[PRIVY COUNCIL.]

JAMES . . . . . APPELLANT;
PLAINTIFF,

AND

COWAN AND OTHERS . . . . . RESPONDENTS.
DEFENDANTS,

ON APPEAL FROM THE HIGH COURT.

PRIVY COUNCIL.* 1932. June 21.

Constitutional Law—Freedom of inter-State trade and commerce—State Parliament—Statute—Compulsory acquisition of dried fruits in South Australia—Orders of Minister made pursuant to statute—Interference with inter-State trade and commerce—Validity of State Act—The Constitution (63 & 64 *Vict. c.* 12), *sec.* 92—*Dried Fruits Acts* 1924-1927 (*S.A.*) (*No.* 1657—*No.* 1784), *secs.* 20, 28, 29.

Appeal to Privy Council—State legislation—Interference with freedom of inter-State trade—Decision of High Court—Whether question "as to limits inter se of the constitutional powers of the Commonwealth and those of any State or States" arose—Certificate granting leave to appeal to Privy Council—Whether necessary—The Constitution (63 & 64 *Vict. c.* 12), *secs.* 74, 92.

Sec. 20 of the *Dried Fruits Act* 1924 (S.A.) is invalid as being contrary to the provisions of sec. 92 of the Constitution.

Sec. 28 (1) of the *Dried Fruits Acts* 1924-1927 (S.A.) does not authorize the Minister for Agriculture for South Australia to make orders for the compulsory acquisition of dried fruits in that State, grown and dried therein, for the purpose of forcing surplus dried fruit off the Australian market: such orders not only contravene sec. 92 of the Commonwealth Constitution, which provides for absolute freedom of trade and commerce among the States, but also contravene sec. 28 of the *Dried Fruits Acts* itself, by which the powers given to the Minister are expressly made subject to sec. 92 of the Constitution.

James v. *State of South Australia*, (1927) 40 C.L.R. 1, approved.

State of New South Wales v. *The Commonwealth*, (1915) 20 C.L.R. 54, discussed.

* Present—The Lord Chancellor, Lord Blanesburgh, Lord Hanworth, Lord Atkin, Lord Russell of Killowen.

The decision of the High Court as to the validity of such legislation and of the orders of the Minister thereunder, was not one upon a question "as to the limits *inter se* of the constitutional powers of the Commonwealth and those of any State or States," and, consequently, a certificate giving leave to appeal to the Privy Council under sec. 74 of the Constitution was not necessary, whether sec. 92 applied to the Commonwealth as well as to the individual States or not.

Jones v. *Commonwealth Court of Conciliation and Arbitration*, (1917) A.C. 528, distinguished.

Decision of the High Court (Full Court): *James* v. *Cowan*, (1930) 43 C.L.R. 386, reversed.

APPEAL from the High Court to the Privy Council.

This was an appeal from the decision of the High Court of Australia, *James* v. *Cowan*, in the report of which the facts are fully stated (1). The appellant appealed to the Privy Council without having obtained a certificate under the provisions of sec. 74 of the Constitution.

LORD ATKIN delivered the judgment of their Lordships, which was as follows:—

This is an appeal from the High Court of Australia in an action in which the plaintiff, a resident in South Australia, claimed damages from the defendants for trespass to his goods. The plaintiff is a producer of dried fruits, currants and raisins. The defendants are the then Minister of Agriculture for South Australia and the members and servants and agents of the Dried Fruits Board set up by the *Dried Fruits Act* 1924 of the Legislature of South Australia (15 Geo. V., No. 1657). The defendants justify the alleged trespasses under the Act; the plaintiff denies that the acts done were authorized by the Act, and alleges that if they were, the authority given and the acts done under the authority were invalid by reason of sec. 92 of the Constitution of Australia, which provides that trade, commerce and intercourse among the States shall be absolutely free.

When the case came on before *Napier* J. in South Australia he took the view that the question raised as to sec. 92 was a question "as to the limits *inter se* of the constitutional powers of the Commonwealth and of the State," and that, therefore, by sec. 40A of the *Judiciary Act* 1903, as amended by the *Judiciary Act* of 1907, the

(1) (1930) 43 C.L.R. 386.

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cause was automatically removed from his jurisdiction to that of the High Court. On the case coming on before *Starke* J. on a summons for directions, that learned Judge, while agreeing with *Napier* J., thought it better to make an order removing the cause to the High Court under sec. 40 of the *Judiciary Act*, a power which he undoubtedly possessed, as the case clearly involved the interpretation of the Constitution. At the hearing of the action *Starke* J. gave judgment for the defendants, and this judgment was upheld on appeal by the High Court (*Knox* C.J., *Gavan Duffy* and *Rich* JJ., *Isaacs* J. dissenting). On appeal to His Majesty in Council a preliminary objection was made by the respondents that the appeal was incompetent by reason of sec. 74 of the Constitution, which provides that no appeal shall be permitted to the Queen in Council upon any question as to the limits *inter se* of the constitutional powers of the Commonwealth and those of any State without a certificate of the High Court. No such certificate had been asked for. It will be more convenient to deal with the preliminary point after considering how the constitutional question arises on the facts of this case.

