Cons Waterside Workers Fed of Australia v. Cth Steamship Owners Assoc (1920) 28 CLR 209

[HIGH COURT OF AUSTRALIA.]

THE FEDERATED GAS EMPLOYEES' INDUSTRIAL UNION . . . } CLAIMANT;

AND

THE METROPOLITAN GAS COMPANY LIMITED AND OTHERS . . . } RESPONDENTS.

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MELBOURNE, *May* 27, 28; *June* 11.

Barton, Isaacs, Higgins, Gavan Duffy, Powers and Rich JJ.

Industrial Arbitration—Industrial dispute—Award—Period fixed for continuation—New dispute as to subject matter of award—Minimum rate of wages—Jurisdiction of Commonwealth Court of Conciliation and Arbitration—Power to vary award—Parties to dispute—Persons not manual workers—Clerks—Commonwealth Conciliation and Arbitration Act 1904-1918 (*No.* 13 *of* 1904—*No.* 39 *of* 1918), *secs.* 4, 18, 19, 21AA, 23-25, 28, 29, 38, 38B, 39, 77.

Held, by *Barton, Isaacs, Gavan Duffy* and *Rich* JJ. (*Higgins* and *Powers* JJ. dissenting), that where the Commonwealth Court of Conciliation and Arbitration has, by an award made pursuant to sec. 24 (2) of the *Commonwealth Conciliation and Arbitration Act* 1904-1918, determined an industrial dispute, and has thereby specified a period during which the award is to continue in force, that Court has, within that period, no jurisdiction with regard to a new dispute as to a subject matter dealt with by that award; although the parties to the new dispute included many who were not parties to the original dispute and although the genuineness or reality of the new claim was not contested in view of the alleged increase in the cost of living.

Held, therefore, that where that Court had, by an award which was to continue in force for a period of three years, determined a dispute wherein a claim was made by an organization of employees for a minimum rate of wages of 13s. 2d. per day for a certain class of employees by awarding a minimum rate of 12s. 6d., it had no jurisdiction within the specified period to entertain a claim for a minimum rate of 15s. 6d.

Per Higgins J.: The dispute which was determined by the previous award was not the dispute either as to persons or as to amount which was to be determined by the new award.

Per Barton, Isaacs, Gavan Duffy and *Rich* JJ. (*Higgins* and *Powers* JJ. dissenting): A Justice of the High Court acting under sec. 21AA is not justified in finding that there is in fact an industrial dispute on the subject of a claim if the Commonwealth Court of Conciliation and Arbitration is not competent to entertain the claim under sec. 28.

Discussion as to the meaning of sec. 28 of the Act.

Held, also, by *Barton, Higgins, Gavan Duffy* and *Powers* JJ., that employees who were clerks, although not manual labourers, might be parties to an industrial dispute within the meaning of sec. 51 (xxxv.) of the Constitution and of the *Commonwealth Conciliation and Arbitration Act*.

Federated Municipal and Shire Council Employees' Union of Australia v. *Melbourne Corporation*, 26 C.L.R., 508, followed.

CASE STATED.

On the hearing of an application to the High Court under sec. 21AA of *Commonwealth Conciliation and Arbitration Act* 1904-1918 for a decision on the question mentioned in that section with regard to a dispute alleged to exist between the Federated Gas Employees' Industrial Union as claimant and the Metropolitan Gas Co. Ltd. and others as respondents, *Higgins* J. stated the following case for the opinion of the Full Court:—

1. An alleged industrial dispute has been submitted to the Commonwealth Court of Conciliation and Arbitration, having been referred to the said Court by the President under the provisions of sec. 19 (*d*) of the *Commonwealth Conciliation and Arbitration Act* 1904-1918.

2. The industrial dispute is alleged to exist between the Federated Gas Employees' Industrial Union as claimant and the Metropolitan Gas Co. Ltd. and the South Australian Gas Co. and others as respondents.

3. An application is made to me as a Justice of the High Court sitting in Chambers for a decision on the question whether the dispute or any part thereof exists or is threatened, impending or probable as an industrial dispute extending beyond the limits of any one State between the said parties.

4. The said Companies and certain other respondents object that there can be no industrial dispute existing as between the said Union and themselves because there is an award of 4th April 1917

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in proceedings under the said Act between the said Union and the said Companies and others and the said award is for a term of three years, the term expiring with April 1920.

5. One of the claims made in the log of demands now made by the said Union is: "Outdoor night-shift work shall be of 6 hours' duration" (claim 34). There was no such claim made in the log of demands on which the previous award (dated 4th April 1917) was made.

6. Another of the claims made in the log of demands now made by the said Union is for a minimum rate for engine-drivers of 15s. 6d. per day or shift of 8 hours (claim 2). In the log of demands on which the previous award was made there was a claim for a minimum rate for engine-drivers of 13s. 2d. per shift or day of 8 hours, and the rate awarded was 12s. 6d. per shift or day.

7. The said Companies and other respondents who were parties bound by the said award do not contest the genuineness or reality of the new claims in view of the alleged increase in the cost of living and other circumstances, but as to claim 2 they object that a higher rate cannot be claimed in the Court of Conciliation and Arbitration before the expiry of the existing award.

8. The evidence has closed, and (subject to the said objections) I am prepared to find on the evidence that there is in fact an industrial dispute existing, within the meaning of the Act, as between the said Union and the said Companies and others on the subjects of the said claims 2 and 34 as well as on other subjects.

9. Another claim made is for a minimum rate of £4 1s. per week of 38 hours for ordinary meter readers and clerks (claim 21), and an objection is taken that clerks are not employees of the kind referred to in the said Act and that no "industrial dispute" within the meaning of the Act can exist as to clerks.

10. The clerks referred to are members of the claimant organization and employed by the respondents, and (subject to the said objection) I am prepared to find that an industrial dispute within the meaning of the Act exists as to clerks.

11. All the said Companies and respondents objecting as aforesaid are represented by the same counsel, and have selected out of

their number the Metropolitan Gas Co. Ltd. and the South Australian Gas Co. to test the questions in the Full High Court.

12. A copy of the award of 4th April 1917 is annexed hereto, and agreements made before the award as to parts of the previous dispute by the said two Companies will be produced, if required. A copy of the "log" or claim of demands on which the said award was made and a copy of the order referring the alleged dispute into the Commonwealth Court of Conciliation and Arbitration will be produced, if required.

I submit for the consideration of the Full Court the following questions :—

(1) Is the Court of Conciliation and Arbitration competent to entertain claims on the subjects of the said claims 2 and 34 respectively notwithstanding that the express term of the said award of 4th April 1917 has not yet expired ?

