[HIGH COURT OF AUSTRALIA.]

PIDOTO AND OTHERS . . . . . APPLICANTS;

AND

THE STATE OF VICTORIA . . . . . RESPONDENT.

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MELBOURNE, *Oct.* 6-8.

SYDNEY, *Dec.* 2.

Latham C.J., Rich, Starke, McTiernan and Williams JJ.

Constitutional Law—Defence—National security—Regulations—Validity—Industrial peace—Jurisdiction of Commonwealth Court of Conciliation and Arbitration—"Industrial dispute"—State public servants—Additional payment in respect of work done on State holidays—Severability—The Constitution (63 & 64 *Vict. c.* 12), *ss.* 51 (*vi.*), (*xxxv.*), 106, 107—*National Security Act* 1939-1940 (*No.* 15 *of* 1939—*No.* 44 *of* 1940), *s.* 5 (1)—*Acts Interpretation Act* 1901-1941 (*No.* 2 *of* 1901—*No.* 7 *of* 1941), *s.* 46 (*b*)—*National Security* (*Industrial Peace*) *Regulations* (*S.R.* 1940 *No.* 190—1943 *No.* 156), *regs.* 3-5, 11—*National Security* (*Supplementary*) *Regulations*, *regs.* 19*, 29†, 29A‡, 44§.

Held, by *Latham* C.J., *Rich*, *McTiernan* and *Williams* JJ.:—

(1) that the terms of s. 51 (xxxv.) of the Constitution should not be construed as imposing limitations upon the defence power of the Commonwealth Parliament;

(2) that the exercise of control in relation to all industrial disputes and industrial unrest in war-time is within the defence power;

(3) that the limitation in war-time of the number of holidays to be enjoyed by persons engaged in industry is within the defence power; and

(4) that such limitation may validly extend to State employees engaged in industry.

Regs. 3, 4, 5 and 11 of the *National Security* (*Industrial Peace*) *Regulations* are valid.

So *held* by *Latham* C.J., *Rich* and *Williams* JJ., and by *McTiernan* J. as to regs. 3, 4, 5 (*a*) and 11, *Starke* J. expressing the opinion that regs. 4, 5 and 11 are invalid.

Reg. 19 of the *National Security* (*Supplementary*) *Regulations* validly applies to industries conducted by a State, and reg. 29A validly gives the right in

* S.R. 1941 Nos. 297, 314. (Repealed by S.R. 1943 No. 88, reg. 31).
† S.R. 1942 Nos. 242, 282, 407, 422.
‡ S.R. 1942 No. 282.
§ S.R. 1942 Nos. 125, 157. (Repealed by S.R. 1942 No. 242, reg. 2.)

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respect of additional payment therein defined to employees in such an industry "who worked on any day which, under regulation 19 . . . was not observed as a . . . holiday."

So *held* by *Latham* C.J., *Rich*, *McTiernan* and *Williams* JJ. (*Starke* J. dissenting).

Held, also :—

(i) By *Latham* C.J., *Rich*, *McTiernan* and *Williams* JJ., that sub-regs. 1-3 and 7 of reg. 29 of the *National Security* (*Supplementary*) *Regulations* are valid in their application to employees of a State. By *Starke* J., that those regulations are invalid in so far as they purport to bind the States as such to make the payment prescribed.

(ii) By *Latham* C.J., *Rich*, *Starke* and *Williams* JJ., that regs. 29 (8)-(10) and 44 of the *National Security* (*Supplementary*) *Regulations*, and also reg. 29A in so far as it operates to confer rights by relation to reg. 44, are invalid in so far as they purport to apply to State employees. Section 46 (*b*) of the *Acts Interpretation Act* 1901-1941 cannot be applied so as to save the operation of these provisions in respect of State employees engaged in any limited class of work. By *McTiernan* J., that those regulations are valid in their application to State employees to the extent to which they apply to such employees engaged in industry.

The operation of s. 46 (*b*) of the *Acts Interpretation Act* 1901-1941, and the construction and operation of enactments in part within, and in part without, power, considered.

R. v. *Commonwealth Court of Conciliation and Arbitration* ; *Ex parte Victoria* ; *Victoria* v. *The Commonwealth*, (1942) 66 C.L.R. 488, and *Amalgamated Society of Engineers* v. *Adelaide Steamship Co. Ltd.*, (1920) 28 C.L.R. 129, discussed.

CASE STATED under s. 31 (2) of the *Commonwealth Conciliation and Arbitration Act* 1904-1934.

On applications by W. L. Pidoto and others (hereinafter called the applicants) to the Commonwealth Court of Conciliation and Arbitration under National Security Regulations mentioned hereunder, Judge *Kelly* stated for the High Court a case which was substantially as follows :—

1.-4. [These paragraphs recited regs. 3-5 and 11 of the *National Security* (*Industrial Peace*) *Regulations*.]

5.-8. [These paragraphs recited regs. 19 (1), (7), 29 (1)-(3), (7)-(10), 29A (1) and 44 (1)-(2A), (3), (4), of the *National Security* (*Supplementary*) *Regulations*, and it was pointed out that reg. 44 was repealed by Statutory Rules 1942 No. 242 notified in the Commonwealth *Gazette* on 28th May 1942.]

9. The applicants were at all material times and still are employed by the State of Victoria in the Public Works Department of the

State and are permanent members of the public service of the State and are appointed under and employed by the State subject to the provisions of the *Public Service Acts* (Vict.).

10. Each of the applicants is paid an annual salary in respect of his said employment.

11.-14. [These paragraphs stated in respect of each of the applicants that he had worked " in his said employment " on some one or more days, specified in respect of each applicant, among the following: 27th December 1941, 16th March, 6th and 7th April, 24th September and 3rd November 1942.]

15. The work performed by each of the applicants in his said employment on such of the said days on which he worked consisted of loading explosives at the Explosives Depot of the said Department at Truganina in the State of Victoria onto lighters, proceeding with such lighters to ships standing in Port Phillip Bay, removing such explosives from such lighters to such ships, returning on such lighters to the said Explosives Depot and from time to time performing maintenance work on or in connection with such lighters for the purposes of the transportation of such explosives from the Explosives Depot to such ships as aforesaid.

16. All the days mentioned, except 3rd November 1942, were public holidays or holidays within the meaning of the *National Security* (*Supplementary*) *Regulations* above recited.

17. The work of transportation of explosives from the Explosives Depot to ships standing in Port Phillip Bay has been carried on for many years and was carried on prior to the outbreak of the present war.

18. Prior to the outbreak of the present war the explosives so transported were used mainly for purposes other than the manufacture of munitions of war; but some of such explosives were used in the manufacture of munitions of war and some of such explosives were used in the manufacture of ammunition destined either for naval and military or for private use.

19. Since the outbreak of war the Commonwealth Government has handled almost all of its own supplies of explosives and the explosives handled at the said Explosives Depot and loaded, transported and unloaded by the applicants have been nearly all destined for the following purposes, being purposes other than the manufacture of actual munitions of war such as shells, bombs, torpedoes, mines, small arms ammunition and pyrotechnics :—(*a*) the construction of works for the manufacture, distribution or establishment of munitions of war or fortifications for use by the naval and military forces, such as the quarrying of stone, the excavation of foundations for, or the

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demolition to clear sites for the foundations of, buildings and other structures, such as factories, wharves, bridges, aerodromes, roads, gun emplacements, bombproof shelters and the like; (*b*) the mining of coal for the provision of heat and power used in the manufacture of munitions of war or their transportation by land or sea or in the construction of factories and works for their manufacture or use; (*c*) the demolition of buildings or other obstructions whose demolition may be required for defensive purposes; (*d*) the mining of coal for the provision of heat and power in the manufacture or preservation or distribution of food and clothing for the needs of that portion of the population engaged either in the armed forces or in the manufacture or construction of munitions of war or defensive works or factories or other structures connected therewith; (*e*) the mining of coal and the quarrying of stone or other materials for the provision of heat or power in the manufacture, preservation or distribution of food and clothing and for the provision of transport, transit and shelter for that portion of the population which, though not engaged in the armed forces or in the manufacture or construction of munitions of war or defensive works or factories or other structures connected therewith, is, in order to liberate men and women for work directly connected with the prosecution of the war (for example, in the armed forces or in the manufacture of munitions of war) called upon to undertake or to continue to fulfil, or is voluntarily undertaking or continuing to fulfil, the work of manufacturing or distributing goods or affording services in accordance with the essential needs of the civilian population; (*f*) purposes other than those mentioned above. The explosives handled at the Explosives Depot destined for use in the manufacture of actual munitions of war as above described have represented a very small proportion of the total of explosives so handled. During the whole of the period of eleven months covering the days in question on only two occasions were explosives, which I am able to find were used in the manufacture of actual munitions of war as above described, handled by any of the applicants, viz., on 24th September 1942 (see par. 20 of this case) and on 23rd July 1942 (not being one of the days in question) on which day a number of cases of torpedo parts were handled.

20. (1) (*a*) It is not possible upon the evidence to find for what particular purpose or purposes the explosives handled by the applicants employed on 6th April 1942, 7th April 1942 or 3rd November 1942 were destined to be used. (*b*) The explosives handled by the applicants employed on 16th March 1942 were consigned by Nobel (Australasia) Pty. Ltd. to its agencies in New Zealand, but it is not possible upon the evidence to find for what

particular purpose or purposes they were destined to be used. (2) On 24th September 1942 the applicants employed were engaged from 7.45 a.m. to 12 noon on maintenance of the lighters and from 12.30 p.m. to midnight in loading explosives (picrites) on behalf of the Department of Munitions. (3) On 27th December 1941 the applicants employed were engaged exclusively in the work of maintenance of the lighters used in the transport of explosives; and on 25th April 1942 certain of the applicants were engaged exclusively in warding duties on lighters lying at anchorage and loaded with explosives, but it is not possible upon the evidence to find for what particular purpose or purposes the said explosives were destined to be used. (4) The handling of explosives and the maintenance of lighters on the days above mentioned were performed in the course of the duties of the applicants in their employment as aforesaid and so enabled them to be employed without the necessity of working for longer than they actually worked on other days than those mentioned at handling other explosives and at the maintenance of lighters for the purpose of transporting other explosives destined for one or other of the purposes set out in par. 19.

21. I am satisfied that the applicants were upon such of the said days as they worked as stated above employed by a State Department, within the meaning of the said *National Security* (*Supplementary*) *Regulations*.

22. I am satisfied that the said Explosives Depot and the area traversed by the said lighters for the purpose of transporting the explosives to the ships is each a place at which the said Department carries out part of its functions and the place of employment of the applicants.

23. None of the applicants is entitled under any law or industrial award, order, determination or agreement to additional payment in respect of his having been engaged on work or having worked on any of the days mentioned in pars. 11, 12, 13 and 14.

24. Save as hereinafter stated, none of the applicants has received any additional payment in respect of his having been so engaged or having so worked on any of the said days. On any of such days on which overtime was worked an allowance therefor was made either by way of additional leave equivalent to the overtime so worked or by way of overtime payment. In respect of 16th March 1942 an extra day's pay to the applicants who worked on that day has been paid by the State and in respect of work performed on 6th and 7th April 1942 two days' leave to be taken at the convenience of the said Department has been granted to the applicants who worked on the said days. The payments and the leave referred to in this paragraph

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were made and granted since the making of the applications referred to in subsequent paragraphs of this case. These payments were accepted by the applicants to whom they were made without prejudice to the applications. The leave has not yet been taken by any of the applicants to whom it has been granted. The payments and leave were made and granted consistently with payments and leave of a like nature and to the same extent made and granted to other members of the Victorian public service who worked on the days abovementioned.

25. The applicants who worked on 27th December 1941 have made application pursuant to reg. 29A of the *National Security* (*Supplementary*) *Regulations* to the Commonwealth Court of Conciliation and Arbitration for a determination that they shall be entitled for having so worked to additional payment at such rate as in all the circumstances (including the regularity of their attendance at work) the said Court may think just.

26. The Minister did not, in pursuance of reg. 19 of the *National Security* (*Supplementary*) *Regulations*, substitute 27th December 1941 for 25th or 26th December 1941 or 1st January 1942 in respect of the State of Victoria.

27-30. [Pars. 27 and 28 described, in terms similar to those of par. 25, applications by some of the applicants in respect of 16th March and 6th and 7th April 1942 pursuant to regs. 29A and 44 of the *Supplementary Regulations*. Pars. 29-30 described applications pursuant to reg. 29 of those Regulations in respect of 24th September and 3rd November 1942.]

