[HIGH COURT OF AUSTRALIA.]

TRANSPORT AND MOTOR OPERATORS' UNION OF WORKERS, PERTH . . } APPELLANT;

AND

WESTERN AUSTRALIAN GOVERNMENT TRAMWAYS, MOTOR OMNIBUSES, RIVER FERRIES AND FREMANTLE TRAMWAY EMPLOYEES' UNION OF WORKERS . . . . . } RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF WESTERN AUSTRALIA.

H. C. OF A. 1958.

PERTH, *Sept.* 9, 10;

MELBOURNE, *Oct.* 16.

Dixon C.J., Kitto and Menzies JJ.

Industrial Arbitration (W.A.)—Industrial Union of Workers—Amendment of rule prescribing the qualifications of persons for membership—Limits of president's authority to approve—Writ of prohibition—"Industry"—Workers employed by one named employer—Government Passenger Transport—Industrial Arbitration Act 1912-1952 (*W.A.*), *ss.* 6, 8, 23, 85, 99, 108.

An industrial union of workers registered under Pt. II of the *Industrial Arbitration Act* 1912-1952 (W.A.) by its rules restricted membership to workers in specified classifications "employed by the Manager of the Government Tramways Department or other authority in accordance with any *Government Tramways Act* or *River Ferries Act* for the time being in force and of workers employed solely in the Tramways Industry as carried on by the Fremantle Municipal Tramways and Electric Lighting Board as at the 7th May 1929". The union made application to the Industrial Registrar to register an amendment to its rules changing its name and composition, in the latter regard by substituting for the words previously quoted the words "employed by the General Manager of Western Australian Government Tramways and Ferries or by Metropolitan (Perth) Passenger Transport Trust". The registrar, pursuant to s. 23 (4) of the *Industrial Arbitration Act*, referred the application to the president. The application was opposed by another registered industrial union of workers on the grounds that the rule, if so amended, would be in conflict with the Act in that the industry of the Trust was not an "industry" within the meaning of s. 6 of the Act, and hence if the amendment were registered, the union would not then be registered "in or in connection with the specified industry" as required by s. 8 of the Act. The president having indicated that he was disposed to accept the amendment, the opponent union sought the issue of a writ of prohibition against him.

Held: (1) That the question whether an amendment having the effect of altering the " constitution " of an industrial union should be registered is left to the unfettered judgment of the president and provided that he exercises his discretion bona fide prohibition, assuming that on such an application it is otherwise available, will not lie, even if it be shown that the amendment would bring the union rules into conflict with the Act. In such an event the amendment itself may be void notwithstanding registration but it does not follow that the president in directing registration is doing something void for excess of power.

(2) On the material before the Court it was not shown that the amendment sought would change the purpose for which its members were associated so as to contravene the requirement contained in s. 8 (1) of the Act, namely that a society of workers, seeking registration under the Act, is to consist of any number of workers not less than fifteen associated for the purpose of protecting or furthering the interests of workers in or in connection with any specified industry.

(3) That a union registered for the benefit of workers employed by one only of a number of employers in an industry, is registered " in or in connection with a specified industry " within the meaning of s. 8 (1) of the Act.

Decision of the Supreme Court of Western Australia (Full Court), affirmed.

APPEAL by special leave from the Supreme Court of Western Australia.

The Western Australian Government Tramways Motor Omnibuses River Ferries Fremantle Tramway Employees' Union of Workers was registered as an industrial union of workers under Pt. II of the *Industrial Arbitration Act* 1912-1952 (W.A.). The conditions of eligibility for membership of that union were defined in the rules as follows :—" (a) This Society (hereinafter termed the Union) shall be called the Western Australian Government Tramways, Motor Omnibuses River Ferries and Fremantle Tramway Employees' Union of Workers and shall be composed of workers engaged in the following classes of labour, namely : Motormen, Conductors, Motor Omnibus Drivers (excluding drivers of omnibuses run in conjunction with Railways under the *Government Railways Act* 1904-1948 as amended), Trolley Bus Drivers, Shed Hands, Trackmen, Storemen, Chainmen, Platelayers, Fettlers, Linesmen, Motor Drivers (excluding those who are eligible to belong to the Western Australian Amalgamated Society of Railway Employees' Union of Workers), Deckhands and others employed by the Manager of the Government Tramways Department or other authority in accordance with any *Government Tramways Act* or *River Ferries Act* for the time being in force and of workers employed solely in the Tramway Industry as carried on by the Fremantle Municipal Tramways and Electric Lighting Board as at the seventh day of May, 1929. Every Member

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of this Union shall be a worker within the meaning of the *Industrial Arbitration Act* 1912-1941 and shall not be less than Fourteen (14) years of age. (b) The area over which this Union shall be authorised to operate shall be the South-West Land Division of Western Australia."