(2) Am I justified in finding that there is an industrial dispute existing within the meaning of the Act on the subjects of the said claims ? And if the said Court is not competent to entertain the said claims, am I still justified in finding as aforesaid ?

(3) Is the said Court competent to entertain claims on behalf of clerks on the subject of their wages as in claim 21 ?

The material portions of the documents referred to in par. 12 are mentioned in the judgments hereunder.

The third question, which had just previously been argued in *Federated Municipal and Shire Council Employees' Union of Australia* v. *Melbourne Corporation* (1), and the first question, so far as regards claim 34, were not argued.

Mann, for the claimant. As to the claim for a minimum rate of wages of 15s. 6d. a day, there is nothing in the Constitution which makes the existence of a prior award a bar to that claim forming the basis of a new industrial dispute. The term "industrial disputes" there refers simply and solely to a question of fact, and has no relation to the existing legal rights of the parties (*Federated Sawmill &c. Employees' Association of Australasia* v. *James Moore & Sons Proprietary Ltd.* (2)). That term should be given the

(1) 26 C.L.R., 508. (2) 8 C.L.R., 465, at pp. 498, 508, 519, 545.

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same meaning in the *Commonwealth Conciliation and Arbitration Act* as in the Constitution. There is nothing in that Act to except from the jurisdiction of the Court a dispute about wages merely because there is existing a binding award as to wages between the same parties. A new dispute may arise as to new subject matter, or as to a subject matter of an existing award but in the light of new circumstances. The question for the Court in the latter case is whether the circumstances have so changed as to entitle the employees on the merits to a different award. The provision in sec. 28 (1) that an award is to "continue in force" during the period specified in it should be read with reference to the particular dispute in which the award is made. Its effect is no greater than that of a bond given outside the Court. Once it is conceded that the foundation of the jurisdiction of the Court is the existence in fact of a dispute, then the Court must take cognizance of the new dispute, and the matter resolves itself into a question of procedure. Under sec. 28 (1) an award is only binding until it is varied. The Court has power under sec. 38 to vary an award, and, if it may do so on a proceeding to vary, it may also do so in a new dispute properly instituted in which one of the claims is that the old award should be varied. The fact that under sec. 28 (2) an award is to remain in force until a new award is made shows that the Act contemplates a new dispute arising during the currency of the old award. Alternatively, the dispute which has already been determined may be regarded as a dispute limited by the amount of the minimum wage which was then claimed. If it be so regarded, the award is binding in that dispute alone, subject, of course, to variation, and is not binding in a new dispute in which the claim is for a different minimum wage. To the objection that there might then be two inconsistent awards, the answer is that the new award would vary the old award.

Starke, for the respondents the Metropolitan Gas Co. Ltd. and the South Australian Gas Co. Whatever may be the powers of the Commonwealth Parliament under the Constitution, the *Commonwealth Conciliation and Arbitration Act* does not contemplate a new dispute upon a subject matter which has already been settled by an award, during the period specified in the award for its continuing

in force. The word " settle " in sec. 18 involves a final adjudication upon the particular subject matter for that period. Dissatisfaction with an award is not a basis for a new dispute. [Counsel referred to secs. 23, 28, 29, 38B, 77.] The provision in sec. 39 that no award is to be varied, except on the application of an organization or person affected or aggrieved by the award, only authorizes a variation of an award in proceedings under that award; and sec. 38B does not authorize the Court to vary that award in a new dispute and as a means to settle that new dispute.

Mann, in reply. On the proper construction of the Act the Court may settle a dispute by making an award which has the effect of varying a prior award made in settlement of a prior dispute between the same parties. It is to be implied that the power to vary an award is given for the purpose of preventing or settling a new dispute, for it cannot be for the purpose of settling the dispute which was determined when the award was made. Sec. 38B makes it clear that in the dispute in respect of which the award was made the Court might have awarded a higher minimum rate of wages than the employees claimed, and consequently a variation of the award might increase the rate awarded beyond the rate then claimed.

Cur. adv. vult.

June 11.

The following judgments were read :—

BARTON J. On 4th April 1917 the learned President made an award in settlement of a dispute between the present claimant and a large number of respondents. All the parties who are now in contention were parties to this, which I will term the original dispute. In the log of demands on which the original award was made there were a number of claims for minimum rates of pay. One of these asked for a minimum rate for engine-drivers of 13s. 2d. per shift or day of 8 hours. The rate awarded was 12s. 6d. per shift or day. It was a term of the award that it should continue in force until the end of April 1920. With that award in force the claimants have submitted what is termed a new industrial dispute.

The log of demands now made includes a claim for a minimum

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rate for engine-drivers of 15s. 6d. per day or shift of 8 hours (claim 2). Two other claims were included in the subjects of the cases stated, but the first of them (No. 34) is no longer contested by the respondents, and the last (No. 21) is the subject of a question which will be dealt with in the *Municipalities' Case* (1).

The alleged new industrial dispute has been referred to the Arbitration Court by the President under the provisions of sec. 19 (*d*) of the Act. The questions submitted for our opinion are: (1) whether the Court is competent to entertain claims on the subject of claim 2 notwithstanding that the expressed term of the award of 4th April 1917 has not yet expired; (2) whether the learned President is justified in finding that an industrial dispute extending to more than one State exists on the subject of the second claim, and, if the Court is not competent to entertain the claim, whether he is still justified in so finding?

A third question is submitted as to claims on behalf of clerks (No. 21). In the light of the judgment which I have prepared in the *Municipalities' Case*, labourers other than manual labourers may become parties to an industrial dispute. The remainder of the present judgment relates only to questions 1 and 2 as asked in the special case in respect of claim 2.

It seems to me that the questions involved rest on the construction of the Act, and that no lengthy discussion of the Constitution is necessary.

Sec. 18 of the Act gives the Arbitration Court jurisdiction to prevent and settle, "pursuant to this Act," all industrial disputes. Sec. 23 (1) provides that "The Court shall, in such manner as it thinks fit, carefully and expeditiously hear inquire into and investigate every industrial dispute of which it has cognizance and all matters affecting the merits of the dispute and the right settlement thereof." Sec. 23 (2) provides that "In the course of such hearing inquiry and investigation the Court shall make all such suggestions and do all such things as appear to it to be right and proper for reconciling the parties and for inducing the settlement of the dispute by amicable agreement." I draw particular attention to the words "the right settlement thereof" in sub-sec. 1, and to the words

(1) 26 C.L.R., 508.

