which other, with respect to those very measures, is declared to be supreme over that which exerts the control, are propositions not to be denied. But all inconsistencies are to be reconciled by the magic of the word confidence. Taxation, it is said, does not necessarily and unavoidably destroy. To carry it to the excess of destruction would be an abuse, to presume which would banish that confidence which is essential to all government. But is this a case of confidence? Would the people of any one State trust those of another with a power to control the most insignificant operations of their state government? We know they would not. Why, then, should we suppose that the people of any one State should be

willing to trust those of another with a power to control the operations of a government to which they have confided their most important and most valuable interests? In the legislature of the Union alone are all represented. The legislature of the Union alone, therefore, can be trusted by the people with the power of controlling measures which concern all, in the confidence that it will not be abused. This then, is not a case of confidence, and we must consider it as it really is. If we apply the principle for which the State of Maryland contends to the Constitution generally, we shall find it capable of changing totally the character of that instrument. We shall find it capable of arresting all the measures of the government, and of prostrating it at the foot of the States. The American people have declared their Constitution, and the laws made in pursuance thereof, to be supreme; but this principle would transfer the supremacy, in fact, to the States. If the States may tax one instrument, employed by the government in the execution of its powers, they may tax any and every other instrument. They may tax the mail; they may tax the mint; they may tax patent rights; they may tax the papers of the customs house; they may tax judicial process; they may tax all the means employed by the government, to an excess which would defeat all the ends of government. This was not intended by the American people. They did not design to make their government dependent on the States."

The learned judges who formed the majority of the Supreme Court seem to have been under the impression that the doctrine of *McCulloch's Case* had been considerably modified by later decisions. This is, however, a misapprehension. Although questions have arisen in some cases whether the facts brought the particular case within the doctrine (see *Bank v. Mayor*, 7 Wall., 16, 25), neither the authority of the judgment nor the accuracy of the statement of the law contained in it has ever been questioned in the United States, nor have the doctrines enunciated in it ever been qualified. It is true that in *Osborn v. Bank of the United States* (9 Wheat., 738), decided five years later, the Court was asked to reconsider its opinion in the case of *McCulloch v. Maryland*. But the reconsideration asked for, and granted, extended only to the question whether the Bank of the United States was an instrumentality or agency of the Republic in such a sense as to render the taxation of its notes by a State an invasion of the sphere of the national government. So far from combating the doctrine that federal instrumentalities are not subject to State control, the counsel for the State conceded that "the States cannot tax the offices, establishments, and operations of the National Government" (9 Wheat., 765, 766), and so fully granted the position as to state it in terms which seem to us to apply strikingly to the present case. He said—"A State is invested with constitutional power to levy a tax upon stamps, and may extend its operations to all dealings of individuals. It cannot subject the transactions of the National Government to the payment of such tax, because the operations of that Government are national, and not subject to the power of any of its parts." (*Ib.*, 777).

We are fortified in our conclusion by the fact that the doctrines laid down in *McCulloch's Case* have been adopted and followed in the interpretation of the Constitution of the Dominion of Canada by the Courts of the Provinces of Ontario and New Brunswick since the year 1878, and that their decisions, though uniformly adverse to the Provincial Governments, have not been made the subject of appeal either to the Judicial Committee or to the Supreme Court of Canada; (see *Leprohon v. Ottawa*, 2 Ontario App. Cas., 522, and the other cases cited by the Attorney-General for the Commonwealth). In no American or Canadian case that we can find has it been denied or even doubted "that the Constitution and the laws made in pursuance thereof are supreme; that they control the constitutions and laws of the respective States, and are not controlled by them." Nor has it been in any way questioned, "1st, that a power to create implies a power to preserve; 2nd, that a power to destroy, if wielded by a different hand, is hostile to, and incompatible with, these powers to create and to preserve; 3rd, that, where this repugnancy exists, that authority which is supreme

must control, not yield to, that over which it is supreme." (*Marshall*, C.J., 4 Wheat., at p. 426.) These declarations, which are so obvious as to be almost truisms, have found clear expression in the *Constitution Act* itself, which, in its fifth section, commands that "This Act and all the laws made by the Parliament under the Constitution, shall be binding on the Courts, Judges, and people of every State and of every part of the Commonwealth, notwithstanding anything in the laws of any State."

It has been suggested, although the point was not pressed by the Attorney-General for Tasmania, that the doctrines enunciated in *McCulloch's Case* are not applicable to the Commonwealth by reason of the power of veto reserved to the Crown by the Constitution. It is, however, the duty of the Court, and not of the Executive Government, to determine the validity of an attempted exercise of legislative power. The assent of the Crown cannot, nor can the non-exercise of the power of veto, give effect to an invalid law. And it would be to impose an entirely novel duty upon the Crown's advisers if they were to be required, before advising whether the power of veto should be exercised, to consider the validity under the Constitution of the provisions of each Act presented for the Royal Assent. That, as already said, is the function of the judiciary. And, even if such a duty were cast upon the Executive Government, it could neither relieve the judiciary of their duty of interpretation nor affect the principles to be applied in that interpretation.

