H. C. OF A. 1922.

COMMISSIONER OF STAMP DUTIES (QD.) v. LIGHTOLLER.

Appeal allowed. Judgment of Supreme Court of Queensland discharged. Declare that the assessment by the Commissioner of Stamp Duties is not contrary to law and that the succession duty to be paid by the several beneficiaries ought to be charged separately and not as in the case of a legacy to one person. Costs in Supreme Court and of this appeal to be paid by respondent.

Solicitors for the appellant, *H. J. H. Henchman*, Acting Crown Solicitor of Queensland.

Solicitors for the respondent, *Foxton, Hobbs & Macnish.*

J. L. W.

Appl *Poulton v Commonwealth* (1953) 89 CLR 540

Aff *John Cooke & Co Pty Ltd v Commonwealth* (1924) 34 CLR 269

Appl *W M C Resources Ltd v Lane (Native Title Registrar)* (1997) 143 ALR 200

[HIGH COURT OF AUSTRALIA.]

JOHN COOKE & COMPANY PROPRIETARY LIMITED AND ANOTHER . . . PLAINTIFFS;

AGAINST

THE COMMONWEALTH AND OTHERS . DEFENDANTS.

H. C. OF A. 1921-1922.

SYDNEY, *Nov.* 28-30, *Dec.* 1-2, 1921.

MELBOURNE, *Mar.* 13, 1922.

SYDNEY, *Sept.* 25-29, *Dec.* 12, 1922.

Knox C.J., Gavan Duffy and Starke JJ.

FIELD AND OTHERS . . . . . PLAINTIFFS;

AGAINST

THE CENTRAL WOOL COMMITTEE AND OTHERS . . . . . DEFENDANTS.

Contract—Evidence—Acquisition of Australian wool clips by Imperial Government—Rights of suppliers of wool against Commonwealth and Central Wool Committee—War Precautions Act 1914-1916 (*No.* 10 *of* 1914—*No.* 3 *of* 1916), *sec.* 4—*War Precautions* (*Wool*) *Regulations* 1916 (*Statutory Rules* 1916, *No.* 322), *regs.* 10, 13, 24, 26—*War Precautions* (*Sheepskins*) *Regulations* 1916 (*Statutory Rules* 1916, *No.* 321), *reg.* 18—*Rules of the High Court* 1911, *Order* II., *r.* 9; *Order* IV., *r.* 1.

About November 1916 the Imperial Government proposed to the Commonwealth Government to purchase the whole of the Australian wool clip for the season 1916-1917. Acting upon a proposal made by a conference of representatives of the wool trade in Australia, the Imperial Government agreed that the wool clip should be secured on its behalf by the Commonwealth Government on the basis substantially of a certain average price per pound of greasy wool, promising to share with the Commonwealth Government the profits which might arise from the sale of wool not required for military purposes. For the purpose of carrying out this agreement and pursuant to the *War Precautions Act* 1914-1916, the *War Precautions* (*Wool*) *Regulations* 1916 and the *War Precautions* (*Sheepskins*) *Regulations* 1916 were then made. The owners of shorn wool and of skin wool submitted their wool for appraisement and sale under those regulations, and the Imperial Government paid the Commonwealth Government for all wool so appraised and supplied to it through the Central Wool Committee set up under those regulations. The Central Wool Committee undertook the duty of distributing among the suppliers of wool the purchase-money and the above-mentioned share of profits as well as other profits which accrued in carrying out the transaction. The same arrangements were made and carried out for the wool clips of several subsequent seasons.

Held, on the evidence, (1) that no contractual relation was created between the Commonwealth Government and the suppliers of wool whereby that Government became either the purchaser of the wool or the agent of the suppliers in respect of it; (2) that the Commonwealth Government did not either requisition the wool or compulsorily acquire it for the purposes of the War; (3) that the arrangement between the Imperial Government and the Commonwealth Government to acquire the wool clips was one of a political nature, not cognizable by Courts of law, creating no legal rights or duties and depending entirely for its performance upon the constitutional relationship between those Governments and their good faith towards each other; (4) that no enforceable contract of purchase and sale existed between the Imperial Government and the suppliers of wool; (5) that no trust was created by the Imperial Government for the benefit of suppliers of wool in respect of moneys paid by that Government to the Commonwealth Government under the arrangement, and no direction was given by the Imperial Government to the Commonwealth Government to pay those moneys to the suppliers of wool; and (6) that the *War Precautions* (*Wool*) *Regulations* 1916 conferred no legal rights upon any individual supplier of wool, apart from rights in respect of the appraised value of his wool (as to which *quære*).

Held, therefore, that suppliers of skin wool had no cause of action against the Commonwealth or the Central Wool Committee in respect of their refusal to allow the suppliers of skin wool to participate in the distribution of the share of profits paid by the Imperial Government and the other profits which had accrued in respect of wool of those suppliers appraised and sold during the seasons 1918-1919 and 1919-1920.

H. C. OF A. 1921-1922.

JOHN COOKE & CO. PROPRIETARY LTD. AND FIELD v. THE COMMONWEALTH AND THE CENTRAL WOOL COMMITTEE.

HEARING of actions.

An action was brought in the High Court by John Cooke & Co. Proprietary Ltd. and Peter McWilliam Ltd., on behalf of themselves and all others the vendors and suppliers of skin wool under the provisions of the *War Precautions* (*Sheepskins*) *Regulations* and the *War Precautions* (*Wool*) *Regulations*, against the Commonwealth, the Central Wool Committee, the Right Honourable William Morris Hughes (His Majesty's Prime Minister for the Commonwealth), Sir John Michael Higgins (the Chairman of the Central Wool Committee), and Edmund Jowett, Franc Brereton Sadlier Falkiner, Walter James Young, Andrew Howard Moore, William Stevenson Fraser, Robert Bond McComas and Burdett Laycock (the members of the Central Wool Committee).

An action was also brought in the High Court by Thomas Alfred Field, Herbert Field and Sydney Field against the Central Wool Committee, the Right Honourable William Morris Hughes (His Majesty's Prime Minister for the Commonwealth), Sir John Michael Higgins (the Chairman of the Central Wool Committee), and Edmund Jowett, Franc Brereton Sadlier Falkiner, Walter James Young, Andrew Howard Moore, William Stevenson Fraser, Robert Bond McComas, Burdett Laycock and John Fox (the members of the Central Wool Committee), and the Commonwealth.

The two actions were directed to be heard before the Full Court, and were heard together before *Knox* C.J., *Gavan Duffy* and *Starke* JJ.

The material facts and the nature of the relief sought and of the arguments are stated in the judgment hereunder.

Maughan K.C., *Flannery* K.C. and *Nicholas*, for the plaintiffs in the first action.

