

## Re Judiciary & Navigation Acts (1921) 29 CLR 257

<https://lawcasesummaries.com/knowledge-base/re-judiciary-navigation-acts-1921-29-clr-257/>

### Facts

- In 1910, the *Judiciary Act 1903* (Cth) was amended to insert Part XII. This allowed the Governor-General to refer “*any question of law as to the validity of any Act or enactment of the Parliament*” to the High Court for consideration. The Court would hear arguments about the law, and then issue a decision about its validity.
- This was similar to the US Supreme Court's advisory power.
- In 1921, the Federal Parliament amended the *Navigation Act 1912* (Cth). The Governor-General wanted to refer these amendments to the High Court for a determination as to their validity.
- Before that occurred, the Victorian Attorney-General challenged Part XII of the *Judiciary Act*, which acted as the basis for that referral.

### Issues

- Could the High Court issue advisory opinions under section 76 of the Constitution when there was no case before it which required determination?

### Held

- In a 5:1 majority, the High Court held that advisory jurisdiction was an exercise of judicial power and that it was not allowed under the Constitution.
- The High Court could not exercise its judicial power on a matter within the meaning of the section 76 of the Constitution unless there is some immediate right, duty or liability to be established by the determination of the Court.
- Higgins J dissented, stating that there was nothing preventing the High Court from issuing advisory opinions.
- Further, Higgins J stated that due to the separation of powers, the three arms of the Commonwealth were “*interdependent*” on one another and nothing prevented the High Court from assisting the executive.

### Quotes

"But we can find nothing in Chapter III of the Constitution to lend colour to the view that parliament can confer power or jurisdiction upon the High Court to determine abstract questions of law without the right or duty of any body or person being involved."

### Full Text

The full text is available here:

<http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/1921/20.html>

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