operate as an agreement only. Incorporeal hereditaments in themselves are not the subject of tenure. Paragraph 9 treats the bargain as an agreement only, and though that paragraph speaks of the purchase of crops—which means the purchase of Hindmarsh's crops—yet that is consistent with the crops being his by virtue of the agreement while it lasts.

Whichever way the matter is looked at, the defendant has no legal estate of any kind in the land. Since *Doe* v. *Staple* (1) it has been, except where altered by the Judicature Acts, firmly established law that the "jurisdiction" of the common law Courts was "confined to legal titles taking care that they do not intrude on the rules of law, nor discuss equitable titles." See *per* Lord *Kenyon* C.J. (2). To the same effect *per Alderson* B., in *Doe d. Hughes* v. *Jones* (3). In other States of this Commonwealth, as in England, the jurisdiction of a Court is now not so restricted, and the rights of the parties may in proper circumstances be adjusted in the one action, and at the one expense, but the inviolability of ejectment actions from the intrusion of all equitable considerations, established in England in 1788, is retained in its full vigour and rigidity in New South Wales to-day. The action cannot be moulded or transformed to meet the circumstances; and so the defendant entirely fails because the plaintiff has a legal title, and he has not, and because nothing but legal title to possession of the land itself can be considered in this action. The rights of the parties can, of course, if they can afford it, be ultimately determined by a separate formal suit in equity with its normal consequences.

I agree that this appeal should be dismissed.

The judgment of GAVAN DUFFY and RICH JJ. was read by

RICH J. During the course of the argument in this case, the meaning of the agreement made between Lawrence Quinn and the defendant on 27th March 1911, and the rights of the parties to the agreement and of the plaintiff under it, were much discussed, but in the end the question was narrowed down to this —Had the defendant any legal title to or in respect of the land

(1) 2 T.R., 684.
(2) 2 T.R., 684, at p. 696.
(3) 9 M. & W., 372, at p. 377.

H. C. OF A. 1914.

HINDMARSH v. QUINN.

Gavan Duffy J. Rich J.

the subject matter of the action, which could displace the right to possession claimed by the plaintiff as administratrix of the estate of Lawrence Quinn? We say "legal title," because, according to the law of New South Wales, merely equitable rights cannot be recognized in this action. It was not contended that any tenancy had been created, but it was suggested that the agreement operated as a grant of a *profit à prendre*, and gave the defendant an irrevocable right to resist the plaintiff's claim for possession to the land. We do not think that it has any such operation, and we agree with the other members of the Court in thinking that the existence of a *profit à prendre* does not entitle the grantee to resist the right of the owner of the land to enforce possession in an action of ejectment. Under these circumstances it is unnecessary and undesirable to offer any opinion as to the meaning of the agreement or as to the rights conferred by it, which must be determined elsewhere, if at all.

Appeal dismissed with costs.

Solicitor, for the appellant, *Arthur B. Shaw*, Singleton, by *A. B. Shaw & McDonald.*

Solicitor, for the respondent, *W. J. Enright*, West Maitland, by *S. E. Pile.*

B. L.

[PRIVY COUNCIL.]

MILES . . . . . APPELLANT;
PLAINTIFF,

AND

THE SYDNEY MEAT-PRESERVING COMPANY (LIMITED) AND OTHERS } RESPONDENTS.
DEFENDANTS,

ON APPEAL FROM THE HIGH COURT OF AUSTRALIA.

PRIVY COUNCIL.* 1913. Dec. 16.

Company—Powers of majority—Ultra vires—Misuse of powers—Carrying on business not with view to make profits for distribution—Rights of minority—Injunction—Sydney Meat-preserving Company (Limited) Incorporation Act 1871 (*N.S.W.*), *secs.* 1, 2, 12, 13.

A company which had been established in Sydney under the rules, regulations and conditions of a deed of settlement, for the purpose of carrying on the business of meat preserving and disposing of and exporting the products, was in 1871 incorporated under a private Act of New South Wales for the purposes mentioned in the deed of settlement. The Act provided that the regulations might be altered, but not in opposition to the general scope or true intent and meaning of the deed of settlement, and that no dividends should be paid except out of profits. By the deed of settlement it was provided that the clear *bonâ fide* net profits arising from the operations of the Company should be applied in payment to the shareholders of a dividend in proportion to the number of shares held by them, and that the directors might in their discretion out of the profits of each half year set apart and appropriate such sum as they might think advisable for increasing the works or plant or in forming or adding to a reserve fund, and that after such appropriation the balance (if any) should be available for payment of dividends. A majority of the shareholders were graziers. No dividends were ever paid by the Company.

An action was brought by a shareholder against the Company and the

* Present—Viscount Haldane L.C., Lord Moulton, Lord Parker of Waddington, and Lord Sumner.

PRIVY COUNCIL. 1913.

MILES v. SYDNEY MEAT-PRESERVING CO. (LTD.)

directors alleging that the business of the Company was being carried on, not with the view of paying dividends, but with a view to benefiting the pastoral industry generally and those members of the Company who were interested in that industry. The plaintiff claimed a declaration that the Company and its directors were not entitled to carry on the business of the Company for the benefit only of the pastoral industry or of those members of the Company who were interested in that industry, and an injunction restraining the Company and their directors from carrying on the business of the Company otherwise than with a view to earning profits for distribution among all of the members of the Company irrespective of whether they were graziers or not.

