[HIGH COURT OF AUSTRALIA].

GIBSON & HOWES LIMITED . . . APPELLANTS;
DEFENDANTS,

AND

WILLIAM LENNON (SECRETARY FOR AGRICULTURE AND STOCK FOR QUEENSLAND) } RESPONDENT.
PLAINTIFF,

ON APPEAL FROM THE SUPREME COURT OF QUEENSLAND.

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SYDNEY, *Dec.* 17, 18, 20.

Barton, Isaacs and Rich JJ.

Sugar-cane—Assessment levied on sugar-cane received at mill—Liability of mill-owner in respect of sugar-cane grown by him—Statute—Interpretation—Application of definition—Regulation of Sugar Cane Prices Act of 1915 (*Qd.*) (6 *Geo.* V. *No.* 5), *secs.* 3, 20.

Sec. 3 of the *Regulation of Sugar Cane Prices Act of* 1915 provides that in the Act, "unless the context otherwise indicates," the term "mill" means "a sugar-mill to which sugar-cane is sold and supplied for the purpose of being treated and manufactured into sugar;" and the term "cane-grower" means "any person, company, corporation, firm, or association growing, selling, and supplying sugar-cane to a sugar-mill for the purpose of its being treated and manufactured into sugar: the term (except for the purpose of being bound by an award) does not include any owner of a mill growing sugar-cane and supplying the same to such mill, or selling and supplying the same to any other mill." Sec. 20 (3) provides that "The Central Board" (the Central Sugar Cane Prices Board constituted by the Act) "may make and levy an assessment of one penny" (afterwards increased to two pence) "on every ton of sugar-cane received at a mill . . . . Such assessment shall be paid by the owner of the mill to the Minister, on the first day of every month, upon the actual number of tons of sugar-cane received at the mill during the preceding month. Such assessment shall, however, be borne by the cane-grower for every ton so supplied by such cane-grower. The amount of the assessment

shall be a debt due from the owner of the mill to the Central Board and recoverable at the suit of the Minister accordingly, but the owner of the mill may deduct from the price of the sugar-cane each cane-grower's proportion of such assessment."

Held, that in sec. 20 (3) the terms "mill" and "cane-grower" have the meaning assigned to them in sec. 3, and that the word "received" connotes a transfer from some other person to the owner of the mill.

Held, therefore, that a mill-owner, who treated and manufactured into sugar sugar-cane grown by him on his own plantation and also sugar-cane grown by other persons and sold and supplied by them to the mill-owner for the purpose of being treated and manufactured into sugar, was not liable to assessment under sec. 20 in respect of sugar-cane so sold and supplied to him.

Decision of the Supreme Court of Queensland: *Lennon* v. *Gibson & Howes Ltd.*, (1918) S.R. (Qd.), 1, reversed.

APPEAL from the Supreme Court of Queensland.

In an action brought by William Lennon, the Secretary for Agriculture and Stock for the State of Queensland, against Gibson & Howes Ltd., a special case stated by consent of the parties for the opinion of the Supreme Court was substantially as follows:—

1. The plaintiff is the Secretary for Agriculture and Stock in the State of Queensland, and is and was at all material times the Minister of the Crown charged with the administration of the *Regulation of Sugar Cane Prices Act of* 1915.

2. The defendants are a joint stock company duly incorporated under the provisions of the *Companies Acts* 1863-1913, having their registered office at Bingera Plantation, near Bundaberg in the State of Queensland aforesaid, and carry on in Queensland the business of mill-owners, manufacturers and refiners of sugar. The defendants were at all material times the owners of a sugar-mill known as the Bingera Mill, situated at the Bingera Plantation near Bundaberg aforesaid, to which sugar-cane is sold and supplied for the purpose of being treated and manufactured into sugar.

3. In pursuance of the *Regulation of Sugar Cane Prices Act of* 1915 the Governor in Council, by Order in Council dated 4th May 1916 and published in the Government *Gazette* of 6th May 1916, duly fixed the amount of the assessment which the Central Sugar Cane

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Prices Board constituted under the said Act might make and levy on every ton of cane received at any mill on and after the date of the said Order, at the sum of two pence per ton. The said Central Board on the said 4th May 1916 duly made and levied an assessment at the rate of two pence per ton on all sugar-cane received at each mill in Queensland on and after 4th May 1916.

4. The total quantity of sugar-cane treated and manufactured into sugar at the said Bingera Mill during the 1916 season was 42,470 tons.

5. Of the said 42,470 tons of sugar-cane in the last preceding paragraph hereof mentioned, 21,193 tons consisted of sugar-cane grown by the defendants on the defendants' own plantation or plantations, and conveyed by the defendants to the said mill for the purpose of being treated and manufactured into sugar, and 21,277 tons consisted of sugar-cane grown by various growers in the district other than the defendants, and sold and supplied by them to the said mill for the purpose aforesaid.

