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should be allowed and judgment entered for the plaintiff on the demurrer.

Appeal allowed. Judgment of the Supreme Court set aside. Judgment entered for plaintiff on demurrer. Respondent to pay costs of appeal.

Appl *Ludeke, Re, Ex parte QEC* (1985) 60 ALR 641

Appl *Caledonian Collieries v Asian Coal & Shale Employees Fed (No2)* (1930) 42 CLR 558

Foll *Waterside Workers Federation v Gilchrist Watt & Sanderson Ltd* (1924) 34 CLR 482

Solicitors for the appellant, *J. W. Maund & Christie.*

Solicitors for the respondent, *Pigott & Stinson.*

B. L.

[HIGH COURT OF AUSTRALIA.]

THE KING

AGAINST

HIBBLE AND OTHERS.

EX PARTE THE BROKEN HILL PROPRIETARY COMPANY LIMITED.

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SYDNEY, *April* 4, 5, 26.

Knox C.J., Higgins, Gavan Duffy, Powers, Rich and Starke JJ.

Industrial Arbitration—Special Tribunal—Jurisdiction—Dispute—Parties—Organization—Demand on behalf of members—De facto members—Rules of organization—Construction—Conference—"Person"—Corporation—Reference of dispute to Special Tribunal—Industrial Peace Act 1920 (*No.* 21 *of* 1920), *secs.* 4, 15, 18, 20—*Commonwealth Conciliation and Arbitration Act* 1904-1920 (*No.* 13 *of* 1904—*No.* 31 *of* 1920), *secs.* 19, 21A, 21B, 22, 29, 55.

Held, by *Knox* C.J., *Gavan Duffy*, *Powers*, *Rich* and *Starke* JJ., that the only capacity and power possessed by an organization registered under the *Commonwealth Conciliation and Arbitration Act* is to put forward claims on behalf of persons who have become members pursuant to its rules.

By the rules of an organization registered under the *Commonwealth Conciliation and Arbitration Act* membership was limited to "employees engaged in or in connection with the coal and shale industry." A company carried on the business of an iron and steel manufacturer, and in that business employed workmen who were engaged in converting coal purchased by it into coke for use in connection with the production of iron and steel.

Held, by the whole Court, that those workmen were not employed in or in connection with the coal and shale industry, and were therefore not eligible for membership of the organization.

Held, therefore, by the whole Court, that a claim made upon the company by the organization for wages and conditions of labour to be paid and granted to its members and an omission by the company to grant the claim did not constitute an industrial dispute between the organization and the company of which a Special Tribunal appointed under the *Industrial Peace Act* 1920 could have cognizance.

Held, also, by the whole Court, that on the evidence no industrial dispute existed between the company and its coke workers.

Per Higgins J.: For the purpose of a conference under sec. 18 of the *Industrial Peace Act* 1920 the word "person" does not include a corporation; and for a reference of a dispute to a tribunal under sec. 20 the dispute must be stated, and the disputants named or indicated in some way—preferably by writing.

ORDER *nisi* for prohibition.

On 23rd December 1920 the Broken Hill Proprietary Co. Ltd. received a document dated 21st December 1920, which was headed "Industrial Peace Acts 1920.—Coke Industry Special Tribunal.—In the matter of an actual, threatened, impending or probable industrial dispute.—Between the Australasian Coal and Shale Employees' Federation and the Illawarra and Western Coke Works Proprietors' Association, W. R. Black Ltd. (Queensland) and others." The document then proceeded: "In pursuance of sec. 18 of the *Industrial Peace Acts* 1920 you are hereby summoned to attend a compulsory conference presided over by the chairman of the Coke Industry Special Tribunal," &c. On 29th December 1920 the conference was held, and was attended by Henry Alfred Mitchell on behalf of the Company; and at its conclusion Hibble said that he referred a dispute, which he found existed, to the Coke Industry Special Tribunal. Hibble subsequently called a meeting of that Special Tribunal for 10th January 1921. On the application of the Broken Hill Proprietary Co. Ltd. an order *nisi* was, on 5th January 1921, granted by *Rich* J., calling upon Charles Hibble, chairman of the Coke Industry Special Tribunal, and Frank Howard Fleming, Henry Alfred Mitchell, Ivo Clarke, James Manners Dixon, John Marcus Baddeley, Albert C. Willis, Albert Edward Phillips and John Michael Walker, members of that Tribunal, and the

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Australasian Coal and Shale Employees' Federation, to show cause why a writ of prohibition should not issue to prohibit the above-mentioned persons and the Federation from further proceeding upon a reference to the Tribunal purported to have been made by the chairman thereof on 29th December 1920; and from further proceeding in any respect before that Tribunal, and from making any award or order, in respect of any alleged industrial dispute between the Company and its employees engaged as coke workers who are *de facto* members of the Federation. There was an alternative claim for a writ of certiorari.

