powers of the Commonwealth, that is to say, such powers as may now be exercised without an amendment of the Constitution under the provisions of sec. 128, *is a question as to the limits inter se of the constitutional powers of the Commonwealth and those of any State or States, the question is one which ought to be determined by His Majesty in Council.*

Solicitors, for the plaintiffs, *Minter, Simpson & Co.*

Solicitor, for the defendants, *C. Powers*, Crown Solicitor for the Commonwealth.

B. L.

[HIGH COURT OF AUSTRALIA.]

PRENTICE . . . . . APPELLANT;
DEFENDANT,

AND

THE AMALGAMATED MINING EMPLOYÉS' ASSOCIATION OF VICTORIA AND TASMANIA . . . . . } RESPONDENTS.
COMPLAINANTS,

ON APPEAL FROM A COURT OF PETTY SESSIONS OF VICTORIA.

Practice—High Court—Appeal from inferior Court of State exercising federal jurisdiction—Procedure—Order to review—No appeal under State law—Rules of the High Court 1911, *Part II., Sec. IV., r.* 1—*Justices Act* 1904 (*No.* 1959) (*Vict.*), *sec.* 21—*Association registered as organization—Rules—Levies imposed on branches—Liability of members to association—Commonwealth Conciliation and Arbitration Act* 1904 (*No.* 139 *of* 1904), *sec.* 68.

H. C. OF A. 1912.

PRENTICE v. AMALGAMATED MINING EMPLOYES ASSOCIATION OF VICTORIA AND TASMANIA.

An appeal to the High Court from a decision of a Court of Petty Sessions of Victoria exercising federal jurisdiction in the case of a civil debt recoverable summarily when the sum involved does not exceed £5, may under the *Rules of the High Court*, Part II, Sec. IV., r. 1, be brought by way of order to review notwithstanding that by sec. 21 of the *Justices Act* 1904 (Vict.) in such a case the granting of an order to review is prohibited.

By the rules of a voluntary association which was registered as an organization under the *Commonwealth Conciliation and Arbitration Act* 1904, it was provided that the Executive Council might make levies upon the various branches of the Association, the amount of which should be in accordance with the number of financial members of the branches.

Held, that a member of a branch was not liable to the Association for any portion of a levy made on the branch, and, therefore, that the Association could not recover it from him under sec. 68 of the *Commonwealth Conciliation and Arbitration Act* 1904.

APPEAL from a Court of Petty Sessions of Victoria.

The Amalgamated Mining Employés' Association of Victoria and Tasmania was a voluntary association registered on 29th May 1909 as an organization under the *Commonwealth Conciliation and Arbitration Act* 1904, and was composed of several branches, of one of which, the Daylesford Branch, Josiah Prentice was at all material times a member. Rule 31 of the Rules of the Association provided that:—"In case the funds in hand are insufficient to meet the requirements of the Association, the Conference or Executive Council shall be empowered to make a levy upon the various Branches, the amount of which shall be in accordance with the number of financial members the Branch contains, and sufficient per member to meet requirements."

On 3rd October at a meeting of the Executive Council of the Association a resolution was passed that "a levy of five shillings for the first fortnight and two shillings for each succeeding fortnight during the currency of the strike be struck on every financial member of the Association." The strike referred to was a strike of miners at Mount Lyell, which was then in progress, and the levy was made to support the men who were on strike. Notice of the resolution was sent to each of the Branches. Prentice did not pay the levies, and the Association took proceedings by way of complaint in the Court of Petty Sessions at Daylesford to recover the amount of them from him, and the

complaint was heard by a police magistrate. It was contended on behalf of the Association that sec. 68 of the *Commonwealth Conciliation and Arbitration Act* 1904 authorized the recovery by the Association of levies made under Rule 31 from individual members. The defendant raised the following defences (*inter alia*):—That no levy was made on the defendant under the Rules; that the Association had no power to make the levies on the defendant and that they were therefore not recoverable; that, if any levy was made, it was not properly made; and that the making of levies to support a strike was illegal. The magistrate held that under sec. 68 the Association was entitled to recover from members levies made under Rule 31, and he therefore gave judgment for the Association for nine shillings with costs. The defendant now by way of order to review appealed to the High Court from that decision on the groumds:—

1. That the object of the levies sued for was unlawful.
2, That the said levies were unauthorized by law.
3. That the said levies were unauthorized by the Rules of the Association.
4. That the Association was not entitled to sue.

Starke, for the appellant.

J. R. Macfarlan, for the respondents, took preliminary objections. First, under sec. 21 of the *Justices Act* 1904 an order to review could not be granted by the Supreme Court in respect of this matter which involves a sum less than £5, and therefore an appeal cannot be brought to this Court by way of order to review under the *Rules of the High Court* 1911, Part II., Sec. IV., r. 1. That being so, the procedure appointed by Sec. III. should have been followed, and the appeal is then out of time. Secondly, the *jurat* to the affidavit on which the order *nisi* was granted does not state the place where the affidavit was sworn, and therefore the affidavit should not be received: *Rules of the High Court*, Part I.,Order XXXV., r. 6.

