H. C. OF A. 1931.

JOSKE v. WHAMOND.

Act 1915 from being deprived of their employment by the prohibition, which is now sec. 68 (1).

I am of opinion that the appeal should be allowed with costs.

Appeal allowed with costs. Order of Macfarlan J. set aside and in lieu thereof order made absolute with costs. Order of Court of Petty Sessions set aside and defendant convicted and fined five pounds with five guineas costs.

Solicitor for the appellant, *Ernest Joske.*

Solicitors for the respondent, *W. E. Pearcey & Ivey.*

H. D. W.

[HIGH COURT OF AUSTRALIA.]

THE FEDERAL COMMISSIONER OF TAXATION APPELLANT; PLAINTIFF,

AND

THE VICTORIAN HARDWARE CLUB . . RESPONDENT. DEFENDANT,

H. C. OF A. 1931.

MELBOURNE, *May* 6.

Rich, Starke, Dixon, Evatt and McTiernan JJ.

Entertainments Tax (Cth.)—Entertainment—Club's annual picnic—Boat ticket—Incidental attractions—Whether an entertainment—Entertainments Tax Assessment Act 1916-1924 (*No.* 36 *of* 1916—*No.* 52 *of* 1924), *secs.* 2, 11.

A club held its annual picnic for which it made a charge to cover the cost of a boat ticket and also provided music and incidental attractions in a public park engaged for the occasion for admission to which no further charge was made.

Held, that the function was not an entertainment within the meaning of the Federal *Entertainments Tax Assessment Act* 1916-1924.

ORDER NISI to review.

A complaint was laid by the Commissioner of Taxation against the Victorian Hardware Club alleging that the Club was, on 10th March 1930, at Melbourne, indebted to the Commissioner in the sum of £16 8s., being the amount of entertainments tax alleged to be due and payable by the Club under the provisions of the Federal *Entertainments Tax Assessment Act* 1916-1924 and the Regulations made thereunder and the *Entertainments Tax Act* 1916-1925 in respect of the Annual Hardware Picnic held on 10th March 1930.

The complaint was heard in the Court of Petty Sessions at Melbourne on 26th February 1931. From the evidence it appeared that the Club chartered the paddle steamer *Weeroona* from Port Melbourne to Sorrento and back. The tickets for the picnic were procurable by the public. The Club engaged the park at Sorrento, but raised no objection to members of the public entering while the picnic was being held, and also provided amusements there for the people who attended the picnic, and provided bands on the boat and in the park. The only charges made were for adults 4s. and for children 2s., which was for the boat trip, and it was stated that hot water and milk would be provided free. The only other charges made were for entering into the competitions arranged at the picnic.

The complaint was dismissed. In dismissing the complaint the Police Magistrate said :—" The argument seems to resolve itself into the question is the picnic an entertainment which is held from the time the boat leaves Port Melbourne until it returns, or is the boat trip a means provided by the Club to allow its members to reach the place where the picnic is to be held, namely, at Sorrento, I am inclined to think that the purchase of the ticket is for the boat passage only. The case is dismissed with £3 3s. costs against the complainant."

From this decision the Commissioner of Taxation now appealed to the High Court by order nisi to review.

Fullagar, for the appellant. There is one whole function provided, beginning with the embarkation on the boat and ending with the disembarkation. [He referred to the *Entertainments Tax Assessment*

H. C. OF A. 1931.

FEDERAL COMMISSIONER OF TAXATION v. VICTORIAN HARDWARE CLUB.

Act 1916-1924, secs. 2, 11; *Lyons & Co.* v. *Fox* (1); *Federal Commissioner of Taxation* v. *Bendrodt* (2); *Clyde* v. *Bolot* (3), and *Cordiner* v. *Stockham* (4).]

Sholl, for the respondent, was not called upon.

The following judgments were delivered:—

Rich J.

RICH J. I think the facts in this case show that the function or diversion, to use a neutral term, was not an entertainment within the meaning of the Act. If the function is separated into two parts, the trip in the boat admittedly was not an entertainment. But it was the only part for which "payment" was made. The picnic in the park was not an entertainment. No "payment" was made for it. The persons who went in the boat might or might not go into the park. Persons outside the Club and not participators in the function, who had not travelled by the boat, might have gone into the park—a public park—and joined in the function. But Mr. *Fullagar* says we must combine the two factors and treat the matter as a whole. Be it so, the combination cannot be said to be an entertainment for which payment was made by a spectator or member of the audience. I think the Magistrate came to the right conclusion, and that the order nisi should be discharged with costs.

STARKE J. There was no entertainment in this case.

DIXON J. I concur. I think the Magistrate was entitled to find that there was no payment for admission to an entertainment within the meaning given to those words by sec. 2 of the *Entertainments Tax Assessment Act* 1916-1924. I do not think that those who bought tickets could be said to have made payments for admission as spectators or members of an audience to an entertainment.

EVATT J. In my opinion the tickets were sold to enable the holders to have a day's outing at the seaside for themselves and their children. Boat transport was the essential thing, and the

(1) (1919) 1 K.B. 11.
(2) (1920) 28 C.L.R. 101.
(3) (1924) 34 C.L.R. 144.
(4) (1920) 1 K.B. 104.

"attractions" at Sorrento were subordinate. What was paid for was not an entertainment and, if there was any entertainment at Sorrento, it was not paid for.

McTiernan J. I agree.

Order nisi discharged.

H. C. of A. 1931.

Federal Commissioner of Taxation v. Victorian Hardware Club.

Solicitor for the Commissioner of Taxation, *W. H. Sharwood*, Crown Solicitor for the Commonwealth.

Solicitor for the respondent, *Eggleston & Eggleston*.

H. D. W.

[HIGH COURT OF AUSTRALIA.]

THE AUSTRALIAN INSURANCE STAFFS' FEDERATION . . . . . } Applicant;

AND

THE ATLAS ASSURANCE COMPANY LIMITED AND OTHERS . . . } Respondents.

Dist 47 C.L.R. 22

Ref'd to 80 C.L.R. 82

H. C. of A. 1931.

Melbourne, *Sept.* 28, 29; *Nov.* 6.

Gavan Duffy C.J., Rich, Starke, Dixon, Evatt and McTiernan JJ.

Industrial Arbitration—Industrial dispute—Log served by employees claiming salary at stated rate—Log served by employers suggesting salary at lower rate—Award fixing salary at an intermediate rate—Application by employers to reduce award rate by ten per cent—Reduction of award rate below amount offered by employers—Jurisdiction of Commonwealth Conciliation and Arbitration Court to reduce salary below that amount—Commonwealth Conciliation and Arbitration Act 1904-1930 (*No.* 13 *of* 1904—*No.* 43 *of* 1930), *secs.* 21AA, 28 (3).

An award cannot be made by the Commonwealth Court of Conciliation and Arbitration prescribing a minimum wage lower than any amount in difference in the industrial dispute, and, unless a new industrial dispute extending beyond one State has arisen, an award cannot be varied so as to prescribe such a minimum wage.