The grounds of the order *nisi* were as follows :—

(1) That the appointment of the said Coke Industry Special Tribunal is bad and not in accordance with the provisions of the *Industrial Peace Act* 1920;

(2) That the *Industrial Peace Act* 1920 does not authorize the appointment of a special tribunal save in relation to a particular specified dispute;

(3) That the said Coke Industry Special Tribunal has no jurisdiction to entertain or deal with industrial disputes as to persons employed as coke workers in the iron and steel manufacturing industry;

(4) That there was at the time of the creation of the said Special Tribunal no industrial dispute with reference to persons employed as coke workers in the iron and steel manufacturing industry extending beyond the limits of any one State or at all, nor was there any such industrial dispute at the time of the service upon the Broken Hill Proprietary Co. Ltd. of the notice or summons of 21st December 1920, nor at the time of the holding of the conference of 29th December 1920 nor at the time of the so-called reference of the so-called dispute by the chairman of the said Special Tribunal to the said Special Tribunal;

(5) That the Special Tribunal has no jurisdiction to entertain or otherwise deal with the wages or conditions of persons employed as coke workers in the iron and steel manufacturing industry of the Broken Hill Proprietary Co. Ltd.;

(6) That there is no evidence of the existence of any dispute as to any industrial matter between an employer or association of

employers on the one hand and an organization of employees within the meaning of the *Industrial Peace Act*, on the other hand, or of any industrial dispute as to which a conference has been held under sec. 18 of the said Act and as to which agreement has not been reached as to the whole of the dispute, and which has been referred to the Special Tribunal in accordance with sec. 20 of the said Act, so far as relates to persons employed as coke workers in the iron and steel manufacturing industry;

(7) That secs. 15 and 16 of the *Industrial Peace Act* 1920 are beyond the constitutional powers of the Commonwealth.

The other material facts appear in the judgments hereunder.

The order *nisi* now came on for argument. The only grounds argued were those numbered 4 and 5.

Innes K.C. (with him *J. A. Ferguson*), for the prosecutor. The employees of the Company who are engaged in coke making are not engaged "in or in connection with the coal and shale industry," and so are not eligible for membership under the rules of the Federation. The coal and shale industry refers to the industry carried on by an employer, and employment in or in connection with that industry does not extend to industries subsidiary to or later than the disposal of coal and shale which has been won. This is borne out by sec. 15 of the *Industrial Peace Act* 1920, which gives a Special Tribunal power, in the case of a producing industry, to inquire into all matters relevant to the dispute "from the point of production to the final disposal of the commodity by the employer." Where a person purchases coal and for the purpose of his business of manufacturing iron and steel employs workmen to convert the coal so purchased into coke, those workmen are engaged not in or in connection with the coal and shale industry but in connection with the iron and steel industry. The coke workers employed by the Company not being members of the Federation, no dispute has been proved between them and the Company; for the only demand made was for the members of the Federation, and the dispute in respect of that demand was the only dispute considered at the conference or referred to the Special Tribunal. Even if persons who are *de facto* members of the Federation are to be treated as members, there is

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no evidence of any industrial dispute between the Company and its employees engaged in making coke, for there is nothing more than a paper demand. The case then falls within *The King* v. *President of the Commonwealth Court of Conciliation and Arbitration*; *Ex parte William Holyman & Sons Ltd.* (1).

J. A. Browne (with him *Cantor*), for the respondent Federation. An organization as defined by the *Industrial Peace Acts* 1920 is not confined to organizations registered under the *Commonwealth Conciliation and Arbitration Act*. The organization in the present case consists of those who were legally members of the registered organization and also those who were *de facto* its members, including the coke workers in the employment of the Company, and the demand was made on behalf of all. One of the disputes which was being considered at the conference was a dispute in the coke industry, and there was evidence to support a finding that the coke workers employed by the Company were parties to that dispute. Coke workers are engaged in or in connection with the coal and shale industry, whether they are employed by owners of coal mines in converting coal into coke for the purpose of disposing of the product of the mines or whether they are employed by iron and steel manufacturers in doing the same work for the purpose of manufacturing iron and steel. The coke workers of the Company are therefore members of the Federation *de jure* as well as *de facto*.

