



# REPORTS OF CASES

DETERMINED IN THE

# HIGH COURT OF AUSTRALIA

1926-1927.

[HIGH COURT OF AUSTRALIA.]

THE COMMONWEALTH AND THE  
ATTORNEY-GENERAL FOR THE  
COMMONWEALTH (ON THE RELA-  
TION OF EDWARDS) . . . . . } PLAINTIFFS ;

AGAINST

THE AUSTRALIAN COMMONWEALTH  
SHIPPING BOARD AND ANOTHER } DEFENDANTS.

*Constitutional Law—Parliament of Commonwealth—Legislative powers—Defence—Public body constituted under Commonwealth law—Australian Commonwealth Shipping Board—Power to carry on business of manufacturing engineer, &c.—Contract to supply and erect machinery—The Constitution (63 & 64 Vict. c. 12), sec. 51 (vi.), (xxxix.)—Commonwealth Shipping Act 1923 (No. 3 of 1923), secs. 10, 14.* H. C. OF A.  
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SYDNEY,  
Aug. 23, 24,  
27.  
*Practice—Parties—Right of Attorney-General of Commonwealth to sue—Public body created by Commonwealth law—Transgression of statutory powers.* MELBOURNE,  
Nov. 1.

*Held*, that the Australian Commonwealth Shipping Board, constituted by the *Commonwealth Shipping Act* 1923, had no power to enter into an agreement with a municipal council to supply, deliver and erect on municipal land steam turbo-alternators :  
Knox C.J.,  
Isaacs, Higgins,  
Gavan Duffy,  
Rich and  
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By *Knox C.J., Gavan Duffy, Rich and Starke JJ.*, on the ground either that the *Commonwealth Shipping Act 1923* conferred no power to enter into such an agreement, or that, if it did, the Act was beyond the power conferred upon the Parliament of the Commonwealth by the Constitution ;

By *Isaacs J.*, on the grounds that there was no authority in the *Commonwealth Shipping Act 1923* to enter into the agreement, and that there was no constitutional power to authorize the agreement merely because it would or could be assistant to the Board's works ;

By *Higgins J.*, on the ground that such a power was not conferred on the Board by the *Commonwealth Shipping Act 1923*.

*Held*, also, by *Knox C.J., Gavan Duffy, Rich and Starke JJ.*, that if a public body constituted under the laws of the Commonwealth transgresses its statutory power, the Attorney-General for the Commonwealth on behalf of the public, whether private injury has or has not been alleged, has a right to complain and to obtain a declaration of transgression and, if necessary, an injunction.

#### DEMURRER.

In an action in the High Court brought by the Commonwealth and the Attorney-General for the Commonwealth, on the relation of Frank L. Edwards, Secretary to the Chamber of Manufactures in New South Wales, against the Australian Commonwealth Shipping Board and the Municipal Council of Sydney, the statement of claim was substantially as follows :—

1. The defendant the Australian Commonwealth Shipping Board (hereinafter called the Shipping Board) was incorporated by the *Commonwealth Shipping Act 1923* under the name aforesaid, with perpetual succession and a common seal and with power to hold property, and capable of suing and being sued in such corporate name and otherwise for the purposes and with the powers in such Act mentioned.

2. The defendant the Municipal Council of Sydney (hereinafter called the Council) was incorporated by the *Sydney Corporation Act 1902* of the State of New South Wales under its aforesaid name for the purposes and with the powers mentioned in such Act and the Acts amending the same, and with power also under the provisions of the *Municipal Council of Sydney Electric Lighting Act* and the Act amending the same to arrange for the generation and supply of electricity for public and private purposes in various parts of the State of New South Wales. The said Council was made capable of suing or being sued in its corporate name.



3. Prior to 1st February 1926 the said Council invited tenders for the supply, erection and maintenance of turbo-alternator sets for its power-house at Botany Bay near Sydney, tenders to close on 1st February 1926. Six turbo-alternator sets were required for delivery at various dates. Firms were invited to tender for any or all sections, and all sections were similar except in the matter of time for completion.