6. The defendants have duly paid to the plaintiff the sum of £177 6s. 2d., being the amount of the said assessment at two pence per ton on the said 21,277 tons of sugar-cane.

7. The defendants have refused on demand to pay to the plaintiff the sum of £176 12s. 2d., being the amount of the said assessment at two pence per ton on the said 21,193 tons of sugar-cane.

8. The defendants duly paid in the first instance the assessment made and levied for the year 1916 under and in pursuance of the *Sugar Experiment Stations Act of* 1900 on the said 42,470 tons of sugar-cane, and such assessment was subsequently apportioned in manner provided by the said Act.

9. This action was commenced by writ of summons dated 2nd June 1917 and indorsed with a claim for "£176 12s. 2d., being the balance of money due and payable by the defendant to the plaintiff under the provisions of the *Regulation of Sugar Cane Prices Act of* 1915 in respect of an assessment duly levied by the Central Sugar Cane Prices Board, under and in pursuance of the said Act and an Order in Council dated 4th May 1916 made thereunder, upon every ton of sugar-cane received at the mill of the defendants."

10. An appearance to the said writ was duly entered by the

defendants on 21st June 1917, and the parties have concurred in stating this special case for the opinion of the Court.

The questions for the opinion of the Court are :—

1. Are the defendants liable under the provisions of the *Regulation of Sugar Cane Prices Act of* 1915 to pay the assessment of two pence per ton or any assessment in respect of the said 21,193 tons of sugar-cane in par. 5 herein mentioned ?
2. To and by whom should the costs of this special case be paid ?

The Full Court answered the first question in the affirmative, and the second question by saying that the costs of the special case should be paid by the defendant to the plaintiff : *Lennon* v. *Gibson & Howes Ltd.* (1).

From that decision the defendant now, by special leave, appealed to the High Court.

The nature of the arguments sufficiently appears in the judgments hereunder.

Stumm K.C. and *Wassell*, for the appellants.

Ryan A.-G. for Qd. and *Macrossan*, for the respondent.

During argument reference was made to *R.* v. *Poor Law Commissioners* ; *In re Holborn Union* (2) ; *In re National Savings Bank Association* (3) ; *Gough* v. *Gough* (4) ; *Colonial Sugar Refining Co. Ltd.* v. *Attorney-General of Queensland* (5).

Cur. adv. vult.

Dec. 20.

The following judgments were read :—

BARTON J. The special case sets out the facts. The action upon which it is raised is for the recovery by the respondent, the Minister of Agriculture in Queensland, of a sum claimed in respect of assessment upon sugar-cane grown upon a plantation of the

(1) (1918) S.R. (Qd)., 1.
(2) 6 A. & E., 56, at p. 68.
(3) L.R. 1 Ch., 547, at pp. 549-550.
(4) (1891) 2 Q.B., 665, at p. 674.
(5) (1916) S.R. (Qd.), 278, at p. 297.

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appellants in that State, and treated at their sugar mill upon that plantation. This sum is sought in addition to the sum payable and paid by way of assessment on the sugar-cane sold and supplied to the appellants by growers in the district other than themselves.

The Statute under which the questions arise is the *Regulation of Sugar Cane Prices Act of* 1915. This is an Act, as its title indicates, for the regulation of the price to which the cane-grower is to be entitled for his crop. There are to be constituted a Central Sugar Cane Prices Board and Local Sugar Cane Prices Boards. Each Local Board has to do with only one mill and the lands assigned to it, that is, "the mill and the lands of the cane-growers in respect of which the Local Board in question is constituted." The Local Boards are given extensive powers of inquiry and consideration, and their duty is to make awards fixing the price or prices of the cane payable by the owner of the mill to the growers on the lands "assigned" or allocated to that mill. An appeal lies to the Central Board from an award of a Local Board. There is to be a Sugar Cane Prices Fund, out of which are to be met the expenses incurred in the execution of the Act, which consists of seeing that prices are fair as between mill-owner and grower, and of securing that end by the necessary means. The fund is to be administered by the Central Board and audited under the Auditor-General. This fund is to be raised by assessments made and levied by the Central Board on sugar-cane, as will presently appear; but whether only as cane supplied to the mill-owner by growers for a price, is now to be determined.

