[HIGH COURT OF AUSTRALIA.]

STEVENS . . . . . APPELLANT;
COMPLAINANT,

AND

THE COLONIAL SUGAR REFINING COMPANY LIMITED . . . . . RESPONDENT.
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF QUEENSLAND.

H. C. OF A. 1920.

SYDNEY, *Nov.* 8, 9, 25.

Isaacs, Gavan Duffy and Rich JJ.

Sugar-Cane—Award—Analysis of sugar-cane—Duty of mill-owner to deliver to cane-grower—Request—Sale by cane-grower of his crop of sugar-cane—Contracting out of Act—Regulation of Sugar Cane Prices Acts 1915-1917 (*Qd.*) (6 *Geo. V. No.* 5; 8 *Geo. V. No.* 18), *secs.* 3, 4, 5, 6, 8, 9, 12, 14, 15, 20.

By sec. 3 of the *Regulation of Sugar Cane Prices Acts* 1915-1917 (Qd.) it is provided that, unless the context otherwise indicates, the term "cane-grower" shall mean "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." Sec. 6 provides that "a Local Board shall in each year, with respect to the lands and the mill for which they have been constituted, make an award determining the price or prices to be paid and accepted by the owner or owners of the mill and cane-growers, respectively (including all mortgagees, lienees, transferees, assignees, or other persons having any title to or interest in any such mill or lands or sugar-cane), for sugar-cane sold and taken delivery of or which should be taken delivery of by such owners of the mill concerned, and determining all matters relating to such supply of sugar-cane, the handling and treatment thereof by the owner or owners of the mill, and payment therefor."

Held, that a cane-grower does not by the sale to a person other than the owner of the sugar-mill to which his land is assigned of the whole of his sugar crop for a particular season cease to be a cane-grower within the meaning of the Act, and neither a sugar-grower nor any of the persons designated by sec. 6 as included within that term can validly do anything in derogation of the obligation of the grower of the crop for the time being to deliver it to the

mill or of the obligation of the mill-owner to pay for it the price fixed under an award and to observe in respect of it the other requirements of the award.

By an award of a Local Board it was provided that "Analysis of his cane shall be available to the grower, and shall be delivered to him weekly, together with the dates the analyses were taken."

Held, that a mill-owner did not commit a breach of the award by not delivering to a cane-grower an analysis of his cane where the cane-grower had made no request for the analysis.

Decision of the Supreme Court of Queensland: *Colonial Sugar Refining Co.* v. *Stevens*; *Ex parte Colonial Sugar Refining Co.*, (1920) S.R. (Qd.), 243, affirmed.

APPEAL from the Supreme Court of Queensland.

Before a Police Magistrate at Mackay a complaint was heard whereby Frank James Stevens charged that on or about 7th October 1919 the Colonial Sugar Refining Co. Ltd., being the owner of the Homebush Sugar-mill within the meaning of the *Regulation of Sugar Cane Prices Acts* 1915 *to* 1917, bound by an award of the Homebush Local Sugar Cane Prices Board published in the *Queensland Government Gazette* on 19th May 1919, failed to abide by the terms of that award in that it failed to deliver weekly in respect of the week ended 4th October 1919 to the complainant, who was a grower of sugar-cane supplying sugar-cane to the Homebush Mill, and who supplied sugar-cane to such mill during the said week, the analysis of such sugar-cane.

From the evidence the following facts appeared:—The complainant was a grower of sugar-cane whose land had been assigned to the Homebush Mill, of which the defendant was the owner. By the award mentioned in the complaint, which was for the season 1919, it was provided (*inter alia*) that "Analysis of his cane shall be available to the grower, and shall be delivered to him weekly together with the dates the analyses were taken, and the numbers of the trucks from which the samples were taken." During the week ending 4th October 1919 the complainant in fact delivered to the Homebush Mill 94·12 tons of sugar-cane grown by him on his land by delivering the cane on to the defendant's trucks on its tramline. No analysis of the sugar-cane so delivered was ever delivered to the complainant, and he never asked for an analysis. After the award had been made, the complainant signed a document, which

H. C. OF A. 1920.

STEVENS v. COLONIAL SUGAR REFINING CO. LTD.

was dated 30th June 1919, addressed to one C. E. Forster, Sydney, by which he offered to sell to Forster the whole of his crop of sugar-cane growing on any part of his land assigned to the Homebush Mill on certain terms and conditions. This offer Forster accepted, and the delivery of the cane by the complainant to the defendant was apparently in pursuance of the contract so made.

