No. 49/1931

THE AUSTRALASIAN MEAT INDUSTRY EMPLOYEES' UNION V. THE MASTER BUTCHERS' MEAT AND ALLIED TRADES FEDERATION OF AUSTRALIA.

JUDGMENT. EVATT J.

On March 27th 1930 the respondent Federation, which had previously obtained registration as an organization of employers under the Commonwealth Conciliation and Arbitration Act, submitted to the Commonwealth Court of Conciliation and Arbitration, by plaint, an alleged industrial dispute with the applicant organization, which was also registered as an employees' organization under the Act. The procedure adopted by those acting for the Federation was in accordance with sec. 19 (b) of the Act. The plaint alleged a dispute between the parties as to the rated of wages to be paid and the terms and conditions of employment to be granted to members of the employees' organization in the employ of the members of the claimant organization. The industry was that of retail butchering, and the States of the Commonwealth to which the dispute was alleged to extend were New South Wales and Queensland. The plaint was signed by Fred Paul as Federal President and A. G. Shand as Federal secretary of the Federation.

The hearing of the plaint did not commence until June 9th 1931 before E. H. Coneybeer Esq., Conciliation Commissioner, who had been appointed as such after the 1930 Amendment of the Federal Act. The question of the existence of the industrial dispute described in the plaint was raised at an early stage before the Commissioner, and certain witnesses gave evidence as to the facts. On June 12th the Commissioner said that he had considered the objections raised, which included that relating to jurisdiction, and he was inclined to the view that he should proceed with the hearing of the claims. Evidence was led accordingly and, on August 14th last, the Commissioner said "I propose merely to read my judgment today. There will be no discussion this afternoon as to the minutes of the award, as I have another matter on at 3 p.m., but I will fix a date next week before my return to Melbourne for the purpose of settling the award. This will give all parties time in which to peruse the judgment and the proposed award." (P. 701).

The Commissioner then read his judgment and handed

Delivered 4 Sept 1931

a copy of the proposed award to the parties. He added that the discussion to be entered upon later would be limited to anomalies, omissions, or errors but that the principles of the award would not be re-opened. Mr. Henwood for the employees' organization said that it was the intention of the Union to apply at once to the High Court for a prohibition, and asked, "Is the award made today, or will it be made on Thursday next when it is finalized ? The Commissioner : On the day on which it is finally settled; it is only a proposed award at present."

On August 19th the employees' organization caused a summons to be issued out of the New South Wales Registry of the High Court under the provisions of sec. 21 A.A. of the Commonwealth Conciliation and Arbitration Act. The summons asks for decisions as to the existence of the industrial dispute alleged in the plaint, and as to whether the proposed award, if made, would be bad in law and without the authority conferred upon the Commonwealth Court or a Commissioner under the Constitution or the Commonwealth Act.

On the following day, August 20th, the Commissioner was served with a copy of the High Court Summons and, before the minutes of the proposed award were discussed by the parties, he was asked to refrain from making any award. The Commissioner pointed out that the award, if made on the same day, would not come into force for at least 21 days. He added, "This matter will "be mentioned at any rate before the High Court on Wednesday next. "If any award made were to come into force right away, I certainly "would be inclined to grant your application for a stay of proceed-"ings, but as an award made will not come into operation for 21 days "and the decision from the High Court should be given at any time, "I think in the circumstances I will hear what you have to say on "speaking to the minutes, and will conclude the award."

This course was adopted. Later the Commissioner said, "I can assure you this matter of hours gave me a lot of "thought..... I ultimately made up my mind to leave it to the Full "Arbitration Court..... It is the most complicated matter of "hours I have yet dealt with. I would suggest that we leave it "until the Full Court gives its decision, and then on the applic-"ation of either party, I will make the variation to accord with

"the decision of the Full Court". He then stated, "I formally make "the award now; it will be for a period of three years operating "from the 14th September 1931."

