[HIGH COURT OF AUSTRALIA.]

ATTORNEY-GENERAL OF QUEENSLAND AND OTHERS . . . . . } APPLICANTS;

AND

WILKINSON . . . . . RESPONDENT.

IN THE MATTER OF THE QUEEN

AGAINST

THE INDUSTRIAL COURT OF QUEENSLAND

H. C. OF A. 1958.

SYDNEY, *Apr.* 14-16; *May* 9.

Dixon C.J., McTiernan, Webb, Fullagar and Taylor JJ.

Industrial Law (Q.)—Award—Sale of petrol—Restriction on laws of sale—Ban on Sunday sales—Variation of award by Industrial Court—Rostering of certain number of traders in zoned districts to sell petrol—Saturday afternoons and Sundays—Prohibition from Queensland Supreme Court directed to Industrial Court to prevent implementation of variation—Jurisdiction of Supreme Court to issue prohibition—Industrial Court a superior court of record—Limited jurisdiction—Prohibition lies—Whether immunity from prohibition conferred by statute—Interpretation—Hours of trading—Not "industrial matter"—Ban on Sunday trading not within power of Industrial Court—Prohibition regularly issued—Locus standi of applicants for special leave—The Garage and Service Station Attendants' Award, Southern Division (Eastern District) (Q.), cl. 5—The Industrial Conciliation and Arbitration Acts 1932 *to* 1955 *(Q.), ss.* 6 (7), 7, 8 (i) (viii) (xi), 21 (2) (3).

The Industrial Court of Queensland constituted under *The Industrial Conciliation and Arbitration Acts* 1932 *to* 1955 (Q.) is subject to control by writ of prohibition issued by the Supreme Court of Queensland, and the power of the Supreme Court to issue such a writ is not in any way affected by the provisions of s. 21 of *The Industrial Conciliation and Arbitration Acts.*

So held by *Dixon* C.J., *Fullagar* and *Taylor* JJ., *McTiernan* J. expressing no opinion.

Reg. v. *The Industrial Court; Ex parte Brisbane City Council* (1957) Q.S.R. 553; *R.* v. *The Industrial Court; Ex parte Rhys Jones* (1915) Q.S.R. 165 and *R.* v. *The Industrial Court; Ex parte Australian Sugar Producers' Association Ltd.* (1917) Q.S.R. 50, approved.

The Industrial Court had by cl. 5 of *The Garage and Service Station Attendants' Award, Southern Division (Eastern District)* 1952 purported to prohibit the sale of petrol on Sundays.

Held, by *Dixon* C.J., *Webb*, *Fullagar* and *Taylor* JJ., *McTiernan* J. expressing no opinion, that the Industrial Court had no power to prohibit Sunday trading and accordingly the enforcement of cl. 5 might properly be restrained by prohibition.

The applicants for special leave to appeal against the order of the Supreme Court of Queensland directing the issue of a writ of prohibition to the Industrial Court in relation to the enforcement of cl. 5 of the award were the Attorney-General of Queensland, the Minister for Labour and Industry of that State and the Chief Inspector of Factories and Shops. None of the applicants had been a party to the proceedings in the Industrial Court, nor had any of them any pecuniary interest or any interest such as would entitle him to assume the role of an appellant in the matter.

Held, by *Dixon* C.J., *McTiernan*, *Fullagar* and *Taylor* JJ. that (1) none of the applicants had any *locus standi* to make the application for special leave; (2) that leave ought not to be granted to substitute the members of the Industrial Court as applicants for special leave.

Per *Webb* J.: (1) The variation order made by the Industrial Court was subordinate legislation or an attempt to enact such legislation and not a judicial act and operated as a common rule. (2) So considered, the Supreme Court had no power to prohibit proceedings upon it; such court could deal with it only when its validity arose in proceedings by some person against whom it was sought to enforce the order. (3) The Attorney-General and the Minister for Labour and Industry had such an interest in supporting the order as subordinate legislation as would warrant an application for special leave by either, but only if the order was valid. (4) The order was invalid as the Industrial Court had no power to prohibit Sunday trading.