The facts are more fully set out in the judgment of the High Court hereunder.

The Police Magistrate convicted the defendant and fined it £10. From that conviction the defendant appealed to the Supreme Court, and the Full Court ordered the conviction to be quashed : *Colonial Sugar Refining Co.* v. *Stevens*; *Ex parte Colonial Sugar Refining Co.* (1).

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

Ryan K.C. and *Evatt*, for the appellant. Under sec. 14 (4) of the *Regulation of Sugar Cane Prices Act* 1915-1917 the award when made is a statutory contract between mill-owners and cane-growers, and by sec. 8 has the force of law. It was therefore incompetent for the appellant to offer to sell his sugar-cane to Forster or to make a binding contract with Forster for its sale. Whatever right the appellant had to make such an agreement as that made with Forster, the agreement could not alter the binding effect which the award had as between the appellant and the respondent. The agreement between the appellant and Forster is expressly rendered invalid by sec. 15 (1), for it must have involved the consent of the respondent. Even if the agreement between the appellant and Forster were valid, it must be taken to have been made in contemplation of the requirement of the award that analyses of the sugar-cane must be delivered. Notwithstanding the agreement, the appellant remained a cane-grower within sec. 6 and the definition of that term in sec. 3. No implication can be drawn that a request for an analysis is necessary in order to entitle a cane-grower to have it delivered to him. [Counsel referred to *Powell* v. *Farleigh Estate Sugar Co.* (2).]

[ISAACS J. referred to *Lennon* v. *Gibson & Howes Ltd.* (3).]

(1) (1920) S.R. (Qd.), 243.
(2) 27 C.L.R., 219, at p. 226.
(3) (1919) A.C., 709 ; 26 C.L.R., 285.

Sir Edward Mitchell K.C. and *Real* (*Bavin* with them), for the respondent. Sec. 6. recognizes the position that a man may part with the whole or portion of his interest in the sugar-cane grown by him, and, when he does so, the assignee becomes the cane-grower for the purposes of the Act. On the proper construction of sec. 6, where a person has sold his sugar-cane to another person the latter becomes bound by the award and the former ceases to be bound by it. There is no obligation upon a cane-grower to supply his cane to the mill to which his land is assigned. He may think it not worth his while to cut it. Sec. 14 (1) assumes that there will be an obligation imposed by the award to supply the cane to that mill, but no such duty is imposed by the award in this case. There is no obligation upon a mill-owner to deliver an analysis unless the cane-grower asks for it.

[ISAACS J. referred to *Vyse* v. *Wakefield* (1).]

Ryan K.C., in reply.

Cur. adv. vult.

Nov. 25.

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

In the *Queensland Government Gazette* for 19th May 1919 there was published an award made under the *Regulation of Sugar Cane Prices Acts* by the Homebush Local Board, fixing prices and values of sugar-cane for the 1919 season, and making various other provisions, including the following : "Analysis of his cane shall be available to the grower, and shall be delivered to him weekly, together with the dates the analyses were taken and the numbers of the trucks from which the samples were taken." The appellant is a cane-grower whose lands were assigned to the Homebush Mill, of which the respondent Company was the owner. During the week ending 4th October 1919—while the award operated—the appellant in fact delivered to the mill 94·12 tons of cane grown by him on his land, by delivering the cane on the Company's trucks on its tramline. No analysis of the sugar-cane was ever delivered to him. He never asked for an analysis. On 12th February 1920 a complaint

(1) 6 M. & W., 442 ; 7 M. & W., 126.

H. C. OF A. 1920.

STEVENS v. COLONIAL SUGAR REFINING CO. LTD.

was made by the appellant to a Justice of the Peace that the Company had failed to abide by the terms of the award by failing to deliver the analysis to him. On 11th March the case was heard before Mr. Macalister, Police Magistrate, who convicted the respondent, inflicted a fine of £10 and ordered it to pay £2 12s. 8d. costs. On appeal the Full Supreme Court quashed the conviction, with costs. This is an appeal from the judgment of the Supreme Court, and is brought by virtue of special leave to appeal granted to determine the question of law stated in par. 7 of the affidavit of William Flood Webb, Crown Solicitor of Queensland. That paragraph is as follows: "An important question of law arises, namely, whether after an award has been made under the said Acts binding on the owner of a sugar-mill and a cane-grower growing cane on land assigned to that mill an agreement can be validly made, even with the consent of such mill-owner, between such grower and a person other than such mill-owner for the sale of such grower's cane to such person so as to take such sugar-cane out of the operation of the said award under such circumstances that such grower is thereby deprived of the benefit of such award or of any of the provisions of the said Acts." In order to understand the position it is necessary to state the facts.