I have set out at some length the course of proceedings before the Commissioner, because Mr. Menzies, for the respondent Federation, contended that as "judgment" was pronounced on August 13th, the summons was taken out at a time too late for the High Court to have jurisdiction under sec. 21 A.A.. He referred to the case of Ince Brothers v. The Federated Clothing Trades Union 34 C.L.R. 457. The Head note of that case states that an application to the High Court under sec. 21 A.A. for a decision on the question "whether the "dispute or any part thereof exists or is threatened or impending "or probable, as an industrial dispute extending beyond the limits "of any one State" may not be made after an award has been made by the Commonwealth Court of Conciliation and Arbitration in respect of an alleged dispute which has been submitted to the Court. In their joint judgments, Isaacs, Powers and Rich JJ., dealing with the phrase which introduces sec. 21 A.A., said, " "when an alleged dispute is submitted to the Court" is continuous while the submission lasts, and no longer." (P.470). They strongly emphasized the terms of sec. 31 of the Commonwealth Act as evidencing the legislative intention to give impeccability to an award or order of the Commonwealth Court, after it was made. "So long as it is possible to test "legality prior to closing up the proceedings and settling the dis- "pute . . . Parliament has allowed ample opportunity. But once "that stage is passed past, Parliament has, so far as in its power "lies, closed the door upon renewal of the controversy . . . Sec. 31 "is, as already stated, a firm declaration of intention that an award "once made is to stand above question, so far as relates to any prior "requirement of the Statute".

In the same case Starke J. held that the inquiry to be embarked on by the High Court was whether the dispute that was submitted to the Arbitration Court or any part of it, "is or is not a living, existing thing" at the time of the application to the High Court. (P. 479). As he added :- "Any other inquiry would be idle, and ind "deed useless. The purpose of the inquiry is, in my opinion, to

"ascertain whether the Arbitration Court has seisin of and jurisdiction "in the dispute and is in a position to exercise its powers and author- "ities."

If therefore at the moment when the jurisdiction of the High Court is invoked by the parties mentioned in sec. 21 A.A. for the purpose of determining the existence or non-existence of the industrial dispute, the arbitration tribunal still has cognizance of the dispute for the purpose of prevention or settlement, the duty of the High Court is to determine the question before it and determine it as at the"date of application to the Court or Justice." (Per. Starke J. p. 480).

In the present case the relevant point of time is August 19th.I think it is clear from the course of proceedings that the Conciliation Commissioner still retained cognizance of the alleged dispute on that day. He did not make the award until August 20th. The jurisdiction of the High Court having once attached, there is nothing in the Act which indicates that the subsequent making of an award or order operates so as to terminate the jurisdiction of the Court. Sec. 31 of the Act has recently been amended in order to make it clear that, even after an award is made, its validity may be challenged in the High Court. Such a provision was not necessary in the case of an application for prohibition to the High Court for the power of exercising such jurisdiction springs from the Constitution itself. Whether it enlarges the jurisdiction conferred upon the Court under sec. 21 A.A. in relation to questions as to the existence of a dispute, it is not necessary to say.

Notwithstanding, therefore, the announcement on August 13th of the terms of the proposed award, and the formal pronouncement on August 20th of the award, it is the right and duty of the Court to pronounce its opinion as to whether on August 19th last the Conciliation Commissioner had lawful jurisdiction in respect of the industrial dispute described and defined in the plaint.

The answer to the question depends upon the facts which have been adduced in evidence before me and the proper inferences to be drawn from these facts. It becomes necessary to refer to them in some detail.

At all material times the Master Butchers Association of New South Wales was an Industrial Union of Employers registered under the New South Wales Industrial Arbitration Act, and Mr. A. G. Shand was, as he still is, its secretary. In October 1927, Mr. A. B. Piddington (as he then was) the Industrial Commissioner for New South Wales made an award which regulated the wages and conditions of employment in the retail branch of the butchering trade. This award was to remain in force until October 1929. It was made whilst the 44 Hours Week Act of 1925 was in force. On May 25th 1928 an award of interpretation was made by the Industrial Commissioner. The effect of the award was, as pointed out by Cantor J. in Re. Butchers 1930 I.A.R. (N.S.W.) at p. 264 not only that the ordinary working hours should be 44 per week and that all hours worked in excess thereof should be paid for at overtime rates, but to prohibit the working of overtime in the industry outside the hours of 7 a.m. till 5.30 p.m. Monday to Friday inclusive; and 6.30 a.m. to 12.30 p.m. on Saturdays. The result mentioned was caused by a provision of the New South Wales Early Closing Act which fixed the opening and closing times for butchers' shops in shopping districts by reference to what was fixed by industrial awards as the time of commencing and finishing work by employees in such shops. A decision was given by Edmunds J. in the year 1916 which identified the time of "cessation of work" by employees in butchers' shops, not as that of the termination of the ordinary hours of work, which would not, in itself, prevent the performance of work thereafter at overtime rates, but as the time when it became unlawful to work employees any further. This decision has been consistently followed for the past fifteen years.

