THE BARRIER BRANCH OF THE AMALGAMATED MINERS' ASSOCIATION OF BROKEN HILL

V.

THE BROKEN HILL PROPRIETARY COMPANY LIMITED.

Industrial Dispute—Limits of power of Court in Settling Dispute—Order of Inquiry—Profits of Individual Employer, as distinguished from Profits of which Industry is capable—Living Wage Sacrosanct.

BROKEN HILL, February 3, 4, 5, 6, 9, 10, 11, 12
PORT PIRIE, February 15, 16, 17, 18, 19
MELBOURNE, February 24, 25, 26
March 1, 2, 3, 4, 12, 13, 1909.

Per the President and per the Full High Court:

The Court is bound by the limits of the dispute put before it by the plaint—the only dispute of which it has cognizance under sec. 19 (*b*); but is not bound by the particular relief sought in the prayer.

Per the President:

Where work has stopped in consequence of a dispute, it is the duty of the Court to make such an award as will set the wheels going again, if it is possible to do so on just terms, and with due regard to the human lives concerned.

The first condition in the settlement is that a living wage be secured to the employees. Definition of a living wage in the Harvester case (2 C.A.R. 1) followed.

As to wages for skill, &c., the relative values of the different classes of workers may generally be safely left to the practice of the employer and the employed.

The order of inquiry should be (1) what is the wage to be paid to the unskilled labourer; (2) what are the wages to be paid to those who have extra skill (on the assumption that the employers can pay whatever wages are proper); (3) are there any sufficient grounds why the employer should not be asked to pay such wages.

Unless the circumstances are very exceptional, the needy employer should be required to pay at the same rate as his richer rival.

The remuneration of the employee cannot be allowed to depend on the profits made by the individual employer; but the profits of the industry as a whole may be taken into account.

The living wage must be kept as a thing sacrosanct—beyond the reach of bargaining; but when the skilled worker has been secured a living wage, bargaining may, with caution, be allowed to operate.

Danger to industrial peace when workmen performing the same work, with the same skill and under similar conditions, are receiving different remuneration.

Quære, has the Court power to order the employer to continue operations on the terms of the award.

When the President invites representatives of both sides, under s. 16, to confer with him with a view to a settlement, he will confer with one if the other refuse to attend.

Undertaking required by Court before trial, as to resumption of work by both sides after award.

By the Full Court—

Circumstances under which the High Court will entertain an application for prohibition for alleged excess of jurisdiction, although the applicant has invited the Court of Arbitration to exercise the jurisdiction alleged to be excessive.

1909.

BARRIER BRANCH OF THE AMALGAMATED MINERS' ASSOCIATION

v.

BROKEN HILL PROPRIETARY COMPANY LIMITED.

Held, that the operations of the Broken Hill Proprietary Co. Ltd., in Broken Hill, in New South Wales, and in Port Pirie, in South Australia, constituted "one industry"; that under the circumstances of this case the dispute extended "beyond the limits of any one State" within Constitution, sec. 51 (xxxv.,); and that under the circumstances the relationship of employer and employee had not been determined, although the employees had ceased to work for the employer; and general prohibition refused. But prohibition granted as to two minor clauses of the award.

This was a dispute between an organization called the Barrier Branch of the Amalgamated Miners Association of Broken Hill and the Broken Hill Proprietary Company Limited, a company carrying on operations at both Broken Hill and Port Pirie. At Broken Hill the crude ore is obtained by mining, and is put through various processes of milling and concentration. The lead concentrates are sent to Port Pirie, and are there smelted and refined for metallic lead, metallic silver, and some metallic gold.

The zinc concentrates have hitherto been sold to foreign syndicates, but the company has recently taken measures for the extraction of metallic zinc at Port Pirie.

The plaint was filed on 29th December, 1908, and, as it originally stood, was as follows:—

"The Barrier Branch of the Amalgamated Miners Association of Broken Hill, being in dispute with the Broken Hill Proprietary Co. Ltd. in respect of the following matters, claims as follows:—

That the said The Broken Hill Proprietary Co. Ltd. is desirous of reducing the current rate of wages payable to its employees at its works at Broken Hill, in the State of New South Wales, and at Port Pirie, in the State of South Australia, and has posted notices to that effect at its said Broken Hill and Port Pirie works respectively, setting out that such a reduction will take effect from the fourth day of January, 1909;

That the Copy Agreement hereunto annexed, and marked "A," which has been entered into between the several mining companies as therein set out carrying on operations at Broken Hill aforesaid, and the several organizations of employees employed by the said companies respectively, on or about, or in connexion with, their said respective operations, shall govern and regulate the relations of the said The Broken Hill Proprietary Company Limited, with the said The Barrier Branch of the Amalgamated Miners Association of Broken Hill, and of the employees of the said The Broken Hill Proprietary Company Ltd., at Port Pirie, aforesaid.

The agreement referred to in the plaint was an industrial agreement made pursuant to the Act in December, 1908, between the several companies whose names were set out in the first schedule thereto, and who should execute the agreement, of the one part, and the several organizations, whose names were set out in the second schedule, and who should execute the agreement, of the other part. The agreement had been executed by the Broken Hill Proprietary Block 10 Company Ltd., The Sulphide Corporation Limited, The Broken Hill South Silver Mining Company No Liability, The Broken Hill South Blocks Limited, The Broken Hill Proprietary Block 14 Ltd., The Broken Hill Junction Mining Company No Liability, The Broken Hill Junction North Silver Mining Company No Liability, The North Broken Hill Mining Company No Liability, and The Zinc Corporation Limited of the one part, and by The Barrier Branch of the Amalgamated Miners Association of Broken Hill, The Barrier Ranges Engine-drivers and Firemen's Association, and The Amalgamated Association of Engineers, of the other part; but it had not been executed by the respondent company—The Broken Hill Proprietary Company Ltd. The agreement set out, and adopted with variations, in full, a previous industrial agreement under the New South Wales law, dated 11th December, 1906, and executed between the same parties, but including the respondent company also. The previous agreement of 1906, was as follows:—

"That the terms, rates of wages, and conditions hereinafter set out shall apply to the members of the said several Industrial Unions employed by the said Companies respectively on or about, or in connexion with, their said respective Mining Operations at or near Broken Hill aforesaid, and that the same shall regulate the relations of the parties respectively during the currency of these presents—

(1) Forty-eight hours a week shall constitute a full week's work.

(2) The following official holidays shall be recognised:—Eight Hours' Day, Christmas Day, Boxing Day, New Year's Day, Good Friday, Easter Monday.

(3) The rate of wages shall be as follows:—

(*a*) All workmen on surface or underground at present receiving 7s. 6d. and under, per shift of eight hours, shall receive 15 per cent. increase on their present rate of wages for every shift of eight hours;

(*b*) All workmen receiving more than 7s. 6d., and not exceeding 8s. 4d., per shift of eight

hours, shall receive an increase of 14 per cent. on their present rate of wages per shift;

(c) All workmen receiving over 8s. 4d. per shift of eight hours shall receive an increase of 1s. per shift of eight hours on their present rate of wages.

(4) Overtime shall be paid for at the rate of time and a quarter, but no overtime shall be claimed by, or be paid to, any workman who shall not complete 48 hours regular work in any one week, subject to deduction for any official holiday or holidays in that week. Provided always that if any workman shall not be able to complete the 48 hours regular work in any one week through no fault of his own, or if, through working double shifts, or over, he is not in a fit condition to resume work on his next ordinary shift, then, and in either such case, he shall be entitled to be paid as overtime for the work additional to his ordinary eight hours shift, which has been worked by him. Work on Sundays, and on official holidays, shall be paid for at the rate of time and a quarter.

(5) In setting contracts for breaking ore underground the representative of the Mining Company and the Contractors shall exercise their best judgment so as to provide that each contractor shall earn 12s. per shift of eight hours, in lieu of 11s. per shift of eight hours as before.

(6) A separate agreement between each Industrial Union and each Company shall, upon demand of one upon the other, be executed in terms of this agreement, and be filed as an Industrial Agreement under the said Arbitration Act.

(7) This agreement shall remain in force, and shall not be altered or amended by either party for the term of two years from the first day of January, 1907, notwithstanding that the said Arbitration Act shall before then expire, the intent being that this agreement shall have the full force and effect of the said Arbitration Act during the continuance of the said Act, and thereafter shall be continued and given effect to as an agreement between employers and workmen at Common Law."

After reciting this agreement of the 11th of December, 1906, the agreement of December, 1908, proceeds as follows:—

"For clause 3 the following shall be substituted—

The rate of wages shall be as follows:—

(*a*) The workmen on surface or underground before the date of the said agreement receiving 7s. 6d. and under per shift of eight hours shall receive 15 per cent. increase on their then rate of wages for every shift of eight hours.

(*b*) All workmen before the said date receiving more than 7s. 6d. per shift of eight hours, and not exceeding 8s. 4d., shall receive an increase of 14 per cent. on their then rate of wages per shift of eight hours.

(*c*) All workmen before the said date receiving over 8s. 4d. per shift of eight hours shall receive an increase of 1s. per shift of eight hours on their then rate of wages. The rate of wage including the increase fixed by this clause shall in future be considered the standard wage.

For clause 4 the following shall be substituted:—

Overtime shall be paid for at the rate of time and a quarter. All time worked in excess of the ordinary shift during each day of 24 hours shall be calculated as overtime.

Work on Sundays and on official holidays shall be paid for at the rate of time and a quarter.

For clause 7 the following shall be substituted:—

This agreement shall remain in force, and shall not be altered or amended by either party for the term of two years from the first day of January, 1909.

In all other respects the said recited agreement shall (*mutatis mutandis*) apply as fully and effectually to all intents and purposes as if the said recited agreement had been made pursuant to the Commonwealth Conciliation and Arbitration Act of 1904, and the parties thereto were the parties to the present agreement, and the term of the present agreement and the term of the said agreement was from the first day of January, 1909, for the period of two years thence ensuing, and as if the agreements and stipulations therein contained had been herein repeated in full with such modifications only as are hereinbefore set forth and necessary to make them applicable to this agreement.

Lastly, it is hereby mutually agreed and declared that this agreement shall be registered only under the provisions of the *Commonwealth Conciliation and Arbitration Act* 1904, and shall be construed as an agreement within the provisions of the said Commonwealth Conciliation and Arbitration Act, and under no other Act whatever."

1909.

BARRIER BRANCH OF THE AMALGAMATED MINERS' ASSOCIATION v. BROKEN HILL PROPRIETARY COMPANY LIMITED.

It will be noticed—in order to understand subsequent proceedings—that the very first clause of the 1906 agreement provided in effect for six shifts per week, and clause 4 for overtime payment at the rate of time and a quarter. The effect of the 1906 agreement as regards wages was that men who before received 7s. 6d. per shift as wages received thereafter 8s. 7½d., and the others received increases also as prescribed in the agreement. The only provision as to payment of men not on wages is in clause 4. The agreement of 1906 did not refer to the men at Port Pirie, but the Company had treated the Port Pirie employees on the same lines—raising the men at 7s. 2d. to 8s. 3d. (15 per cent.), and the others in the proportion prescribed. About October, 1908, most of the employees at Port Pirie joined the claimant organization, and the claim now was that the agreement of 1908 which the other companies had signed in December, 1908 (and which was not in its terms restricted to employees at Broken Hill) should be made binding on the Proprietary Company both as to employees at Broken Hill and as to employees at Port Pirie.

The Court sat first to take evidence at Broken Hill on 3rd February, 1909, and began to sit at Port Pirie on 15th February, and in Melbourne on 24th February. Notes of the proceedings were taken in shorthand, but were imperfectly transcribed, and there was no time to make corrections. At an early stage it occurred to the President that some difficulties might be raised as to jurisdiction; and, in order that time should not be spent fruitlessly, he asked counsel for the company, on 4th February, 1909, whether he disputed jurisdiction or not. The following are the notes as transcribed:—

His Honour.—I take it, Mr. Kelynack, that you do not dispute my jurisdiction.

Mr. Kelynack.—I am not taking any point as to that. I am not making any admissions.

His Honour.—Consent could not give jurisdiction. You know of no point about this which would prevent me from exercising my jurisdiction?

Mr. Kelynack.—We don't wish to take any point.

His Honour.—If you know of any, it would be only fair to the Court to let me know before we go much farther.

Mr. Kelynack.—It might suggest that we were throwing difficulties in the way. We wish the matter to be heard.

His Honour.—I can't ask you to answer further. I think you, as counsel of experience, will see that it is only fair to the Court. Supposing I have to decide against the company on any small point, either partially or wholly, it would be very awkward if you were to say that the whole thing is *ultra vires*—without jurisdiction.

Mr. Kelynack.—There is no intention on our part to do that.

His Honour.—First taking your chance of getting a successful verdict, and then, if you should happen to be beaten, you might say no jurisdiction.