31. As a judge of the Commonwealth Court of Conciliation and Arbitration, sitting as the said Court, I am satisfied, pursuant to reg. 5 of the *National Security* (*Industrial Peace*) *Regulations*, that the applications are in respect of an industrial dispute, within the meaning of the said Regulations, which is proper to be dealt with in the interests of industrial peace and national security; and I have taken cognizance thereof accordingly; and, sitting as the said Court, I deem it desirable in the interests of industrial peace and national security, pursuant to reg. 11 of the said Regulations, to exercise jurisdiction under the *Commonwealth Conciliation and Arbitration Act* 1904-1934 and the said Regulations on my own motion in respect of the said dispute.

32. It has been contended before me (sitting as the said Court), on behalf of the State of Victoria—(*a*) that the *National Security* (*Industrial Peace*) *Regulations*, and in particular regs. 3, 4, 5 and 11 thereof, are invalid to give the said Court cognizance of the said dispute and to empower it to exercise any jurisdiction under the

Commonwealth Conciliation and Arbitration Act 1904-1934 or the said Regulations; (*b*) that regs. 19, 29, 29A and 44 of the *National Security* (*Supplementary*) *Regulations* and in particular such portions of them as are recited in pars. 5, 6, 7 and 8 respectively of this case, are in so far as any of them or the said portions of them are relied upon by any of the said employees for their said applications, invalid to empower the said Court to entertain and determine any of the said applications; (*c*) that the said Court cannot take cognizance of the said dispute or exercise any jurisdiction under the *Commonwealth Conciliation and Arbitration Act* 1904-1934, or the *National Security* (*Industrial Peace*) *Regulations* in respect thereof; (*d*) that the said Court cannot determine the said applications.

33. The contrary has been contended on behalf of the applicants.

The judge stated the following questions, which "are in my opinion questions of law arising in the proceeding, that is to say, in the hearing and determination of the said dispute and of the said applications before me, sitting as the said Court for the purpose of such hearing and determination," for the opinion of the High Court:—

(1) Are the *National Security* (*Industrial Peace*) *Regulations* and in particular regs. 3, 4, 5 and 11 thereof a valid exercise of the powers conferred upon the Governor-General by the *National Security Act* 1939-1940, so as to give the said Court cognizance of the said dispute and empower the said Court to exercise any jurisdiction under the *Commonwealth Conciliation and Arbitration Act* 1904-1934, or the said Regulations?

(2) Are any of the regulations 19, 29, 29A and 44 of the *National Security* (*Supplementary*) *Regulations* and in particular such portions of them as are recited in pars. 5, 6, 7 and 8 respectively of this case and in pursuance of which the said employees have purported to make their said application, and, if so, which of them, a valid exercise of the powers conferred upon the Governor-General by the *National Security Act* 1939-1940 so as to empower the said Court to entertain and determine all or any, and, if only one or some, which, of the said applications?

P. E. Joske, for the applicants, relied upon the argument to be presented on behalf of the Commonwealth (intervening).

Fullagar K.C. (with him *Dean*), for the respondent, at the instance of the Court presented argument at this stage. Presumably the

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applicants rely upon reg. 19 of the *Supplementary Regulations* (coupled with reg. 29A) for 27th December 1941, reg. 44 (and 29A) for 16th March and 6th and 7th April 1942, and reg. 29 (8)-(10) for 24th September and 3rd November 1942. Reg. 29 (1), which is limited to work connected with the war, is, on the case stated, not applicable to any of the days in question here. Regs. 19, 29 (8)-(10) and 44 are all quite general in expression and are not necessarily limited either in relation to industry in general or war work in particular. They are wholly invalid or, at least, invalid so far as they purport to apply to State servants (*R.* v. *Commonwealth Court of Conciliation and Arbitration*; *Ex parte Victoria*; *Victoria* v. *The Commonwealth* (*Public Service Case*) (1)). There is no possibility of severance or reading down of the provisions of regs. 19, 29 (8)-(10) or 44, at all events in any manner affecting the respondent. The Court cannot say what would have been intended by the subordinate legislative body on the assumption that these regulations in their present form were beyond power, and there is no room for the application of s. 46 (*b*) of the *Acts Interpretation Act* (*R.* v. *Poole*; *Ex parte Henry* [*No.* 2] (2)). The real effect of the decision in the *Public Service Case* (1) is that sub-regs. 8-10 of reg. 29 are wholly invalid or invalid in so far as they purport to bind the State of Victoria. These sub-regulations are not limited in terms to work connected with the war or even to industrial work; they purport to bind the State in respect of all its servants, and cannot be read down so that they will be limited to State servants engaged in either industrial or war work. This applies also to regs. 19 and 44. The defence power does not authorize interference with State services even in the carrying on of an industry. If it is sought to distinguish the *Public Service Case* (1) on the ground that there the declaration of invalidity was restricted to servants not engaged in industry and that the work now in question is industrial, the applicants are still faced with the proposition that the defence power does not include a general power to control industry (*Victorian Chamber of Manufactures* v. *The Commonwealth* (*Industrial Lighting Regulations*) (3)). It may be that the regulations in question or some of them can be read down so that they do not apply to State servants, but the respondent here is not concerned with that. The true effect of the *Public Service Case* (1) as here submitted is shown by passages in the judgments, per *Latham* C.J. (4); per *Rich* J. (5); per *Starke* J. (6); per *McTiernan* J. (7); per *Williams* J. (8). If the argument as to

(1) (1942) 66 C.L.R. 488.
(2) (1939) 61 C.L.R. 634.
(3) (1943) 67 C.L.R. 413.
(4) (1942) 66 C.L.R., at pp. 508, 509.
(5) (1942) 66 C.L.R., at p. 510.
(6) (1942) 66 C.L.R., at p. 515.
(7) (1942) 66 C.L.R., at pp. 524, 525.
(8) (1942) 66 C.L.R., at pp. 532, 533.

the *Supplementary Regulations* is wrong so that the applicants have some rights under those Regulations, there still remains the question whether the Commonwealth Court of Conciliation and Arbitration has jurisdiction in the matter. This depends on the *Industrial Peace Regulations*. These Regulations are wholly invalid; alternatively, they do not apply as a matter of construction to State servants and, if they do, they are to that extent invalid. They are quite general in their application and cover all sorts of disputes and matters which can have no relation to the conduct of the war or the defence of the Commonwealth. Broadly speaking, it is true to say that industrial peace is desirable in the interests of defence, but that means general industrial peace throughout the country, and, as already mentioned in connection with the *Supplementary Regulations*, the contention that the defence power gives the Commonwealth a general power in relation to industry has already been rejected. [He referred to the *Public Service Case* (1).]

Barry K.C. and *P. D. Phillips*, for the Commonwealth (intervening).

Barry K.C. The *Industrial Peace Regulations* are a proper exercise of the defence power. The preamble to those Regulations recites that peace in industry is necessary for the efficient prosecution of the war and that, to preserve peace in industry, it is desirable that certain limitations on the jurisdiction of Commonwealth industrial tribunals should be removed and provision made for those tribunals to deal with industrial disputes with greater expedition. The Regulations themselves are directly related to the matters stated in the preamble, and those matters are directly related to defence. The purpose of the Regulations is to see that there is an efficient use of the man-power resources of the Commonwealth. The proper mobilization and utilization of those resources is plainly related to the effective prosecution of the war: See *Victorian Chamber of Manufactures* v. *The Commonwealth* (*Women's Employment Regulations*) (2), per *Latham* C.J., *McTiernan* J., and *Williams* J. respectively; *Farey* v. *Burvett* (3), per *Higgins* J.; *Victorian Chamber of Manufactures* v. *The Commonwealth* (*Prices Regulations*) (4), per *Latham* C.J. and *Williams* J. respectively; *Ferguson* v. *The Commonwealth* (5), per *Latham* C.J.; *Peacock* v. *Newtown Marrickville & General Co-operative Building Society No.* 4 *Ltd.* (6),

(1) (1942) 66 C.L.R., at p. 508.
(2) (1943) 67 C.L.R. 347: See pp. 356, 386, 403.
(3) (1916) 21 C.L.R. 433: See p. 459.
(4) (1943) 67 C.L.R. 335: See pp. 339, 345.
(5) (1943) 66 C.L.R. 432: See p. 434.
(6) (1943) 67 C.L.R. 25: See p. 49.

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per *Williams* J. The national control of industry in war-time is capable of assisting defence, and the matter of man power is particularly one which in time of war must be subject to the control of a strong central authority. The Commonwealth has exercised its power in that regard in the Regulations, and it is not for the Court to say whether the means chosen are the correct or the best means of achieving the purpose. The extension of the jurisdiction of the Arbitration Court is merely the adaptation of the existing machinery for the purpose of accomplishing something which is necessary by reason of the abnormal circumstances created by the war, and is a proper exercise of the defence power. It is impossible to say in advance that any particular industrial dispute will or will not militate against the efficiency of the war effort, and the only practicable way of dealing with the matter is to assume control of all industrial disputes. As to the *Supplementary Regulations*, for the purposes of this case reg. 19 (Statutory Rules 1941 No. 297) is material to 27th December 1941. Reg. 44 (Statutory Rules 1942 Nos. 125, 157) is material to the days in March and April: It was repealed but by Statutory Rules 1942 No. 282, a new regulation, 29A, preserving rights under reg. 44 and providing a procedure for the purposes of reg. 19, was enacted. The object of reg. 29A was to enable workers who were not protected by laws or awards to obtain holiday pay for days worked during the Christmas, New Year and Easter periods. Reg. 29 (8) (Statutory Rules 1942 No. 407) was inserted to deal with the Victorian statutory holiday, 24th September 1942 (Show Day), and reg. 29 (9), (10) (Statutory Rules 1942 No. 422), to deal with the day which ordinarily would have been Melbourne Cup Day (3rd November 1942). So far as Show Day and Cup Day are concerned reg. 29 (1) would apply if the applicants' work was connected with the war (which is a question for the Arbitration Court) and it would not be necessary to invoke reg. 29 (8) for Show Day or reg. 29 (9) or (10) for Cup Day. Regs. 19, 44, 29 and 29A are merely the manner whereby the Commonwealth exercises its control over man power; the existence of the power is not to be confused with the policy which directs its exercise. Once it is shown that the Commonwealth has power to control and direct the man-power resources of the Commonwealth it follows that the Commonwealth may say to the whole working population of Australia, whether engaged in the war effort or in manufacturing articles which have no immediate connection with the war effort: "You may take a holiday on a particular day," or: "You may not." It is reasonably incidental to the exercise of the power to require people to work that those for whom they work be required to pay

them. The Commonwealth can bind the States in this respect, treating State servants as it does all other employees. Accordingly, the regulations in question which are not restricted to work directly connected with the war effort are nevertheless valid and bind the States. This contention applies to reg. 29 (8)-(10). In so far as the *Public Service Case* (1) is inconsistent with this contention, it should be reconsidered : It was not put to the Court in that case, as it is now put, that the real justification for the regulations in question relates to control of man power, that the Commonwealth has power to deal with every aspect of the way in which people should work, whether employed immediately in war industry or in the production of civilian goods or in the supply of other services to the community. The Commonwealth can bind the States, provided it is otherwise within the extent of its powers (*Amalgamated Society of Engineers* v. *Adelaide Steamship Co. Ltd.* (2)). [He referred also to the *Public Service Case* (3).]

P. D. Phillips. If the Court is not prepared to reconsider the *Public Service Case* (1), the question arises, particularly in relation to reg. 29 (8)-(10), as to the application of s. 46 (*b*) of the *Acts Interpretation Act*. As to the days covered by reg. 29 (8)-(10), if the Arbitration Court found that the work in question was within reg. 29 (1), that Court could take cognizance of the applications without reference to reg. 29 (8)-(10) ; if not, the question how far sub-regs. 8-10 now operate remains to be determined. Section 46 (*b*) is directed to giving *operative effect* to provisions held in part invalid, and not to construction. If an enactment contains valid and invalid parts in separate words so that the invalid part can be struck out by the " blue-pencil " method, there is no difficulty. If it is clear on the face of an enactment that it was not intended to operate otherwise than as a whole, then, if part is bad, all is bad. However, it does not follow that an enactment expressed in general terms is wholly invalid because it is capable of extending beyond power and cannot be treated by the blue-pencil method. In view of s. 46 (*b*) the function of the Court, when it finds such an enactment bad in its application to particular circumstances, is limited to declaring it bad to that extent, the enactment being left to operate in all cases to which it can validly apply. The regulations in question could validly operate so as to apply to State servants engaged in industry or, at all events, to those engaged in war work, and the Court could

(1) (1942) 66 C.L.R. 488.
(2) (1920) 28 C.L.R. 129, at pp. 153, 155, 158.
(3) (1942) 66 C.L.R., at pp. 505, 508, 522, 532.