E. M. Mitchell, for the plaintiffs in the second action.

Innes K.C. and *Ferguson*, for the defendants in both actions.

During argument reference was made to *Owners of the Crown of Leon* v. *Admiralty Commissioners* (1); *Joseph* v. *Colonial Treasurer*

(1) (1921) 1 K.B., 595, at pp. 602, 609.

of New South Wales (1); *The Zamora* (2); *Sheffield Conservative and Unionist Club* v. *Brighten* (3); *Attorney-General* v. *De Keyser's Royal Hotel* (4); *John Robinson & Co.* v. *The King* (5); *In re Mersey Docks and Harbour Board and Admiralty Commissioners* (6); *St. Pancras Vestry* v. *Batterbury* (7); *Bentley* v. *Manchester, Sheffield and Lincolnshire Railway Co.* (8); *Cannon Brewery Co.* v. *Central Control Board (Liquor Traffic)* (9).

Cur. adv. vult.

Mar. 13, 1922.

THE COURT delivered the following written judgment:—

These two actions were ordered for trial before the Full Court, and were so heard in November and December last. It was agreed at the hearing that the evidence given in *Cooke's Case* should be treated as also governing *Field's Case*, but the plaintiffs were separately represented and heard before the Court. A short analysis of the pleadings will make clear both the issues between the parties and the matters that fall for decision by this Court.

In *Cooke's Case* it is alleged (par. 5) that the Imperial Government agreed with the owners of skin wool and of shorn wool in the Commonwealth that the Imperial Government would purchase, and the owners would sell, the whole of the wool available for the two wool seasons of 1916-1917 and 1917-1918 (less certain wool disposed of or required for local purposes) on the following terms: the Imperial Government to pay forthwith 15½d. per pound on the greasy basis plus a charge of ⅝d. per pound to cover handling and other charges; and, in the event of any profit being realized from the sale of the wool by the Imperial Government for other than military or naval requirements, one-half of such profit to be retained by the Imperial Government, and one-half paid to the Commonwealth on behalf of the owners of the wool in part payment for their wool. A similar agreement is alleged for the years 1918-1919 and 1919-1920, but the handling and other charges are alleged to be ¾d. per pound instead of ⅝d. per pound. In order to carry out the agreements, the Commonwealth, it is alleged, promulgated regulations

(1) (1918) 25 C.L.R., 32.
(2) (1916) 2 A.C., 77.
(3) (1916) W.N., 277, at p. 278.
(4) (1920) A.C., 508, at p. 526.
(5) (1921) 3 K.B., 183, at p. 198.
(6) (1920) 3 K.B., 223.
(7) (1857) 2 C.B. (N.S.), 477.
(8) (1891) 3 Ch., 222.
(9) (1918) 2 Ch., 101; (1919) A.C., 744.

H. C. OF A. 1921-1922.

JOHN COOKE & CO. PROPRIETARY LTD. AND FIELD v. THE COMMONWEALTH AND THE CENTRAL WOOL COMMITTEE.

under the *War Precautions Act* 1914-1916, known as the *War Precautions (Sheepskins) Regulations* and the *War Precautions (Wool) Regulations* respectively. According to the allegations a Central Wool Committee was set up, and to this Committee was given the control of the administration of the regulations, subject to the directions of the Prime Minister. Further, provision was made for the appraisement of wool supplied by official appraisers, and the sale of any wool or tops was prohibited except through, to, or with the consent of, the Committee, or otherwise in accordance with the regulations. It was also provided that the general policy to be observed in the administration of the regulations would be equality of treatment. The Commonwealth and the Central Wool Committee were, it is alleged, the agents of the plaintiffs and others in and about the sale of the wool to the Imperial Government, and in and about the administration of the regulations.

The plaintiffs, so it is alleged, in each of the seasons already mentioned submitted their wool for appraisement and sale in accordance with the agreements and the regulations. The Commonwealth or the Central Wool Committee, it is also alleged, received large sums of money by way of the following: (1) purchase-money, (2) profit on exchange, (3) savings on the holding and handling charges, (4) profits from investment, (5) utilization of all such profits and savings, (6) instalments of the half-share of profits payable by the Imperial Government in accordance with the agreements. It is also alleged that further instalments of these profits will be received. The Commonwealth and the Central Wool Committee, it is alleged, retained part of the purchase-money, and refuse to distribute the moneys so retained, and the profits and other moneys already mentioned, among the owners of skin wools, except on the basis that the owners of skin wools be not entitled to participate in the profits already mentioned, in respect of any wool of theirs appraised and sold during the wool seasons 1918-1919 and 1919-1920.

The plaintiffs' pleadings set forth several contentions in support of their claim: (1) that the moneys paid by the Imperial Government to the Commonwealth or the Central Wool Committee were paid under and by virtue of the contracts already mentioned; (2)

that all the moneys were received by the Commonwealth or the Central Wool Committee as the agents for the plaintiffs; (3) that under the regulations the owners of skin wool were entitled to equality of treatment with the vendors of shorn wool.

During the trial a further case was made by an addition to the pleadings. It is set forth in par. 19 (a); and it alleges an agreement with the Commonwealth, as and when the Commonwealth received any moneys in respect of the transactions from the Imperial Government or otherwise, that the Commonwealth would, after deducting therefrom the expenses (if any) of the Commonwealth, pay to each of the plaintiffs a portion of the same, the amount of such portion being calculated proportionately, according to the quality and quantity of the wool supplied. An alternative claim is also made that the Commonwealth Government requisitioned the plaintiffs' wool, whereby the plaintiffs are entitled to compensation to the extent of the full value of their wool, including the share of the profits paid by the Imperial Government.

Substantially the defendants traversed these allegations, but also affirmatively alleged a sale of wool by the Commonwealth to the Imperial Government and a compulsory acquisition by the Executive Government of the Commonwealth of the plaintiffs' wool for the purposes of the War.

The pleadings in *Field's Case* raise substantially the same case as *Cooke's Case*; and do not, therefore, require a detailed statement.