For some years prior to 1957 the Fremantle Municipal Tramways and Electric Lighting Board had ceased to operate trams.

The *Metropolitan (Perth) Passenger Transport Trust Act* 1957 was assented to on 10th December 1957 and was proclaimed to come into operation on 15th January 1958. This Act created a Metropolitan Transport Trust which was a body corporate and an agency of the Crown and vested in that trust power to acquire any passenger transport undertaking within the metropolitan area including the undertaking previously carried on by the General Manager of the Government Tramways and Ferries.

On 11th December 1957 the Tramway Union lodged with the Registrar of Industrial Unions an application to amend its name and constitution and this application the registrar pursuant to s. 23 (4) of the Act referred to the President of the Court of Arbitration.

This application was opposed by the Transport and Motor Operators' Union of Workers, Perth (hereinafter called the Transport Workers' Union) and other unions and it came before the president on 20th March 1958. His decision thereon was delivered on 31st March 1958. He then declined to grant the application but intimated that if the Tramway Union made application to amend its name and constitution so as to read :—" This Society . . . shall be composed of workers employed as hereinafter mentioned and engaged in the following classes of labour, namely :—Motormen, Conductors, Motor Omnibus Drivers, Trolley Bus Drivers, Shed Hands, Trackmen, Storemen, Chainmen, Platelayers, Fettlers, Linesmen, Motor Drivers, Deckhands and others employed by the General Manager of Western Australian Government Tramways and Ferries or by Metropolitan (Perth) Passenger Transport Trust " then he considered that the application should be granted.

On 18th April 1958 the Tramway Union made a further application to amend its name and constitution in the terms indicated in the said decision of the president whereupon the Transport Workers' Union sought and obtained in the Supreme Court of Western Australia an order nisi for a writ of prohibition to prohibit the president " from proceeding to deal with the application to amend its constitution on the grounds that insofar as the proposed amendment is limited to the specified employees of the Metropolitan (Perth) Passenger Transport Trust the said learned president has no

jurisdiction to approve thereof as the undertaking of the trust is not an industry or branch of an industry within the meaning of the *Industrial Arbitration Act* 1912-1952 ".

This order was discharged by the Full Court of the Supreme Court of Western Australia (*Dwyer* C.J. and *Wolff* J., *Jackson* J. dissenting) whereupon the Transport Workers' Union by special leave granted on 4th September 1958 appealed to the High Court.

L. D. Seaton Q.C. (with him *I. Gunning*), for the appellant. The president, when dealing with an application by a union of workers to amend its constitution, has no power to approve of any amendment which would result in that union then not being registered " in or in connection with a specified industry " as required by s. 8 (1) of the *Industrial Arbitration Act*. When s. 8 of the Act is read in the context of the whole Act, it then sufficiently appears that the legislative intention was to deal with industrial matters industry by industry. One can register an industrial union of workers in connection with a branch of an industry, which branch is in itself and by force of the definition contained in s. 6 of the Act, an industry. One cannot register an industrial union of workers in connection with a part (not being a branch) of an industry. An industrial union of workers whose membership is restricted to workers employed by one specified employer cannot therefore be registered, unless it be a monopoly industry. The objects or purpose of a union is co-extensive with the interests of its members and so by extending the qualification for membership the " purpose "—as that word is used in s. 8 of the Act—is correspondingly extended. Section 108 of the Act does not oust the jurisdiction of the Supreme Court to grant prohibition in a proper case. Prohibition goes to inferior courts but it is not limited to courts as such. It lies to any person or tribunal which has the duty or obligation to act judicially. [He referred to *R.* v. *Connell*; *Ex parte Hetton Bellbird Collieries Ltd.* (1).] Section 23 (4) of the *Industrial Arbitration Act* necessitates a hearing and there is an obligation upon the president to act judicially and he is subject to prohibition.