" the settlement of the dispute " in sub-sec. 2. Sec. 24 (1) provides for the case where all or any of the parties arrive at an agreement as to all or any part of the dispute. A memorandum of its terms is to be made in writing and certified by the President, the memorandum being filed in the Registrar's office, whereupon the memorandum, unless otherwise ordered and subject as may be directed by the Court, is, as between the parties to the agreement, to have the same effect as, and be deemed to be, an award.

Sec. 24 (2) provides thus : " If no agreement between the parties as to the whole of the dispute is arrived at, the Court shall, by an award, determine the dispute, or (if an agreement has been arrived at as to a part of the dispute) so much of the dispute as is not settled by the agreement." The words " determine the dispute or . . . so much of the dispute as is not settled by the agreement " are clearly used in the sense that determination is equivalent to settlement. Sec. 28 (1) is as follows : " The award shall be framed in such a manner as to best express the decision of the Court and to avoid unnecessary technicality, and shall subject to any variation ordered by the Court continue in force for a period to be specified in the award, not exceeding five years from the date of the award." The award, unless varied by the Court (see sec. 38 (*o*)), is to "continue in force " for a period not exceeding five years to be specified in the award. What is the meaning of the term " continue in force " ? Does it permit the creation of a new dispute by the making of a claim on the same subject matter during the period specified ? The award is, unless the Court otherwise orders, still to be in force after the expiration of the period specified until a new award has been made (see sec. 28 (2)). This sub-section, to my mind, clearly implies that the award on the dispute shall operate finally in settlement of it until the prescribed term expires, and even afterwards until the making of a new award between the same parties, although the Court has power to make an order preventing its continuance.

By sec. 33 (1) the President may require from a claimant organization security for the performance of an award. If it is not the intention of the Act that the award shall be observed during the specified period, why should Parliament have framed such a provision ? The President may entertain no doubt as to the honourable

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performance of the award, but, if he has any such doubt, he may protect its operation by security, and the protection clearly may extend during the whole life of the award.

Sec. 38 says that "The Court shall, as regards every industrial dispute of which it has cognizance, have power . . . (*o*) to vary its orders and awards and to reopen any question." This is the only provision that I can trace in the Act enabling any interference by the Court with a still current award, and it relates to the dispute the subject of the award, and not to any other alleged dispute.

For the above reasons I am of opinion that if the subject matter of the new claim is any part of the subject matter of the original award, it cannot be treated as a new industrial dispute under which the President would be authorized to disturb the existing award. As I have pointed out, sec. 38 (*o*) refers only to the existing award, and the provision cannot be strained to justify a new one while it is still current.

What, then, is the position as regards subject matter? The original claim was for a fixation of minimum wages both as to engine-drivers and other classes of employees. Although the rate then demanded was less than is now demanded, the present claim is, notwithstanding, one for a minimum wage. The minimum wage for the prescribed period of the award was fixed by the original award, and it cannot in my view be said that the mere fact that the present demand is a higher one while the subject matter remains the same constitutes a new dispute so as to entitle the Court to make a new award.

No doubt, it is true that a new dispute may arise where new subject matter arises, but as regards the original subject matter or matters I think it is the plain policy of the Act that, when the Court has once made an award prescribing a period of currency, that award is, unless itself varied or reopened under sec. 38 (*o*), to remain undisturbed during the period. Cases of hardship may and no doubt will arise, as they will in the case of every general rule, but their probability does not entitle the Court to frustrate the intention of Parliament. If the contention now made were accepted, it would only be necessary for those who are dissatisfied with the conditions accorded to them to make a succession of higher demands at short

intervals, and on all such occasions to claim the upsetting of conditions already fixed after much evidence and argument, and with such foresight as the tribunal commands. In fact, it would be grim irony to describe the result of the application of the Act as "industrial peace." It was the intention of Parliament that the Court should, as no doubt it does, "carefully and expeditiously hear inquire into and investigate every industrial dispute of which it has cognizance" (sec. 23 (1)). No doubt, Parliament in framing the provisions of the Act was legislating in a time of peace, and it may not have foreseen to what extent conditions would be altered in time of war. That consideration might have impelled the Parliament in its wisdom to provide, during the War, for the new conditions which it saw arising. But it affords no ground for this Court to transgress its functions by a decision which would amount to judicial legislation.

It follows that I must answer questions 1 and 2 in the negative. I have already answered question 3 in the affirmative.

ISAACS AND RICH JJ. An industrial dispute that has arisen between the claimant and the respondents includes, *inter alia*, two claims numbered respectively 2 and 34. We are asked whether the Arbitration Court has jurisdiction in respect of those claims.

There would, on the facts stated in the case, unquestionably be jurisdiction if there had been no prior award between the parties. On 4th April 1917 an award on a then pending industrial dispute was made by way of agreement certified and filed as required by sec. 24 of the Act. The agreement, however, did not extend to fix the actual amount of wages, and thus part of the then pending industrial dispute was left to be investigated and awarded upon by the learned President. The claim—so far as is now relevant—(1) did not refer to the subject matter of the present claim No. 34, but (2) did claim, under the head of "Statement of wages and working conditions," in item 5, "Engine-drivers 13s. 2d. per shift or day of 8 hours." This is now to be understood as a claim for a minimum wage of 13s. 2d. No other amount, however, was mentioned, and there would have been no jurisdiction to award more. The learned President

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fixed a minimum wage of 12s. 6d. per day or shift. He also provided specifically in his award (par. 6) that "it shall continue in force until the end of April 1920." That period coincided with the agreed duration of the terms included in the agreement filed as an award. The present industrial dispute includes a claim for a minimum rate for engine-drivers of 15s. 6d. per shift or day of 8 hours, and this is claim No. 2.

It is conceded that there is jurisdiction in the Arbitration Court to deal with item 34, because it is entirely outside the former award. It is, however, contended for the respondents that, inasmuch as the award of April 1917 still "continues in force" by sec. 28 of the Act, there is no jurisdiction to deal with claim No. 2 for two reasons. The first reason advanced is that while the award exists no "industrial dispute" on a subject matter it covers can be recognized as existing; and the second reason is that, assuming the existence of the later industrial dispute must be recognized as a fact, the Act gives no jurisdiction to deal with it. The first reason cannot be sustained. An industrial dispute is a matter of fact, and unless some special and unnatural interpretation is framed by the Legislature for the purpose of the Act—which is not the case here—the natural meaning of the expression must be given to it. There is undoubtedly an industrial dispute in fact as to 15s. 6d. a day.

But the second reason does not depend for its force on natural events. It depends entirely on what Parliament has said. Having the constitutional power to provide for arbitration in industrial disputes, it had the right to put what limits it pleased on the power of the Court to deal with them. We have to look at the Act—and to look at it as a whole—to see how far that power has been granted. We have no right to stretch that power; we have faithfully to read and interpret the words of the Statute and apply them. Whatever our own views might be as to the advisability of other provisions, we must respect the Constitution by not attempting to legislate under the guise of judicial interpretation.

