

[HIGH COURT OF AUSTRALIA.]

THE MUTUAL LIFE AND CITIZENS' ASSUR- }
ANCE COMPANY LIMITED . . . } APPLICANT ;
DEFENDANT,

AND

THIEL RESPONDENT.
COMPLAINANT,

ON APPEAL FROM THE COURT OF INDUSTRIAL
ARBITRATION OF QUEENSLAND.

*High Court—Jurisdiction—Appeal from Court of Industrial Arbitration of Queens-
land—The Constitution (63 & 64 Vict. c. 12), sec. 73—Industrial Arbitration
Act 1916 (Qd.) (7 Geo. V. No. 16), secs. 6, 7, 19.*

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SYDNEY,
Dec. 11.

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

Secs. 6 and 7 of the *Industrial Arbitration Act of 1916* (Qd.) provide (*inter alia*) that the Court of Industrial Arbitration established under the Act for all purposes of status shall be deemed to be a branch of the Supreme Court, that every Judge of the Court shall have the status of a Judge of the Supreme Court, and that the Court shall have all the powers and jurisdiction of the Supreme Court in addition to the powers and jurisdiction conferred by the Act.

Held, that the Court of Industrial Arbitration is not the Supreme Court within the meaning of sec. 73 of the Constitution, and therefore no appeal lies from it to the High Court.

Special leave to appeal from the Court of Industrial Arbitration refused.

APPLICATION for special leave to appeal.

On 10th September 1919 a complaint was laid in the Industrial Magistrate's Court at Brisbane, by Frederick William Thiel, charging the Mutual Life & Citizens' Assurance Co. Ltd. with committing a breach of an award of the Court of Industrial Arbitration for canvassers and collectors for life assurance companies, in that it failed

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to pay one Phillip Brooks the minimum wage prescribed. At the hearing the Industrial Magistrate held on the evidence that the said Phillip Brooks was not an employee of the defendant Company within the meaning of the *Industrial Arbitration Act* 1916 (7 Geo. V. No. 16 (Qd.)) and dismissed the complaint. The complainant appealed to the Court of Industrial Arbitration, and the Full Bench of that Court (*McCawley* J., President, and *Macnaughton* J.) set aside the decision of the Magistrate, and convicted the defendant Company.

The Company now applied for special leave to appeal to the High Court from the decision of the Court of Industrial Arbitration.

Stumm K.C. (with him *Fahey*), in support of the application. There is a right of appeal from the Arbitration Court to this Court, because the Arbitration Court is the Supreme Court in industrial jurisdiction (*Industrial Arbitration Act* 1916, sec. 7 (1)). It is deemed to be the Supreme Court for the purposes of status (sec. 6 (5)).

[KNOX C.J. referred to *McCawley* v. *The King* (1).

[ISAACS J. referred to sec. 6 (9).

[KNOX C.J. This Court differs very little from the Land Appeal Court in New South Wales, which is a superior Court of record, but no appeal lies from it to the Supreme Court. They are both Courts set up to deal with special portions of the life of the community.

[ISAACS J. Has the judgment sought to be appealed from been pronounced by a Judge of the Supreme Court?]

No; but it has been given by the Supreme Court as constituted under this Act.

[GAVAN DUFFY J. referred to the judgment of *Isaacs* J. in *Baxter* v. *New South Wales Clickers' Association* (2).

[KNOX C.J. referred to sec. 6 (6).

[RICH J. referred to sec. 6 (8).]

Counsel referred to sec. 3 of the Schedule to the Act, and to *Skinner* v. *Northallerton County Court Judge* (3).

[KNOX C.J. referred to the definition of the word "Judge" in sec. 4, and to sec. 19.]

(1) 26 C.L.R., 9.

(2) 10 C.L.R., 114, at pp. 163-164.

(3) (1899) A.C., 439.

The machinery of the Supreme Court is available to execute the orders of the Arbitration Court (see Regulations of 26th January 1917 under the Act, Order IV., rules 5, 6, 7, 9, 17, 26).

[KNOX C.J. The applicant must get over sec. 73 of the Federal Constitution.

[ISAACS J. "Supreme Court" there means the Supreme Court in the sense of the Court from which an appeal will lie to the Privy Council. If an appeal does not lie to the Privy Council, it will not lie to this Court.

[KNOX C.J. I think everything in the Act is against you.

[GAVAN DUFFY J. I agree.

[RICH J. So do I.

[ISAACS J. *Parkin v. James* (1) is against you. It was there held that the "Supreme Court" does not mean the Supreme Court in any jurisdiction, but the Supreme Court by the Constitution.

[KNOX C.J. I think it is hopeless to argue that the Court of Industrial Arbitration is the Supreme Court; and so do my learned brethren.]

PER CURIAM. We are of opinion that we have no jurisdiction to entertain this appeal, and so it is unnecessary to consider whether, if we had jurisdiction, leave ought to be granted. Leave will be refused.

Special leave to appeal refused.

Solicitors for the applicant, *Foxton, Hobbs & Macnish*, Brisbane.

N. McT.