Mr. Kelynack.—We have told the employees we won't take any exception to jurisdiction.

The Court, relying on this unconditional promise of the respondent's counsel, and upon the express promise to the same effect, contained in the letter from the company, dated the 23rd December, 1908, and set forth hereafter in the judgment of the Chief Justice, proceeded with the evidence for many days, and the promise was not, from first to last, withdrawn or qualified, or attempted to be withdrawn or qualified. Subsequently the President questioned the expediency of the contract system for miners as disclosed in article 5 of the agreement of 1906. He was asked to settle the dispute, and was asked by the claimant to sanction, as a term of settlement, this clause 5 which, according to the evidence, was a fertile cause of many disputes. But Counsel for the Company strenuously resisted the abolition of the contract system, and intimated that his promise as to jurisdiction would not apply to this point, as it was outside the plaint as filed. The jurisdiction to entertain that part of the claim which appears in the original plaint was not questioned in any way whatever until proceedings were taken before the High Court, as hereinafter mentioned.

Again, on 3rd February, as the plaint did not disclose on its face the facts which would give jurisdiction, and was defective in several respects, leave was given to Counsel for the Claimant to amend the plaint generally. The proposed amendments were not submitted till the 15th February, at Port Pirie; but on 10th February, Counsel for the Claimant intimated that he would seek to add to the claim certain new matter, not covered by the agreement of 1908, referred to in the plaint, but which were, he said, actually in dispute. Counsel for the respondent objected—

> *Mr. Kelynack.*—My friend, in bringing in a point like this at this stage, is not within the undertaking I gave, which was that I wanted to inquire into the matters then in dispute. If my friend wishes to enter into something fresh, I should take exception.

On the 15th February, Counsel for the Claimant submitted his proposed amended plaint. So far as regards the men at Port Pirie, the claim was as follows:—

> That the said Respondent Company shall pay to its employees at Port Pirie aforesaid, being members of the said

Organization, wages at the rates, and shall observe the conditions of employment paid and observed by the said Respondent Company during the years 1907 and 1908, provided that—

1. The minimum wage for all adult employees shall be 8s. 7½d. per shift of eight hours.
2. For charge wheelers, 9s. 6d. per shift of eight hours.
3. For Carmichael Bradford Desulpherizing Process workers, 9s. 6d. per shift of eight hours.
4. For furnace feeders, 10s. per shift of eight hours.
5. For carpenter's assistants, 9s. per shift of eight hours.
6. For carpenters, 11s. per shift of eight hours.

And that no such employee shall be required to work more than six such shifts per week."

It will be seen that in this claim there were six new items—items not covered by the original plaint. The addition of these six new items was refused by the President. These were the six items referred to in the discussion which ensued—a discussion which was directed to items not covered by the original plaint, and not in any way directed to the words at the end of the sixth item—" and that no such employee shall be required to work more than six such shifts per week." There was no debate as to this part of the prayer, as it was obviously covered by the very first clause in the agreement of 1906: " Forty-eight hours a week shall constitute a full week's work;" and the claim in the original plaint was that this clause and the other clauses adopted by the agreement of 1908, should govern the Respondent Company as to its employees at Port Pirie as well as those at Broken Hill. But these words at the end of the sixth item were unnecessary, in view of the first clause in the agreement of 1906, and were therefore struck out with the rest, when the President refused leave at that stage to add to the subjects of claim. When the amended plaint was submitted, a discussion took place:—

His Honour.—Mr Kelynack, have you any objection to the proposed amendment.

Mr. Kelynack.—Yes, Your Honour. As to the amendment Your Honour proposed should be made with regard to alleging those facts which were necessary to give this Court jurisdiction to entertain the claim that was originally filed, I make no objection, but as to this request to be allowed to amend the actual claim, it is that that I do object to for various reasons. We came to this Court to submit to the dispute being heard without objection. They came into Court asking that the agreement made in 1908 with the other companies should be made binding on us. It was explained what they really meant by that was that the terms of that agreement should be made binding on

us, and in the claim they ask that it should be made binding on us at Port Pirie. I asked Mr. Arthur whether the rates prevailing in 1908 should be prescribed for Broken Hill and Port Pirie respectively. I understood my friend to accede to that position. Now they come in when the case has reached its ninth day of hearing.

His Honour.—Is there any reference to the six items in the original complaint?

Mr. Kelynack.—No, Your Honour.

His Honour.—The only thing in the original complaint is that the agreement with the other companies be an agreement with the Proprietary Company.

Mr. Kelynack.—Yes. We are anxious, as I have said, to have this matter ventilated. I think the more we proceed with the case it will be seen that we have really got to meet a case of very great difficulty.

His Honour.—That is not the question. The question is—ought I to amend, by adding this claim for further benefits, which were never referred to in the original claim?

Mr. Kelynack.—This Court has power to hear any dispute which is brought before it. As far as I understand the procedure, when there is a dispute it must be brought before this Court by a plaint, and it is a dispute which is brought before the Court by a plaint that the Court has jurisdiction to hear. If the parties, while in Court, make a dispute about some other matter, it has to be instituted by a fresh plaint. They have no power when they come in, as to a dispute, say *A* having got into Court, to say—"We want to amend this, and bring in a dispute about *B*, *C*, *D*, and so on." Having got a dispute, the Act of Parliament says the Court shall hear that dispute.

His Honour.—If a man disputes as to a cow, and also as to a horse, and brings a claim as to the cow dispute, he has no right to amend as to the horse dispute.

Mr. Kelynack.—It was so decided in the New South Wales Court.

His Honour.—Mr. Arthur, you say that when you started what we might call an action for simply a demand for the same agreement with the other companies, you now say you not only want that, but something else.

As a result of the discussion the President refused to accept the plaint as amended; and the six additional items were struck out, the words which appeared at the end of the sixth item being also struck out by the President as unnecessary. Counsel for the claimant undertook to re-draft an amended plaint.

No new amended plaint was submitted until the 1st of March, in Melbourne. Meantime, on 25th February, there was a discussion:

Mr. Kelynack.—We did say, as regards the claims as originally filed, that we would not take objection to the jurisdiction

His Honour.—You went further than that. I think you will admit, too, that, except so far as regards those parts of the amended claim that are struck out, you took no objection to any amendment made in the plaint.

Mr. Kelynack.—Not to the amendment being made. I have asked for permission to file an answer, and I have not yet received an amended claim.

When the amended plaint was submitted, on the 1st March, counsel for the claimant pressed the six shifts' claim (48 hours per week) for Port Pirie, thus:—

Mr. Arthur.—As to the six shifts' question, I submit that that, if not exactly covered by the claim, is decidedly touched by the claim. The claim is that the provisions of the agreement be extended to Port Pirie. The normal conditions at Broken Hill are six shifts per week. Sunday work is overtime in Broken Hill. By implication, if the agreement in these circumstances is to be extended to Port Pirie, then the implications go along with it.

His Honour.—If you look at the agreement which you want to force upon the respondent, the first thing in the agreement is, "48 hours per week shall constitute a week's work."

Mr. Arthur.—Yes.

His Honour.—Why should I not deal with that?

Mr. Arthur.—That is exactly it. We are asking that all the provisions of the agreement be extended to Port Pirie. Here is a distinct article in the agreement that 48 hours a week shall constitute a full week's work.

His Honour.—It is hardly fair to put it that it is a claim to extend to Port Pirie the Broken Hill conditions of agreement. The proposal is to compel the respondent company to obey the provisions of the agreement with the other companies so far as they are applicable to Port Pirie.

Mr. Arthur.—Yes.

His Honour.—It would be universal in Broken Hill, and in Port Pirie so far as applicable. One thing is 48 hours per week.

Mr. Arthur.—It depends on whether the 48 hours' shift is practicable or whether the 48 hours per week is practicable in Port Pirie. It is like an application of the Statute of George IV. with regard to the existing circumstances of a colony. If Your Honour finds it is practicable, then this agreement is

applicable. It has gone before Mr. Delprat to show that it is practicable. I submit, therefore, it does come directly within the claim. It amounts to this, also—in the agreement there is no provision with regard to overtime—that time and a quarter shall be paid as overtime. I submit that would include Sunday in Port Pirie. If they want them to work seven days a week they should pay overtime on Sunday. It would have the same practical effect as to award 48 hours per week. I submit, therefore, that the matter is covered by the agreement.

His Honour.—As to the amendments as to Port Pirie, do you press these other six small matters?

Mr. Arthur.—Your Honour has power to deal with them. Your Honour has ruled on this question of the amendment that the basis of the whole thing is the existence of a dispute, these were things interested. As a matter of accident, the claim includes that.

His Honour.—What I regarded as unfair to the respondent company in that matter was this—a great number of witnesses had been examined and cross-examined who might have been asked questions with regard to these six matters, and they were not asked. At the interview of the leaders of the men with Mr. Delprat at Port Pirie, in December, 1908, a written scheme for rotation of men whereby each man should have one day of rest in seven, was put before him in support of their claim. Mr. Delprat was cross-examined with regard to the scheme on 26th February without any objection on the part of respondent's counsel. Mr. Delprat said there were some weak points in the scheme, but that he meant to give it a trial. He admitted it would not mean any more money to be paid by the company (p. 1165). The President said to Mr. Delprat, "If you have any safeguard or any suggestion to make that I can weave into any scheme, I shall try to adopt it. You need not put it now, but I would like to have it before we finish. . . . . ."

Answer.—I will think it over.

The President.—The form in which I should propose to deal with it would be to leave you the widest latitude so long as you put only 48 hours in the week. *The prayer of the claim is to make all the terms of this agreement binding. One term is 48 hours per week for a full week's work.* If I were to use that phraseology, I suppose it would leave your hands as free as possible?

Answer.—As long as there are sufficient men to do it.

Thereupon the President of the Union intimated through counsel, that he would undertake that sufficient men of the Union would present themselves for employment under the scheme for 48 hours per week; and counsel for the respondents

said, "Your Honour could suspend any provisions if it were not done. If we could not get the men the provision could be suspended." Evidence-in-chief was also given, without objection, on the subject of the scheme for six shifts, by Mr. Renton, president of the Port Pirie men, on 1st March (p. 1266). In the final speech of counsel for the respondent, he submitted that there was no jurisdiction to include the subject in the award; but his only ground stated was that "What they have asked in their claim is that the agreement made with other companies should be made applicable to the men at Port Pirie."

The reason for inserting in the award the clause as to not letting further contracts appears in the following discussion. The President had intimated his sense of the dangerous friction caused by the contract system for miners, as described in clause 5 of the agreement of 1906. Counsel for the respondent company had urged that this matter was not within the dispute. The President said that he was called upon to sanction all the clauses of the agreement of 1908, and that probably he could sanction clause 5 with a variation, providing for a minimum rate as to contract work. This idea was eventually abandoned, and the following discussion took place:—

> *His Honour.*—I might, perhaps, relieve you, Mr. Kelynack, subject to what Mr. Arthur may say. Strongly as I feel that there ought to be a minimum wage to these men—to all the men, even under contract—yet the matter is not ripe. It has not been matured by the men themselves. As it was not asked directly by the plaint, and as there is a difference of opinion—*bonâ fide* difference of opinion—about the expediency of having a minimum wage for the contract system, I think it would be my duty on this occasion to refuse to make the change. I have receded from the opinion very unwillingly, because I am quite sure that something of the sort will arise again for settlement some day. Here I find that the men file a plaint, asking simply for the same agreement to operate between the Company and the Union as operates between the other Companies and the Union. The other Companies have not been tied up with this minimum wage. I should wait, I think, until this proposal has been thoroughly thought out by the Unions and by the Company's officials. They ought to come to me, if I am on the Bench, and press that as a substantive matter, and not merely a thing to be hung on to the award. I have quite enough to do to make a proper workable award as it is. I feel that I have the jurisdiction. I still hold to the view, rightly or wrongly, that I have the jurisdiction to say I approve of a certain mode of settling the dispute on certain conditions, one condition being the payment of a minimum wage. Subject to what I may hear from

Mr. Arthur, I want to relieve you from any further argument or evidence upon that matter. If Mr. Arthur should like to urge it now, I should hear him.

Mr. Arthur.—I should prefer to do it afterwards.

His Honour.—Mr. Gamboni, one of the last witnesses, has some apprehension that the minimum will become the maximum. I am not going to force a boon upon men who do not want it.

Mr. Kelynack.—That was the only matter.

His Honour.—What I have just said was on the hypothesis—I think you will agree to it—that the contract system should not be imposed, in cases where it is now imposed, without the consent of the Union. I can see easily that I might make an award for, say, 8s., or whatever it is as a minimum—or 9s.—and then if it did not suit the Company, the Company could say, "There is nothing to hinder us getting this work on contract." Although the Company has been in the habit of doing the work on wages, it could hedge out of it by saying, "We will not have this now any more on wages, but will do it by contract." I apprehend that you will undertake, on behalf of the Company that you will not go beyond the present limits of the contract system in relation to the men and yourselves.