It is convenient at this point to advert to another misapprehension into which the learned Judges who formed the majority of the Court seem to have been led. They appear to have thought that, accepting the doctrines of *McCulloch v. Maryland* as sound law, it is a question in each case whether the attempted exercise of State authority actually impedes the operations of the Federal Government—in other words, that the interference must, in its extent, be such as to cause some actual obstruction or hindrance. Were this the true point of view, the validity of a State law would depend on a question of fact, to be determined, presumably, by a jury, who would be charged to inquire whether the attempted control or interference amounted to a substantial obstruction. It is, however, manifest that the extent of an interference is quite a different thing from the existence of interference in fact. A man's enjoyment of a large estate is not appreciably diminished by the occasional passage of a stranger across an unfrequented part of it. But if the stranger passes under a claim of right there is a substantial interference with the owner's right of property. So the power claimed for the State of Tasmania is, in its nature, in conflict with the exclusive power of legislation given to the Commonwealth over its own Departments, and the greater or lesser extent to which it may be exercised does not enter into the inquiry concerning its existence.

Applying then the test already enunciated, does the Tasmanian *Stamp Act*, assuming it to be applicable to the case, interfere with or exercise control upon the action of a federal officer in the discharge of his duty to the Commonwealth? The Federal *Audit Act* requires him for the purposes of a federal department to give a receipt for his pay, which receipt is to be preserved as a record of the department. The *Stamp Act* says in effect—"If you perform that duty without at the same time contributing to the State revenue, you will be liable to a fine, and in default of payment to imprisonment." How can it be said that this is not an attempt to exercise control? The attaching by a State law of any condition to the discharge of a federal duty is assuredly an act of interference or control. Moreover, any State enactment which on the face of it attempts to deal with a matter within the exclusive legislative power of the Commonwealth, and upon which the Commonwealth has legislated, is necessarily, so far as it purports to apply to that matter, inconsistent with the law of the Commonwealth.

Before passing from this branch of the subject the case of *Bank v. Mayor* (7 Wall., 16) (1868), already referred to, may be mentioned, in which it was pointed out, in a passage which commends

itself to our judgment, that taxation of any subject matter necessarily implies control; and also the case of *Crandall v. Nevada* (6 Wall., 35), in which it is shown by very cogent argument that the question in such cases is not the extent to which a tax interferes with or controls freedom of action, but whether there is any power to tax. If the power exists, no Court can inquire into the propriety of its exercise. In several of the American cases cited to us this doctrine has been elaborated, and it has been shown—as is, indeed, almost self-evident—that a power to tax, whether it is exercised to the extent of one penny or 10s. in the pound, is equally a power to tax; that, if conceded at all, it must exist in fullness; and that if exercised to its utmost limits it might operate to the destruction or practical prohibition of the thing or transaction in respect of which the tax is imposed. These considerations lead to the inevitable conclusion that the *Tasmanian Act* in question, if construed as applying to receipts given by a federal officer to the federal treasurer in the course of his federal duty, would be an interference with him in the exercise of that duty, and would therefore be invalid.

It is, however, in our opinion, a sound principle of construction that Acts of a sovereign legislature, and indeed of subordinate legislatures, such as a municipal authority, should, if possible, receive such an interpretation as will make them operative and not inoperative. And this leads us to the other aspect in which the case was presented to the Court. Ought the *Tasmanian Act* to be construed as applying in its terms to the transactions in question?

It is true that the general words used in the Act are wide enough to include a receipt given by a federal officer to a federal department for his salary. But it is a settled rule in the interpretation of Statutes that general words will be taken to have been used in the wider or in the more restricted sense according to the general scope and object of the enactment (*Hardcastle*, 193-4). For instance, it will be taken that general words are not to be applied extra-territorially. It will also be presumed that Parliament did not intend to interfere with international usage, and therefore, unless express words are used, an English Statute will not be held applicable to a foreigner residing out of England. As *Cotton*, L.J., says, interpreting the word "debtor" in the *English Bankruptcy Act of 1869*, "we must not give to general words an interpretation which would violate the principles of law admitted and recognised in all countries" (*Ex parte Blain*, 12 Ch. D., p. 533). Most federal officers in discharging their duties must of necessity live within some one of the several States, and in most cases they are citizens of those States, having all the privileges of citizenship. Most State laws will probably bind them in the same way as other citizens; but to apply the general words of a State law to a federal officer, where the application of the law would be an infringement of the Constitution, seems to us a violation of the principle of construction so clearly stated by Lord Justice *Cotton*. In our judgment the operations of the Commonwealth, and the acts of its agents as such, ought, so far as regards State control, to be considered on the same footing as if they did not occur within the territorial limits of any State. The State law in question was passed after the Federal Postal Act had become law, and we should not, we think, be justified in assuming that the Tasmanian Parliament intended the general words of their enactment to have an application which would conflict with the Constitution of the Commonwealth. In our view, therefore, the Tasmanian Statute under consideration should be construed as not applying to a receipt given by a federal officer under the circumstances of this case. For these reasons we think that the decision appealed from was erroneous, and that the appeal should be allowed. The respondent must pay the costs of the appellant in the Supreme Court and the costs of the appeal.

Appeal allowed with costs; conviction quashed with costs.

Solicitor, for appellant, Allport.

Solicitor, for respondent, State Crown Solicitor.

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