F. T. P. Burt (with him *R. Jones*) for the respondent. Section 8 is dealing with the purpose for which the society is registered as an industrial union. That section has no necessary relevance to an application to amend the " constitution " of a union. If s. 8 is restrictive of the powers of the president under s. 23 (4) of the Act,

(1) (1944) 69 C.L.R. 407, at p. 429.

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it does not restrict those powers on the facts of this case because if the amendment sought is approved and registered, the union will still be registered "in or in connection with a specified industry" *sic* the transport industry. The word "industry" is not a precise technical term. It has different meanings in different contexts. [He referred to *R.* v. *Hickman*; *Ex parte Fox and Clinton* (1); *Melbourne and Metropolitan Tramways Board* v. *Municipal Officers' Association of Australia* (2).] For the purposes of s. 85 of the Act the industry is marked out by the award itself. If the president is about to fall into error it is an error within jurisdiction. The jurisdiction of the president does not depend upon any finding as to jurisdictional facts. Section 108 of the *Industrial Arbitration Act* prevents any "proceeding" before the president from being challenged. It does not only protect the completed act. If the president approves the amendment and if the amendment be registered, it would not be void and hence prohibition does not lie. For prohibition to lie, it must be shown that the act if done, would be void. [He referred to *R.* v. *Deputy Industrial Registrar; Ex parte J. C. Williamson Ltd.* (3); *Amalgamated Society of Carpenters and Joiners* v. *Haberfield Pty. Ltd.* (4); *R.* v. *Dunlop Rubber Australia Ltd.* (5); *R.* v. *Taylor*; *Ex parte Professional Officers' Association—Commonwealth Public Service* (6) and *R.* v. *Murray*; *Ex parte Proctor* (7).] Any decision which the president may make under s. 23 (4) does not affect rights. Registration as an industrial union of workers under the Act is a statutory privilege which does not affect the rights of any other persons or of any other union which may be already registered. It does not bear upon it so as to restrict or extend any antecedent right. *R.* v. *Commonwealth Rent Controller*; *Ex parte National Mutual Life Association of Australia Ltd.* (8); *R.* v. *City of Melbourne* (9) and *Attorney-General of Queensland* v. *Wilkinson* (10) are distinguishable on this ground. The manner in which power is exercised does not determine whether it is a judicial power for the purposes of prohibition. [He referred to *R.* v. *McFarlane*; *Ex parte O'Flanagan and O'Kelly* (11).]

L. D. Seaton Q.C., in reply.

Cur. adv. vult.

(1) (1945) 70 C.L.R. 598.
(2) (1944) 68 C.L.R. 628.
(3) (1912) 15 C.L.R. 576.
(4) (1907) 5 C.L.R. 33.
(5) (1956) 97 C.L.R. 71.
(6) (1951) 82 C.L.R. 177.
(7) (1949) 77 C.L.R. 387.
(8) (1947) 75 C.L.R. 361.
(9) (1949) V.L.R. 257.
(10) (1958) 100 C.L.R. 422.
(11) (1923) 32 C.L.R. 518.

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THE COURT delivered the following written judgment:—

By special leave, the Transport and Motor Operators' Union of Workers, Perth, appeals from an order of the Full Court of the Supreme Court of Western Australia refusing to grant a prerogative writ of prohibition addressed to the President of the Court of Arbitration constituted under the *Industrial Arbitration Act* 1912-1952 (W.A.).

The prohibition which the appellant had sought was against proceeding to deal with a pending application by the Western Australian Government Tramways, Motor Omnibuses, River Ferries and Fremantle Tramway Employees' Union of Workers, a respondent to this appeal, for an amendment of its rules. The amendment, if made, would change the respondent union's name and composition. Its name would become the Metropolitan State Passenger Transport Industrial Union of Workers, and it would be composed of workers, within the meaning of the *Industrial Arbitration Act* and not less than fourteen years of age, described as "engaged in the following classes of labour namely:—Motormen, Conductors, Motor Omnibus Drivers, Trolley Bus Drivers, Shed Hands, Trackmen, Storemen, Chainmen, Platelayers, Fettlers, Linesmen, Motor Drivers, Deckhands and others—employed by the General Manager of Western Australian Government Tramways and Ferries or by Metropolitan (Perth) Passenger Transport Trust". The difference between this description and that which it is intended to replace is that the latter, after the words "and others", proceeds "employed by the Manager of the Government Tramways Department or other authority in accordance with any *Government Tramways Act* or *River Ferries Act* for the time being in force and of workers employed solely in the Tramways Industry as carried on by the Fremantle Municipal Tramways and Electric Lighting Board as at the seventh May, 1929". The respondent union's desire to make the proposed amendment is a consequence of the disappearance of tramways from Perth and Fremantle and the establishment by the *Metropolitan (Perth) Passenger Transport Trust Act* 1957 of a statutory trust, as an agency of the Crown in right of the State, to perform functions extending to the provision of passenger transport facilities by vehicular service along routes over streets in the metropolitan area and if necessary by ferry services on ferry service routes in that area. Thus one system of government road transport of passengers in the metropolitan area is superseded by another, and the respondent union, having represented employees in the former system, desires to have its rules so amended that it may represent employees in the new and extended system.