Mr. Kelynack.—I could not give any undertaking on the part of the Company. I have no apprehension of any such thing. Contracts vary sometimes. They let a new contract, and things of that kind.

His Honour.—I am not interfering with you in letting contracts for any of that work which last year you were doing ordinarily on contracts. I want to make sure that you do not expand the contract system under the award I should make.

Mr. Kelynack.—I cannot give the undertaking.

His Honour.—It will only mean this—that if I cannot get the undertaking I will make it an order under the award.

Mr. Kelynack.—Of course, if Your Honour does that, I cannot help myself.

His Honour.—I should prefer that the Company, as far as possible, should do this voluntarily. It will produce a better feeling and be more easily workable. I will not press you for an answer immediately, but I shall hope that before the case is concluded you can give me an assurance that the Company will adhere to what I have said.

The assurance was not given, and the President inserted in the award the following clause for the purpose of protecting the scale of wages which he fixed from evasion:—

Order that no contracts be set by the Company except as to work for which contracts have been usually set by the Company since the 11th of December, 1906.

1909.

BARRIER BRANCH OF THE AMALGAMATED MINERS' ASSOCIATION v. BROKEN HILL PROPRIETARY COMPANY LIMITED.

The plaint, as amended on 1st March, 1909, stated (par. 6 of claim) as follows:—

6. The employees of the said respondent Company at Broken Hill and Port Pirie aforesaid being members of the said Organization refused to work for the said respondent Company at the rates, wages and under the conditions of employment so reduced and altered. And the members of the said Organization in the employ of the said Company at Broken Hill aforesaid on or about the eighteenth day of December One thousand nine hundred and eight met Guillaume Daniel Delprat the General Manager of the said Company in conference with a view to arriving at a settlement of the dispute and having the then rate of wages maintained but the respondent Company refused to refrain from reducing the said wages as aforesaid or to pay the wages and observe the conditions of employment as set out in the agreement a copy whereof is hereunto annexed and marked "A" and the members of the said Organization in the employ of the said respondent Company at Port Pirie aforesaid met the said Guillaume Daniel Delprat on or about the fifteenth or sixteenth days of December One thousand nine hundred and eight in conference with a view of arriving at a settlement of the dispute and having the then rate of wages and conditions of employment maintained at Port Pirie aforesaid, and the respondent Company refused the said demand and the said Organization claims as follows:—

That this Honorable Court award:—

1. That the said Respondent Campany shall pay to its employees at and near Broken Hill aforesaid and at Port Pirie aforesaid being members of the said Organization wages at the rates and shall observe the conditions of employment contained in the agreement a copy whereof is hereunto annexed and marked "A" which said agreement has been entered into between the several Mining Companies as therein set out and the Organizations of Employees employed by the said Companies including the members of the Claimant Organization.

Dated this first day of March, 1909.

Judgment was given, and minutes of the award were announced on March 12th, and counsel were invited to speak to the minutes on March 18th. The judgment as delivered on March 12th was as follows:—

JUDGMENT:

PARTIES.

This is a dispute between, on the one side, a Union—an association registered under the Act,—of persons employed in the mining industry; and on the other side a Company, which, before the dispute, employed, at Broken Hill, in New South Wales, and at Port Pirie, in South Australia, about 4,195 men, mostly members of the association. At Broken Hill the crude ore is obtained by mining, and is put through various processes of milling and concentration. The concentrates are sent to Port Pirie and are there smelted and refined for metallic lead, metallic silver, and some metallic gold. The tailings left after taking the lead and silver concentrates contain zinc, and are reduced at Broken Hill to zinc concentrates. These zinc concentrates have hitherto been sold to certain foreign syndicates; but the Company has recently taken measures for the extraction of the metallic zinc (spelter) at its works at Port Pirie. The Company also produces materials for flux at Iron Knob and at Point Turton, in South Australia, and produces coal and makes coke at Bellambi, in New South Wales; but the employees at these latter places are not within the ambit of this dispute.

HISTORY OF DISPUTE.

A dispute arose between the Broken Hill Companies and the claimant union and other unions of employees in 1903; and by an award dated 25th September, 1903, the New South Wales Arbitration Court decided the dispute, in favour of the companies in most respects. The operation of this award ceased in 1905. The unions having become dissatisfied with the conditions of labour, a conference took place in 1906, and, as the result, an agreement was made (11th December 1906) between the twelve principal companies of Broken Hill, including the respondent company, and four unions of employees, including this union; and the agreement was registered under the New South Wales Act. This agreement was confined to members of the unions employed about Broken Hill, and it was to last till the end of the year 1908. By clause 3 the rate of wages was to be as follows:—

(*a*) All workmen on surface or underground at present receiving 7s. 6d. and under per shift of eight hours shall receive 15 per cent. increase on their present rate of wages for every shift of eight hours.

(*b*) All workmen receiving more than 7s. 6d., and not exceeding 8s. 4d. per shift of eight hours shall receive an increase of 14 per cent. on their present rate of wages per shift of eight hours.

1909.

BARRIER BRANCH OF THE AMALGAMATED MINERS' ASSOCIATION v. BROKEN HILL PROPRIETARY COMPANY LIMITED.

The President.

(*c*) All workmen receiving over 8s. 4d. per shift of eight hours shall receive an increase of 1s. per shift of eight hours on their present rate of wages.

Clause 4 contained a regulation as to overtime. Clause 5 is as follows:—

"In setting contracts for breaking ore underground the representative of the mining Company and the contractors shall exercise their best judgment so as to provide that each contractor shall earn 12s. per shift of eight hours, in lieu of 11s. per shift of eight hours as heretofore."

This clause 5 was the only clause that dealt specifically with the contract system, as distinguished from the wages system. It relates to contracts "for breaking ore," and it has no relation to any contracts for work in the operations at Port Pirie. Indeed, the whole agreement applied in its terms to employees at Broken Hill only; but the Company gave at the same time increases of wages in the same proportions to its employees at Port Pirie, and continued the increased wages until the end of 1908. Those employees at Broken Hill who had been receiving 7s. 6d. per shift as wages under the award of the Arbitration Court of New South Wales got, by virtue of the agreement, 8s. 7½d.; and at the same time employees who had been paid 7s. 2d. per shift at Port Pirie got 8s. 3d. It is to be noted, in passing, that this increase in wages all round was not made dependent on the price of metals, and was obligatory in its full sense, for a definite and fixed amount, for the two years. In no possible light can it be called a "bonus," within the meaning of that word as used in the relations of employers and employed. It was expressly an increase of the rate of wages.

The chairman of directors of the respondent Company, having announced, at a meeting of the Company, that the wages would have to be reduced at the end of 1908, the unions, on 27th August, 1908, wrote requesting a conference with the Association of Mine Managers at Broken Hill. On 25th September, 1908, the Company consented to the conference; and the managers of this Company and of the other companies met the unions in November. Certain proposals having been made by the unions, the managers went to Melbourne to consult their directors; but, on 21st November, 1908, the Company wrote to the unions to the effect that it withdrew from the conference, and that the general manager would be happy to discuss matters with the unions. The negotiations with the other mine managers still proceeded; and on 12th December, an agreement was made by the unions, with nine of the principal companies at Broken Hill for the continuance of the agreement of December, 1906,

with some modifications in favour of the employees. This new agreement was signed by the Broken Hill South Company, the Sulphide Corporation, the North Broken Hill, the Broken Hill Junction North, the De Bavay Treatment, Block 14, Zinc Corporation, Broken Hill South Blocks, Broken Hill South Extended—in short, by all the principal companies in active operation, with the exception of the Proprietary Company and Block 10. The companies who signed had about 3,656 employees; but the Proprietary Company, which is the first and greatest of the Broken Hill Companies, had about 4,195 employees at Broken Hill and Port Pirie, and Block 10 had about 632 employees at Broken Hill. However, the refusal of Block 10 to enter into the agreement is probably to be explained by the fact that three of its directors, including the chairman, are directors of the Proprietary Company.

Meanwhile, on the 3rd December, Mr. Barnett, secretary of the unions, wrote, in reply to the letter of the Proprietary Company of 21st November, to the effect that he had not yet been able to get that letter considered by the unions, but that it would be dealt with soon. From Port Pirie the local secretary wrote on the 7th December, consenting to meet Mr. Delprat, the general manager of the Company. But on 7th December Delprat wrote to Barnett that he assumed from the silence of the unions, from 21st November to 3rd December, that they did not desire to meet him, and that he now had instructions to post a notice, which he enclosed. This notice was posted at the works, both at Broken Hill and Port Pirie, on 7th December, and was as follows:—

"NOTICE.

"The combined unions not having accepted the suggestion made a fortnight ago by the Board, to discuss the question of wages, &c., I have been instructed by the Board to notify that—

"(1) Work at the mine will be stopped from Monday, 21st December, till Monday, 4th January, for the Christmas holidays.

"(2) The bonus granted for two years dating from 1st January, 1907, will cease on 1st January, 1909, and that the present rate of wages, less the bonus, will remain in force.

"G. D. DELPRAT."

1909.

BARRIER BRANCH OF THE AMALGAMATED MINERS' ASSOCIATION v. BROKEN HILL PROPRIETARY COMPANY LIMITED.

The President.

The contents of this notice are, to my mind, extraordinary, coming from a man so tactful as the general manager. It was unfair to refer to the increased wages of the past two years as a bonus, and to the wages before that time as "the present rate of wages." It was unfair to say that the unions had not accepted the suggestion of the Board to discuss the question of wages. The general manager, no doubt with the approval of the Board, had actually left the conference to which he had agreed—had actually repudiated the negotiations to which he and the other managers had been parties; and, to say the least, he had no right to complain if the representatives of the unions waited to complete their negotiations with the other managers before again conferring with him. Such a notice, under the circumstances, could not but have been irritating to the men; but as read by the public it would give the impression that the stoppage of the mining operations—which was, and is, in fact, soon unavoidable, whether work be resumed or not—was owing to a refusal on the part of the unions to negotiate.

Some further correspondence ensued. On the 12th December the Unions wrote requesting a conference, or, in default, arbitration. Mr. Delprat met the men at Port Pirie on 15th and 16th December, and the men at Broken Hill on 18th December; but on 23rd December he intimated by letter that the Board adhered to its notice of 7th December, and a notice to that effect was posted on the works. On 29th December, the plaint, as it originally stood, was filed in this Court; and the only prayer was that the agreement which had been made with the nine companies should govern the relations of the Proprietary Company and its employees. On 4th January—the date fixed for resumption of operations—the employees did not return to work, because they were not to be paid the wages of the preceding two years. According to the view of Cohen, J., as expressed in *Newcastle Wharf Labourers' Union* v. *Newcastle and Hunter River Steamship Company Limited* (1 New South Wales Arbitration Reports 1), as I understand it, it was the duty of the Company, if it objected to the wages of 1907 and 1908, to continue paying those wages until the Arbitration Court allowed the reduction of wages. Mr. Kelynack assures me that this opinion is not now regarded as good law in New South Wales. But whether this is the true meaning of the Federal Act or not, the position is that the mine and all its mills and works at Broken Hill and Port Pirie are closed and silent, are picketed by the men; that the Company has its immense plant and machinery lying idle, and is losing heavily; that employees over 4,000 in number have been thrown suddenly out of work and out of wages; that this huge enterprise, with its hundred branches

and trades, which has been feeding so many other dependent industries, has suddenly become paralysed; that shopkeepers, the shipping, the railways, and incidental industries are suffering; that the resources of many families are severely strained; and it is my duty now to try to settle the dispute in the interests of the public.

To prevent misapprehension, perhaps I ought to say that I have no right, no power, to sit in judgment on those who are alleged to have committed offences against public order in the course of picketing or otherwise. My function is to find the terms which would be suitable for the regulation of the relations of the employer and the employed in the future.

Problem in settling Dispute.

I take it that my duty is to make such an award as will set the wheels of this mammoth enterprise going again, if it is possible for me to do so on just terms, and with due regard to the human lives concerned. This Court, as I take it, represents the public between the two contending factions; and the public are suffering grievously by the contest. I have anxiously sought for some arrangement which would hold out sufficient inducement to the directors of the Company to resume full operations, and at the same time satisfy the reasonable demands of the reasonable men, who, no doubt, constitute the great bulk of the employees. I endeavoured at first to find even some temporary scheme under which the works could be carried on until my award; and I, therefore, under sections 16, 23 of the Act, invited representatives of both sides to meet me before the trial. The union accepted my invitation, but the Company declined. The Secretary of the union came all the way to Melbourne from Broken Hill to meet me, and I could not refuse to give him the audience which I had offered. The conversation was confined to the question of a temporary arrangement until the award. I had thought that an offer made by the Company, to pay the difference of wages into a special fund until the award, was very reasonable; but the Union Secretary showed to me certain strong objections from the point of view of his unions; and, as there was no one to represent the Company, I had no means of meeting the objections, or of removing the scruples of the unions.