Semble per Dixon C.J.: Section 18 (2) of *The Industrial Conciliation and Arbitration Acts* 1932 *to* 1955 keeps an award in force after its fixed period has expired. A consideration of the terms of the sub-section suggests that it is the expired award which is to continue in force, and the very requirement that it shall continue in force seems to imply, in the absence of an express power to vary or amend it after its expiration, that it shall remain in force as it stood at the end of its fixed period.

APPLICATION for special leave to appeal from the Supreme Court of Queensland.

On 28th November 1957 one Jack Wilkinson obtained from the Supreme Court of Queensland (*Matthews* J.) an order nisi directed to the Industrial Court of Queensland constituted under *The Industrial Conciliation and Arbitration Acts* 1932 *to* 1955 (Q.), the Honourable Leslie Brown the President of the said court, the Royal Automobile Club of Queensland, the Queensland Automobile Chamber of Commerce Incorporated Union of Employers, the Federated Miscellaneous Workers' Union of Employees, Queensland Branch, and one Arthur Henry Smart on his own behalf and on behalf of all other members of The Service Station Association of Queensland calling upon the respondents to show cause before the Full Court of the

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Supreme Court of Queensland why a writ of prohibition should not issue directed to the said Industrial Court and to the said president thereof restraining it and him from proceeding further upon or implementing the variation made on 1st November 1957 to *The Garage and Service Station Attendants' Award, Southern Division (Eastern District)* or the application made for such variation upon the ground that the Industrial Court had no jurisdiction to make the said variation.

The said order nisi came on for hearing before the Full Court of Queensland (*Philp, Stanley* and *Townley* JJ.) which on 17th December 1957 made the same absolute with costs to be paid by the respondents other than the said Industrial Court and the president thereof.

By notice of motion dated 7th January 1958 the Attorney-General of Queensland, the Minister for Labour and Industry of that State and the Chief Inspector of Factories and Shops pursuant to the provisions of *The Factories and Shops Acts* 1900 *to* 1945 sought special leave to appeal from so much of the judgment of the Full Court making the order absolute as restrained the said Industrial Court and the said president thereof from proceeding further upon or implementing the said variation or the said application for the said variation.

Further relevant facts appear, and the arguments of counsel are sufficiently set forth, in the judgment of *Fullagar* J. hereunder.

A. L. Bennett Q.C. and *R. H. Matthews*, for the applicants.

H. T. Gibbs Q.C. and *E. S. Williams*, for the respondent.

Cur. adv. vult.

May 9.

The following written judgments were delivered :—

DIXON C.J. This application for special leave to appeal was argued at length before us. We allowed it to be argued in that manner because so much importance appeared to be attached to the matter. No doubt it is an important question whether the provision is valid which stands as cl. 5 of the document published in the *Gazette* of 19th November 1957 as a consolidated award for garage and service station attendants. But I am clearly of the opinion that it is not valid. It appears to me to go outside the scope and purpose of *The Industrial Conciliation and Arbitration Acts* 1932 *to* 1955 and I think that s. 8 (1) (viii) in giving authority with reference to early closing and weekly half-holidays emphasises this fact by its exceptional and restricted character. To construe the Act otherwise

would go counter to the whole reasoning of the decisions of this Court in *Clancy* v. *Butchers' Shop Employe's Union* (1); *R.* v. *Kelly*; *Ex parte State of Victoria* (2), and *Brownells Ltd.* v. *Ironmongers' Wages Board* (3).