4. The Council's invitation to tender was expressed (*inter alia*) in the words and figures following:—"Extent of Contract.—This specification covers the supply, delivery, erection, testing, setting to work and maintenance to the satisfaction of the Engineer on foundations to be provided by the purchaser at its power-house on the shore of Botany Bay in the Municipality of Randwick, Sydney, New South Wales, of steam turbo-alternator sets as hereafter described " &c.

5. Tenderers were required to undertake maintenance of the plant for a period of twelve calendar months from the time of taking over by the Council.

6. If the tenders provided for manufacture in Australia of part of the plant, the tenderer was to state clearly and in detail according to schedules prescribed what parts were proposed to be manufactured within the Commonwealth and the names of the firms proposed to be entrusted with the work.

7. The said specification was annexed to printed general conditions which provided (*inter alia*) that the successful tenderer and the said Council should enter into a sealed agreement for the proper fulfilment of the contract with sureties if required.

8. The form of formal tender which the tenderer was required to sign and lodge with the said Council was in the words and figures following:—"I/We hereby offer to supply, deliver, erect, test, set to work and maintain in your power-house at Botany Bay, Sydney, New South Wales, within from the date of acceptance of this tender the two turbo-alternator sets and auxiliary plant described in this specification (section A) and in accordance with the general conditions, the specification, the schedules and drawings hereto annexed and to perform all other obligations which are to be performed by the contractor for the sum of and

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to pay . . . all royalties and fees (if any) on patented articles supplied . . . I/We further agree . . . that in the event of this tender being accepted I/we will deposit with the City Treasurer security and execute a formal contract within the time and in the manner provided in the general conditions and that in the event of any breach or non-performance of the foregoing agreement the sum of £220 mentioned in the general conditions may be held by the Council pending the settlement of any claim for liquidated or unliquidated damages which the Council shall have against me/us."

9. Twelve firms tendered—including the said Shipping Board, which tendered for all six turbo-alternators for a total price of £666,605 or thereabouts, and which in and by its said tender declared that 55 per cent or thereabouts of such price represented the value of parts to be made in Australia and the residue represented the value of work to be done and materials to be imported from abroad. The said Shipping Board in its said tender also stated that, in respect of such portions of the said turbo-alternator sets and plant as were not to be constructed solely by themselves, the manufacturers to be associated with them would be Metropolitan Vickers Ltd., England, and Metropolitan Vickers Ltd., New South Wales, and possibly also Walsh Island, New South Wales.

10. The said Shipping Board's tender for all six sets was accepted by the said Council on or about 25th March 1926, and the defendants the Shipping Board and the Council on or about 7th April 1926 entered into a sealed agreement for the proper fulfilment of the said contract and are preparing and intending to carry such contract into effect and the said Shipping Board is preparing and intending to utilize and expend its properties, assets and funds in connection therewith.

The plaintiffs claimed (*inter alia*)—

- (1) A declaration that the said agreement is beyond the powers of the said Shipping Board ;
- (2) A declaration that the said Shipping Board is not entitled to utilize or expend its properties, assets or funds in furtherance of such agreement ;
- (3) An injunction restraining the defendants and each of them from further proceeding with the agreement.



The Attorney-General for the Commonwealth authorized the presentation of that statement of claim to the High Court.

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Each defendant demurred to the statement of claim on the grounds (1) that the statement of claim did not allege any facts which showed that the agreement therein mentioned was *ultra vires* the defendant and (2) that the statement of claim disclosed no cause of action or right to relief. The Municipal Council of Sydney demurred on the ground also that the plaintiffs were not nor was either of them entitled to sue to restrain the Council from proceeding with the said agreement.

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The demurrers now came on for argument.

