

Chapter 3

Thomas McCawley v The King

*Nicholas Aroney**

As to my own little matter, the Court reserved its decision ... I have no doubt that the decision will be adverse – the atmosphere of hostility, political, professional, and personal, certainly favours such a result.

Thomas McCawley to Henry Bournes Higgins,
2 February 1918¹

Introduction

Of the many cases that have dealt with the constitutional foundations of the Australian States, *Thomas McCawley v The King*² is possibly the most significant, and certainly the most fundamental. In its day, the case was also one of the most controversial.

The case concerned the appointment of Thomas McCawley as President of the Queensland Court of Industrial Arbitration in early 1917 and his appointment as a Judge of the Queensland Supreme Court later that year. The appointments were contested because the statute under which they were made, the *Industrial Arbitration Act 1916* (Qld), was in certain respects inconsistent with the *Constitution Act 1867* (Qld), itself a statute enacted by the Queensland Parliament.

The constitutional significance of the case derived from the critical issue that it addressed, which was whether the *Constitution Act* is to be

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1 Papers of Henry Bournes Higgins, MS1057, National Library of Australia.

2 *McCawley v The King* [1920] AC 691; (1920) 28 CLR 106 (“*McCawley*”).

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