As I have said, the prayer of the claimant union is that the Company may be bound by the agreement to which the other great Broken Hill Companies have assented, and in accordance with which the minor companies act. It is obvious that the unions could not honourably give to the Proprietary Company better terms than to the other companies which have consented to the new agreement for two years; but it might be quite a different position if the Court should see fit, notwithstanding a protest on the part of the union, to dictate terms more favorable to this Company.

1909.

BARRIER BRANCH OF THE AMALGAMATED MINERS' ASSOCIATION v. BROKEN HILL PROPRIETARY COMPANY LIMITED.

The President.

At an early stage of the hearing, I found unpromising indications of inflexibility as to demands; and, as the time of the Court would be expended uselessly if the Company would not give work unless I gave an award of which it approved, and if the men would not accept work if I refused any of their claims, I demanded an undertaking from both sides. The unions met, and undertook, through their counsel, that the men—at all events, men sufficient for any wants of the Company—would accept work at such wages and conditions as I should fix; but the Company, through its counsel, merely undertook to resume operations, in accordance with my award, so far as regards the production of zinc concentrates, and so far as regards the smelting and treatment of lead concentrates purchased from other companies. These latter contracts will expire with the present year, except, I understand, one, which expires about March next year. The Company would not assure me that they would resume full operations as before. The truth is—and this fact is at the root of the whole difficulty—that in the opinion of the Company's officers the days of this great mine are approaching an end. The General Manager says that the mine has not five years' life as an ore-producing concern, and that at the present rate of extraction it could not pay to work it after two and a half years. The lodes are becoming narrower, and the cost of extraction becomes greater in proportion. The assay values of the ore produced are becoming less. The prices of necessaries, such as coal, water, candles, have greatly increased; the prices of the metals have fallen. Lead is at a low price—somewhat over £13 per ton, silver about 2s. per ounce. Mr. Delprat, who has assisted the Court materially by his clear, concise, and masterly synopses of facts and figures, says that with such prices, and at the rates of pay prescribed by the agreement of December 1906, the Company, if in full working, producing about 550,000 tons of ore per annum, would lose about 8s. per ton of concentrates, or 1s. 4d. per ton of crude ore. This statement must be qualified by other facts admitted by Mr. Delprat; but I am prepared to deal with the case on the Company's own basis. The Company, therefore, has proposed, in effect, to reduce the wages bill by some £60,000 to £70,000 per annum—in other words, to reduce the cost by some 10s. 9d. per ton of concentrates; and this would turn the loss of 8s. per ton into a profit of 2s. 9d. per ton.

Now, the first condition in the settlement of this industrial dispute as to wages is that, at the very least, a living wage should be secured to the employees. I cannot conceive of any such industrial dispute as this being settled effectively which fails to secure to the labourer enough wherewith to renew his strength and to maintain his home from day to day. He will dispute, he must dispute, until he gets this minimum; even as a man immersed can never rest until he

gets his head above the water. Nor do I see any reason yet for modifying my view of a living wage as expressed in the Harvester case (2 C.A.R. 1), and in the Marine Cooks case (2 C.A.R. 55). In finding the living wage, I look, therefore, to find what money is necessary to satisfy "the normal needs of the average employee regarded as a human being living in a civilized community."

In the present case, it was reassuring to find that counsel for the Company, the General Manager, and even the Chairman of Directors, notwithstanding his strong prepossessions in favour of the inexorable laws of demand and supply, all assented to the doctrine that no man ought to be asked to work for less than a living wage. The result of this admission is that I may proceed to consider the prices of necessary commodities at Broken Hill and at Port Pirie, in order to ascertain what is the least sum that will enable an unskilled labourer to live in the sense to which I have referred. For Broken Hill, the Company offered 7s. 6d. per day; the union asked for 8s. 7½d. per day, the wage paid by the Company and the other companies in 1907-8, and still paid by the nine companies. For Port Pirie the Company offered 7s. 2d. per day; the Union asked for 8s. 3d. per day, the wage of 1907-8.

Living at Broken Hill.

In the first place, water, that prime essential, is dearer in Broken Hill than in other cities. The only water supply comes from a private company's reservoir, and the cost, which was last year 5s., is now 4s. 2d. per thousand gallons. In Melbourne the charge by meter is 1s. per thousand. In Broken Hill, the water mains are not usually connected with the houses occupied by the workers. In most cases the occupant buys the water which is brought in a cart to his door, and the average worker takes about 200 gallons in a fortnight, for which he pays 2s. 6d. Buying in these quantities, he pays 12s. 6d. for the same quantity of water as he could get in Melbourne for 1s. As for bread, the loaf (hand-made) which costs 3d. in Adelaide costs 4d. in Broken Hill. Rent is distinctly dearer in Broken Hill than in Adelaide; although the infinite variety of conditions affecting houses renders it impossible to express the difference in precise figures. The best evidence seems to be that of Mr. Dickson, and of Mr. Bowering, house and land agents. The houses occupied by the workers are generally of galvanized iron, lined with hessian and wood—without garden or fence—without bath—hot as ovens in summer, cold in the extreme in winter. The workers' homes, of three to five rooms, in Adelaide, are much superior; and yet the rents are generally cheaper for houses of the same number of rooms, than the houses in Broken Hill. Mr. Dickson has taken 78 specific

1909.

BARRIER BRANCH OF THE AMALGAMATED MINERS' ASSOCIATION v. BROKEN HILL PROPRIETARY COMPANY LIMITED.

The President.

workers' houses which are on his books since 1903; and he says that they fetched £21 18s. as rent in 1903, and £30 6s. 6d. in 1908. But he admits that rents have somewhat fallen since 1907, the year of greatest activity.

The evidence as to the cost of necessary commodities may be classed under four heads:—

(1) the statements of dealers;
(2) the average purchases of certain workers' families in the Co-operative Store;
(3) the practice of great institutions as to allowances to their officers at the Barrier; and
(4) domestic budgets stated by workmen and their wives.

Now the statements of the dealers show some marked discrepancies; but I am satisfied that in such cases the dealers do not, in stating the prices, refer to the same precise quality of article; and very often there are some special circumstances undisclosed. The evidence given by dealers on behalf of the Company is not so definite or satisfactory as that given on the other side. For instance, to tell me that the price of an article ranges from 10d. to 1s. 6d. is useless for purposes of comparison. Yet even the Company's witnesses show by their lists that in most items prices are substantially greater in Broken Hill than in Adelaide, and that they are higher now than in 1903, the date of the award made by the New South Wales Arbitration Court. Mr. Delprat, indeed, frankly admits that the purchasing power of 7s. 6d. is not so great now as in 1903, and that 7s. 6d. is not enough for living (pp. 465, 474, 521). Counsel for the Company makes a similar admission (page 549). I think that I may safely take the moderate and careful estimate made by the manager of Wilkinson and Company Limited, of Adelaide and Broken Mill, wholesale dealers in groceries and produce, to the effect that the wholesale prices of the articles ordinarily purchased by a typical labourer are greater by 10.67 per cent. in Broken Hill than in Adelaide; and, of course, the retail prices must differ still more. The excess over Adelaide prices is easily explained. General goods come all the way from Adelaide by railway, and the latter part of the journey is over a private railway which charges much more per mile than the Government Railway—it is said three or four times as much. The dealers have to pay for freight and cases and packing, and there is no saving in returning the cases. It is by no means clear, however, that the working clothes of a miner are much, if at all, dearer in Broken Hill than in Adelaide.

Meat, so far as regards the parts usually purchased by workmen, is distinctly dearer than in Adelaide. Owing to the slightness of the rainfall in the Barrier District, there is very little pasturage for

many miles around the city, but the manager of the butchering business of Messrs. Kidman Brothers attributes the comparative dearness of meat to (1) the better market in Adelaide for the by-products, and (2) to the greater general expenses necessary for the dealer in Broken Hill. He says that beef steak, which costs 5d. in Adelaide, costs 8d. in Broken Hill; corn brisket beef 5d., as against 6d.; side of mutton 3d., as against 5d.; chops 5d., as against 7d. Mr. Bowering, land and estate agent, who divides his time between Adelaide and Broken Hill, says that meat is more than 50 per cent. higher in Broken Hill than in Adelaide; but I prefer to adopt the more detailed statement of Messrs. Kidman Brothers as that of men having more intimate knowledge of the business.

The milk used by the working families is nearly always some tinned milk sold by the grocers. As Dr. MacGillivray says, "Cows' milk is almost an impossibility at Broken Hill;" and the result is an abnormally great infant mortality. Wood is purchased by the poor in small quantities. Usually a worker buys a quarter ton of long wood, which he cuts up, and it lasts him a fortnight or three weeks. In Broken Hill the price in 1904 of this quantity was 6s. 3d.; now it is 7s. 3d. The price to-day in Adelaide is 6s. 3d.—16½ per cent. less. But probably the greatest difference in prices between Broken Hill and the sea-board is to be found in fruit and vegetables, so necessary for such a climate. I am told that cabbages, which fetch 3s. 6d. per dozen in Adelaide, fetch 6s. in Broken Hill; and there are corresponding differences in price in turnips, carrots, peas, cooking apples. As for cheese, bacon, potatoes, onions, butter, and eggs, the manager of the B.H. &c. Produce Company says that there is an average increase of 41.25 per cent. since 1904; but, perhaps, this estimate has to be slightly discounted. Yet Mr. Sweetapple, of Sully and Company, who was a witness for the Company, admits that bacon, which cost 11d. in 1903, now costs 1s. 1d., that butter has increased from 1s. 3d. to 1s. 5½d., cheese from 10d. to 1s., matches from 2s. 9d. to 4s. 3d., potatoes from 2s. 6d. for 28 lbs., to 3s. 3d., kerosene from 5s. 9d. to 6s. 3d., tobacco from 5s. to 5s. 4d., and from 4s. 6d. to 5s. 2d.

Taking now the returns of the Co-operative Store, I find that seven typical working households purchased there, from July, 1908, to January, 1909, to the average weekly amount of £1 0s. 1d. in groceries (including kerosene, matches, &c.), and to the average weekly amount of 8s. 11d. in drapery (including boots, &c.); but there is plain internal evidence that some of these families did not make all their purchases at this store. The manager has also given detailed lists of groceries, showing Broken Hill prices 24¼ per cent. higher than prices in Adelaide; and showing that prices of a week's purchases in 1908 are 10 per cent. dearer than the same goods in 1904.

1909.

BARRIER BRANCH OF THE AMALGAMATED MINERS' ASSOCIATION v. BROKEN HILL PROPRIETARY COMPANY LIMITED.

The President.

It is also proved that the Australian Mutual Provident Society makes extra allowances according to a scale to District Secretaries in out-of-the-way places; that the maximum allowance is given for residence in Broken Hill (amongst other places), and that Broken Hill is regarded by the Society management as the worst of Australian centres to live in. Again, under the New South Wales Public Service Regulations, a special climatic allowance is made to all officers stationed in the Western Districts, including Broken Hill. Under the Commonwealth Public Service Regulations Broken Hill is placed, with Bourke and Walgett, among the districts for which special allowances are made to meet the conditions of climate and the cost of living.

But I should attach chief importance to domestic budgets if arranged on a common system, and if sufficiently numerous to give a safe average. Unfortunately, however, the budgets submitted are not arranged on any common system. Some kinds of expenditure have been obviously forgotten in making out the lists. Some omit the necessary payment of 6d. per week to the Miners' Accident Relief Fund and the Hospital Fund. Some omit school requisites for children. Some omit the pan rate. Some omit water. Some omit clothes altogether, and some omit husband's clothes. Some omit rent. Some are buying their houses through a building society. A very few own their homes. But taking the eleven lists which are the least unsatisfactory, I find that the average total expenditure (mentioned) of a household is £3 os. 2d. per week; and that the average expenditure that goes to the grocer, the butcher, the baker, the greengrocer, the draper, the wood-dealer, is £2 4s. 5d. Now the proposal of the Company was to pay 7s. 6d. per day, or £2 5s. per week. This would leave 7d. per week wherewith to pay rent, lodge, union, water, pan rate, city rate (if owner), school requisites, child insurance, medicines, &c., newspapers, accident and hospital fund, stationery and stamps, tobacco—to say nothing of any provision for old age or for life insurance. One woman, the wife of a miner who works on contract and on wages, gave me her list in full detail, and I am tempted to reproduce it.

