[HIGH COURT OF AUSTRALIA.]

THE COMMITTEE OF DIRECTION OF FRUIT MARKETING . . . . . APPELLANT;
DEFENDANT,

AND

COLLINS AND ANOTHER . . . . RESPONDENTS.
PLAINTIFFS,

ON APPEAL FROM THE SUPREME COURT OF QUEENSLAND.

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MELBOURNE, *May* 25.

BRISBANE, *June* 30.

Knox C.J., Isaacs, Higgins, Rich and Starke JJ.

Fruit Marketing—Powers of Committee of Direction of Fruit Marketing—"Take control of" marketing of fruit—Power to engage in marketing—Interference with inter-State trade—Punctuation in Acts—Fruit Marketing Organization Act 1923 (*Q.*) (14 *Geo. V. No.* 39), *secs.* 2, 6, 7, 8 (2), 10 (1), 12, 15.

Held, by *Isaacs*, *Higgins*, *Rich* and *Starke* JJ. (*Knox* C.J. dissenting), that sec. 7 of the *Fruit Marketing Organization Act of* 1923 (Q.), which provides that the Committee of Direction of Fruit Marketing "shall take control of the marketing of all fruit"—that is, all fruit grown in Queensland—does not give that Committee a right itself to market such fruit, but gives it only a right to regulate and supervise the marketing of all such fruit by other persons.

Per Higgins and *Rich* JJ. : Although the Committee has not power, directly or through agents, to sell fruit, growers and produce agents, as such, have no right to prevent the Committee from selling.

Per Isaacs J. : The declaration claimed by the respondents on behalf of themselves and other growers and agents that the Committee had not such power should be made in respect of the respondents only and as to them should be limited to restraining respective individual wrong.

Observations by *Isaacs* J. as to the effect of punctuation in construing statutes.

Decision of the Supreme Court of Queensland (*Macnaughton* J.) affirmed with a variation.

APPEAL from the Supreme Court of Queensland to the High Court.

An action was brought in the Supreme Court against the Committee of Direction of Fruit Marketing, by Henry William Collins, a grower of Queensland-grown fruit, on behalf of himself and all other growers of such fruit who claimed to be entitled to send or deliver for sale fruits grown by them in Queensland to duly licensed farm produce agents and/or to sell their fruits to any other person or persons, and W. Arkell & Sons, duly licensed farm produce agents on behalf of themselves and all other duly licensed farm produce agents in Queensland who claimed to be entitled to receive for sale and to sell fruit grown in Queensland. The plaintiffs claimed a declaration substantially that the defendant was not entitled (1) to prevent or prohibit the plaintiffs or the persons whom they respectively represented from carrying on their respective lawful business or from receiving or offering for sale Queensland-grown fruit; (2) to demand, seize or divert to its possession or control any fruit consigned by rail or otherwise in transit to any person within or without Queensland; (3) to hold itself out as the sole person entitled to receive for sale or to sell or trade in bananas or any other Queensland-grown fruit in Queensland or elsewhere; (4) to carry on the business of farm produce agent, fruit merchant, fruit salesman or fruit auctioneer or to act as agent for the sale of fruit; (5) to prevent or prohibit the plaintiffs who were growers of fruit from consigning, forwarding or delivering fruit grown by them to such persons within or without Queensland as they might think fit or to interfere with or prevent the carriage of such fruit to its destination. The plaintiffs also claimed injunctions founded on such declarations.

On a motion by the plaintiffs for an interlocutory injunction, the hearing of which was, by consent, treated as the hearing of the action, *Macnaughton* J. made an order in favour of the plaintiffs substantially in accordance with the relief claimed.

From that decision the defendant now appealed to the High Court.

The other material facts are stated in the judgments hereunder, where the nature of the arguments also appears.

Owen Dixon K.C. (with him *Gill*), for the appellant.

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June 30.

Stumm K.C. (with him *Keating*), for the respondents.

Cur. adv. vult.

The following written judgments were delivered :—

KNOX C.J. This is an appeal from a judgment of the Supreme Court of Queensland (*Macnaughton* J.). The appellant is a statutory body created by, and claiming its rights and authority under, the *Fruit Marketing Organization Act of* 1923 of the State of Queensland. The respondent Collins, who is a grower of fruit in Queensland, sues in the action on behalf of himself and all other growers of Queensland fruit who claim to be entitled to send or deliver for sale fruits grown by them in Queensland to duly licensed farm produce agents and/or to sell their fruit to any other person or persons. The respondents W. Arkell & Sons, who are duly licensed farm produce agents in Queensland, sue in the action on behalf of themselves and all other duly licensed farm produce agents in Queensland who claim to be entitled to receive for sale and sell fruit grown in Queensland.

