H. C. OF A. 1919.

FEDERATED GAS EMPLOYEES' INDUSTRIAL UNION v. METROPOLITAN GAS CO. LTD.

Powers J.

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

though not being liable to quarantine within the meaning of this Act, and also with respect to any person and any article on board the same; and in case of any infectious or contagious disease highly dangerous to the public health appearing or breaking out in New South Wales may make such order and give such directions in order to cut off all communication between any persons infected with any such disease and the rest of Her Majesty's subjects as appear to the Governor to be necessary and expedient for that purpose; and likewise to make such order as the Governor sees fit for shortening the time of quarantine to be performed by particular vessels or particular persons or articles, or for absolutely or conditionally releasing them or any of them from quarantine."

Held, that the section must be read as authorizing the making of orders in connection only with persons or things arriving in New South Wales by vessels or with persons communicating with such persons or vessels.

The Governor made an order reciting that an infectious or contagious disease highly dangerous to the public health had appeared or broken out in New South Wales, and that it was desirable in the interest of the public health and safety that such orders should be made and directions given as might cut off all communication between any person infected with such disease and the rest of His Majesty's subjects, and ordering that all premises within a certain area licensed for the sale of liquor should be closed until further order.

Held, that the order was not authorized by sec. 33 of the *Quarantine Act* 1897, and was invalid.

CERTIORARI.

On 3rd February 1919, there was published in the New South Wales *Government Gazette* a Proclamation by the Governor of New South Wales, dated the same day, the substance of which was in the following terms:—"Whereas an infectious or contagious disease highly dangerous to the public health has appeared or broken out in New South Wales, and it is desirable in the interest of the public health and safety that such orders should be made and directions given as may cut off all communication between any person infected with such disease and the rest of His Majesty's subjects: Now, therefore, I, Sir Walter Edward Davidson, the Governor aforesaid, with the advice of the Executive Council, do hereby order in pursuance of the Statute made in that behalf, that on and after six o'clock p.m. on Tuesday the fourth day of February 1919 all premises licensed for the sale of liquor in accordance with the *Liquor Act* 1912, within the county of Cumberland in the State of New South Wales, shall be closed

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and kept closed for the sale or consumption of liquor until a further order shall be made, subject to the provisions of sub-sec. 2 of sec. 57 of the said Act."

On 25th February 1919, at the Court of Petty Sessions at Burwood, an information was heard whereby Edward Fitzpatrick, an Inspector of Police, charged that William Henry Young, on 15th February 1919, unlawfully failed to comply with the order of the Governor contained in the Proclamation above mentioned (the order being stated in the information to have been made pursuant to the *Quarantine Act* 1897), in that he, being the holder of a publican's licence in respect of certain premises, did not close them and keep them closed for the sale and consumption of liquor. The defendant, having been convicted and fined £10, gave notice of his intention to appeal to the Court of Quarter Sessions at Parramatta against the conviction and order, on the grounds that the information was bad, that it disclosed no offence, that the conviction and order were bad and contrary to law and that the fine was excessive. On application made on behalf of the Attorney-General for New South Wales a writ of certiorari was issued to bring up to the Supreme Court the record of the Court of Quarter Sessions of the pending appeal, and on a return being made of the record a rule *nisi* was obtained on behalf of the Attorney-General, calling upon the defendant to show cause why his appeal should not be dismissed and his conviction affirmed. On the return of the rule *nisi* a question as to the limits *inter se* of the constitutional powers of the Commonwealth and those of the State of New South Wales arose, and accordingly under sec. 40A of the *Judiciary Act* the matter was removed to the High Court.

Broomfield K.C. (with him *Flannery*), for the Crown. The order made by the Governor by the Proclamation of 3rd February 1919 was authorized by sec. 33 of the *Quarantine Act* 1897. The provision in that section as to infectious or contagious diseases appearing or breaking out in New South Wales is perfectly general, and is not limited to diseases coming from abroad by means of vessels. It is a general health provision, and not a quarantine provision. If sec. 2 of the original Act, 3 Will. IV. No. 1, from

which sec. 33 was taken, was limited in the way contended for, the use of the words "any infectious or contagious disease" in place of the words "any such infectious disease" shows an intention to make the provision in sec. 33 quite general. This prosecution was authorized by the regulation of 13th February 1919, made under sec. 34 of the *Quarantine Act* 1897 and sec. 15 of the *Public Health Act* 1902. If an order in these terms could reasonably be thought to be necessary and expedient for the purposes of the *Quarantine Act*, that is sufficient (*Farey* v. *Burvett* (1)).

