

Privy Council Appeal No. 121 of 1915.

Jones and Others - - - - - Appellants,

v.

The Commonwealth Court of Conciliation and
Arbitration and Others - - - - Respondents,

and

The Attorney-General for the Commonwealth
of Australia and the Attorney-General for
the State of New South Wales - - - - Interveners.

FROM

THE HIGH COURT OF AUSTRALIA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 8TH MAY, 1917.

Present at the Hearing :

EARL LOREBURN.
VISCOUNT HALDANE.
LORD ATKINSON.
LORD SUMNER.
LORD PAR MOOR.

[*Delivered by* EARL LOREBURN.]

The respondents in this case raised a preliminary objection to the effect that S. 74 of the Commonwealth of Australia Constitution Act precluded the Board from entertaining this appeal at all. That section forbids appeals to the Queen in Council "from a decision of the High Court upon any question howsoever arising as to the limits *inter se* of the constitutional powers of the Commonwealth and those of any State or States unless the High Court shall certify that the question is one which ought to be determined by the Queen in Council." No such certificate has been given in the present case.

Accordingly, it becomes necessary to enquire what the decision of the High Court actually was. The High Court refused to prohibit the Commonwealth Court of Conciliation and Arbitration from proceeding upon an award of their President

as to the hours of work, wages, payment for overtime and for work done on holidays, compensation for accidents, and other matters concerning the terms and conditions of the employment of builders' labourers throughout Australia. The contention before the High Court was that the President had no power to make that award, and the High Court decided that he had power, because he had been authorised to make such awards by an Act of the Commonwealth Parliament pursuant to the Commonwealth Act.

Now, that Parliament can make laws with respect to "conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State." But the rights of the State under its own constitution must be borne in mind. Their Lordships do not express any opinion as to the power of the State to settle industrial disputes within their own borders, even though they have extended into other States, because that is the province of the High Court to determine, and the point has not been argued, but only adverted to in course of argument. For the same reasons it would be inappropriate to discuss the important matters decided in Whybrow's case (10 C.L.R., 278), beyond pointing out that it does not bear on the question now standing for decision, namely, whether or not the Board is authorised by law to entertain this appeal. Their Lordships are of opinion that it is not so authorised.

Whatever may be the power of the Commonwealth in regard to industrial disputes, whether or not that power must be exerted in harmony with State laws or State awards, it is at all events clear that the field of legislation and of consequent determination in obedience to laws so made is divided between State and Commonwealth, and these are constitutional powers because they spring from constitutional sources.

The able but necessarily difficult arguments of Mr. Lawrence and Mr. Romer were directed to show that the decision of the High Court in the present case was not upon a question as to the limits *inter se* of Commonwealth and State powers. They said that it did not decide any conflict of powers and could not impair the power of the State, and therefore was not concerned with limits *inter se*, laying emphasis upon the two Latin words. Let it be supposed that no conflict has arisen and that the powers of the State could not be so impaired. These considerations do not, in their Lordships' opinion, furnish the test.

Their Lordships consider that the High Court decided, first, that the dispute before them was one extending beyond the limits of one State; and secondly, that the President had jurisdiction to make his award under the legislation of the Commonwealth passed pursuant to their constitutional powers. The High Court decided that the frontier of the Commonwealth power reaches in this case into the State, and it therefore followed that the State has not exclusive, if any, power in this case. This appears to their Lordships to be a question as to the

limits *inter se* of the several powers, however much or little the Commonwealth may be required to conform to State laws or State awards, and however much or little the State may impose laws upon its own subjects.

Their Lordships will therefore humbly advise His Majesty that by "The Commonwealth of Australia Constitution Act, 1900," S. 74, no appeal is permitted to His Majesty in Council from the judgment of the High Court in this case.

The appellants will pay the respondents' costs.

In the Privy Council.

JONES AND OTHERS

v.

THE COMMONWEALTH COURT OF
CONCILIATION AND ARBITRATION
AND OTHERS,

and

THE ATTORNEY-GENERAL FOR THE
COMMONWEALTH OF AUSTRALIA
AND THE ATTORNEY-GENERAL
FOR THE STATE OF NEW SOUTH
WALES.

DELIVERED BY EARL LOREBURN.