Leverrier K.C. and *Jaques*, for the Commonwealth intervening, did not argue.

Innes K.C. was not called upon to reply.

Cur. adv. vult.

April 26. The following written judgments were delivered :—

KNOX C.J., GAVAN DUFFY, POWERS, RICH AND STARKE JJ. An Order in Council was passed and published in the *Commonwealth Gazette* on 8th October 1920. It appointed a Special Tribunal to be known as the Coke Industry Special Tribunal. The Tribunal

(1) 18 C.L.R., 273.

consisted of a chairman, Mr. Charles Hibble, and representatives of employers and employees. The Order purported to be made in pursuance of the *Industrial Peace Act* 1920.

On 21st December 1920 the chairman, purporting to act under sec. 18 of the same Act, summoned the Broken Hill Proprietary Co. Ltd. and others to attend a compulsory conference presided over by the chairman of the Coke Industry Special Tribunal. At this conference the chairman referred to and read a statutory declaration of Mr. A. C. Willis, dated 17th December 1920, and a log of wages, &c., exhibited to that declaration, which had been filed with him. A discussion then took place on the attitude of the State of Victoria towards the Tribunal, and the chairman said that Mr. Willis's declaration showed "that there is in existence an industrial dispute both in the coal and coke industries and that these disputes have actually extended beyond the limits of any one State." Mr. Mitchell, for the Broken Hill Proprietary Co. Ltd., attempted to intervene, but was requested not to interrupt at that stage. The chairman added:—"This affidavit" (declaration) "also sets out that the log embodying the dispute has been served upon the respondent colliery proprietors and coke manufacturers and others, and that they have not either granted the log or agreed to a conference to discuss it, and it is my intention, if there is no agreement arrived at here to-day, to refer the dispute to the Special Tribunals for adjudication at dates comparatively early." Some of the colliery representatives said they were willing that the claims raised by the log should be referred to a Special Tribunal. The chairman then asked the representatives of the coke manufacturers, and Mr. Mitchell as representing the iron and steel industry, whether they admitted having received the log and that no agreement had been arrived at. These representatives replied in the affirmative. After inquiring if any further attempt should be made to discuss the log in conference and obtaining no reply, the chairman said:—"I hold that a dispute does exist, and one that brings it within the jurisdiction of the Coal Industry Special Tribunal" (a tribunal that had also been constituted under the *Industrial Peace Act* 1920) "and also that a dispute exists in the coke industry which brings it within the jurisdiction of the Coke Industry Special Tribunal, and as chairman of both

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Tribunals it is my intention now to refer the respective disputes to the Tribunals for awards to be made in connection therewith. No doubt all the questions of jurisdiction will be placed before the respective Tribunals to determine." The matter referred to the Special Tribunals must be gathered from these extracts from the transcript of the shorthand notes of the conference. No formal order of reference was drawn up by the chairman. The chairman called a meeting of the Special Tribunal for 10th January 1921.

The Broken Hill Proprietary Co. Ltd., on 5th January 1921, obtained a rule *nisi* calling upon the chairman and members of the Coke Industry Special Tribunal and the Australasian Coal and Shale Employees' Federation to show cause why proceedings upon the reference by the chairman should not be prohibited. The Special Tribunal has not entered upon the reference pending the determination of this rule. Many grounds were taken in the rule *nisi*; but we have not found it necessary to consider more than two questions for the purpose of our decision—firstly, what was the dispute which the chairman actually referred to the Special Tribunal? secondly, whether that dispute or any dispute actually existed between the Broken Hill Proprietary Co. Ltd. and its employees.

The Special Tribunal, for the purpose of this case, can only have cognizance of or jurisdiction in an industrial dispute as to which a conference had been held and which had been referred to the Special Tribunal in accordance with secs. 18 and 20 of the Act (see sec. 15). We have already set out the proceedings before the conference for the purpose of showing the dispute that was referred to the Tribunal. It clearly appears that the claim made by the log constituted the dispute that was referred. Looking therefore to the log, we find that it was put forward by the Australasian Coal and Shale Employees' Federation as a log of hours, wages, overtime rates, and conditions to be granted by employers to *members* of the above Federation. The Broken Hill Co. contends that no persons were at any material time in its employ who were members of the Federation according to law. It has, we think, made good this contention, and thereby established that it was no party to the dispute referred to the Special Tribunal.