> "Groceries:—6 lb. sugar, ½ lb. tea, ½ lb. tin coffee, 3 tins milk, 2 lbs. butter, onions, ¼ cwt. potatoes, 3 lbs. salt, ¼ tin pepper, 3 tins jam, ¼ tin mustard, 1 doz. eggs, 2 lbs. raisins, 2 lbs. currants, 1 bar Velvet soap, 1 box starch, ¼ lb. blue, washing soda, 1 lb. candles, 1 doz. matches, blacking, 1 bottle vinegar, 3 lbs. rice, 2 self-raising flour" (making for groceries, £1 2s. 3½d.). Miscellaneous:—Butcher, 10s.; baker, 7s.; fruit, 1s.; vegetables, 2s.; water, 2s.; wood, 3s.; lodge, 1s. 9d.; A.M.A. (union), 9d.; *Daily Truth*, 6d.; *Clarion*, 2d.;

school material, 1s.; drapery, 6s.; payment off house, 12s. 6d.; Miners' Accident Relief Fund, 4½d.; Hospital, 1½d.; rates (at £1 9s. 5d. per year), 6d.; insurance on house (£100 at £1 2s. 9d. per year), 5d.; (making for miscellaneous, £2 9s. 1d.)." The sum total is £3 11s. 4½d.

This instance is better than any taken from unskilled labourers, for the man is a miner, able to earn an average of 12s. 6d. when on contract, and an average of 10s. when on wages; and yet there is no indication of any freedom in expenditure, or of any money for recreation, or of any balance "to come and go on." One of the sons helped the house by his earnings; but both father and son are now out of work. The drapery mentioned does not include any clothes for the husband. The wife makes up clothes for the husband and children.

As to these lists of expenditure, Mr. Kelynack offered some fair criticism. He pointed out that most of the lists came from men who could earn 11s., or more, per day, and urged that the expenditure of such men was not a fair criterion of the amount necessary for the living of a labourer. Mr. Arthur made answer that, even if a man can earn 12s. per day, the work is so far intermittent that he does not really earn more than (approximately) a labourer's wage. We have, extracted from the books of the Company, the earnings of a large number of the employees during 1907-8; and it is plain that the work of all is more or less intermittent. It looks well to see that the average earnings per shift of Bernard Anderson is 12s. 10¼d.; but his total earnings from January to October, 1908 (he left 26th October), are only £61 15s. 5d. W. M. Brown appears as earning 10s. 8d. per shift in 1908; but his total earnings are only £72 5s. 1d. Charles E. Coutts worked for the Company in all the months of 1908, to November (inclusive). His earnings per shift average 12s. 3¼d., but his average per week, for the year, is £2 4s. 10d. So with all the others. Moreover, on looking over the details of expenditure, it has surprised me to find how little the highly-paid men differ from the labourer, as regards the essentials of food and clothing and wood. The list given by Mrs. Mann, wife of a labourer, shows actually a greater expenditure on these essentials (£2 6s. 3d.) than the average of the eleven lists (£2 4s. 5d.). At all events, I do not think that I should reject the lists, although it is to be regretted that more pains were not taken in their selection.

Counsel for the Company has also strongly pressed upon me the regularity of the work of the employees, both here and at Port Pirie, as a ground for lowering the scale of payment. It is true that the work is, generally speaking, more regular than in the case

1909.

BARRIER BRANCH OF THE AMALGAMATED MINERS' ASSOCIATION v. BROKEN HILL PROPRIETARY COMPANY LIMITED.

The President.

of casual labourers; but, so far as the evidence goes, the work is, notwithstanding, largely intermittent. The cases just given of certain contract miners, and of many others, demonstrate the fact. Not only do men lose shifts by "pulling out," through dissatisfaction with their contract rates, but they lose shifts from a variety of other causes—stoppages for conclusion of job, for repairs, sickness, accidents, loss of night shifts from inability to sleep in the hot days of summer, &c. Moreover, Mr. Boyd, the underground manager, states that he has about 1,350 men underground, but that probably twice that number go through the books during the year; and that, while 42 per cent. remain with him all the year round, 58 per cent. "float."

I found one valuable sidelight accidentally. One labourer, with 8s 7½d. per day, expends—or, rather, his wife expends—£2 18s. 9d. per week—7s. more than her receipts. As a family cannot go on for long paying £2 18s. 9d. per week out of £2 11s. 9d. per week, I asked for an explanation; and I ascertained the pathetic fact that, in many cases, including the case just mentioned, the wife adds to the little income by laundry work or nursing, or by taking lodgers. In this case—as in many cases—the family is in debt. The fact that the mother of the household is so often found leaving her home, even her young children, for a day's work, is significant. So, too, the fact that when milk is taken in, there is rarely more than one pint taken in the day. No one can say that these people are lazy, or unthrifty, or self-indulgent. Nearly all the men whose affairs have been examined are teetotallers and do not gamble, and hand over their whole fortnightly earnings to their wives. I estimate that half the men, at least, abstain even from tobacco. The price of the ordinary cheap restaurant meal ought to be some slight aid in testing the price of food. Such a meal costs, in the eastern cities, 6d., or even 4d. In Kalgoorlie it costs 1s. In Broken Hill the cost is 9d.

In the Harvester case I found 7s. per day to be the minimum living wage for Melbourne and neighbourhood. In the Brushmakers' case Mr. Justice Gordon also fixed 7s. for Adelaide. In the Harvester case I found the average weekly expenditure for bare necessaries to be £1 12s. 5d.; but this included rent, not clothes. In this case, I have found the average weekly expenditure, for bare necessaries, excluding rent, but including clothes, to be £2 4s. 5d.; and if we add rent it would be about £2 12s. 5d. One miner, who has worked in Ballarat, says that 7s. 6d. there is equal in purchasing value to 10s. in Broken Hill. Another, who has worked in Bendigo, says that he has to pay more than twice as much in Broken Hill for the same things that he could purchase in Bendigo for £1 6s. 3d. Another, having a

wife and one child, allowed his wife £1 10s. per week for housekeeping in Melbourne; but he has to allow her £2 15s. in Broken Hill. The cost of living at the Barrier is undoubtedly much greater than in Melbourne or in Adelaide, and I am driven—as any impartial person who has heard the evidence must be driven—to the unhesitating conclusion, that the minimum wage proposed by the Company is not a sufficient living wage in Broken Hill; that the 7s. 6d., which is the standard rate for miners in Victoria, is not sufficient for Broken Hill; and that no less than the full sum of 8s. 7½d.—the minimum fixed for unskilled labourers by the agreement of December, 1906, and now claimed by the men—is required for the healthy subsistence of an average family.

Disadvantages of Broken Hill.

There is no doubt that many who have not seen the Barrier, and who are familiar only with the wages prevailing in Adelaide, Melbourne, or Sydney, must think 7s. 6d. per day to be an ample wage for an unskilled labourer, and must regard 8s. 7½d., the minimum demanded by the men, as remarkably liberal; but they cannot form a safe opinion without learning the cost of living at Broken Hill.

Now, in computing the living wage, I have arrived at a standard of 8s. 7½d per day, without taking into account the climatic and other discomforts and dangers of the Barrier district. The Directors, it seems, make their annual visit to the mine about July, when the climate is at its best; but for a great part of the year the workers, in their iron sheds, have to face an unbroken desert on all sides, and dun, dreary, desolate, grassless and treeless plains, with all-pervading dust and grime, with water scarce and dear and impure, amid unhealthy conditions. The Sickness Fund of the Manchester Unity, I.O.O.F., bears significant testimony as to health. According to the most recent tables of the Society available, the Barrier is the worst district in New South Wales as to health, and Newcastle district comes next. Taking 100 as the standard (the average for New South Wales), Newcastle is found with 116 cases of sickness, and the Barrier with 142. In other words, Broken Hill has nearly 50 per cent. more cases of sickness than New South Wales as a whole. The Superintendent of the Industrial Department of the Australian Mutual Provident Society says that the lapsing of industrial policies is "infinitely greater" in Broken Hill than in any other district that he knows of; and he attributes the frequent lapses to sickness of the bread-winners (mostly mine employees), to broken work, and to low wages. It is further significant that, according to the regulations of this Society, a silver-lead miner or smelter proposing insurance is "loaded" as of course with five years, even if he is actually in full health. Lead poisoning is by no means

1909.
BARRIER BRANCH OF THE AMALGAMATED MINERS' ASSOCIATION
v.
BROKEN HILL PROPRIETARY COMPANY LIMITED.
The President.

unknown in Broken Hill, even since the removal of the smelters to Port Pirie, in 1898. There were as many as 39 cases reported to the Department in 1902, and 30 in 1903; but the cases reported have dwindled in number, owing chiefly to the devices adopted by the Company to keep down the dust in the mine.

As for accidents, the records of the Mining Department show, for 1907, that with a total of 8,820 men employed (in all the mines), there were 17 fatal accidents, 30 serious accidents, 1,174 minor accidents; and in the Proprietary Mine, out of 2,815 employees, in 1908, there were nine fatalities and 25 serious accidents. This means 12.08 fatalities and serious accidents for every 1,000 men. The temperatures are said to vary, in the dry from 67.5 degrees, to 83 degrees, in the wet from 61.5 degrees to 81.5 degrees. No doubt, a temperature of 80 degrees is more distressing at a stope or in a rise, where the air does not freely move in a through current, than on the surface; but I am convinced that the Company's General Manager is fully sensible of the advantage to the Company of giving to the men the best possible conditions for working, and is alert to adopt any reasonable expedient to that end. The work is hard work, rough-and-tumble work, even dangerous work, at the best; and the men are kept well up to the collar as regards exertion. There may be cases in which improvements are not made so rapidly as the men would desire; but, on the whole, the provision made for the comfort of the men—if "comfort" is an appropriate word at all—will bear favorable comparison with the provision made in any mine, and reflects credit on the management of this splendidly equipped and organized enterprise.

My estimate of 8s. 7½d. as the minimum wage is made apart from these considerations of danger and discomfort to the men; but these same considerations would make me very chary of reducing, without very strong grounds indeed, any of the remuneration which I find to be fair to the employees.

LIVING AT PORT PIRIE.

At Port Pirie the Company smelts and refines its concentrates, as well as the concentrates which it buys from other Companies, and produces the metallic lead and other metals.

This port is on an arm of the sea, a few miles from Spencer Gulf. Ships bring to it, for the mines and works, coal and coke from New South Wales, and timber in huge quantities from Oregon. The ships take away to Europe and elsewhere the lead and silver and the zinc concentrates. The town has an advantage over Broken Hill in an excellent water supply. Water is laid on to all the houses. The occupants pay a certain rate, and at the rate of 1s. per 1,000

gallons for any excess. Although the rainfall is not good, there are many farms in the vicinity, which contribute to the supplies of meat, grain, and vegetables for the town. No less than 1,132 members of the claimant organization are employed in the Company's great smelting works. The work of the men is arduous and intense, and in many cases most trying, because of the heat and of the dust; and there are too many sad evidences of health ruined or injured by "leading" in the Company's operations. I am bound to say, however, that the Company's officials have exerted themselves strenuously, and to a large extent successfully, in combating the causes of leading. They have put hoods over the furnaces, and have provided shower baths. But there are still instances of lead poisoning, sometimes in the acute form of the lead colic, or of wrist-drop, or of paralysis; sometimes in the form of general ill-health and degeneration. It is not at all matter for surprise that the Australian Mutual Provident Society "loads" a man engaged on the smelters with five years as of course, whatever his actual state of health. So far as I can gather, the prices of commodities at Port Pirie—probably owing to the competition of water carriage and the comparative nearness of settled districts—are not so great as at Broken Hill; but they are distinctly greater than in Adelaide. Port Pirie has felt the rise in prices which has been general since 1904; and Messrs. Symonds Brothers, storekeepers, state, as to groceries, that there has been a rise of 10 to 12½ per cent. since that year, and that the prices are greater than in Adelaide to the extent of 5 to 10 per cent. Another dealer has calculated the cost of the groceries sold to a family in 1906, and again in 1908. He finds that necessaries which cost 15s. 11½d. in 1906, cost 17s. 11½d. to-day. Mr. Dodds, a greengrocer, says that prices are increased since 1904 for potatoes, cabbages, peas, rhubarb, onions, plums, apples, beans (not for pumpkins or turnips). On behalf of the Company, Messrs. Good and Company dispute some of the alleged advances in price; but even their witness shows more advances than decreases. They do not give me much guidance, however, when they say that eggs were "10d. to 1s. 5d." in 1903, and "7d. to 1s. 4d." in 1908. Another witness for the Company shows also more increases than decreases in prices of food; and it is indisputable that the increase is most common in the commodities most used by the labouring classes. Another witness for the Company, Mr. Clark, admits an increase in bacon, candles, matches, preserved milk, tea, tobacco.