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The appellant union has a clear interest to oppose the amendment. It is a union of transport workers generally (with some but immaterial exceptions), and it is likely to be prejudiced in its membership if the respondent union becomes, as it wishes to be, a union specifically catering for the employees of the new Passenger Transport Trust. Opposition before the president is likely to be unavailing, for the president has already intimated, in the course of earlier proceedings, that he is disposed to approve of an amendment of the kind proposed. In these circumstances the appellant union seeks to establish that such an amendment is not in accordance with the Act and that the president has no power to sanction it. In order to test the question, a rule nisi was obtained in the Supreme Court for a writ prohibiting the president from "proceeding to deal with the application to amend its (the respondent union's) constitution on the grounds that insofar as the proposed amendment is limited to the specified employees of the Metropolitan (Perth) Transport Trust the learned president has no jurisdiction to approve thereof as the undertaking of the trust is not an industry or branch of an industry within the meaning of the said *Industrial Arbitration Act* 1912-1952". The Full Court by a majority (*Dwyer* C.J. and *Wolff* J., *Jackson* J. dissenting) discharged the rule.

The provision under which the application for the amendment is being made to the president is in s. 23 of the Act. That section is found in Div. 1 of Pt. II, dealing with industrial unions. The division begins with s. 8, which enables a society of employers or workers, in certain circumstances, to be registered as an industrial union under the Act. An employers' society must consist of two or more persons employing (to express it broadly) not less than fifteen workers on an average. A workers' society must consist of not less than fifteen workers. In either case the society must be associated for the purpose of protecting or furthering the interests of employers or workers in or in connection with a specified industry, or (in the case and subject to the conditions set out) in or in connection with divers industries in the State. The society must have rules, and the rules must specify the purposes for which the society is formed and must provide for a variety of matters including the mode in which and the terms and qualification on which persons shall become or cease to be members: s. 9 (2) (3). Registration operates to incorporate the society: s. 13, and has important consequences in the working of the industrial arbitration system. Section 23, the section upon which primarily the present case depends, contains in sub-s. (1) a general provision that no addition to or amendment or rescission of the rules of an industrial union (i.e. one registered under the

Act: s. 6) shall be valid until registered. Then it makes an important distinction. In general, the Registrar of Industrial Unions is required to register the addition or amendment or rescission upon a verified copy being sent to him and upon his being satisfied that the same is not in conflict with the Act; but a proviso forbids him to register any addition, amendment or rescission of any rules which has or may have the effect of altering the constitution of a union. The constitution of a union means, in this section, the qualification of persons for membership of the union, the objects of the union, or the area over which the union is authorised to operate: sub-s. (5). By sub-s. (4), a union which desires to make any addition, amendment or rescission of the kind which the registrar is forbidden to register must make application to the registrar for that purpose, and the registrar is to refer the matter to the president. That is the course which has been followed in the present case.