Before referring to the evidence, we propose to state our general view of the case and the facts surrounding it. About November 1916 the question of ensuring an adequate supply of wool to meet the military needs of the British and Allied Armies had been engaging the serious consideration of the Imperial Government, and the Secretary of State for the Colonies communicated with the Commonwealth suggesting the purchase by the Imperial Government of the entire wool clip of Australia. The disposal of the wool was a matter of no less importance to Australia. As the Prime Minister of the Commonwealth said in Parliament in July 1917, in relation to the 1917-1918 wool clip: "Australia would have been faced with financial chaos, if not disaster, if its wool could not have been disposed of and financed." Buyers were not operating and freight was

H. C. OF A. 1921-1922.

JOHN COOKE & CO. PROPRIETARY LTD. AND FIELD v. THE COMMONWEALTH AND THE CENTRAL WOOL COMMITTEE.

scarce, so that the disposal of the wool was plainly a matter of very serious concern to the community. The transaction proposed by the Imperial Government involved many millions of pounds—nearly twenty-five millions for the 1916-1917 clip alone; but if it were concluded, the financial and industrial position of Australia would be enormously relieved at a critical period of the War. Thus the Commonwealth Government had no difficulty in accepting the suggestion of the Imperial Government, both because of the needs of the Allied Armies and because of the financial position of Australia. The Prime Minister lost little time in summoning a conference of representative members of the wool trade.

It is undoubted that at this time the Commonwealth Government was prepared to use all its powers to acquire the wool in case of need; but it preferred, as the Prime Minister said at the conference, and as the Treasurer, Mr. Watt, said in his evidence, to work with the co-operation of the wool trade rather than with its opposition. At the conference the Prime Minister said that the Empire must acquire the wool clip of Australia for military purposes, but, while emphasizing the imperative need of the hour, he invited a statement from the conference of the price at which suppliers would sell their wool and of the arrangements necessary for payment thereof. The conference appointed a committee to consider the price which should be named per pound of greasy wool for the Australian clip. Resolutions were agreed to as follows: (1) "That the committee recommends that the remainder of the clip for the season 1916-1917 be sold through the Commonwealth Government to the Imperial Government at 15d. per pound of greasy wool, under the usual conditions of sale in the Australian trade; (2) that the conference propose the appointment of a central wool committee representative of all sections of the Australian wool industry to advise the Prime Minister in carrying out the scheme, such committee to consist of two growers, two sellers, one buyer, one manufacturer, one scourer, and an independent chairman." The conference expressed a desire that Mr. (now Sir John) Higgins fill the position of Chairman to the Central Committee.

These resolutions were brought before the conference and discussed with the Prime Minister, who at once required some information as to the usual conditions of trade in the Australian industry.

It was pointed out that wool-selling brokers were in normal times paid a commission for handling, storing, cataloguing and selling the wool, and that additional charges were also incurred in transporting the wool from warehouse to ship. Finally the resolutions were adopted, and the Prime Minister communicated with the Imperial Government through the usual official channels. The result is summed up in a cable dated 13th December 1916, from the Secretary of State for the Colonies, to the effect that the Imperial Government agreed to the proposal that the wool clip (with some exceptions) should be secured on its behalf by the Government of the Commonwealth on the basis of an average price of 15½d. per pound of greasy wool in good condition, plus a maximum charge of ⅝d. per pound to cover all charges in Australia.

On 20th December 1916 the Governor-General in Council, upon the recommendation of a committee of the conference, and pursuant to the *War Precautions Act* 1914-1916, made the regulations known as the *War Precautions (Wool) Regulations* and the *War Precautions (Sheepskins) Regulations* (Statutory Rules 1916, No. 322; 1916, No. 321). These regulations as amended from time to time, are conveniently set forth in the second and third schedules of the *Commercial Activities Act* 1919.

It is not necessary, for the purposes of the present case, to determine what was the precise position of the Imperial Government as regards the individual suppliers of wool in Australia, under the terms of the arrangement set forth in the communications that passed between it and the Commonwealth Government; for it is beyond dispute that, whatever its obligations were, the Imperial Government is performing them.

The Imperial Government paid for all wool appraised and supplied to it through the Central Wool Committee set up under the Wool Regulations. The Central Wool Committee undertook the duty of handling and distributing these moneys among the suppliers of wool —and not only these moneys, but also various profits which it made in handling the business, beside the profits which the Imperial Government remitted to it from the sale of wool not required for military purposes. These latter profits the Imperial Government

H. C. OF A. 1921-1922.

JOHN COOKE & CO. PROPRIETARY LTD. AND FIELD v. THE COMMONWEALTH AND THE CENTRAL WOOL COMMITTEE.

had, in its original communication to the Commonwealth Government of 14th November 1916, promised to share with the Government of Australia.

But the plaintiffs insist that a contract was made between each of the plaintiffs severally and the Commonwealth Government whereby the Commonwealth Government agreed to pay to each of the plaintiffs a portion of these moneys proportionately, according to the appraisement, under the Wool Regulations, of the wool supplied by them respectively. Or, if such a contract cannot be inferred, then the plaintiffs claim that the Commonwealth and the Central Wool Committee acted as the agents of the plaintiffs and became subject to the ordinary fiduciary duty of accounting to their principals and each of them for all moneys received in the course of the agency to the use of the principals. Neither contention can be supported. The basis for the formation of a contract is wanting. The Commonwealth Government was not even in touch with the individual suppliers: it certainly invited persons to attend a wool conference, but these persons, though important representatives of the wool trade, were not the agents of individual suppliers, and had no authority whatever to conclude a contract for them. The Government did not make an offer to purchase from all persons who chose to supply wool (see *Carlill* v. *Carbolic Smoke Ball Co.* (1)), though it did use its governmental powers to prohibit persons selling wool except through, to, or with the consent of, the Central Wool Committee. As a matter of fact, the transaction with the Imperial Government was not even disclosed to persons outside the conference until its terms had been concluded.

But, putting on one side the technical aspects of the law relating to contract, the facts and the surrounding circumstances convince us that the Commonwealth Government did not intend to, and did not in fact, enter into any legal relations with the plaintiffs or any of them. Its acts were in truth and in fact acts of Government. On the one hand, it was bound to assist and protect the Imperial Government, and it therefore prohibited the sale of wool except to or through a Central Wool Committee which it set up. On the other hand, it was desirous of assisting the wool conference in

(1) (1893) 1 Q.B., 256.

carrying out a scheme which it had formulated for the acquisition of the wool clip by the Imperial Government. This scheme was one which required some legislative action if it were to work successfully or even smoothly. And so regulations were passed, and a Central Wool Committee was set up to administer them. Substantially the administration of the scheme was confided to representatives of those engaged in the wool trade. But the Commonwealth retained supervision through the Chairman, and also control of the administration by virtue of the provision that the administration of the regulations was subject to the direction of the Prime Minister. The acquisition of the clip was secured by the provision that no person could sell wool or tops except through or to or with the consent of the Wool Committee. This clause secured, in effect, what the Imperial Government required, and at the same time prevented suppliers who dissented from the scheme from obtaining advantages over those who adhered to it. The appraisement clauses ensured a fair and just apportionment among the wool suppliers of the moneys paid by the Imperial Government. It was, in fact, recognized at the conference on 21st November 1916 that some system of appraisement was essential, and "a division of the total proceeds on an equitable basis amongst the woolgrowers was a matter of prime importance to the Commonwealth." (See cable, 4th December 1916, Governor-General to Secretary of State.) Hence this provision in the regulations.