One witness for the men, who has worked at Sheffield in England, says definitely that the purchasing power of wages at Port Pirie is at least 45 per cent. less than in England; but this witness lived at his father's house in Sheffield. The estimate of the French cook,

1909.
BARRIER BRANCH OF THE AMALGAMATED MINERS' ASSOCIATION
v.
BROKEN HILL PROPRIETARY COMPANY LIMITED.
The President.

who gave evidence in the Marine Cooks' case, was that 7s. in England went as far as 10s. in Australia; but he spoke of the greater cities of Australia, and prices are considerably greater in Port Pirie.

I have taken the average of the budgets of domestic expenses given by five families of employees. Some of these own their own houses, and have only to pay rates. In other cases, the cost of clothes has been altogether omitted, as being irregular expenditure. Repairs are usually done by the mother; or, as to boots, by the father. Notwithstanding these omissions, the average weekly total expenditure is £3 2s. 6½d. The average weekly expenditure on groceries, meat, clothes, milk, and wood alone is £2 10s. 4d. per week. Now, since the agreement of 11th December, 1906, the ordinary unskilled wage is 8s. 3d., but most of the men at the Port Pirie smelters have to work seven days a week. This would mean £2 17s. 9d. per week. The men would much prefer to work six shifts for six days' pay. The difficulty in the way of six shifts is that the furnaces have to be kept up; but by employing more men, and giving a shift off to each man in rotation, it is thought that, without any further expense to the Company, the men could get the priceless privilege of one day's rest in seven. At all events, the General Manager says that he will make the attempt. His main fear was that there would not be sufficient labour forthcoming; but the claimant union, through counsel, has undertaken that it will furnish the Company with all the workers that are wanted.

Following the same line of reasoning, substantially, as I have adopted in the case of Broken Hill, I fix 8s. 3d. as the minimum wage for the unskilled labourer in Port Pirie.

Other Mining Fields.

Mr. Kelynack has pressed upon me the example of the scale of wages prescribed recently by Judge Heydon for the copper mines at Cobar; and also the example of the wages paid, without any Award or control, at Wallaroo and Moonta. I know now something of the conditions of Broken Hill and Port Pirie; and it is safer to fix a scale by reference to these known conditions, than to accept a scale which has been applied in other localities of whose conditions I am almost wholly ignorant. For obvious reasons, it is not desirable to comment in detail on the wages and conditions of life in these other localities, with my imperfect knowledge. It is sufficient to say that I am not satisfied that the wages awarded in Cobar are fair wages for Broken Hill, or that the wages paid in Wallaroo and Moonta are fair wages for Port Pirie.

Wage for Skill, Etc.

The main struggle of the case has been with regard to the living wage, and with regard to the financial position of the Company.

No evidence has been adduced to show that any of the men who have been receiving more than the unskilled labourer's wage are overpaid by comparison with the unskilled labourers. There is no evidence, for instance, that if 8s. 7½d. is the proper wage for a trucker, the wage of 9s. 1d. is too great for a tool man, or the wage of 10s. too great for a miner (on wages). As I have said in previous cases, the relative values of the different classes of workers, the extra wage that ought to be paid to each for extra skill, may generally be safely left to the practice of the employer and the employed. In this case, during the time that the unskilled labourer got 7s. 6d., the miner (on wages) got 9s., and when the unskilled labourer got 8s. 7½d. the miner (on wages) got 10s. I think that, having fixed the wage for the unskilled labourer at 8s. 7½d., I may reasonably leave the minimum wage of the miner (on wages) at 10s.; and similarly with the other skilled employees. It is true that at Port Pirie certain "charge wheelers" and men engaged on the Carmichael-Bradford process, urged that they were not sufficiently paid—urged that they should not be treated as ordinary unskilled labourers. The demands of these men were put before the General Manager at the conference of 15th and 16th December, and there certainly was a dispute with regard thereto. But this was not the dispute put before the Court by the plaint—it was not the dispute of which the Court has cognisance under section 19. Counsel for the claimant sought to amend the plaint by adding this (and other) disputes; but he did not submit his amendments till a late stage of the trial; and even if the Court had jurisdiction to add this dispute—which is doubtful—it would not have been fair to the Company to do so at the stage which we had reached.

THE FINANCIAL POSITION OF THE COMPANY.

The proper course in any inquiry such as this would seem to be to ascertain, first, the wage to be paid to the unskilled labourer, then the proper wages to be paid to those who have extra skill, on the assumption that the employers can pay whatever wages are proper; and then to hear any evidence, and consider any arguments, adduced to show that the employer ought not to be asked to pay such wages. In the Harvester case, and in the Marine Cooks' case, it was admitted that the employers could pay such wages as the Court should find to be fair and reasonable, so that I had not to face the difficulty which I now have to face. First of all, is an employer who is poor to be ordered to pay as high wages as an employer who is rich? Now, without laying down a rule absolute and unconditional under all circumstances, I strongly hold the view that, unless the circumstances are very exceptional, the needy employer should, under an award, pay at the same rate as his richer rival. It would

not otherwise be possible to prevent the sweating of employees, the growth of parasitic enterprises, the spread of industrial unrest—unrest which it is the function of this Court to allay. If a man cannot maintain his enterprise without cutting down the wages which are proper to be paid to his employees—at all events, the wages which are essential for their living—it would be better that he should abandon the enterprise. This is the view independently adopted by Mr. Justice Gordon in Adelaide, and by Mr. Justice Burnside in Western Australia. The former said, in the Brush-makers' case, "If any particular industry cannot keep going and pay its employees at least 7s. a day of eight hours, it must shut up." In the Collie Miners' case, Mr. Justice Burnside refused an application of the employers to lower the minimum, and said, "If the industry cannot pay that price, it had better stop, and let some other industry absorb the workers." Both the other members of the Court concurred in the latter decision. (6 W.A. Arb. Reports, 84.)

It is not the function of this Court to foster slackness in any industry; and if A, by his alertness and enterprise, and by his use of the best and most recent appliances, can make his undertaking pay on the basis of giving proper wages to his workmen, it would be most unjust to allow B, his lazy and shiftless rival, to pay his workmen lower wages. In short, the remuneration of the employee cannot be allowed to depend on the profits actually made by his individual employer. This proposition does not mean that the possible profits, or returns, of the industry as a whole are never to be taken into account in settling the wages. For instance, the fact that the industry is novel, and that those who undertake it have at first to move very warily and economically, might be favorably considered. So long as every employee gets a living wage, I can well understand that workmen of skill might consent to work in such a case for less than their proper wages, not only to get present employment, but in order to assist an enterprise which will afford them and their comrades more opportunities for employment hereafter. For this purpose, it is advisable to make the demarcation as clear and as definite as possible between that part of wages which is for mere living, and that part of wages which is due to skill, or to monopoly, or to other considerations. Unless great multitudes of people are to be irretrievably injured in themselves and in their families, unless society is to be perpetually in industrial unrest, it is necessary to keep this living wage as a thing sacrosanct, beyond the reach of bargaining. But when the skilled worker has once been secured a living wage, he has attained nearly to a fair contractual level with the employer, and, with caution, bargaining may be allowed to operate.

Now, in this case, if I accept Mr. Delprat's figures—and there is no evidence that they are wrong—this Company cannot pay the wages of the last two years, because the mine is very near its end. The lodes are dwindling, the expenses (per ton of concentrates) are becoming greater, the ore itself is of less assay value. In addition, at present the price of metals is rather low. I have fixed the wages proper to be paid to the different classes of employees. I find that these wages which I have fixed as proper are being actually paid by nine of the principal mines in Broken Hill—in fact, by all the mines in active operation with the exception of the Proprietary Company, and of Block 10 (which is under the same influence). It is not difficult to see the danger to industrial peace involved, when workmen performing the same work, with the same skill, in the same city, are receiving different remuneration. Such was the view of Cohen, J., in the 1903 Arbitration between the Broken Hill Mining Companies and the Claimant Union, as reported in 2 N.S.W. Industrial Arb. Reports, p. 531:—"The policy of the Arbitration Act is equality and uniformity; and it would be a clear violation of that policy if this Court were to impose on that Company (the Proprietary) exceptional industrial conditions, and thus place it at a disadvantage with its competitors because, perhaps, through greater enterprise, greater ability in its scientific and general management . . . . or other incidental causes, it is enabled to work to better advantage."

So that, when the Proprietary Company asks me to fix by my award wages lower than are proper for the industry as a whole, and adduces as its reason the fact that its mine is now poor, and is becoming poorer, I cannot discern either justice or expediency in the request. Ordinarily, if a mine has not payable ore, the owners cease to work it. Perhaps at some future time some process or expedient may be found whereby such ore as is left may be extracted with profit. What would the more highly paid workmen of Broken Hill and Port Pirie get as an equivalent if they were to consent to work for the Proprietary Company at wages below the proper wages? Counsel for the Company has taken great care to impress on me the terrible nature of the catastrophe if this Company stopped working. I recognise the catastrophe, and I recognise to the full my responsibility. This Company seems to dominate great districts in two States, and it gives employment, directly and indirectly, to many thousands of people throughout Australia. But it has not—according to Mr. Delprat—more than two and a half years of full work before it. If the catastrophe did not happen to-day, it is bound to happen very soon. It is quite possible that when I give my award some will attribute the stoppage of the mine to the award. "The directors could not go on," it may be said; "the Arbitration Court

1909

BARRIER BRANCH OF THE AMALGAMATED MINERS' ASSOCIATION v. BROKEN HILL PROPRIETARY COMPANY LIMITED.

The President.

fixed the scale of wages too high." But if such a statement be made, it will simply be untrue. What stops the mining is the deficiency of payable ore. But for this deficiency, the Proprietary Company would be now carrying on its mining and milling operations, paying the same wages as the other nine companies. Of course, it is a catastrophe that this mine should be closed down. But as the metals do not replace themselves on extraction, such a catastrophe is bound to take place in every mine at some time, and, in this case, must occur after a short interval. Still, it is a disaster; and from first to last it has been my endeavour to find some means whereby, without trenching upon the sacred living wage, the men and the Company could work harmoniously together. Counsel for the Company having suggested that there should be a sliding scale of wages, varying with the prices of the metals, I requested Mr. Delprat, at an early stage, to submit some scheme under which he could undertake to resume operations, without interfering with the unskilled labourers' wage of last year—8s. 7½d—at Broken Hill. But the scheme submitted involved the cutting down of this wage. Again, in Melbourne, I expressed myself as anxious to consider some other scheme which should leave untouched the 8s. 7½d. at Broken Hill and the 8s. 3d. at Port Pirie; but, again, the sliding scale submitted on behalf of the Company proposed to cut down these figures. I asked what the claimant union thought of the proposal, and I was informed that the men would have none of it—that they would rather be out of employment. It was impossible for me to press the Union to consent—still more clearly impossible for me to force the proposal on the men by incorporating it in my award. For to surrender any part of the living wage is to surrender the vital point of unionist effort on behalf of employees. I face the possibility of the mine remaining closed, with all its grave consequences; but the fate of Australia is not dependent on the fate of any one mine, or of any one Company; and if it is a calamity that this historic mine should close down, it would be a still greater calamity that men should be underfed or degraded.

For the sake of brevity, I have spoken of the mining operations as having to be carried on at a loss to the Company. But it has to be borne in mind that there are some operations that still can be carried on at a profit—the smelting and refining of concentrates purchased from other Companies, the production of zinc concentrates from tailings, and the sale (or smelting) thereof, and the sintering of slimes. The profit from these operations has, it seems, converted what would otherwise have been a loss into a net profit of £22,776 for the half-year ending 31st May, 1908, and into a net profit estimated at £30,000 for the half-year ending 30th November, 1908. This is a vanishing mine; but the Company is far from being

in any financial difficulty. With a capital fully paid up, or treated as paid up, of £384,000 (of which £287,117 1s. 8d., I am told, represents the price of the mine to the Company), the Company has, in the course of about 23 years, distributed eleven and a half million pounds in dividends and bonuses; and on 31st May, 1908, the date of the last balance-sheet, the Company had, not only £225,000 to the credit of the Reserve Fund (not specifically appropriated), and £35,000 to the credit of Insurance Fund; but it had also £522,703 undistributed profits, used, indeed, in the general business of the Company, but available legitimately at any time for dividends or for expenses. In the half-year ending 30th November, 1907, the actual profits earned were only £137,642; and yet no less than four dividends of 1s. 6d., amounting in all to £288,000, equivalent to three-fourths of the capital of the Company, were distributed in that one half-year. In the half-year ending 31st May, 1908, the actual profits earned were only £22,776, and yet one dividend of 1s. 6d., amounting to £72,000, was distributed in that half-year. The mine stands in the balance-sheet at its cost price of £287,117 1s. 8d., and (as I am told—for I have not been furnished with any but the last balance-sheet) this sum stands unchanged during all the years as the value of the mine as an asset, notwithstanding the huge depletion of the ores. It has not been the practice of the directors to make any provision in times of great profits for returning to the ultimate shareholders the full capital paid up. The Articles allow the directors to make such a provision, but do not render it obligatory. The policy has been to distribute, with certain deductions, all the available profits among the shareholders, and to treat the mine as still remaining worth the original purchase money.