It will be convenient to assume, without deciding, that in dealing with the application the president is engaged in performing a function of such a character that his observance of the legal limits of his authority may be secured by means of the writ of prohibition. At the root of the appellant union's contention that what the president proposes to do is in excess of his power is the proposition that the Act upon its proper construction does not in general allow the registration of a union membership of which is restricted to the workers employed by one or some only of the employers in an industry in which other employers also are engaged. Whether that contention is sound will be considered in a moment, but, even if it is, the question arises whether it has any relevance to the limits of the president's authority under s. 23. The section does not expressly define the power which it evidently intends that the president shall have, but the proviso to sub-ss. (1) and (4), taken together, convey the meaning clearly enough. It is obviously meant that although every application for registration of an addition, amendment or rescission is to be made to the registrar in the first instance, he is not to register one which alters or may alter the constitution of a union, unless the president, on the matter being referred to him, decides that registration ought to be granted. The question whether it should be granted is left as a matter for the unfettered judgment of the president. There is a necessary implication, of course, that he is to exercise his discretion in good faith, doing what he considers expedient for the better effectuation of the purposes of the Act; but neither by express provision nor by implication is any more specific standard or criterion prescribed for him. In particular, there is nothing to suggest that the intention of the section is to subject his power of

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granting registration to the condition that the amendment conforms with the Act according to the construction of its provisions which the courts of law will hold to be correct. Indeed, a strong indication to the contrary is to be found in the provision as to the duty of the registrar in cases where that officer is to act without reference to the president. There, a condition is expressed, but it is only that the registrar is satisfied, and not that it is the correct conclusion of law, that the addition, amendment or rescission is not in conflict with the Act. In the face of such a provision it is obvious that prohibition could not lie to prevent the registrar, on the ground of a conflict between the amendment and the Act, from performing the duty of deciding for himself whether the conflict exists and of acting upon the opinion which he forms. In considering the question he is, as was said in reference to a somewhat similar situation under the Commonwealth legislation, "engaged upon the very function assigned to him, and none the less so because he may arrive at an erroneous conclusion": *R.* v. *Taylor*; *Ex parte Professional Officers' Association—Commonwealth Public Service* (1). Without clear words it is not to be supposed that the power of the president is intended to be more narrowly confined than the registrar's. It seems right to hold, on the section as a whole, that the president, no less than the registrar, "may decide a matter before him wrongly without exceeding his power": *ibid.* Accordingly it is no ground of prohibition, even if it be true, that an amendment which the president is considering under s. 23 would make the union's rules conflict with the Act. If it would, the amendment itself may be void notwithstanding registration; but it does not follow that the president, if he directs that the amendment be registered, is doing something which is void for excess of power.

Reference was made in the course of the argument to s. 108. As amended by the Act No. 5 of 1952, that section provides that no award, order or proceeding of the court or before the president shall be liable to be challenged, appealed against, reviewed, quashed or called in question by any court of judicature on any account whatever. But there is no need to go to that section, either to find a validation of an excess of the power conferred by s. 23 on the principle referred to in *R.* v. *Hickman*; *Ex parte Fox and Clinton* (2); *R.* v. *Murray*; *Ex parte Proctor* (3) and *R.* v. *Metal Trades Employers' Association*; *Ex parte Amalgamated Engineering Union, Australian Section* (4), or to find a still more direct obstacle to the

(1) (1951) 82 C.L.R., at p. 186.
(2) (1945) 70 C.L.R., at p. 615.
(3) (1949) 77 C.L.R., at p. 398.
(4) (1951) 82 C.L.R. 208, at p. 249.

appellant's case in the withdrawal of the Supreme Court's jurisdiction to grant prohibition against proceedings before the president. The first answer to the appeal must be simply that the president will not be transgressing the limits of his power under s. 23 if he proceeds to deal with the respondent union's application, even assuming that the conclusion ought to be reached that the amendment which he is asked to approve is in conflict with the Act.

But the appellant's argument fails also in its main contention. The substance of that contention has been stated already. The first step which it takes is to say that there is a conflict between the Act and a proposed amendment of a registered union's rules if the union would not have been entitled to registration originally had its rules then been in the amended form. Let the correctness of that step be assumed. The next step is to say that a union would not be entitled to registration if its rules confined its membership to persons employed in a part only of an industry, as distinguished from a branch of an industry—at least unless those persons belong to one calling or vocation. In particular, it is contended, there cannot be a registered union consisting of the employees of one particular employer in an industry. Justification for the view so propounded is said to be found in s. 8 (1), read with the definition of "industry" in s. 6. The definition is not exclusive. It defines "industry" to include three categories: (a) any business, trade, manufacture, handicraft, undertaking, or calling of employers on land or water; (b) any calling, service, employment, handicraft, or industrial occupation or vocation of workers, on land or water; and (c) a branch of an industry or a group of industries. The appellant's argument puts aside categories (a) and (b) as inapplicable, and concentrates upon excluding category (c) by drawing a distinction between a branch of an industry and a part of an industry and insisting that the employment of the Metropolitan (Perth) Passenger Transport Trust is a part and not a branch of the public passenger transport industry. The distinction which is taken may be illustrated by contrasting the employment of a particular builder, which may be conceded to be a part of the building industry, and bricklaying, which (as s. 62 (2) may be thought to suggest) is properly described as a branch of that industry. This distinction, it is said, is to be observed in applying s. 8 (1), and particularly the requirement of that sub-section that a society of workers, to be entitled to registration, must be associated for the purpose of protecting and furthering the interests of workers in or in connection with a specified "industry" or (in some circumstances) in or in connection with divers "industries".