*Flannery* K.C. (with him *Weston*), for the defendant the Australian Commonwealth Shipping Board. The Board had power under sec. 14 (4) of the *Commonwealth Shipping Act* 1923 to enter into this contract. The only limitation upon the power thereby conferred to carry on the business of a manufacturer, engineer, &c., is with regard to the site of the plant and to the establishment on the two Islands as it existed at the time of the transfer to the Board. The business must be one to which the plant is normally adapted. Sec. 10 imposes no restriction which limits the powers conferred by sec. 14 (4) to carrying on business for a particular purpose, and no restriction can be implied from the fact that the Board carries on the business of a shipowner. Sec. 14, so far as powers are concerned, should be construed by itself, and sec. 19 cannot aid the construction. The conferring of the power contained in sec. 14 (4) is authorized by the defence power (sec. 51 (vi.) of the Constitution), the incidental power (sec. 51 (xxxix.)) and the trade and commerce power (sec. 51 (i.)). It is conceivable that the administration of the two Islands and the plant there is part of the defence administration. If that be so, the using of the plant in such a way as to keep it continuously in a state of efficiency for naval purposes is incidental to the defence power, and when the plant is not being used for naval purposes the carrying out of work such as is contemplated by this contract is a proper means for securing that efficiency. It must be shown by the plaintiffs that the act which is challenged cannot reasonably



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be referred to any power conferred by the Constitution (*Farey v. Burvett* (1); *Pankhurst v. Kiernan* (2); *Roche v. Kronheimer* (3); *Heiner v. Scott* (4); *Commonwealth v. Queensland* (5)).

*Brissenden* K.C. (with him *Cassidy*), for the defendant the Municipal Council of Sydney. The critical word in sec. 14 (4) is the word "business," which is quite inappropriate to the manufacture of goods for a Department of the Government, but is quite appropriate to the doing of work for outside persons. The subsection means that the Board may carry on an ordinary commercial business, with one limitation only, namely, that it is to be carried on by means of the plant on the two Islands. The Act should be interpreted having regard to the circumstances which exist (*In re Jordison*; *Raine v. Jordison* (6)). Sec. 14 (4), so interpreted, is not *ultra vires*. It must be shown that a power given by the Act cannot be assigned to any power of the Commonwealth Parliament. If the Act is wide enough to authorize the class of work to be done under this contract, the defendants are entitled to show that that work is for the benefit of the Commonwealth and within the defence power (see *Kerr's Law of the Australian Constitution* p. 202; *Farey v. Burvett* (7)).

[STARKE J. referred to *Fort Frances Pulp and Power Co. v. Manitoba Free Press Co.* (8).

[ISAACS J. referred to *Toronto Electric Commissioners v. Snider* (9).]

The plaintiffs are not entitled to bring this action against the Municipal Council of Sydney. If the contract is within the powers of the Council, the Attorney-General of the Commonwealth cannot interfere. The Council is not a necessary party to the action.

*E. M. Mitchell* K.C. (with him *Neild*), for the plaintiffs. All the parties to the contract are necessary parties to the action (*Hare v. London and North-Western Railway Co.* (10)). The onus of proving the existence of a Commonwealth power lies upon him who seeks to rely on the power (*Waterhouse v. Deputy Federal Commissioner*

(1) (1916) 21 C.L.R. 433, at pp. 442, 445, 460.

(2) (1917) 24 C.L.R. 120.

(3) (1921) 29 C.L.R. 329.

(4) (1914) 19 C.L.R. 381, at p. 393.

(5) (1920) 29 C.L.R. 1, at pp. 21, 22.

(6) (1922) 1 Ch. 440, at p. 451.

(7) (1916) 21 C.L.R., at p. 442.

(8) (1923) A.C. 695, at p. 706.

(9) (1925) A.C. 396, at pp. 412, 414.

(10) (1860) 1 John. & H. 252.



