

[HIGH COURT OF AUSTRALIA.]

MONTGOMERY . . . . . APPELLANT;  
DEFENDANT,

AND

AUSTRALIAN MASTER HAIRDRESSERS' }  
AND WIGMAKERS' FEDERATION } RESPONDENTS.  
INFORMANTS,

ON APPEAL FROM A POLICE MAGISTRATE OF  
VICTORIA.

*Industrial Arbitration—Industrial agreement—Agreement between an organization and a branch in a State of an organization—Enforcement of agreement—Commonwealth Conciliation and Arbitration Act 1904-1911 (No. 13 of 1904—No. 6 of 1911), secs. 4, 73, 75, 76, 78.* H. C. OF A.  
1913.  
MELBOURNE,

March 19.  
Griffith C.J.,  
Barton,  
Isaacs and  
Gavan Duffy JJ.

An agreement was made between the Victorian branch of an association which was registered as an organization under the *Commonwealth Conciliation and Arbitration Act 1904-1911*, and another association which also was so registered, and the seal of the first-mentioned association was affixed to it. The agreement was filed and the Industrial Registrar certified that it was duly made and executed pursuant to the Act by and on behalf of the parties thereto.

*Held*, that as the agreement was not made between organizations nor between an organization and a person, it was not within secs. 73 and 75 of the Act, and therefore that a breach of it could not be punished in the manner prescribed by the Act.

APPEAL from a Police Magistrate of Victoria exercising federal jurisdiction.  
Before Harold Morrison, Esq., P.M., at Footscray, an information was heard whereby the Australian Master Hairdressers'



H. C. OF A. and Wigmakers' Federation charged that John Montgomery,  
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 MONT- is a party to an instrument made pursuant to the provisions of  
 GOMERY the *Commonwealth Conciliation and Arbitration Act* and made  
 v. between the said defendant and the informant organization, dated  
 AUSTRALIAN 15th March 1912, and duly filed with the Industrial Registrar of  
 MASTER the Commonwealth Court of Conciliation and Arbitration, did  
 HAIR- during the continuance of the said agreement and in violation  
 DRESSERS' of the said agreement carry on business as a hairdresser at the  
 AND WIG- hour of 3 p.m. on Saturday, 14th December 1912."  
 MAKERS' FEDERATION.

The agreement purported to be made between the "Victorian Branch of the Australian Hairdressers', Wigmakers' and Hairworkers' Employés' Federation being an organization of employés duly registered under the" *Commonwealth Conciliation and Arbitration Act*, of the one part, and the informant organization of the other part, and the common seal of "the Australian Hairdressers', Wigmakers' and Hairworkers' Employés' Federation" was affixed to it. It also appeared that the Industrial Registrar had certified that he was satisfied that such agreement "was duly made and executed pursuant to" the *Commonwealth Conciliation and Arbitration Act* "by and on behalf of the parties thereto."

The agreement consisted of a code for the regulation of the relations between members of the two associations which were parties to it, and included (*inter alia*) a provision that work on all Saturdays should cease at 2 p.m., and that any employer or employé violating any of the terms should be liable to a specified penalty.

The Police Magistrate having convicted the defendant, an order *nisi* was, on the application of the defendant, granted by *Higgins J.* to review the decision on the ground (*inter alia*) that the agreement was not a registrable agreement under the provisions of the *Commonwealth Conciliation and Arbitration Act*, inasmuch as it was not made between an organization and another organization or person, nor was it executed by the parties purporting to make it.

*Starke*, for the appellant. The agreement is not an industrial



agreement within the meaning of the *Commonwealth Conciliation and Arbitration Act* 1904-1911. A State branch of an organization is not an organization or a person within sec. 73. Neither the fact that the seal of the organization is affixed to the agreement, nor the fact that the Industrial Registrar has given a certificate under sec. 76, brings it within sec. 73.

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*Morley*, for the respondents, was called on as to this ground. The agreement was executed by the organization as agent for the branch, and will bind the members of the branch. The members of the branch have authorized the organization to execute the agreement. It is then an agreement between an organization and the aggregate of the individuals who are members of the branch, and they are "persons" within the meaning of sec. 73. The agreement is therefore an industrial agreement, and binds those persons who were members of the branch when it was executed.

GRIFFITH C.J. Several objections are taken on this appeal, with one of which only it is necessary to deal, that is, that the agreement which is sought to be enforced is not an agreement under the *Commonwealth Conciliation and Arbitration Act*, for a breach of which penal consequences may follow. Sec. 73 of the Act provides that "Any organization may make an industrial agreement with any other organization or with any person for the prevention and settlement of industrial disputes existing or future by conciliation and arbitration." The term "industrial agreement" is defined as "any industrial agreement made pursuant to this Act." Secs. 75 and 76 prescribe the manner in which industrial agreements are to be made and recorded, and the form which they are to take. Sec. 75 provides that the agreement is to be in writing, and for a specified term, and that "the names of all organizations and persons parties to the agreement shall be truly stated therein." It is clear, therefore, that, however sec. 73 be construed, and whether it is an exhaustive definition or not, the agreement must be made between organizations or between an organization and a person.

The agreement in this case is made between the Victorian



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Branch of the Australian Hairdressers', Wigmakers' and Hairworkers' Employés' Federation of the one part and the Australian Master Hairdressers' and Wigmakers' Federation of the other part. The latter is a registered organization, and is capable of entering into such an agreement, but the Victorian Branch of the Australian Hairdressers' &c. Employés Federation is not an organization; so that the agreement does not fall within the terms of the Act, however construed.

Griffith C.J.

It was suggested that the "Victorian Branch" might be considered as an informal way of describing the persons who are members of the branch. But that is practically forbidden by sec. 75, which provides that the names of all organizations and parties to the agreement shall be truly stated therein.

From no point of view can this be regarded as an agreement under the Act for a breach of which penal consequences may follow. I think, therefore, that the appeal should be allowed.

BARTON J. I entirely concur.

ISAACS J. I am of the same opinion.

GAVAN DUFFY J. I concur.

*Appeal allowed. Conviction quashed.*

Solicitors, for the appellant, *Secomb & Woodfull*.

Solicitors, for the respondents, *Croft & Rhoden*.

B. L.