

H. C. OF A.
1913.

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dictate terms and to force men into submission to the terms they dictate, or even if it interferes with contracts entered into before the dispute.

Counsel for the respondents contended that all industrial disturbances, irrespective of the cause of the dispute, cannot be settled by the Arbitration Court. That is true. The dispute must be about some matter that the employers and employés can settle between themselves. For instance, an industrial disturbance, however serious, to effect a political purpose—such as universal suffrage—or for any other political claims or for any other cause not in the control of the parties to a dispute (the employers and employés), cannot be settled by the Arbitration Court. Outside that, however, once the dispute is one between employers and employés, and amounts to an inter-State industrial dispute, and is one that can be settled between the employers and employés, I hold that it can be settled by the Arbitration Court even if common law rights of employers or employés are interfered with. The Court would otherwise be powerless to prevent or settle industrial disputes.

The power to settle matters in dispute, within the jurisdiction of the Court, that the parties could themselves settle, is referred to by my brother *Barton* in *Whybrow's Case* [No. 2] (1), where he said :—“ As I said in the *Australian Boot Trade Employés Federation v. Whybrow & Co.* (2), ‘The range . . . of an arbitrator's authority, if the submission be wide enough, is co-extensive with the powers of the parties to settle their disputes without him. Whatever they can lawfully agree to, he may lawfully award.’ ” In this case the dispute could have been settled by a lawful agreement.

Neither can I fall in with the view submitted during the argument that disputes on absurd grounds cannot be deemed to be industrial disputes within the Constitution. The more absurd the cause of the dispute, so long as the dispute is industrial and affects the industry, the greater the necessity to get it before a conciliator or arbitrator to decide it, and to prevent public loss and inconvenience through unreasonable employers' or unreasonable unionists' claims.

If there is any doubt about the dispute being within sec. 51 (pl. xxxv.) on the grounds I have referred to, I think, for the reasons

(1) 11 C.L.R., 1, at p. 37.

(2) 10 C.L.R., 266, at p. 294.

given by my brothers *Isaacs* and *Rich* in the judgment just delivered, that this is an industrial dispute, on the facts stated in the case, within the meaning of sec. 51 (pl. xxxv.) of the Constitution.

I hold that, on the facts of this case, for the reasons I have mentioned, and for the reasons given in the judgment delivered by my brother *Isaacs* as the judgment of my brother *Rich* and himself—with which reasons I agree—the dispute is an industrial dispute within the meaning of the Constitution, and of the *Commonwealth Conciliation and Arbitration Act*, and, therefore, that question 1 and the first part of question 3 should be answered in the affirmative.

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*Question 1 and the first part of question 3
answered in the affirmative.*

Solicitors, for the claimants, *Frank Brennan & Rundle*.

Solicitors, for the Brisbane Tramways Co. Ltd., *Blake & Riggall*,
for *Thynne & Macartney*, Brisbane.

Solicitors, for the Municipal Tramways Trust, Adelaide, *T. S.
O'Halloran*.

Solicitor, for the Commonwealth, *Gordon H. Castle*, Crown Solicitor
for the Commonwealth.

B. L.

[HIGH COURT OF AUSTRALIA.]

HOLT APPELLANT ;

AND

THE DEPUTY FEDERAL COMMISSIONER }
OF LAND TAX, NEW SOUTH WALES } RESPONDENT.

H. C. OF A. *Land tax—Assessment—“Legal tenant for life” under will of testator who died*
1914. *before 1st July 1910—Tenant for life not registered as proprietor—Gift to uses—*
Land Tax Assessment Act 1910-1911 (No. 22 of 1910-No. 12 of 1911), sec. 25
SYDNEY, *—Real Property Act 1900 (N.S. W.) (No. 25 of 1900), secs. 39, 41.*

April 15, 16.

Griffith C.J.,
Barton,
Isaacs and
Powers JJ.