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At this point the argument meets with a difficulty in its application to the present case, because the existing rules of the respondent union (other than those which prescribe the union's name and describe the persons eligible for membership) were not put in evidence before the Supreme Court, and that court therefore had not the material necessary to enable it to ascertain the class of worker whose interests the union exists to serve. Unless, on the true construction of the rules, the purpose for which the union is associated is limited by reference to the persons for the time being eligible for membership, the making of the amendment would leave the purpose unaltered; and there is no reason to suppose that the existing purpose does not satisfy s. 8 (1) so as to justify the union's original registration. If that is the situation, the appellant's argument fails at the threshold. Clearly there is no ground for assuming that the only workers whose interests the union exists to protect are those who are eligible for membership of it, where there are other workers in the same industry whose interests are, if not identical, at least likely to be affected by the same or similar considerations from time to time.

But suppose that the proposed amendment would have the effect of limiting the purpose of the respondent union to the protecting or furthering of the interests of the specified workers and others employed by the Government Tramways and Ferries or by the Metropolitan (Perth) Passenger Transport Trust. Suppose, moreover, that the "and others" is deleted. (It seems probable, as counsel has suggested, that these words have been carried over from the original rules by inadvertence.) The motormen and other specified workers employed by the bodies mentioned are undeniably workers in the public passenger transport industry. Would not the union, then, be associated, even after the amendment, for the purpose of protecting or furthering the interests of workers in or in connection with the public passenger transport industry, and so satisfy s. 8 (1)? It can hardly be that "the interests of workers in or in connection with any specified industry" means the interests of all the workers in or in connection with that industry. The expression "workers" in this context is surely satisfied, even if no other workers are contemplated than those who are members of the society. A similar view would seem clearly to be right with respect to a society of employers, that is to say that a purpose of furthering the interests of its members as employers is a sufficient purpose to satisfy the section; for under the section a society of employers may have as few as two members, and it is hardly consistent with a policy of allowing registration to so small a body that its purpose

should have to be to serve the interests of employers generally in the relevant industry, or of any larger group of such employers than those who are members of the society. According to the natural sense of the section, the interests of workers to which it refers are simply the interests which any workers have in respect of their work in or in connection with the specified industry. It may be unusual for a union to be registered which exists for the benefit of the employees of one only out of a number of employers in an industry, and in many cases such a thing may be considered undesirable; but there is no justification for concluding from s. 8 and the definition of "industry" in s. 6 that the Act excludes from registration a union so limited in its purposes.

There is another criticism of the appellant's argument which ought also to be made. It is a mistake to treat the definition of "industry" in s. 6 as if it were intended to be exhaustive. Even conceding that neither the activities (if any) which are still carried on by the General Manager of the Western Australian Government Tramways and Ferries, nor the activities of the Metropolitan (Perth) Passenger Transport Trust, nor both sets of activities together, constitute the whole of any industry falling within the three categories set out in the definition, there remains the question whether they may not properly be called an industry in the ordinary sense of the term—the industry, one perhaps might call it, of government passenger transport. To describe a section of industrial activity as an industry is, after all, to use an expression of no very precise application, and the appropriateness of its use in a given case may be a matter of legitimate difference of opinion. At least it cannot be said that there is any error of law in treating the transportation of passengers by public vehicles in a modern city, performed though it be by a single governmental agency, as consistituting by itself an industry.

For all these reasons we are of opinion that the decision of the Supreme Court was correct and the appeal should be dismissed.

Appeal dismissed with costs.

Solicitors for the appellant, *Kott, Wallace & Gunning.*
Solicitors for the respondent, *Joseph Muir & Williams.*

F. T. P. B.