The Australasian Coal and Shale Employees' Federation is an

organization registered under the *Commonwealth Conciliation and Arbitration Act*, and its rules provide that it shall consist of an unlimited number of employees engaged in or in connection with the coal and shale industry, together with such other persons, whether employees in the industry or not, as have been appointed officers of the Federation and admitted as members thereof. The Broken Hill Proprietary Co. Ltd. carries on the business of iron and steel manufacturers, and in that business employs certain workmen who are engaged in converting coal into *coke* for use in connection with the production of iron and steel. These workmen, it is said, have been admitted as members of the Coal and Shale Employees' Federation *as persons engaged in or in connection with the coal and shale industry*. The words are no doubt wide, but they do not cover every person who uses coal or works in connection with it. The Arbitration Act allows the organization of employees according to their association with the trades or businesses of employers or according to the occupations or avocations of employees. The discrimen adopted by the Coal and Shale Employees' Federation, on a proper interpretation of their rules, is, we think, the trade or business of the employer. Thus, some employers extract coal from the earth, convert some of it into coke, and distribute both coal and coke to consumers. Such a business would in point of fact be part of the coal or shale industry, and all persons employed in that business are properly said to be employed in or in connection with that industry. A person, however, who carried on the trade or business of a baker using coal or coke for the purpose of heating his ovens could not, according to the ordinary meaning of words, be said to be engaged in the coal or shale industry, nor could his employees be rightly said to be employed in or in connection with that industry.

The question whether a particular trade or business is or is not part of the coal and shale industry must in all cases be a question of fact. We hold that a steel and iron manufacturer who for the purpose of his business uses coal in its natural state or after it has been transformed by him into coke is not engaged in the coal or shale industry, and that his employees are not employed in or in connection with that industry. Our decision does not prevent the association

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of workmen in any form they think fit. The Federation might have based its membership on the calling of coal workers or any other avocation of employees, but it has not done so, and we must decide the matter on the words that were in fact chosen for the qualification of membership.

An argument was made that the coke workers in the employ of the Broken Hill Proprietary Co. Ltd. were *de facto* if not *de jure* members of the Federation, and were therefore within the description of "members" in the log. There is nothing in the *Commonwealth Conciliation and Arbitration Act* which authorizes so loose a connection between an organization and individuals; and it is clear, we think, that the only capacity and power possessed by an organization is to put forward claims on behalf of persons who have been made members pursuant to its rules (see secs. 55, 19, 21A, 21B, 22, 29). The provisions of sec. 21A do not impinge upon this proposition, for they merely provide a summary method of evidencing the matters of fact and of law involved in the question of membership.

Mr. *Browne* also contended that Mr. Willis personally placed the claims of the coke workers in the employ of the Broken Hill Proprietary Co. Ltd. before the chairman of the Special Tribunal. It is plain, on the evidence, that Mr. Willis was present at the conference as an officer of the Coal and Shale Employees' Federation, and that he put forward the log and nothing else. At one point of the argument Mr. *Browne* suggested that the association putting forward the log was not the registered organization known as the Coal and Shale Employees' Federation, but some new and larger unregistered association of the same name with different objects and rules. Apart from the inherent improbability of such a state of facts, it was pointed out from the Bench that the rule *nisi* was not directed to any such body nor to any proceeding taken by it. The argument was not further pressed, and Mr. *Browne* thereafter showed cause on behalf of the registered organization.

We have now dealt with the dispute which was referred to the Special Tribunal, and the rule *nisi* might be decided on this ground alone. We have, however, heard a full argument upon the question whether any dispute existed between the Broken Hill Proprietary Co. Ltd. and the coke workers in its employ; and, as this question

is perhaps of the greater importance to the parties, we think it well to state our conclusions upon it also.

It is settled law under the Arbitration Act that a dispute must be real and genuine (*Tramways Case* [*No.* 2] (1)). Whether it be real and genuine is always a question of fact, and upon proceedings in prohibition the fact must be determined by this Court on its own independent view of the evidence. There is no difference under the *Industrial Peace Act*.