There is no doubt that a number of employers, members of the Master Butchers Association, have objected strongly to the legal situation which resulted from the interpretations given to the Early Closing Acts and the butchers (retail) awards by the industrial authorities of New South Wales. The Parliament of that State gave them relief under the circumstances to which I will refer [redacted], but, [redacted] later, reverted to the original position. It was partly the desire of such employers to avoid the conditions mentioned which led to the present attempt of the Federation to create an industrial dispute within the jurisdiction of tribunals authorized under the

Commonwealth Conciliation and Arbitration Act, and not limited, in settling disputes, by the provisions of State laws or State awards.

On September 17th 1928, whilst the 44 Hours Act, and the Piddington award were still operative, twenty employers, all from New South Wales, met in Sydney and resolved themselves into a general meeting of the Master Butchers and Allied Trades Federation of Australia. They then proceeded to adopt certain rules placed before them and elected a committee pending the holding of an annual general meeting. It was decided to register as an organization of employers under the Commonwealth Act. On the same day this provisional committee elected Mr. Shand as secretary. Some difficulties were encountered on the way to registration, but on October 25th another general meeting was held which ten employers attended, and a slight addition was made to the rules. The registration was obtained in December 1928, and on 27th February 1929 thirteen employers held another general meeting. As before, no employers from Queensland attendéd or were represented. The secretary made a report relating to the granting of registration and to "arrangements with the Queensland Association." I have no doubt the Association thus referred to was the Queensland Meat Traders' Association.

The meeting went on to consider "the details of the award to be applied for," and agreed upon certain matters including a 48 hour week and provisions as to overtime. The following minute then occurs:- "It was agreed upon that all members should be called "upon to make an initial contribution of 10/-. The Secretary was "instructed to take steps to secure the formation of a Queensland "Branch."

Another meeting was held on April 9th at which the secretary read a report of a trip made by him to Brisbane and his activities there. This report has not been produced during the present hearing, although Mr. Watt's cross-examination was such that the Federation was called on to explain all the circumatances surrounding its formation and promation. At the same meeting it was decided "that a meeting of the New South Wales members of the Federation be "called on May 21st to form a State Branch and to finalise all matters "with regard to the application for a federal award."The minute book

of the Federation indicates that although it was proposed to hold a meeting on May 21st (as was decided on April 9th) such meeting did not take place. In the result, minutes of the meeting of April 9th were never confirmed and from that day to the present no general meeting of the Federation has ever taken place. It is also clear that no New South Wales branch was ever instituted, as distinct from the Federation itself and those who, from New South Wales, were in control of it.

During Mr. Shand's visit or visits to Queensland he endeavoured, with more or less success, to extend the activities of the Federation to that State. With the assistance of motor conveyances, a number of employers were sufficiently interested to attend the preliminary meetings, the second of which took place on May 28th 1929. A Mr. Sparkes read the notice convening the second meeting which was described as an adjourned general meeting, and stated that the local secretary had no minutes of the previous general meeting as Mr. Shand had taken them back to Sydney. Previously, on May 14th according to a copy of minutes which has been produced, "the draft claim for a federal award was very carefully considered" and agreed to, with certain additions.

At the close of the meeting on May 28th the secretary was instructed to obtain a minute book, cash book and members' register. Up to this time Mr. Sparkes had been acting as chairman and Mr. Earle as secretary of the proposed Queensland branch. They were both prominently connected with the Queensland Meat Traders' Association, Mr. Earle being its secretary. It is clear that Mr. Shand was doing his best to assist at the birth of a Queensland branch. He wrote on May 20th 1929 to Mr. Earle a letter which shows that the notices of the Queensland meeting of May 28th had been prepared in Sydney, and that he was endeavouring to make arrangements for the opening of a bank account. On May 24th Mr. Shand wrote to Mr. Sparkes, "In case there is anything said about the "likelihood of the Federal Government stepping out of the field "of industrial arbitration, you might point out that there can be "no chance of this coming about before the end of this year, and, if "it does, it will be in the teeth of the very strongest opposition

"from all the employers' organizations. The opposition has been "already arranged. It is not anticipated that anything will come "of the affair."

