

H. C. OF A. the Constitution, and not for seven years only. Question 2—No.
1918. Question 3—No.

WATERSIDE
WORKERS'
FEDERATION
OF
AUSTRALIA

v.
J. W.
ALEXANDER
LTD.

Questions answered as follows :—1 (a) No.

(b) Yes. 2 No. 3 No.

Solicitors for the applicants, *Farlow & Barker*.

Solicitors for the respondents, *Sly & Russell*, Sydney, by *Hedderwick, Fookes & Alston*.

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

B. L.

[HIGH COURT OF AUSTRALIA.]

THE CROWN APPELLANT ;
RESPONDENT,

AND

DRAGE RESPONDENT.
PETITIONER,

ON APPEAL FROM THE SUPREME COURT OF
WESTERN AUSTRALIA.

H. C. OF A. *Industries Assistance—Advances to settlers—Advance in respect of leased land—*
1918. *Applicant also owner of freehold land—Unauthorized advance—Crop distrained*
PERTH, *and sold by landlord—Purchase by agent of Government—Refusal by Crown to*
Oct. 14, 15, *pay for crop—Property in crop—Charge on crop of settler—Industries Assistance*
17. *Act 1915 (W.A.) (No. 27 of 1915), secs. 9, 10, 12, 15—Industries Assistance*
— *Act Amendment Act 1915 (W.A.) (No. 52 of 1915), sec. 3—Industries Assistance*
Barton, *Act Amendment Act 1917 (W.A.) (No. 16 of 1917), secs. 4, 5, 6, 8, 11—Wheat*
Gavan Duffy *Marketing Act 1916 (W.A.) (No. 18 of 1916).*
and Rich JJ.

Sec. 9 of the *Industries Assistance Act* 1915 (W.A.), Part 2, and its amendments provide for assistance to be afforded by the Colonial Treasurer to settlers and other persons affected by drought or other adverse conditions for various purposes. By sec. 10 it is provided that "Any person holding any land for a freehold estate, or under contract for the purchase of the freehold, or under any conditional purchase or other lease or as a homestead farm under the *Land Act* 1898, or its amendments, who is, as the result of drought or other adverse conditions, in need of such assistance as is provided for by this Act, may apply for such assistance." By sec. 15 (sec. 8 of the *Industries Assistance Act Amendment Act* 1917 (W.A.)) it is provided that the principal and interest of all advances made, or deemed to have been made, under Part 2 of the Act were to be, and until fully paid were to remain, a first charge in priority to all other incumbrances upon the lands and crops of the applicant, and that any such advance was to have the effect of a mortgage and bill of sale of the lands and crops so charged, to secure the repayment of all such advances with interest, and was to confer on the Industries Assistance Board all the powers and remedies of a mortgagee under an instrument of mortgage or bill of sale duly registered.

H. C. OF A.
1918.
THE CROWN
v.
DRAGE.

The lessee of certain privately owned agricultural land, who was also the owner of freehold land, applied for advances for the purpose of cropping the leased land, offering to give security over his crops. The advances were made, and afterwards the lessor, having distrained on this wheat for arrears of rent, purported to sell the same to the agents of the Government under the *Wheat Marketing Act* 1916 (W.A.), and interim receipts were issued to him, but the Government refused to issue to him the final certificates enabling him to obtain certain payments under that Act, alleging that they had acquired either a title to the wheat or a charge over it by virtue of their advances to the lessee, and that the lessor's distress was unlawful and ineffectual against them.

Held, on the facts and the construction of the Acts, that the Government had no property in the wheat, nor any charge over it.

Judgment of the Supreme Court of Western Australia (*Burnside J.*) in effect affirmed.

APPEAL from the Supreme Court of Western Australia.

In and prior to March 1917 one Samuel Lockier Burges was the lessee of certain agricultural land at Bowes, Western Australia, under a lease from Thomas Amos Drage, dated 9th December 1915, which contained an option to purchase. On 21st March and 5th April 1916 Burges made an application to the Board constituted under the *Industries Assistance Act* 1915 (W.A.) for an advance of £1,500 to enable him to put in and take off his crops on the land referred to. He offered to give security over his crops, and to lodge as