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make a declaration accordingly. These submissions are not inconsistent with *Newcastle and Hunter River Steamship Co. Ltd.* v. *Attorney-General for the Commonwealth* (1), nor with *Victorian Chamber of Manufactures* v. *The Commonwealth* (*Industrial Lighting Regulations*) (2), in which the view appears to have been taken that the whole subject matter was beyond power. [He referred also to *Huddart Parker Ltd.* v. *The Commonwealth* (3); *R.* v. *Poole*; *Ex parte Henry* [*No.* 2] (4); *Australian Railways Union* v. *Victorian Railways Commissioners* (5).]

Fullagar K.C., by leave, referred to *Attorney-General* (*Alberta*) v. *Attorney-General* (*Canada*) (6); *Adelaide Company of Jehovah's Witnesses Inc.* v. *The Commonwealth* (7), per *Williams* J.

P. E. Joske, in reply. The proper construction of reg. 19 of the *Supplementary Regulations* is that it refers only to departments of the State or of the Commonwealth in which any industry is carried on. Alternatively, if it is wider than that, the express reference to State departments can be severed; the result will be that the regulation will apply in general terms to all premises in which any industry is carried on and State premises will be affected in the same way as any other premises. Similarly, reg. 44 applies to employees in a business of the Commonwealth or a State. [He referred to *Merchant Service Guild of Australasia* v. *Commonwealth Steamship Owners' Association* [*No.* 2] (8).]

Cur. adv. vult.

Dec. 2.

The following written judgments were delivered :—

LATHAM C.J. Case stated by his Honour Judge *Kelly* under the *Commonwealth Conciliation and Arbitration Act* 1904-1934, s. 31, sub-s. 2. This case raises questions as to the validity of the *National Security* (*Industrial Peace*) *Regulations* and of certain *National Security* (*Supplementary*) *Regulations*, and as to the applicability of the regulations, if they are valid, to certain claims made in the Arbitration Court by employees of the Government of Victoria for payment for work done on days which would normally have been holidays, but which, under the regulations, were working days in respect of which the regulations provided that extra payment could be awarded by industrial authorities.

(1) (1921) 29 C.L.R. 357.
(2) (1943) 67 C.L.R. 413: See pp. 418, 423, 428.
(3) (1931) 44 C.L.R. 492, at pp. 512 et seq.
(4) (1939) 61 C.L.R., at pp. 640, 653, 658.
(5) (1930) 44 C.L.R. 319.
(6) (1943) A.C. 356, at p. 376.
(7) (1943) 67 C.L.R. 116, at p. 161.
(8) (1920) 28 C.L.R. 436.

The *Industrial Peace Regulations* are Statutory Rules 1940 No. 290 as subsequently amended. The validity of the Regulations was discussed but not decided in *Australian Coal and Shale Employees Federation* v. *Aberfield Coal Mining Co. Ltd.* (1), and *R.* v. *Commonwealth Court of Conciliation and Arbitration* (*Public Service Case*) (2).

In the *Industrial Peace Regulations* " the Act " means the *Commonwealth Conciliation and Arbitration Act* 1904-1934 (reg. 2).

Reg. 3 provides :—" 3. Subject to these Regulations, the Act and these Regulations shall, so long as these Regulations continue in force, be construed as if the provisions of these Regulations were incorporated in the Act as amendments thereof."

Reg. 4 provides :—" 4. So long as these Regulations continue in force, the provisions of the Act shall be applied and construed as if from the definition of ' industrial disputes ' in section 4 the words ' extending beyond the limits of any one State ' were omitted, and the jurisdiction of the Court shall be extended accordingly."

Reg. 5 provides :—" 5. In addition to the industrial disputes of which the Court has cognizance in pursuance of the Act, the Court shall also have cognizance of all industrial disputes—

(*a*) which the Court is satisfied are, or which the Minister certifies to the Court as being, proper to be dealt with in the interests of industrial peace and national security ; or

(*b*) which are referred into Court by the Court or Judge in pursuance of sub-regulation (4.) of regulation 15 of these Regulations."

Reg. 6 gives power to make a common rule in an industry.

Reg. 9 provides :—" 9. Where the Minister is of the opinion that any industrial matter has led, or is likely to lead, to industrial unrest, he may refer that matter to the Court and, notwithstanding that an industrial dispute affecting that matter does not exist, the Court may proceed to hear and determine the matter in like manner as if it were an industrial dispute."

Reg. 11 provides :—" 11. In any case where the Court deems it desirable in the interests of industrial peace or national security so to do, it may exercise any jurisdiction under the Act or these Regulations on its own motion."

The regulations quoted are sufficient to show that they are designed to exercise Commonwealth legislative power in relation to industrial matters and industrial disputes without regard to the limitations which arise from the terms of s. 51 (xxxv.) of the Constitution, which confers power upon the Federal Parliament to make laws with respect to " conciliation and arbitration for the

(1) (1942) 66 C.L.R. 161. (2) (1942) 66 C.L.R. 488.

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prevention and settlement of industrial disputes extending beyond the limits of any one State." It has been held that under this provision the Commonwealth Parliament is limited to making laws for the prevention and settlement of industrial disputes (not for the direct regulation of industrial matters) and only of inter-State industrial disputes, and for the prevention and settlement of such disputes only by the methods of conciliation and arbitration. The *Industrial Peace Regulations* do not limit authorities acting thereunder to methods of conciliation and arbitration, or to the subject matter of inter-State industrial disputes, or to disputes.

The Regulations were made under the *National Security Act* 1939-1940, and the question is whether they can be supported under that Act as necessary or convenient to be prescribed for the more effectual prosecution of any war in which His Majesty is engaged (s. 5). They apply to any industrial matter, provided either (1) that the Court is satisfied or the Minister certifies that it is proper to be dealt with in the interests of industrial peace and national security (reg. 5 (*a*)); or (2) that a conciliation commissioner is of opinion that an industrial dispute has arisen or is threatened or impending (regs. 5 (*b*) and 15) ; or (3) that the Minister is of opinion that the industrial matter has led or is likely to lead to industrial unrest (reg. 9) ; or (4) that the Arbitration Court thinks it desirable in the interests of industrial peace or national security to exercise its powers under the Regulations (reg. 11). The Regulations, therefore, do not deal with industrial matters generally, but only with industrial matters which in the opinion of the Court or of the Minister or of a conciliation commissioner are actual or probable sources of industrial disturbance, or in the opinion of the Court should be dealt with in the interests of national security. The Regulations do not relate to industrial matters irrespective of the possibility of industrial disputes or of relation to national security. They are, therefore, in my opinion, distinguishable in this essential particular from the regulations considered in the *Victorian Chamber of Manufactures* v. *The Commonwealth* (*Industrial Lighting Regulations*) (1). Those Regulations were not limited in any way by reference to possible industrial disturbance or to possible effect upon national security.

An industrial matter which in the opinion of the Arbitration Court may affect national security is, I think, very plainly a matter affecting the effectual prosecution of the war. But jurisdiction in respect of other matters under the regulations mentioned depends upon the opinion of the Minister as to the actuality or probability of industrial unrest or upon the opinion of the Arbitration Court or

(1) (1943) 67 C.L.R. 413.

a conciliation commissioner as to the preservation of industrial peace. The fact that jurisdiction depends upon the opinion of the Court or the Minister or a conciliation commissioner does not constitute an obstacle to the validity of the Regulations: See *Lloyd* v. *Wallach* (1), and *Ex parte Walsh* (2). The opinion of the Minister or a commissioner has only the same effect in bringing a matter before the Court as a certificate of the Registrar of the Court under s. 19 (*a*) of the *Commonwealth Conciliation and Arbitration Act* 1904-1934. The question which arises, therefore, is that of the relation of industrial unrest (or, obversely viewed, industrial peace) to the effectual prosecution of the war.

The first objection to the Regulations submitted by the State of Victoria is based upon s. 51 (xxxv.) of the Constitution, which confers upon the Commonwealth Parliament power to make laws with respect to "conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State." It is contended that this provision implies a negative—that it means, not only that the Commonwealth Parliament shall have power to legislate in relation to the industrial disputes there defined and in the manner there prescribed, but also that the Commonwealth Parliament shall not have power to deal with any other industrial matter or with any industrial dispute in any other manner. In my opinion this argument cannot be supported. Section 51 (xxxv.) is a positive provision conferring a specific power. The particular terms in which this power is conferred are not, in my opinion, so expressed as to be capable of being so construed as to impose a limitation upon other powers positively conferred. Further, if s. 51 (xxxv.) were construed so as to prevent the Parliament from dealing with industrial matters except under that specific provision, similar reasoning would lead to the conclusion that the Commonwealth Parliament could not (under *any* legislative power) provide for the use of conciliation and arbitration in relation to any other matter than inter-State industrial disputes. It must, I think, be conceded, for example, that the Commonwealth Parliament can, in legislating with respect to the public service of the Commonwealth (Constitution, s. 52 (ii.)), provide for conciliation and arbitration in relation to matters such as wages, conditions and hours, whether or not any dispute about those matters is industrial, and whether or not it extends beyond the limits of any one State. In my opinion the objection to the *Industrial Peace Regulations* based upon s. 51 (xxxv.) of the Constitution must be rejected, because it finds no support in the words of this provision for the implied prohibition suggested.

(1) (1915) 20 C.L.R. 299. (2) (1942) A.L.R. 359.

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The next question is whether, if the making of the *Industrial Peace Regulations* is not prohibited by an implication based upon s. 51 (xxxv.) of the Constitution, the Regulations can be justified under the *National Security Act*, s. 5.

It is contended that the assumption of the degree of control of industrial matters which is involved in the Regulations cannot be so related to the defence of the country and the prosecution of the war as to justify the making of the Regulations under the Act.

It is argued that there are some industrial matters such, for example, as the growing of ornamental flowers, which cannot possibly be regarded as having any real relation to the successful prosecution of the war. But the question which now arises is not whether the growing of ornamental flowers or some such occupation can be so regarded, but whether industrial peace and industrial war have a real connection with the war effort. The question is whether a system of dealing with all industrial disputes and all industrial matters which have led or may lead to such disputes or to industrial unrest, as distinguished from a system of dealing only with inter-State industrial disputes by means of conciliation and arbitration, can be sufficiently connected with defence and the war. In my opinion the answer to this question should be in the affirmative. In such a war as the present the authority responsible for defence must be able to organize and control the working capacity of the people and to assist the smooth working of the industrial system by preventing the friction and waste of time and energy which are inevitably involved in any industrial dispute. Industrial matters which may lead to an industrial dispute are possible, though not yet actual, sources of such waste and friction. With the present organization of employers and employees and of capital and labour, any industrial matter, however small (even a matter relating to the growing of flowers), may lead to an industrial dispute which may develop into an obstacle to the war-efficiency of the community. The defence power, in my opinion, authorizes the Commonwealth Parliament to provide a system of dealing with all industrial matters which fall within the terms of the challenged regulations 4, 5, 9 and 11.

It should be observed that the *Industrial Peace Regulations* deal only with industry and industrial matters, and not with the governmental activities of States: See the *Public Service Case* (1). In my opinion the objections to the validity of the *Industrial Peace Regulations* fail. This opinion is in accordance with the principles which were stated by the majority of the Court in the *Women's Employment Case—Victorian Chamber of Manufactures* v. *The Commonwealth* (*Women's Employment Regulations*) (2).

(1) (1942) 66 C.L.R. 488.

(2) (1943) 67 C.L.R. 347.

The next question which arises is as to the validity of certain National Security (Supplementary) Regulations, Statutory Rules 1941 No. 297 as amended. The regulations in question are Nos. 19, 29, 29A and 44.

Reg. 19 limits days which may be observed as holidays in the Christmas-New Year season 1941-1942 and expressly applies to State Departments and authorities, but it is limited to " business premises." The word " premises " is defined as follows :—

> " ' premises ' means bank, office, shop, factory or any premises whatever at which any industry is carried on and includes any Department of the Commonwealth or of a State or Territory of the Commonwealth and any place at which the business of any authority of the Commonwealth or of a State or Territory of the Commonwealth or of any local governing body is carried on."