No doubt it is an important question too whether the Industrial Court of Queensland can travel beyond its jurisdiction and authority free from any remedy as, for example, a prerogative writ of prohibition. But again, I think that the question must plainly be answered in the negative. The argument that the Industrial Court is a superior court is nothing to the point. That was disposed of by *Willes* J. in *James* v. *South Western Railway Co.* (4), where speaking of the High Court of Admiralty he said, " I do not call it an inferior court, but treating it as a superior court with a limited jurisdiction, it is subject to prohibition though superior in name: like many other courts, nominally superior, but still liable to prohibition, their jurisdiction being limited " (5). As to s. 21 I agree in the interpretation which has been placed upon it by the Supreme Court in *Reg.* v. *The Industrial Court*; *Ex parte Brisbane City Council* (6).

The order from which it is sought to appeal by special leave is not directed against cl. 5 of the consolidated award already mentioned but against the amendment which the Industrial Court purported to make by substituting a new cl. 5 in the award gazetted on 17th December 1952. I do not think that the power or authority in the purported exercise of which that variation or amendment was made is by its nature outside the scope of a writ of prohibition as the scope of that writ is delimited or described by modern English case law.

In these questions I agree in the reasons given by *Fullagar* J. in his judgment which I have had the advantage of reading. I agree also in the view his Honour expresses that the Attorney-General of Queensland, the Minister of Labour and the Chief Inspector of Factories and Shops are not parties aggrieved by the order and so entitled to appeal therefrom by special leave or otherwise.

To grant special leave to the members of the court would, I think, be an erroneous exercise of our discretion.

The foregoing covers the substantial matters which it was the purpose of the application to bring before this Court for decision.

But there are one or two matters that appeared during the argument to which I desire to address certain observations. The first is the question whether the powers to amend or vary an award apply after it has expired. See s. 20 and s. 4 defining " decision ",

(1) (1904) 1 C.L.R. 181.
(2) (1950) 81 C.L.R. 64.
(3) (1950) 81 C.L.R. 108.
(4) (1872) L.R. 7 Ex. 287.
(5) (1872) L.R. 7 Ex., at p. 290.
(6) (1957) Q.S.R. 553.

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and s. 8 (1) (v) and, as to certain subjects, s. 10 (3). It is not a question which it is necessary to decide but I think that it ought not to pass without notice. Section 18 (2) keeps an award in force after its fixed period has expired and the fixed period of the award gazetted on 17th December 1952 had expired. A consideration of the terms of s. 18 (2) suggests that it is the expired award which is to continue in force, and the very requirement that it shall continue in force seems to imply, in the absence of an express power to vary or amend it after its expiration, that it shall remain in force as it stood at the end of its fixed period.

In the second place, we have before us no explanation of the document purporting to be a consolidated award published in the *Gazette* of 19th November 1957. It has a new fixed period of one year from the date of the document (see cl. 26), a period which is prospective. The consolidated award necessarily supersedes the prior award and the purported amendment or variation of the prior award. Yet the order from which leave to appeal is now sought is concerned only with the order for the variation of that award which substitutes the new cl. 5. There is nothing else against which the writ of prohibition complained of in this application has been directed. But the order varying or amending the old award must be as dead as the old award itself, that is to say if the new instrument professing to be a consolidated award came into being as a viable decree. Perhaps it is an exercise of a power to be found in s. 7 or s. 8, but on what its authority rests we were not told, whether it be legislative, judicial, administrative or simply null.

But we cannot ignore it. While it is there we could have no warrant for giving special leave to appeal from an order of the Supreme Court relating only to an amendment or variation which must be superseded if the consolidated award has any effect.

For every reason this application should be refused.

McTIERNAN J. I would dismiss this application upon the ground that none of the applicants has, under *The Industrial Conciliation and Arbitration Acts* 1932 *to* 1955 or otherise, any *locus standi* to make the application. I consider it would not be proper to substitute the President of the Industrial Court for the present applicants. It is not necessary, in my opinion, to decide the questions argued on the basis that the applicants would be competent as appellants. It is not to be implied that I would be prepared to accept the argument of the applicants on any of the substantive questions which would be involved in the appeal.