Held, on the evidence, that the business of the Company had been carried on in the interests of shareholders generally and with a view of making profits which, when the Company should think it prudent to do so, might be divided among them, and not in the interests only of such of the shareholders as were graziers ; and, therefore, that the action failed.

Quære, whether if the plaintiff had established the facts alleged he would have been entitled to relief.

Decision of the High Court : *Miles* v. *Sydney Meat-preserving Co. (Ltd.)*, 16 C.L.R., 50, affirmed.

APPEAL from the High Court.

This was an appeal by the plaintiff to the Privy Council from the decision of the High Court: *Miles* v. *Sydney Meat-preserving Co. (Ltd.)* (1).

The judgment of their Lordships was delivered by

LORD PARKER OF WADDINGTON. The defendant Company was incorporated by private Act in the year 1871, with the object of carrying on the business of preparing and preserving meat and vegetables of all kinds in Australia and disposing of and exporting the products. The Act clearly contemplates that this business will be carried on for the purpose of making profits to be divided among the shareholders. The Company commenced business shortly after its incorporation, but its operations have been confined to the meat trade. It acquires its raw material, consisting principally of sheep, in New South Wales, but it markets its finished goods in Europe, so that its trade is, for the most part, an export trade, the selling prices in which are regulated by world-wide competition. It has necessarily to enter into many contracts for future delivery at prices so regulated,

(1) 16 C.L.R., 50.

and its chance of making a profit depends (1) on obtaining a regular supply of raw material in New South Wales, and (2) on the prices at which such raw material can be obtained.

The graziers in New South Wales send in their sheep to be sold in the market at Homebush, near Sydney, which is held about twice a week. The number of sheep for sale on a market day varies greatly. There is at times a great shortage, and prices are consequently forced up. At other times the market is glutted, and prices are unduly depreciated. The graziers must sell for what they can get, for otherwise their sheep must either be taken back to the country or held over for another market day, and either of these courses involves considerable expense. This state of things is bad for the graziers and likely to lead them to restrict the supply of sheep. Nor is it of any real advantage to the Company, for though in times of glut it can buy cheap, it is in times of shortage practically forced to buy at prices which destroy any chance of making a profit at all. If it does not buy because prices are too high its works will lie idle and its prospects of fulfilling contracts for future delivery in Europe will be endangered. It would suffer still more if the supply of sheep to the market were in any way restricted.

Finding that under these circumstances the chances of making regular profits in the meat trade were somewhat precarious, the Company, in the year 1878, came to an arrangement with the graziers, under which the latter were to provide and pay to the Company a subsidy, the amount of which was to be determined by a percentage on the purchase prices of all sheep sold in the market. The object of the Company was to protect itself against loss and, if possible, earn a profit. The object of the graziers was to put the Company in a better position to bid on the market in times of shortage, and to give higher prices when it bought by private contract in times of glut. In this way they would not only command better prices for their sheep, but would keep their largest customer from risk of insolvency.

This subsidy was paid to the Company from 1879 to December 1885. It was discontinued during the years 1886, 1887, and the first half of 1888. It was renewed in December 1888 and has been paid ever since. The net result of the Company's trading

PRIVY COUNCIL. 1913.

MILES v. SYDNEY MEAT-PRESERVING CO. (LTD.)

from June 1873 to December 1909 may be stated as follows:— The subsidy has amounted to £183,409, of which £115,684 has been carried to profit and loss account and £67,725 to reserve account. The profit and loss account for the whole period shows a net loss of £321. In the period before the subsidy commenced there was a profit amounting to nearly £1,500. In the period during which the subsidy was discontinued there were losses amounting to £18,200 or thereabouts. In other years there has sometimes been a considerable profit in addition to the subsidy, and sometimes a heavy loss notwithstanding the subsidy. The Company has never paid a dividend even in the most prosperous years, it being feared that if they did so the continuance of the subsidy might be jeopardized. The reserve has been employed in extending the Company's business.

The majority of the Company's shareholders are and have always been graziers who derive an indirect benefit from the Company's operations. There are, however, and apparently always have been, shareholders who are not graziers, and whose interest is that the Company should earn and pay dividends. The appellant in the present proceedings is one of such last-mentioned shareholders, and his case against the Company and its directors is that the business of the Company is not being carried on with a view to earning dividends for distribution among its shareholders, but with a view to keeping up the price of sheep for the benefit of such members of the Company as are graziers. He asks for a declaration that the Company and its directors are not entitled so to carry on the Company's business, and for an injunction on the footing of such declaration.

The first question which their Lordships have to determine is, therefore, a question of fact. Has the business of the Company been carried on, and is it being carried on, not with a view to earning dividends for the shareholders generally but in order to benefit indirectly such of its shareholders as are graziers? Are the interests of the shareholders, as such, being sacrified for the indirect benefit of such of them as desire to keep up the price of stock?

The plaintiff relies chiefly on certain circulars and letters sent out by the Company to graziers and stock agents, and certain