About this date there was in existence a document, which had been prepared in order to show how the terms of an existing federal award, applicable to the retail butchering industry in Victoria and South Australia, could be adopted so as to be applied to Queensland. There is no evidence showing who originally prepared this document, but no doubt it was part of the propaganda designed to induce Queensland enployers to join the Federation. The copy that is in evidence was, after the second Queensland meeting had been held, sent by Mr. Earle to Mr. Shand. The former concluded some references to its terms in his covering letter by stating "there are certain clauses in the State award we should like retained". After that date (June 1st,1929) nothing more was heard from Queensland.

By this month of June 1929, the promotion of the federation had reached such a stage that it was necessary to proceed with its government under the rules which had been registered in the Court. At a "committee meeting" held in Sydney on June 19th a resolution was carried, "inviting" four named Queensland employers including Mr. Sparkes "to take positions on the committee". Nothing came of this. Even if the invitation was forwarded, it was not accepted. In any case the course proposed was quite contrary to the registered rules. At the same Sydney meeting it was resolved "that the letter and log as read be sent to the secretary Trades "Hall Melbourne. In default of the Union replying to the log, the "secretary shall present a claim to the Federal Court in the terms "of the log served." Notwithstanding this direction the letter and the log were not sent to the employees' organization.

It has already been pointed out that no general meeting of the Federation took place after April 9th, 1929. It seems to have occurred to the New South Wales employers who were in de facto control of the Federation that there was ground for considerable doubt as to the exact position of the Federation in relation to themselves. A perusal of the registered rules of the organiz-

ation makes it clear that they were not observed in letter or in spirit.

Rule 4 provided that the affairs of the Federation should be managed by a Federal Executive Committee, consisting of not more than 22 persons. Rule 5 required that nominations for positions on this Executive should be made by two members and be sent in writing to the secretary of the Federal Executive Committee before April 30th in each year. Rule 6. provided that the election of the Federal Executive should be made at the annual general meeting of the Federation by ballot, and that written notices of such meeting should be sent to each member of the Federation at least 14 days before the date of the annual meeting. Provision was made for absent or postal voting. Rule 8 limited the tenure of office of the Federal Executive, to one year, terminating at the annual general meeting succeeding its election. Rule 13 empowered the general committee to bring industrial disputes before the Court of its own accord or at the instance of a general or special meeting. It was the duty of the secretary under rule 14 to keep minutes of all proceedings and take charge of all the books, papers and records of the Federation. Rule 19 provided that the annual general meeting of the Federation should be held in the month of May or June in each year at a time and place fixed by the Committee. Rule 20 required proposed industrial agreements to be placed before a general meeting, otherwise they would not be binding upon the Federation. Provision was made in Rule 24 for the formation of branches in each State.

No annual general meeting was held in the month of May or June in the year 1929 as required by rule 19. The Federal Executive Committee mentioned in rule 4 had no right to function as such after the annual general meeting fixed by the rules for May or June 1929. It is perfectly clear from the minutes, which are admitted to be the only minutes of the transactions of the Federation, that no nominations for positions on the Executive were called for or received before April 30th 1929. This is contrary to the requirements of rule 5. As no annual general meeting was ever held, no Federal Executive Committee was ever elected in

accordance with rule 6. I doubt very much whether, under the rules, even a properly elected committee was entitled to make demands on behalf of the Federation because industrial agreements had, by rule 20, to be adopted by the Federation in general meeting. But the so called committee which did make the demands to be referred to hereafter was the committee of the Federation in name only. The tenure of office of the committee expired, at the latest, on June 30th 1929. No annual or special general meeting of the Federation ever authorised or ratified the acts performed in its name by this body. So far as Queensland is concerned, the tentative attempts to extend the operations of the Federation to that State were not continued after June 1929. During the hearing of this summons, I stated that correspondence between Mr. Shand and Queensland employers might be very relevant but not a single document bearing a date later than June 1st, 1929 was produced. I am satisfied that no branch of the Federation ever functioned in the State of Queensland. No minute book of any Queensland branch has been produced. I doubt very much whether any such minute book exists. In short, after June 1929, the fact is that a number of Sydney employers, without any authority under the registered rules of the organization, proceeded to use the name of the Federation as it suited their own industrial interests, which were, at all material times, of a local, special and New South Wales character.