In so far as the regulation applies to State Departments irrespective of whether or not those Departments are engaged in industry and therefore to purely governmental work, the regulation must, in my opinion, be held to be ineffective in accordance with the decision in the *Public Service Case* (1). But the word " State " in the definition of premises is clearly severable, and, if this word is struck out, the regulation would apply to limit holidays in industries, whether they were carried on by a private employer or by a State Department or authority. The fact that an industry is carried on by a State does not exclude the application of Commonwealth legislative power in respect of that industry. If a Commonwealth legislative power, upon its true construction, extends to a particular subject matter, a law which is a law with respect to that subject matter may validly apply to a State " in the absence of any special provision to the contrary " in the Constitution. There is no implied constitutional prohibition against Commonwealth legislation binding a State (*Engineers' Case* (2)), which established the proposition which I have stated—see p. 149—quotation from *R.* v. *Burah* (3) ; p. 153, Commonwealth laws may validly bind the " political organisms called States " :—rejection of any *a priori* contention that the grant of legislative power to the Commonwealth Parliament should not bind the States and their agencies ; p. 154—a power generally expressed may extend to the States " subject to any special provision to the contrary elsewhere in the Constitution " ; p. 155—States are subject to Commonwealth legislation passed under a general power containing no exceptions relating to States, if such legislation on

(1) (1942) 66 C.L.R. 488. (2) (1920) 28 C.L.R. 129.
(3) (1878) 3 App. Cas. 904, 905.

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its true construction applies to them; and p. 144—the principles upon which the *Engineers' Case* (1) was determined "apply generally to all powers" contained in s. 51 of the Constitution. Thus, if the Commonwealth Parliament can, under the defence power, limit the days to be observed as holidays in industry, general legislation of this character may be made applicable to industry carried on by States.

The continuity of industrial production in time of war is a matter which has a very close connection with defence. Maximum industrial production is, or obviously may be, of the greatest importance for the purposes of war. Thus the limitation of the number of holidays to be enjoyed by men and women who are engaged in industry is a subject which falls within the defence power. (As I prepare this judgment it is announced that in Germany there are to be no Christmas holidays this year.) The applications made to the Arbitration Court to which this case refers are stated in the case (par. 31) to be applications in respect of an industrial dispute. So far as reg. 19 is concerned, I am of opinion that it validly applies to industries even though those industries are carried on by a State. I now proceed to consider the other regulations the validity of which is challenged.

Reg. 29 (1) is as follows:—"29.—(1) The employer, manager, or occupier of every establishment, factory, mine, dockyard, or workshop, which is engaged wholly or partly in production for war or defence purposes, or in the repair or overhaul of munitions of war, and every Commonwealth or State Department, or authority of the Commonwealth or of a State engaged on work associated with the prosecution of the war, shall, on every day to which this regulation applies, carry on such production, repair, overhaul or work in the same manner and to the same extent as would be the case if that day were an ordinary working day."

Further provisions of reg. 29 are stated in the report of the *Public Service Case* (2). Reg. 29 (1) is limited to what may be described as work associated with the war, but sub-regs. 8, 9 and 10, added by amendment, relate to any work whatever. They are set out in the report of the *Public Service Case* (3), and they relate to Royal Agricultural Show Day in Victoria and to the day which ordinarily is Melbourne Cup Day in Victoria. Sub-reg. 8 expressly applies to State Departments and employees.

Reg. 44 required employers to keep their premises open on the days to which the regulation applied, which were days which would

(1) (1920) 28 C.L.R. 129. (2) (1942) 66 C.L.R., at pp. 503, 504.
(3) (1942) 66 C.L.R., at p. 504.

normally have been observed as holidays, and gave a right to employees including State employees (sub-reg. 3) to get additional payment if awarded by a tribunal or authority having jurisdiction to determine disputes or claims in respect of rates of pay or conditions of employment in relation to the work of the employee. Reg. 44 has been repealed, but the rights under the regulation are preserved by reg. 29A.

Reg. 29A provides that where an employee has worked on any day which under reg. 19 was not observed as a holiday, or on any day to which reg. 44 applied, and the employee was not entitled to additional payment for so working under an existing law, industrial award, &c., any tribunal or authority with jurisdiction described as in reg. 44 already quoted may, upon application of the employee, determine that the employee shall be entitled to additional payment.

The applicants worked on various of the days to which these regulations apply, and have made application to the Arbitration Court for additional payment under the regulations.

The application cannot succeed unless the Arbitration Court is a "tribunal . . . having jurisdiction to determine disputes or claims in respect of rates of pay or conditions of employment in relation to the work on which the employee is employed" (reg. 29 (3) and reg. 29A (1)). If the *Industrial Peace Regulations* are invalid there might be room for doubt whether a tribunal having jurisdiction to deal only with inter-State disputes, and then only by means of conciliation and arbitration, was a tribunal falling within the general description quoted. But if the Regulations are valid (as in my opinion they are for reasons already stated) the Arbitration Court is plainly such a tribunal.

In the *Public Service Case* (1), it was held that sub-regs. 8, 9 and 10 of reg. 29, in so far as they purported to control holidays and remuneration of members of the public service who were engaged in ordinary State governmental work, were not authorized under the power of the Commonwealth Parliament to legislate with respect to defence. These sub-regulations were held to be invalid in their application to such public servants. Similar reasoning would apply in such cases to the right given to such State servants by reg. 29A in respect of days not observed as holidays by reason of reg. 19 and to the right created by reg. 44 as preserved by reg. 29A. Accordingly, the applicants and the Commonwealth (intervening) submit two arguments to the Court in these proceedings. In the first place they ask the Court to reconsider the decision in the *Public Service Case* (1) and to hold that the regulations in question are

(1) (1942) 66 C.L.R. 488.

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valid in their application to all State servants whatever the nature of their work may be, and, secondly, they contend that, even if the regulations are invalid in relation to employees engaged in what may be called the strictly governmental service of the State, reg. 29 (1), limited to war work but applying to State servants engaged in such work, is valid, and that sub-regs. 8, 9 and 10 of reg. 29 should be read down by virtue of the *Acts Interpretation Act* 1901-1941, s. 46 (*b*), so as to apply only to State public servants engaged in work described in reg. 29 (1). On the other hand it was contended for the State of Victoria that the Court should follow its decision in the *Public Service Case* (1) and that the regulations cannot be read down, but are invalid *in toto*.

No arguments have been presented in the present proceedings which lead me to think it necessary or proper to reconsider the decision in the *Public Service Case* (1). I venture to repeat what I said in that case after stating (2) that the question involved was whether the Federal control of State public servants sought to be exercised by the regulations without reference to the character of their work could be shown to be a measure which was really a defence measure :—" If, under the defence power, the Commonwealth can control the pay, hours and duties of all State public servants, it is obvious that the Commonwealth can take complete control of all governmental administration within Australia. The result would be the abolition, in all but name, of the Federal system of government which it is the object of the Constitution to establish—preamble and clause 3 of the covering clauses of the Constitution " (3).

The question stated was fully argued in the *Public Service Case* (1). The Justices agreed in the decision. To hold otherwise would, in my opinion, involve the practical abolition of State Governments in any time of war. Such a result should not be brought about by a decision of this Court unless it is inescapable. In my opinion the reasons given for judgment in the *Public Service Case* (1) are right and the case should be followed as a binding authority. I mention that the case has no reference to the emergencies and urgencies of actual military operations.

As I indicated in my reasons for judgment in the *Public Service Case* (1), in my opinion reg. 29 (1) is valid in relation to State public servants employed in State Departments or by State authorities in work of the kind to which reg. 29 (1) applies : see the report (4). Reg. 29 (1) is limited in its application to " production for war or defence purposes," " the repair or overhaul of munitions of war " and

(1) (1942) 66 C.L.R. 488.
(2) (1942) 66 C.L.R., at p. 506.
(3) (1942) 66 C.L.R., at p. 507.
(4) (1942) 66 C.L.R., at p. 508.

"work associated with the prosecution of the war." A further question which now arises is whether the general provisions of reg. 29 (8), (9) and (10) and reg. 44, which relate to any work whatever, and of reg. 29A so far as it purports to give rights to persons who worked on days to which reg. 19 and reg. 44 applied, can be read down so as to be limited to certain work or to certain employees so as to be valid in relation to State employees engaged in such work.

The answer to this question depends upon the application to the regulations of s. 46 (*b*) of the *Acts Interpretation Act* 1901-1941. Section 46 (*b*) is in the following terms :—

"Where an Act confers upon any authority power to make, grant or issue any instrument (including rules, regulations or by-laws), then—

(*a*) . . .

(*b*) any instrument so made, granted or issued shall be read and construed subject to the Act under which it was made, and so as not to exceed the power of that authority, to the intent that where any such instrument would, but for this section, have been construed as being in excess of the power conferred upon that authority, it shall nevertheless be a valid instrument to the extent to which it is not in excess of that power."

This provision applies to regulations. A similar provision applying to statutes is to be found in s. 15A. I propose for the purpose of this judgment to refer to these provisions as the *Acts Interpretation Act*, and to refer to statutes and regulations as laws, using the term "law" for the purpose of describing statutes in fact passed and regulations in fact promulgated, without reference to any question of their validity.

In *R.* v. *Commonwealth Court of Conciliation and Arbitration*; *Ex parte Whybrow & Co.* (1), attention was given to the question of severability in its relation to the possible invalidity of statutes. *Isaacs* J. in particular examined the two cases of (1) separate words or expressions, some of which as enactments separately considered were valid and others invalid, and (2) a general word or expression which included both good and bad provisions. The relevant provisions of the *Acts Interpretation Act* were passed subsequently to this and a number of other decisions in which the question of severability arose. It is a fair construction of the Act to say that Parliament has in the Act indicated its general intention that all Federal laws shall be held to be valid so far as possible. But it may be that the provisions of a particular law show that it was the intention of

(1) (1910) 11 C.L.R. 1.

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the Parliament that, if the law did not have a full and complete application in all cases according to its terms, it should not apply in any case. The whole question is one of the intention of Parliament.

Mr. *Phillips*, in an interesting argument, submitted to the Court that the Act was not directed to the construction of laws for the purpose of determining their meaning, but to the operation of all laws. The Act applies only when the law, construed according to its terms, is beyond power. One view of the section is that if it appears that Parliament intended it to operate under certain conditions, even though it could not operate fully as expressed, and if this intention can be ascertained from an examination of the law itself (taking the *Acts Interpretation Act* into account), then it is valid in relation to those conditions. This view treats the Act as prescribing a rule of *construction*, as stated by *Evatt* J. in *R.* v. *Poole*; *Ex parte Henry* [*No.* 2] (1). Upon this view, where, to use the words of *Isaacs* J. in *Whybrow's Case* (2), good and bad provisions are contained in separate words and expressions, then it will be possible to strike out the invalid parts, provided that the operation of the remaining parts of the law remains unchanged. But if, either in such a case or in the case of "general words or expressions" the Court is of opinion that the law was intended to operate fully and completely according to its terms, or not at all, then the law would be either completely valid, or completely invalid. The opposing view, for which the applicants contend, is that the Act should be read as affecting the *operation* of all laws in the sense that all laws are to be held to be valid in all cases to which they are, according to their terms, applicable, irrespective of failure to operate in other cases: that is, that the Act in effect says that all laws are to be construed as validly applying wherever they could by suitable limitations have been made validly applicable. Upon this view no legislation would ever be completely invalid if a case could be discovered to which it could have been validly applied. This argument may be illustrated by an example. Let it be supposed that the Commonwealth Parliament passes a general statute dealing with larceny which, according to its terms, is plainly beyond Commonwealth legislative power because the Parliament has no power to make general criminal laws. Prima facie the law is invalid. But the Commonwealth has full powers of legislative control, e.g., in relation to all the territories of the Commonwealth, in relation to acts and defaults of postal, customs and other Commonwealth officers, and in relation to acts which constitute parts of inter-State and foreign

(1) (1939) 61 C.L.R., at p. 656. (2) (1910) 11 C.L.R. 1.

trade and commerce. Then, it is said, the statute should be treated as valid in relation to such cases as those mentioned, that is, to all larcenies in the Federal Capital Territory, the Northern Territory, Norfolk Island, &c., in relation to larcenies by postal, customs and other Commonwealth officers, and in relation to people who, in the course of transactions in inter-State trade and commerce, are guilty of the acts which are penalized by the statute. When any person was charged with an offence under the statute the inquiry would be, not whether the statute in its general terms was within Commonwealth power, but whether such a statute could have been passed with some limitation or limitations which would have resulted in the statute being valid and applicable to the person who was on that particular occasion charged with an offence. If this question could be answered in the affirmative, it is said that the effect of the *Acts Interpretation Act* is that the statute must be held to be valid in its operation in relation to that person. It would be left to the Court to discover and prescribe an appropriate limitation as various cases presented themselves. One person A could be convicted under the statute because he committed larceny in the Northern Territory, another person B because he was a customs officer, C for some other reason, while D, E and F, whose acts fell within the precise words of the statute, could not be convicted because the courts which dealt with D and E and F found themselves unable to think of a category which, if specified in the statute, would have validly included them within the scope of Commonwealth legislative power.