Admissions of fact were made by both parties in a statement, the relevant portions of which are as follows :—" (3) The defendant Committee has prevented and prohibited the plaintiff farm produce agents from receiving for sale and selling any bananas or tomatoes grown in Queensland in the city of Brisbane and the defendant Committee claims the right to prevent and prohibit the plaintiff farm produce agents from receiving for sale or offering for sale bananas and also any fruit and vegetables grown in Queensland which it deems proper. (4) The defendant Committee has since July 1924 caused to be diverted to its own possession and control bananas and tomatoes consigned by rail and otherwise in transit to the plaintiff farm produce agents by the growers thereof and by other persons. And the defendant Committee claims the right to continue so to divert to its possession and control bananas and also any fruit and vegetables grown in Queensland (which it deems proper), and consigned by rail and otherwise in transit to the plaintiff farm produce agents from the growers thereof and from any other person." " (7) The defendant Committee claims the right and threatens and intends itself or by its servants and agents to receive for sale and sell in

Queensland such fruit grown in Queensland as it thinks proper, and claims the right (and threatens and intends) so to do in the city of Brisbane to the exclusion of all the plaintiff farm produce agents. (8) Since the month of July 1924 the defendant Committee has prevented and prohibited the plaintiff growers and other growers from consigning, forwarding and delivering bananas and tomatoes grown by them in Queensland to farm produce agents in Brisbane, Sydney, Melbourne and Adelaide to whom such growers claimed or desired to send the same, and the defendant Committee claims the right (and threatens and intends) to continue to prevent and prohibit the said plaintiff growers and other growers from consigning, forwarding or delivering any fruit or vegetables grown in Queensland to any person in Queensland or out of Queensland other than the defendant Committee or agents appointed by them in Sydney, Melbourne and Adelaide. (9) The defendant Committee has since July 1924 caused the Commissioner of Railways for Queensland to refuse to accept for carriage on the Queensland railways any bananas or tomatoes consigned to persons other than the defendant Committee or the agents appointed by the said defendant Committee, both where the proposed consignee has been in Queensland and where he has been out of Queensland; and the defendant Committee claims the right (and threatens and intends) to continue to cause the said Commissioner to refuse to accept for carriage on the Queensland railways any bananas and other fruit or vegetables grown in Queensland (which it thinks proper) consigned to any person whether within or without the State of Queensland other than the defendant Committee or agents without the State named by the defendant Committee."

It is admitted that the appellant claims the right and threatens and intends to continue acting in the manner stated above, and that it has caused notices to be sent to all persons concerned which may be summarized as follows: (1) A notice that on and after 30th June 1924 the appellant will be sole selling agent for Queensland bananas in Brisbane, and that no other agent must sell or attempt to sell any such bananas after that date; (2) a notice that on or after 5th January 1925 the appellant will be the sole wholesale commission agent for Queensland tomatoes in Brisbane: (3) a

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notice requiring that all tomatoes shall be tendered for sale, transported and handled in Queensland only under the authority of the appellant; (4) a similar notice with reference to bananas.

The relief claimed in the action is a declaration that the appellant is not entitled (1) to prevent or prohibit the respondents or the persons whom they respectively represent from carrying on their respective lawful business or from receiving and offering for sale Queensland-grown fruit; (2) to divert fruit consigned by rail or otherwise in transit to any person whether within or without Queensland; (3) to hold itself out as the sole person entitled to receive for sale or to sell bananas or other Queensland-grown fruit in Queensland or elsewhere; (4) to carry on business as a farm produce agent, fruit merchant, salesman or auctioneer or to act as agent for the sale of fruit; (5) to prevent or prohibit the plaintiff growers from consigning or delivering fruit grown by them to such persons in or out of Queensland as they might think fit or to interfere with the carriage of such fruit to its destination. And the respondents claim injunctions founded on such declarations.

The action came on before *Macnaughton* J., who entered judgment for the respondents substantially in accordance with the relief claimed, on the ground that the Act did not confer on the appellant the rights and authority claimed by it. He was precluded by sec. 40A of the *Judiciary Act* 1903-1920 from considering whether the Act was obnoxious to the provisions of sec. 92 of the Constitution. His conclusion was based on the view that an examination of the provisions of the Act, especially when compared with those of other recent Queensland statutes *in pari materia*, supported the respondents' contention that the Act empowered the Committee to regulate the existing methods of marketing fruit by growers and produce agents, but not to take the process of marketing out of their hands altogether or itself to sell or otherwise deal with fruit.