WEBB J. I would dismiss this application for special leave.

The application was argued as fully as if it were an appeal. The applicants submitted that the Supreme Court of Queensland had no power to issue a writ of prohibition to the Industrial Court of that State, constituted under *The Industrial Conciliation and Arbitration Act of* 1932, restraining the latter court and the parties to a variation by consent of an award made by the court under that Act as amended, from proceeding on the order for variation. The effect of the variation order, if valid, was to permit Sunday trading by specified petrol stations, although the *Factories and Shops Acts* of Queensland at that time required such places to be closed throughout Sunday.

The main grounds for this submission were that the variation order was lawfully made and that even if it was not so made, the Supreme Court had no power to prohibit proceedings on the order as the Industrial Court had conferred on it the powers and jurisdiction of the Supreme Court and was a superior court of record under the Act; that the variation order was a legislative act and not a judicial act; and that, in any event, s. 21 (3) of *The Industrial Conciliation and Arbitration Acts* expressly deprived the Supreme Court of the power to issue a writ of prohibition to the Industrial Court.

Now, as I see the position, it is simply this: that whether the variation order was made validly or invalidly it was subordinate legislation, or an attempt to enact subordinate legislation, and not a judicial act. I am unable to distinguish this case from *Reg.* v. *Wright*; *Ex parte Waterside Workers' Federation of Australia* (1). The variation order operates as a common rule and otherwise possesses the features of subordinate legislation mentioned in *Wright's Case* (2). The fact that the variation order was made on summons after hearing parties is immaterial, as it was held to be in *Wright's Case* (2). The test of its character is not the means prescribed or employed to bring it into existence, but what its effect is when it comes into existence. When made it is a common rule, i.e., a law of general application, and not the mere solution of a problem between parties. Then, just as the Supreme Court has no power to prohibit proceedings on a regulation, say a traffic regulation, made under a statute, so it had no power to prohibit proceedings on this variation order. The jurisdiction to deal with the variation order can arise only when its validity has been raised in proceedings by some person against whom it is sought to enforce

(1) (1955) 93 C.L.R. 528, at pp. 541, 542.

(2) (1955) 93 C.L.R. 528.

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the order. Then the writ of prohibition should not have issued, and the Attorney-General and the Minister for Labour and Industry of Queensland have an interest in supporting the variation order as subordinate legislation of the State warranting an application for special leave by either; but only if the variation order is valid. There can be no point in endeavouring to support an invalid order. At all events this Court cannot assist such an endeavour.

However, I am satisfied that this variation was beyond power and invalid. To be valid, it had to be a modification of the early closing provisions of *The Factories and Shops Acts*. This is the full extent of the power to deal with the closing of " shops " conferred by *The Industrial Conciliation and Arbitration Acts*. But Sunday closing is not early closing but total closing, as it continues throughout Sunday. The Queensland Parliament, having applied its mind to this particular matter, was satisfied to confine the regulating power of the Industrial Court to early closing. That is, I think, the effect of s. 8 (1) (viii) of those Acts. This view is not negatived by the general powers conferred on the court elsewhere in the Acts, and more particularly in ss. 4, 7 and the introductory words of s. 8, among other sections: *Magner* v. *Gohns* (1); *Butt* v. *Frazer* (2); *R.* v. *Wallis* (3).

It is unnecessary for me to deal with other questions raised.

FULLAGAR J. This is an application for special leave to appeal from an order of the Full Court of the Supreme Court of Queensland that a writ of prohibition should issue directed to the Industrial Court of Queensland and to certain persons interested in maintaining a certain award or order of that court. On the application the whole case was fully argued on the merits.