Now, it seems to me that the prime purposes of this Act are, first, the fixing of fair prices to be paid by the mill-owners to the growers from whom they buy, and, secondly, the raising by assessment of a fund to defray the expense incurred by the operations required. I do not see in any of the sections which have been cited anything to show an intention that contributions should be made to the fund for any other reason than that the machinery involving the expense, namely, the processes of fixing prices and of making and levying the assessment, ought in fairness to be paid for by those in whose interest the transaction between buyer and seller is to be adjusted and safe-guarded. The sections upon which the controversy particularly

arises are the 3rd and the 20th. The 3rd section consists of a number of interpretations. It prescribes that in the Act, that is, throughout the Act, "unless the context otherwise indicates," the terms set out have the meanings set out against them. Of these it is essential to consider two. "Cane-grower" means "any person, company, corporation, firm, or association growing, selling, and supplying sugar-cane to a sugar-mill for the purpose of its being treated and manufactured into sugar: the term (except for the purpose of being bound by an award) does not include any owner of a mill growing sugar-cane and supplying the same to such mill, or selling and supplying the same to any other mill." "Sugar-mill," "mill," means "a sugar-mill to which sugar-cane is sold and supplied for the purpose of being treated and manufactured into sugar."

In the first of these definitions the cane-grower is a seller, as well as a supplier, to a sugar-mill, and (except for the purpose of being bound by an award) the term is not to include any mill-owner growing sugar-cane who "supplies" it to his own mill, or who "sells and supplies" it to any other mill. Obviously a mill-owner, notwithstanding that he himself grows cane, is properly to be bound by an award in respect of the cane he buys from others, or in respect of any cane he sells and supplies to another's mill. In the first case he must come under an award in respect of the price of cane which he has to pay to other people, and in the second case he has to come under an award in respect of the price which he gets from other people who are mill-owners. I do not dwell on the definition of "sugar-mill" or "mill." It seems to relate, not merely to the particular transaction, but to the habitual dealings of the mill which buys cane. A sugar-mill is to be called by that name in the Act if it is a place where cane is usually bought and treated. Sec. 20 provides, in sub-sec. 1, for the establishment of the Sugar Cane Prices Fund already alluded to; in sub-sec. 2, for the body which is to administer it, namely, the Central Board; and, in sub-sec. 3, as follows:—"The Central Board may make and levy an assessment of one penny on every ton of sugar-cane received at a mill, or such other sum per ton as the Governor in Council may at any time fix by Order in Council. Such assessment shall be paid by the owner of the mill to the Minister, on the first day of every month, upon

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the actual number of tons of sugar-cane received at the mill during the preceding month. Such assessment shall, however, be borne by the cane-grower for every ton so supplied by such cane-grower. The amount of the assessment shall be a debt due from the owner of the mill to the Central Board and recoverable at the suit of the Minister accordingly, but the owner of the mill may deduct from the price of the sugar-cane each cane-grower's proportion of such assessment. All assessments levied under this Act shall be paid into the fund." It will be observed that though payment is to be made by the mill-owner to the Minister monthly, the assessment is to be "borne" by the cane-grower, who has, one supposes, to reimburse the mill-owner. If the cane-grower is to be understood as the person defined in sec. 3, the appellants are clearly not included in the term in respect of their own cane treated at their own mill. That is in accord with the general scheme of the Act, which does not seem to me to cast the burden of its administration on transactions which are not the sales for which the awards are to fix the fair price. (See sec. 6.) Sec. 20, sub-sec. 3, further provides that the assessment shall be paid upon the "number of tons of sugar-cane received at the mill during the preceding month." Although the act of receiving a thing can only be performed by one person or party, it primarily involves the delivery, on sale or otherwise, to that person or party by some other person or party, of the thing to be received. Then "*such* assessment" is to be borne by the "cane-grower" for every ton which he "so" supplies, that is, supplies to him who receives it. Here again the idea of two parties to the transaction is connoted. Lastly, although the amount of the assessment is recoverable from the mill-owner by the Minister for the Central Board, the owner may deduct each cane-grower's proportion of the assessment "from the price of the sugar-cane." This is an operation clearly impossible where the mill-owner is dealing with his own. This part of the sub-section is eloquent as to the meaning of the whole of it where it deals with the cane-grower. All these things go to show that the sub-section is dealing with the "cane-grower" in the sense which the term bears in the interpretation section, and that is the sense, in my judgment, which the Legislature deliberately intended the term to bear in this, the crucial

section, as well as elsewhere. The Act is limited in this respect to the cane-growers who sell to the mill and the mill-owners who buy the cane, for the plain reason that it is their transactions which are the subject of price-fixing and their benefits for which assessment is to be paid, primarily by the owner but ultimately by the grower. I cannot find in the many sections which have been quoted anything to shake this view as to the party liable in an action. There is no doubt much to confirm it. Under sec. 6 the award is to fix prices for sugar-cane "sold and taken delivery of at the mill concerned, and determining all matters relating to *such* supply of sugar-cane and *payment therefor.*" The Act teems with references to mill-owner and cane-grower which show that they are regarded as separate parties to commercial transactions having diverse interests. The Central Board (see sec. 4) includes an elected representative of each body, and as the mill-owner evidently has a liability under sec. 20 in respect of his purchases, and in respect of the assessment to be made, which would give him as a matter of justice representation as such on the Central Board, it is not likely that he was also intended to have a vote as a cane-growers' representative where he had not sold cane, and the representation of cane-growers is evidently to be representation only of the persons defined in sec. 3. If the cane-grower, in sec. 20 (3), includes persons other than these—that is, growers who do not supply a mill in the sense of selling the cane for treatment, but who crush their own cane—the consequence would be that in an Act giving the fixing of the assessment to a partly elective body, a grower who mills his own cane would become the ultimate payer of an assessment determined by a body in which he had no representation.