Now, regarding the Act as a remedial measure, and a powerful instrument for securing industrial peace, what is the widest interpretation that can reasonably be put on the parts which confer jurisdiction to settle such a dispute? Great reliance was placed in

argument on sec. 18. It says: "The Court shall have jurisdiction to prevent and settle, pursuant to this Act, all industrial disputes." That is a very large grant of jurisdiction and is limited only by the words "pursuant to this Act." The words "pursuant to this Act" are inserted to show that sec. 18 is not to be read as bestowing unlimited power. The jurisdiction to "prevent and settle" any dispute is not to be exercised except pursuant to this Act, that is, consistently with the provisions of the Act.

The Act proceeds to formulate the scheme under which the jurisdiction shall be exercised. The first section in that connection is sec. 19. It is plain that it cannot be a correct construction of sec. 18 to say that the jurisdiction it confers can be exercised except where negative or exclusive words are found taking it away. If that were so, what would be the result of sec. 19? Sec. 19 uses affirmative words only. It says: "The Court shall have cognizance, for purposes of prevention and settlement, of the following industrial disputes," and then it enumerates four different kinds. It does not say expressly those "only"; nor does it add "and no others." But, unless sec. 18 is to be limited by the affirmative scheme of sec. 19, the Court could go on and take cognizance of every industrial dispute, whether included in sec. 19 or not. Sec. 18 is plainly subject to the express enactment of sec. 19 as part of the legislative scheme. And so, when we come to sec. 28, we find that an express and definite enactment is made as to the effect of the award made in any industrial dispute of which it is to be assumed the Court has cognizance. In order to understand sec. 28, we must bear in mind that the provisions of secs. 23 and 24 involve the result that an award, once it is made, authoritatively settles the dispute, and, by virtue of the legislative authority under which it is made, legally binds both parties to observe its provisions. But for how long? Is it only momentary?—which would be absurd; or is it like any other provision having the force of law—perpetual, unless limited? The latter clearly. So then by sec. 28 Parliament, after prescribing requirements of form, proceeds to limit the obligatory continuance of the awarded conditions.

Now, it is at this point that Parliament had to exercise its discretion, and determine what effect it was going to give to an award.

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It had to settle for itself, whether the parties were to be allowed continuously to submit disputes to the Court even on matters already settled by award, or were to abide by the award for some definite period. In other words, whether the "industrial peace" aimed at by the Act was to be recognized by the Act as terminable at the will of either party; or whether, once established, it was to prevail for a definite term, so as to give, for the benefit of both parties, some sort of stability to the rights it created. It is very clear that Parliament did intend that both employers and employed should have some guarantee of continuance of awarded conditions, something on which to count and to rely—the employer to build up and carry on his industry, the employees to work in security that what had been declared to be just conditions should not be in constant doubt; and, further, that the public should not be in momentary danger of interruption countenanced by law. And therefore Parliament proceeded to frame the scheme in this way:— By sec. 28 it requires the Court in every case to specify a period during which the award is to continue. That period it leaves entirely to the Court—except that it places a maximum limit of five years. The Court, in considering the case, has regard to the parties, the industry, the nature and extent of the claims, the cost of living, the probabilities of the future, and then makes up its mind and takes the responsibility—a great responsibility though a necessary one—of saying for how long the conditions it awards shall continue. Once that is fixed by the Court, Parliament accepts the Court's decision, and declares it shall be the law; the award "shall continue in force" for the specified period. That, however, is subject to one alteration, namely, "any variation ordered by the Court." A variation is an alteration of the award, and is quite distinct from a new award. A variation referred to in the Act is an alteration of the decision already arrived at, and is made on a mere "application of an organization or person affected or aggrieved by the . . . award" (sec. 39). It has reference to the old dispute as to which the award was made. The power to vary, like every other power contained in sec. 38, is controlled by the governing words at the head of the section, namely, "The Court shall, as regards every industrial dispute of which it has cognizance." This power to "vary an

award " has always been so construed by the Arbitration Court itself, and the contention that varying an award in one dispute includes making a new award in a totally distinct dispute cannot be sustained.

During the whole of the specified period, then, the award once made is to " continue in force "—that is, to be the Commonwealth law as to the conditions of labour awarded—subject only to any variation within the limits of the original dispute which the Court on application may see fit to make. That variation it may be induced to make because experience may show that its conclusions within the range of the dispute need correction. Now, when Parliament says that the award is to " continue in force " for the specified period, what does that involve ? It must be taken that the Act means what it says—that the award is to bind both sides. But if it is to bind both sides (say) as to " minimum wage, " it must mean that on the one hand the employees are entitled to get that as a minimum wage during the whole specified period, and that on the other hand the employer, provided only he does not pay a smaller minimum wage during that period, shall not be subject to prosecution ; on that understanding both sides can arrange their affairs, and that is why the Court is called on to specify a period. And since the terms of the award are declared by Parliament not only to be " in force " but are to be " enforced " by Courts of law, it stands to reason that, except for possible " variation " which still leaves it the same award in the same dispute, the Arbitration Court cannot make another award altering the provisions of the existing award, whether in the same dispute or any other dispute. The Federal Parliament may limit the arbitrator's jurisdiction in any way it pleases, and it has chosen to limit it by declaring that an award shall be " in force " for a specified period. He cannot act contrary to that, and to displace the old award entirely and substitute a new one, either on the old dispute or on a new dispute, would be acting contrary to the express command of Parliament. The arbitrator's jurisdiction subsequent to the award is subject to Federal law, including the law enacted by sec. 28. Now, after the specified period has elapsed, the award would no longer have the force of law if no further provision were made ; and equally plain is it that after the specified period the

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Arbitration Court could proceed to deal with a new industrial dispute even on the same matters. That would leave a period uncovered by law. Parliament has purported to fill up the gap by saying: If the arbitrator says nothing, the award shall still continue in force (and, being in force, there is of course the constant power of variation under sec. 38 (*o*)); if the arbitrator thinks fit he may declare that it shall no longer continue; but, if he says nothing and it continues in force, it shall not continue in force for ever, but only until he exercises the power which, once the specified period has elapsed, he possesses, namely, *the power to make a new award*, which expression, applying only to that subsequent period, involves the antecedent power, since the expiry of the specified period, to take cognizance of a new industrial dispute.

