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ARTICLES

WHAT REMAINS OF THE ENGINEERS CASE? A CENTENARY APPRAISAL

Nicholas Aroney

The Engineers Case is widely considered the most important constitutional judgment of the High Court, but it is also one of its most severely criticised decisions. This article identifies the key propositions of the reasoning in Engineers and assesses them in the light of subsequent High Court decisions. It is concluded that very little of the propositions has survived scrutiny and what remains can be turned to good purposes. It is argued that the Court should recover the balanced interpretive approach advocated by O’Connor J. He proposed that when the Constitution confers a power in terms equally capable of a relatively wide and a relatively narrow meaning, that interpretation should be adopted which is most in harmony with the general scheme of the Constitution. The Commonwealth’s powers should not be construed so expansively that it would render pointless the conferral of only particular carefully defined powers upon the Commonwealth. 684

THE EVOLUTION FROM STRICT LIABILITY TO NEGLIGENCE: IMPLICATIONS FOR THE TORT OF PRIVATE NUISANCE – PART 2

Anthony Gray

Part 1 of this article considered the broad shift in the law of tort away from a strict liability, “act at peril” approach in favour of a fault-based system of liability, best shown in the explosive growth of the tort of negligence. Given the overwhelming prevalence of fault-based liability in negligence, it causes us to wonder about continuing pockets of strict liability elsewhere in tort law. The tort of private nuisance is typically seen as one such tort. Part 2 considers these trends and developments, with a view to considering whether the tort of private nuisance might now be subsumed into the law of negligence, as has occurred with other torts that formerly had a separate identity. 699

PANDEMIC JUSTICE – AN HISTORICAL PERSPECTIVE

The Honourable Justice John Logan RFD

A “blame game” conducted between the Commonwealth and a State with respect to alleged laxity in public health administration in relation to the arrival of vessels carrying passengers from abroad during a global pandemic (eg, the report by Freya Noble, “Coronavirus: Emails show NSW Health knew of COVID-19 risk on Ruby Princess”, National Nine News, 4 April 2020). Special court practices and procedures introduced and limitations as to the types of case that proceed during that pandemic (eg, “The Federal Court’s Response to the COVID19 Outbreak” on the Court’s webpage). Such are but some of the features of contemporary life and of the administration of justice in Australia during the COVID-19 global pandemic. An examination of reports of some court proceedings and court practices and procedures a little over a century ago during the “Spanish influenza” pandemic in 1919 reveals some earlier parallels and assists in putting the apparent novelty of contemporary events in perspective. 709

Australian Law Journal Reports

HIGH COURT REPORTS – Staff of Thomson Reuters

DECISIONS RECEIVED IN AUGUST 2020

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