The Industrial Court is constituted under *The Industrial Conciliation and Arbitration Acts* 1932 *to* 1955 (Q.). On 17th December 1952 there was published in the Government *Gazette* an award described as the " *Garage and Service Station Attendants' Award —Southern Division (Eastern District)* ". This award dealt with wages, hours of work, overtime, sick leave, and a large number of other matters affecting the relations of employers and employees. Clause 5 was headed " Restriction of Hours for selling Petrol ", and was in the following terms :—" It shall not be lawful in the Factories and Shops District of Brisbane for any occupier of a garage and/or service station to sell, issue, or deliver petrol, motor spirit, motor

(1) (1916) N.Z.L.R. 529, at p. 532.
(2) (1929) N.Z.L.R. 636, at p. 642.
(3) (1949) 79 C.L.R. 529, at p. 552.

fuel, or substitutes therefor, and/or motor oil, or permit any employee or other person to do so before 7 a.m. or after 6 p.m. Mondays to Fridays inclusive, and before 7 a.m. or after 2 p.m. on Saturdays, or at all on a Sunday, Christmas Day, Anzac Day, or Good Fridays ". This award was varied in immaterial respects on 31st July 1957 and 26th October 1957. On 26th October 1957 a notice of motion for a further variation was filed in the Industrial Court on behalf of the Royal Automobile Club of Queensland, the Queensland Automobile Chamber of Commerce Incorporated Union of Employers, the members of the Service Station Association of Queensland, and The Federated Miscellaneous Workers' Union of Employees, Queensland Branch. The motion was supported by an affidavit which stated that agreement as to the variation sought had been reached between the above-named bodies and the Minister for Labour and Industry. On 1st November 1957 the court made the variation sought, and its order was published in the Government *Gazette* of 19th November 1957. The text was headed : " In the matter of " the Award, and " In the matter of an application by the Royal Automobile Club of Queensland, the Queensland Automobile Chamber of Commerce Incorporated Union of Employers, the Members of the Service Station Association of Queensland and the Federated Miscellaneous Workers' Union of Employees of Australia, Queensland Branch for a variation of the said Award." Then came the following recital :— " This matter coming on for hearing before the Court at Brisbane on 1st November, 1957 : This Court, after hearing Mr. K. C. Shaw for the Royal Automobile Club of Queensland ; Mr. J. P. Coneybeer for the Queensland Automobile Chamber of Commerce Incorporated Union of Employers ; Mr. A. H. Smout for The Service Station Association of Queensland ; and Mr. W. T. Ward for the Federated Miscellaneous Workers' Union of Employees of Australia, Queensland Branch, doth order, by consent, that the said Award be varied as follows as from the fourth day of November 1957 :—" The relevant variation was made " by deleting clause 5 and inserting the following in lieu thereof : " The actual restrictions on the hours for selling petrol etc. were the same as had been prescribed by the old cl. 5, but the new cl. 5 added elaborate provisions for the zoning of the district and the rostering of a limited number of traders in each zone to sell petrol etc. on Saturday afternoons and Sundays. The court ordered that the award as varied be consolidated and reprinted. In pursuance of this order a consolidated award was published in the *Gazette* of 19th November 1957. Clause 26 of the consolidated award is in the following terms :—" 26. This Award as consolidated and reprinted shall take effect and have the force of law throughout

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the area specified as from the fourth day of November 1957, and shall remain in force for a period of twelve months from the date hereof."

On 28th November 1957 the prosecutor, Wilkinson, obtained in the Supreme Court of Queensland an order nisi requiring the Industrial Court and the president thereof and the persons upon whose application the variation had been made to show cause why a writ of prohibition should not issue restraining the Industrial Court and its president " from proceeding further upon or implementing the Variation made on the First day of November 1957 to '*The Garage and Service Station Attendants' Award, Southern Division (Eastern District)*' or the application made for such variation, upon the ground that the said Industrial Court had no jurisdiction to make the said variation, and on other grounds sufficient in law, . . ." The matter came on for hearing before the Full Court of the Supreme Court, which on 17th December 1957 made the order which is the subject of the present application for special leave. The substantive part of the order was simply " that the said order nisi be and the same is hereby made absolute ". This sends us back to the order nisi, which related the prohibition sought to the variation of the award. It would seem that the writ, if it is to issue, should be related not to the order of variation but to cl. 5 of the consolidated award published in the *Gazette* of 19th November 1957.