The Facts.—After the award appeared in the *Government Gazette*, the respondent Company sent to each grower an "offer" in writing, that sent to the appellant being dated 30th June 1919. He got it either direct from the Company or through his son, who was secretary of the Growers' Committee. The "offer" was dated from Homebush, but was an offer addressed to one "C. E. Forster, Esq., Sydney," and began thus: "Dear Sir—I, the undersigned, hereby offer you the whole of my 1919 crop of sugar-cane growing on any part of my land assigned to the Homebush Mill under the Regulation of Sugar Cane Prices Acts of 1915 and 1917 on the terms and conditions set out hereunder." Then follow terms and conditions fixing the value and price of sugar-cane on a basis materially differing from those awarded. Par. 3 of the offer ran as follows: "You shall take delivery of all cane containing over seven per centum of commercial cane sugar delivered into the trucks at the *same points of delivery as in season* 1918." Par. 4 provided:

"Other conditions of delivery, and deductions for burning diseased cane, bad topping, trashy cane, shall be governed by the procedure *as between a mill-owner and a cane-grower* laid down in clauses 4, 5 and 6 of the award of the Local Board for the Homebush Mill for the season 1918." Par. 5 runs thus: "You will hold me indemnified against any legal proceedings that may arise out of the Regulation of Sugar Cane Prices Acts of 1915 and 1917 in connection with the sale to you of my crop." The "offer" concluded thus: "If you agree to the above terms, kindly signify your acceptance thereof to Mr. W. A. Wright of Mackay, whom I have appointed my agent in the matter, not later than 5th August 1919." The real meaning and effect of the "offer" cannot be properly understood without reading the "other conditions of delivery and deductions for burning diseased cane, bad topping, and trashy cane" incorporated by reference in par. 4 of the "offer" as set out in the 1918 award. There are these:—"4. The *mill-owners* shall, as hitherto, provide, free of charge, sufficient tramway material within reasonable limits delivered on the nearest main line for the removal of cane from the field to the main line existing at the date hereof, and shall at least three weeks before *requiring delivery of the cane* give notice in writing to that effect to the grower. 5. All railage, haulage, and cartage allowances or charges as have hitherto been made or agreed to be made between the *mill-owners* and the cane-growers shall remain in force and be allowed and made in respect to the 1918 season. Such allowances to be treated as part of the *cost of manufacture*. 6. The following deductions from the price of cane shall be made at the time of delivery:—(*a*) For Burning—(1) if delivered at the mill or on the mill-owners' main tram-line within two days after burning, 1s. per ton; (2) if delivered at the mill or on the mill-owners' main tram-line after two days but within three days after burning, 2s. per ton: cane burnt without permission—(3) if delivered at the mill or on the mill-owners' main tram-line within two days after burning, 1s. 9d. per ton; (4) if delivered at the mill or on the mill-owners' main tram-line after two days but within three days after burning, 2s. per ton. All burnt cane *delivered at the mill* or on the mill-owners' main tram-line more than three days after burning shall be subject to a deduction of 6d. per ton per day for every day after

H. C. OF A. 1920.

STEVENS v. COLONIAL SUGAR REFINING CO. LTD.

three days, in addition to the deductions set out in sub-clauses 2 and 4, provided that the delay is not caused by *the fault of the mill.* In case of dispute the matter to be referred to the Local Board. Permission to burn shall not be *refused* unreasonably and *any dispute* as to whether permission is unreasonably withheld shall be referred to the Local Board. (*b*) Diseased Cane—Gummed cane (gummosis), penalty not exceeding one shilling per ton if gummed. In the event of the *miller* and the grower not being able to come to any agreement in regard to the matter, it shall be *referred to the Local Board* for decision. There shall, however, be a deduction not exceeding 2s. per ton on all ratoons cropped from such diseased fields, if gummed. In case of dispute the amount of penalty to be referred to the Local Board. (*c*) For Bad Topping—If cane is delivered at a mill badly topped, it shall be subject to a penalty not exceeding 1s. per ton. (*d*) For Trashy or Dirty Cane—As in the case of badly topped cane, the cane shall be subject to a penalty not exceeding 1s. per ton."