Isaacs J. (as he then was) pointed out in United Grocers &c Union v. Linaker 22 C.L.R. 176 at 182 that the High Court had clearly laid down that the rules of an organization registered under the Commonwealth Conciliation and Arbitration Act must be rigidly complied with. In the same case Griffiths C.J. stated that very special and important rights are conferred by the Act on a duly registered organization and its members, rights which are not merely rights inter se but against the public. Indeed, in the Tramways ℄ Case No. 2 19 C.L.R. 43 at page 71 Griffiths C.J. said, "In my opin-"ion the rules on the prescribed subjects are imperative, and any "action of the organization not in accordance with them is a mere "nullity."

The condition which must be complied with by assoc-

iations obtaining registration as ~~an~~ organizations is that its affairs shall be regulated by rules which will provide not only for the election of a committee of management of the organization but for the control of such committee by its members. If, as Starke J. said, in the Burwood Cinema Case 35 C.L.R. 528 at 551 a registered organization is not merely an agent of its members but "a representative of the class associated together in the organization," it is essential to insist upon the substantial observance by the organization of its registered rules. Otherwise, the use of its name either in attempts to obtain industrial agreements, or in the invocation of the jurisdiction of the Commonwealth authority must be calculated to mislead that authority, and to impair the prospects of real industrial peace. The legal results of non-observance of the Federation's rules might themselves be sufficient to dispose of this case, but it is best to trace the matter further.

The failure of the body of persons acting as the committee of the Federation to present the log of terms and conditions in June 1929 is not explained in any way by the evidence. But the Master Butchers' Association of New South Wales, of which Mr. Shand was also the industrial agent, obtained on January 24th, 1930, a variation of the State award, in consequence of the lowering of the living wage by the Industrial Commission of New South Wales some time before that date. It seems very likely that the inquiry which, under New South Wales law, usually precedes the living wage declaration of the Industrial Commission, had raised hopes among the Sydney employers that they might obtain many advantages by continuing their industrial activity before the State tribunals.

Whatever the motives may have been, the fact is that it was not until six months after the meeting of June 19th, that there was any further meeting dealing with the question of obtaining an award from the Federal Arbitration Court. On December 19th the following resolutions appear :- "That this Committee of Management "consents to the submission of the dispute contained in the claim "to the Commonwealth Court of Conciliation and Arbitration. That "the secretary of the Federation be instructed to present a plaint "as submitted to this meeting, to the Federal Court." The minute

book does not state who were present at this meeting of the supposed committee of management. It is certain that no Queensland representatives were either invited to or did attend. There was, of course, no dispute in existence on December 19th 1929 because no log had then been served on the employees' organization. It was not till December 24th, 1929 that Mr. Shand, purporting to act on behalf of the Federation, forwarded to the Union a log of claims covering New South Wales and Queensland. This letter stated that he had been authorized to receive a reply and to discuss items for the purpose of arriving at a settlement. But there is no basis for this statement in the minutes of December 19th, at which it was supposed that a dispute had crystallised, and that all the secretary had to do was to submit the plaint to the Federal Court. In preparing the log of claims Mr. Shand no doubt did ask for things which he thought would please employers of labour in Queensland as well as in New South Wales. But there was a complete absence of any real consultation in or about December 1929 between the employers in the two States. What was desired by Queensland employers in April and May might, in the following December, either not be desired at all or be very inexpedient to demand.

Some reference was made in evidence to a discussion on the claims in the log during the month of January 1930 between representatives of employers and employees. The evidence shows that, at the most, a verbal request for discussion was made in the course of a casual conversation between a Mr. Paul, an employer, and one of the Union organizers in New South Wales. There was a conference in the same month between the New South Wales branch of the Employees' Union and the Master Butchers' Association of New South Wales. If there was any reference to the log it arose as an incident of such conference. It is admitted that any discussion related to conditions in New South Wales alone. It is obvious that, at this time, the New South Wales employers, who were using the name of the Federation, were doing so solely for the purpose of assisting their position in that State. They regarded the log as being a necessary step for the purpose of enabling them to present a case in the Federal Court as and when they wished to alter indus-

trial conditions. The subsequent history of the matter proves this beyond [redacted] controversy.

