[PRIVY COUNCIL.]

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

AND

GIBSON & HOWES LIMITED . . . . DEFENDANTS, RESPONDENTS.

ON APPEAL FROM THE HIGH COURT.

PRIVY COUNCIL.* 1919.

May 2.

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 1915 *(Qd.)* (6 *Geo. V. No.* 5), *secs.* 3, 20.

Sec. 3 of the *Regulation of Sugar Cane Prices Act of* 1915 (Qd.) 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 twopence) "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

* Present—Viscount Haldane, Viscount Finlay, Lord Dunedin and Lord Shaw.

PRIVY COUNCIL. 1919.

LENNON v. GIBSON & HOWES LTD.

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 not the meaning assigned to them in sec. 3, but have their natural meaning, and that the term "received" does not imply 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 liable to assessment under sec. 20 in respect of the sugar-cane grown by him.

Decision of the High Court: *Gibson & Howes Ltd.* v. *Lennon*, 24 C.L.R., 140, reversed.

APPEAL from the High Court.

This was an appeal to the Privy Council by the plaintiff from the decision of the High Court: *Gibson & Howes Ltd.* v. *Lennon* (1).

The judgment of their Lordships, which was delivered by LORD SHAW, was as follows:—

This is an appeal from a judgment of the High Court of Australia dated 20th December 1917, upon a special case stated by consent of parties. The judgment of the Full Court of Queensland was pronounced in favour of the appellant on 9th October 1917, but was reversed by the High Court. As appearing from the special case the facts are simple. The appellant is the Minister of the Crown charged with the administration of the *Regulation of Sugar Cane Prices Act of* 1915. The respondents, a joint stock company, carry on in Queensland the business of mill-owners, manufacturers and refiners of sugar. About half of their sugar is produced from cane of their own growing, the other half from cane bought from other growers.

The total quantity of sugar-cane treated and manufactured at the respondents' mill during the 1916 season was 42,470 tons. Of this, 21,193 tons consisted of cane grown by themselves, and 21,277 tons of cane grown by others. The respondents refused to pay the sum sued for, namely, £176 12s. 2d., being the levy

(1) 24 C.L.R., 140.

of an assessment of twopence per ton on the former figure, namely, the cane grown by themselves. Hence the writ and the special case.

The question is whether this refusal was justified. In other words, are the respondents liable under the Act for an assessment in respect of sugar-cane received at their mill although grown by themselves on lands belonging to them? There is no dispute as to rate or amount.

It is of interest to observe that the Act of 1915, which is to be under construction, was preceded in Queensland by an Act to provide for the establishment and control of sugar experiment stations, and that the expenses of that Act were provided for by the levy of an assessment "not exceeding one penny on every ton of sugar-cane received at a sugar works." By the definition of that Act "sugar-cane received" was to have the meaning of "sugar-cane delivered at a sugar works and accepted." In the absence of any context indicating a contrary intention, it may be presumed that the Legislature intended to attach the same meaning to the same words when used in a subsequent Statute in a similar connection.

The conflict of opinion between the Courts below has arisen upon the construction of sec. 20 of the Act of 1915. By sub-sec. 3 thereof it is provided:—"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 the actual number of tons of sugar-cane received at the mill during the preceding month." This is the first half of the sub-section, and did it stand by itself there would appear to be no possibility of doubt that the levy of the assessment was to be made upon every ton of sugar-cane received at the mill, or, more emphatically, upon "the actual number of tons of sugar-cane received at the mill." The cane in question in this suit was actually received at the mill, and so far the language of the Statute applies expressly to it. But the argument for the respondents, which was very powerfully presented, arose more definitely on the second half of the

PRIVY COUNCIL. 1919. LENNON v. GIBSON & HOWES LTD.

sub-section. It is in these terms :—" 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 is no doubt true that the right of the appellant to recover is dependent upon the first half of the section, under which the liability of the mill-owner is fairly plain, and that the second half of the section deals, and deals solely, with such relief as the Statute grants to the mill-owner from the cane-grower. This might be a sufficient answer to the defence set up. But in view of the argument presented, their Lordships do not desire to put their judgment upon this narrow ground. The scheme of the sub-section seems very reasonably to be worked out by the consideration that the levy that is to be made upon the mill-owner shall be in respect of all the tonnage of sugar received at the mill, the mill-owner to have the right to be recouped in respect of all tonnage supplied by a cane-grower. If the cane-grower is an outsider, the case is provided for. That grower recoups the mill-owner. If the cane-grower is the mill-owner himself, the mill-owner cane-grower bears the levy and the recoupment is effected, no doubt, in the ordinary commercial sense by a cross-entry in the firm's books. In the result a levy is made upon the actual tonnage received at the mill, and the Statute is satisfied. To permit the mill-owner to exclude the proportion which is grown on lands belonging to him would, in their Lordships' opinion, be to violate the express words of the Statute, which provide for the levy being upon the tonnage which the mill actually receives.