Among the provisions which so place the mill-owner and the cane-grower in separate categories as to indicate that it is in respect of their transactions *inter se* that prices are fixed and assessments afterwards made, are secs. 8, 10, 12 (sub-sec. 4 of which indicates very clearly that in speaking of cane supplied to a mill the Act is dealing with purchase and sale), 14 (1), (2) and (4) (which are entirely inapplicable to a cane-grower supplying his own mill), 16, and parts of the Schedule. In this connection I note par. 1 (*b*), which manifestly uses the word "supplied" in the same sense in which

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it is employed in sec. 12 (4); and the last clause of par. 14, which needs no comment. To sec. 6 I have already referred.

Differing with respect and regret from the conclusion arrived at by the Supreme Court of Queensland, I am of opinion that there is no general intention disclosed in this Act which entitles the Court to attach two different meanings to the word "cane-grower" in secs. 3 and 20. The general intention seems to me to indicate the identity of the meaning attachable to that word in the two sections. If I saw or suspected any general intention which pointed to a variation of meaning I should still look for a clear context outside the interpretation clause and governing it, and, not finding one, I should feel bound to let the interpretation prevail. That course is indicated by the principles of construction as well as by the 3rd section itself. In this connection some words of Lord *Denman* in *R.* v. *Poor Law Commissioners* (1) deserve quotation. The Lord Chief Justice said:—"We disclaim altogether the assumption of any right to assign different meanings to the same words in an Act of Parliament on the ground of a supposed general intention in the Act. We find it necessary to give a fair and reasonable construction to the language used by the Legislature; but we are not to assume the unwarrantable liberty of varying that construction for the purpose of making the Act consistent with any views of our own . . . . we must look at the actual state of things, and not be governed merely by words; we are to see, not whether this has been called an union, but whether it be one within the meaning of the Act."

I am of opinion, then, that the appeal should be allowed, and that the questions should be answered as follows:—(1) No. (2) By the respondent.

The respondent must pay the costs of this appeal.

ISAACS AND RICH JJ. The question is whether the appellant is liable to assessment under sec. 20 of the Queensland *Regulation of Sugar Cane Prices Act of* 1915, in respect of sugar-cane grown by the appellant, and conveyed by it to its own sugar-mill to be manufactured into sugar. The answer turns on the meaning of these

(1) 6 A. & E., at p. 68.

few words in sub-sec. 3 of that section: "The Central Board may make and levy an assessment of one penny on every ton of sugar-cane received at a mill." The Crown contends, and the Supreme Court has held, that inasmuch as the appellant's sugar-mill was a "mill" within the meaning of the Act, and the cane in fact came into the mill irrespective of its source, the words of the section referred to are satisfied and the appellant is liable.

The principle is indisputable that "the intention to impose a tax or duty, or to increase a tax or duty already imposed, must be shown by clear and unambiguous language and cannot be inferred from ambiguous words" (*Brunton* v. *Acting Commissioner of Stamp Duties for New South Wales* (1)). The problem before us is whether, fairly reading the words relied on as they are found in the particular Statute, they do clearly and unambiguously extend to cover sugar-cane grown by the miller himself, and manufactured by him at his own mill.

The first inquiry is whether the word "received" in its primary and natural meaning applies to such a case. In *Attorney-General of Ontario* v. *Mercer* (2) Lord *Selborne* L.C., for the Privy Council, said: "It is a sound maxim of law, that every word ought, *primâ facie*, to be construed in its primary and natural sense, unless a secondary or more limited sense is required by the subject or the context." Now, the word "received" in its primary and natural sense connotes a transfer from one person to another. See the *Oxford Dictionary* under the word "Received." The words "at a mill," indicating the place of receipt, do not negative the inherent connotation of giver and receiver. The phrases "received at a mill" and "so supplied," in sec. 20, appear to be directly referable to the phrase "sold and taken delivery of at the mill" in sec. 6.

The primary and natural meaning of the word "received" in the expression "received at a mill" is therefore adverse to the Crown's contention. To overcome that, the learned Judges of the Supreme Court have pointed out, first, what they consider the unreasonableness of such an interpretation, and, next, the sense in which they hold the word "received" was used in another Act, and then conclude that the word has a "wide sense," viz., that of

(1) (1913) A.C., 747, at p. 760. (2) 8 App. Cas., 767, at p. 778.

