

now, by the amending Act, the successors, &c., of the business of the party who made the agreement are also bound. The constitutional power is not so weak, in my opinion, that it is limited to the settlement of an industrial disturbance between the actual participators therein. If so limited, the power would be practically ineffective: if industrial disturbances are to be settled or prevented, then the power must extend to the ever changing body of persons within the area of such disturbances. (See *Attorney-General for Canada v. Cain and Gilhula* (1).)

H. C. OF A.
1922-1923.
—
GEORGE
HUDSON
LTD.
v.
AUSTRALIAN
TIMBER
WORKERS'
UNION.
—
Starke J.

*Question asked by case stated answered No.
Costs in Supreme Court and in this Court
to be paid by the defendant company.*

Solicitors for the appellant, *Norton Smith & Co.*
Solicitor for the respondent, *V. P. Ackerman.*

B. L.

(1) (1906) A.C., 542, at p. 546.

[HIGH COURT OF AUSTRALIA.]

IN RE THE JUDICIARY ACT 1903-1920

AND

IN RE THE NAVIGATION ACT 1912-1920.

Constitutional Law—High Court—Jurisdiction—Original and appellate jurisdictions
—The Constitution (63 & 64 Vict. c. 12), sec. 74.

H. C. OF A.
1923.
—
SYDNEY,
Dec. 6.
—

The statement in *In re Judiciary and Navigation Acts*, (1921) 29 C.L.R., 257, at p. 264, that secs. 73 and 74 of the Constitution deal with the appellate power of the High Court is not an authority for the proposition submitted to the Privy Council in *Minister for Trading Concerns for the State of Western Australia v. Amalgamated Society of Engineers*, (1923) A.C., 170, at p. 173, that the High Court has held that sec. 74 does not apply to a decision of the High Court in its original jurisdiction.

Dictum in *In re Judiciary and Navigation Acts*, (1921) 29 C.L.R., 257, at p. 264, explained.

H. C. OF A.
1923.
~
IN RE
JUDICIARY
AND
NAVIGATION
ACTS.
—

On 6th December 1923 KNOX C.J., on behalf of himself and the other Justices who formed the majority in *In re Judiciary and Navigation Acts* (1) (Knox C.J., Gavan Duffy, Powers, Rich and Starke JJ.), made the following statement:—

The consideration of the case of *George Hudson Ltd. v. Australian Timber Workers' Union* (2) involved reference to some sections in the Constitution relating to the Judiciary. And in the course of that consideration some members of the Court had occasion to refer to the *Judiciary and Navigation Acts Case* (1). In the judgment of the majority of the Court in the last-mentioned case, it is said that "secs. 73 and 74" of the Constitution "deal with the appellate power of the High Court" (3). Apparently these words have been cited before the Judicial Committee of the Privy Council as authority for the proposition that "sec. 74 does not apply to a decision of the High Court in its original jurisdiction; the High Court has so held" (see the argument in *Minister for Trading Concerns for the State of Western Australia v. Amalgamated Society of Engineers* (4)).

The words used in the judgment are perhaps incautious, but the members of the Court giving that judgment did not intend to affirm the proposition submitted to the Privy Council, and the words do not, if read in their context, support the contention. The question in that case was as to the validity of Part XII. of the *Judiciary Act* (reference of constitutional questions). The determination of such questions fell, if Part XII. were valid, within either the appellate or the original jurisdiction of the High Court. The judgment pointed out that it was "not suggested that the duty imposed by Part XII. of the *Judiciary Act* is within the appellate jurisdiction of this Court" (5); therefore, sections dealing with appeals were irrelevant. Sec. 73 of the Constitution deals with appeals to the High Court, and sec. 74 with appeals to His Majesty in Council. Consequently, neither section required further consideration in the case then before the Court.

B. L.

(1) (1921) 29 C.L.R., 257.

(2) (1922-23) 32 C.L.R., 413.

(3) (1921) 29 C.L.R., at p. 264.

(4) (1923) A.C., 170, at p. 173.

(5) (1921) 29 C.L.R., at p. 264.