Such an application of the *Acts Interpretation Act* appears to me to require the Court to perform a feat which is in essence "legislative and not judicial" (*R.* v. *Burgess*; *Ex parte Henry* (1). To recur to the illustration given, the view suggested should, in my opinion, be rejected for the reason that it could not reasonably be supposed that it was the intention of Parliament, as disclosed in the statute, taken together with the *Acts Interpretation Act*, to produce such a hotch-potch of irregularly and partially operating law with respect to larceny: Compare *Attorney-General for Manitoba* v. *Attorney-General for Canada* (2).

Where the law itself indicates a standard or test which may be applied for the purpose of limiting, and thereby preserving the validity of, the law, the case is different. Thus where a law is clearly made with the intention of exercising the power to make laws with respect to trade and commerce, it is not difficult to read it down so as to limit its application to inter-State and foreign trade and commerce, with which alone the Commonwealth Parliament

(1) (1936) 55 C.L.R. 608, at p. 676. (2) (1925) A.C. 561, at p. 568.

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has power to deal (Constitution, s. 51 (i.)). In such a case the subject matter of the legislation itself is such as to provide a test for limiting the law by construction so as to treat it as applying only to that part of a definite subject matter which is within power and with which Parliament clearly intended to deal so far as it could lawfully do so. Examples are to be found in *Newcastle and Hunter River Steamship Co. Ltd.* v. *Attorney-General for the Commonwealth* (1) and *Huddart Parker Ltd.* v. *The Commonwealth* (2). If the laws in question in those cases were treated as applying to all trade and commerce, they were invalid. But construed as applying only to foreign and inter-State trade and commerce they were held to be valid.

But in the absence of any indication in a law of the nature of the standard or test to be applied for the purpose of reading down a general expression contained in the law, the court is left to guesswork. Where the application of a law which is prima facie invalid depends upon the co-existence of a number of conditions, e.g., upon the character of the work performed by certain employees, or by all employees, of certain or all employers, at certain places or at all places, it might be possible to reconstruct the legislation upon a valid basis by limiting it to a narrower class of work, or to narrower classes of employees or of employers, or to a narrower class of places. In the absence of any guide to legislative intention, the court would be quite unable to determine, except in an arbitrary manner, whether to apply one possible limitation to the exclusion of the others, or two or three possible limitations, or all possible limitations. Any selection among these possibilities would result in the content of the law depending upon the mere choice of the court, not based upon any principle. In my opinion the *Acts Interpretation Act* does not authorize a court to adopt such a method of promulgating a law under the guise of ascertaining it.

Thus in my opinion the provisions of the *Acts Interpretation Act* have provided a rule of construction and not a rule of law. The words of the sections expressly refer to the manner in which laws are to be construed. In the case of separable words and expressions, the application of the sections does not raise as many difficulties as in the case of general words and expressions. If a law is stated to apply to cases A, B and C in express terms and the application of the law to B and C is beyond power, then the law may validly apply to A unless the striking out of the provisions with respect to B and C results in the law having a different policy or operation in relation to A. In other cases, where there are not separate words, but

(1) (1921) 29 C.L.R. 357.

(2) (1931) 44 C.L.R. 492.

where there are general words or expressions which apply both to cases within power and to cases beyond power, then if an intention of Parliament that there should be a partial operation of the law based upon some particular standard criterion or test can be discovered from the terms of the law itself or from the nature of the subject matter with which the law deals, it can be read down so as to give valid operation of a partial character. In such a case also it would be necessary to consider whether such reading down would alter the policy or operation of the statute with respect to the cases which, after the reading down, would still remain within its terms But if a law can be reduced to validity by adopting any one or more of a number of several possible limitations, and no reason based upon the law itself can be stated for selecting one limitation rather than another, the law should be held to be invalid. In such a case the law cannot be saved by the *Acts Interpretation Act*.

These views are in my opinion consistent with what has been held in *Newcastle and Hunter River Steamship Co. Ltd.* v. *Attorney-General for the Commonwealth* (1) (though this case, decided in 1921, should not be regarded as a direct authority upon the meaning of s. 15A of the *Acts Interpretation Act*, introduced in 1930, or s. 46 of the Act, introduced in 1937) ; *Huddart Parker Ltd.* v. *The Commonwealth* (2) ; *R.* v. *Burgess* ; *Ex parte Henry* (3) ; and *R.* v. *Poole* ; *Ex parte Henry* [*No.* 2] (4). For these reasons I adhere to the view which I expressed in the *Lighting Restrictions Case—Victorian Chamber of Manufactures* v. *The Commonwealth* (5), and in *R.* v. *Burgess* ; *Ex parte Henry* (6), that the *Acts Interpretation Act* does not authorize the Court, by adopting a standard criterion or test merely selected by itself, to redraft a statute or regulation so as to bring it within power and so preserve its validity.

It is contended that certain of the regulations, if held to be invalid on the ground that they extend to work of State employees which is governmental as distinguished from industrial, or which is not work associated with the war, should be read down so as to be limited either to work such as the industrial work mentioned in reg. 19, or to work of the kind mentioned in reg. 29 (1) and, so far as State employees are concerned, to such employees engaged upon one or other or both of such kinds of work ; and that, so read down, they should be held to be valid.

(1) (1921) 29 C.L.R. 357.
(2) (1931) 44 C.L.R. 492.
(3) (1936) 55 C.L.R. 608.
(4) (1939) 61 C.L.R. 634, in particular at pp. 651, 652 and 656.
(5) (1943) 67 C.L.R. 413.
(6) (1936) 55 C.L.R. 608, at p. 655.

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Reg. 19 prohibits the observance of certain days as holidays in the Christmas-New Year period 1941-1942. It expressly applies to State Departments and State authorities. I have already stated my opinion that reg. 19 is valid in such application. Reg. 29A (1) is relied upon as giving a right to additional payment for working on any of the days which under reg. 19 were not observed as a public holiday. The only day in respect of which an application for additional payment is made which falls within the Christmas-New Year period mentioned is the twenty-seventh of December, and in my opinion the Arbitration Court has jurisdiction to deal with an application in respect of work performed by State servants on that day in any industry carried on by a State.

Reg. 29A purports also to give a right to additional payment in respect of the days to which reg. 44 applied, and applications are made in respect of such days. Reg. 44 applied to Labour Day, 16th March 1942, and to Easter Monday and Easter Tuesday 1942. Reg. 44 applied, with certain exceptions which are not material, to all employment or business and is expressed to apply to State employees generally. Sub-reg. 3 is in the following terms :—

"(3) This regulation shall extend to employees of or under the Commonwealth or any State, employees of or under any authority of the Commonwealth or any State and employees under the Administration of the Northern Territory."

As applied to *all* State employees, it was, for the reasons given in the *Public Service Case* (1), invalid. The first question is whether the provision which introduced employees of a State (sub-reg. 3) can be read down by introducing a limitation based upon reference to kind of work or description of persons, and if not, whether the whole of reg. 44 was invalid, or whether the provisions of sub-reg. 3 as to State servants can be severed and struck out.

Reg. 44 or, alternatively, sub-reg. 3, might be read down by limiting it to work on business premises as described in reg. 19 or to war work of the character mentioned in reg. 29 (1). But there is no reason for choosing one rather than the other of these alternatives. For this reason I am of opinion that the regulation cannot be so read down as to preserve its validity.

There is another reason for refusing to use reg. 29 (1) for the purpose of ascertaining a limitation which, by construction, could be introduced into reg. 44. Reg. 44 was made on 12th March 1942 and was repealed on 28th May 1942. Reg. 29 (1) was made on 28th May 1942 by the same statutory rule as that which repealed reg. 44. Thus reg. 44 and reg. 29 (1) never co-existed. In these circumstances

(1) (1942) 66 C.L.R. 488.

reg. 29 (1) cannot be relied upon for the purpose of discovering a standard criterion or test for the purpose of reading down reg. 44 or any part thereof so as to give it a valid operation by limiting it to work connected with the war of the description specified in reg. 29 (1).

A further question arises as to reg. 44. For the reasons stated it appears to me that it should not be read down by introducing a limitation relating to the *work* done by the persons to whom it is made applicable. But it may be urged that it should be read down by striking out in sub-reg. 3 the separate words relating to State servants so that it should be held to be valid at least with respect to employees of the Commonwealth and employees under any authority of the Commonwealth and employees under the Administration of the Northern Territory—who are all expressly separately mentioned in sub-reg. 3. This particular point was not argued, as all the employees concerned in the applications before the Arbitration Court were State employees. It is therefore not necessary to decide in this case whether reg. 44 was valid in its application to the Commonwealth and Territory employees mentioned. As at present advised I see no reason why it should not be validly so applicable, as the provisions in sub-reg. 3 relating to State employees are separately expressed and the operation and policy of the rest of the regulation in relation to other persons would not be altered if those provisions were struck out. Similar reasoning applies to reg. 29 (8), which also refers to separate classes of employees, including State servants.

Claims are also made in respect of Royal Agricultural Show Day in Victoria (24th September 1942), which is a public holiday under the *Public Service Act* 1928 (Vict.), s. 187, but which was, by reason of the regulations, not observed as such a holiday in 1942. Reg. 29 (8) applies to Show Day. Reg. 29 (9) applies to the day which normally would have been appointed by proclamation as the Cup Day holiday, and applications are made in respect of this day. Reg. 29 (8) and (9) and (10) apply to all work. They are not limited to industry and in terms extend to work of any kind, including governmental work and to work whether associated with the war or not. In the *Public Service Case* (1) it was held that they did not validly apply to State servants employed in governmental as distinguished from industrial work. The Court is now asked to apply s. 46 (*b*) of the *Acts Interpretation Act* and to read these regulations down in some manner so as to bring them within power.

It is argued that these regulations can and should be read down by reference to one of the descriptions of work contained in reg. 19

(1) (1942) 66 C.L.R. 488.

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or in reg. 29 (1). But there is no reason for choosing one limitation rather than the other, and, for reasons already stated, I am of opinion that these regulations cannot be read down in the manner suggested.

There are no relevant separate and severable words in these regulations so far as the work to which they are applicable is concerned. Sub-reg. 8 may be valid in respect of Commonwealth and Territory employees, as already indicated, but otherwise these sub-regs. 8, 9 and 10 are invalid.

The result, therefore, is that reg. 29, sub-regs. 8, 9 and 10, should be held to be invalid in their application to State employees. Reg. 29 (1) by virtue of sub-reg. 7 validly applies to 24th September 1942 (Show Day) in respect of work of the character described in sub-reg. 1. Reg. 29A (1) is valid so far as it relates to applications founded upon reg. 19, such applications being applications relating to industrial work. But reg. 44 does not validly apply to State servants and therefore does not give any right to which the procedure provided by reg. 29A can be applied in respect of the applications made to the Arbitration Court.

In my opinion the questions asked should be answered as follows :

Question (1). Are the *National Security* (*Industrial Peace*) *Regulations* and in particular regs. 3, 4, 5 and 11 thereof a valid exercise of the powers conferred upon the Governor-General by the *National Security Act* 1939-1940, so as to give the said Court cognizance of the said dispute and empower the said Court to exercise any jurisdiction under the *Commonwealth Conciliation and Arbitration Act* 1904-1934, or the said Regulations ?

Answer. The said regs. 3, 4, 5 and 11 are valid.

Question (2). Are any of the regs. 19, 29, 29A and 44 of the *National Security* (*Supplementary*) *Regulations* and in particular such portions of them as are recited in pars. 5, 6, 7 and 8 respectively of this case and in pursuance of which the said employees have purported to make their said application, and, if so, which of them, a valid exercise of the powers conferred upon the Governor-General by the *National Security Act* 1939-1940 so as to empower the said Court to entertain and determine all or any, and, if only one or some, which, of the said applications ?

Answer. Regs. 19, 29 (1) to (3) and (7), 29A, are valid so as to empower the said Court to entertain and determine the said applications in respect of industrial work on 27th December 1941, and of work described in reg. 29 (1) performed on 24th September 1942 but the regulations specified in the question do not empower the

said Court to entertain or determine any others of the said applications.

Each party has succeeded in part and has failed in part. In my opinion there should be no order as to costs.

RICH J. I have had the advantage of reading the judgments of the Chief Justice and *Williams* J. and as I am in substantial agreement with their reasons I concur in the answers to the questions proposed by the Chief Justice.

STARKE J. Case stated by a judge of the Commonwealth Court of Conciliation and Arbitration pursuant to s. 31 of the *Commonwealth Conciliation and Arbitration Act* 1904-1934.