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applying to all sugar-cane that comes into the mill from any source whatever. It seems evident that the Supreme Court did not accede to the view of the Crown that the ordinary meaning of the word "received" supported the claim. Unless there is something which so extends the primary meaning of the word "received" as to give it the secondary meaning of "coming into" the mill, the Crown must fail.

In the view we take of the provision of the Act, whether read separately, or as one of a series of enactments relating to the sugar industry, not only is there no legislative indication, either clear and unambiguous, or even probable, of intention to so extend the meaning of "received"; but, on the contrary, there is very strong indication of a consistent plan not to include the mill-owner's own sugar-cane. Such sugar-cane—as subject matter—is, in our opinion, entirely foreign to the purposes of the Act.

The Act is called "*The Regulation of Sugar Cane Prices Act of* 1915. (See, as to the "title," per Lord *Moulton* in *Vacher & Sons Ltd.* v. *London Society of Compositors* (1), and *Fielding* v. *Morley Corporation* (2).) It proceeds by regular steps to effect its purpose. First, it repeals the *Sugar Growers Act of* 1913. That was an Act by which the State Parliament had made special provision in favour of "cane suppliers" as against mill-owners. It provided, in short, that where a mill-owner had "purchased or agreed to purchase" sugar-cane "from the persons supplying such cane for the purpose of being treated and manufactured into sugar," each cane supplier should be entitled forthwith to receive a certain part of "the price of the sugar-cane so supplied." It also provided that the payment should be in cash without any deduction on any account whatsoever.

The *Regulation of Sugar Cane Prices Act of* 1915 further repealed the reference to the *Sugar Growers Act of* 1913 in the *Sugar Growers' Employees Act of* 1913, so as to make the labour conditions of that Act applicable to the new legislation about to be enacted. There was then, so far, a *tabula rasa* as to the mutual relations of mill-owner and cane-grower.

Then the Act provides (sec. 3) that in the Act—"unless the context otherwise indicates" — certain terms are to have the

(1) (1913) A.C., 107, at p. 128. (2) (1899) 1 Ch., 1.

"meanings" set against them (see *Dilworth* v. *Commissioner of Stamps* (1)). One term is "cane-grower." If the ordinary meaning of that term were permitted to attach to it, every person who grows cane would be a cane-grower, notwithstanding the fact that he also did something else. He might, for instance, also practise as a physician, or carry on business as a grocer, or he might be a sugar-mill owner. But the statutory definition makes it clear that "cane-grower" in the Act (apart from some possible context to the contrary) is not to include any person, although he is in fact apart from the Act a cane-grower, if he owns a mill and supplies cane to that mill, or sells and supplies it to any other mill. There is one exception to this exclusion, namely, he is still to be considered a "cane-grower" for the purpose of being bound by an award—which means bound as a cane-grower—in relation to some other person as a mill-owner. "Sugar-mill" also receives a special statutory definition for the purposes of the Act. It does not include every sugar-mill, but only "a sugar-mill to which sugar-cane is *sold and supplied* for the purpose of being treated and manufactured into sugar."

This is the first time in the history of Queensland legislation where "sugar-mill" has been so restricted in definition. In the *Sugar Experiment Stations Act of* 1900, sec. 2, the expression "sugar works" is defined as "any mill for the extraction of sugar-cane juice." In the *Sugar Works Act of* 1911 it is defined thus: "any mill for the extraction and manufacture of sugar and the by-products thereof," &c., the remaining words being immaterial here. And so in the *Co-operative Sugar Works Act of* 1914. In the repealed *Sugar Growers Act of* 1913 no special definition is given.

The element of "sold and supplied" expressly introduced into the preliminary statutory definition of "mill" in the *Regulation of Sugar Cane Prices Act of* 1915 is therefore an important guide to the intention of the Legislature. No mill which is not one where sugar-cane is bought from "cane-growers" by the mill-owner is within the ambit of the Act. The natural inference, therefore, in consonance with the word "prices," is that the operation of "sale" and "purchase" is essential to the application of the operative

(1) (1899) A.C., 99, at pp. 105-106.

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statutory provisions, that is, what is called "the execution of the Act."

The Act (sec. 4) provides for a Central Sugar Cane Prices Board, on which there are to be Government representatives, and also "a cane-growers' representative" and "a mill-owners' representative." The statutory duties of the Central Board, apart from the incidental functions of receiving notices of intention (sec. 5), of receiving returns (sec. 16) and certain other incidental powers may be epitomized thus: (1) to make awards where a Local Board makes default (sec. 7 (*i*)); (2) to make awards where a Local Board delegates the power (sec. 7 (*ii*)); (3) to decide appeals from awards of Local Boards (sec. 8); (4) to terminate an award of a Local Board after twelve months; (5) to make assessments (sec. 20).