On January 8th, 1930 Mr. Shand received from the general secretary acting for the federal council of the Employees' Union a refusal of the request contained in the log of claims. This refusal on the part of the Union was genuine enough, but nothing whatever was done by Mr. Shand to bring the supposed dispute before the Federal Court until March 29th following. Before that date, on January 24th, the Master Butchers Association had obtained the living wage variation of the New South Wales award to which I have already referred.

After the filing of the plaint nothing was done on behalf of the Federation in the Federal Court for the purpose of settling the dispute referred to in the plaint. The minute book shows that no meeting whatever was held [redacted] in the year 1930 until December 19th. I am quite satisfied that there was no Federation activity in Queensland of any kind during the whole of that year. Important events however were occurring in New South Wales to which some reference should be made.

On June 16th 1930, the Legislature of New South Wales reverted to the 48 hour working week. It also amended the Early Closing Act of 1915. On August 27th the Master Butchers Association obtained a decision of the Industrial Commission, the effect of which was to give them relief from the difficulties in regard to overtime working which have been already mentioned. The variation of the award in pursuance of the altered working hours was made on September 24th, 1930, and the New South Wales employers who had joined the Federation had [redacted] probably become satisfied with the new conditions created by legislation and decision. As to the so called dispute created by the demands contained in the log, and their refusal, they had forgotten all about it. From the evidence of Mr. Ashcroft, who impressed me as a very open and frank witness, I infer that the main difficulty felt by the New South Wales employers had been overcome by the action of the New South Wales Legislature and Industrial Commission. But for the subsequent change of Government and the restoration of the 44 hour working week, it is highly probable that

none of the Sydney employers would have ever remembered their attempt to enter the Federal Arbitration Court.

By December 1930 however, this reversion to the shorter working week was regarded as certain. Mr. Shand therefore called together another Sydney meeting and this was held on December 19th. Queensland was again unrepresented.

In July or August 1930, various employers' organizations in Queensland had become parties to an application for a new award to cover the retail section of the butchering industry in that State. Prior to this, Mr. Sparkes had resigned from the Federation, although in April 1929 he had been one of the prime movers. About the same time Mr. Earle had also severed all connections with the Federation. The employing interests of the Queensland industry had long before that date come to the conclusion that nothing would come from the activities of the new Federation, owing possibly to its complete domination by Sydney employers. They preferred to endeavour to obtain a satisfactory award from the Industrial Court of Queensland. From their point of view they, no doubt, succeeded and on April 10th, 1931 an award was obtained from that Court restoring the weekly working hours to 47.

It is not surprising, therefore, that no reference whatever was made at the meeting held at Sydney on December 19th, 1930 to the conditions existing in Queensland. The minutes of the meeting held on September 19th, 1929 (some fifteen months earlier) were read and confirmed. From this it would appear to be very doubtful whether the meeting, which I have assumed to have occurred on December 19th, 1929, really took place on that date. In view of the other circumstances of the case the point is not important. On December 19th, 1930, eight employers, calling themselves the committee of the Federation, instructed the secretary to apply to the Commonwealth Court of Arbitration for an injunction restraining the New South Wales Conciliation Committee from dealing with the various New South Wales retail butchering awards. For this purpose, it was decided to make arrangements with the Master Butchers Association and the Stock Meat and Allied Industry Defence Committee to obtain financial assistance for the Federation in its proposed

litigation. It may be added that on February 9th, 1931 the Sydney employers purported to admit to the membership of the Federation the Master Butchers Association of New South Wales.

The new 44 hour week legislation was assented to on January 5th, 1931, and on the same day the New South Wales branch of the Employees' Union applied for a variation of the existing award in order to get the benefit of the new conditions. On January 13th Mr. Shand launched his application under sec. 20 of the Commonwealth Conciliation and Arbitration Act in order to prevent the New South Wales Conciliation Committees from dealing with the Union's application for variation of the State awards. The ground of this application was necessarily that the State Industrial Authority was about to deal with an industrial dispute within the jurisdiction of the Federal Court. The hearing of the application for an injunction took place before Judge Beeby on February 11th and it was ~~admitted~~ dismissed. ~~on March 13th, 1931.~~

On March 16th, 1931 the Industrial Commission made an order with respect to hours and overtime which gave effect to the amending legislation, and the formal variations were made on March 23rd. On March 30th the Master Butchers Association of New South Wales, through counsel, applied to the Industrial Commissioner to reconsider the situation in relation to the Early Closing Act and the award, but the Commission decided to adhere to its ruling given of March 16th. On April 10th the Queensland employers, ~~succeeded~~ after some eight or nine months litigation, succeeded in obtaining the award increasing hours to 47 per week and containing other industrial conditions of a favourable character.