The challenge of the applicant to the decision of the Supreme Court proceeded on two broad grounds. It was said in the first place that the Supreme Court of Queensland had no jurisdiction to issue the prerogative writs to the Industrial Court. It was said in the second place that in prescribing what is now contained in cl. 5 of the consolidated award the Industrial Court did not exceed its jurisdiction.

It will be convenient to deal first with the question of the jurisdiction of the Supreme Court. It cannot be doubted—and the contrary was not suggested—that the Supreme Court of Queensland has a general jurisdiction to issue writs of mandamus, prohibition and certiorari to tribunals of limited jurisdiction in Queensland. Section 21 of the *Supreme Court Act of* 1867 confers upon that Court " the same jurisdiction power and authority as the superior Courts of Common Law " in England. This plainly includes the jurisdiction of the Court of Queen's Bench to issue the prerogative writs. The argument, however, is that that jurisdiction does not extend to the issue of prohibition to the Industrial Court. The argument proceeded on three grounds.

It was said in the first place that prohibition does not lie to a "superior" court, and that the Industrial Court is by s. 6 (7) of the Act made a "superior Court of Record". But this is obviously insufficient to render the Industrial Court immune from prohibition. Whatever may be its status, and whatever its dignity, it is a court of limited jurisdiction, and it follows prima facie that it may be restrained by prohibition from exceeding its jurisdiction. As *Wrottesley* L.J. observed in *R.* v. *Chancellor of St. Edmundsbury and Ipswich Diocese: Ex parte White* (1), the writ of prohibition "went to all courts of limited jurisdiction regardless of their position or of the law they administered" (2). Nor is the matter carried any further by the somewhat remarkable provision of s. 7 that the Industrial Court "shall have all the powers and jurisdiction of the Supreme Court in addition to the powers and jurisdiction conferred by this Act". It would be absurd to suppose that the Industrial Court could grant a divorce or try an indictment for murder. The words can mean no more than that within its own sphere the Industrial Court may exercise any appropriate power of the Supreme Court, and they probably have very little practical effect.

It was said in the second place that prohibition will lie only to restrain an exercise of judicial power, and that the powers of the Industrial Court are not judicial but administrative and legislative in character. It is, of course, incorrect to say at the present day that prohibition lies only in respect of an exercise of judicial power in the strict sense. This has been pointed out again and again, and it is sufficient to refer to *Reg.* v. *Australian Stevedoring Industry Board*; *Ex parte Melbourne Stevedoring Co. Pty. Ltd.* (3). The Court in that case said: "In the second place, although the power of the board is administrative, modern English authority has extended the writ to statutory bodies exercising quasi-judicial powers affecting the rights of private persons and the board comes fairly within the application of the remedy as now understood: cf. *R.* v. *Electricity Commissioners; Ex parte London Electricity Joint Committee Co.* (1920) *Ltd.* (4); *R.* v. *Minister of Health*; *Ex parte Davis* (5); *Estate & Trust Agencies Ltd.* v. *Singapore Improvement Trust* (6); *R.* v. *Commonwealth Rent Controller*; *Ex parte National Mutual Life Association of Australasia Ltd.* (7); *R.* v. *City of Melbourne*; *Ex parte Whyte* (8)." The power under consideration in

(1) (1948) 1 K.B. 195.
(2) (1948) 1 K.B., at p. 208.
(3) (1953) 88 C.L.R. 100.
(4) (1924) 1 K.B. 171.
(5) (1929) 1 K.B. 619.
(6) (1937) A.C. 898.
(7) (1947) 75 C.L.R. 361, at p. 367.
(8) (1949) V.L.R. 257, at pp. 261-263; (1953) 88 C.L.R., at p. 118.