The appellant in answer to the Police Magistrate said :—" The Colonial Sugar Refining Co. supplied the offer to each grower. All I had to do was to sign it." And in cross-examination he added : " I may have got my copy of the offer through my son as he was secretary of the Growers' Committee." Forster accepted the offer ; we do not know how. But other growers also sold to Forster. On 2nd August 1919 Forster wrote to W. A. Wright of Mackay, named in the offer as Stevens' agent (a member of the firm that afterwards acted on behalf of the Company at the hearing of the complaint), as follows :—" I hereby inform you that I have entered into an arrangement with the Colonial Sugar Refining Co. Ltd. to take delivery of all the cane crops purchased by me in the terms of my agreement with the cane suppliers to Homebush Mill *as arranged through you, and that the Company will accordingly take delivery and make payment* therefor on my behalf." When Stevens delivered his cane in October 1919 to the Company's tram-line, he thereby apparently carried out his agreement to deliver " at the same points of delivery as in season 1918." It is most important to note that until that delivery was made the property in the cane had not passed. " Every contract of sale involves two things. First. The bargain. Secondly. The transfer of the property"

(per Cockburn C.J. in *Crane* v. *London Dock Co.* (1)). Stevens delivered the cane, he says, "under that agreement." But that must mean that he did so as the *principal*, the owner of the cane. By no other method could he divest himself of the property. The Company received it, and, we will assume, purporting to act as Forster's agent, by reason of the arrangement mentioned by Forster in his letter of 2nd August 1919; but, nevertheless, it was the Company that actually received delivery of the cane from Stevens, and it was the Company that all parties contemplated should manufacture sugar from the cane, give notice to deliver, give or refuse permission to burn, examine the cane on delivery, for it would be absurd to suppose Forster in Sydney was to act in these matters personally or otherwise than through the Company, and it was therefore the Company alone that was to carry out the provisions of pars. 4, 5 and 6 of the 1918 award as incorporated in the "offer."

In ordinary circumstances it might be said that Stevens as principal thereby delivered the cane to Forster, by delivering it to the Company as Forster's agent. But, in the first place, Stevens was, as stated, undoubtedly a principal in that transaction, and the cane he delivered to the Company was, up to the moment of delivery, *his cane*. It was not a delivery to the Company by Forster, through Stevens as Forster's agent, as the Supreme Court has assumed. There is no evidence whatever of a subsequent delivery by Forster, or of any act by which the Company became possessed of the cane in its own right. The knowledge of this is with the Company. The delivery by Stevens was, so far as appears, the only act of delivery to the Company. The Company, and we shall again assume, purporting to act on behalf of Forster, not only received the cane but gave a written receipt in these terms: "Received from Mr. F. G. Stevens the following cane"—specifying dates, trucks and quantities; and the receipt was signed "R. M. for Cane Inspector." Whose Cane Inspector? The appellant, in cross-examination, said: "Forster was the only person I dealt with." But that must be taken subject to the proved facts. He also says:—"I looked to the Colonial Sugar Refining Company to pay me for the cane. The payments were in accordance with the agreement made with

(1) 5 B. & S., 313, at p. 317.

H. C. OF A. 1920.

STEVENS v. COLONIAL SUGAR REFINING CO. LTD.

Forster . . . . The payments for the sugar-cane were made to the Mackay branch of the Australian Bank of Commerce Ltd. I had an account at that branch. I don't know actually who paid the amount in. I wrote a letter to the acting manager of the Homebush Mill to pay to my account in the Mackay branch of the Australian Bank of Commerce Ltd. the money for my cane for 1919. There were certain disadvantages in the Forster agreement. There was a lesser price in the agreement than in the award."

Those are the circumstances. There are some irresistible conclusions from the facts narrated in detail. First: the agreement to which Forster was a party was in reality a *tripartite agreement*, not confined in reality to the document called the " offer " and to some actual or implied assent of Forster, but constituted by all the circumstances. Stevens was the vendor, Forster the purchaser, and the Company a necessary party for the purpose of inducing, and assenting to, Stevens selling to Forster in derogation of Stevens' statutory obligation and of the Company's statutory rights, and for the purpose of carrying out the transaction in respect of delivery and payment, and particularly of carrying out the minute provisions incorporated in the offer from clauses 4, 5 and 6 of the award of 1918, for as to these it was, as already observed, the Company, and not Forster, that was capable of performing the acts therein referred to. The Company's part in the agreement was taken in the first instance by its sending the offer to Stevens to sign and forward to some one, either Forster or some one representing him in aiding Stevens and Forster to carry through their respective parts in it, and co-operating in the performance—one portion of its co-operation, namely, the details of the arrangement between it and Forster being disclosed only by the acts of the Company, showing that Forster was a mere intermediary. Though the Company's name does not appear in the offer or in any formal acceptance of it, the facts demonstrate the true tripartite nature of the arrangement. Indeed, Forster's undertaking to indemnify Stevens for breach of the statute, adopted as it was by the Company in including it in the offer, is indisputable proof that the Company's assent was a necessary element in the bargain; and indicates that it was the instigator of the scheme. Forster's role as a *dramatis persona* is strongly

