

[HIGH COURT OF AUSTRALIA.]

DEVANE APPELLANT ;
INFORMANT,

AND

GATI AND ANOTHER RESPONDENTS.
DEFENDANTS,

ON APPEAL FROM THE CHIEF INDUSTRIAL MAGISTRATE
AT SYDNEY.

H. C. OF A. *Industrial Arbitration (Cth.)—Award—Binding on partnership—Bound in firm
1956.
SYDNEY,
Aug. 17.*

Dixon C.J.,
Fullagar and
Taylor JJ.

*name—Breach of award—Prosecutions against partners in firm—Partners
named individually in information—Regularity of prosecution—Clothing Trades
Award 1950—Conciliation and Arbitration Act 1904-1952 (No. 13 of 1904—
No. 34 of 1952), s. 59.*

The rule of the common law that for the purpose of writs and proceedings in the ordinary courts of justice the parties must be named as individual persons does not govern the industrial proceedings of the Court of Conciliation and Arbitration. It is quite competent for that court or a conciliation commissioner in making an award to deal in the firm name with a partnership carrying on business in the firm name. In a proceeding in a State Court of Petty Sessions for breach of the award it is proper to name as defendants the individuals forming the partnership.

Decision of the Chief Industrial Magistrate, at Sydney, reversed.

APPEAL from the Chief Industrial Magistrate at Sydney, New South Wales.

On 20th June 1955 Thomas Patrick Devane laid six informations under s. 59 of the *Conciliation and Arbitration Act 1904-1952* against Albert Gati and Thomas Sebastian trading as Gaty Clothing Co. of No. 112 King Street, Newtown near Sydney, New South Wales, alleging various breaches by the defendants of the Clothing Trades Award 1950. Such award was binding upon a large number of persons named in the schedule thereto, included amongst whom was “Gaty Clothing Co., 112 King Street, Newtown”.

Upon the informations coming on to be heard before the chief industrial magistrate at Sydney on 12th October 1955 it was objected on behalf of the defendants that they could not be proceeded against as in the award only the firm was bound and it was not a separate legal entity. The objection was upheld and the informations were dismissed. On 14th November 1955 the informant obtained special leave to appeal from this decision and the present appeal was brought to the High Court upon the ground that the chief industrial magistrate erred in law in holding that the defendants had not been shown to be parties to the Clothing Trades Award 1950 and could not be made respondents to the said award under a firm name under which they carried on business.

H. C. OF A.

1956.

DEVANE

v.
GATI.

J. H. Wootten, for the appellant.

There was no appearance by or on behalf of the respondents.

The judgment of the Court was delivered by DIXON C.J.

This appeal is from an order or orders dismissing six informations. The informations were laid under s. 59 of the *Conciliation and Arbitration Act* 1904-1952 (Cth.) for breaches of the award called the Clothing Trades Award 1950.

The defendants named in the informations are Albert Gati and Thomas Sebastian. They in fact carried on business as the Gaty Clothing Co. of 112 King Street, Newtown. By the award of 15th July 1954 a large number of persons was named in the schedule as persons upon whom the Clothing Trades Award was binding according to its terms. Among the persons named was the Gaty Clothing Co. of 112 King Street, Newtown. The two individual partners who formed that company were not expressly mentioned in the schedule.

When the informations came on for hearing before the court of petty sessions the objection was taken that the defendants could not be proceeded against because in the award only the firm was bound and, further, that the firm was not a separate legal entity. The magistrate gave effect to this objection and dismissed the informations.

In our opinion the objection was without foundation. It was quite competent for the Court of Conciliation and Arbitration to deal in the firm name with a partnership carrying on business in the firm name. The partners of the firm against which proceedings in the Court of Conciliation and Arbitration were so carried on would be bound by an order or award made naming the firm, that is assuming

H. C. OF A.
1956.

DEVANE
v.
GATI.

Dixon C.J.
Fullagar J.
Taylor J.

that in all other respects the court had jurisdiction to bind them by the order or award. It is, of course, true that a partnership is not a separate legal entity. But the firm name is nevertheless a description of the individuals who compose the partnership and it describes them for the purpose of the firm's business. The rule of the common law was that for the purpose of suits and proceedings in the ordinary courts of justice the parties must be named as individual persons and the firm name did not satisfy this requirement, although for many other purposes it is recognized as a collective description. But the rule does not govern the industrial proceedings of the Court of Conciliation and Arbitration. It was perfectly proper for the informant to name them individually in the informations and, indeed, that was the only manner in which they could regularly be prosecuted in the present proceedings.

The rule which the magistrate applied was inapplicable to the proceedings and accordingly the dismissal was based on an erroneous ground. The informations were not heard on the merits; it is therefore necessary to remit them for hearing.

The order of the Court will be as follows:— Appeal allowed with costs against the defendants respondents. Order of the court of petty sessions set aside. Informations remitted to the court of petty sessions for rehearing. Costs of the former hearing to abide the order of the court of petty sessions disposing of the informations.

Order accordingly.

Solicitors for the appellant, *J. R. McClelland & Co.*

R. A. H.