[HIGH COURT OF AUSTRALIA.]

THE MARINE BOARD OF HOBART . . PLAINTIFFS.

AND

THE COMMONWEALTH AND ANOTHER . DEFENDANTS.

H. C. OF A. 1915.

MELBOURNE, *June* 17.

Griffith C.J., Isaacs and Rich JJ.

Customs—Protection of the revenue—Wharves—Security by owner of wharf—Corporation established by State law having control of wharves—Customs Act 1901-1910 (*No.* 6 *of* 1901—*No.* 36 *of* 1910), *sec.* 42—*Marine Boards Act* 1889 (*Tas.*) (53 *Vict. No.* 34), *secs.* 9, 61, 62, 130—*Marine Boards Amendment Act* 1904 (*Tas.*) (4 *Edw. VII. No.* 18), *sec.* 3—*Marine Boards Act Amendment Act* 1911 (*Tas.*) (2 *Geo. V. No.* 34), *sec.* 2—*Customs Regulations* 1913 (*Statutory Rules* 1913, *No.* 346), *reg.* 3, *Form* 1A—*Statutory Rules* 1915, *No.* 70.

The plaintiffs were a corporation established under the law of Tasmania charged with the management and control of the wharves in the port of Hobart, over which they had under various Statutes full powers of maintenance and regulation and power to charge for services rendered, and such wharves had been appointed as places where goods might be landed under the *Customs Act* 1901-1910.

Held, that the Commonwealth was entitled in respect of those wharves to require the plaintiffs to enter into a bond in accordance with Form 1A in the Schedule to the *Customs Regulations* 1913 (*Statutory Rules* 1913, No. 346), as required by *Statutory Rules* 1915, No. 70, for the protection of the Customs revenue with regard to dutiable goods landed at those wharves.

MOTION for injunction.

The Marine Board of Hobart, Tasmania, brought an action in the High Court against the Commonwealth and William John Bain, Collector of Customs for Tasmania, claiming a declaration that the Commonwealth "is not entitled to require from the plaintiffs a bond or other security for payment of Customs duties

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upon goods not belonging to or under the control of the plaintiffs," and an injunction to restrain the Commonwealth and its officers from taking any steps to compel the plaintiffs to give such bond or security, and to restrain the defendant Bain from taking any proceedings to recover penalties from the plaintiffs for refusal to give such bond or security.

The plaintiffs now moved the Full Court of the High Court for an injunction in the terms above mentioned. By consent of the parties the hearing of the motion was treated as the hearing of the action.

Among the affidavits used on the motion was that of Milford McArthur, Harbour Master of the port of Hobart, which was substantially as follows:—

1. The plaintiffs have under the *Marine Boards Act* 1889 the control and management of all wharves in the River Derwent, in Sullivan's Cove, and in all other places adjoining or near the City of Hobart, with the exception of one or two small private wharves.

2. The only port in the southern part of Tasmania which has been appointed for the landing of dutiable goods is the port of Hobart, and the only places within such port where dutiable goods may be landed are the wharves within Sullivan's Cove before mentioned, which are under the control and management of the plaintiffs.

3. All such wharves are open and public wharves available for use by all vessels resorting to the port, and are used by such vessels subject to the regulations duly made by the plaintiffs in the exercise of their statutory powers, and under the direction of the Harbour Master.

4. Upon many of such wharves there are sheds for the storage and protection of goods imported or to be exported. All such sheds have proper doors, all of which can be closed and secured, and each shed can be completely locked up.

5. From the moment when any dutiable goods are landed upon any such wharf they pass under the control of the Customs Department, and remain under such control until the duty has been paid and the goods are released by the said Department.

6. If any dutiable goods are left in any such shed at the close of the working hours of the day, such shed is locked up by an officer of the Customs Department, and the only key or keys of such shed is or are retained by him or some other officer of the said Department, until the shed is reopened at the commencement of the next working day.

7. When dutiable goods are left after working hours in any wharf shed, the shed is locked up by officers of the Customs Department, who use the padlocks and keys of the said Department and retain the keys. When no dutiable goods are so left, the sheds are locked up by the plaintiffs' officers with different padlocks and keys, and they in such case retain the keys. The keys in the possession of the plaintiffs' officers will not unlock the padlocks used by the said Department. No complaint has ever been made to me by the said Department of the loss or abstraction of any goods from such locked sheds.

8. The plaintiffs have no control over such goods beyond their power to prevent the removal thereof from any wharf until the wharfage rates chargeable thereon and owing to the plaintiffs (if any) have been duly paid. So soon as such wharfage rates have been paid, the plaintiffs have no power under any Statute or regulation to detain any goods, whether dutiable or not.