suggestive of that of Wall between Pyramus and Thisbe. The second conclusion is that Stevens delivered *his* cane to the *Company* on the terms of the Forster agreement. He delivered the cane in fact to the Company. He so delivered it in his actual capacity of "grower" of the cane, a character he never in fact lost. The Company received the cane in fact at its mill. To all outward appearance and in substance it so received the cane as the owner of the mill. Did it lose that quality by reason of the arrangement? Apart from the arrangement between the grower, the mill-owner and Forster, the award had in those circumstances to be complied with as to terms of analysis and price. If sec. 15 (1) nullifies the arrangement as between the Company and Stevens (a question to be presently considered), what was there to prevent the award taking effect? The question then comes to this: Is the bargain, entered into and carried out between mill-owner, cane-grower and a third party, who acted entirely through the Company as his agent, such a bargain as avoided the operation of the award of 1919? Did Stevens cease to have, in respect of the cane he delivered to the Company, the status of a "grower" under the award? Or did the mill-owner cease to have, in respect of the cane delivered, the status of mill-owner under the award? In other words, did the arrangement referred to effectually, in the eye of the law, interpose Forster as a barrier between cane-grower and mill-owner so as to prevent the award operating upon their actual relations. If, as the Supreme Court has held, these questions are to be answered in the affirmative, the Act is practically a dead letter. Before arriving at so drastic a conclusion, it is necessary to examine the statute carefully in order to discover from its express provisions or its necessary implications how the relations of mill-owners and cane-growers are regulated in the public interest.

The Statute.—The Act intitules itself an Act for "The Regulation of Sugar Cane Prices" (sec. 1). Sec. 3 is "an interpretation section," but like all such sections it must yield to a context in the enacting portions of the statute. In relation to this Act that principle has been very strongly applied by the Judicial Committee in *Lennon* v. *Gibson & Howes Ltd.* (1), where the scheme of the Act was held to

(1) (1919) A.C., 709; 26 C.L.R., 285.

H. C. OF A. 1920.

STEVENS v. COLONIAL SUGAR REFINING CO. LTD.

govern in preference to the words of sec. 3. Among the terms which are *primâ facie* defined by sec. 3 is " cane-grower," and great stress has been placed on this by the Supreme Court. It was held by the Supreme Court that as the three words " growing, selling, and supplying " were all used, and as Stevens was not—as the Court held—the " seller " of the cane to the mill, he could not come within the definition. It would, of course, follow if that be correct, that as Forster was not the " grower," he would be equally outside the definition, and so this award, and every award made under the Act, would in the presence of similar arrangements be a nullity. It appears clear to us, even if the matter were *res nova*, that so rigid a construction of the definition is contrary to many express provisions. For instance, sec. 4, providing for the Central Board, requires " a cane-growers' representative " (sub-sec. 2 (ii)), who (sub-sec. 3) is to be elected by ballot by the " cane-growers of Queensland." A man actually growing cane surely cannot be excluded from voting merely because he is not actually " selling " cane. So in sec. 5 (2) the lands of the " cane-growers " assigned to a mill are lands of growers who may not have yet " sold " any cane whatever to that mill or to any mill. The definition, which must, like every other part of the Act, be construed by the light of the Act as a whole, refers to " cane-grower " as a member of *a class* whose occupation is that of " growing, selling, and supplying sugar-cane to a sugar-mill," and has not reference to a particular transaction. Similarly in the converse case of " owner of a mill " and " owner," a person whose general position answered the definition would not cease to come within the definition, though on account of illness or other temporary reason he was not, on some particular occasion, in actual " control " of the mill. Taking no other guide than the language of the Act itself, we should hold that the definitions are by way of general descriptions of the two classes of persons engaged in the sugar producing industry. But in *Lennon* v. *Gibson & Howes Ltd.* (1) the Privy Council not merely adopted that view, but gave commanding effect to the general scheme of the Act. Their Lordships (2) took into consideration the interests of the " public as a

(1) (1919) A.C., 709 ; 26 C.L.R., 285.
(2) (1919) A.C., at pp. 713-715 ; 26 C.L.R., at pp. 289-291.