By his will a testator who died before 1st July 1910 devised certain land to trustees to the use of his son for his life without impeachment of waste with remainder to the use of his eldest grandson, the appellant, for his life without impeachment of waste with remainders in tail male. The land was under the *Real Property Act 1900* (N.S.W.). The testator's son was dead, but the appellant had not procured himself to be registered as proprietor of the life estate given to him by the will.

Held, that the appellant was a “legal tenant for life” of the land within the meaning of the proviso to sec. 25 of the *Land Tax Assessment Act 1910-1911*.

The provisions of the *Real Property Act 1900* requiring registration of instruments and prohibiting them from passing an estate unless registered, do not apply to wills.

SPECIAL CASE for the opinion of the Court.

On the hearing of an appeal by Thomas Samuel Holt against an assessment of him for land tax as on 30th June 1911, *Rich J.* stated the following case for the opinion of the Full Court:—

“1. This is an appeal from an assessment of land tax for the financial year 1911-1912.

“2. By his will dated 6th March 1888, The Honourable Thomas Holt (hereinafter called the testator) devised *inter alia* certain

lands situate in the State of New South Wales and in the said will called his 'Sutherland Estate' (subject to the lease or leases thereof by him to the Holt-Sutherland Estate Land Co. Ltd.) in the words following, that is to say :—'To my Australian trustees and their heirs to the uses following that is to say To the use of my son Frederick Samuel Ellis Holt for his life without impeachment of waste with remainder to the use of Thomas Samuel Holt the eldest son of the said Frederick Samuel Ellis Holt for his life without impeachment of waste with remainder to the use of the first and every other son of the said Thomas Samuel Holt successively in remainder one after the other according to their respective seniorities in tail male.' And for the purposes of this case the whole of the said will is to be taken to be before this Court.

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"3. The said testator made a codicil to his said will, which said codicil is not material to the questions in issue in this appeal.

"4. The said testator died on 5th September 1888, and probate of the said will and codicil was on 30th January 1889 duly granted to two of the Australian executors named in the said will by the Supreme Court of New South Wales.

"5. The said lands were held by the testator in fee simple in accordance with the provisions of the *Real Property Act*, 26 Vict. No. 9, and the Acts amending the same (now the *Real Property Act* 1900), and the name of the testator still appears in the register book of lands held in accordance with the provisions of such Act as the registered proprietor of such lands.

"6. The appellant is the Thomas Samuel Holt mentioned in the said devise and is a resident of New South Wales.

"7. The said Frederick Samuel Ellis Holt survived the testator, and died on 7th February 1902 without having taken any steps to procure himself to be registered under the said Real Property Acts as the proprietor of a life or any estate in the said lands.

"8. The appellant has not been registered under the provisions of the said Real Property Acts as the proprietor of a life or any estate in the said lands.

"9. The appellant has been assessed for land tax in respect of the said lands as an equitable life tenant thereof.

"10. The appellant by notice of objection duly objected to the

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said assessment and by arrangement with the respondent it has been agreed that such notice of objection shall be treated as a notice of appeal in pursuance of the regulations in that behalf made under the said *Land Tax Assessment Act* 1910-1911.

“11. The appellant claims that he is entitled to be assessed as the legal tenant for life of the said lands in accordance with the provisions of sec. 25 of the said *Land Tax Assessment Act* 1910-1911.

“The questions for the Court are :—

“(1) Is the appellant entitled to be assessed for land tax as the legal tenant for life of the said lands ?

“(2) If not, upon what basis is the appellant to be assessed in respect of his said interest in the said lands ?”

Knox K.C. (with him *Harper*), for the appellant. The gift to the use of the appellant for life operates under the *Statute of Uses* as a gift to him of the legal estate for life. This is not affected by the fact that the will is not registered under the *Real Property Act* 1900 or that the appellant has not under that Act procured himself to be registered as proprietor. There is no provision of that Act whereby a will can be registered, and the provision in sec. 41 prohibiting an instrument from passing an estate unless registered does not apply to a will. Sec. 42 recognizes that there may be interests created by unregistered instruments.