*of Land Tax* (1); *Huddart Parker & Co. Pty. Ltd. v. Moorehead* (2); *H. C. OF A. 1926.*  
*Attorney-General for the Commonwealth v. Colonial Sugar Refining*  
*Co.* (3); *Amalgamated Society of Engineers v. Adelaide Steamship*  
*Co.* (4)). If sec. 14 (4) has the wide meaning contended for by the  
 defendants, there is no constitutional power of the Parliament  
 which will support it. The defence power will not support it.  
 Under no rational view of that power can a contract under which  
 the Board is to be liable in certain circumstances to pay damages  
 be within the defence power, (See *Dundee Harbour Trustees v.*  
*D. & J. Nicol* (5).) Sec. 14 was not intended to empower the  
 Board to do anything except for Commonwealth purposes. The  
 section must be construed in relation to the purpose for which  
 the Commonwealth holds the Commonwealth Shipping Line.  
 The word "manufacturer" must be limited to manufacture in  
 relation to the Shipping Line. The business of manufacturer,  
 engineer, dock-owner, &c., should be construed as limited to a  
 business ancillary to the owning of ships by the Shipping Line or  
 to the Commonwealth ownership of dockyards.

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*Cur. adv. vult.*

KNOX C.J. The Court is of opinion that the demurrers should be  
 overruled with costs. The reasons will be given later.

Aug. 27.

The following written reasons were delivered:—

Nov. 1.

KNOX C.J., GAVAN DUFFY, RICH AND STARKE JJ. This is an  
 action by the Commonwealth and by the Attorney-General of  
 the Commonwealth, on the relation of a private individual, for a  
 declaration that the Australian Commonwealth Shipping Board,  
 incorporated under the *Commonwealth Shipping Act* 1923,  
 transgressed its powers in entering into an agreement with the  
 Municipal Council of Sydney for the supply, delivery and erection  
 at Botany Bay, New South Wales, of six steam turbo-alternators,  
 and an order that the Board be restrained from further proceeding  
 with the agreement.

(1) (1914) 17 C.L.R. 665, at p. 679.

(1913) 17 C.L.R. 644, at p. 653.

(2) (1909) 8 C.L.R. 330, at p. 415.

(4) (1920) 28 C.L.R. 129, at p. 154.

(3) (1914) A.C. 237, at pp. 254-255;

(5) (1915) A.C. 550.



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The statement of claim set out this agreement in some detail, but substantially to the effect already stated. The Board and the Council both pleaded and demurred to this statement of claim, but it is only with the demurrers that the Court is now concerned. The right of the plaintiffs to sue was challenged; but if a public body transgresses its statutory powers the Attorney-General on behalf of the public, whether private injury has been alleged or not, has the right to complain and to obtain a declaration to that effect and if necessary an injunction. If the body transgressing its powers be one incorporated under the laws of the Commonwealth, then the Attorney-General of the Commonwealth is a proper party to complain of that transgression with or without a relator as he thinks expedient.

The real ground of the demurrer depends upon the construction of the *Commonwealth Shipping Act* 1923. The argument was put in the form of a dilemma: it was said that the Act did not authorize the particular agreement that was entered into or, if it did, then the Act was beyond the power of the Parliament of the Commonwealth to enact, and therefore invalid.

Prior to the passing of the Act the Commonwealth was possessed of a number of ships and occupied two Islands known as Cockatoo and Schnapper Islands in Port Jackson. The Act transferred the ships to the Board and also the interest of the Commonwealth in the islands and all improvements, buildings, structures, erections, dockyards, machinery, &c., on those Islands respectively. It authorized the Board to carry on the general business of a shipowner, and also to carry on in respect of the Islands the business of manufacturer, engineer, dock-owner, ship-builder and repairer and any other business incidental thereto or to the works and establishments. It is unnecessary to consider what power, if any, the Commonwealth has to establish and carry on a line of steamers for commercial purposes, for this case depends upon the authority to carry on in respect of the islands the businesses already specified.

One construction of the section presented to us was that the power conferred by it is limited to acts connected with the shipping line established by the Act or with activities carried on by the Commonwealth under some legislative sanction such as Naval Defence Acts, Post Office Acts and so forth. If this be the proper



construction of the section, then the contract entered into in this case is clearly beyond the power, for it stipulates for the supply and delivery to and erection of turbo-alternators for the municipal authority of Sydney for its power-house at Botany in New South Wales. The supply and delivery of these alternators is wholly unconnected with the shipping line or any activity carried on by the Commonwealth under legislative sanction.