The matter seems quite plain on the words of the Act and the scheme of the Act. To accede to the argument of the claimant would make sec. 28 say in effect: An award shall not last for any specified time; a time may be nominally specified, but that means nothing; the day after the award is made, a new dispute may arise, perhaps in the same terms, perhaps in different terms, and the parties may continue their disputes *ad infinitum* until they or some of them and the Court and the public are exhausted. For instance, in the present case the award, as it now stands, gives 12s. 6d. a day to the men; the claimant's contention is that the very day after that award was made, and although it was fixed for three years, the employers might have raised a new dispute to reduce the men to 10s. a day, and, if that were granted (say) for three years nominally, they might raise another dispute immediately to reduce the wages still further to 9s., leaving the workers no security whatever. That would reduce the Act to such futility, and would so countenance the policy of one party or the other coercing its opponents by exhaustion, that nothing but the most direct language could justify such an interpretation.

Before stating the formal answers to the questions, two things should be distinctly understood. The first is that nothing that has been said is to be understood as denying to the learned President or Deputy President the right, if he so thinks fit—apart from any legislative direction to do so—to personally intervene in any new

dispute. His position, his experience, his knowledge of the circumstances of the original dispute, and the relation he bears to an existing award which is "law" during its continuance, give very special weight to any intervention which either the President or the Deputy President may see fit to exert in the interests of all parties. Such intervention to conciliate may obviously confer immense benefit on the whole community. And there is nothing contrary to law in attempting it. The second observation is that, though we feel constrained by the words of the Act to determine this case as Parliament has plainly intended, yet the argument addressed to us as to the unforeseen circumstances was impressive. When the Act was passed the cataclysm of a world war was not foreseen or provided against. Without venturing to intrude into a domain not belonging to us, we are impelled to observe that the preservation of the present general plan of sec. 28 is not inconsistent with a supplemental provision for emergencies that could not reasonably be contemplated, namely, a provision to the effect that even during the specified period the arbitration tribunal may, in the event of abnormal circumstances arising which disturb the fundamental justice of the award, have power to adjust conditions. Even in an ordinary contract, if its basis disappears by reason of some event not anticipated, the law does not hold the parties to their obligations founded upon the assumed continuance of that basis. As the law stands, however, the Statute does not provide for such a case, and as the law must be observed, the first two questions, except as to claim 34, must be answered in the negative; and as to claim 34 in the affirmative.

The answer to the third question will be deferred.

HIGGINS J. It is contended that the Court of Conciliation is not competent to entertain claim 2 because the express term of the award of 4th April 1917 has not expired. The dispute on which that award was made was a dispute as to a claim that 13s. 2d. per day be the minimum rate payable to engine-drivers, and the Court awarded 12s. 6d. as the minimum. Now the same Union claims against a number of respondents, including two who were parties to the award, that the minimum rate should be 15s. 6d.

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It is not contended that the Court is not competent to entertain claim 34; for that claim is quite new in its subject matter. But claim 2 is a claim for a minimum wage; and as a claim for a minimum wage was one of the subjects of the previous dispute, it is urged that the dispute on the subject was determined by the award.

Now, the existence of a dispute is a question of fact. The genuineness or reality of the new claim, in view of an increase in the cost of living and other circumstances, is not contested (par. 7); and, subject to the contention stated, the President is prepared to find on the evidence that there is in fact an industrial dispute within the meaning of the Act (par. 8). Even if the dispute ought not to exist —if it exist in violation of a solemn agreement—if it does exist as a concrete reality, interfering with the supply of the commodities or services which the public need, then, on the theory of the legislation, it is better that it should be settled on the basis of reason rather than by economic or other force. Now, is there anything in the Act to prevent the Court from entertaining the dispute and endeavouring to reconcile the parties, and (if the parties will not make an agreement) from making an award? If it cannot, it could not interfere even if the value of money decrease to such a degree that 20s. in 1919 would only buy the same commodities as 1s. in 1917.

There is here in fact, rightly or wrongly, an "industrial dispute" within the definition in sec. 4; and under sec. 18 the Court has jurisdiction "to prevent and settle, pursuant to this Act, all industrial disputes." That is to say, the Court is to get cognizance of the disputes and to deal with them in the manner provided in the Act. There is no exception made by the Act of any such industrial dispute. Then, having the jurisdiction, and whether the parties to the dispute wish for the Court's interference or not, the Court gets cognizance of the dispute by a certificate of the Registrar, or by an order of the President after a conference or by the request of a State authority, or by plaint (sec. 19). If the Court get cognizance of the dispute, it *must* investigate it and try to get an agreement (sec. 23); and if there be no agreement reached, the Court *must* make an award (sec. 24). The word used is "shall." This is the clear duty of the Court, not a mere power; but the duty is subject to sec. 25 and to sec. 38 (*h*)—that is to say, the Court is to "act according

to equity, good conscience, and the substantial merits of the case" ; and if the claim has been recently settled and no new factor of importance has arisen in the meantime, the Court may refuse the claim. Besides, under sec. 38 (*h*), the Court can dismiss the matter if it appears that further proceedings are not necessary or desirable in the public interest. But the Court's duty as to every dispute of which it gets cognizance and which is not dismissed under sec. 38 (*h*) is to get an agreement or make an award (sec. 24). So far there is nothing in the Act to relieve the Court of this duty even if a dispute has been determined by award on Monday, and the disappointed party claim the same thing, raise a new dispute on the same subject, on Tuesday. Of course, it must be "a genuine dispute, of real substance."

But it is said that sec. 28 prevents the Court from entertaining the new dispute. Under that section, the award determining the earlier dispute is to "continue in force" (subject to any variation ordered by the Court) for the period specified in the award (not exceeding five years), and to "continue in force" afterwards "until a new award has been made"—"unless the Court otherwise orders." That is to say, the Court can shorten the period unspecified, indefinite, *not* the period which is specified and definite. There is no power conferred by sec. 28 to shorten the specified term. If it be said that the power to vary in sec. 38 (*o*) is the substantive power to vary, I agree ; but if it be said that sec. 38 (*o*) allows a shortening of the specified term, I am inclined to think that the fixing of the specified term is a special power conferred by sec. 28, and that the length of the term is not an "industrial matter" forming part of the "industrial dispute" which was determined. The length of the term is not part of "the dispute" which was determined by the award. The "log" of demands on which the award was made is incorporated in the case stated ; and it contains no claim as to any term. The length of the term is not a "question" that may be "reopened" under sec. 38 (*o*).

But whether there is power to shorten the specified term or not, the purpose of sec. 28 (2) is merely to lengthen the term of the award after the specified term so as to leave no period uncovered by some regulation on the subject. The section as a whole deals only with

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the dispute that has been determined; it provides that the legal obligations created by the award continue until a new award. It says nothing against new disputes on the same subject: on the contrary, it implies clearly that there may be a new cognizable dispute thereon during the period of the award; else, how could a new award be made?