On the facts proved before us, we have no doubt that there was no real or genuine dispute between the Broken Hill Proprietary Co. Ltd. and the coke workers in its employ. A log was served on the Company which only claimed for members of the Coal and Shale Employees' Federation, and these coke workers were never members of this Federation for reasons already adduced. Further, these coke workers were, at the time, being paid wages under and in accordance with the award of the Industrial Arbitration Court of New South Wales, and none of them had ever personally made any representation to the Company or its officers that higher wages or improved conditions were required, or manifested any sign of discontent. So far the evidence shows at best a mere paper demand. The evidence is far from satisfying us that any real and genuine dispute existed. But then a conference was called, and it is said that the log was insisted upon by the Federation, and that the Company refused to concede its terms. We have already set out the substance of the proceedings in conference. As evidence of a dispute they are farcical. So soon as the representative of the Company attempted to intervene and speak on the question of a dispute he was asked not to interrupt. And because the Company admitted that it had received the log and that no agreement had been or could be arrived at, the chairman referred the log to the Special Tribunal. It is quite impossible to gather from the proceedings in conference why the Company refused to concede the log. It was prevented from explaining its position when its representatives desired to intervene. The transactions of the conference are as consistent with the view that the Company refused to agree to the log because its workmen are not members of the Coal and Shale Employees'

(1) 19 C.L.R., 43.

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Federation or were satisfied with their conditions, as with the admission of a dispute. The service of the log is therefore the only evidence of any dispute, and in the circumstances under which it was served we are quite unable to find any real or genuine dispute between the Company and its coke workers.

In these circumstances, should the rule *nisi* be made absolute or discharged? It must be made absolute. The Special Tribunal has not yet met, but the chairman appointed a day for hearing. The granting of the rule *nisi* led to an adjournment of the hearing, but the facts are sufficient to warrant a finding that the Tribunal would enter upon a consideration of the matter affecting the Broken Hill Proprietary Co. Ltd. and proceed to an award.

We pass no opinion upon the validity of the provisions in the *Industrial Peace Act* 1920 relating to Special Tribunals. The matter has not been argued before the Court. But, if they have jurisdiction, a substantial adherence to the forms prescribed by the statutes under which they act is eminently desirable. A reference under sec. 20 of the *Industrial Peace Act* might well be in writing, and should set forth the precise dispute and the parties to that dispute. And the Special Tribunal, before proceeding to award, should be satisfied that the dispute referred to it exists between the parties named. We make these observations in order to assist the Tribunals, and to point out that the limitations which the Constitution imposes upon the industrial power of the Commonwealth and the limitation of jurisdiction imposed upon Special Tribunals under the *Industrial Peace Act* should be observed as well by Special Tribunals as by every other Court in the Commonwealth.

HIGGINS J. A rule *nisi* has been obtained by the Company for a prohibition directed against the chairman and members of a body called the "Coke Industry Special Tribunal" and the "Australasian Coal and Shale Employees' Federation, an organization registered under the *Commonwealth Conciliation and Arbitration Act*." There are several grounds taken in the rule; but I shall deal mainly with that which has been the subject of most argument—that there is no industrial dispute.

On 8th October 1920 there appeared in the *Commonwealth*

Gazette a notice headed "*Industrial Peace Act* 1920," to the effect that the Governor-General in Council had appointed a Special Tribunal to be known as the Coke Industry Special Tribunal for the prevention or settlement of any industrial dispute or disputes which have arisen or which may arise "in the coke industry." I shall assume in favour of the respondents that a tribunal with such general functions is valid under the Act. On 10th December 1920 a letter was sent by A. C. Willis, describing himself as general secretary of the "Australasian Coal and Shale Employees' Federation," to the Company at its steel works, Newcastle. This letter stated that Mr. Willis had been instructed by the "Australasian Coal and Shale Employees' Federation" to forward a log of wages and conditions of work with a request that the Company would grant the claims in the log *to the members of the said Federation* in the Company's employ. The letter asked for a reply within seven days, either granting the claims or granting a conference with a view to an agreement; otherwise, it would be assumed that the Company admitted the existence of a dispute within the meaning of the Constitution. The log was enclosed: it was headed "Log of hours, wages, &c., to be submitted to *employers of the members of the above Federation*"; it contained thirteen claims, some of which could refer to men on mines only, but some of which might be applicable also to coke workers. There was a fourteenth claim: "That pending the final determination of the aforegoing log an interim award or agreement be made granting all members of the Australasian Coal and Shale Employees' Federation (which includes the coke workers and brown coal workers)" certain increases in wages as from 27th September 1920. The Company made no reply. By a notice dated 21st December 1920 Mr. Hibble, chairman of the Tribunal, summoned the "Broken Hill Proprietary Company Limited" to attend a compulsory conference to be presided over by himself on 29th December at a certain place in Sydney (sec. 18 of the *Industrial Peace Act*). I pass by the curious fact that a company —a corporation—is summoned to attend a meeting. For the purpose of a conference under sec. 18, I think that a "person" does not include a corporation; but the point is not taken in the rule, and Mr. Mitchell, the industrial officer of the Company, in fact attended.