It is not very clear from the regulations how the moneys payable by the Imperial Government were intended to be distributed, but the Commonwealth Government (reg. 26) was to be reimbursed out of moneys received from the Imperial Government for all expenses incurred in connection with the administration of the regulations. As a matter of fact, however, the receipt and distribution of the moneys, amounting to many millions of pounds, were, from the inception of the scheme, in the hands of the Central Wool Committee, and no objection to this arrangement was made by any interested party. It is clear that no part of the moneys ever passed into, or through, the Consolidated Revenue Funds of the Commonwealth.

The learned counsel for the plaintiffs, however, in both of the cases before us, based their argument upon the communications

H. C. OF A. 1921-1922.

JOHN COOKE & CO. PROPRIETARY LTD. AND FIELD v. THE COMMONWEALTH AND THE CENTRAL WOOL COMMITTEE.

which passed between the Imperial Government and the Commonwealth Government, and upon the statements of Ministers of State for the Commonwealth at conferences and in speeches, both in Parliament and in public, in support of their contentions.

The evidence is within a comparatively narrow compass; and as the case deals with a matter of great public importance it is proper that the Court should deal with it in some detail. The evidence must be considered in relation to four clips, namely, the 1916-1917 clip, the 1917-1918 clip, the 1918-1919 clip and the 1919-1920 clip.

First, of the 1916-1917 clip:— A cable of 14th November 1916 from the Imperial Government suggested the purchase by it of the entire wool clip of Australia. Persons interested in the wool trade were invited by the Prime Minister of the Commonwealth to attend a conference on this proposal. The conference met first on 20th November 1916, and the Prime Minister announced that it had been called as a result of the decision of the British Government to acquire the wool clip of Australia. A sub-committee was appointed to bring up recommendations; and the conference resumed on 21st November. A resolution was now proposed that the remainder of the 1916-1917 clip be sold *through the Commonwealth Government*, and this was adopted by the conference with the apparent approval of the Prime Minister. The resolution does not disclose any contract on the part of the Commonwealth such as is alleged in par. 19 (a) of the statement of claim in *Cooke's Case* and in par. 8 (a) of the statement of claim in *Field's Case*. Nor are the words "sold through the Commonwealth Government to the Imperial Government" any decisive indication of the existence of a relationship of principal and agent between the plaintiffs and the Commonwealth. Indeed, at a later stage of the conference we find Mr. Jeffrey inquiring whether there would not be a possibility of the British Government buying wool through firms in Australia, and the Prime Minister replied that it was preferable that the Commonwealth should act as agents for the British Government, for, as he said, "you have your remedy against the Commonwealth Government. The Commonwealth Government is in your hands. If there are other agents, they are servants of the British Government, and you have very little remedy in regard to that. That the Commonwealth Government should act as agents

for the British Government is a better one." We do not suppose that the Prime Minister was at this point defining the legal relations of the parties; but, whatever he meant, it is clear that the words do not support the allegation that the Commonwealth was agent for the plaintiffs. The following cables next pass between the Commonwealth and the Imperial Government: 22nd November 1916—"Commonwealth prepared to acquire wool clip 1916-1917"; 4th December 1916—"Commonwealth is prepared to sell Australian wool clip"; 13th December 1916—"His Majesty's Government agrees to the proposal that wool clip should be secured on its behalf by Government of the Commonwealth." On 14th December 1916 the Prime Minister, in announcing the wool clip arrangement to Parliament, used these words:—"The Commonwealth Government is to acquire on behalf of the British Government the whole of the merino and cross-bred clip of Australian wools, excluding only those that passed under the hammer before 23rd November last. . . . A regulation was passed the other day prohibiting further sales or transactions in wool or sheepskins. The Government having acquired these at a price fixed by negotiations between the British and Commonwealth Governments, it is not considered advisable that there should be any speculation which would place the seller at a disadvantage. Every seller has now a sure buyer . . . and that buyer being the Government acting on behalf of the British Government, he can be under no disadvantage whatever." On 20th December 1916 the Prime Minister, again speaking in Parliament, said:—"The purchaser is the Imperial Government. The agent for the Imperial Government is the Commonwealth Government, and the head of the Commonwealth Government is in actual control of the scheme." On 6th March 1917 the then Treasurer (Sir John Forrest, afterwards Lord Forrest) also made a speech in Parliament in connection with the acquisition of the 1916-1917 wool clip, and so did the Prime Minister in March and July 1917; but as to the matter under consideration, these speeches add nothing to the statements already made by the Prime Minister.

We can find nothing in these communications and statements, taken as a whole, to justify the conclusion that the Commonwealth contracted with the plaintiffs or any of them, or that it placed itself

H. C. OF A. 1921-1922.

JOHN COOKE & CO. PROPRIETARY LTD. AND FIELD v. THE COMMONWEALTH AND THE CENTRAL WOOL COMMITTEE.

in the relation of agent to the plaintiffs or any of them. It does not appear to us that the Commonwealth Government intended to purchase wool on its own account, or to establish any legal relation with the vendors of wool. The intention of the Commonwealth Government was to act as a mere intermediary, assisting the Imperial Government to acquire wool which the latter needed, and willing to use its power of compulsory acquisition in case of need: also assisting the wool trade in disposing of its wool in the interests of the community in general, and willing to use its governmental powers in carrying out the scheme propounded by that trade.

We now pass to the consideration of the 1917-1918 clip:—In May 1917 the Imperial Government approached the Commonwealth Government through the High Commissioner of the Commonwealth, but the document despatched to Australia was, so we are informed, lost at sea owing to enemy action, and its contents were not known in Australia until a much later date. In the meantime, the Commonwealth Government, on 21st May of the same year, intimated to the Imperial Government that it was "willing to extend present contract for last season's clip to cover coming season's clip." The Prime Minister, speaking in Parliament on 12th July 1917, indicated the necessity for this arrangement in the general interests of the community. About 10th July the Commonwealth Government was advised that this proposal was acceptable to the Imperial Government, and had in fact been covered by the communication of May 1917, which, as we said, had not at this time reached the Commonwealth Government.

These communications and the surrounding facts make it clear that the position of the Commonwealth in relation to the 1917-1918 clip cannot be distinguished from its position in relation to the 1916-1917 clip.