It is clear that the Act does not contemplate the activity of the Central Board without the existence of Local Boards. It is clear also that without the existence of Local Boards the sum of a penny per ton on all sugar-cane milled in Queensland would be an absurd and extravagant impost—really for nothing but the mere existence of a department. It is also clear, that in the absence of a Local Board, and consequently in the absence of an award, a mill-owner selling and supplying to another mill sugar-cane of his own growing would not be a cane-grower within sec. 20, and would not have to bear any proportion of the assessment. The existence of a Local Board is therefore a manifest condition of the execution of the Act. Now, a Local Board may or may not be established in relation to a mill according to circumstances. In the first place, the mill must be one where the owner buys cane. This follows from the definition, and from the fact that the sole purpose of the Act is to settle his contractual relations with cane-growers who supply him. Next, the Board must be applied for. The Schedule, art. 1, provides that the application must be by (1) the owner of the particular mill, or (2) at least twenty cane-growers. These cane-growers are not necessarily growers in the immediate vicinity of the mill; they may be in closer proximity to another mill; their sole qualification is that they "supplied sugar-cane during the year then last past" to that particular mill. The "owner" need not be the same person as during the preceding year; but the mill must be the same. If

they supplied to that particular mill, that is, to the owner for the time being, "at that mill," that is sufficient qualification. The application is to be not later than 31st January. The Governor in Council may constitute a Local Board not later than 1st March (art. 4 of Schedule) after any recommendation by the Central Board (sec. 5 (2)), which that Board may make on (*inter alia*) information derived from returns under sec. 16.

The statutory area of the Local Board is of the greatest importance. It is indicated by sec. 5. It is in respect of "one mill and the land or lands assigned to such mill." There is no necessary contiguity. The "mill" is one thing, the "lands" assigned to that mill are another. Sub-sec. 2 says: "The Order in Council shall declare the mill and the lands of the cane-growers in respect of which the Local Board in question is constituted." This sub-section is a great step in the elucidation of the question before us. The mill represents the mill-owner's purchasing side, and the "lands of the cane-growers" represent the growers' selling side —in other words, the "receiving" and the "supplying" elements respectively.

Then comes a proviso which must be regarded. A "cane-grower" *not* under any agreement—that is, before an award is made binding him—by which he is bound to any particular mill-owner may sell his crop in whole or in part to any mill-owner other than the one to whose mill his lands are assigned, provided before 1st March he notifies the Central Board of his intention to do so. The last words of the proviso are important; they are "to supply sugar-cane to a mill-owner other than that to which he supplied sugar-cane during the last preceding season." "Mill-owner" should read "owner of a mill." That proviso shows three things: (*a*) that the lands assigned to a mill may be anywhere, (*b*) that the qualification in art. 1 of the Schedule is strictly adhered to, and (3) that when the Act speaks of a cane-grower supplying a mill it means supplying the owner, and the operation connotes two persons.

The one dominant circumstance for the present purpose is that inasmuch as the mill-owner himself is, by force of the definition, and of art. 1 of the Schedule and of sec. 9 of the Act, excluded from the ambit of "cane-growers" in relation to that mill, his own

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land on which he himself grows cane is not land which can be assigned to the mill, and so brought under the jurisdiction of the Local Board. This view is confirmed by the later Act, No. 20 of 1915 (the *Local Sugar Cane Prices Boards Confirmation Act of* 1915). When the Local Board is constituted it may make an award (sec. 6). Its power is first as to area, that is, with respect to the *lands* and the *mill* for which it is constituted. Then as to subject matter it has power to determine as to (1) prices to be paid and accepted by *owner* and *cane-growers* respectively for cane sold and taken delivery of *at the mill* concerned, (2) all matters relating to *supply*, and (3) payment therefor. The award (sec. 8) is to bring in (*a*) owners of sugar-mills and (*b*) cane-growers upon the *lands to which the award applies.* Sec. 12 requires the Board to consider various matters in making its award. They include (1) "the estimated quantity of sugar-cane to be *treated* at the mill." The word "treated" is relied on by the Crown as going beyond the cane-growers' own cane. It may be that the miller proposes to treat more than the cane to be purchased. But it is possible that he does not propose to treat more than a very limited quantity—much less than the cane-growers propose or are prepared to supply. He may have opposed the creation of the Board which they applied for. The indefinite word "treat" does not necessarily show a greater quantity than that to be supplied by the growers. But the actual amount intended to be treated is essential to be known when determining the supply, whatever the treated quantity may be.

The second element for consideration in sec. 12 is "the estimated commercial cane sugar contents of the sugar-cane." What is meant by "the sugar-cane." Clearly, one would say, the sugar-cane that is to be paid for. "Commercial cane sugar" is an artificial term defined in sec. 3 as "the estimated value of sugar-cane based upon analysis of its juice." Being the value of the "cane," and based upon analysis of the "juice," it is manifest that the expression can have reference only to the cane to be paid for according to that value.