Starke. Under Order XXXV., r. 13, the Court may receive and use the affidavit notwithstanding the irregularity.

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GRIFFITH C.J.—There is nothing in either objection. As to the first, the right of appeal is given by the Constitution. Sec. IV. of the Appeal Rules provides that "Appeals to the High Court from decisions of inferior Courts of a State in the exercise of federal jurisdiction shall be brought in the same manner and within the same times and subject to the same conditions, if any, as to security or otherwise, as are respectively prescribed by the law of the State for bringing appeals from the same Courts to the Supreme Court of the State in like matters." That is all. It does not matter whether an appeal would lie to the Supreme Court or not. The rule relates to the procedure for bringing appeals before the High Court, and that depends upon the way in which that kind of appeal is brought in the particular State from the particular Court to the Supreme Court.

As to the objection to the affidavit, it is not worth speaking about. The Court may order the affidavit to be read notwithstanding the omission. There is no reason why the Court should not proceed to hear the appeal.

Starke. If the levy was made in support of a strike in relation to an inter-State dispute, the strike being unlawful under sec. 6 of the *Commonwealth Conciliation and Arbitration Act* 1904, the levy cannot be recovered under sec. 68. If the levy was made in support of a strike connected with an intra-State dispute, sec. 68 does not apply to it, for that section is limited by the power of the Commonwealth Parliament, which is to legislate as to inter-State disputes only. The Federal Parliament cannot authorize an organization to recover levies made solely to support an intra-State strike. [He referred to the *Acts Interpretation Act* 1904, sec. 4; *Conspiracy and Protection of Property Act* 1889 (Tas.)]. The Association had no power under their Rules to make a levy enforceable by them against the members of Branches. See Rule 31. When the levy was made no notice was given to the members of the Central Executive of the business to be dealt with at the meeting, and the levy is therefore invalid. [He referred to *Lindley on Companies*, 6th ed., vol. I., p. 425; *In re Bridport Old Brewery Co.* (1); *Imperial Bank of China*,

(1) L.R., 2 Ch., 191.

India and Japan v. *Bank of Hindustani, China and Japan* (1)].

J. R. Macfarlan. The prohibition of strikes in sec. 6 of the *Commonwealth Conciliation and Arbitration Act* 1904 is limited to strikes in connection with inter-State disputes, and on the evidence there was no inter-State dispute. There is nothing to prevent the Commonwealth Parliament authorizing an organization to recover levies made to support its members who are out of work owing to a strike which is not connected with an intra-State dispute. Rule 31 gives power to the Executive Council of the Association to make levies which are enforceable by it against the members. The Branches are only agents of the Association for collecting levies.

Starke, in reply.

GRIFFITH C.J. Some very serious questions have been raised in argument in this case, some of them questions of difficulty, which it is not necessary to decide. Indeed, it is never desirable to decide questions in which the construction of the Constitution, or the effect or validity of a Commonwealth Statute, is involved unless it is necessary to do so. But there is one point in the case which is very clear, and which disposes of it. The action was one brought by the respondents against the appellant to recover a sum of nine shillings alleged to be payable by him as a member of the respondent society as "dues." Supposing that all other difficulties were out of the way of the respondents, the appellant's answer is "I never entered into any agreement by which I became bound to pay anything to the respondents." The respondents are a voluntary association, which has the status of an organization under the *Commonwealth Conciliation and Arbitration Act.* That, however, does not alter the nature of the bargain between themselves and their members. By the bargain the appellant became liable to a Branch of the Association to pay levies or contributions to that Branch. The Branch in turn undertook liabilities to the respondents, but the appel-

(1) L.R., 6 Eq., 91.

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lant entered into no contract to pay to the respondents what he owed the Branch. That is a sufficient ground for allowing the appeal, and I see no reason why the respondents should not pay the costs.

BARTON J. I am of the same opinion, and have nothing to add.

ISAACS J. I agree. The section under which this proceeding was launched is sec. 68 of the *Commonwealth Conciliation and Arbitration Act*, which provides that:—"All fines fees levies or dues payable to an organization by any member thereof under its rules may, in so far as they are owing for any period of membership subsequent to the registration or proclamation of the organization, be sued for and recovered in the name of the organization in any Court of summary jurisdiction constituted by a Police, Stipendiary or Special Magistrate."

The question whether this levy was payable to the organization that sued by the member who was sued depends upon the construction of the Rules. They form the compact under which the appellant became and was a member of the organization. On the construction of those Rules it seems to me that the appellant did not undertake to pay this levy directly to the organization which is one specific body, but that he might have been made liable under those Rules to his particular Branch. Whether he was or was not so liable by reason of the executive levy and without further action by the Branch I do not say. But I am clear that the appellant was not a debtor of the organization directly under the agreement by which he was a member, that is, under the Rules as they stand. That disposes of the case.

Appeal allowed with costs. Complaint dismissed with costs.

Solicitors, for the appellant, *Maddock, Jamieson & Lonie.*

Solicitors, for the respondents, *Murphy & Murphy* for *Murphy & Connelly*, Bendigo.

B. L.