H. C. OF A. 1918.
THE CROWN
v.
DRAGE.
—

collateral security the title deeds of certain freehold lands held by him. On 6th April the Industries Assistance Board acceded to the request, and sums amounting to £1,970 15s. 8d. were advanced at various times. No title deeds were lodged. On 12th March 1917 there was upwards of £1,000 of rent in arrear in respect of the land leased. On that day Drage, the lessor, entered on the land and distrained on about 3,000 bags of wheat found thereon. On 20th March he negotiated the sale of the wheat to the local agents of the Government at Geraldton under the *Wheat Marketing Act* 1916 (W.A.). Drage was handed interim receipts acknowledging the delivery of the wheat on behalf of the Government, the value of which was £1,331 5s. 4d. The Government having refused on 4th May 1917 to deliver to him the final wheat certificates enabling him to obtain payment in accordance with the provisions of that Act, Drage brought a suit against the Crown, by petition under the *Crown Suits Act* 1898, for refusal to deliver the same. The suit was heard by *Burnside J.*, who adjudged that the petitioner was entitled to receive from the Crown the certificates in question, and ordered that judgment be entered for him with costs.

Against this judgment the Crown now appealed to the High Court.

On the argument upon the appeal the only point material to this report was whether Burges was qualified to receive advances under the *Industries Assistance Act*, and whether the advances made were such as are authorized by the Act, so as to transfer to the Crown the property in the wheat or create a charge over it in favour of the Crown.

Stow, for the appellant. The language of sec. 15 of the *Industries Assistance Act* of 1915 (W.A.) is wide enough to cover ordinary leaseholds. The qualifying freehold land referred to in sec. 10 need not be the land in respect of which the advances are made. Sec. 12 (c) has been extended by the *Industries Assistance Act Amendment Act* 1915 (W.A.), sec. 3, and the *Industries Assistance Act Amendment Act* 1917 (W.A.), sec. 6, to include the grant of assistance with respect to any object or purpose of which the Board may approve. Burges is undoubtedly within sec. 10. The objection raised is that the money

has not been used on the qualifying land. But mere ownership of the qualifying land is sufficient. Having regard to secs. 10 and 12 (c), there is no foundation for the argument that Burges is unqualified. The applicant was qualified, and the advances were authorized; so the charge is created. The agreement to give a charge contained in the application for assistance creates an equitable incumbrance in favour of the Crown.

H. C. OF A.
1918.

THE CROWN
v.
DRAGE.

Pilkington K.C. (with him *Boulton*), for the respondent. The advances were not authorized. The Act is carefully drawn to limit the classes of persons who may avail themselves of it, and to show the circumstances under which they may do so. Sec. 10 sets out the classes. The land in regard to which the application was made in the present case is leasehold, but the leasehold referred to in the section, in view of its collocation, must mean Crown leasehold. There is no provision in the Act to indicate that ordinary leaseholds were contemplated. The application must be made in respect of the qualifying land. Sec. 12 supports this contention. Sec. 12 (c) as amended only provides for matters incidental to the main matter of getting a crop.

Stow, in reply. The advances need not be made in respect of the qualifying land, because the security extends to all lands held. Even if the Court holds that there is no charge, it cannot give judgment for the respondent unless he shows title to the wheat.

Cur. adv. vult.

The judgment of the COURT, which was delivered by BARTON J., was as follows:—

Oct. 17.

We are all of opinion, after considering the arguments and the relevant enactments, that the facts in evidence do not make the wheat in question the property of the appellant, unless indeed it has become so by purchase, and that there is not any charge upon the lands, crops, &c., under the enactments referred to, nor any equitable charge affecting the same.

If it happened that we felt ourselves impelled to send the case

H. C. OF A. down for another trial, it could only be on the terms, first, that the
1918. respondent should be at liberty to amend his petition so as to let
THE CROWN in a claim for money had and received, and further that the appel-
v. lant must pay the costs of the trial and of this appeal. The case
DRAGE. may be mentioned again.

Subsequently counsel for the appellant stated that an agreement had been made by the parties that the judgment be varied so as to adjudge that the respondent recover £1,348 10s. with costs, such judgment to carry interest from 17th October 1918, and that appellant pay the respondent's costs of the appeal.

Appeal allowed. Judgment appealed from discharged except as to costs, and judgment varied as agreed. Appellant to pay respondent's costs of appeal.

Solicitor for the appellant, *F. L. Stow*, Crown Solicitor for Western Australia.

Solicitor for the respondent, *G. F. Boulton*, for *H. W. Morrisby*, Geraldton.

N. McT.