We pass, therefore, to the 1918-1919 and 1919-1920 clips:—On 7th June 1918 the Imperial Government intimated to the Commonwealth Government that it was anxious to enter into negotiations to extend the existing arrangements for the purchase of wool on a basis suitable to both Governments, and suggested the purchase of the Australian clip for the period of the War, and also for one full year commencing on the 30th day of the June after the

termination of hostilities. It also suggested that appraisement prices averaging 15½d. be continued on the present system, that a slight increase be made for handling charges, and that, as regards wool sold for purposes other than those of the Imperial Government, Australia should receive half of any excess obtained over basic prices. On 12th June 1918 the Commonwealth Government "*on behalf of the Australian woolgrowers* accepts the offer of His Majesty's Government to extend the purchase of the Commonwealth wool clips . . ." The rate for handling, the cable stated, would be raised from ⅝d. per pound to ¾d. per pound. On 12th June 1918 the Acting Prime Minister and Treasurer (Mr. Watt) announced this arrangement in Parliament, and again on 25th September 1918 reviewed the transactions with the Imperial Government.

Stress was laid upon the words "the Commonwealth Government on behalf of the Australian woolgrowers accepts the offer of His Majesty's Government." Here, it is contended, is a clear act of agency. But when we go a little further, we find that the Commonwealth had never consulted the suppliers, individually or collectively. There is little doubt that the extension was made in consultation with the Central Wool Committee. Equally is there little doubt that it was extremely important at this date, in view of the financial and industrial position in Australia, to arrange for the disposal of the wool clip. It was estimated by the Treasurer at the time that the transaction involved a sum approaching one hundred million pounds sterling. In this setting the words relied upon are not, in our opinion, words establishing agency.

The needs of the British and Allied arms were paramount, and the Government was in a position to acquire the clips in case of need by an exercise of its powers of Government. On the other hand, the Government knew that the acquisition by the Imperial Government of the Australian clips was essential to the welfare of the wool trade in Australia, and was likely to be hailed with satisfaction in that trade. The price was high—higher, indeed, than had ever before been obtained in the wool trade (see Sir John Forrest's speech, 14th March 1917)—and stability was secured to the trade for two seasons at a most critical stage of the War (see Mr. Watt's

H. C. OF A. 1921-1922.

JOHN COOKE & CO. PROPRIETARY LTD. AND FIELD v. THE COMMONWEALTH AND THE CENTRAL WOOL COMMITTEE.

speech in Parliament, 12th June 1918). Consequently the Government anticipated the desire of the wool trade in the interest of that trade and of the community in general.

A critical examination of the evidence compels us to reject the argument of the learned counsel for the plaintiffs that each individual supplier of wool had a separate right against the Commonwealth or the Central Wool Committee, based upon a special contract or upon a fiduciary position as agent, for his proportionate part of the proceeds of the wool and of the profits made in connection therewith. The history of the transactions which we have detailed also compels us to reject the alternative case made by the plaintiffs, that their wool was requisitioned by the Commonwealth Government, and likewise the affirmative case of the Commonwealth, that it compulsorily acquired the plaintiffs' wool for the purposes of the War. We have no doubt that the Commonwealth would have used all its powers in the case of need to acquire the wool necessary for the British and Allied arms. Mr. Watt, who was Acting Prime Minister and Treasurer of the Commonwealth during 1918-1919, stated the position in his evidence :—"My conception of the wool situation as between the Imperial and Australian authorities from the start —and which has never varied until now—was that the British Government represented to the Australian authorities the urgent need of the Empire and the Allies for this supply of wool. It was probably competent for the Australian authorities to have commandeered the wool to satisfy that demand or request—notwithstanding that the Prime Minister, Mr. Hughes, apparently thought it would be best to operate not with the resistance of the woolgrowers but with their co-operation—and thus the conference originated the scheme. It was acquired by consent because it was mutually satisfactory to the Empire that requested this operation and the Australian interests concerned." The Government knew the mind of the wool trade from the conference : the trade was in a serious position, and all desired that some practical scheme should be entered into for the disposal of the wool. All that the Commonwealth did was to ensure that if the suppliers did not choose to hand over their wool for the purposes of the Imperial Government, then they should not be

allowed to dispose of it elsewhere without the sanction of the Central Wool Committee.

We have still to deal with what perhaps is the most important contention made in the case. It was said that the Commonwealth or the Central Wool Committee had control of a large sum of money arising from retained purchase-money, from profits on exchanges, &c., and from the half share of the profits on the sale of surplus wool paid or payable by the British Government; and that the skin wool suppliers were entitled to a share in these moneys, which claim the Commonwealth and the Central Wool Committee denied. Further, it is alleged that they have a right to equality with shorn wool suppliers founded upon the provisions of the Wool Regulations. It is open to doubt, on the evidence of Mr. Yeo, whether any basis in fact has been laid for this case as to the wool clips for the seasons 1916-1917 and 1917-1918, but it is certainly clear that the skin wool suppliers were excluded, for the seasons 1918-1919 and 1919-1920, from participation in any profits from any source over and above the flat rate price basis of 15½d. per pound of greasy wool.

Cooke & Co.'s action is framed as a representative suit, and a prayer is made that if necessary the defendants Edmund Jowett and Franc Brereton Sadlier Falkiner be appointed to represent the vendors or suppliers of shorn wool for the purposes of the action. Field's action, on the other hand, is not framed as a representative suit, and no representative of the vendors of shorn wool is added to the suit, nor is any prayer made that they be joined.

During the hearing the Court suggested on several occasions that if the suit was for the administration of a fund in the hands of the Commonwealth or the Central Wool Committee, or for the determination of the rights of skin wool suppliers and of shorn wool suppliers in that fund, some representative of the shorn wool suppliers should be appointed or added to the suit as the case might require. But the learned counsel for the plaintiffs stated that they did not seek any amendment or any order as to a representative party for the shorn wool suppliers, insisting that they were entitled, on the pleadings as they stood, to a declaratory order as to all the defendants on the record. Indeed, the learned counsel for the plaintiffs in *Cooke's Case* expressly refused, on more than one occasion,

H. C. OF A. 1921-1922.

JOHN COOKE & CO. PROPRIETARY LTD. AND FIELD v. THE COMMONWEALTH AND THE CENTRAL WOOL COMMITTEE.

to ask for an order in the terms of the seventh prayer of his statement of claim—that if necessary Edmund Jowett and Franc Brereton Sadlier Falkiner be appointed to represent the vendors or suppliers of shorn wool for the purposes of the action—or for any similar order.