Campbell K.C. (with him *Pike*), for the respondent. Where a person acquires land which is under the *Real Property Act* he takes it with the obligations imposed by the Act as well as with the benefits conferred by it. He therefore cannot acquire a legal estate except in the manner prescribed by the Act. If he takes the land under a will, he does not get a legal title to it until he takes out a transmission under sec. 93. He has no right to deal with the land unless he takes out a transmission, and the failure to take out a transmission would be fatal in an action for ejectment: *Little v. Dardier* (1). Unless an instrument is substantially in the form prescribed by the Act it cannot be registered,

(1) 12 N.S.W.L.R. (Eq.), 319.

and therefore under sec. 41 cannot pass any estate. A will cannot be in the form prescribed, and therefore cannot pass any estate. A "legal tenant for life" within sec. 25 of the *Land Tax Assessment Act* is the person on the register as the registered proprietor of the estate for life. The appellant is only the equitable tenant for life until he obtains a transmission. The Commissioner is not concerned to show who is the legal tenant for life. [He also referred to *Finucane v. Registrar of Titles* (1).]

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Knox K.C., in reply. A legal tenant for life is a tenant for life who takes his estate without the intervention of a trustee.

GRIFFITH C.J. The question in this case is whether the appellant is a legal tenant for life within the meaning of sec. 25 of the *Land Tax Assessment Act* 1910-1911. That section provides that the owner of any freehold estate less than the fee simple shall be deemed to be the owner of the fee simple, with a proviso that "for the purpose of the assessment of a legal tenant for life of land, without power to sell, under a settlement made before 1st July 1910, or under the will of a testator who died before that day," certain privileges shall be granted, and the assessment is to be on a lower basis. The appellant's title is under the will of a testator who died in 1888, by which the land in question was devised to the testator's "Australian trustees and their heirs to the uses following that is to say To the use of my son Frederick Samuel Ellis Holt for his life without impeachment of waste with remainder to the use of" the appellant for his life without impeachment of waste, with remainder in tail. The appellant's father, F. S. E. Holt, is dead. The land is under the Real Property Acts and the appellant has not procured himself to be registered as proprietor of the life estate given to him by the will, as he might have done. The will itself cannot be registered under the Acts, so that the provisions relating to registered instruments have no application.

The first question to be considered is what is the true nature of the rights of the appellant under the will. The language of the will is within the *Statute of Uses*. The effect of that Statute,

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if applicable, apart from the Real Property Acts, is to vest the legal estate in the land in the appellant for his life. The trustees were merely devisees to uses. The *Real Property Act* 1862 repealed all laws inconsistent with its provisions, and, so far as relates to conveyances or transfers of land which has been brought under the Act, the provisions of the *Statute of Uses* have no application. But the *Statute of Uses* also applied to wills, and there is nothing in the *Real Property Act* inconsistent with it so far as it prescribed a rule for the construction of wills. The effect is that the land was given directly to the appellant for life, and under the *Real Property Act* he is entitled to be registered as the proprietor of a life estate in the land.

The question is whether he is a legal tenant for life. The Commissioner has held that he is an equitable tenant. The real question is what is the meaning of the expression "legal tenant for life" as used in sec. 25 of the Act.

As the Act originally stood the word "legal" was not included, and the proviso enured for the benefit of all tenants for life, legal or equitable, and this Court so held in *Sendall v. Federal Commissioner of Land Tax* (1). Then the legislature amended the law by inserting the word "legal." In doing so what did they mean? The appellant is entitled to the land and is entitled also to be registered as the proprietor of an estate for life in it. No one else is entitled to be registered in respect of it as trustee or otherwise.

In my opinion the term "legal tenant for life" as used in the section imports a distinction between a legal and an equitable tenant for life. I accept Mr. *Knox's* definition of the term as meaning the person who holds his estate without the intervention of a trustee. That is the case of the appellant. There is no trustee, and there is no one else entitled to any estate or interest in the land. The appellant is certainly not an equitable tenant for life. In my opinion he is the legal tenant for life within the meaning of the section, and is entitled to the benefit of the proviso.

BARTON J. I am of the same opinion. I think that the matter is too clear to necessitate any further discussion by me.

(1) 12 C.L.R., 653.