Another construction of the section was that it authorized the Shipping Board to carry on upon the islands the business of a manufacturer, engineer, &c., and to supply any person anywhere with commodities and services ordinarily supplied in the classes of business specified in the section; but that construction at once raises the constitutional power of the Parliament to confer any such power.

The Parliament has only such power as is expressly or by necessary implication vested in it by the Constitution. There is no power which enables the Parliament or the Executive Government to set up manufacturing or engineering businesses for general commercial purposes. The trade and commerce power was referred to, but that is a power to regulate trade and commerce with other countries and among the States. The naval and defence power coupled with the incidental power conferred by sec. 51 (XXXIX.) was also relied upon. Extensive as is that power, still it does not authorize the establishment of businesses for the purpose of trade and wholly unconnected with any purpose of naval or military defence. It was suggested, however, that the dockyard and workshops on Cockatoo Island were required for the purposes of the naval defence of the Commonwealth, and that it was impracticable to maintain them efficiently for that purpose unless the managing body—the Shipping Board—was authorized to enter upon general manufacturing and engineering activities, because the cost of maintenance of the works would be excessive and the working staff would be unable to obtain proper experience. Despite the practical difficulties facing the Commonwealth in the maintenance of its dockyard and works, the power of naval and military defence does not warrant these activities in the ordinary conditions of peace, whatever be the position in time of war or in conditions arising out of or connected

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The executive power of the Commonwealth was also touched upon; but it is impossible to say that an activity unwarranted in express terms by the Constitution is nevertheless vested in the Executive, and can therefore be conferred as an executive function upon such a body as the Shipping Board.

The demurrers should be overruled.

ISAACS J. I have now to state my reasons for holding that the demurrers should be overruled. The question of law is shortly this: Was the agreement referred to in par. 10 of the statement of claim *ultra vires* of the defendant Board? The Board has no powers other than those conferred by the *Commonwealth Shipping Act* 1923 (No. 3 of 1923). Whether the powers so conferred include the capacity to enter into the agreement depends upon the nature of the agreement and the construction of the statute. I say "construction" of the statute, because no one has questioned the validity of the statute apart from the extended meaning sought by the defendants to be placed upon sub-sec. 4 of sec. 14.

The agreement is one by which the Board undertakes to supply to the defendant the Sydney Corporation, for a total price of about £666,600, six turbo-alternators, of which 55 per cent of working parts should be made somewhere in Australia and the residue imported. The agreement contemplated the Board's liability in damages for breach of agreement. The effect of the statute referred to is to establish a shipping line, to provide for its ownership and management by a Board, as a body corporate, to confer on the Board power to carry on the business of a shipowner and any business incidental thereto, to acquire "any land," &c., for the purposes of the "business of the Board"—that is, any land, anywhere at least in Australia—to dispose of any property subject to the Treasurer's consent, to establish offices and local boards and to appoint agents anywhere, and generally to do all things incidental. It has power to appoint officers and servants for "its business." Its fleet was constituted by the transfer of about fifty



ships, together with four others when completed. One special matter was also provided for. The Commonwealth had what it called "the right, title and interest of the Commonwealth in and to . . . Cockatoo Island and Schnapper Island," where were situated certain structures, works and establishments connected with ship-building and repairing, and that "right, title and interest" was transferred to the Board. The nature of the Commonwealth's right, title and interest may be seen by reference to the Act No. 19 of 1925. Obviously, the full powers of acquisition and disposal given generally by sec. 10, could not be included in the "right, title and interest" conferred by the governing and limiting words of sec. 14. So far as those Islands are concerned, the powers contained in sub-sec. 4 of sec. 14 are necessarily not larger than the "right, title and interest" referred to, which cover some property, but some only. They may even not be so large, and in my opinion the powers in that sub-section are limited to the purposes of the "Line." That, of course, would not prevent the use by the Commonwealth of the works and establishments for its own naval purposes. Parliament could always authorize that by an appropriation or otherwise. But the Board is, in my opinion, constituted, so far as this Act is concerned, for the "Line" purposes only, and the powers expressed in sub-sec. 4 of sec. 14 are ancillary to that purpose. The "business" authorized is not the business which a private "manufacturer" or "engineer," &c., would or might carry on; but it is the business of "manufacturer" only or "engineer" only, &c., that is, the *work* done by a "manufacturer" or an "engineer," &c. And it is not such work done in respect of *anything*, or for *anyone* and *anywhere*. The manufacturing does not extend, for instance, to agricultural machines or children's toys, nor does the engineering extend to building railway engines for Russia. But, if not, it is because the context supplies the limitation. And the context to my mind is clear.