Maughan K.C. (with him *Bathgate* and *Evatt*), for the respondent. The *Quarantine Act* 1897 is an Act relating to vessels and persons arriving in vessels, and the general words in sec. 33 will be restricted to that subject matter. The Act only authorizes measures to separate infected from uninfected persons directly or indirectly connected with vessels. The general words in sec. 33 will not be construed so as to give the Governor power to supersede the provisions of another Act of Parliament, namely, the *Liquor Act* 1912. The *Quarantine Act* 1897 is inconsistent with the Federal *Quarantine Act* 1908 and the regulations made thereunder. The Department of Quarantine was taken over by the Commonwealth (sec. 69 of the Constitution), and therefore the Commonwealth Parliament has exclusive powers of legislation as to the matter.

[KNOX C.J. At present the Court is with you as to the construction of the *Quarantine Act* 1897, and therefore it is unnecessary to go into the other questions.]

Broomfield K.C., in reply.

KNOX C.J. In this case the question for decision is whether the provision in sec. 33 of the *Quarantine Act* 1897 authorizing the Governor to make orders and give directions in case of any infectious or contagious disease appearing or breaking out in New South Wales, is a provision of general application enabling the Governor to make orders for the purpose of restricting communication between persons in New South Wales not connected with ships or shipping, or with

(1) 21 C.L.R., 433.

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KNOX C.J.

persons or goods carried by ships, or whether the provision must be read as restricted to the subject matter of persons directly or indirectly connected with ships or shipping. In support of the latter view it is pointed out that the section is found in a code of legislation dealing exclusively, but for these particular words, with vessels, and persons and things arriving in New South Wales in vessels, and persons in New South Wales communicating with vessels which have arrived there. In my opinion there is no doubt that the section must be read in the narrower sense, that is to say, as authorizing the making of orders in connection only with persons or things arriving in New South Wales by vessels or with persons communicating with such persons or vessels. This conclusion is strengthened by reference to the earlier Acts, which were consolidated by the Act now under consideration, which purports to be merely a consolidating Act. The preamble to the original Act, 3 Wm. IV. No. 1, recites that it is expedient that regulations should be made to prevent the introduction of the disease called the malignant cholera, or any other infectious disease highly dangerous to the health of His Majesty's subjects, into the Colony of New South Wales, and the provisions of sec. 1, which relate solely to vessels and persons and things in vessels arriving in New South Wales from overseas refer to orders made by the Governor with the advice of the Executive Council. The power to make orders which is contained in sec. 2 of that Act is in almost identical terms with the power contained in sec. 33 of the Act of 1897, but the use of the words " any such disease " in sec. 2 of the earlier Act makes it clear that the power to make orders conferred by that section was directed to the making of orders preventing the introduction or extension of diseases by communication with vessels arriving from overseas. There is nothing in either Act to suggest that the Legislature was dealing with any subject matter other than the prevention of the introduction of diseases into New South Wales through the medium of vessels from overseas.

We have not been referred to any other statutory provision enabling the Governor to make such an order as that for the breach of which the respondent was prosecuted, and I am therefore of opinion that the conviction cannot be sustained and should be

quashed, and that the costs of the appeal to Quarter Sessions and of the proceedings in the Supreme Court and in this Court should be paid by the Crown.

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ISAACS, GAVAN DUFFY, POWERS and RICH JJ. agreed.

Rule nisi discharged. Conviction quashed. Crown to pay costs in all Courts.

Solicitor for the Crown, *J. V. Tillett*, Crown Solicitor for New South Wales.

Solicitor for the respondent, *C. O. Smithers*.

B. L.

[HIGH COURT OF AUSTRALIA.]

SLATTERY . . . . . APPELLANT;
INFORMANT,

AND

BISHOP AND ANOTHER . . . . . RESPONDENTS.
DEFENDANTS,

ON APPEAL FROM THE SUPREME COURT OF VICTORIA.

H. C. OF A. 1919.

MELBOURNE, *Oct.* 31; *Nov.* 5.

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

Factories and Shops—Grocer, meaning of—Sale of articles usually sold by grocer—Evidence—Factories and Shops Act 1915 (*Vict.*) (No. 2650), *sec.* 226.

Practice (*High Court*)—*Appeal from Supreme Court of State—Special leave—Rescission—Question of fact.*

Held, by *Knox* C.J., *Isaacs* and *Rich* JJ., that a shopkeeper who habitually in the course of his business sells goods of a description usually sold by a given class of traders is not for the purposes of the *Factories and Shops Act* 1915 (Vict.) excluded from that class by reason of the fact that his business includes the sale of other articles to an equal or greater extent.

Held, therefore, by *Knox* C.J., *Isaacs* and *Rich* JJ. (*Gavan Duffy* J. dissenting), that where, on a prosecution under sec. 226 of the *Factories and*