But in this case claim 2 is not even for the same thing as in the previous dispute. The claim in the first dispute was for a minimum rate of 13s. 2d. per day. The claim is now for 15s. 6d. per day, and, as I have said, the genuineness or reality of the new dispute is not impugned. The object of the Act being to secure the peaceful prosecution of industry without stoppages, the substitution of reason and an impartial hearing for strikes and lock-outs, it would be lamentable if, when circumstances render a drastic and speedy change in wages imperative, there were no means of getting the Court to consider the new claim. If, for instance, a claim were made for labourers of 8s. per day in 1913, and an award then made for 7s. for a period of five years; and if on the outbreak of war the country (not wheat producing) were blockaded, so that the cost of living rose tenfold: can it be said that a new award is not to be made till the five years have expired? True, there is a power to vary the award on the application of a party affected or aggrieved (sec. 38 (*o*); sec. 39); but as the award cannot exceed the ambit of the dispute, neither can the award as varied. According to the decisions of this Court, the utmost that could be done would be to raise the minimum to 8s. Such a conclusion should not be accepted unless the language forces it on us; and it does not. The determination of the old dispute by award does not prevent jurisdiction and cognizance of the new dispute. In other words, the question determined in the former dispute was: Shall the respondents be forbidden to pay less than 13s. 2d. per day? The question to be determined in the new dispute is: Shall the respondents be forbidden to pay less than 15s. 6d. per day? It is not now in any sense "the dispute" which was determined by the previous award. Moreover, the parties to the new dispute here are not the parties to the earlier dispute. A dispute with 11 employers is not the same dispute as a dispute with 43 employers, even if the 11 are included in the 43. What the

minimum rate should be where only a few are bound may not be the same minimum as where many are bound.

It has been contended, however, that sec. 28 involves two propositions: (1) that no new dispute on the same subject was to be entertained during the specified term, and (2) that it might be entertained during the unspecified term. It must be admitted that such a scheme is theoretically possible, even plausible; but where is proposition 1 to be found in the Act? If such a proposition were intended, it would naturally be found in sec. 19, which limits the disputes of which the Court takes cognizance, but such a proposition was probably thought to be incompatible with the rough necessities of industrial relations. The truth is, I think, that two ideas are being confused—the settlement of a subject, and the determination of a definite dispute on the subject. All that has been here determined is "the dispute"—the previous dispute. As for proposition 2, sec. 28 (2) does not, as asserted, *enable* the Court to entertain a new dispute during the unspecified term; it *assumes* that an award which continues in force does not prevent the cognizance of a new dispute. It has been urged that the Court can shorten the specified term on an application to vary made under sec. 38 (*o*) and then get cognizance of a new dispute. I have stated my view that sec. 38 (*o*) does not apply to the fixed term specified under the special power contained in sec. 28 (1). But even if it did apply, it would lead to the very evil which it was the end and object of the section to prevent: it would leave an interregnum of chaos, in which the industry would be left to the old and unhappy conditions of unregulated bargaining between employer and employees. Besides, there can be no variation of the express term except on an application made by a party to the award (sec. 39); and there may be no party desirous of making the application. There are always other things than wages prescribed in an award, and it may not be desirable to shorten the period for the other things prescribed. The "period" of the award, the time of expiry, has to be one and the same for the whole award.

In my opinion, the only way of reconciling the sections, as well as of meeting the grave practical difficulties, is to treat a determination by award (or settlement by agreement) of the dispute in April

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1917 as not affecting the powers of the Court with regard to a new and different dispute in 1919; even though it necessarily must affect the discretion of the Court in dealing with the new dispute. The Court is quite able to protect itself from the abuses conjectured; because it has the powers conferred by secs. 23-25 and by sec. 38 (*h*).

In my opinion, question 1 should be answered in the affirmative. As for the second question, I think that the answer should be Yes, in both branches. If there is in fact an industrial dispute extending &c., the High Court shall so find under sec. 21AA—whether the Court of Conciliation is competent to entertain the claims or not.

As for the third question, the subject has been argued in the *Municipalities' Case* (1); and for the reasons which I shall there state, the answer should be in the affirmative.

GAVAN DUFFY J. On 4th April 1917 the Commonwealth Court of Conciliation and Arbitration, in a dispute to which the parties in the present proceedings were parties, made an award fixing a minimum rate of wage for engine-drivers at 12s. 6d. per shift or day, and directed that the award should continue in force for a period of three years. In the log of demands in the present alleged dispute, a claim is made for a minimum rate of 15s. 6d. per shift or day. The first question to be determined is whether in view of the existing award there can be an industrial dispute existing within the meaning of the Act with respect to the new claim for a minimum rate. A dispute to be settled by arbitration means a contest in which a claim, whether moral or legal, is made on one side and resisted on the other, and the settlement of a claim by award means the determination of the question at issue between the parties. The award finally determines the rights of the parties, and though it does not necessarily convince them or prevent them from retaining and expressing their own views, it substitutes new rights acquired under the award for those which existed before the arbitration. The *Commonwealth Conciliation and Arbitration Act* recognizes the necessity for finality in awards made under its authority. If conciliation is not effective an award must be made (sec. 24). If made, it shall be framed in such a manner

(1) 26 C.L.R., 508.

as to best express the decision of the Court and to avoid unnecessary technicality, and shall, subject to any variation ordered by the Court, continue in force for a period to be specified in the award not exceeding five years from the date of the award (sec. 28, sub-sec. 1), and thereafter until a new award is made (sub-sec. 2). The award so made is binding on the parties (sec. 29). The language of these sections seems to me to make it abundantly clear that the award, once made, shall continue operative until it is varied or expires by fluction of time.

Sec. 28 (2) is as follows: "After the expiration of the period so specified, the award shall, unless the Court otherwise orders, continue in force until a new award has been made." It is said that this language shows that a new dispute cognizable by the Court may be in existence while the award still continues in force; so it does, but the new dispute which may be in existence is not a dispute about matters already determined by the existing award, but about matters to be determined by a new award which can operate only after the old award has ceased to operate. An award, unless varied under the provisions of sec. 38 (*o*), determines specified conditions for a period prescribed by the award or enlarged by virtue of sec. 28. It has no further operation in respect of time or subject matter and cannot prevent the existence of an industrial dispute about a question not determined by it. It was strongly urged on us that even if the effect of an award were to prevent the existence of a new dispute in respect of a matter determined by the award unless and until the award had been varied, the submission to the Commonwealth Court of Conciliation and Arbitration of the alleged new dispute and the subsequent proceedings thereon might be regarded as an application for the necessary variation under sec. 38 (*o*), and the whole question of minimum wage might be thus reopened, the procedure to be adopted being a matter to be disposed of by that Court. I cannot accept this contention. If the claimant Union desires to apply for a variation of the existing award it can do so by means of an application under the existing award, and its rights in respect of such an application can then be determined, but in my opinion it would be absurd to hold that the present proceedings constitute such an application.