The proceedings before the Arbitration Court in the present cases were applications on the part of several permanent members of the public service of the State of Victoria appointed by and employed by the State subject to the provisions of the *Public Service Act* of the State for holiday rates of pay or compensation under various clauses of the Commonwealth *Industrial Peace* and *Supplementary Regulations*. It has already been decided in this Court that these Regulations do not cover public servants of a State engaged in its ordinary governmental departments (*R.* v. *Commonwealth Court of Conciliation and Arbitration*; *Ex parte Victoria*; *Victoria* v. *The Commonwealth* (1)). But it is said that the State of Victoria employed the public servants concerned in this case in industrial activities. So far as the facts are stated it appears that these servants loaded explosives from an explosives depot in the State of Victoria on to lighters and into ships standing in Port Phillip Bay and performed some maintenance work in connection with the lighters. And they were employed in the Public Works Department of the State. It does not appear from the case whether the State of Victoria manufactures explosives, but at all events the case states that it stores and lighters explosives.

This activity is not specially related to the war, for it was carried on before the outbreak of war and is still carried on and the explosives appear to be used for any purpose for which explosives are normally required. And the case states that substantially they are not used for the manufacture of munitions of war such as shells, torpedoes and so forth. Let it be assumed that the case finds and states as a fact that the activity of the State and of these servants is an industrial activity, still the question arises whether the Commonwealth has any authority under the Constitution to compel the

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States as such to pay its officers and servants such sums as the Commonwealth prescribes. It was argued that the Commonwealth has plenary legislative power over the States as such in respect of the powers conferred upon the Parliament by the Constitution unless the same be clearly denied and particularly so in relation to the defence power.

The *Engineers' Case* (1) does not, I think, for reasons which I have stated in *Victoria* v. *The Commonwealth* (2), warrant any such proposition. Nor can I find any such proposition maintained by a majority of this Court in the judgments in *Victoria* v. *The Commonwealth* (3), nor in the *Case of the Women's Employment Board* (4). And in my judgment the proposition is subversive of the Constitution and, as I think, of all constitutional principle, but I shall not again repeat my reasons for rejecting the argument, for these may be found at large in *South Australia* v. *The Commonwealth* (5) and *Victoria* v. *The Commonwealth* (6). Consequently, in my opinion, the Commonwealth Court of Conciliation and Arbitration has no jurisdiction over the State of Victoria in the proceedings now before it and any regulations purporting to give it such jurisdiction are therefore invalid. And from my point of view no other pronouncement is necessary. The function and the duty of this Court is to determine questions of law that arise in proceedings before the Arbitration Court but not to write essays upon the *Industrial Peace Regulations* or to give opinions upon hypothetical questions of law that do not arise in the proceedings (*Merchant Service Guild of Australasia* v. *Newcastle and Hunter River Steamship Co. Ltd.* [*No.* 1] (7) ; *Australian Commonwealth Shipping Board* v. *Federated Seamen's Union of Australasia* (8)).

But there are also, I think, other objections to the validity of the *Industrial Peace Regulations*. Reg. 3 standing alone is innocuous. It is a mere interpretation section. But reg. 4 is, I think, bad. It provides that during the continuance of the Regulations the *Arbitration Act* shall be applied and construed as if from the definition of " industrial disputes " in s. 4 of the *Commonwealth Conciliation and Arbitration Act* the words " extending beyond the limits of any one State " were omitted and the jurisdiction of the Commonwealth Court of Conciliation and Arbitration were extended accordingly. The Commonwealth thus takes complete control of all industrial disputes whatever throughout Australia. Such disputes may be only threatened, impending or probable, but the Commonwealth

(1) (1920) 28 C.L.R. 129.
(2) (1942) 66 C.L.R., at p. 513.
(3) (1942) 66 C.L.R. 488.
(4) (1943) 67 C.L.R. 347.
(5) (1942) 65 C.L.R. 373, at pp. 445, 446.
(6) (1943) 66 C.L.R., at pp. 515, 516.
(7) (1913) 16 C.L.R. 591.
(8) (1925) 36 C.L.R. 442.

nevertheless takes control of them. And, further, by reg. 10, where any organization or employer is aware of any industrial matter which may lead to the occurrence of a strike, a stop-work meeting or any other interruption of work the Court may by appropriate procedure hear and determine the matter or cause another tribunal to hear and determine the matter as if it were an industrial dispute. And this jurisdiction is assumed over the whole field whether the disputes or matters have or have not any relation to national security or to defence. The greatest and the most trivial industrial disputes and matters are all alike brought under Commonwealth power. It is difficult, I think, to justify the validity of regulations in this form, having regard to the decisions of this Court in the *Lighting Restrictions Case* (1) and *R.* v. *University of Sydney*; *Ex parte Drummond* (2). And it is equally difficult to justify the Regulations on the ground that they are a system of dealing with all industrial disputes and matters and so connected with defence and war. Such a proposition would be equally true at any time. And it is merely asserting that all matters, particularly industrial matters, affecting the well-being of the community have such a relation, which I understood was a proposition denied in the *Lighting Restrictions Case* (1). Again, in *Victoria* v. *The Commonwealth* (3) it is recognized that the defence power is not without limit, and yet with regard to industrial disputes and matters that power is apparently without any limit whatever. And this is apparently so because otherwise it would be difficult to keep within power and much litigation would result. But I may point out that this difficulty is not apparent in the *National Security Act* itself, for it confines the power to make regulations to those securing the public safety and defence of the Commonwealth, nor in various regulations which have similar restrictions: Cf. Supplementary reg. 29. In my opinion reg. 4 transcends the limits of the *National Security Act* and the defence power in the Constitution, and it brings down in its train regs. 5 and 11.

There are also other objections to various Supplementary regulations mentioned in the case. Supplementary reg. 29, sub-clauses 8 and 9 and 10, were held invalid in the *Public Service Case* (3), and the invalidity of Supplementary reg. 44 follows, I think, for much the same reason. It was said during argument that my statement in the *Public Service Case* (4) is inaccurate because Show Day was a holiday under the *Public Service Act* 1928 (Vict.), s. 187, and was never cancelled, but the fact is not material to the decision.

(1) (1943) 67 C.L.R. 413.
(2) (1943) 67 C.L.R. 95.
(3) (1943) 66 C.L.R. 488.
(4) (1943) 66 C.L.R., at p. 515.

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Supplementary reg. 19 is also, I think, invalid. "Premises" in that regulation, it will be observed, refers to any premises whatever at which any industry is carried on. And, if reg. 44 is bad because it covers "any business," so reg. 19 is equally bad because it covers "any industry."

Supplementary reg. 29, *sub-clauses* 1 *to* 7, *both inclusive.*—This regulation is limited to work wholly or partly in production for war or defence purposes or in repair or overhaul of munitions of war or work associated with the prosecution of the war. Now this regulation illustrates a proper limitation of Federal regulation in respect of defence, and, except in so far as it purports to bind the States and directs them to make payments from their revenues as the Commonwealth prescribes, the regulation seems within power and valid; but the only question this Court should decide is whether it binds the States as such. In my opinion the regulation is bad in so far as it purports to direct the States as such to make the payment in the regulation prescribed.

Supplementary reg. 29A falls within Supplementary regs. 19 and 44. It relates to the matters provided for in those regulations.

It was sought to save the invalid regulations by reference to the *Acts Interpretation Act* 1901-1941, s. 46 (*b*). The section is a legislative declaration of the intent of Parliament that if valid and invalid provisions are found in regulations, however interwoven together, no provision within the power of the regulation-making authority shall fall by reason of such conjunction but the regulation shall operate on so much of its subject matter as the authority might lawfully have dealt with (*Newcastle and Hunter River Steamship Co. Ltd.* v. *Attorney-General for the Commonwealth* (1)). The section provides a rule of construction "but not an inexorable command." Notwithstanding the presumption in favour of divisibility which arises from the legislative declaration the Court cannot rewrite a regulation and give it an effect altogether different from that sought by the regulation viewed as a whole. These useful observations on the effect of such a provision as is contained in the *Acts Interpretation Act* I take from the opinion delivered by the Supreme Court of the United States in *Railroad Retirement Board* v. *Alton Railroad Co.* (2). And this view has been acted upon in this Court on more than one occasion (*Australian Railways Union* v. *Victorian Railways Commissioners* (3); *R.* v. *Burgess*; *Ex parte Henry* (4); *R.* v. *Poole*; *Ex parte Henry* [*No.* 2] (5)), and is applicable to the regulations now under consideration.

(1) (1921) 29 C.L.R. 357.
(2) (1935) 295 U.S. 330, at pp. 361, 362 [79 Law. Ed. 1468, at p. 1482].
(3) (1930) 44 C.L.R. 319, at pp. 385, 386.
(4) (1936) 55 C.L.R. 608, at p. 659.
(5) (1939) 61 C.L.R. 634.

It is quite impossible to gather from the regulations themselves the extent to which the regulation-making authority intended that the regulations should operate in case of invalidity without reframing them and making clear and definite the limits of their operation.

Lastly I would add that the limits of the defence power are so vague and ill defined and so overshadowed by war and political considerations that constitutional principles and implications are apt to be overlooked or neglected. Therefore I would answer the questions stated in the case in a manner sufficient to dispose of the cases actually before the Arbitration Court without any general declaration of validity of the *Industrial Peace Regulations*, many of which were not discussed in the present case.

The questions stated should be answered that regs. 4, 5 and 11 mentioned in the case and Supplementary regulations 19, 29, 29A and 44 mentioned in the case give the Commonwealth Court of Conciliation and Arbitration no authority or jurisdiction to make any award or order against, or to exercise any jurisdiction over, the State of Victoria in respect of the permanent members of the public service of Victoria mentioned in the case.

McTIERNAN J. The Executive of the Commonwealth used the powers conferred upon it by the *National Security Act* 1939-1940 to make regulations prohibiting employers and their employees from observing various days as holidays at the places of employment mentioned in the regulations respectively, notwithstanding that any Commonwealth or State law required that such days should be observed as holidays at those places of employment. These regulations include 19, 29, 29A and 44 of the *National Security* (*Supplementary*) *Regulations*. Their effect was that on the days to which the regulations respectively applied, the employers were bound to keep open and their employees to work at any places, which came within the scope of the regulations respectively, as if such days were ordinary working days. The regulations entitled the employees to receive payment in addition to that paid for an ordinary day's work. If they were entitled under any industrial law, award or agreement to additional payment for working on a holiday, they were to be paid at that rate : if there was no such right, the regulations remitted the question whether they should receive additional payment, and the amount, to any tribunal or authority having jurisdiction to determine disputes or claims in respect of the rates of pay which the employee should receive for the work done by him.

The present case arises out of applications which a number of employees of the State of Victoria respectively made to the Commonwealth Court of Conciliation and Arbitration for orders entitling

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them to additional payment for working on days which, but for the intervention of the Commonwealth, would have been observed as holidays at their place of employment.

The jurisdiction of the Commonwealth Court of Conciliation and Arbitration under the statute, pursuant to which it discharged its functions before the making of the *National Security* (*Industrial Peace*) *Regulations*, was to make an award appropriate to the prevention or settlement of an inter-State dispute. The *National Security* (*Industrial Peace*) *Regulations* have transformed it, for the period they remain in force, into a tribunal for the preservation of industrial peace generally in the Commonwealth, and it may act for this purpose whether the dispute or unrest which threatens or disturbs industrial peace extends beyond the limits of a State or not (regs. 3 and 4). By the provisions which these Regulations add to the statute, the Court is given cognizance of all industrial disputes, which it is satisfied, or which the Minister certifies to the Court, are proper to be dealt with in the interests of industrial peace and national security (reg. 5). The Court may also, in any case where the Court deems it desirable in the interests of industrial peace or national security, exercise any jurisdiction under the statute or the *Industrial Peace Regulations* of its own motion. But the only disputes of which the Court is given cognizance are disputes arising in industry (*R.* v. *Commonwealth Court of Conciliation and Arbitration*; *Ex parte Victoria* (1)).

His Honour Judge *Kelly*, sitting as a judge of the Commonwealth Court of Conciliation and Arbitration, was satisfied that the applications made by these employees of the State of Victoria are in respect of an industrial dispute, within the meaning of the *Industrial Peace Regulations*, which is proper to be dealt with in the interests of industrial peace and national security (reg. 5). It is to be assumed therefore, for the purposes of this case, that the applicants were employed in an industrial undertaking of the State and not in connection with its governmental functions. His Honour accordingly took cognizance of the industrial dispute and deemed it desirable in the interests of industrial peace and national security to exercise jurisdiction under the statute and the Regulations on his own motion.

The questions in the present case, which his Honour stated under s. 31 (2) of the statute, are whether the Governor-General exceeded the powers conferred on him by the *National Security Act* 1939-1940 in making the *National Security* (*Industrial Peace*) *Regulations*, particularly regs. 3, 4, 5 and 11, pursuant to which the Court has taken cognizance of the foregoing industrial dispute; and in making regs.

(1) (1942) 66 C.L.R. 488.

19, 29, 29A and 44 of the *National Security* (*Supplementary*) *Regulations*, on which the applications giving rise to the industrial dispute are based.