Laying aside the question whether the Act is obnoxious to the provisions of sec. 92 of the Constitution, I am unable to agree in the conclusion at which the learned Judge arrived. Sec. 7 (1) of the Act is in the following words:—" The Committee of Direction, as from a date to be fixed by the Governor in Council by Order in Council, shall take control of the marketing of all fruit. Thereafter

as and when the Committee of Direction shall so direct, either generally or in any particular case or class of cases, all fruit shall be tendered for sale, transported by railway or otherwise, and handled at water fronts, railway stations or sidings, or fruit or vegetable markets or exchanges, wholesale depots, shops, stalls, barrows, or otherwise, or elsewhere in the State of Queensland only, under the authority of the Committee of Direction." Sec. 6 (5) provides that " Subject to this Act the Committee of Direction shall have power to purchase, sell, exchange, lease, and hold land, goods, chattels, securities, and any other property whatsoever, and may appoint agents, enter into agreements and contracts, issue debentures (on such terms and conditions as may be approved by the Council of Agriculture) engage and pay officers, servants, and employees, impose levies on fruit marketed, and do all such other acts, matters, or things as may be prescribed." By sec. 2 of the Act " marketing " is defined as including everything involved in the transmission of fruit from the producer to the consumer. If this meaning be given to the word " marketing " in sec. 7 (1)—and it was not suggested that there was any indication to the contrary in the context—I think the expression " take control of the marketing of all fruit " imports that the Committee is invested with power to direct when, how and by whom each operation involved in the transmission of fruit from the grower to the consumer shall be conducted. The ordinary meaning of the word " control " is to exercise power or authority over, and the provision contained in the section that, when the Committee shall so direct, the particular operations therein mentioned shall be carried out under the authority of the Committee does not seem to me to place any limitation on the natural meaning of the words by which the general power of control is conferred.

It was argued that the provisions of the *Wheat Pool Act of* 1920 and of the *Primary Products Pools Act of* 1922 showed that, if the Legislature had intended to confer on the appellant the powers which it claims, different words would have been used. I think, however, that, where the words used in an Act are reasonably clear and unambiguous, as the words in this Act in my opinion are,

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there is no reason to look at other Acts in order to ascertain their meaning. It was said also that sec. 8 (2) of the Act supplied a legislative interpretation of the intention of Parliament. But that section deals only with a Provisional Committee and the specific powers and functions referred to in sub-sec. 2 are expressly stated to be prescribed "without limiting the powers or status of such Provisional Committee as the Committee of Direction." It is not necessary to consider whether the provisions of sec. 7 (1), standing alone, would confer on the Committee power to buy or sell fruit, for by sec. 6 (5) power is expressly given to purchase or sell goods, chattels, &c., and any other property whatsoever.

For these reasons I am of opinion that, so far as its validity is not affected by the provisions of sec. 92 of the Constitution, the Act conferred on the appellant power to do the acts complained of.

The remaining question is whether the Act is obnoxious to the provisions of sec. 92 of the Constitution, and therefore invalid. It is clear from the decision in *W. & A. McArthur Ltd.* v. *Queensland* (1) that sec. 92 prevents any effective restriction being imposed on inter-State trade by a State legislature. In deciding the right of the respondents to obtain part of the relief claimed in the action, it is immaterial to consider whether the Act does or does not purport to confer on the appellant power to interfere with or impose restrictions on inter-State trade in Queensland-grown fruit. In the one case the Act confers no valid authority, in the other no authority at all, to restrict or interfere with inter-State trade, and the appellant admits acts of interference and restriction (see pars. 8 and 9 of statement of facts) and the intention to repeat such acts. It follows that in either event the appellant is shown to have acted in excess of its powers, and the respondents are entitled to appropriate relief. But this does not obviate the necessity of dealing with the question, for the respondents contend that, by reason of the fact that the Act purports to restrict inter-State trade, the whole Act is invalid.

The test to be applied in determining whether an Act which purports to restrict both intra-State and inter-State trade without express words of distinction can be treated as effectively restricting

(1) (1920) 28 C.L.R. 530.

intra-State trade is that laid down in *W. & A. McArthur Ltd.* v. *Queensland* (1) in these words: "This question must depend on the terms of the State Act, and in our opinion the proper rule to apply in determining it is that where the State Act does not by express words or necessary implication make the restriction on intra-State trade dependent or conditional on the effective restriction of both inter-State and intra-State trade, it should be held to operate on intra-State trade." Assuming that the Act now under consideration purports to place restrictions on inter-State trade, it does so by general words without express words of distinction. I can find in the Act no express words making the restriction on intra-State trade dependent or conditional on the effective restriction of both inter-State and intra-State trade; nor can I find anything in its provisions giving rise to a necessary implication that this was the intention of Parliament. It is therefore, in my opinion, unnecessary to determine in this case whether the Act does or does not purport to restrict both inter-State and intra-State trade. In either event the Act effectively restricts intra-State trade.

In my opinion the judgment of the Supreme Court should be varied by limiting its operation to acts done, or threatened or intended to be done, in restriction of trade, commerce or intercourse between the State of Queensland and any other State, and to any claim of authority to do any such act.

ISAACS J. This appeal concerns the construction of the Queensland Act 14 Geo. V. No. 39, called the *Fruit Marketing Organization Act Act of* 1923. In one possible construction it also concerns the validity of the Act in part and its operation *in toto* (see *McArthur's Case* (2)). The facts agreed upon by the parties, so far as material to this appeal, may be briefly stated:—One respondent, Collins, is a banana grower in Queensland, and the other named respondents, Arkell & Sons, are produce agents in Queensland. The appellant Committee since July 1924 has prevented, and threatens and intends in the future to prevent, Collins from consigning, forwarding and delivering bananas and tomatoes grown in Queensland to farm produce agents in Brisbane, Sydney, Melbourne and Adelaide,

(1) (1920) 28 C.L.R., at pp. 558-559. (2) (1920) 28 C.L.R. 530.