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It is unnecessary to state in detail what took place at the conference. It was a conference in connection with a "Coal Industry Special Tribunal" as well as the Coke Industry Special Tribunal. The log was the same in each case. There was no agreement. The chairman announced that he referred "the dispute so far as it affects the coke industry" to the Coke Industry Special Tribunal, which was to meet on 10th January 1921. In the meantime, on 5th January, the rule for prohibition was obtained.

It appears that there is an organization registered under the *Commonwealth Conciliation and Arbitration Act* under the name of the "Australasian Coal and Shale Employees' Federation." The log was sent under this name, claiming wages and conditions for the members of the Federation. But, according to the constitution of the Federation, the only members allowed were "employees *engaged in or in connection with the coal and shale industry*." The words used are not "in or in connection with coal," or "in or in connection with coal industries"; and when one speaks of "the coal and shale industry," as a single industry, the meaning is surely the industry of extracting coal and shale. Coke is not made from shale, but shale is frequently lying over beds of coal. If there is any "coal and shale industry," it must be in the process of extraction from the earth. It is not enough to show that coke is "connected with" coal, or jam with sugar; the *employees* must be engaged in the industry, or in *connection with it* (*e.g.*, as surface-men or engineers in connection with coal mining, or as carpenters with jam factories).

I am of opinion that on the true construction of the rule coke workers—at all events, in an undertaking such as that of this Company at the steel works, which buys coal to make coke—cannot be members of this registered federation of employees in or in connection with the "coal and shale industry." The Federation actually tried to get an alteration of its constitution registered under the Conciliation Act so as to include coke workers, but it failed.

Primâ facie, therefore, there is enough to sustain the fourth ground taken in the rule *nisi*, that there was no industrial dispute as to coke workers—actual, threatened, impending or probable—at the time that the conference was summoned or held or at the time of the reference to the Tribunal. Simply, the log was a claim by the

Federation for its members; and no coke workers were members. But it appears that many coke workers in New South Wales and in Queensland—including some of the coke workers of this Company—were treated as members and paid their subscriptions; and it has been ingeniously argued that this mixed body of men—men in the coal and shale industry and men working coke—is an "organization" within the meaning of the *Industrial Peace Act* (see sec. 4). It is contended that there may be an organization for the purposes of the Act even though it is not registered, and that a number of men in two or more States engaged in coke working may, if associated, be parties to an industrial dispute with their employers. I rather think that this contention is right; but it does not settle the matter. Where is the dispute to be found? The only evidence before us of any dispute is that afforded by the letter of Mr. Willis of 10th December forwarding the log and by the failure of the Company to comply with the demands of the log and letter. But log and letter both claim the wages and conditions for "the members of the Federation" only, and these men are not members. For every dispute there must be disputants, and the only disputants on the employees' side are the Federation and its members. If it be said that the Federation meant to claim for these coke workers, loosely associated, the letter and the log do not say so; and a dispute is created not by what one thinks but by what one expresses. "The thought of man is not triable" (per *Brian* C.J. (1)). Any employer who got log and letter was entitled to look at the constitution of the Federation—the only association that used the name—and say "This claim is made for members of the Federation; my coke workers cannot be members of the Federation." There is, indeed, in the log a fourteenth claim, which I have set out above. It states, as a fact, that the Federation includes the coke workers and brown coal workers; but the statement is simply wrong. The claim 14 is for an "interim award or agreement" of certain increases in wages pending the determination of the log. I cannot find in the Act any power to make such an interim award; but apart from that point, even this subsidiary claim is made for coke workers only in their capacity as members of the Federation, and if they are not

(1) Y.B. 17 Edw. IV., 1 Pasch., 2.