whole," the intention of the statute to operate for the "protection and advance of the sugar industry as a whole," that the institution of Sugar Boards with their powers is, as was said, for the benefit of the sugar-growing community and the public generally. Their Lordships further pointed out the principal object of the two artificial categories constituted by the definition of "cane-growers" and "mill-owners" (1); and we are of opinion that what is there stated supports the view we have expressed. And we would refer to the very explicit words of Lord *Shaw* (2) repelling the notion that in sec. 20 the term "cane-grower" is to be understood in the sense that "a cane-grower" may grow cane but he is not "a cane-grower" because he crushes his cane at his own mill. That observation entirely disposes of the view that no one can be a "cane-grower" within the meaning of the Act unless he "sells" cane. We may relevantly supplement what was said by the Judicial Committee by adding that not only is the Act a distinct expression of the public policy of Queensland to regulate a great national industry, but that one of the methods adopted is to provide for sugar-growers a remuneration adequate to enable them to cultivate by means of white labour (see sec. 12, sub-secs. 1 (*d*) and 2).

Sec. 4 establishes a Central Board, on which, in addition to a Judge, a sugar chemist and an accountant, each class has a representative. The Central Board has certain appellate, regulative and supervisory powers which, except so far as expressly stated by us, it is not necessary to mention in detail. Sec. 5 provides for "Local Sugar Cane Prices Boards." The word "Prices" is of some importance. There is to be a local Board for each "mill and the land or lands assigned to such mill." That is done by an Order in Council which declares "the mill and the lands of the cane-growers" and constitutes the Local Board. That, so far, amounts to a segregation of a particular mill from other mills, and of the particular cane-growing lands from other cane-growing lands, and to the exclusive attachment of the particular mill to the particular lands for the purpose of sugar production. The first proviso—substituted for the original proviso by sec. 4 (2) of the amendment Act of 1917—makes one

(1) (1919) A.C., at pp. 714-715; 26 C.L.R., at p. 290.
(2) (1919) A.C., at p. 715; 26 C.L.R., at p. 290.

H. C. OF A. 1920.

STEVENS v. COLONIAL SUGAR REFINING CO. LTD.

exception to this exclusiveness, by enacting that " any *cane-grower* shall be at liberty to deliver any of his frosted or damaged sugar-cane to any mill which is crushing sugar-cane, whether such cane-grower's lands are assigned to that mill or not." The original proviso for which this was substituted, and which we do not quote, made an exception in a different way, but not so restricted. The exclusiveness of the assignment, apart from specific exception, was, however, quite distinct even in the Act as originally framed. Apart from the present proviso the exclusiveness would have existed even as to frosted or damaged cane, subject however to such deductions as the Board might allow under sec. 12 (3). Another exception—inserted in sec. 5 by the same sec. 4 (2) of the Act of 1917—is that the Central Board has power to alter the assignment by the Order in Council of lands, or an area or locality to a particular mill, by assigning the same to another mill and, says the enactment, " *so that* the sugar-cane grown on such land or lands or within such area or locality *shall* be *supplied* to the newly-assigned mill." Subject to any later provisions, it seems clear that the basic idea of the Act so far is to connect a certain mill and certain lands so that the cane grown on those lands shall be *supplied* to that mill, except frosted or damaged cane which at the option of the grower may be supplied to any mill, if containing over seven per cent. of commercial cane sugar. These provisions for exclusive supply were preparatory to what the Judicial Committee in *Lennon's Case* (1) termed the " leading purposes of the statute," namely, " the adjustment of prices and the making of awards thereon."

Sec. 6 is the section enabling Local Boards to fix prices by an award. The principal argument of the respondent rested on that section as amended. It is therefore very important to understand it. In its original form it ran thus : " 6. A Local Board may, with respect to the lands and the mill for which they have been constituted, make an award determining the *price or prices* to be paid and accepted by the owner or owners of the mill and cane-growers, respectively, for sugar-cane *sold and taken delivery of* at the mill concerned, and determining *all matters relating* to such *supply* of sugar-cane and

(1) (1919) A.C., at p. 715 ; 26 C.L.R., at p. 291.

payment therefor." The section so standing assumed the mutual obligation of supply and acceptance which resulted in the cane being, in the words of the section, "sold and taken delivery of." The act of delivery on the one hand and of acceptance on the other constitutes the sale. The function of the section from the first was to enable the Local Board to award determining (1) the price or prices to be paid and accepted and (2) all matters relating to "such supply and payment." Then the Act of 1917, by sec. 5, amended the section, first, by altering the word "may" to the words "shall in each year"; thus indicating the intention of the Legislature that the proper price shall be fixed in view of each year's conditions or prospects and that the price for 1919 shall not be governed by the price in 1918. Next, it inserted after the word "respectively" the words "(including all mortgagees, lienees, transferees, assignees or other persons having any title to or interest in any such mill or lands or sugar-cane)"; and instead of "taken delivery of at" there were inserted the words "taken delivery of or which should be taken delivery of by such owners of"; and "the handling and treatment thereof by the owner or owners of the mill" were added to the subjects as to which the Board might award.

