

19/76

HIGH COURT OF AUSTRALIA

WALKER v DUNCAN

Barwick CJ, McTiernan, Gibbs, Mason and Murphy JJ

10 June 1975 — (1975) 6 ALR 254; (1975) 49 ALJR 231

EXTRADITION – DISCRETION RESERVED TO MAGISTRATE – MATTERS RELEVANT TO THE EXERCISE OF – LIMITS OF SUCH DISCRETION: *SERVICE AND EXECUTION OF PROCESS ACT 1901-1973 (COM)*, S18(6).

HELD: Per Barwick CJ, McTiernan, Gibbs and Mason JJ, (Murphy J dissenting):

The absence of an offence in the law of the extraditing State identical to or similar to the offence with which the accused was charged was not a matter which could form any part of the exercise of the discretion reserved to a magistrate by s18(6) of the *Service and Execution of Process Act 1901-1973 (Com)* because that sub-section limited the discretion. The Application should be refused.

Application for special leave to appeal. This was an application by W. for special leave to appeal to the High Court.

BARWICK CJ: In my opinion, special leave should be refused in this case because, in my opinion, there is no doubt as to the correctness of the judgment of Taylor J on the one point of principle which has been raised and, indeed, the only point which has been argued before us by the applicant.

The absence in the law of New South Wales of an offence identical with or comparable to the offence with which the applicant is charged was not a matter which could form the basis or any part of the exercise of the discretion reserved to a magistrate by s18(6) of the *Service and Execution of Process Act 1901-1973 (Com)*. That subsection sets the limit of that discretion.

In my opinion, Taylor J was correct in the view he expressed as to the relevant operation of the *Service and Execution of Process Act*. I would dismiss the application.