[HIGH COURT OF AUSTRALIA.]

ANDERSON . . . . . APPELLANT;
PLAINTIFF,

AND

THE COMMONWEALTH OF AUSTRALIA . RESPONDENT.
DEFENDANT,

ON APPEAL FROM DIXON J.

H. C. OF A. 1932.

MELBOURNE, *March* 11.

SYDNEY, *April* 7.

Gavan Duffy C.J., Rich, Starke, Evatt and McTiernan JJ.

Administrative Law—Agreement between Commonwealth and a State controlling importation of sugar—Claim by citizen to restrain performance of agreement—Citizen not interested otherwise than as a member of the public—High Court Rules (*S.R.* (1928), *No.* 118), *Order XLIV., r.* 2.

A person, who has no interest otherwise than as a member of the public in an agreement made between the Commonwealth and a State, has no sufficient interest in the subject matter of the agreement to entitle him to maintain an action to obtain a determination that it is *ultra vires* of the Commonwealth or contrary to law.

Decision of *Dixon* J. affirmed.

APPEAL from High Court (*Dixon* J.).

Charles Frederick Borrodaile Anderson brought an action in the High Court against the Commonwealth of Australia claiming that an agreement in writing between the Commonwealth and the Government of Queensland restricting the importation of sugar into the Commonwealth was illegal and invalid. The plaintiff alleged in his statement of claim that he was interested in the matter in dispute in this action as a member of the public. The Commonwealth took out a summons asking for an order that the proceedings in this action should be stayed under Order XLIV., rule 2, of the *High Court Rules* on the grounds that there was no reasonable or probable cause of action, and that the action was vexatious and oppressive. The summons was heard by *Dixon* J., who, having

referred the matter into Court, held that the plaintiff had no such interest as would entitle him to maintain the action, which he accordingly dismissed.

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

Appellant, in person.

Irvine, for the respondent. The appellant should fail as he has no interest in the Sugar Agreement other than as a member of the public.

[STARKE J. referred to *Attorney-General for New South Wales v. Brewery Employees Union of New South Wales* (1).]

Cur. adv. vult.

April 7.

The following written judgments were delivered :—

GAVAN DUFFY C.J., STARKE AND EVATT JJ. This was an action claiming a declaration that an agreement in writing, made between the Commonwealth and the Queensland Governments, and known as the Sugar Agreement, is illegal and invalid. Our brother *Dixon* held that the plaintiff had no such interest as entitles him to maintain the action, and he accordingly dismissed it. We feel no doubt that this judgment was right. The substance of the Agreement is that the Government of the Commonwealth prohibits the importation of sugar, with certain exceptions, until 31st August 1936, whilst the Government of Queensland acquires the raw sugar grown in Queensland and New South Wales during the seasons 1931-1932 to 1935-1936 inclusive, at prices ascertained in accordance with the complicated provisions of the Agreement. The plaintiff contends that the Agreement substantially increases the cost of sugar to himself and other consumers in Australia; and there is no doubt that his contention is true. The plaintiff is no party to the Agreement, and founds his action upon an allegation of lack of authority on the part of the Commonwealth to make any such agreement or to prohibit the importation of sugar. But the Agreement made by the Commonwealth, and its prohibition, affect the public generally and the plaintiff has no interest in the subject matter beyond that

(1) (1908) 6 C.L.R. 469.

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of any other member of the public: he has no private or special interest in it. Great evils would arise if every member of the Commonwealth could attack the validity of the acts of the Commonwealth whenever he thought fit; and it is clear in law that the right of an individual to bring such an action does not exist unless he establishes that he is "more particularly affected than other people" (see *Brice* on *Ultra Vires*, 2nd ed., p. 366). The public is not or should not be without remedy, for the Attorney-General of the Commonwealth, or of any of the States sufficiently interested, might take proceedings necessary to protect their rights and interests (see *Union Label Case* (1)).

RICH AND MCTIERNAN JJ. The plaintiff complained in his statement of claim that the defendant Commonwealth had entered into an agreement with the State of Queensland which relates to the production, manufacture and disposal of sugar, and that it was beyond the power of the Commonwealth to do so. He founds his right to complain upon the allegation that he is a member of the public. It is, perhaps, not ungenerous to understand this as meaning that he is a natural-born subject of the King resident in Australia who pays taxes and consumes sugar. *Dixon* J. considered that the plaintiff disclosed no title to maintain a suit for any relief in respect of the agreement, and exercised the jurisdiction to dismiss the action *brevi manu*. It is quite clear that his Honor's view was right. For the Executive Government to make an agreement with a State cannot be an invasion of any legal right of a citizen as such, and cannot infringe upon any legal interest which he has in virtue of his citizenship only. In the United States taxpayers have been denied the privilege of challenging the constitutionality of the appropriation of moneys by Congress (*Massachusetts* v. *Mellon*; *Frothingham* v. *Mellon* (2)). The appeal should be dismissed.

Appeal dismissed with costs.

Solicitor for the respondent, *W. H. Sharwood*, Crown Solicitor for the Commonwealth.

H. D. W.

(1) (1908) 6 C.L.R. 469.

(2) (1923) 262 U.S. 447, at pp. 486-488; 67 Lawyers' Ed. 1078, at pp. 1084-1085.