Now, the effect of the Company's proposal to revert to the 1903 scale of wages would be that there would be about £33,000 less expenditure for wages for the half-year; and, with the other profits, this might mean a dividend to the shareholders. But it is apparent now that this £33,000 would have to come out of the workmen's necessaries of life; that the dividend would be distributed at the cost of the workmen's breakfast tables—by reducing the food necessary for the worker and for his wife and children. On the other hand, it is not fair to abuse the directors, in their difficult position of grave responsibility to the shareholders, for not proceeding with mining and milling on the strength of the half million of undistributed profits. What the directors want is to get enough profits from each half-year's operations to pay dividends, and not to lean, as they have been leaning, on past profits. I certainly do not feel justified in ordering the Company to continue mining operations under the circumstances. It may be that I have power to make such an order

1909.
BARRIER BRANCH OF THE AMALGAMATED MINERS' ASSOCIATION
v.
BROKEN HILL PROPRIETARY COMPANY LIMITED.
The President.

(see section 38(*b*), &c.). But even if I have, I should not exercise it except in extreme cases. In this case, I should be compelling the directors to extract the ore at a time when the price of the metal is such that the extraction of ore is a losing business. It is not for the Court to dictate to employers what work they should carry on. It can merely, in such a case as this, prescribe fit conditions for human labour, if the Company employ it. If, as is probable, the Company should confine its operations to those which are profitable, and which it has undertaken to carry on, the great masses of the employees at Broken Hill will be left out of work so far as this Company is concerned. But the undertaking given to me by the Union—an undertaking without which I should probably not have felt justified in pursuing this inquiry—distinctly involves the supplying of the Company with such men as it may require for any limited operations; and I should be grievously disappointed, and the Court would be hampered in its future action, if the Company find difficulty, after the award, in obtaining the men required at the wages which I have fixed. I shall certainly trust the Union, unless I find that it is not to be trusted.

THE CONTRACT SYSTEM.

Although the schedule contains a long list of wages, it is to be borne in mind that 73 per cent. of the employees, and 98 per cent. of the miners, are employed on contract. The only protection given to these men as to remuneration is that contained in clause 5 of the Award of the New South Wales Arbitration Court, which is incorporated in the agreement of December, 1908, made with the other companies. The prayer of the plaint in this case as originally filed was simply that this agreement should govern and regulate the relations of the Company with the members of the Barrier Branch. As a matter of jurisdiction, I do not think that the Court is confined within the terms of the prayer, or bound to give only such relief as the agreement involves. But, as a matter of fairness and expediency, it would not be proper to interfere with so important a matter as the contract system unless the parties have deliberately faced the problem, and until the union is prepared with some definite well-thought-out scheme on the subject. At my instance, the President of the Union put the contract system before the members, and the union passed a resolution adverse to the system. But the union did not submit to me any means of meeting the reasonable difficulties of the employers, or of modifying the contract system so as to obviate the dangers which it involves to industrial peace. My present view is that under the misnomer of "free contract," it throws the worker back on the old, unfair dilemma—of insufficient rates, or else unemployment—and a hungry home. I do not wish to say much on

the subject, as it may come before me some time for full argument; but I desire it to be understood that, in incorporating the old contract clause in my award, I do so, not because I like the clause, but because I am coerced by the manner in which this dispute has been presented to me; and also because it is advisable to adhere as closely as possible to the terms of the agreement which the other companies have signed. I was for some time impressed with the view that even if I retained the contract system I should add a proviso for a minimum wage. There is ample precedent for such a course. But here, again, I find that the proposal had not been well thought out, or submitted to the General Manager before the plaint; and one of the leaders of the miners even said that he feared that a minimum wage would become a maximum wage. It is obvious that the matter is not ripe for dealing with effectively, and, therefore, I leave this matter also, as it was left by the agreement with the other companies and by the plaint.

I make the award operative to the end of 1910, as the agreement with the other companies will then expire.

In framing the schedule of wages, in accordance with the list of workers and wages submitted to me by both parties, there are sometimes two or three different wage-amounts payable to employees answering the one description. This defect I cannot help, as it is inherent in the list submitted.

MINUTES OF AWARD.

Award, order, and prescribe that the following conditions of labour and rates of wages or remuneration shall apply to such of the members of the claimant organization as may be employed by the respondent Company during the term of this award, that is to say:—

(1) Forty-eight hours per week shall constitute a full week's work.

(2) The following official holidays shall be recognised and allowed:—Eight-hours Day, Christmas Day, Boxing Day, New Year's Day, Good Friday, Easter Monday.

(3) Overtime shall be paid for at the rate of time and a quarter, including all time of work on a seventh day in any week, or on official holidays, and all time of work done in excess of the ordinary shift during each day of twenty-four hours shall be reckoned as overtime.

(4) In setting contracts for breaking ore underground the representative of the Mining Company and the contractors shall exercise their best judgment so as to provide that each contractor shall earn 12s. per shift of eight hours.

1909.
BARRIER BRANCH OF THE AMALGAMATED MINERS' ASSOCIATION
v.
BROKEN HILL PROPRIETARY COMPANY LIMITED.

Prescribe that the rates of wages appearing in the Schedule be the minimum rates paid to all members of the claimant organization who may be employed by the respondent Company during the term of this award.

Order that no contracts be set by the Company except as to work for which contracts have been usually set by the Company since the 11th December 1906.

Order that this award continue in force until the end of the year 1910.

Order the respondent to pay to the claimant £161 9s. 0d. for costs and expenses (including expenses of witnesses), under section 38(*i*) of the Act. Declare also that (in pursuance of the respondent's undertaking given to the Court) the respondent ought to pay to the claimant £183 13s. 0d., as for the additional costs and expenses caused to the claimant by reason of the transference of the sittings to Melbourne and order accordingly.

SCHEDULE.

Occupation.	Per day of eight hours, unless otherwise mentioned. s.	d.
1. UNDERGROUND.—		
Timber-men	11	0
Miners	10	0
Brace and plate men	9	6
Toolmen	9	1.4
Turncocks	9	1.4
Truckers	8	7½
Ore baggers	11	0
Sanitary attendant	11	0
2. OPEN-CUT AND GENERAL SURFACE.—		
Leading hands	9	6
Powder-men	10	0
Labourers	8	7½
Boys	4	0
3. TRAMWAY TRAFFIC.—		
Gangers	9	6
Shunters	9	6
Labourers	8	7½
Boys	4	7
4. STABLES.—		
Groom	10	0
Stablemen	9	1.4
Horse drivers	9	1.4

Occupation.	Per day of eight hours, unless otherwise mentioned.
5. ORE-DRESSING.—	s. d.
Jigmen	9 6
Vanner attendants	8 7½
Vanner attendants (leading)	9 6
Brace men (hydraulic elevator) ...	9 6
Oilers	9 6
Dumpmen	9 1
Boys	5s. 2d. to 5s. 9d.
Boys (horse drivers)	5s. 2d. to 5s. 9d.
Labourers	8 7½
6. ZINC PLANT.—	
Pan attendants	9 1.4
Vat attendants	9 1.4
Labourers	8 7½
Boys	5s. 2d. to 4s. 0d.
7. SULPHURIC ACID PLANT AND ZINC ROASTER.—	
Sulphur burners	9 6
Labourers	8 7½
Boys	4 0
8. SINTERING WORKS.—	
Gangers	9 6
Platelayers	9 6
Labourers	8 7½
Boys	4 7
9. ENGINEERING.—	
Sailors	9 0
Riggers	8 7½
Riggers (leading hands)	9 6
Turncock	10 0
Roper	10 0
10. MISCELLANEOUS.—	
Fire-service firemen	8 7½
Apprentices	2s. 10d. to 8s. 7½d.
Platelayers	8 7½
Platelayers (leading hands)	9 6
Assay assistants	4s. 0d. to 8s. 7½d.
Samplers	8 7½
Samplers (leading hands)	9 6
Caretakers	8 7½
Caretakers (leading hands)	10 0

1909.

BARRIER BRANCH OF THE AMALGAMATED MINERS' ASSOCIATION v. BROKEN HILL PROPRIETARY COMPANY LIMITED.

Occupation.	Per day of eight hours, unless otherwise mentioned.
10. MISCELLANEOUS—*continued.*	s. d.
Sanitary attendant	8 7½
Gardener	8 7½
Watchmen	8 7½
Labourers	8 7½
Boys (general)	4 0
Boys (shift work)	4s. 7d. to 5s. 9d.
Boys (other than apprentices) ...	4s. 7d. to 7s. 5d.
Boys (errand)	2 10
11. SMELTERS.—	
Foremen	13 0
Shift bosses	12 0
Assistant shift boss	11 0
Tappers and feeders	9 4
Slag wheelers	8 3
Charge wheelers	8 3
Labourers	8 3
Labourers (old and infirm workers) ...	5 9
Boys	4s. 0d. to 2s. 10½d.
Shunters	9 4
12. REFINERY.—	
Shift bosses	12 0
Shift boss (foreman)	13 0
Furnacemen	9 6
Furnacemen (leading hands)	10 0
Labourers	8 3
13. REFINERY (DAY GANG).—	
Silver safe	11 0
Lead scales	9 6
Silver yard	9 1.4
Silver safe (weekly wage for day shift)...	57 6 per week.
Boys	2 10½
14. ROASTERS, ETC.—	
Shift bosses and foremen	12 0
Lead pot-men	11 0
Firemen	9 4
Labourers	8 3
Labourers (old and infirm workers) ...	5 9
Boys	2 10½
Shift bosses	10 0

Occupation.	Per day of eight hours, unless otherwise mentioned.
	s. d.
15. PLUMBERS, ETC.—	
Painter	9 1.4
16. CARPENTERS.—	
Foreman	13 0
Carpenters	11s. 6d., 11s. 0d., 10s. 0d.
Sawyer	9 6
Labourers	8 3
Boys	4s. 0d., 2s. 10d.
17. GENERAL REPAIRS.—	
Foremen	11 0
Assistant foremen	9 1.4
Ropers	9 1.4
Labourers	8 3
Bath attendant	5 9
Boy	2 10
18. PLATELAYERS.—	
Foremen	11 0
Platelayers	8 3
19. STABLES (PORT PIRIE).—	
Foremen	10 0
Assistant foremen	9 1
Drivers	8 3
Labourers	8 3
20. SLAG HOIST.—	
Foremen	10 0
Powder monkey	9 6
Hammer and drill-men	8 7½
Labourers	8 3
Boys	5s. 9d. to 2s. 10½d.
21. SAMPLE MILL.—	
Foreman	10 0
Samplers	8 3
do. (leading hand)	9 1.4
do. (old and infirm workers and boys)	6 4
22. ELECTRIC LIGHT.—	
Foreman	£3 3 per week.
Dynamo attendant	10 0
Wiremen	10 0
do. (boys)	6s. 4d. to 5s. 2d.

1909.

BARRIER BRANCH OF THE AMALGAMATED MINERS' ASSOCIATION

v.

BROKEN HILL PROPRIETARY COMPANY LIMITED

Occupation.	Per day of eight hours, unless otherwise mentioned. s.	d.
23. SMITHS AND STRIKERS.—		
Foreman	12	0
Smiths	10	0
do. (leading)	10	6
Tool sharpener	9	6
Strikers	8	3
24. CONVERTOR HOIST.—		
Signalmen, &c.	8	3
Tippers	5	9
Watchmen	8	3
25. CRUSHER.—		
Shift boss	9	4

SPEAKING TO THE MINUTES.

On Thursday, 18th March, Counsel for the Respondent was present; and on the question of the minutes the following discussion took place:—

His Honour.—Mr. Kelynack, do you wish to speak to this matter?

Mr. Kelynack.—No, Your Honour, except Your Honour asked me to tell you any matter where I thought Your Honour was going beyond jurisdiction. There are two matters I referred to during the hearing. Your Honour is aware of that—that is as to the six shifts a week at Port Pirie and as to the part where Your Honour ordered that no contracts should be set by the Company except roughly set since 11th December, 1906. These, I contend, are not within jurisdiction. With respect to these we merely wish to intimate that we desire to take all our rights with respect to the award.

His Honour.—I understand you very well. With regard to that matter as to no contracts being set, you understand distinctly I would have gone further so as to protect the men with regard to contracts only for those clauses that I have put in.