The third element is the crushing capacity and efficiency of the mill—which has relation both to quantity and to price, inasmuch as one question is how far the mill is calculated to extract the full

quantity of cane sugar without introducing deleterious substances into any samples which may have to be taken for analysis in order to ascertain the resultant commercial cane sugar on which payment is to be made.

The fourth element is extremely significant. It is: "The labour conditions under which the sugar-cane is grown, harvested, and delivered to the mill." The labour conditions apparently have reference to, and at all events include, the provisions of the Act of 1913 already referred to. Again, what is meant by "the sugar-cane"? It cannot well mean the owner's own cane. The labour conditions he follows as to his own cane cannot affect the price he should fairly pay the cane-growers for their cane. But they are an essential factor as to the price they should charge for their cane. Sub-sec. 2 emphasizes this. And that the element referred to is confined to their cane seems evident from a perusal of sub-sec. 6 of the same section. That sub-section is introduced as a qualification of sub-sec. 1 (*d*) and sub-sec. 2. The award being made on a supposed basis of labour conditions, if that basis is altered for the worse, so as to increase the margin of profit, sub-sec. 6 allows a correspondingly lower price to the cane-grower; the mill-owner, however, having got full value for his money, is not to profit, and so he deducts the difference and pays it to the Central Board. But the point is that if sub-par. (*d*) of sub-sec. 1 were intended to apply also to labour conditions for the mill-owner's own cane, it is inconceivable some provision corresponding to sub-sec. 6 was not made. In *Attorney-General* v. *Sillem* (1) *Pollock* C.B. pointed out in very clear terms that "in order to know what a Statute does mean, it is one important step to know what it does not mean." If in sub-par. (*d*) "the sugar-cane" means only the *cane-grower's sugar-cane*, it is almost decisive in itself that the sugar-cane referred to in sec. 20 is the cane-grower's sugar-cane, because that is all that is within the execution of the Act.

Sub-sec. 7 of sec. 12 is highly important in relation to sec. 20. That sub-section should be quoted literally. It is: "Sugar-cane *supplied* by any cane-grower and containing over seven per centum of commercial cane sugar shall not be refused to be *taken delivery of*

(1) 2 H. & C., 431, at p. 515.

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and *purchased* by the owner of any mill." That shows the cane may be "supplied," in the sense of being taken to the mill, or, in other words, of being cane that "comes into the mill," and yet if it proves to contain not more than seven per centum commercial cane sugar the mill-owner need not "take delivery of and purchase" it, that is, "receive" it. That content of course is to be ascertained by sampling the cane in manner provided by the regulations and applying the formula prescribed.

This close examination of the Act establishes that the mill-owner is only brought within the Act as a purchaser of sugar-cane; that a Local Board in making its award has no concern with the mill-owner's own land, used for cane-growing; that, consequently, the only sugar-cane with which the Act is concerned is that which comes off the lands of "cane-growers," and that a miller *quâ* his own mill is not a cane-grower under any circumstances. He may be and is a cane-grower *quâ* another person's mill, if he sells and supplies cane to that other mill, but not for representative purposes, only for "award" purposes, that is, for obtaining a price, and furnishing a supply. That being the scope of the execution of the Act, a fund is provided by sec. 20. It is called "The Sugar Cane Prices Fund." Again "the sugar-cane" means "the sugar-cane" already dealt with, and "prices" means the prices fixed under the Act.

The foregoing survey of the statutory provisions makes tolerably clear what is meant by the Legislature when it comes to enact in sec. 20 that "The Central Board may make and levy an assessment of one penny on every ton of sugar-cane *received* at a mill." To construe "received at a mill" as simply "coming into a mill" would not only be substituting an equivalent for the words of the section, always a dangerous course (per Lord *Halsbury* L.C. in *Gresham Life Assurance Society Ltd.* v. *Bishop* (1)), but would be inconsistent with sub-sec. 7 of sec. 12 above quoted. Unless "received" connotes "acceptance" by the mill-owner, all cane "supplied" would, notwithstanding sub-sec. 7, be assessable, because it "came into" the mill. But if it connotes "acceptance" by the mill-owner, it necessarily connotes also a person who offers it. Again, it is clear that the word "received" cannot be considered

(1) (1902) A.C., 287, at p. 291.

apart from the rest of the Act. (See per Lord *Herschell* in *Colquhoun* v. *Brooks* (1) and Lord *Haldane* L.C., for the Privy Council, in *Toronto Suburban Railway Co.* v. *Toronto Corporation* (2).) "Received" for what purpose? In *Robertson* v. *Day* (3) the Privy Council, speaking by Sir *Robert Collier*, said: "It is a legitimate rule of construction to construe words in an Act of Parliament with reference to words found in immediate connection with them." We find the word "received" used with reference to a "mill," and that sends us to the interpretation section to ascertain for what purpose the cane is to be received. That is the only place where we can find it stated. We must therefore read sec. 20 in this way: "Received at a sugar-mill to which sugar-cane is sold and supplied for the purpose of being treated and manufactured into sugar." It must be conceded that if cane were "received at" a mill for storage purposes only, or for fodder (as it might be if found to be under seven per cent. commercial cane sugar), it would not be assessable under sec. 20. But why? Because it was not received for the purpose mentioned in the definition of "mill." But if "received" must be read subject to that part of the definition of mill, since the word "mill" is so used in sec. 20, how can we escape reading it subject to the whole definition?