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For these reasons I think I must answer questions 1 and 2 in the negative with respect to claim No. 2. It was admitted in argument that they must be answered in the affirmative with respect to claim No. 34. For reasons which I shall state in the *Municipalities' Case* (1) I think employees other than manual workers may be parties to an industrial dispute within the meaning of the Constitution and the Commonwealth Act, and I therefore answer question 3 in the affirmative.

POWERS J. In the case submitted to this Court the learned President states that he is prepared to find on the evidence that there is in fact an industrial dispute within the meaning of the *Commonwealth Conciliation and Arbitration Act* 1904-1918 as between the claimant and the respondents on the subject of the claims referred to in the case—claims 2, 21 and 34. The respondents claim that there can be no industrial dispute existing as between the claimant and themselves because there is an award of 4th April 1917 in proceedings under the said Act between the claimant and the respondents, and the said award is for a term of three years—the term expiring in April 1920. It is not now contended that there cannot be a dispute as to claim 34. It is admitted that it is a new dispute, as no claim was made for it in the log of demands on which the previous award was made. It is also admitted that the Court can entertain the claims made on behalf of clerks—claim 21.

The claim on which it is contended that there can be no dispute cognizable by the Court during the term of the award is one made by the claimant in a new demand now made for a minimum rate for engine-drivers—a claim for 15s. 6d. per day or shift of 8 hours (claim 2). The contention is based on the ground that in the log of demands on which the previous award was made there was a claim for a minimum rate for engine-drivers of 13s. 2d. per shift or day of 8 hours, and the rate awarded was 12s. 6d. per shift or day, and the award has not yet expired. The respondents rely on sec. 28 of the Act, which declares :—" (1) The award shall be framed in such a manner as to best express the decision of the Court and to avoid unnecessary technicality, and shall subject to any variation

(1) 26 C.L.R., 508.

ordered by the Court continue in force for a period to be specified in the award, not exceeding five years from the date of the award. (2) After the expiration of the period so specified, the award shall, unless the Court otherwise orders, continue in force until a new award has been made." In considering the question whether an existing award does prevent industrial disputes arising during the term of the award from being cognizable by the Court, sec. 28 must be read with the rest of the Act, and it is necessary to consider to what extent the award made under the Act is binding on the parties to it. Whatever effect the true construction of the section, read with the rest of the Act, may have, it should not affect the judgment of the Court.

The Court, it is said, was established to prevent and settle industrial disputes by fixing wages and conditions which were to be binding on employers and employees *for a term* securing to employees fair wages and conditions, and allowing employers to safely enter into contracts for the term fixed by the arbitrator. The Arbitration Court has, however, by fixing minimum rates and conditions binding only on employers, dropped into the position of a wages board Court to fix minimum rates and conditions. These wages and conditions can legally be refused, and new rates can be enforced from time to time by the employees by agreement, by ceasing to work, or through the Court by variations of the award, or by agreements or by ceasing work only if the Court cannot deal with new legal industrial disputes arising during the award for more than the original claim. The award does not fix any maximum wage, or any wage which the members of the organization agree to accept, or are legally bound to accept, during the term of the award. The awards at present made are not, generally speaking, binding on the employees. This Court has held, in *Waterside Workers' Federation of Australia* v. *Commonwealth Steamship Owners' Association* (1), that an award fixing a minimum wage only, without containing any covenant binding the employees, is not binding on any employee, and that members of the organization can legally refuse to work next day for the rates awarded unless any demand they think fit to make for a higher wage is conceded. Generally speaking, the employees are not bound by any

(1) 21 C.L.R., 642.

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condition of an award. The Court's awards at present are in effect only wages-board awards fixing minimum wages and conditions binding specified employers—respondents to the claim—instead of including, as in State wages-board determinations, all employers in specified districts. The award is not binding on employers a day longer than they think fit to employ the members of the organization, and it only fixes a minimum wage which they must pay if they employ members.

Powers J.

I agree with the judgment of my brother *Higgins*, and I have very little to add. No award or Act of Parliament can prevent new industrial disputes arising during an award. Parliament, in my opinion, anticipated them, and provided for their settlement by the Court. In this case the learned President has found that an industrial inter-State dispute exists in fact; the only question is whether it is cognizable by the Court. The Act imposes a duty on the Court to make an award in every industrial dispute brought before it, in accordance with the provisions of the *Commonwealth Conciliation and Arbitration Act*, in which an agreement is not arrived at—sec. 24 (2), which provides that "If no agreement between the parties as to the whole of the dispute is arrived at, the Court *shall*, by an award, determine the dispute, or (if an agreement has been arrived at as to part of the dispute) so much of the dispute as is not settled by the agreement."

An industrial dispute about a claim for 13s. 2d. a day is, in my opinion, an entirely different dispute from one about a claim for 15s. 6d. a day. No dispute as to whether the members of the organization should be paid 15s. 6d. a day has been considered or settled by the Court, and the Court is bound under the Act to settle the new dispute proved to exist (sec. 24). This Court has held that an industrial dispute can be dealt with by the Commonwealth Conciliation and Arbitration Court although parties are subject at the date of the award to existing agreements fixing wages and conditions for a term, even where the employees have agreed to work for the wages and conditions set out in the agreement. The award in question, it is admitted, does not prevent the parties to it from coming to an agreement to pay 15s. 6d. instead of 12s. 6d. a day as a minimum wage, if a claim is made for 15s. 6d. a day; that is a matter the parties

can agree to or refuse. If they disagree and the organization insists upon the claim for 15s. 6d. a day, a dispute arises which, if it extends beyond the limits of one State, is cognizable by the Court. The fact that an award is in force fixing a minimum wage, although it ought to prevent new disputes in normal times, does not and cannot prevent new disputes from arising in abnormal times. If they do arise, it is the Court's duty to settle them by awards if the parties cannot come to an agreement. Parliament anticipated the probability of employees causing new disputes during the term of an award, and endeavouring to unreasonably reopen questions settled and making unreasonable claims, by providing, *not* that the Court could not deal with them, but that the Court could dismiss the applications or refrain from hearing or determining them (see sec. 38 (*h*)). It was urged that it was contrary to common sense to allow disputes about an increased minimum wage to be dealt with during the term of the award which was made to settle a previous dispute as to the minimum wage for a term of three years. The question asked is a legal one; but it appears to me that common sense would, if allowed to prevail, settle industrial disputes as they arise, rather than stand by and see the industries throughout the Commonwealth closed for want of action by the Court established by Parliament for the purpose of preventing and settling industrial disputes.