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Reg. v. *Wright*; *Ex parte Waterside Workers' Federation of Australia* (1)—a power depending on the exercise of the legislative power with respect to trade and commerce—was held to be legislative in character notwithstanding that it was conferred upon the Commonwealth Court of Conciliation and Arbitration.

It may be that there are some powers given to the Industrial Court (e.g. those given by s. 8 (1) (viii) and (xi)) which, if not essentially legislative in character, are at least capable of being exercised by way of legislative act. But, if this be so, such powers are anomalous in their context. Throughout the Act there are the clearest indications that the general powers of the court are of an "arbitral" nature, and arbitral power, though not judicial in the strict sense, must be exercised judicially, and a body to which it is entrusted may be restrained by prohibition from exceeding its powers. Prohibition has been granted in innumerable cases in respect of the arbitral jurisdiction of the Commonwealth Court of Conciliation and Arbitration. The arbitral nature of the normal functions of the Industrial Court of Queensland is made plain from beginning to end of the Act. The long title of the Act is "An Act to provide for the Regulation of the Conditions of Industries by Means of Conciliation and Arbitration". The short title is "*The Industrial Conciliation and Arbitration Act*". The body which the Act constitutes is called a "Court". Its function is normally fulfilled by the making of an "award". Section 27 of the Act provides that the provisions set forth in the schedule shall be applicable in all matters with respect to which the court has jurisdiction. The schedule provides for the initiation of "proceedings". The court in every "industrial cause" may take steps to ascertain whether all persons interested have had notice of the "proceedings". There are a number of references to "parties" and to "proceedings". There is power to award costs, to punish for contempt, and to make rules regulating "practice and procedure". In the present case the normal procedure was followed. An "award" was made, and the award was subsequently varied. The power exercised was of an arbitral nature, and for excess of such power prohibition is an available remedy.

The applicants finally submitted on this aspect of the case that, even if prohibition would otherwise have been available against the Industrial Court, that remedy was taken away by s. 21 (2) or s. 21 (3) of the Act. Section 21 (2) provides: "Every decision of the Court shall be final and conclusive, and shall not be impeachable for any informality or want of form, or be appealed against, reviewed,

(1) (1955) 93 C.L.R. 528.

quashed, or in any way called in question in any Court on any account whatsoever." The word " decision " by s. 4 includes award and order. Very clear words are required to take away the remedy of prohibition where that important and valuable remedy would be available at common law : see, e.g. *Jacobs* v. *Brett* (1). The words of s. 21 (2) cannot be interpreted as having that effect. Section 21 (3) provides :—" Proceedings in the Court shall not be removable by certiorari, and no writ of prohibition shall be issued, and no injunction or mandamus shall be granted by any Court other than the Industrial Court in respect of or to restrain proceedings under any award, order, proceedings, or direction relating to any industrial matter or any other matter which, on the face of the proceedings, appears to be or to relate to an industrial matter or which is found by the Court to be an industrial matter." This sub-section refers expressly to prohibition, but the words " and no writ of prohibition shall be issued " cannot be read in isolation from their context. Reading the sub-section as a whole, and having regard particularly to the concluding words—" which is found by the Court to be an industrial matter "—it seems clear enough that what the legislature is really saying is in effect that (1) proceedings in the Industrial Court are not to be removable by certiorari, (2) no court other than the Industrial Court shall grant prohibition or mandamus or an injunction to any other body in respect of proceedings in an industrial matter, and (3) if a question arises as to whether a particular matter is an industrial matter or not, the decision of the Industrial Court on that question is to be conclusive. The power of the Industrial Court itself to grant prohibition or mandamus or an injunction to inferior industrial tribunals is given by cl. 3 of the schedule : see also s. 55. There is nothing in s. 21 which has the effect of depriving the Supreme Court of its jurisdiction to issue prohibition to the Industrial Court.