Now, it is plain that by adding the last-mentioned auxiliary subjects the Legislature recognized that the powers of the Board under sec. 6 were limited to the matters therein specified. It cannot, therefore, be sustained that so vital a matter as the existence of any obligation whatever on the part of the cane-growers to supply the mills was left to be determined by award of the Board. If it were so left, it might be ordained by the Board that some cane-growers should be bound, and some free, some entirely and others partly bound, and so on. But the truth is that the obligation is found in the Act, once the Order in Council assigns a mill and lands or the Central Board modifies that. The creation of the obligation is beyond the sphere of the Local Board, and it would be a violent construction of the Act which would give that Board virtually the power to nullify or counteract the decision of the Governor in Council and the Central Board. Its function is the adjustment of prices and the awarding of auxiliary conditions of supply and manufacture. The addition

H. C. OF A. 1920.

STEVENS v. COLONIAL SUGAR REFINING CO. LTD.

of the words " or which should be taken delivery of " has evident reference to the statutory obligation to take delivery and not to any obligation created by an award. Then as to persons bound, " mill-owners " and " cane-growers " are mutually bound as before. The amendment says " including " the persons designated ; it does not exclude anybody who was previously bound by the section. A " cane-grower,' so long as he remained a " cane-grower " and in fact supplied the cane he grew, was within the section. *Lennon's Case* (1) establishes that under sec. 20 sugar-cane is " received " at a mill even though the owner of the mill grows the cane himself and conveys it to the mill. There is a passage in sec. 20 which bears strongly on this case. The section says the " assessment shall, however, be borne by the cane-grower and the owner of the mill respectively, in equal proportions for every ton *so supplied* by such cane-grower." That is held by the Privy Council to be satisfied by a mill-owner being also a cane-grower, and that when he conveys the cane to the mill the cane is " supplied by such cane-grower." " Supplied " therefore means simply " delivered." If so, Stevens, as a cane-grower, certainly " supplied " the mill in this instance.

It was strongly contended for the respondent that sec. 6 contains in the words added by amendment a necessarily implied recognition of the right of a cane-grower to sell his cane as he did to Forster, and that, if he did so, he was no longer within the terms of the award. We do not dissent from the contention that a cane-grower may mortgage or give a lien or transfer or assign, but with essential qualifications. A cane-grower may, for instance, by death or by ceasing to own or occupy land, or by bankruptcy or by not cultivating his land, cease to be a cane-grower. He does not necessarily cease to be so by merely mortgaging his land or his crop or giving a lien on it. And we think that neither he nor any of the persons designated as " included " can validly do anything in derogation of the obligation of the grower of the crop for the time being to deliver it to the mill, or of the obligation of the mill-owner to pay the award price for it, and to observe the other requirements of the award in respect of it.

(1) (1919) A.C., 709.

Whatever might have been the result had the actual arrangement been different, Stevens, in the proved circumstances, remained a "cane-grower," and Forster certainly did not become a "cane-grower." And as Stevens while a cane-grower delivered, as he was bound by law to deliver, the cane he grew to the mill, so the mill-owners were bound to observe towards him the obligations of the award. This appears to be the inevitable conclusion from the direct provisions of the Act to which we now refer. By sec. 8 an award has the force of law, and is "binding on all owners of sugar-mills and cane-growers upon the lands to which the award applies." By sec. 12 (8) delivery by the cane-growers at the usual place of delivery is "deemed to be delivery . . . to the owner." By sec. 14, which recognizes the statutory obligation of the cane-grower to deliver to the mill (as sec. 8 recognizes the reciprocal obligation of the mill-owner to accept it), there is imposed a penalty on the cane-grower for breach. This was the provision against which the "offer" professed to indemnify Stevens. Sub-sec. 4 of that section declares that "For the purposes of this section the making of an award shall be regarded as an agreement entered into between each cane-grower and owner bound by such award." The "purposes of the section" include the enforcement of the cane-grower's statutory obligation of delivery, and the mutual obligations of obedience to the provisions of the award itself.