So far as the main controversy of hours and overtime was concerned, there was now no other course open to the Sydney employers in control of the destiny of the Federation except to make an attempt to obtain a hearing of the plaint which had been filed more than twelve months before. It is again noticeable that, after the failure of the injunction application, there was no communication with Queensland employers for the purpose of determining whether any of them still desired to go on with the plaint or any of it. Finally,

on June 9th, 1931, the Conciliation Commissioner did actually commence the hearing of the plaint.

The only employer witness with any working knowledge of industrial conditions in Queensland is A. T. Williams of Brisbane. He gave evidence before the Conciliation Commissioner and, by consent of the present applicant, such evidence is treated as evidence before this Court. He stated in cross-examination that a member of his Brisbane firm, Mr. Cameron, had represented Queensland employers in their recent application for a new State award, and it also appeared that after the making of such award on April 10th, 1931, there had been a further reduction in the Queensland basic wage declaration on May 28th, 1931. There was nothing in any evidence given by Mr. Williams which indicated that there was any dispute in existence in January 1930 when the demands contained in the log of the respondent Federation were refused by the Union. He gave evidence about certain conditions in the industry which he thought might reasonably be altered, but his evidence before the Commissioner was not directed to the question of the existence of a dispute in Queensland and he gave no such evidence.

I have set out the facts of this case at some length. The minutes kept are of outstanding significance. There is no escape from the inferences of fact which must be drawn. So far as the evidence shows, the respondent is not an Australian Federation of Master Butchers at all. Originally a number of New South Wales employers of labour in the retail butchering industry, being genuinely dissatisfied with the prohibition against working overtime before their shops were opened for business in the morning and after they were closed in the afternoon, thought it would be a good thing to obtain a federal award for the purpose of removing that disability. Mr. Shand, as secretary of the Master Butchers Association of New South Wales, was selected for the purpose of exploring the ground. Before he did so, he was told by the Victorian employers not to trespass upon the field of the existing federal award which covered Victoria and South Australia. There had never been any federal award applicable to the retail butchering in the State of New South Wales.

As it was necessary to have a two State dispute before the Federal Court could arbitrate, the Sydney employers, naturally, turned in the direction of Queensland. Mr. Shand commenced to organize Queensland employers so far as it was possible to do so, in two or three hurried visits. He got in touch with the recognized employers' association and Mr. Sparkes and Mr. Earle, who were associated with it. These men became sufficiently interested to enter upon certain preliminary stages of the necessary organization.

Meanwhile however, the Sydney employers had completely ignored the registered rules of the Federation, the name and status of which were to be used in order to obtain a satisfactory Federal award. In most organizations this usurpation would have led to strong objection on the part of those whose rights of representation and control were being treated as a nullity. But there was no protest from Queensland because, after May or June 1929, employers in that State had lost interest in the affair. They seem to have appreciated the fact that, if they came in, control would be exercised from Sydney. The whole system of Federal Arbitration was in danger of abolition. Even if it remained, there was no guarantee that they would be pleased with the terms of any award made.

The position is that for close on three years, there has been a continuation in supposed office, as the committee of management of the Federation, of some ten or fifteen New South Wales employers, notwithstanding the very clear requirements of the rules of the Federation. It is not necessary or proper for this Court to express approval or condemnation of their conduct. Why, it may be asked, should they ever have an annual meeting and an election of a committee ? They were depriving Queensland employers of nothing because Queensland employers had ceased to care. They therefore still met in Sydney, and called themselves the Federation on the few occasions when Mr. Shand asked them to attend.

