HIGH COURT OF AUSTRALIA

Chia Gee

Vs.

Martin

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

20th October 1905

Griffith C.J.

A number of objections have been taken to the convictions in this case, all of which are unsubstantial. To some of them it is not necessary to refer. The first point made by Mr. Le Mesurier was that the *Immigration Restriction Act 1901* was unconstitutional, because its provisions were contrary to the provisions of *Magna Charta*, and the Statutes which had since confirmed it, and also inconsistent with certain treaties. The contention that a law of the Commonwealth is invalid because it is not in conformity with *Magna Charta* is not one for serious refutation. As to the objection that the provisions of the Act are invalid as being in conflict with treaties, it is sufficient to say that some day perhaps that question may be raised for decision, but it is not raised now. There is no treaty in existence which is relevant to the present case, and therefore it is not necessary to say anything about that argument. A point *primâ facie* of more validity was that these men had previously been convicted of the same offence, and that the convictions had been quashed. It appears that the convictions were quashed on the ground that the test had not then been applied to them, that is to say, that they had never been informed in a language which they could understand of what they were required to do. The test whether a previous conviction is a bar to a further prosecution is whether the evidence necessary to support the second prosecution would have been sufficient to procure a legal conviction on the first. In this case the appellants were charged with being prohibited immigrants within the meaning of sec. 7 of the *Immigration Restriction Act 1901*, found within the Commonwealth on 2nd June. The previous charge was of being prohibited immigrants found within the Commonwealth on 13th January. Of course, it is obvious that the evidence required to show that they were prohibited immigrants found within the Commonwealth on 2nd June could not have been sufficient to procure a legal conviction on a charge of being within the Commonwealth on 13th January. It was then suggested that the immigrant was entitled to select the European language from which he was to write fifty words from dictation. The words of the Act are: "Any person who ... fails to write out at dictation and sign ... a passage of fifty words in length in an European language directed by the officer." From that it is plain that it is for the officer, and not for the immigrant, to select the passage. The last point taken, and taken before us for the first time, is that the men did not come here voluntarily, but that they were brought here in the custody of the law, and had only been discharged from the custody of the law when they were arrested. The facts are that the men came as stowaways on a ship trading between the terminal ports of Singapore and Fremantle, and came in the ship to the end of her voyage. There was, therefore, obviously, evidence that they did not come to the Commonwealth merely intending to enter its territory as members of a crew of a ship coming here and going away again in the ordinary course of their business. When they were found in the Commonwealth on 2nd June, after the previous convictions had been quashed, they were here in pursuance of their original intention. They had entered the Commonwealth voluntarily, they were

found here, and they failed to comply with the test. They therefore brought themselves clearly within the terms of sec. 5, sub-sec. (2) of the Act. All the ingredients of the offence are clearly proved. It was suggested that the term "immigrant" in this Act means a person "who arrives in the Commonwealth with the intention of becoming a permanent resident." The word may have that meaning in some contexts. When you are contrasting immigrants with members of a crew, that may be a convenient distinction to take, but the purpose of this Act is clearly to prevent entry into the Commonwealth; the test is one to be applied on entry, and the question whether a man is an immigrant must be a matter capable of being determined then and there. It would be reducing the Act to a nullity if it were held that the test of whether a man were an immigrant or not was to be some intention in his mind, which intention the Commonwealth authorities might have no means of discovering. If there could be any doubt on the subject, it is removed by the words of sec. 5, sub-sec. (2), which speak of an immigrant, "at any time within one year after he has entered the Commonwealth." The term "immigrant" is clearly satisfied by the act of coming into the Commonwealth. The case of the crew of a ship is excepted by sec. 3, sub-sec. (k).

Barton J.

I concur.

O'Connor J.

I concur.

Appeals dismissed with costs.

Solicitor, for appellants, Le Mesurier.

Solicitor, for respondent, Crown Solicitor.

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