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Gavan Duffy J.

and, inasmuch as there may be inaccuracy and inconsistency, you must, if you can, ascertain what is the meaning of the instrument taken as a whole in order to give effect, if it be possible to do so, to the intention of the framer of it. But it appears to me to be arguing in a vicious circle to begin by assuming an intention apart from the language of the instrument itself, and having made that fallacious assumption to bend the language in favour of the assumption so made."

I agree with *Gordon* J. in the answers which he gives to questions 1 and 2, and I agree with him in thinking that in the circumstances it is premature to deal with the other questions asked in the summons. In my opinion his order was right and should be restored.

Appeal dismissed with costs.

Solicitors, *Shierlaw & Jessop*, Adelaide.

B. L.

[HIGH COURT OF AUSTRALIA.]

THE AUSTRALIAN TIMBER WORKERS' UNION . . . . . CLAIMANT;

AND

JOHN SHARP & SONS LIMITED AND OTHERS RESPONDENTS.

H. C. OF A. 1919.

MELBOURNE, *July* 28, 31; *August* 4.

Higgins J.

IN CHAMBERS.

Industrial Arbitration—Dispute, proof of existence of—Dispute between organization of employees and employers—No members of organization employed by respondent employers—Probable dispute—Commonwealth Conciliation and Arbitration Act 1904-1915 (*No.* 13 *of* 1904—*No.* 35 *of* 1915), secs. 4, 21AA.

As between an organization of employees and an employer who employs persons doing the same kind of work as is done by members of the organization, although no members of the organization are employed by that employer, an "industrial dispute" may exist or, if members of the organization will probably apply to the employer for employment, may be probable.

Australian Workers' Union v. *Pastoralists' Federal Council*, 23 C.L.R., 22, followed.

SUMMONS.

The Australian Timber Workers' Union, an organization registered under the *Commonwealth Conciliation and Arbitration Act* 1904-1915, instituted proceedings in the Commonwealth Court of Conciliation and Arbitration against John Sharp & Sons Ltd. and a large number of persons, firms and companies, alleging the existence of an industrial dispute extending beyond the limits of one State. The Union, according to its rules, consisted of "all persons who are employed, or are usually employed, in any position in or in connection with sawmills, timber yards, box and case factories, saw makers' shops, joiners' workshops, car and waggon shops, and coach builders' shops, or in preparing woodwork for joiners, carpenters, implement makers, coach builders, car and waggon builders, and hewers, splitters, fallers, and all woodworking machinists throughout the Commonwealth, and such other persons who may from time to time be appointed to any office."

An application was made by the organization by motion to the High Court under sec. 21AA of the *Commonwealth Conciliation and Arbitration Act* 1904-1915 for a decision on the question whether the alleged dispute or any part thereof existed, or was threatened or impending or probable, as an industrial dispute extending beyond the limits of any one State.

The other material facts appear in the judgment of *Higgins* J. hereunder.

Foster, for the claimant organization.

Stanley Lewis and *Owen Dixon*, for some of the respondents.

Robertson, for other respondents.

Cur. adv. vult.

HIGGINS J. read the following judgment :— Aug. 4.

This is an application for a decision under sec. 21AA of the *Commonwealth Conciliation and Arbitration Act*. There has been considerable difficulty in finding which of the respondents to the plaint are parties severally to the numerous items of the log ; inasmuch

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as the log affects employers so diverse as proprietors of bush mills, proprietors of timber yards, proprietors of furniture warehouses, and so forth. An important point of law was raised by respondents who have timber yards in Western Australia. They have, for instance, machinists of different varieties employed; but at present none of the machinists actually employed are members of the claimant Union. There are plenty of wood machinists in the Union, and there is no reason for thinking that they would not take employment with these respondents if they can get satisfactory terms. In the case of *Australian Workers' Union* v. *Pastoralists' Federal Council* (1) I held that there is nothing in the Constitution or in the Act forbidding the finding of a dispute between a union and employers, even if no members of the union are actually in the employment of a respondent; and that, even if this view be incorrect, there is a *probable* dispute, if members of the union would *probably* apply to the respondent for employment. At first Mr. *Dixon* asked me to state a case for the opinion of the High Court on the subject. I am always chary of refusing a request by counsel for a case to be stated for the full High Court, inasmuch as my decision under sec. 21AA is not subject to any appeal. But eventually Mr. *Dixon* withdrew his request. I therefore follow my own decision in the *Pastoralists' Case*.

[The learned Judge then made an order which is not material to this report.]

Solicitors for the claimant, *Brennan & Rundle.*

Solicitors for the respondents, *Derham, Robertson & Derham.*

B. L.

(1) 23 C.L.R., 22.