The Full Court of the Supreme Court of Queensland has previously held in *Reg.* v. *The Industrial Court* ; *Ex parte Brisbane City Council* (2) that prohibition lies from the Supreme Court to the Industrial Court. In so holding it followed earlier decisions (given on legislation in somewhat different terms) in *R.* v. *The Industrial Court* ; *Ex parte Rhys Jones* (3) and *R.* v. *The Industrial Court* ; *Ex parte Australian Sugar Producers' Association Ltd.* (4). None of these decisions is binding on this Court, but, for the reasons given, they appear to be clearly correct.

(1) (1875) L.R. 20 Eq. 1, at p. 6.
(2) (1957) Q.S.R. 553.
(3) (1915) Q.S.R. 165.
(4) (1917) Q.S.R. 50.

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The remaining question is whether, in including cl. 5 in the award, the Industrial Court exceeded its jurisdiction. It seems clear that it did. The effect of cl. 5 is to restrict the hours during which garages and service stations may be open for the sale of petrol etc., and in particular to prohibit (subject to specified exceptions) the sale of petrol etc. on Sundays. The matter of trading hours as such is not a matter affecting the relations of employer and employee. It is not an " industrial matter " within the meaning of that term as defined in s. 4 of the Act : see *Clancy* v. *Butchers' Shop Employe's Union* (1) ; *R.* v. *Kelly* ; *Ex parte State of Victoria* (2), and *Brownells Ltd.* v. *Ironmongers' Wages Board* (3). It is not, therefore, within the general jurisdiction of the Industrial Court. The only specific provision on which the applicants relied is that which is contained in s. 8 (1) (viii) of the Act. The power there given is to make an award " modifying or altering the early-closing provisions or the weekly half holiday provisions of the Acts relating to factories and shops ". This might give power to fix trading hours on week-days, but it does not enable the Industrial Court to prohibit trading on Sundays, and cl. 5 must stand or fall as a whole : its provisions are not severable. The power given later in s. 8 (1) (viii) to fix opening and closing times is given only as consequential upon a declaration that certain premises shall be " a shop of a certain class within the meaning of " the factories and shops legislation. It does not authorise the inclusion of cl. 5 in the award. In including cl. 5 the Industrial Court exceeded its jurisdiction, and the Supreme Court rightly ordered that a writ of prohibition should issue.

In view of the fact that the whole matter was argued at length before us, it has seemed right that this Court should express an opinion on the points raised, but, this having been done, the proper order is that special leave to appeal be refused. Mr. *Gibbs* put forward several reasons (none of which was without substance) why special leave should in any case be refused, and one of these it is desirable to mention. It was that the applicants for special leave had no *locus standi* in the matter. This appears to be a sound objection. The applicants are the Attorney-General, the Minister for Labour and Industry and the Chief Inspector of Factories and Shops. None of these was a party to the proceedings in the Industrial Court, and none of them has any pecuniary interest in the matter or any such interest as would entitle him to assume the role of an appellant in the matter. Mr. *Bennett* said that, if the Court took this view, he had authority to make the application on behalf of the Industrial

(1) (1904) 1 C.L.R. 181.
(2) (1950) 81 C.L.R. 64.
(3) (1950) 81 C.L.R. 108.

Court and its members. But the application was not originally made on behalf of the Industrial Court or its members. Any application made by them (assuming that it might with propriety have been made) would have been long out of time, and there was no reason why an extension of time should have been granted.

The application for special leave should be dismissed with costs.

TAYLOR J. I agree that this application should be dismissed. I fully subscribe to the reasons prepared by *Fullagar J.* and I have nothing to add.

Application refused. Applicants to pay the costs of the respondent, Wilkinson, of the application.

Solicitor for the applicants, *L. E. Skinner*, Crown Solicitor for the State of Queensland.

Solicitors for the respondent, *John P. Kelly & Co.*, Brisbane, by *Murphy & Moloney*.

R. A. H.