If an agreement between parties can effect a change of ownership, the statutory agreement must take precedence of the Forster agreement with a consequential obligation to deliver, to accept, and to pay according to an award. We hold that no private agreement can have any validity so far as it is in derogation of the statutory agreement created by sec. 14 (4), or the express or implied requirements of the Act. Further, sec. 15 (1) forbids contracting out. It invalidates the tripartite agreement, because without the Company that agreement is impossible, and, if possible, would derogate from the requirements of that Act, and with the Company it is contrary to sec. 15 (1).

We are therefore of opinion that, so far as the Act is concerned, the appellant was entitled to the benefits of the award in respect of the cane to be delivered.

H. C. OF A. 1920.

STEVENS v. COLONIAL SUGAR REFINING CO. LTD.

The Supreme Court, however, thought that, as the cane had been sold to Forster, the provision of the award itself that " analysis of *his* cane shall be available " could not apply to Stevens. This is due to a misapprehension. In addition to what we have already said, it is to be observed that the word " his " is there used not to indicate " property " but to indicate that each grower's right to see the analysis and to have a copy is confined to the cane delivered by *him*. He has no right to see the statistics as to other persons' cane. See for instance, sub-sec. 4 of sec. 6A.

The only question remaining, therefore, is whether the respondent committed a breach in not delivering to Stevens the analysis, notwithstanding he made no request for it. Analysis means the chemical process of ascertaining the sugar contents of the cane, and the provision that " analysis of his cane shall be available to the grower " means that the tabulation or record of that process so far as it relates to the cane supplied by any particular grower shall be open to his inspection and examination at any reasonable time. The further provision is: " and shall be delivered to him weekly." Delivery of the analysis must mean delivery in recorded form of the result of the process. There is no statement in the award whether delivery is to be made by handing the result to the grower personally, or by posting it, or by handing it to an agent; and no directions general or particular were ever given to the growers. The grower might not be present personally for over a week. He might not even desire to have the record. He may have seen and copied the entry on other documents shown him by the mill-owner. There is no rule of law as to the party undertaking to deliver being bound to seek out the other party. The matter therefore falls within the reasoning of *Vyse* v. *Wakefield* (1) and *Makin* v. *Watkinson* (2), and notice was necessary, because in the absence of notice, in the words of *Bramwell* B., " the defendant can only guess or speculate about the matter."

For this reason, and for this reason only, we dismiss the appeal, but without costs, except that the respondent pay to the appellant extra costs in accordance with the order of 2nd August 1920.

(1) 6 M. & W., at p. 452.

(2) L.R. 6 Ex., 25, at p. 30.

H. C. OF A. 1920.

STEVENS v. COLONIAL SUGAR REFINING CO. LTD.

Appeal dismissed. Respondent to pay to appellant the extra costs occasioned by the hearing of the appeal in Sydney.

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

Solicitors for the respondent, *Minter, Simpson & Co.*

B. L.

Foll Hoysted v Taxation, Federal Commissioner of (1921) 29 CLR 537

[HIGH COURT OF AUSTRALIA.]

ROFE AND ANOTHER . . . . . APPELLANTS;

AND

THE DEPUTY FEDERAL COMMISSIONER OF LAND TAX FOR NEW SOUTH WALES . . . . . RESPONDENT.

H. C. OF A. 1920.

SYDNEY, *Nov.* 9, 10, 11.

Knox C.J., Isaacs and Rich JJ.

Land Tax—Assessment—Owner—Joint owner—Deduction of £5,000*—Trustees—Beneficiaries entitled to income from land—Will of testator who died before* 1*st July* 1910*—Land Tax Assessment Act* 1910-1916 (*No.* 22 *of* 1910*—No.* 33 *of* 1916), *secs.* 3, 10, 11, 12, 33, 38 (7).

A testator who died before 1st July 1910 by his will devised certain land to trustees upon trust for such of the children of one of his sons living at the testator's death or born thereafter as should attain the age of twenty-one years, and, if more than one, as tenants in common. He directed that his trustees should accumulate the net rents and profits of the land until one of such children should first attain the age of twenty-one years, and should thereafter, on 1st January of each year, divide the net rents and profits into as many equal shares as there were children living on that day or who had died before that day having attained the age of twenty-one years, and should pay one of such shares to each of such children, or to the parent or guardian of such of them as were under the age of twenty-one years, or to the representatives of such of them as had died after attaining that age. There were four children of such son of the testator, and the eldest of them attained the age of