There is one head office called the "Head Office of the Line" (sec. 5). The Board is to be "for the purposes of this Act" (sec. 6). It is called the "Australian Commonwealth Shipping Board" (sec. 7). The remuneration of the directors is undivided. It has power to appoint officers and servants for "its business" (sec. 11). That

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“business” is clearly the business of the Line, and that only. The Board’s debentures are to cover ships and all property transferred, including such as exists on the Islands (sec. 15). The Commonwealth advances relate to the “working capital” of the Board, and that is one single conception. The “profits of the Line” (sec. 19) cannot be ascertained unless and until the result of any working operations under sec. 14 (4) are taken into account. The “balance-sheet” in sec. 22—and there is only one balance-sheet contemplated for each year—would be manifestly incomplete unless its operation under sub-sec. 4 of sec. 14 were included. Consequently I interpret the sub-section as saying that, while the Commonwealth’s right, title and interest in and to the Islands are transferred to the Board, the Board is not to have “in respect of those Islands” the larger powers previously given in respect of the Line generally, but merely the power of doing there, for the purposes of the Line, work of the classes specified, with such incidental powers as will enable the Board to do that work efficiently.

That at once eliminates the suggested capacity of the Board to enter into what are really private trading contracts, with obligations to pay damages out of public moneys or by the sale of public property.

It was suggested that the capacity of the Board to enter into the agreement depended on a question of fact, namely, whether in the circumstances such an agreement would or could be assistant to the effective preservation or operation of the works as an authorized Commonwealth institution. I am unable to find such a meaning in sub-sec. 4 of sec. 14, and if I could, I should be unable to find its justification in the Constitution.

HIGGINS J. The sole question that emerges for determination under these demurrers—each of the two defendants puts in a separate demurrer—is whether it is or is not competent for the Shipping Board—a Commonwealth Government Board—created by the Act No. 3 of 1923 to tender for and contract to supply electric apparatus—six turbo-alternator sets and auxiliary plant—to an outside body—here, the Municipal Council of Sydney.

The Commonwealth Attorney-General is a party plaintiff, submitting that it is not competent. I presume that he allows



his name to be used in this litigation adversely to the Commonwealth Board in order that the question may be fairly tested. Another plaintiff is the Commonwealth itself. I do not know why; but no objection is taken to the procedure.

The Attorney-General sues on the relation of the secretary of a body called the Chamber of Manufactures of New South Wales; the manufacturers objecting, I presume, to the competition of the Board in manufacturing. The finances of the Commonwealth are involved: as to certain matters moneys may be spent or advanced by the Treasurer without even any appropriation by Parliament (sec. 16). The Municipal Council of Sydney is properly made a party defendant to the action impugning the contract to which it is a party.

Neither the specifications nor the printed conditions nor the sealed agreement have been fully set forth in the pleadings (see *Rules of the High Court*, Order XXIV., r. 6), nor have they been produced; but, as no objection is taken, probably we may deal with the demurrers as if the summary statements of the contents were exhaustive for the present purpose.

It should be clearly understood that the power of Parliament to pass this Act creating the Shipping Board is not impugned; and unless it be impugned it is our duty to assume that Parliament had power to pass the Act which it has passed in fact. The main, if not the only, question is as to the construction of the Act.

