

[HIGH COURT OF AUSTRALIA.]

THE AMALGAMATED SOCIETY OF } ENGINEERS }	APPLICANTS;
AND	
THE AUSTRALASIAN INSTITUTE OF } MARINE ENGINEERS }	RESPONDENTS.

H. C. OF A. "Industry," meaning of—Shipping "industry"—Marine engineers—Registration
 1909. —Commonwealth Conciliation and Arbitration Act 1904 (No. 13 of 1904),
 secs. 4, 55 (1).

MELBOURNE,
 June 18.

Griffith C.J.,
 O'Connor,
 Isaacs and
 Higgins JJ.

The shipping industry is an "industry" within the meaning of sec. 55 (1) of the *Commonwealth Conciliation and Arbitration Act 1904*.

An association of marine engineers may properly be registered under that section as an organization in connection with the shipping industry.

CASE stated by the President of the Commonwealth Court of Conciliation and Arbitration.

On an application by the Amalgamated Society of Engineers to the Commonwealth Court of Conciliation and Arbitration for the cancellation of the registration of the Australasian Institute of Marine Engineers as an organization of employes, the President stated the following case for the opinion of the High Court :—

"The abovenamed Institute was registered on 20th June 1906 as an organization of employes in 'connection with the shipping industry.' The abovenamed Society had been registered in 1905 as an organization of employes in connection with the engineering industry.

"The Society applied to the Registrar on 4th May 1909 for the cancellation of the registration of the Institute, and the Registrar

refused. The Society thereupon made an application to this Court under sec. 60 (3) of the *Commonwealth Conciliation and Arbitration Act* 1904. The application is based on numerous grounds; and I have decided against the application on all the grounds except such grounds as involve the questions hereinafter set forth—questions arising in the proceedings which, in my opinion, are questions of law. If and so far as the matter rests in my discretion, I exercise my discretion against the applicants on the excepted grounds also.”

(The case then incorporated the rules of the Institute and of the Society, and *Statutory Rules* 1905, Nos. 23 and 70.)

“The questions are :—

“1. Is the ‘shipping industry’ an industry within the meaning of sec. 55 (1) (b) of the Act?

“2. If so, is the Institute properly registered as an association in or in connection with the shipping industry?

“3. If the answer is in the negative to either of the questions 1 and 2, is it the duty of this Court to order that the registration of the Institute be cancelled?”

McArthur, for the applicants. With regard to employes, shipping is not an industry within the meaning of sec. 55 (1) (b) of the *Commonwealth Conciliation and Arbitration Act* 1904. In the definition of “industry” in sec. 4 the words “business, trade, manufacture, undertaking” refer to employers and “calling, service, or employment” refer to employes. Men whose callings, services or employments are of many different kinds may be employed in connection with shipping, but shipping cannot be said to be the “industry” of all of them. The industry in connection with which marine engineers are employed is not shipping but engineering. Shipping cannot be said to be the “calling, service or employment” of marine engineers.

[He also referred to the *Commonwealth Conciliation and Arbitration Act* 1904, secs. 2 (vi.), 58, 59, Schedule B.; *Statutory Rules* 1905, No. 23, r. 4; *Jumbunna Coal Mine, No Liability v. Victorian Coal Miners’ Association* (1).

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H. C. OF A. *Arthur*, for the respondents, was not called on.
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TUTE OF
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Griffith C.J.

GRIFFITH C.J. The first question submitted to the Court for its opinion is whether the shipping industry is an industry within the meaning of sec. 55 (1) of the Act. That sub-section prescribes what associations may be registered, and sub-sec. (1) (b) is:—
“Any association of not less than one hundred employés in or in connection with any industry.” The word “industry” is defined in sec. 4 as meaning “business, trade, manufacture, undertaking, calling, service, or employment, on land or water, in which persons are employed for pay, hire, advantage, or reward” with certain exceptions. I do not see how it is possible to say that the shipping industry is not an industry within the meaning of those words. I do not understand the argument. It is not a case of the division of industries into watertight compartments, A., B., C., D., so that, if you do not name the exact compartment into which the association should be put, the registration will be bad. The object of the Act is to enable persons connected with industries to be registered.

A subsidiary question is whether the Institute is properly registered as an association in or in connection with the shipping industry. I think the occupation or calling of marine engineers is a calling carried on in connection with the shipping industry. I should call that a more accurate way of describing the occupation than to say that it is carried on in connection with the engineering industry, because engineering connotes many different kinds of occupations, engine drivers, electrical engineers, engineers in saw mills, marine engineers and all sorts of other engineers. So that, if it is a question of accuracy, I should say that the term used is more accurate than any other description. These are the only questions, and they will both be answered in the affirmative.

O'CONNOR J. I am of the same opinion.

ISAACS J. I agree.

HIGGINS J. I agree.

Questions answered accordingly. The applicant Society to pay the costs of the reference.

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AMALGAM-
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Solicitors, for the applicants, *Barrow & Pearcey*.

Solicitor, for the respondents, *J. Woolf*.

B. L.

[HIGH COURT OF AUSTRALIA.]

DANIEL CAPEL APPELLANT;
PLAINTIFF,

AND

JAMES LESLIE WILLIAMS,
NOMINAL DEFENDANT,

AND

FRANCIS WILLIAM MICHELL AND
ANOTHER
DEFENDANTS,

RESPONDENTS.

ON APPEAL FROM THE SUPREME COURT OF
NEW SOUTH WALES.

*Volunteer Land Orders—Grant of Crown lands—Volunteer Force Regula-
tion Act 1867 (31 Vict. No. 5), sec. 44—Lands open to conditional sale—
Areas set apart for holdings—Crown Lands Act 1884 (48 Vict. No. 18), secs.
21, 22, 24, 26—Crown Lands Act 1889 (53 Vict. No. 21), sec. 18—Crown Lands
Act Amendment Act 1903 (No. 15 of 1903), sec. 29—Crown Lands Act Amend-
ment Act 1905 (No. 42 of 1905), sec. 4.*

H. C. OF A.
1909.

SYDNEY,
July 20, Aug.
2, 16.

Griffith C.J.
Barton and
O'Connor JJ.

By sec. 44 of the *Volunteer Force Regulation Act 1867* every volunteer not serving for pay after 5 years efficient service became entitled to a free grant of Crown land open to conditional sale under sec. 13 of the *Crown Lands Alienation Act 1861*, certificates of such service when registered being called Volunteer Land Orders. The *Crown Lands Act 1884* repealed the Act of 1861 and substituted other provisions as to conditional sale. Sec. 21 specified