We are not prepared to make any declaration or order affecting the rights of the absent parties unless these parties are properly represented before the Court. There is no difficulty in obtaining proper representation. The case is clearly one in which the rights of all parties to the moneys in the hands of the Central Wool Committee should be the subject of final adjudication and settlement. Neither the Commonwealth nor the Central Wool Committee has claimed that any of the moneys the subject of these actions should fall into the Consolidated Revenue Fund of the Commonwealth. Even the profits on the sales of surplus wool which the Imperial Government offered to share with the Government of Australia have, with the consent of the Government of the Commonwealth, gone into the wool fund in the hands of the Central Wool Committee. The only dispute in substance is whether the vendors of skin wool are entitled to share equally with the vendors of shorn wool in these moneys; or, in other words, whether the resolution of the Central Wool Committee of 27th June 1918 is sustainable, namely, "that all skin wool shall be paid on the flat rate price basis of 15½d. per pound and shall not participate in any profits from any source over and above that flat rate price. This decision shall operate from 1st July 1918."

The *Rules of the High Court* relevant in this connection are Order II., r. 9, and Order IV., r. 1. Order II., r. 9, is as follows:—"The Court shall not refuse to determine a cause or matter by reason only of the misjoinder or nonjoinder of parties, and the Court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The Court or a Justice may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as appear to the Court or Justice to be just, order that the names of any persons improperly joined, whether as plaintiffs or as defendants, be struck out, or that the names of any persons who ought to have been joined, or whose presence before the Court may

be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added, either as plaintiffs or defendants. But no person shall be added as a plaintiff suing without a next friend, or as the next friend of a plaintiff under any disability, without his own consent in writing." Order IV., r. 1, is as follows: "An action shall not be open to objection on the ground that a merely declaratory judgment or order is sought thereby; and the Court may make binding declarations of right in an action properly brought, whether any consequential relief is or could be claimed therein or not."

These rules are practically the same as the English *Judicature Rules*, Order XVI., r. 11, and Order XXV., r. 5; and they undoubtedly give the Court very wide powers. But they are discretionary in their nature. (See *Wilson, Sons & Co.* v. *Balcarres Brook Steamship Co.* (1) and *Russian Commercial and Industrial Bank* v. *British Bank for Foreign Trade Ltd.* (2).) Thus there is no doubt that the Court may "permit an action to go on, so that the rights of the parties before the Court may be determined even though all parties to the action are not before it" (see *Robinson* v. *Geisel* (3)). The Rules, too, enable the Court to add parties who ought to have been joined or whose presence before the Court is necessary to enable it to effectually and completely adjudicate upon and settle all the questions involved in the cause or matter. But we see no reason whatever in the circumstances of the present actions for proceeding without proper representation of the interests of the vendors of shorn wool. And the Court is quite unable to add parties when none of the parties to the actions have made any application for that purpose. This the plaintiffs expressly refuse to do. So far as the rights of the vendors of shorn wool are not affected we have decided the matters arising in this action, and, in order that the whole of the questions in these actions may be effectually and completely adjudicated upon and settled, we will now allow the parties a further opportunity of adding other parties as they may be advised.

(1) (1893) 1 Q.B., 422. (2) (1921) 2 A.C., 438.
(3) (1894) 2 Q.B., 685, at p. 689.

H. C. OF A. 1921-1922.

JOHN COOKE & CO. PROPRIETARY LTD. AND FIELD v. THE COMMONWEALTH AND THE CENTRAL WOOL COMMITTEE.

Order that the plaintiffs have liberty to apply within one month to this Court for the addition of such parties to their several actions and to make such amendments in their pleadings as they may be advised, and, in the event of any such application, reserve costs of action for further consideration on such application. In default of such application in either action, dismiss that action with costs (including costs of discovery and shorthand notes).

The plaintiffs in each action subsequently amended their statements of claim in the manner described in the judgments hereunder, and the action was heard upon the pleadings, as amended, before the same Court on September 25-29, 1922.

Maughan K.C., *Flannery* K.C. and *Nicholas*, for the plaintiffs in the first action.

E. M. Mitchell, for the plaintiffs in the second action.

Innes K.C. and *Ferguson*, for the defendants, other than Mackay and Murphy, in both actions.

Owen Dixon K.C. and *Martin*, for the defendants Mackay and Murphy in both actions.

Cur. adv. vult.

Dec. 12. THE COURT delivered the following written judgment:—

Since these actions were last before this Court, the plaintiffs have, pursuant to orders dated 5th April and 9th June 1922, made amendments both in the parties to the actions and in the pleadings. They sue on behalf of themselves and all other vendors or suppliers of skin wool under the provisions of the *War Precautions* (*Sheepskins*) *Regulations* and the *War Precautions* (*Wool*) *Regulations*, but in Field's action this form of action was adopted pursuant to the order giving leave to amend. They have added John Mackay and Charles Robert Murphy to represent the vendors or suppliers of shorn wool.

The amendments in the pleadings raise more pointedly the claims which were touched upon in our former judgment in these actions as follows (1) :—" It was said that the Commonwealth or the Central Wool Committee had control of a large sum of money . . . and that the skin wool suppliers were entitled to a share in these moneys, which claim the Commonwealth and Central Wool Committee denied. Further, it is alleged that they have a right to equality with shorn wool suppliers founded upon the provisions of the Wool Regulations." We must now shortly examine the pleadings in order to understand the plaintiffs' case, and how they allege their rights to arise. And for this purpose we can take the pleading in *Cooke's Case*, because that in *Field's Case* is substantially the same.

The material allegations are as follows :—The Imperial Government agreed with the owners of skin wool and shorn wool that it would purchase and that they would sell (with some exceptions) the whole of the wool in Australia (including both skin and shorn wool) for the seasons 1916-1917, 1917-1918, 1918-1919, 1919-1920, upon certain terms. An alternative of this allegation is that the Imperial Government arranged with the Commonwealth that the latter should obtain for the Imperial Government, and that the Imperial Government would take, with some exceptions, the whole of the wool in Australia, including skin as well as shorn wool, for the same seasons and upon certain terms. The Commonwealth acted as agent for the Imperial Government, and, in order to provide for some immediate payment to each wool owner in respect of the wool sold and delivered by him, and to ensure that the various owners should participate proportionately, or else in order to carry out the arrangement between it and the Imperial Government, the Commonwealth instituted a system of appraisements and promulgated Wool Regulations for that purpose (see pars. 6, 9, 10, 24 (2)). Subsequent to the conclusion of the purchase by, or of the arrangement with, the Imperial Government, the Commonwealth announced that every wool owner whose wool should be appraised would be paid the appraised value—a part of it almost immediately after appraisement, and the balance (" retention money," as it was called) when available. In addition it was announced that the wool owners were to participate, in proportion to the appraised value of their wool,

(1) *Ante*, p. 409.