Mitchell K.C. (with him *J. Macfarlan*), for the plaintiffs. There is no power under sec. 42 *et seqq.* of the *Customs Act* 1901-1910 to make such a regulation as *Statutory Regulations* 1915, No. 70. If there is, then on its terms it does not apply to the plaintiffs, who have nothing to do with goods but merely permit them to be landed at their wharves. It purports to put upon the plaintiffs duties which are not put upon them by the Acts under which they are constituted, and which they cannot undertake. It is not competent for the Federal Parliament to make the plaintiffs responsible for the storage of goods. If they enter into a bond, money paid under it would not be paid for the purposes of their Acts. The regulation would put upon the plaintiffs a new duty which they could not voluntarily undertake. They have no power to prevent goods being landed at their wharves. [He referred to *Customs Act* 1901-1910, secs. 18, 42; *Marine*

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Boards Act 1889, secs. 9, 61, 62, 130; *Marine Boards Amendment Act* 1904, sec. 3; *Marine Boards Act Amendment Act* 1911, sec. 2.] A proceeding for an offence against the regulation is a Customs prosecution, which may be brought in the High Court. There is jurisdiction, therefore, to make a declaratory order: *Colonial Sugar Refining Co. Ltd.* v. *Attorney-General for the Commonwealth* (1); *Williams* v. *North's Navigation Collieries* (1889) *Ltd.* (2).

[ISAACS J. referred to *Barraclough* v. *Brown* (3).

Mann and *Owen Dixon*, for the defendants, were not called upon.

GRIFFITH C.J. This is an action brought by the plaintiffs, the Marine Board of Hobart, against the defendants, the Commonwealth and the Collector of Customs for Tasmania, for a declaration that the Commonwealth is not entitled to require from the plaintiffs a bond or other security for payment of Customs duties upon goods not belonging to or under the control of the plaintiffs and for an injunction.

The plaintiffs are a corporation established under the law of Tasmania charged with the management and control of the wharves in the port of Hobart, over which they have under various Statutes very full powers of maintenance and regulation, including everything necessary and incidental to the exercise of those powers, and also the power to charge for services rendered in order to raise revenue. They are an elective body, and although the duties which they perform are naturally in some respects different, they are substantially of the same kind as those of a municipal corporation. They are, therefore, in regard to the observance of the laws of the Commonwealth, in the same position as any other municipal body or private person.

Under the *Customs Act* 1901-1910 goods imported into the Commonwealth are only allowed to be landed at certain appointed places. The plaintiffs are the owners of wharves at Hobart which have been appointed as such places. Sec. 42 of the Act provides

(1) 15 C.L.R., 182, at p. 210. (2) (1904) 2 K.B., 44.
(3) (1897) A.C., 615.

that the Customs authorities may require and take securities for compliance with the Act and generally for the protection of the revenue of the Customs. Amongst the regulations purporting to be made under that power is a regulation which requires the owner of any wharf, in respect of which security has not been furnished at the commencement of the regulation, to furnish security for the protection of the revenue, in accordance with Form 1A, and in such amount as the Collector of Customs for the State in which the wharf is situated deems necessary. As to wharves in actual use at the commencement of the regulation, the security must be furnished within sixty days from the commencement of the regulation. The penalty for a breach of the regulation is a fine not exceeding £50, and a possible cancellation of the appointment of the wharf as a place for landing. By the security the subscriber is bound to the Commonwealth in the sum named, subject to the conditions that if any goods which without payment of duty are discharged at the wharf are safely and securely kept free from all loss, deficiency, or damage, and if before removal of the goods from the wharf they are duly entered for home consumption and all duty due thereon is paid, or are duly entered for warehousing or for transhipment, and also if the goods are dealt with in accordance with the provisions of the *Customs Act* and the regulations thereunder, then the security shall be discharged. That is to say, as a condition of granting the privilege of landing goods at a private wharf the owner must give security that the Customs duty upon them shall be paid. The regulation, of course, only applies to dutiable goods.

The objection made is that the Commonwealth has no right to impose such a condition upon the use of a private wharf. I confess that I have difficulty in apprehending the objection. The Commonwealth is authorized to take the necessary steps to secure payment of duty. How can they better do that than by making the person on whose premises the goods are after landing and before payment of the duty responsible for the payment? That is all the Regulations profess to do. In my opinion the contention set up by the plaintiffs fails.

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Isaacs J.

The motion is, by agreement, to be treated as the hearing of the action, which must be dismissed.

ISAACS J. I quite agree. The plaintiffs have under the local Acts the charge, management and control of the port of Hobart and of all public wharves and docks therein, and under the same enactments they have power of regulating the shipping or landing of goods at or from any dock or wharf, the nature of goods which may be landed thereon, the mode and time of shipping and landing goods. It is therefore quite clear to me that they have the fullest control with regard to uncustomed goods; and, if they do in fact permit uncustomed goods to be landed at and to remain upon their wharves, having such control and power of regulation, it seems to follow that it is a necessary provision that they shall be held responsible to some extent for the protection of the Customs revenue.

What is fair and reasonable in each particular case is not for this Court to determine, but for the law-making authority, and as regulations have to be made by the Executive and to be submitted to Parliament nothing can be determined by this Court except the power to make the regulations. I therefore agree with what has been said by the learned Chief Justice.

RICH J. I agree.

Motion dismissed with costs.

Solicitors, for the plaintiffs, *Malleson, Stewart, Stawell & Nankivell* for *Roberts & Allport*, Hobart.

Solicitor, for the defendants, *Gordon H. Castle*, Crown Solicitor for the Commonwealth.

B. L.