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selected by him, or to any person other than the Committee itself in Queensland or its agents in Sydney, Melbourne and Adelaide. As to Arkell & Sons, the Committee has prevented and prohibited them from receiving for sale and selling any bananas in Brisbane, and claims the right to prevent and prohibit them similarly as to any fruit and vegetables grown in Queensland. The Committee, claiming to have a statutory monopoly to sell bananas and tomatoes grown in Queensland, not only advertised its claim but caused bananas and tomatoes consigned by rail to other persons to be diverted to its own possession. It is on this ground alone that the Committee asserts its right to do the acts complained of. *Macnaughton* J. held that the Committee had not the powers it claimed and made a declaration and granted an injunction accordingly. The learned Judge's decision is challenged by the Committee. In my opinion his decision should, in substance, be sustained.

The pivotal portion of the Act is sec. 7 (1): "The Committee of Direction, as from a date to be fixed by the Governor in Council by Order in Council, shall take control of the marketing of all fruit." On those words arise two questions:—(1) Do the words "take control of the marketing" include the exclusive power to sell, and therefore the power to prevent others from selling? (2) Do the words "all fruit" include fruit the subject of inter-State trade? If the first question be answered in the negative, the appeal must fail, because, as stated, the acts complained of were done solely in order to monopolize the power of sale, but the actual powers of the Committee would remain in that case subject to the next question. If the second question be answered in the affirmative, the appeal fails, because the whole Act would be invalid, as in violation of sec. 92 of the Constitution (*McArthur's Case* (1)), the words "all fruit" not being in themselves susceptible of division so as to sever the bad and leave the good standing (*R.* v. *Commonwealth Court of Conciliation and Arbitration*; *Ex parte Whybrow & Co.* (2) and *Owners of s.s. Kalibia* v. *Wilson* (3)). By "the bad" I mean the part invalidated by sec. 92 of the Constitution, and by "the good" I mean intra-State part not directly affected by the Constitution. The reason

(1) (1920) 28 C.L.R., at p. 552. (2) (1910) 11 C.L.R. 1, at p. 54.
(3) (1910) 11 C.L.R. 689, at p. 714.

I think the words "all fruit" not susceptible of division is that, reading them in conjunction with the rest of the Act, the Queensland Legislature intended by one indivisible scheme to regulate the whole field, that is, the whole field occupied by the Act when properly construed—or none. To declare invalid the inter-State part and to maintain as operative the intra-State part, though not contrary to the Constitution, would be, nevertheless, as a matter of construction, so subversive of the scheme of the Queensland Act that it would not represent the will of its Legislature. To eliminate a very extensive part and leave it free from State regulation, and yet to maintain the State regulation of the remainder, would give rise to a situation so diverse in operation as to be incompatible with the generality of the words actually used by Parliament and with the unity of its scheme, and, therefore, outside its contemplation as gathered from its own all-inclusive enactment. There is, consequently, the "necessary implication" (1) that the whole field —whatever it may be—or none of that field, is effectively covered.

(1) "*Take control of the marketing.*"—This is a composite phrase, and needs careful examination. There is no statutory definition of the words "take control," and they must therefore be interpreted by reference to the Act as a whole; particularly, I would add, by the light of the subsequent words of sec. 7 (1), of sec. 8 (2), of sec. 10 (1), sec. 12, and pars. (iii.), (vi.), (vii.) and (ix.) of sec. 15 (1). So read, the words "take control" do not mean "take possession" or "personally perform." There is not a word I can find indicating a monopoly of sale by the Committee itself, or a transfer of the property in the fruit from the growers or any intermediate owner to the Committee. No reference is made as to the Committee accounting to the owners for the value of the fruit, or for the proceeds of its sale. There is much to the contrary. The word "direct" in sec. 7 (1) is used only of transport and handling. The phrase "under the authority of the Committee" indicates that some one else is doing or causing to be done the acts in question. Sec. 8 (2) enumerates functions of the Provisional Committee, but says the enumeration is "without limiting the powers or status of such Provisional Committee as the Committee of Direction."

(1) (1920) 28 C.L.R., at p. 559.