Again, it is admitted that although an award may be for five years it may be varied not only to remedy errors (sec. 38 (*q*)) but also for any other reason the Court thinks fit (sec. 38 (*o*)). It is suggested that the limit of the possible variation is the ambit of the old dispute which the award settled. The Act does not say so; but, assuming that it is the limit, the Act provides (although the old dispute is settled by the award) for new disputes arising during the term of the award by way of variations (even about the matters settled by the award during the term of the award) being heard and determined by the Court, and for the alteration of the award during its term. It is clear, therefore, that all that has been urged about the futility of an award if new disputes can be dealt with by the Court during its term, can be set aside if new disputes can be dealt with under the power to vary awards during an award. The Act also expressly authorizes a new award to be made after the term fixed but while it

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is in force. Under the power to vary an award the employees may apply—as my brother *Isaacs* put it—next day or at any time to vary the award by increasing the minimum wage to 13s. 2d. a day but not, it is contended, to 13s. 3d., and if the new dispute is not settled by the parties the Court can settle it by an order varying the award. It is also admitted that if the original claim had been for £1 a day, instead of 13s. 2d., the new dispute about the present new claim for 15s. 6d. a day could be decided by the Court on an application to vary, notwithstanding the old dispute had been settled by the Court. In sec. 39 provision is made that "no order or award shall be varied and *no submission shall be reopened* except on the application of an organization or person *affected or aggrieved by* the order or award." Sec. 19 (*b*) refers to disputes *submitted* to the Court by plaint. Sec. 38 (*o*) also authorizes the Court "to vary its . . . awards and to *reopen any question*." That must mean any question submitted to the Court. In the present case the question what should be the minimum wage was submitted to the Court.

The Act, therefore, was not intended to make the rates and conditions fixed by the Court like the laws of the Medes and Persians—unalterable during the term of the award; and it does in my opinion authorize the Court to settle the many serious industrial disputes as to increased wages which have necessarily arisen during the abnormal times caused by the War and the increased cost of living.

Further, it cannot be assumed that the Arbitration Court can only do justice to the parties to an award during the term of an award if the organization makes an exorbitant claim instead of a just claim upon its employers when it serves its demand and when it files its plaint. Parliament could not, I think, have intended that. The futility of an award of the Arbitration Court for five years would have to be recognized if the Court, after a serious new industrial dispute about increased wages beyond the original claim, which might cause ruin to employers and loss to employees and the public generally in more than one State, had been properly brought before it and proved beyond question to exist, refused to attempt to conciliate the parties or to make an award because a previous dispute between the same parties about a claim for a different minimum wage had been settled by the Court's award three years

previously. This it would have to do, if the contention of the respondents is right, even when the employees had legally decided not to continue to work for the wages fixed by the old award (see *Waterside Workers' Case* (1)) and both parties to the new dispute, about a higher minimum wage, were anxious that the Court should determine the dispute and make an award.

In 1913 the President made an award in the *Engine-Drivers' Case*. The rates were fixed on a basic claim for 9s. a day made by plaint. The President granted the claim in full, and the award was made for five years. In 1914 the War started, and the increased cost of living made it impossible for men on the basic wage to live in anything like reasonable comfort in 1917 on 9s. a day. This was recognized in 1917 by the employers. The members refused to continue to work any longer for the minimum wage fixed, and applied for a variation of the award. The claim of the employees through their organization—even to the *extent they were admitted by the employers to be reasonable*—could not be granted by a variation of the award if confined to the original claims in the plaint. The employees and the employers could not agree to settle the new dispute as to what the minimum wage should be in 1917. Both parties were agreeable to the Court settling the new dispute by a legal award, and a strike by the great majority of engine-drivers and firemen in the industries in the Commonwealth to enforce higher rates than they claimed in 1913 would have been declared if the Court had refused to act. The High Court having decided that employees, notwithstanding an existing award, could, during the term of the award, legally refuse to work for the respondents unless they received more than the minimum wage fixed by the Court, I regarded the dispute as a legal one and a new one arising from new conditions and the increased cost of living caused by the War, and as Deputy President of the Court I summoned a compulsory conference under sec 16A of the Act. As the new dispute was not settled, I referred it into Court, and after hearing the evidence I made an award increasing the minimum rates for a term expiring at the date of the original award.

The action taken in the matter referred to may not have been authorized by the Act; but, if this Court holds that no new dispute

(1) 21 C.L.R., 642.

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about the minimum wage beyond the claim made when the plaint was filed can be dealt with by the Arbitration Court during the term of an award, the Arbitration Court, until Parliament sees fit to amend the Act, can only "fiddle while Rome is burning," and employees can only resort to strikes to enforce claims employers will not grant. Employees will not in these days try to live on less than what the Arbitration Court has fixed as a living wage. Such a result ought, I hold, to be avoided unless the Court feels bound to adopt, as the only possible reasonable construction of sec. 28, the construction contended for by the respondents.

Dist *R* v *Maryborough Licensing Court; Ex parte Webster & Co* (1919) 27 CLR 249

The answers to questions should in my opinion be: Question 1, Yes; question 2 (*a*), Yes; question 2 (*b*), Yes; question 3, Yes.

Questions answered thus:—*Question* 1, *as to claim* 2, *No*; *as to claim* 34, *Yes*. *Question* 2, *No*. *Question* 3, *Yes*.

Solicitors for the claimant, *Brennan & Rundle*.

Solicitors for the two respondent Companies, *Malleson, Stewart, Stawell & Nankivell*.

B. L.

[HIGH COURT OF AUSTRALIA.]

THE KING

AGAINST

YOUNG

H. C. OF A. 1919.

SYDNEY, *Nov.* 14.

Knox C.J., Isaacs, Gavan Duffy, Powers and Rich JJ.

Quarantine—Statute—Interpretation—Power of Governor to make orders as to infectious diseases—Closing of hotels—Quarantine Act 1897 (*N.S.W.*) (*No.* 25 *of* 1897), *sec.* 33.

Sec. 33 of the *Quarantine Act* 1897 (N.S.W.) provides that "The Governor may make such order as shall be deemed necessary and expedient upon any unforeseen emergency or in any particular case with respect to any vessel arriving under any alarming or suspicious circumstances as to infection