H. C. OF A. 1921-1922.

JOHN COOKE & CO. PROPRIETARY LTD. AND FIELD v. THE COMMONWEALTH AND THE CENTRAL WOOL COMMITTEE.

in the half share of profit to be received from the Imperial Government, and in interest on retention money, and also in all profits made or received by the Central Wool Committee in the course of its administration of the Wool Regulations (see par. 24 (*a*) (*j*)). Appraisements were made; and the Commonwealth, as agent for the Imperial Government, paid in the first place nine-tenths of the appraised value, and ultimately the remaining one-tenth referred to as retention money (see pars. 14, 15). The Commonwealth or the Central Wool Committee earned interest on this retention money (par. 15). One or other of them also received, in addition to the retention money, a considerable sum of money representing the difference between the moneys paid by the Imperial Government at a flat rate of 15½d. per pound of wool on the greasy basis under the agreements already mentioned, and the total appraisements, which money was not completely distributed. The Commonwealth or the Central Wool Committee received, too, from the Imperial Government, under the agreements already mentioned, instalments of the half share of profits made by the Imperial Government in the disposal of the wool (par. 21). The Commonwealth or the Central Wool Committee further received sums of money by way of profit on exchanges, by way of savings on the holding and handling charges of the wool sold to the Imperial Government, and from the investment and utilization of such profits and savings and from other sources. A large sum of money or fund thus came to the hands of the Commonwealth or the Central Wool Committee, and was available for distribution amongst the wool suppliers; but the Commonwealth and the Central Wool Committee refused to distribute it except on the basis of the skin wool suppliers not being entitled to participate in such fund in respect of any wool of theirs appraised during the seasons 1918-1919, 1919-1920 (par. 23). A further complaint is that portion of the fund was distributed in the following manner: among the owners of shorn wool an amount equal to 5 per cent. on the value of all wool submitted by them for appraisement and sold during the whole four wool seasons 1916-1917, 1917-1918, 1918-1919, 1919-1920, but among the owners of skin wool an amount equal to 5 per cent. on the value of skin wool submitted by them for appraisement and sold during the seasons 1916-1917

and 1917-1918 only (pars. 23 and 24). A special agreement is then alleged with the Commonwealth that, as and when it received any moneys in respect of the transactions from the Imperial Government or otherwise, the Commonwealth would pay each of the suppliers of skin wool a portion of the amount calculated, as set forth in the statement of claim (see par. 19 (a)). An allegation is also made that the Commonwealth acted as agent for the wool suppliers, and became subject to the fiduciary duty of accounting to their principals for all moneys received in the course of the agency for the use of the principals (par. 28). Further the plaintiffs claim that they are entitled, by virtue of the arrangement between the Imperial Government and the Commonwealth, to participate with the shorn wool suppliers in the moneys received from the Imperial Government and from other sources, in proportion to the value of the wool supplied by them for the four wool seasons (par. 27). In addition, they claim, by virtue of the Wool Regulations, equality of treatment with the shorn wool suppliers in respect of all the moneys already mentioned. Finally, they allege that the wool was requisitioned by the Government, and they claim to be compensated on that basis.

The actions on these amended pleadings came on for further hearing before the Court in September 1922. Additional evidence was called, but it did not materially differ from that adduced before us on the former hearing. The most noticeable additions, we think, were: statements by the Prime Minister to the effect that the half share of profits and any other moneys received from the Imperial Government and any interest, profits, &c., made by the Commonwealth or the Central Wool Committee in the administration of the scheme would accrue for the benefit of wool suppliers and not for the Government; and cables from the Secretary of State for the Colonies which indicated that the Imperial Government expected that half the share of profits made by it on the sale of wool supplied to it would accrue for the benefit of the wool suppliers.

In our former judgment we rejected the contention that the Commonwealth Government entered into any legal relations with the plaintiffs or any of them. We thought that it did not contract with the plaintiffs or any of them, and that it did not place itself in

H. C. OF A. 1921-1922.

JOHN COOKE & CO. PROPRIETARY LTD. AND FIELD v. THE COMMONWEALTH AND THE CENTRAL WOOL COMMITTEE.

the relation of agent for the plaintiffs or any of them. We also rejected the contention put forward by both the plaintiffs and the Commonwealth, that the Commonwealth requisitioned the plaintiffs' wool or any of the wool involved in the actions. We adhere to our decision in regard to these contentions, for the reasons assigned in our former judgment. We pass therefore, to the consideration of other aspects of the plaintiffs' case, as raised in their pleadings.

In so far as the plaintiffs' rights are founded upon the existence of an enforceable contract of purchase and sale between the Imperial Government and the owners of skin and shorn wool, we have come to the conclusion that no such contract existed in fact or in law. The correspondence which took place by cable and by letter between the Imperial and the Commonwealth Governments has been most elaborately examined, and it undoubtedly shows that there was an arrangement between the Imperial Government and the Commonwealth for the acquisition of the wool clips of Australia for the wool seasons already mentioned. But we agree with Mr. *Owen Dixon*, in his able argument, that this was an arrangement between Governments—an arrangement of a political nature, as he phrased it—not cognizable by Courts of law, creating no legal rights and duties and depending entirely for its performance upon the constitutional relationship between those Governments and their good faith toward each other. The Imperial Government was not addressing itself, again to use the very language of the learned counsel, to a mercantile agent: it was addressing itself to a political power, a political entity, with coercive powers available to it, and was requesting that body to perform a service for it by the exercise, if necessary, of every power that was available to it. The case of *Rustomjee* v. *The Queen* (1) was referred to as analogous in character. The evidence adduced before us was examined with great care for the purpose of establishing that the communications between the two Governments were of an ordinary commercial nature, that the arrangement discussed between the two Governments was discussed in words appropriate to the relationship of vendor and purchaser, and that the subject matter of the purchase and sale was the wool

(1) (1876) 1 Q.B.D., 487; 2 Q.B.D., 69.

clip produced or held by the skin and shorn wool owners in Australia. We do not think it necessary to detail all this evidence, but we may give some illustrations. Thus, in certain of the cables the Secretary of State for the Colonies intimates that the Imperial Government concurs in the proposed arrangement for the purchase of the 1916-1917 clip, and that the Australian Government shall act as its sole agent. Again, as to the 1917-1918 clip, the Imperial Government offers to acquire the whole of the Australian clip on terms suggested, and an arrangement is ultimately come to. Further, as to 1918-1919 and subsequent clips, the Secretary of State for the Colonies intimates that the Imperial Government is willing to purchase the Australian clip for the period of the War and one full year after its termination, and the Australian Government accepts the offer on behalf of the Australian woolgrowers. Then there is a series of cables, relied upon by Mr. *Maughan*, in which the arrangement embodied in the communications between the two Governments is spoken of as a contract for the benefit of the Australian growers, and in which assurances are to be found that the arrangement will be carried out and interest paid to Australia on the growers' share of cash surpluses. And in a cable dated 1st July 1920 the Imperial Government questioned whether it could legally pay any other party than the growers, and required the assent of the latter before paying over moneys to the Commonwealth; but in August 1920 the Secretary of State for the Colonies had apparently reconsidered the position, for he cabled:—"As I understand the position, this share" (of wool profits) "will then be payable to Commonwealth Government as agent for the woolgrowers. . . . What I said in my telegram of 1st July was that I should be glad to use wool money to meet Commonwealth debts, but must take advice first whether they can legally pay any other than the growers. I did not say that the money was due to the growers, and I do not think as a matter of law the growers could claim payment direct from the Imperial Government." There is, we think, no evidence stronger or more striking than that contained in these illustrations. The evidence, however, is wholly lacking in several essentials requisite for the formation of a contract. The persons to whom the proposal of purchase was made, or the conditions upon which