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That connotes that the specified powers are contained within the widest general words, "take control of the marketing." But the specified powers include (vii.) prohibiting or regulating the use and management of fruit barrows, fruit stalls at railway stations, and fruitgrowers' retail shops; and (ix.) "imposing levies on fruit marketed." Before commenting on those provisions, I refer to the last two sentences in par. (vi.) of sec. 15 (1) in relation to levies. These powers, and perhaps especially the words "fruitgrowers retail shops," show very distinctly that marketing was still intended to be carried on by the private owners as principals. Par. (ix.) of sec. 15 (1) is "the standardization of agents' accountancy methods." This is very strong in the same direction. Sec. 10 (1) recognizes the "person growing fruit for sale." Sec. 12 goes so far as to provide for arbitration to decide whether the views of the Committee are to prevail against those of a local association or a sectional group committee. Clearly the Committee is not always supreme. There are certainly provisions enabling the Committee to arrange for transportation, cartage and handling, and for supervision, and for making agreements with fruit commission agents, fruit carriers, and other persons, also for taking *preliminary* steps in the direction of extension of markets and even for financing local associations and sectional group committees whose activities are important and may be enlarged. These powers are additional to the purely directional powers and are for the purpose of assisting producers in advantageously disposing of their fruit.

Taken altogether, the phrase "take control of the marketing" is a compendious expression of the function of the Committee in establishing governmental rules, for the benefit of consumers, to be complied with by producers and intermediaries between them and the consumers, and also the further function of assisting the producers on the way. For this very extensive authority the Committee is equipped with wide general powers and means in sec. 6 (5). The word "marketing" is defined as including "everything involved in the transmission of fruit from the producer to the consumer." It is "transmission" only, but transmission in the broad sense of including the whole course direct or indirect, while

in movement or temporarily stationary, of the fruit while passing from the hands of the producer to those of the consumer.

(2) "*All fruit.*"—These words are undoubtedly large enough to embrace both fruit marketed for State trade and fruit the subject of inter-State commerce. But, just as the rest of the sub-section indicates the nature of the "marketing," so it makes plain the restricted area of the "marketing." That area is the "State of Queensland only." It is true that that is indicated by a comma. But it has been ascertained that the actual Act assented to by the Governor of Queensland has the comma after the word "only," and not before it. It is well known that a print of the Bill as it leaves Parliament is presented for signature. A comma is one means of expressing intention in a writing, and a Court is entitled to have regard to it, though of course not to be controlled by it if the context nevertheless requires otherwise. In *Carr* v. *Royal Exchange Assurance Corporation* (1) *Cockburn* C.J. said: "If punctuation had been employed, two commas would have made the sense clear." In *Shire of Charlton* v. *Ruse* (2) I referred to the system in Victoria of punctuating Acts, and said: "Though I am not prepared to discard wholly the punctuation of an Act, it would be unsafe to allow it to govern the construction." I treated it as an aid, but subject in any case to greater considerations. The House of Lords in *Houston* v. *Burns* (3) has affirmed that view. Lord *Finlay* L.C. (4), Lord *Haldane* (5) and Lord *Shaw* (6) quite definitely accepted punctuation as a legitimate help to construction of legal documents.

The position of the comma here is extremely important. The well-known rule, when an Act is *in dubio*, of reading it as far as is consistent with its language so as to prefer validity to invalidity (see *Jumbunna Coal Mine, No Liability*, v. *Victorian Coal Miners' Association* (7)) might, and probably would, be sufficient of itself to save from utter annihilation the statutory provisions themselves and the structure raised upon them. But the added fact that the comma has been deliberately placed after the word "only" indicates to me that great care was taken by the Queensland Legislature to limit itself

(1) (1864) 5 B. & S. 433, at p. 437.
(2) (1912) 14 C.L.R. 220, at pp. 229-230.
(3) (1918) A.C. 337.
(4) (1918) A.C., at p. 342.
(5) (1918) A.C., at p. 344.
(6) (1918) A.C., at p. 348.
(7) (1908) 6 C.L.R. 309, at pp. 368, 369.

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entirely to State marketing. Reading the Act as a whole, the "marketing" affected is, in my opinion, intended to be that of Queensland *only* and not to include that of Queensland as part of a larger integer having as a whole the distinctive character of commerce between States (*McArthur's Case* (1)). If I may, I would suggest that in similar cases State Acts should contain an express declaration that their provisions do not extend so as to affect trade, commerce or intercourse among the States, or else that they are intended in any case to apply to intra-State operations. That would guide all persons concerned, and probably in some circumstances save the statute from complete ineffectiveness.

The appeal fails, not because there is invalid legislation, but because the Act properly construed does not authorize the Committee's interference with the plaintiffs' rights that is complained of. The plaintiffs are entitled to a declaration with regard to their own respective businesses and property. But the attempted representation of other growers and other agents is extremely vague. I do not think it necessary to say more than that the right claimed is a legal right to be unmolested by the Committee in an unlawful way. The case is not dependent on any doctrine of equity; and, personally, I think it unnecessary to complicate it by declaring rights as to persons who are really unascertainable and not identifiable and who could not be held bound if the judgment were against the respondents. In my opinion the declaration should be made in respect of the respondents only. As to restraining the Committee from selling, and thereby acting *ultra vires* of its statutory authority, the Attorney-General is not a plaintiff. Apart, therefore, from individual wrong to the respondents, they have no cause of action, and this part of the judgment should be omitted. Further, so far as my own opinion is concerned, it must be understood that the due exercise by the Committee of any of its actual powers under the Act, whatever they may be, would in no wise violate the declaration of the Court. The substantial accuracy of the judgment of *Macnaughton* J. is left untouched.