The heading of the Act shows, no doubt, its central aim—"An Act to provide for the establishment of the Commonwealth Shipping Line and for other purposes." A line of steamers is established (sec. 4); a Board of Directors is to be appointed by the Government for the purposes of the Act (sec. 6); the Board is to be a body corporate (sec. 7); the management of the Line is vested in the Board (sec. 12); certain existing merchant ships, stores, equipment, &c., belonging to the Commonwealth are vested in the Board at valuations, the Board issuing debentures therefor (secs. 13, 15); two Islands in Port Jackson (Cockatoo and Schnapper Islands) are also vested in the Board with all their improvements, dockyards, machinery, &c., and the management of the works and establishments on the Islands (sec. 14 (1), (2), (3)); and it is provided (sub-sec. 4)

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that "the Board shall have power to carry on in respect of these Islands the business of manufacturer, engineer, dock-owner, shipbuilder and repairer, and any other business incidental thereto or to the said works and establishments" It is on sec. 14 (4) that the Shipping Board mainly relies for its alleged power to tender for and supply electrical plant (for payment) to the outside public.

But there is a significant section to which I have not yet referred, a section which recalls the title of the Act and its dominating purpose—sec. 10: "The Board shall, in *addition to any other powers conferred by this Act*, have power—(a) to carry on the *general business of a ship-owner*, and any business incidental thereto; (b) to acquire and hold ships; (c) to acquire and hold on any tenure any land, offices, ship-yards, wharfs or other premises and any gear or equipment necessary for the purposes of *carrying on the business of the Board* . . .; (g) to do anything incidental to any of its powers." The phrasing of this section echoes the phrasing of a memorandum of association which defines the objects of a company created under the Companies Acts, and limits its functions and powers; and although the section expressly does not exhaust all the powers of the Board, it is for the Board to show that a power to carry on an electrical engineering business is an additional power conferred by the Act. But in construing the expression used in sec. 14 (4), that the Board shall have power to carry on "in respect of those Islands" the business of manufacturer, engineer, &c., and any other business incidental thereto or to the said works and establishments, it is our duty to read the words as limited to the general nature of the business contemplated by sec. 10 as well as by the title. The special powers conferred by sec. 14 (4), however absolute in terms, are to be construed as subject to the special purposes of the original bond of association of the Board (*Pickering v. Stephenson* (1); *Osborne v. Amalgamated Society of Railway Servants* (2)). The language of Lord *Blackburn*, used in *River Wear Commissioners v. Adamson* (3), though necessarily vague, has often been cited with approval:—"In all cases the object is to see what is the intention expressed by the words used. But, from the

(1) (1872) L.R. 14 Eq. 322, at p. 340.

(2) (1909) 1 Ch. 163, at pp. 191, 192,

per *Farwell* L.J.

(3) (1877) 2 App. Cas. 743, at p. 763.



imperfection of language, it is impossible to know what that intention is without inquiring farther, and seeing what the circumstances were with reference to which the words were used, and what was the object, appearing from those circumstances, which the person using them had in view ; for the meaning of words varies according to the circumstances with respect to which they were used.”

It is my opinion, therefore, that the language of sec. 14 (4), however wide it may appear as “in respect of those Islands,” must be read as restricted to the general purposes of a shipping business, not as extending to a general electrical engineering business ; and that the demurrers should be overruled. It would be dangerous, however, to attempt to define affirmatively, by anticipation of developments, the limits of the powers conferred by such a section as sec. 14 (4).

H. C. OF A.  
1926.  
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THE  
COMMON-  
WEALTH  
v.  
AUSTRALIAN  
COMMON-  
WEALTH  
SHIPPING  
Board.  
—  
Higgins J.

*Demurrer of each defendant overruled with costs.*

Solicitors for the plaintiffs, *Sly & Russell.*

Solicitors for the defendants, *A. J. McLachlan, Westgarth & Co. ; Dawson, Waldron, Glover & Edwards.*

B. L.