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at the meeting at which the utterances were made or whether there were 1,000 or only a few people present there, because the real question is whether the utterances were of a kind which in themselves were calculated to prejudice the relations under consideration. We entertain no doubt that this is a case in which the rule *nisi* asked for must be refused.

Application dismissed.

Solicitor for the appellant, *A. C. Roberts.*

B. L.

[HIGH COURT OF AUSTRALIA.]

FLINT . . . . . APPELLANT;
DEFENDANT,

AND

BANNIGAN . . . . . RESPONDENT.
INFORMANT,

ON APPEAL FROM THE SUPREME COURT OF SOUTH AUSTRALIA.

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SYDNEY, *Dec.* 17.

Barton, Isaacs, Gavan Duffy and Rich JJ.

Employer and Employee—Wages—Conflicting determinations of wages boards—Industry board and craft board—Different rates of wages fixed—Offence—Factories Act 1907 (*S.A.*) (*No.* 945), *secs.* 78, 93, 123.

By sec. 78 of the *Factories Act* 1907 (S.A.) it is provided that "The Governor shall appoint wages boards for the following processes, trades, businesses, occupations, or callings:— . . . (*i*) Of drivers of trollies, wagons, drays, and carriers' vehicles: . . . (*v*) For any other process, trade, business, occupation, or calling in respect whereof both Houses of Parliament pass a resolution

approving such appointment." By sec. 93 a board so appointed is directed (*inter alia*) to "determine the lowest prices or rates of payment which may be paid: (*a*) To each class" of employees; "or (*b*) For any specified work." Sec. 123 (1) provides that "No employer engaged in a process, trade, business, occupation, or calling, . . . in respect whereof prices or rates have been fixed by a board shall, directly or indirectly, pay any employee therein at a lower price or rate than that so fixed, and applicable to such employee," and imposes a penalty for the infringement of the provision.

The Carriers and Drivers Board, which by virtue of sec. 79 of the Act was to be deemed to have been appointed under sec. 78 (*i*) for the process, trade, business, occupation or calling of drivers of trollies, wagons, drays and carriers' vehicles, on 23rd December 1915 fixed the minimum rate of wages of a driver of a one-horse vehicle at £2 10s. per week. This determination was on 28th September 1916, with regard to drivers employed by retail sellers of hardware. adopted by the Hardware Board, which was appointed under sec. 78 (*v*) for the process, trade, business, occupation or calling of retail sellers of hardware. On 9th November 1916 the determination of the Carriers and Drivers Board was suspended, and on 15th February a new determination was substituted fixing the minimum rate of wages to be paid to a driver of a one-horse vehicle at £2 16s. per week. The determination of the Hardware Board was not altered.

Held, that a retail seller of hardware who employed a driver of a one-horse vehicle was bound by the determination of the Carriers and Drivers Board, and might properly be convicted of an offence under sec. 123 if he only paid him the weekly wage fixed by the Hardware Board.

Special leave to appeal from the Supreme Court of South Australia refused.

APPLICATION for special leave to appeal.

On the information of John Bannigan, Chief Inspector of Factories for South Australia, before a Special Magistrate at Adelaide, Thomas Flint was charged under the *Factories Acts* 1907 to 1910 for that, being an employer engaged within the metropolitan district in the occupation of a driver of drays, he paid Harry A. Bradley, who was employed to work for him in such occupation in driving a one-horse dray, for the week ending 21st March 1917, at a lower price or rate than that determined by the Carriers and Drivers Board, viz., £2 10s. instead of £2 16s. Flint, having been convicted, appealed to the Industrial Court, and the President of that Court stated a special case from which the following facts appeared:—The Carriers and Drivers Board was appointed on 11th April 1907 pursuant to sec. 6 of the *Factories Act Amendment Act* 1906, and was continued by

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sec. 79 of the *Factories Act* 1907 to satisfy the provisions of sec. 78 of that Act, which required the Governor in Council to appoint a wages board for the process, trade, business, occupation or calling of drivers of trollies, wagons, drays and carriers' vehicles. The Hardware Board was appointed on 15th June 1916, pursuant to a resolution passed by both Houses of Parliament, under the authority of sec. 78 of the *Factories Act* 1907, approving of the appointment of a wages board for the process, trade, business, occupation or calling of retail sellers of hardware. On 23rd December 1915 the Carriers Board made a determination fixing the minimum rate of wages to be paid to the driver of a one-horse vehicle at £2 10s. per week. On 28th September 1916 the Hardware Board adopted this determination for drivers employed by retail sellers of hardware. On 9th November 1916 the determination of the Carriers and Drivers Board was suspended by the Governor, and on 15th February 1916 a new determination was substituted fixing the minimum rate of wages to be paid to the driver of a one-horse vehicle at £2 16s. per week. The determination of the Hardware Board was not altered. The question asked by the special case was whether the defendant was bound to pay to Bradley the minimum rate of wages fixed by the determination of the Carriers and Drivers Board.

The special case coming before the Full Court of the Supreme Court for hearing, they answered the question in the affirmative, being of opinion that, as the *Factories Act* 1907 expressly provided for the appointment of a board for the occupation or calling of drivers of trollies, &c., and at the same time provided for the appointment of boards for trades or businesses in which drivers of that description are commonly employed, the inference was that all such drivers, in whatever trade or business they might be employed, were to be subject to the jurisdiction of the board specifically appointed for their occupation or calling.

The defendant now applied to the High Court for special leave to appeal from that decision.

Cleland K.C., for the appellant. The award of an industry board should prevail over that of a craft board. The former, which in this

case is the Hardware Board, is the more special board, and their award should supersede that of the craft board, that is the Carriers and Drivers Board.

[ISAACS J. The awards are not inconsistent. The employer can obey both of them (*Australian Boot Trade Employees Federation* v. *Whybrow & Co.* (1)).]

PER CURIAM. We do not think that special leave to appeal should be granted in this case. We see no reason to differ from the conclusion at which the Supreme Court arrived. We do not discuss the reasons given for that decision.

Special leave to appeal refused.

Solicitor for the appellant, *J. M. Napier.*

B. L.

(1) 10 C.L.R., 266.