It remains only to be added that the omission of reference to an injunction is because the appellant is a public body who will, of

(1) (1920) 28 C.L.R., at p. 549.

course, observe the law as declared by the Court, and no injunction is thought necessary. The liberty to apply in case of necessity, which is open to the respondents, is a sufficient safeguard.

HIGGINS J. The ultimate question is, what is the meaning of sec. 7 of the *Fruit Marketing Organization Act of* 1923: "The Committee of Direction . . . shall take the control of the marketing of all fruit." The word "control" is not defined; but the word "marketing" is defined as including (unless the context otherwise indicates) "everything involved in the transmission of fruit from the producer to the consumer." So the Committee was to take control of everything involved in the transmission of fruit from the producer to the consumer. "Transmission" does not ordinarily include selling or buying; it generally presupposes a previous sale (or a gift); it generally means merely conveyance from one person or place to another. If a testator direct that his shop business be carried on by his son and that the trustees shall "control" the operations, he would not, in my opinion, be treated as directing or empowering the trustees to sell the goods. If Parliament were to direct that the grocery business shall be under the control of a certain Minister, the Minister would surely not be enabled thereby to forbid any man absolutely to carry on the business. But if Parliament were to direct that the Minister shall control the transmission of rabbits from the producer to the consumer, and everything involved in the transmission, the Minister would be in a position to facilitate and regulate the movement from producer to consumer.

The provisions of sec. 6 (5) do not, in my opinion, give to the Committee any power to purchase or sell fruit: "*Subject to this Act* the Committee of Direction shall have power to purchase, sell, exchange, lease, and hold land, goods, chattels, securities, and any other *property* whatsoever, . . . impose levies on fruit marketed," &c. The section makes the Committee a body corporate, and by these words merely gives the Committee a power to purchase, sell, &c., property required for carrying on the operations authorized. The power is "subject to this Act," and is confined to incidentals.

Therefore I think that *Macnaughton* J. was substantially right in

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his view of the Act. The Parliament of Queensland has not defined what it means by "control," and prima facie we must take the word in its ordinary sense. But we may find some clue to the meaning in the classes of action allowed by sec. 8 to the first—the Provisional —Committee of Direction. By sec. 8 (2) (without limiting the powers or status of that Committee), the following powers are conferred: (i.) Requiring (*sic*) the co-operation of local associations with a view to having one channel of receipt and despatch at station siding or outport; (ii.) encouraging the provision of packing sheds where conditions are suitable; establishing a system of inspection of fruit; (iii.) arranging for transportation of fruit; also cartage and handling at destination points; (iv.) arranging for supervision at the markets; (v.) making agreements with fruit commission agents, fruit canners and other persons; (vi.) taking preliminary steps in the direction of extension of markets; (vii.) prohibiting or regulating the use and management of fruit barrows, fruit stalls at railway stations, and fruitgrowers' retail shops; (viii.) entering into agreements and contracts, engaging and paying officers, servants and employees; (ix.) imposing levies on fruit marketed; (x.) arranging for financing the operations of local associations and of sectional group committees; (xi.) engaging in such other activities as may be *approved by the Governor in Council* on the *recommendation of the Council of Agriculture*. There is nothing in all these clauses to indicate any power for the Committee to sell fruit, or to prevent growers or produce agents from selling, consigning, &c.; on the contrary, (v.) suggests that fruit commission agents may continue their business subject to any voluntary agreements. It may be that (xi.) was intended to enable the Committee to do many other things; but what other things it is unnecessary to determine, for it is not alleged that the Governor in Council has approved of, or that the Council of Agriculture has recommended, anything further.

But we must look also at sec. 15. Under this section the Governor in Council is empowered on the recommendation of the Committee to make such regulations providing for all or any purposes "as may be convenient for the administration of this Act or as may be necessary or expedient to carry out the objects and purposes

of this Act, and, where there may be in this Act no provision or no sufficient provision in respect of any matter or thing necessary or expedient to give effect to this Act, providing for and supplying such omission or insufficiency." It might be sufficient to say that there are no such regulations alleged; but it will be observed that the regulations must be aimed at carrying the Act into effect. They must be confined to the objects and purposes of the Act. The regulations as expressed (without limitation, &c.) may relate to fees, &c., elections, &c., control of local associations, exemptions from penalties, levies on fruitgrowers for expenses of the Act, prescribing forms of returns, &c., procedure on ballot, standardization of agents' accountancy methods. There is not one word here, from first to last, to support the view that the Committee might sell or might prevent commission agents from selling.

Even if (contrary to my opinion) the words used in the Act were equally consistent with the existence of these powers and with their non-existence, the Legislature "must not be deemed to take away or extinguish the right" of the growers or agents to carry on their business "unless it appear, by express words, or by plain implication, that it was the intention of the Legislature to do so" (*Western Counties Railway Co.* v. *Windsor and Annapolis Railway Co.* (1)).