But helpful light is thrown upon the question by the connection and context in which the words in sub-sec. 3 are used, and in particular by a consideration of sub-sec. 1 of the same section, namely, sec. 20. It is in these terms : " (1) There shall be established a fund to be called ' The Sugar Cane Prices Fund,' out of which shall

be paid all expenses incurred by the Governor in Council or the Minister or the Central Board or any Local Board in the execution of this Act."

In their Lordships' opinion it is a mistake to think that the expenses in respect of which the levy was made are not in the interests of Queensland and its sugar trade, and its public as a whole. The expenses are to be those incurred by the Governor in Council, the Minister, the Central Board, or a Local Board. To take one example : What are the powers of the Governor in Council on this head of expenses ? By sec. 4 (5) " The Governor in Council may appoint a secretary of the Central Board and such chemists, inspectors, and other officers as may be deemed necessary for the purposes of this Act." The analysts are important officers by reason of the fact that " commercial cane sugar " depends, under the definition in the Statute, on " the estimated value of sugar-cane based upon analysis of its juice." And in point of fact it turns out, as might have been expected, that a main portion of the expenses of working the Act is the furnishing of analysts and an inspectorate. This is merely an illustration of the general nature of the Statute, because it is at least unlikely that expenses of that character directed to the protection and advance of the sugar industry as a whole should be recovered only by a levy upon cane grown by one person and sold or delivered for crushing to another. So far, however, was the contrary argument pushed that it was contended that once a cane-grower starts a crushing-mill he thereby escapes the incidence of the levy. Their Lordships would be loth to arrive at any such conclusion.

The difficulty arises from the definition clause, which provides that in the Act, " unless the context otherwise indicates," certain terms are to have " the meanings respectively set out against them." Then occur the following, namely : " ' Cane-grower '— 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 " ; and

PRIVY COUNCIL. 1919. LENNON v. GIBSON & HOWES LTD.

" ' Sugar-mill,' ' Mill '—A sugar-mill to which sugar-cane is sold and supplied for the purpose of being treated and manufactured into sugar." It appears plain to their Lordships that these meanings are to be so given only where the context so permits and that in sec. 20 (3) the context, as already observed, and in particular sub-sec. 1, prevent the attachment of a non-natural or artificially limited meaning to very plain and general words. Upon a review of the Statute, however, as a whole, it is found that the necessity for putting cane-growers into one category separate from mill-owners was principally this, that in the constitution of this Central Board it was provided that there should be a cane-growers' representative and a mill-owners' representative. These interests thus separately represented were, to avoid a cross-division, kept separate in the definition. This is a simple and perfectly workable explanation of what no doubt might have been more clearly expressed in the Statute itself.

Further, there is an exception applicable to the term " cane-grower " expressed in these words : " except for the purpose of being bound by an award." When the sections of the Act are looked at, this is an exception of very wide dimensions. But in their Lordships' opinion the definition is also entirely inapplicable to sec. 20, which is dealing, not with the rival interests of cane-grower and mill-owner, but with the promotion of the sugar industry as a whole. It would not accordingly be legitimate to apply the very clear general language of sec. 20 so as to produce the result in construction that a mill which in fact crushes sugar, is yet neither a mill nor a sugar-mill, because it does not take in goods on a contract of sale, nor to apply the term " cane-grower " in the sense that a cane-grower may grow cane, but he is not a cane-grower because he crushes his sugar-cane at his own mill. These constructions appear to their Lordships false and inapplicable. In short, the main proposition on which the judgment of the High Court is founded, namely, that the word " received " is equivalent to " sold and taken delivery of at the mill," is one to which their Lordships do not see their way to assent.

In the opinion of their Lordships, the institution of Sugar Boards with their powers is, as said, for the benefit of the sugar-growing

community and the public generally. The adjustment of prices and the making of awards thereon are leading, but are not the only, purposes of the Statute. The scheme of the Act is that the industry should bear the expense of working the scheme. There is no *primâ facie* reason why a sugar-grower who is a mill-owner should be treated differently in this matter from a sugar-grower who is not. The collection of the tax, for obvious reasons of convenience, is made at the mill. Accordingly, when a tax is imposed on the actual number of tons of sugar-cane received at the mill, there is every reason for holding that the term should be interpreted according to its natural meaning; that is, by making the criterion receipt without consideration of the quarter from which the sugar can come.

Their Lordships will humbly advise His Majesty that the appeal should be allowed, and the judgment of the Supreme Court of Queensland restored, that the appellant should have his costs in the Supreme Court of Queensland and in the High Court of Australia, and that there should be no costs of this appeal.