H. C. of A. 1921-1922.

JOHN COOKE & CO. PROPRIETARY LTD. AND FIELD v. THE COMMONWEALTH AND THE CENTRAL WOOL COMMITTEE.

individual woolgrowers might avail themselves of that proposal, were quite indefinite. The price that was to be paid to individual growers was equally indefinite. A flat rate of 15½d. per pound for the whole clip was proposed on a greasy basis, but the individual growers' shares of that amount were unfixed so far as the Imperial Government was concerned. It is true that the Commonwealth Government and the representatives of the wool trade subsequently instituted a scheme of appraisements which enabled the flat rate to be distributed according to the value of each individual's wool; but that was not part of the proposal of the Imperial Government. The power of the Commonwealth to except wool from the arrangement also militates against the view that individual growers had a contract with the Imperial Government. But putting on one side these objections, the character of the negotiators, the circumstances under which and the purposes for which the wool was required, the steps that might have become necessary in the acquisition of wool, all these factors stamp the nature of the arrangement; they exclude it from the region of contract, and establish it as an arrangement of a political nature forced upon the two Governments by reason of the War and necessary for military purposes.

An argument was, very properly, pressed upon us, that the plaintiffs had parted with their wool and that one Government or the other must be under some legal obligation to pay for it. The Court had already negatived any agreement with the Commonwealth; therefore it followed, according to the argument, that the Imperial Government must have made the agreement. Indeed, the learned counsel for the Commonwealth and for the representatives of the shorn wool suppliers lent some aid to the argument because, in their view, the result of the transaction was that the Commonwealth acquired the wool submitted to appraisement and delivered under the wool scheme, and became bound to pay the wool suppliers the amount of the appraisement. But, beyond the appraised value of the wool, the learned counsel for the defendants denied that the wool suppliers had any rights enforceable at law. Anything more that was paid was, in their view, a matter of grace or concession on the part of the Government of the Commonwealth.

We do not agree with the view suggested by the defendants. The position, as we see it, is that the wool suppliers knew that the

arrangement between the two Governments would be carried out in good faith, or at least they were content to act upon that assumption. Regulations were passed for the administration of the scheme, and a committee was set up at the suggestion of representatives of the wool trade to administer it. The trade had the practical control of its administration, subject to the direction of the Government through the Prime Minister. The task of carrying out the scheme was substantially entrusted to the Central Wool Committee as an administrative function of Government. It is possible that some provisions confer rights enforceable by individuals, but in the main the administration of the scheme was left to the wisdom, fairness and discretion of the Committee (*Wool Sliping and Scouring Co.* v. *Central Wool Committee* (1)). The suppliers, in our opinion, delivered up their wool on the basis of these regulations, and became entitled to the rights given by them and to no other rights. If the regulations confer any legal rights upon the plaintiffs, then those rights are enforceable in the Courts of law. If, on the other hand, the regulations confer no such rights upon the plaintiffs, then the administration of the scheme and of the moneys arising therefrom is necessarily a matter for the discretion and judgment of the administrative body, whose decision the Courts of law have, in that case, no right or power to revise or control. These views incidentally destroy the plaintiffs' submission that the Imperial Government paid over the moneys in question here to the Commonwealth upon trust for the plaintiffs, or with a direction to pay the same to them. But, in point of fact, we feel no doubt that the Imperial Government never created any such trust or gave any such direction. The Director-General of Raw Materials put very clearly the attitude of the Imperial Government, when replying to a claim by the solicitors for the skin wool suppliers for the protection of their clients' rights. "This Department," he said, "is not concerned with the distribution in Australia of wool profits. Lump sums will be paid to Commonwealth authorities, who will make the distribution on their own responsibility." The case, therefore, depends, in our opinion, upon the construction of the Wool Regulations.

What rights, if any, do those regulations confer upon the plaintiffs?

(1) (1920) 28 C.L.R., 51.

H. C. OF A. 1921-1922.

JOHN COOKE & CO. PROPRIETARY LTD. AND FIELD v. THE COMMONWEALTH AND THE CENTRAL WOOL COMMITTEE.

We need not consider whether the plaintiffs could claim as a matter of right that the surplus profits, interest on retention moneys, profits on exchanges, and other moneys in question in this action, should be placed under the administrative control of the Central Wool Committee, for all these moneys have admittedly, and with the full approval of the Executive Government of the Commonwealth, been so dealt with. And we need not consider whether a right enforceable in Courts of law is conferred upon the plaintiffs, as against the Commonwealth or otherwise, in respect of the appraised value of their wool handed over in pursuance of the arrangement between the two Governments, for admittedly all these moneys have been duly paid. The effect and relation of regs. 5, 11, 12, 15, 24 and 27 of the regulations would require detailed consideration before the question could be actually resolved. But when we pass away from the appraised value, the only regulation that can be relied upon in support of the plaintiffs' claim is reg. 24. "The general policy," it reads, "to be observed in the administration of these regulations shall be equality of treatment." These words, however, are a direction to the body entrusted with the administration of the regulations as to the manner in which its administrative function should be exercised. They confer, in our opinion, no legal rights upon any individuals. It follows that the plaintiffs have not established any right to the moneys in question in these actions or to an order for the administration of such moneys under the direction of the Court. The distribution of the moneys has been left by the Commonwealth, in point of fact, and by the regulations, in point of law, to the wisdom, fairness and discretion of the Central Wool Committee.

Both actions are therefore dismissed with costs, including any reserved costs and costs of discovery and shorthand notes.

Order accordingly.

Solicitors for the plaintiffs, *Dibbs, Parker & Dibbs*; *Sly & Russell.*

Solicitors for the defendants, *Gordon H. Castle*, Crown Solicitor for the Commonwealth; *Blake & Riggall*, Melbourne, by *Stephen, Jaques & Stephen.*

B. L.