This explains why Mr. Shand, although directed to forward his log to the employees in June 1929, did nothing for six months. When he did send it, in the December which followed, the Federation did not endorse it in general meeting, because the Federation, as such, had no real existence as a two State body. The Commonwealth Concil-

iation and Arbitration Act requires the signature of a majority of the committee of management of a registered organization before the latter is entitled to file a plaint. In the present case certain signatures were obtained, but without any reference to Queensland and without any consideration of the matter, even at the Sydney gathering. The fact is that a number of Sydney Master Butchers were endeavouring to make the best of two industrial worlds. When the employees refused the demands of the log, the only discussion which resulted was a discussion with the New South Wales Master Butchers Association, not with the Federation and not even with the supposed committee of the Federation. What was called the Federation had become, to all intents and purposes, a body which represented employers in New South Wales and not elsewhere.

This outstanding fact also explains the conduct of the parties during 1930 and 1931. The plaint was not filed until the end of March 1930, nearly three months after the refusal of the claims in the log. But the New South Wales employers , in the capacity of the Master Butchers Association, went to the State tribunal and obtained an alteration of the existing award when the living wage was reduced in that State. The plaint was allowed to remain where it was, and no efforts were made to pursue the demands contained in it. And, as the year 1930 went on, New South Wales legislation gave complete relief and the overtime prohibition came to an end. It is quite clear that, had it not been for the restoration of the 44 hour week in December 1930, the plaint would never have reached a hearing. Every step possible was taken by Mr. Shand, (as secretary of the New South Wales Master Butchers), to prevent the reimposition of the prohibition as to overtime. He failed to get an injunction from the Federal Arbitration Court (as secretary of the Federation). He then tried and failed to get the Industrial Commission to review the very old ruling on the Early Closing Act (as secretary of the Master Butchers Association). And, in the meantime, the Queensland employers had not only lost any interest they ever had in the doings of the Federation, but had on their own account obtained the benefits of longer working hours from the Queensland Court.

I have reached the following conclusions :-

(1). That on March 27th, 1930 there was no industrial dispute between the respondent Federation and applicant Union, which either extended beyond the limits of any one State or was threatened, impending or probable as an industrial dispute extending beyond the limits of any one State.

(2). That the individuals purporting to make demands on behalf of the Federation in December 1929 were not authorized to do so by the registered rules of such organization.

(3). That the demands which were made in December 1929 merely represented the then desires of a number of New South Wales employers, who were de facto in charge of the affairs of the Federation and were using its name.

(4). That the object of such employers, in using the name of the Federation, was solely for the purpose of obtaining an award from the Federal tribunal, in order to avoid the operation of existing New South Wales laws and awards, the demands contained in the log being regarded by them as a necessary step to the obtaining of such an award.

(5). That neither in December 1929 nor at any subsequent time did the persons in de facto control of the Federation represent, in law or in fact [redacted] any Queensland employers, or [redacted] any employers outside the State of New South Wales.

(6). That there was no insistence upon nor persistence in the demands made upon the employees organization and that the intention to proceed with the plaint in the Arbitration Court did not arise until the proposed alteration of hours and conditions in New South Wales in December 1930, owing to the restoration of the 44 hour week.

(7). That, apart from a few preliminary meetings in April and May 1929, no Branch of the Federation was ever formed in the State of Queensland and that, after June 1929, no Queensland employers retained any interest in the affairs of the Federation, or had any representation in it.

(8). That on August 19th 1931, the date of the present summons, the alleged industrial dispute submitted to the Commonwealth Arbitration Court by the plaint neither existed as an industrial dispute extending beyond the limits of one State nor was threatened

impending or probable as an industrial dispute so extending.

(9). That the Conciliation Commissioner had no jurisdiction to hear, determine or settle the alleged industrial dispute referred to in the plaint, and the award of August 20th, 1931 is null and void.

With regard to the costs of the present application the position is that the applicant could have issued a summons in this Court in June last, in which case, much trouble inconvenience and expense would have been saved. On the other hand, it is equally true that the persons action for the Federation could also have invoked the jurisdiction of the High Court under sec. 21 A.A.. And the outstanding fact of this case id that such persons, with full knowledge of the facts which have been set out in this judgment, and of the absence of full knowledge on the part of the Union, deliberately chose to proceed with the plaint, and perpetrate a futility. I am quite sure that Mr. Coneybeer would have negatived the existence of the alleged dispute, if the facts had been properly placed before him. The respondent must therefore pay the costs of the summons, and I propose to certify for counsel, including leading counsel.

The questions in the summons will be answered as follows :-

(1) No.

(2) No.

(3) Yes.

The other questions asked will not be answered. The respondent will pay the costs. I certify for counsel, including senior counsel.