Probably sec. 16 of the Act ought to be mentioned: "Every Order in Council *made under this Act* shall be published in the *Gazette*, and upon such publication shall have the same effect as if it were enacted in this Act." An Order in Council has been put before us, dated 12th June 1924, which purports to vest the property in all Queensland fruit in the Committee; and this Order was published in the *Gazette*, 14th June 1924. No attempt has been made to argue that this Order in Council was made under the Act.

The case was decided by *Macnaughton* J. on a statement of facts to which the parties agreed; and by clause 8 of that statement it was alleged that the Committee has "prevented and prohibited the plaintiff growers . . . from consigning, forwarding and delivering bananas and tomatoes grown by them in Queensland to farm produce agents in . . . Sydney, Melbourne and Adelaide . . . and the defendant Committee claims the right (and threatens and

(1) (1882) 7 App. Cas. 178, at p. 188.

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intends) to continue so to prevent and prohibit the said . . . growers from consigning" &c. "any fruit or vegetables grown in Queensland to any person . . . out of Queensland other than the defendant Committee or agents appointed by it in Sydney, Melbourne and Adelaide." These facts would, of course, raise a question under sec. 92 of the Constitution, which provides that trade, commerce and intercourse among the States "shall be absolutely free"; but the learned Judge very properly, if I may say so, did not deal with the question, finding himself able to decide the case on the mere construction of the Queensland Act. If it is necessary for us to decide this question, I see no reason why the principles laid down in *Duncan* v. *Queensland* (1) and in *W. & A. McArthur Ltd.* v. *Queensland* (2) should not be followed. These cases show the distinction between a State Act affecting rights of property and a State Act restricting commerce between the States; and, in my opinion, the Committee of Direction, not the Act itself, offends against sec. 92. I do not base this opinion on the position of the comma after the word "only" in sec. 7 (1). I base it on the fact that there is nothing in the Act from beginning to end, that necessarily refers to other States or to inter-State commerce, or that is inconsistent with the Act being restricted to marketing within Queensland; and it is our duty to presume that the Queensland Legislature meant to keep within its powers under the Constitution. But I am content to rest my judgment on the other ground, that the conduct of the Committee is not warranted even by the State Act.

In my opinion, the order of the learned Judge of first instance (which was drawn up by the parties) may be shortened; and there should be, at the present stage, a declaration such as that proposed in the judgment of my brother *Isaacs*. I do not see how any relief can be given to the plaintiffs against the Committee because of its selling fruit. The action is brought by Collins on behalf of himself and certain other fruitgrowers; and by Arkell & Sons on behalf of themselves and certain other produce agents. So far as the growers are prevented by the Committee from selling and consigning to whom they like, and so far as the produce agents are prevented by the defendant from carrying on their legitimate business, relief

(1) (1916) 22 C.L.R. 556, at pp. 572, 636, &c. (2) (1920) 28 C.L.R. 530.

should be given; but the growers and the produce agents, as such, have no right to prevent the Committee from selling fruit directly or by agents. The plaintiffs, in the capacity in which they sue, have no cause of action. The Committee has no right to sell; but the growers and the produce agents, as such, cannot complain. Any dealer may lose business when a formidable rival sets up business in the same street; but it is loss without wrongdoing—*damnum absque injuria*. If trustees, in breach of their trust, carry on business, a stranger to the trust cannot complain; but the beneficiaries can complain.

The description of the class on whose behalf the plaintiff Collins sues, and of the class on whose behalf the plaintiffs W. Arkell & Sons sue, is clumsy and may lead to friction; but we have had to follow the description as the defendant has not taken any step to put it right. The description must not be treated as a precedent.

RICH J. In my opinion the conclusion of law arrived at by *Macnaughton* J. is correct. The gist of the claim asserted by the Committee of Direction is that under the words "shall take control of the marketing of all fruit" it has power, if it so wills, to prevent all persons in Queensland from selling to the public any "fruit" as defined by the Act. In other words, it asserts that it has now the monopoly of selling "fruit" to the public either directly or through such channels as it authorizes. It also asserts, as incidental to this monopoly, that it can insist on all growers of fruit handing over their fruit to the Committee for disposal, and can prevent any fruit being consigned or delivered to any other person except through the medium of the Committee itself or under its authority. If this claim cannot be sustained, and I think it cannot, this appeal must fail. In my opinion, the word "control" is not sufficient to include the monopoly I have described. The natural meaning of the word is not large enough to embrace such an unusual and far-reaching interference with private rights. There is nothing else in the Act to carry its meaning so far. Many of the powers specifically mentioned are, as I think, inconsistent with the rights set up by the Committee; as, for instance, the interim powers of the Provisional Committee in sec. 8. The acts complained of by the individual