The question to be resolved is whether either set of Regulations exceeds the powers conferred on the Governor-General to make regulations for securing the public safety and the defence of the Commonwealth, and the Territories of the Commonwealth, or for prescribing all matters which are necessary or convenient to be prescribed for the more effectual prosecution of the war (*National Security Act* 1939-1940, s. 5). A shorter way of stating the question to be decided is whether the Regulations are within the defence power of the Commonwealth.

In *Farey* v. *Burvett* (1) the defence power was the subject of this observation : " It is complete in itself and there can be no implied reservation of any State power to abridge the express grant of a power to the Commonwealth "—See also *South Australia* v. *The Commonwealth* (2) ; *R.* v. *Commonwealth Court of Conciliation and Arbitration* (3). In the latter case I said that " In the *Engineers' Case* (4) the Court said that the principles upon which it determined that case apply generally to all the powers contained in s. 51 of the Constitution of the Commonwealth. One of the principles upon which the Court decided that case is stated in these words : ' Laws validly made by authority of the Constitution bind, so far as they purport to do so, the people of every State considered as individuals or as political organisms called States—in other words, bind both Crown and subjects ' (5) ". The Commonwealth's defence power is a power to make all laws which are capable of conducing to the protection of the Commonwealth and the waging of war against its enemies. The words of Chief Justice *Marshall* in *Gibbons* v. *Ogden* (6), which were spoken in relation to the power of Congress to regulate inter-State commerce, may be applied to the defence power of the Commonwealth: " This power . . . is complete in itself, may be exercised to its utmost extent and acknowledges no limitations other than are prescribed in the Constitution." It follows that if the Regulations which are in question in the present case are a valid exercise of the powers which the Parliament delegated to the Governor-General, the Regulations are binding on the State of Victoria : and it also follows that the State was bound, notwithstanding its own laws with respect to holidays, to keep open on the days to which the *National Security*

(1) (1916) 21 C.L.R., at pp. 453, 454.
(2) (1942) 65 C.L.R. 373.
(3) (1942) 66 C.L.R., at p. 522.
(4) (1920) 28 C.L.R. 129.
(5) (1920) 28 C.L.R., at p. 153.
(6) (1824) 22 U.S. 1 [6 Law. Ed. 1].

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(*Supplementary*) *Regulations* applied, such of its establishments as came within the Regulations, and to pay the employees who worked there on those days according to any determination made by the Court of Conciliation and Arbitration in accordance with those Regulations and the *National Security* (*Industrial Peace*) *Regulations*.

The Executive has stated on the face of the *National Security* (*Industrial Peace*) *Regulations* the purposes for which it made them. In the first place the Executive makes the statement that the preservation of peace in industry is a necessary condition for the efficient prosecution of the war. This is a self-evident truth, at least as regards such parts of industry as are concerned with things needed in war. In the second place, the Executive has stated on the face of the Regulations that, in order to preserve peace in industry, it is desirable that certain limitations on the jurisdiction of industrial tribunals constituted under the laws of the Commonwealth should be removed and that provision should be made for those tribunals to deal with industrial disputes with greater expedition. The limitations correspond with those which are inherent in s. 51, pl. xxxv. pursuant to which those laws were passed. The only means which those laws provided for the prevention and settlement of industrial disputes were conciliation and arbitration, and the only disputes to which those laws extended were inter-State disputes. Because of these limitations no Commonwealth industrial tribunal could intervene to prevent or settle a dispute that did not extend beyond a State, even if the industry disrupted by the dispute is vital to the economy of the whole Commonwealth. Furthermore, because of these limitations, no Commonwealth industrial tribunal could, as a matter incidental to the prevention or settlement of an industrial dispute between the disputants, make an award which would apply generally to all employers and employees, irrespective of whether they were disputants or not, and finally, because of the limitation in the existing laws for the prevention and settlement of industrial disputes, much prolixity and artificiality, which led to industrial unrest, often characterized the steps by which Commonwealth industrial tribunals got cognizance of the industrial disputes in respect of which they had jurisdiction.

Reg. 4 removes from the definition of the industrial disputes, with which the Commonwealth industrial tribunals could deal, the limitation confining their jurisdiction to industrial disputes extending beyond the limits of a State. The validity of reg. 4 arises in this case, as the applications which the employees have made do not give rise to an inter-State dispute. Industrial peace is a necessary condition for the efficient prosecution of the war; and to

preserve peace in an industry that is carried on in one State only is no less conducive to that end than to preserve peace in an industry that is carried on in more than one State. The mere technical distinction between an industrial dispute confined within a State and an industrial dispute extending beyond its limits is irrelevant to the question whether the dispute is an impediment to the prosecution of the war. The relevant consideration is whether the preservation of industrial peace everywhere within the limits of the Commonwealth may conduce to the more efficient prosecution of the war. There is no doubt that it may do so.

The question of the validity of reg. 5 (*a*) and reg. 11 also arises in this case. It is clearly appropriate to the end which the Executive has in view in making the Regulations, the efficient prosecution of the war, for the Court, therein mentioned, to have cognizance of all industrial disputes which that Court is satisfied, or the Minister certifies to it are proper to be dealt with in the interests of industrial peace and national security (reg. 5 (*a*)); and also to give it jurisdiction to exercise its powers under the Act and the Regulations for the prevention and settlement of industrial disputes in any case where the Court deems it desirable in the interests of industrial peace and national security (reg. 11). If there are industries in which disputes and unrest would not be detrimental to the efficient prosecution of the war this Court has no information which would enable it to say what they are. In any case, it is not necessarily untrue that industrial unrest outside the particular industries which are directly concerned with things needed in the war, could lead to industrial unrest within those industries.

This Court cannot, in my opinion, hold that it is not conducive or incidental to the plan of the Regulations, which is to preserve industrial peace in the Commonwealth as a condition necessary to the efficient prosecution of the war, for the Commonwealth to authorize its industrial tribunals to deal with industrial disputes occurring in any branch of industry.

Section 51, pl. xxxv., of the Constitution being subject to the limitations which have been described, it follows that the powers of the States to make laws for the prevention and settlement of intra-State disputes are saved by s. 107 of the Constitution. But it does not follow that the *National Security* (*Industrial Peace*) *Regulations* invade those State powers. These Regulations are an exercise of the Commonwealth's defence power, not an invasion of a field of State legislative power which is saved by the Constitution. The defence power is not limited by s. 51, pl. xxxv.

In my opinion regs. 3, 4, 5 (*a*) and 11 of the *National Security* (*Industrial Peace*) *Regulations* are a valid exercise of the powers

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conferred on the Governor-General by the *National Security Act* 1939-1940.

Reg. 19 of the *National Security* (*Supplementary*) *Regulations* provides that certain days shall not be observed as holidays at the employer's "business premises" and the regulation says that "premises" means bank, office, shop, factory or any premises at which any industry is carried on and includes any Department of the Commonwealth and any place at which the business of any authority of the Commonwealth or of a State or Territory of the Commonwealth or any local governing body is carried on. The places at which reg. 29 (1) of those Regulations provides that the days to which the regulation is applicable shall not be observed as holidays are every establishment, factory, mine, or workshop, which is engaged wholly or partly in production for war or defence purposes, or in the repair or overhaul of munitions of war, and every Commonwealth or State Department or authority of the Commonwealth or of a State engaged on work associated with the prosecution of the war. Reg. 29 (8) extended the provisions of reg. 29 to another day which was a holiday in Victoria only, and made it apply to employers and bankers (being persons engaged in the business of banking and insurance) and to every Commonwealth or State Department or authority of the Commonwealth or of a State engaged on any work whatsoever. Reg. 44 provides that the days to which it applies shall not be observed as holidays at the place at which the employer is engaged in business, and the regulation was expressed to extend to Commonwealth and State employees.

It is a proposition, which I think is indisputable, that the *National Security Act* 1939-1940 confers power on the Executive to prohibit the observance of any day as a holiday if such observance could possibly interfere with the efficient prosecution of the war. The *National Security* (*Supplementary*) *Regulations* prohibit the observance of certain days as holidays in particular fields of private enterprise and in Commonwealth and State Departments.

The Court has no information which would enable it to say, so far as regards those fields of private enterprise, that the cessation of work on any of those days would not appreciably interfere with the nation's war effort. Such parts of private enterprise which the Regulations affect are either industrial or business operations or services incidental to such operations. The important relationship of industry to the war effort and the obvious need of a continuity of work in industry are sufficient ground for saying that the elimination of holidays within the fields of private enterprise mentioned in the Regulations respectively is a step which is capable of aiding the prosecution of the war.

In *Victoria* v. *The Commonwealth* (1) it was decided, however, that reg. 29 (8), (9) and (10) are not within the ambit of the defence power in so far as they purport to control the holidays and remuneration of members of the public service of Victoria who are not engaged in work associated with the war. It has been shown by the foregoing references to the Regulations that 29 (1) was expressed to apply to every Commonwealth or State Department engaged on work associated with the prosecution of the war, whereas 29 (8), (9) and (10) explicitly rejected that criterion and purported to lay down a rule to be observed by every Commonwealth and State Department engaged on any work whatsoever. It was plain on the face of the Regulations that 29 (8), (9) and (10) were intended to have a more extensive operation than 29 (1). The words " engaged on work associated with the prosecution of the war " limited a wide field. It could not be predicated that any part of industry could be excluded from that field: but the words used in reg. 29 (8) " engaged on any work whatsoever " gave a reasonably plain indication that the Executive itself did not consider that all the work which would have been carried on in Government Departments, if the holidays had not been observed therein, would have been associated with the prosecution of the war. Hence other considerations than some association, which could be presumed to exist between the work of employees in the State Departments and the prosecution of the war, were advanced in the last-mentioned case to support reg. 29 (8), (9) and (10). These considerations did not find favour with the Court. In the present case we are asked to reconsider the question whether these sub-regulations are invalid. I think that task should not be undertaken.

The employers and employees to whom the above-mentioned *National Security* (*Supplementary*) *Regulations* (i.e., those other than reg. 29 (1)) are expressed to apply may be divided into two classes, those engaged in industry and those engaged in occupations not falling within industry. It could clearly conduce to the more efficient prosecution of the war to prohibit the interruption of industrial work by the observance of holidays. As regards State employees, those engaged in industrial work and those engaged in ordinary governmental work are two distinct and separate classes. In so far as these regulations apply to these two classes they are good in part and bad in part. But the regulations are expressed to apply generally to the whole class of State employees and accordingly if the regulations are to be held valid to any extent, that result can be achieved only by giving them an artificial construction

(1) (1942) 66 C.L.R. 488.

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according to the rule in s. 46 (*b*) of the *Acts Interpretation Act* 1901-1941. The rule has been described as a rule of construction in *R.* v. *Poole* (1) and in *Victorian Chamber of Manufactures* v. *The Commonwealth* (*Industrial Lighting Regulations*) (2). See also *R.* v. *Burgess* (3).

This rule of construction can be properly applied " in relation to words which, merely because they describe too widely certain classes of persons, places or things, extend beyond the limits of Commonwealth power but which are capable of being read down so as not to trespass beyond such limits " (*R.* v. *Burgess* (4)). Where the provision to be construed according to the section is of that nature the question is whether the authority making it intended the provision to have " a distributive operation or effect. That is to say, did it intend that the particular command or requirement expressed in the provision should apply to or be fulfilled by each and every person within the class independently of the application of the provision to the others ; or were all to go free unless all were bound " (*R.* v. *Poole* (5)).

It seems to me that the substance and policy of these regulations make it reasonable to presume that it was not intended to forbid such State Departments and their employees as were engaged in industrial work to observe the holidays only if the Regulations also required and bound the State Departments and their employees, whose work had no connection with the prosecution of the war, to give up those holidays.

The above analysis does not of course apply to reg. 29 (1), which is expressly limited to Departments associated with the prosecution of the war, that is to say, in industry.

In my opinion the first question should be answered : Yes, as to regs. 3, 4, 5 (*a*) and 11 ; and the second question : Yes, to the extent to which they apply to employees engaged in industry.

WILLIAMS J. I answer the questions asked in the case stated as follows.

Question 1. The *Industrial Peace Regulations* were enacted by the Governor-General, which means the Federal Executive Council, pursuant to the powers conferred upon the Governor-General by the *National Security Act* 1939-1940. That Act, as I have ventured to point out in previous cases, delegates to the Executive the right to exercise the legislative powers conferred upon the Commonwealth Parliament by s. 51 (vi.) of the Constitution.

(1) (1939) 61 C.L.R., at pp. 652, 656.
(2) (1943) 67 C.L.R. 413.
(3) (1936) 55 C.L.R., at p. 672.
(4) (1936) 55 C.L.R., at p. 676.
(5) (1939) 61 C.L.R., at p. 652.