It is a fundamental error to detach the first portion of a section and settle its meaning first, ignoring even the rest of the section, and then proceed to apply the remainder of the section on the basis that the meaning of the first part is already fixed. That is, however, what the Crown argument amounts to. We must read the whole section, and perhaps the whole Act, to ascertain the meaning of the first sentence of sec. 20 (3). Reading the section by the light so far obtained, and applying it to the subject matter dealt with, its meaning is that where the owner of a mill within the meaning of the Act receives, for the purpose of its being treated and manufactured into sugar, cane from a cane-grower who supplies it under the statutory conditions—that is, where the "price" is fixed—the cane so "received" by the miller is liable to assessment, and he must pay this to the Crown for the benefit of the "Sugar Cane

(1) 14 App. Cas., 493, at p. 506. (2) (1915) A.C., 590, at p. 597.
(3) 5 App. Cas., 63, at p. 69.

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Prices Fund." But he can collect it from the cane-growers by deducting from the "price" payable to each the proportion of the assessment referable to the cane supplied by that cane-grower. It is suggested by the Crown that the miller is himself a "cane-grower" within the meaning of sec. 20. The Supreme Court agreed with that view. We are not able to share that opinion. If in that section "cane-grower" is free from statutory definition, why not "mill"? And if "mill" is free, then, though no cane came into the mill but that of the owner, the whole would be taxable. But if "mill" be restricted to the statutory definition, it seems to us impossible to draw the line at "cane-grower."

Considerations of policy are inadmissible, except so far as they are the result of construction of the words of the Act itself (per Lord *Selborne* in *Hardy* v. *Fothergill* (1)).

Nor are we able to accede to the Crown view that sec. 20 applies whether Local Boards exist or not. As already indicated Local Boards are the basis of the execution of the Act, and it would be astonishing to think the Legislature created a fund in aid of the execution of the Act, and called it "The Sugar Cane Prices Fund," irrespective of whether prices were fixed or not. It would be still more astonishing if the Legislature compelled either mill-owners or cane-growers to subscribe to that fund, though the Government refused—as it may refuse—to appoint a Local Board for a particular mill. And again it would be an unexpected use of language to permit, as sec. 20 permits, the miller to deduct the proportion of assessment from the price. Compare the difference of language in sec. 7 of the *Sugar Experiments Stations Act*, where the corresponding words are "any moneys due." In passing, we may observe that the effect of sec. 7 of that Act is not within our province, and therefore we express no opinion as to it. But we are clear that its meaning, whatever it may be, does not control the meaning of the word "received" in sec. 20 of the Act directly under our consideration. If previous legislation is to guide us, the word "receiving" as used in clause 1 (*a*) of the Schedule to the *Co-operative Sugar Works Act of* 1914 is a clearer guide.

It is not, in our opinion, consistent with the other provisions

(1) 13 App. Cas., 351, at p. 358.

of the Act protecting the cane-growers that sec. 20 should require cane-growers to pay a penny or two pence a ton, notwithstanding they get no Local Board either because they do not wish it or because the Government refuses. The section, as we read it, assumes the existence of a Local Board, and the existence of an award, and the "price" fixed, in other words, it assumes "the execution of the Act" *quâ* the mill concerned. The mere creation of a Central Board is not in any substantial sense the execution of the Act in relation to a given "mill."

It was suggested that, unless the mill-owner were held liable for his own cane, it would induce him to increase the quantity of cane grown by himself, and so largely displace the smaller growers. We can hardly think it reasonable that two pence a ton would be sufficient inducement for that purpose; but if it would, the Crown view would lead to his displacing the smaller growers altogether, because it is admitted that if his mill is one for which he purchases nothing he is quite free from assessment.

In our opinion the appeal should be allowed, and the questions answered respectively: (1) No; (2) By the respondent.

Appeal allowed. Order appealed from reversed. Questions answered as above stated. Respondent to pay costs of appeal.

Solicitors for the appellants, *Hamilton & Nielson*, Bundaberg, by *Morris & Fletcher*, Brisbane.

Solicitor for the respondent, *W. F. Webb*, Crown Solicitor for Queensland.

B. L.