

His Honour examined closely whether the matters alleged in the Statement of Claim in the Court proceedings came within sub-paragraphs (a)-(e) of the arbitration clause. He concluded that they did not and therefore, within the meaning of Section 53, Court proceedings had not been commenced "in respect of a matter agreed to be referred to arbitration". His Honour thus held that Section 53 did not apply.

In case however his opinion was incorrect, His Honour considered the position if Section 53 did apply. If Section 53 was applicable, should His Honour exercise his discretion in favour of granting a stay of the Court proceedings so that the matters in issue could be referred to arbitration?

While accepting the view expressed by Rogers J. in *Qantas v. Dillingham* (1985) 4 N.S.W.R. 14, that there should be no judicial hostility to arbitration, His Honour took the view that if Section 53 was applicable, he should not exercise his discretion and grant a stay of the court proceedings. Firstly, there was a jurisdictional issue. If there was not a valid GIAS, there was no valid reference to arbitration. In His Honour's view, this jurisdictional issue would be better determined by the Court. In any event, this issue of validity would no doubt ultimately reach the court either by way of appeal under Section 38(2) or by way of reference on a point of law under Section 39. Further, there was an allegation of a breach of a fiduciary duty or obligation owed by Santos to the plaintiff. His Honour thought that the determination of whether or not such a duty existed and whether it had been breached was better suited to determination by a court than by an arbitrator.

PRELIMINARY ARBITRATION COURSE

New South Wales Chapter—Wollongong Activity

On 30 March 1990 the New South Wales Chapter of the Institute conducted a full day Preliminary Arbitration Course in Wollongong which was attended by 34 registrants, quite a few of whom were non-Institute members. Attendees came from all the usual professions and callings associated with the construction industry, as well as real estate and the accounting profession, and also included a law student and an industrial chemist.

Six papers were presented by Messrs Geoffrey Lumsdaine, Chapter Chairman, John Muirhead, Doug Peacocke, Ms Pamela Jack of Phillips Fox, Messrs Peter Callaghan, Partner, Colin Biggers & Paisley, and John Twyford of the New South Wales Master Builders' Association.