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plaintiffs and the threats admitted to interfere with them were therefore unlawful, and the Supreme Court was right in so declaring. But no case is made for any declaration or injunction against the Committee carrying on business, that is, apart from any obstruction to the respondents' businesses. This is, however, a comparatively minor matter—the important question being the claim of monopoly referred to, with the right of interfering with the businesses of the respondents. No objection as to the frame of the class suit was taken before the trial Judge or before us. "The parties," said *Macnaughton* J., "naturally desire to obtain the decision of the High Court of Australia upon it" (the substantial question) "as soon as possible, and with this object agreed upon" a "statement of facts, and also to treat the hearing before me as the trial of these actions upon this statement. At the same time they undertook to assist each other in every way to expedite the appeal from this judgment." The actions were brought on behalf of two classes—fruitgrowers and licensed farm produce agents—to test the legality of the Committee's claims. I therefore agree that, limiting the declaration as I have mentioned, the appeal should be dismissed with costs.

STARKE J. The Committee of Direction have not, in my opinion, the powers which they claim under the *Fruit Marketing Organization Act of* 1923. The Act, sec. 7, requires that the Committee "shall take control of the marketing of all fruit." And sec. 2 of the Act provides that marketing "includes everything involved in the transmission of fruit from the producer to the consumer." The contention of the Committee is that these words give them the exclusive right to the consignment of all fruits within the Act, to the handling and sale of that fruit and to its despatch to consumers; whilst the contention of the plaintiffs is that the words only give the Committee a supervising or controlling power over marketing operations conducted by the fruitgrowers and their agents. It is a sound rule of construction that the rights of citizens are not to be destroyed or taken away "unless you have plain words which indicate that such was the intention of the Legislature" (cf. *In re Cuno*; *Mansfield*

v. *Mansfield* (1); *London and North-Western Railway Co.* v. *Evans* (2)). "Prima facie a trader in a free country in all matters 'not contrary to law may regulate his own mode of carrying on his trade according to his own discretion and choice'" (*Mogul Steamship Co.* v. *McGregor, Gow & Co.* (3)). Clearly, the statute has interfered with this right to some extent, and the question is—to what extent? The words "take control of the marketing" point, I think, to supervision of the operations rather than to the conduct of the operations themselves. So does the title to the Act. So, also, do various provisions of the Act; as illustrations, I cite the following: Sec. 7 (1)—"Fruit shall be tendered for sale . . . under the authority of the Committee"; sec. 7 (3)—"The Committee . . . may . . . exempt from the operations of this Act . . . such methods of transportation, handling, or sale as they deem fit"; sec. 8 (2)—the functions of the Provisional Committee; sec. 15 (1) (ix.)—the standardization of agents' accountancy methods. Again, it is a strange omission, if the Committee have the exclusive right which they claim, that the Act makes no provision for financing so vast a scheme, nor for ascertaining either the prices at which the fruit might be offered on the market or the charges for various services, nor for accounting to or paying the fruitgrowers for their fruit. I have not omitted to consider sec. 6, sub-sec. 5, but, whatever it authorizes, still its provisions fall far short of what are expedient and even necessary for the purposes I have indicated.

This view disposes of the whole case, and I say nothing as to the provisions of sec. 92 of the Constitution or its effect upon the State Act.

In the order of the Supreme Court substitute for the declaration and the injunction the following declaration:—Declare that the defendant the Committee of Direction of Fruit Marketing is not entitled to do any of the acts following, that is to say: (1) *Prohibit, prevent or hinder the plaintiff Henry William Collins or any other grower of Queensland-grown fruit who claims to be entitled to*

(1) (1889) 43 Ch. D. 12, at p. 17.
(2) (1893) 1 Ch. 16.
(3) (1892) A.C. 25, at p. 36: (1889) 23 Q.B.D. 598, at p. 614.

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send or deliver for sale fruit within the meaning of the term "fruit" in the Fruit Marketing Organization Act of 1923 *from carrying on the trade or business of the said Henry William Collins or such other grower as a grower and seller of fruit within the meaning aforesaid*; (2) *demand, seize or divert any fruit within the said meaning consigned or sold by or to the said Henry William Collins or other grower as aforesaid*; (3) *prohibit, prevent or hinder the plaintiffs W. Arkell & Sons or any other duly licensed farm produce agents in Queensland who claim to be entitled to receive for sale and sell fruit grown in Queensland within the meaning of the term "fruit" in the Fruit Marketing Organization Act of* 1923 *from carrying on their respective businesses of fruit agents, salesmen and auctioneers of fruit within the meaning aforesaid*; (4) *demand, seize or divert any fruit within the said meaning consigned or sold to or by the said W. Arkell & Sons or other duly licensed farm produce agents aforesaid. With the above variation, appeal dismissed with costs.*

Solicitor for the appellant, *G. S. Webb*, Brisbane, by *J. M. Smith & Emmerton.*

Solicitors for the respondents, *Atthow & Atthow*, Brisbane, by *Crisp & Crisp.*

B. L.