The whole of the proceedings were conducted, therefore, on the faith of the respondent's invitation to adjudicate; and even after the judgment and award were announced, Counsel for the Respondent,

repeating his objection to two specific points of the award, gave no hint of any receding from the Company's undertaking. From first to last of the proceedings, the Company submitted to the jurisdiction of the Court as to the questions raised by the plaint. The two points to which Counsel for the Company referred in his remarks on 18th March were (*a*) a provision in the Award that 48 hours a week shall constitute a full week's work, and (*b*) a provision that no contracts be set by the Company except as to work for which contracts have been usually set by the Company since the 11th of December, 1906, It had been, until this dispute, the practice to make the men at Port Pirie work on Sundays and all days—seven shifts of eight hours each per week—because of the necessity for keeping the furnaces going. A scheme was submitted to Mr. Delprat at the conference on the 15th and the 16th December, 1908, whereby the Company by taking on its books more men, could keep the furnaces going without cessation, but allow its Port Pirie employees the privilege of the rest of every seventh shift in rotation. This would not cost the Company any more money, for it would pay each man for only six shifts per week.

PROHIBITION PROCEEDINGS.

On or about the 30th March, 1909, notice was served on the President personally to the effect that the Respondent Company would move the High Court for an order *nisi* calling upon the Court of Conciliation "and the President thereof" to show cause why a writ of *certiorari* should not issue for removal of the proceedings from the Court of Conciliation into the High Court, on the grounds—

(1) that there was no dispute in an industry extending beyond the limits of any one State;

(2) that there was no dispute extending beyond the limits of any one State;

(3) that the employment of all the members of the Barrier Branch of the Amalgamated Miners' Association of Broken Hill by the Broken Hill Proprietary Company Limited had ceased before the hearing of the plaint in the said proceedings and the making of the said Order and Award;

1909.

BARRIER BRANCH OF THE AMALGAMATED MINERS' ASSOCIATION

v.

BROKEN HILL PROPRIETARY COMPANY LIMITED.

(4) that clauses 1 and 3 of the Award and Order prescribe terms of employment at the works of the Broken Hill Proprietary Company Limited at Port Pirie

(*a*) which were not in dispute between the parties to the said proceedings;

(*b*) which were not submitted to the Court in the plaint, originally filed in the said proceedings or in any amendment thereof;

(5) that the subject-matter of clause 6 of the said Award and Order

(*a*) was not in dispute between the parties to the said proceedings,

(*b*) was not submitted to the Court in the plaint originally filed in the said proceedings or in any amendment thereof;

(6) that the subject matter of clause 6 is beyond the jurisdiction of the said Court under the *Commonwealth Conciliation and Arbitration Act* 1904;

(7) that if the said Act purports to give jurisdiction in respect of the subject-matter contained in clause 6 of the said Order and Award the said Act is unconstitutional.

In pursuance of this notice, addressed to and served upon the President and the Court of Conciliation, counsel appeared for the Court, and the Registrar verified and exhibited the full notes of evidence as transcribed. Counsel for the Court called attention, as to grounds 1, 2, and 3, to the discussions as to jurisdiction already mentioned; but the High Court, on the 1st April, 1909, ordered that the President (sic) and the claimant show cause why a writ of prohibition should not issue directed to the President to prohibit the Court from further proceeding in the plaint and upon the Order and Award or upon clauses 1, 2, and 3 of the Order and Award, or in the alternative why a writ of *certiorari* should not issue directed to the President to remove the proceedings to the High Court upon all the seven grounds mentioned in the notice. The order *nisi* came on to be heard in Sydney on the 13th, 14th, 15th, 16th, 19th, 20th, and 21st days of April, 1909, before a Full High Court (Griffith C.J., O'Connor and Isaacs JJ.). Irvine, K.C., Starke and Kelynack for the Company to support the order *nisi;* Blacket for the Court of Conciliation and Arbitration; Cullen, K.C., and Holman for the Commonwealth Government (allowed to intervene as to any questions of constitutionality of the Act); Arthur for the claimant. Judgment was delivered on the 23rd April, 1909. A copy of the judgment follows.

1909.

R. v. COMMONWEALTH COURT OF CONCILIATION AND ARBITRATION. *Ex parte* BROKEN HILL PROP. CO. LTD.

Isaacs, J.

The Court of Conciliation and Arbitration has the most unrestricted power to settle any dispute of which it has cognisance, but not to travel outside it into a region not disputed nor submitted, and not having any possible connexion of necessity or expediency to effectuate the settlement of the dispute actually existing and submitted.

I would only add that it is not necessary to decide whether on the evidence of this case the men working on contract were substantially employees for the purpose of the Act. I, therefore, agree in the judgment proposed.

The order of the Full Court (so far as material) was as follows:—

Prohibition granted from proceeding to enforce the Award—

(1) In so far as the Award purports to direct that 48 hours a week shall constitute a full week's work with respect to any work at Port Pirie other than work as to which 48 hours per week was immediately before 31st December, 1908, recognised and treated as constituting a full week's work.

(2) In so far as the Award purports to direct that overtime shall be paid for at a higher rate in respect of any work at Port Pirie, which was not immediately before 31st December, 1908, recognised and treated as overtime work.

(3) In so far as the Award directs that no contracts shall be set by the Company except as to work for which contracts have been usually set by the Company since 11th December, 1906.

No order as to costs.

On 29th April, 1909, at a sitting of the Court of Conciliation in Sydney, the President made the following statement:—

> I take this opportunity—the first that I have had since the decision of the Full Court on the application for a prohibition—to correct a misapprehension which I find to be widespread as to my Award in the Broken Hill case—a misapprehension which unless corrected may tend to impair the influence of this Court and its usefulness to the public. It is said that I, as President of this Court, responsible for the performance of its very difficult duties, have claimed for the Court a right to go beyond

the limits of the dispute set out in the claim, and to make any order that I deem to be proper for the parties. This statement is absolutely without foundation. The truth is that I carefully and scrupulously announced my view, during the trial, that under section 19 of the Act I could not go outside the dispute mentioned in the plaint. I even used the homely illustration, that if A has a dispute with B as to a horse, and also as to a cow, and brings a plaint as to the horse, the Court cannot give relief as to the cow. I said that the only matter I could deal with "must be the dispute referred to in the plaint" (p. 598). Again, "I cannot go beyond the dispute as it originally was, but in settling the dispute I have power to do anything in pursuance of the Act that may settle the dispute" (p. 1130). "According to my view, the claim as originally filed does cover all these things" (p. 1130).

It is true, however, that the Full Court while upholding the award in most respects has decided that in two points I have actually overstepped the boundaries of the dispute submitted. This decision I accept as the decision of a Court which is superior to this Court of Arbitration; and it is not for me sitting in this Court to impugn or to criticise the decision. I shall of course accept such guidance as is afforded by the judgments of my colleagues. But it is one thing to say that the limits of the dispute have been inadvertently overstepped; and it is quite another thing to say that I have asserted a right to overstep these limits. The duties of this Court are sufficiently onerous as they stand; and I have no intention to claim in addition the powers of a benevolent despot. Nothing would injure this Court more than a general belief that it is eager to meddle in matters as to which its intervention is not sought; and I conceive it to be my duty to make this statement sitting as President of the Court and with the view of having it recorded in the published reports of the Court. I have no other means of showing the true position. Fortified by the opinion of the Full Court I intend, so long as the Act remains unaltered, to pursue the practice which I have been pursuing—the practice of treating the relief as confined to the dispute which is stated in the plaint.

Solicitor for the Claimant—*A. J. Hall*, Broken Hill.

Solicitors for the Respondent—*Minter, Simpson & Co.*, Sydney.

1909.

R. v. COMMONWEALTH COURT OF CONCILIATION AND ARBITRATION. *Ex parte* BROKEN HILL PROP. CO. LTD.

The President of the Commonwealth Court of Conciliation and Arbitration desires that the following remarks be added with reference to the judgments of the Full Court:—

(*a*) This is a misapprehension—the facts may not have been correctly presented. The remarks of the President referred to were made on the 15th February in a discussion as to the proposed amendment of the plaint by adding the six new items of claim for the Port Pirie men. The President intimated that he had only power to deal with the dispute referred to in the plaint (s. 19 (*b*)); but that so long as he kept within the bounds of that dispute he was free to make any order expedient for settling it; that he was confined to the dispute, but was not confined to the mode of settling it indicated in the prayer. His words, even as transcribed, are (p. 598): "It must be the dispute referred to in the plaint. I have come to the conclusion that it is my duty to strike out and refuse the amendment from the words . . . Mr. Kelynack will understand that rightly or wrongly I hold myself free to make any order which will be most expedient for settling *the dispute*."

(*b*) This is also a misapprehension. The Company did not at any time during the proceedings, say or intimate that it considered itself relieved from any obligation to submit to the award, or that it held itself at liberty to object to the jurisdiction of the Court altogether. On the contrary—as appears above by the statement of facts—the Company intimated an objection as to jurisdiction on two specific minor points, but always maintained the same attitude of willing acquiescence in the jurisdiction generally.

(*c*) The reference here is to the six items of claim for Port Pirie men, as to which amendment was refused. The words inserted in the proposed amendments by counsel for the claimant through inadvertence—claiming a seventh day of rest, though this was already part of the existing agreements and of the plaint—were struck out as unnecessary.

(*d*) This refers to the clause of the award forbidding the extension of the contract system. It was inserted in order to prevent the evasion of the duty to pay wages as prescribed by the award; for the employer might substitute contract (piece-work) for wages.

(*e*) The *Court* appeared—not the President—though both were named in the order *nisi*.

(*f*) The award could not be made the foundation of a common rule if the award is invalid as being beyond the Court's jurisdiction. Those against whom the common rule is sought can show the excess of jurisdiction; the question here was, could the Company, having encouraged the Court to act, and being defeated, rely on the alleged excess of jurisdiction?

(*g*) See notes (*a*) and (*b*), *supra*, p. 76.

(*h*) The President also availed himself of his power under s. 25 to "inform his mind" on the matter in such manner as he thought just—apart from the evidence transcribed.

(*i*) This is an error in transcription—obvious when the context is examined in the sentence, "I can bring in these things in my own way." The President, in rejecting the claimant's application for leave to add six new items to the plaint, is reported as saying what appears in the text as far as "way;" and then follow these words:—"It would not be fair to the Company. We have had eight days of evidence, and they could, for all I know, have cross-examined several witnesses, &c. . . . . ." The President's point was that as regards every dispute of which the Court has cognizance, it can (s. 38 (*b*)) make an order or award or give any direction in pursuance of the hearing or determination. But the circumstances did not render it necessary to test the extent of this power—except, perhaps, as to the order forbidding the extension of the contract system. The President in no way asserted a power to go outside the dispute submitted. The order referred to was treated by him as reasonably incidental to the main order prescribing wages, &c. (See notes (*a*) and (*d*)).

(*j*) This clause in the award, giving each of the men at Port Pirie a right to one day of rest in the week, would not involve any overtime or additional payment by the Company. The furnaces would be kept going continuously; but in place of A being paid for work on a Sunday, B would be paid. The only danger was that the men might possibly arrange matters so as to leave

the Company short of hands, and thus might be taken for the seventh day work at overtime rates. To meet this, the President obtained an undertaking from the claimant union that sufficient men would be forthcoming; and this undertaking was inserted in the award. Mr. Delprat was asked by the President to make any suggestion on the subject which would help the Company; but he failed to do so.

(*k*) The full scheme for rotation of the men at Port Pirie for the purpose of securing to each a rest on the seventh day (losing the seventh day's pay) was submitted to Mr. Delprat; and he pointed out no objection to it.

(*l*) This statement about not being "fair to the Company" was not made as to the claim for 48 hours per week, but was made as to the six new items of claims for Port Pirie men. The clause as to 48 hours was part of the agreements of 1906 and 1908, and was, therefore, part of the claim. There was no decision of any sort that this clause of the agreements should not be treated as part of the dispute for decision.

(*m*) This claim for 48 hours per week came under the *original* plaint.

(*n*) The clause 6 did not "restrict the operation of the contract system," except in the sense that the contract system was not to be *extended* to cases in which wages were paid before.

(*o*) There was no such statement made by the President. Any order made, as he said, must be to settle *the dispute*—the dispute of which the Court has cognizance—the dispute which has been submitted by plaint.

(*p*) There was a scheme put in evidence before the Court and discussed for carrying out the claim for six instead of seven days—48 hours per week.

(*q*) The provision for a 48 hours week was contained in agreement A (clause 1); and the provision for overtime was contained in agreement A (clause 4).

(*r*) The words as to six shifts per week were struck out from the proposed amendments because they were unnecessary, as the plaint already covered, by its reference to agreement A, a claim for six shifts per week. At no time in the Arbitration Court was the plaint construed

"as not containing anywhere the question of 48 hours a week." The discussion referred to hereinbefore at (*o*) shows that the plaint was construed in the Arbitration Court as containing the claim; and Mr. Delprat, the Company's manager, was examined on the subject of the merits of a scheme in the witness box. (See discussion with Mr. Delprat as to 48 hours.)

(*s*) This is a misapprehension. There was no such refusal. The President refused to abolish the contract system where it already prevailed; but he refused to allow the system to be applied to wages men so as to produce an evasion of the wages prescribed.