The Regulations enlarge the jurisdiction of the Commonwealth Court of Conciliation and Arbitration and of the conciliation commissioners appointed under the *Commonwealth Conciliation and Arbitration Act* 1904-1934 in two main ways: (1) they extend the jurisdiction of the Court and of the conciliation commissioners to all industrial disputes whether extending beyond the limits of any one State or not, and (2) they provide for the settlement of industrial unrest with respect to industrial matters although an industrial dispute with respect to those matters does not exist (*Australian Coal and Shale Employees Federation* v. *Aberfield* (1)). The Regulations purport, therefore, to enact on behalf of the Commonwealth Parliament legislation in excess of the express power conferred upon the Commonwealth Parliament by s. 51 (xxxv.) of the Constitution and to invade a legislative domain which in normal times is reserved to the States by s. 106 of the Constitution.

The Regulations can only be upheld, therefore, if they are a valid exercise of the defence power.

In previous cases, and particularly in that relating to the validity of the *Women's Employment Act* (2), I have ventured to state the tests which should, in my opinion, be applied in order to determine whether legislation is or is not within that power. It follows from that decision that the fact that there is an express power to legislate under placitum xxxv. with respect to conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State does not deprive the Commonwealth Parliament of its power under placitum vi. to legislate with respect to intra-State disputes where that legislation can be justified as legislation capable of aiding in the prosecution of the war.

It is not contested that there are many intra-State industries in which industrial disputes and industrial unrest can seriously prejudice the successful prosecution of the war; but it is contended that many intra-State industries have no connection with the prosecution of the war, so that an extension of the power of the Commonwealth Parliament to take control of industrial disputes and industrial unrest in these industries is not justified because it would not aid even incidentally in the defence of the Commonwealth. It is contended, therefore, that the extension of Commonwealth legislation into the domain of intra-State industries in order to be valid should be confined to industries which are associated with the successful prosecution of the war. If it were possible to draw a line between those industries which are and those which are not associated with the prosecution of the war there might be considerable substance in this contention. But in the modern industrial world all its component parts are so

(1) (1942) 66 C.L.R., at pp. 190, 191. (2) (1943) 67 C.L.R. 347.

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interlocked that it would be impossible artificially to create such a separation, or to anticipate what effect industrial disputes or industrial unrest in one industry which, taken in isolation, might not appear to have any association with the prosecution of the war, would have upon other industries which are associated with its prosecution. Moreover, the objective in war-time is to confine production to industries which assist the war effort and to achieve a maximum output in these industries by concentrating all available man power on this work. It is essential to keep the industrial machine running smoothly if this output is to be achieved and maintained. Legislation which sets up some national machinery to deal with industrial disputes and industrial unrest on a uniform basis throughout the Commonwealth is more likely to attain this end than legislation by each State, which would probably take different forms. The amount of industry which possibly has no connection with the war must be so small when compared with industry which has some connection that, in view of the general interlocking, it is, in my opinion, reasonably capable of aiding the war effort for the Commonwealth to legislate to maintain industrial peace in the whole of industry, even if it is open to dispute in the case of some industries whether they have any connection with the prosecution of the war. War does not brook delay and to confine the Regulations to industries having some general classification such as industries associated with the prosecution of the war would invite litigation and therefore delay and expense in order to decide whether such an association existed or not. It is like price fixing. It can be urged that some goods and services are not essential to the maintenance of the armed or civilian population, so that it cannot aid the prosecution of the war to fix their prices. But it has been held by this Court that the Commonwealth Parliament can, in time of war, control the prices of all goods and services. It has been established by previous decisions of this Court and by the statements of Lord *Haldane* and of the Supreme Court of the United States of America which I cited in the case of the *Women's Employment Act* (1) that the Commonwealth Parliament, charged with the responsibility for the defence of the realm, and the Executive which it controls must be given considerable latitude to decide what means are required to make that defence effective. Looking at the matter in this way it cannot be said to be beyond the defence power for the Commonwealth to exercise control over all industrial disputes and industrial unrest in war-time. For these reasons I am of opinion that the National Security (Industrial Peace) regs. 3, 4, 5 and 11 are a valid exercise of power and that the first question should be answered in the affirmative.

(1) (1943) 67 C.L.R. 347.

Question 2. The first regulation mentioned in the case in chronological order is reg. 19, gazetted on 16th December 1941. Shortly stated, it provided that during the period 25th December 1941 to 3rd January 1942 the only holidays were to be on 25th and 26th December 1941 and on 1st January 1942, and that, except on these days, all employers and employees, including those employed in any department of a State, at any premises at which any industry was carried on, were to work on the other days in this period which would ordinarily have been observed as holidays. No means of applying for additional pay for work on the cancelled holidays was provided in the regulation.

The next regulation is reg. 44, gazetted on 12th March 1942, amended on 31st March 1942 and repealed on 28th May 1942. Shortly stated, it provided that between 12th March 1942 and 30th June 1942, except on 3rd, 4th and 25th April 1942, all employees, including employees of any State, and all employers actively engaged in the conduct or control of any business, were to go to work on days which would ordinarily be observed as holidays. Sub-reg. 2A provided means of applying for additional pay.

The history with respect to the next regulation, reg. 29, which was gazetted on the same day that reg. 44 was repealed, is set out in the report of the *Public Service Case* (1) and need not be repeated. I wish, however, to correct an error in my judgment in that case when I stated that the holiday on the day which would have been Show Day if the show had been held was cancelled, but I also wish to state that this error does not affect my judgment in that case in any way.

The next regulation is reg. 29A, gazetted on 25th June 1942. Shortly stated, it provided that where any employee had worked on any day which under regs. 19 or 44 was not observed as a holiday and he was not entitled to additional pay for such work, he could apply for additional pay to any tribunal or authority having jurisdiction to determine disputes or claims in respect of rates of pay or conditions of employment in relation to the work in which he was employed.

It will be seen, therefore, that the provisions of reg. 19 were confined to industrial undertakings, that the provisions of reg. 44 embraced every kind of business, that the provisions of reg. 29, sub-regs. 1-3 and 7 were confined, in the case of the States, to work associated with the prosecution of the war, while the provisions of reg. 29, sub-regs. 8 and 9 were confined to the State or part of the State of Victoria. The provisions of sub-reg. 8 related to all officers

(1) (1942) 66 C.L.R. 488, at pp. 531, 532.

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or employees of the State, engaged in any work whatsoever, while those of sub-reg. 9 related to all such officers or employees engaged in any work in those parts of the State in which the first Tuesday in November would have been gazetted as a holiday if the Melbourne Cup had been run on its ordinary date. It follows from what I have said in this judgment and from the *Public Service Case* (1) that regs. 19 and 29, sub-regs. 1-3 and 7 were within power, so that any officer or employee of the State who was engaged in industry within the meaning of reg. 19 or in work associated with the prosecution of the war within the meaning of reg. 29 (1) and worked on days which would ordinarily have been holidays in Victoria during the periods to which they applied would be entitled to apply for additional pay under reg. 29A or reg. 29 (3). The only days to which these regulations would apply would be 27th December 1941 and 24th September 1942. But it also follows that reg. 44 and reg. 29, sub-regs. 8 and 9, which were not confined to industrial undertakings or to work associated with the prosecution of the war, were beyond power. They are therefore wholly invalid unless they can be brought partly within power under the provisions of the *Acts Interpretation Act* 1901-1941, s. 46 (*b*).

Section 46 (*b*), so far as material, provides that where an Act confers upon any authority power to make any instrument (including regulations) " any instrument so made, granted or issued shall be read and construed subject to the Act under which it was made, and so as not to exceed the power of that authority, to the intent that where any such instrument would, but for this section, have been construed as being in excess of the power conferred upon that authority, it shall nevertheless be a valid instrument to the extent to which it is not in excess of that power."

The sub-section requires, therefore, that if on the true construction of an instrument it has an operation which is in excess of power, then the Court is to read down the instrument by a process of construction so that it will have an operation which is not in excess of power. The previous decisions of this Court to which we were referred, and particularly the statements in the joint judgment of five Justices in *Newcastle and Hunter River Steamship Co.* v. *Attorney-General for the Commonwealth* (2) and in the judgment of my brother *Dixon* in *R.* v. *Poole*; *Ex parte Henry* [*No.* 2] (3), appear to me to establish that, in order to be capable of being subjected to such a process, the instrument must either contain independent provisions

(1) (1942) 66 C.L.R. 488.
(2) (1921) 29 C.L.R. 357, at pp. 369, 370.
(3) (1939) 61 C.L.R. 634, at pp. 652, 653.

within power which are severable and will continue to operate in the same manner as they would have done if the instrument as a whole had been valid, or it must appear from the provisions of the instrument, read in the light of the power which it purports to exercise, that it is intended to operate in a distributive manner with respect to each and every part of the subject matter to which it relates, and therefore to operate with respect to those parts of the subject matter which are within power although it has failed to be effective with respect to the whole subject matter.

Regs. 44 (1) and 29 (8) and (9) do not contain any severable provisions some of which are within and some beyond power, so that the only possible manner of reading them down by construction would be to give them a distributive effect and to hold that, although as a whole they were ineffective, they were nevertheless intended to apply to all employees engaged upon work with respect to which the Executive had power to legislate. The regulations must be within the power to make regulations conferred upon the Executive by the *National Security Act*. This is a power to make regulations for securing the public safety and defence of the Commonwealth and for the effectual prosecution of the war. But this power which, as I have already said, corresponds to s. 51 (vi.) of the Constitution, is a power of an indefinite ambit. So far as the regulations with respect to holidays are concerned the Executive has exercised the power in a valid manner by legislating with respect to holidays in all industries (reg. 19); and with respect to particular industries and to all work associated with the prosecution of the war (reg. 29, sub-regs. 1-3 and 7); and in an invalid manner by legislating with respect to holidays in all business (reg. 44 (1)); and with respect to holidays in all employment in Victoria, reg. 29, sub-regs. 8 and 9. There is no certain indication, therefore, either in the ambit of the power itself or in the regulations made under the power relating to holidays, of the extent to which the regulations which are beyond power should be read down so as to bring them within power.

I am unable to find any indication in reg. 44 (1) that it was intended to be construed distributively. Its operation was deliberately enlarged beyond that of reg. 19 so as to include any business, whether of an industrial character or not, so that the indications are all to the contrary. Even if it was intended to have a distributive effect it is uncertain whether it should be construed to apply to all industrial businesses as in reg. 19, or to certain industrial businesses or to all work associated with the prosecution of the war as in reg. 29 (1). Moreover, it would be difficult to read reg. 44 down in the light of regulations, the operation of one of which was exhausted before it

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came into force, while the other only came into force when reg. 44 was repealed. The same remarks apply to reg. 29, sub-regs. 8 and 9. In both these sub-regulations the Executive deliberately enlarged the scope of the work beyond that included in sub-regs. 1-3 and 7. It is also uncertain what narrower construction should be adopted. To attempt, therefore, to read down regs. 44 (1) and 29, sub-regs. 8 and 9, would, as the Chief Justice said in the *Lighting Restrictions Case* (1), " be re-writing the regulations and would in effect be engaging in legislation."

It may well be that reg. 44 (1) could be read down so as to be applicable to employees in the service of the Commonwealth or any authority of the Commonwealth or of the Administration of the Northern Territory and that reg. 29 (8) and (9) could be read down so as to be applicable to employees in the service of the Commonwealth or any authority of the Commonwealth, but this question does not arise in the present proceedings.

For these reasons I am of opinion that question 2 should be answered that regs. 19 and 29, sub-regs. 1-3 and 7 are, but that regs. 44 and 29, sub-regs. 8 and 9 (and sub-reg. 10 must fall with 9) are not, in relation to State servants, a valid exercise of power; and in consequence that reg. 29A is a valid exercise of power for the purpose of applications by such servants under reg. 19 but not for the purpose of applications by them under reg. 44.

Questions in case answered as follows :—

(1) *The said regulations* 3, 4, 5 and 11 *are valid.*

(2) *Regulations* 19, 29 (1) *to* (3) *and* (7), 29A, *are valid so as to empower the said Court to entertain and determine the said applications in respect of industrial work on 27th December* 1941, *and of work described in reg.* 29 (1) *performed on 24th September* 1942 *but the regulations specified in the question do not empower the said Court to entertain or determine any others of the said applications.*

No order as to costs.

Solicitors for the applicants, *Maurice Blackburn & Co.*

Solicitor for the respondent, *F. G. Menzies*, Crown Solicitor for Victoria.

Solicitor for the intervener, *H. F. E. Whitlam*, Crown Solicitor for the Commonwealth.

E. F. H.

(1) (1943) 67 C.L.R. 413, at p. 419.