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members there is no claim. Counsel here appear for the registered organization, not for any loose association.

I am therefore of opinion that no sufficient evidence of an industrial dispute has been adduced as to the coke workers in the employment of the Company, and, even if there were such evidence, this rule, if made absolute, will merely prohibit proceedings in arbitration as between the Federation—the registered organization—and the Company. The rule is expressly addressed to the registered organization, not to any loose association or aggregate of persons. There appear to be other grounds—some taken, some not taken—which strike me as fatal to this proceeding before the Special Tribunal, assuming that it is an industrial tribunal within the meaning of the Act. I do not attach importance to the fact that there is no evidence of discontent expressed by the coke workers to the Company before the log was sent. The explanation given by *Barton* J. in the case of *Merchant Service Guild of Australasia* v. *Newcastle and Hunter River Steamship Co.* [*No* 2] (1) corrects any idea that such expression is necessary. I shall only add that, in my opinion, ground 5 has been established, as expressed, though not, perhaps, as intended. For there has been no reference to the Tribunal of "the dispute," within sec. 20. "The dispute" means a definite dispute, and the chairman has not stated what dispute he refers to the Tribunal. For such a reference, the disputants—employers as well as employees or union—must be named or indicated in some way, as well as the matters in dispute (some of the claims in the log cannot refer to coke workers at all). I do not say that the reference *must* be in writing, for the Act does not say so; but to put it in writing, in definite terms, would prevent any misunderstanding.

In my opinion, the rule should be made absolute.

Rule nisi absolute. Prohibition granted against Charles Hibble, chairman, and the members of the Coke Industry Special Tribunal and the Australasian Coal and Shale Employees' Federation from further proceeding so far as the Broken Hill Proprietary Co. Ltd. is

(1) 16 C.L.R., 705.

concerned upon the reference to the said Special Tribunal made by the said Charles Hibble, chairman of the said Tribunal, on 29th December 1920.

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Solicitor for the prosecutor, *A. A. Rankin*, Newcastle, by *Minter, Simpson & Co.*

Solicitor for the respondent organization, *Cecil A. Coghlan & Co.*

Solicitor for the intervener, *Gordon H. Castle*, Crown Solicitor for the Commonwealth.

B. L.

[HIGH COURT OF AUSTRALIA.]

LE LEU . . . . . PLAINTIFF;

AGAINST

THE COMMONWEALTH . . . . . DEFENDANT.

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MELBOURNE, *May* 19, 20; *June* 14.

Knox C.J., Higgins, Gavan Duffy, Rich and Starke JJ.

Public Service (Commonwealth)—Officers in transferred Departments—Rights preserved—Rights under South Australian law—Removal on account of age—Life tenure—Compulsory retirement under Commonwealth law—Civil Service Act 1874 (*S.A.*) (37 & 38 *Vict. No.* 3), *secs.* 13, 14, 24, 25, 26, 28, 32 *—*Civil Service Amendment Act* 1881 (*S.A.*) (*No.* 231), *sec.* 4 *—*Commonwealth Public Service Act* 1902-1918 (*No.* 5 *of* 1902—*No.* 46 *of* 1918), *secs.* 60, 73, 74, 78—*The Constitution* (63 & 64 *Vict. c.* 12), *sec.* 84.

*By secs. 24 and 25 of the *Civil Service Act* 1874 (S.A.) it is provided that the Governor may dismiss from his office an officer guilty of a breach of regulations or of conduct rendering him unfit to remain in the Civil Service. Sec. 26 provides that an officer convicted of felony or taking the benefit of any Act for the relief of insolvent debtors shall be deemed to have forfeited his office. Sec. 28 provides that "the Governor may require any officer, who has become incapacitated for the performance of his duties, to resign his office, and, in the event of non-compliance, may remove such officer, who shall thereupon be entitled to the compensation provided by this Act." Sec. 4 of the *Civil Service Amendment Act* 1881 provides (*inter alia*) that "every officer in the Civil Service on being removed from, or on being permitted to resign, his office on account of illness, infirmity, age, abolition of office, or any other cause whatever, except misconduct or pecuniary embarrassment, shall, with the consent of the Governor, be entitled to and shall be paid by the Treasurer" a sum of money ascertained in a certain manner.