The production of dried fruits, which for all relevant purposes in this case means dried currants, sultanas and lexias (a species of raisin), is an industry of chief importance in South Australia, Victoria and, to a less extent, Western Australia. The fruit having been grown, prepared, dried, pressed and packed, finds a market in its native State, in the other States of Australia, in New Zealand, and in London. The production is much greater than the consumption in Australia. It appears to be admitted that about 15 per cent of the total production of Australia and no more can be consumed in Australia; the surplus has to be exported elsewhere. It is unnecessary to say that this 15 per cent is obviously in excess of the possible consumption in any producing State, for it includes the consumption in New South Wales and Queensland, which for producing purposes may be ignored. Unlimited competition, therefore, in Australia would naturally injure the native grower by depriving him of the advantage of a protected market and leaving him mainly dependent upon obtaining for his exports out of the Commonwealth the world price. In 1924 the Commonwealth and

the producing States concerned had recourse to legislation to deal with the question of marketing dried fruits. The Commonwealth passed the *Dried Fruits Export Control Act* 1924 in October 1924. Under that Act the Minister had power through a system of licensing to control the export of dried fruits from the Commonwealth, and a Dried Fruits Control Board was constituted which had power to control the fruit so brought under licence. This Act, however, only related to export from the Commonwealth. Dealings with dried fruits in the States were left to the State legislatures. Both Victoria and South Australia passed Dried Fruits Acts in 1924.

This appeal is concerned with the South Australian Act, which was assented to on 24th December 1924. It was not to come into force until the Governor was satisfied that there was similar legislation in force in Victoria. The Act constituted a Dried Fruits Board of five members, three of whom were to be appointed by growers, the other two being official members. By sec. 19 the Board was to have power to make contracts with any person in respect to the purchase or sale of dried fruits produced in Australia; (*b*) "to enter into contracts with Boards appointed under legislation in force in other States with objects similar to those of this Act for concerted action in the marketing of dried fruits produced in Australia and for purposes incidental thereto, and to carry out such contracts"; and it had power to open shops, fix maximum prices, and by advertising or other appropriate means encourage the consumption of dried fruits. Sec. 20 of the Act provided: "(1) The Board shall also have power, in its absolute discretion, from time to time to determine where and in what respective quantities the output of dried fruits produced in any particular year is to be marketed, and to take whatever action the Board thinks proper for the purpose of enforcing such determination." Notice of every determination was to be given to the public and to every grower affected. There were provisions for the registration of growers, dealers and packing sheds, with an obligation on the persons registering to give particulars of their past and expected future out-turn. Sec. 28 of the Act is the section under which the present dispute arises:—"28. (1) Subject to section 92 of the Commonwealth of Australia Constitution Act and for the purposes of this

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Act or of any contract made by the Board, the Minister may on behalf of His Majesty purchase by agreement or acquire compulsorily any dried fruits in South Australia grown and dried in Australia, not being dried fruits which are held for export under and in accordance with a valid and existing licence granted under the *Dried Fruits Export Control Act* 1924 of the Parliament of the Commonwealth, or of which the Board constituted under that Act has accepted the control for the purposes of that Act, or which are included in any contract referred to in section 18 of that Act: Provided that the Minister under the powers conferred by this Act shall not acquire compulsorily any such dried fruits in any case where the owner or the person having the control thereof has exported or arranged to export such quantity as he is licensed to export under and in accordance with such a licence as aforesaid, and such further quantity (if any) as is determined by the Minister and for the export of which a licence can be obtained under the said Commonwealth Act. (2) The Minister may authorize the Board to acquire on his behalf any dried fruits which this Act empowers him to acquire. (3) Any dried fruits acquired pursuant to this Act may be sold by the Minister in such manner as he thinks fit." For any fruit so acquired by the Minister the owner, by sec. 29 (2), was to be entitled to receive the export parity price, which by sec. 3 meant the selling price in London of the like Australian dried fruits, less freight, insurance and other charges. Sec. 30 annulled all existing agreements in writing for the sale of dried fruits to be produced in 1925, with the exception of certain contracts already made by dealers with growers. Power was given to the Governor to make regulations dealing with the marketing of dried fruits, inspection and granting of certificates of quality, registration and other matters, and substantial penalties were enacted for interfering with the Board or the Minister and for breach of the regulations. In 1926, in pursuance of the Act, the Dried Fruits Board made several determinations, notices of which were duly published. The plaintiff was himself a grower of fruits, and a dealer, and owned a registered packing shed, in which he prepared and packed the fruit which he had either grown himself or bought from others. He apparently disputed the validity of the determinations and refused to obey them, and sold his dried fruits

to other States in Australia in excess of the proportions fixed in the respective determinations. Proceedings were issued against him by the Board for penalties for breach, but they stood adjourned from time to time pending the hearing of an action in the High Court, which the present plaintiff instituted against the State to have the determinations declared invalid. In this action the plaintiff was eventually successful: judgment was given in August 1927 declaring the determinations invalid. Meantime, on 26th February 1927, the Board gave notice of a determination for 1927. It follows the form of the determination of 1926, and it is relevant to notice what it purports to declare:—"*Dried Fruits Acts* 1924-1926.—Notice of Determination made by the Dried Fruits Board.—Notice is hereby given that the Dried Fruits Board has made the following determination under section 20 of the *Dried Fruits Act* 1924, namely:—That the proportion of the output of currants, sultanas and lexias produced in the year 1927 which may be marketed in the Commonwealth of Australia by any of the following persons, that is to say—(*a*) any grower; (*b*) any dealer; or (*c*) any person being the owner or occupier or person in charge of any packing shed—shall not be more than the following:—For currants, 15 per cent; for sultanas, 10 per cent; for lexias, 10 per cent. This determination shall operate until rescinded or varied by a subsequent determination.—Dated the 26th day of February 1927.—By order of the Board, W. N. Twiss, Secretary."

This determination was arrived at as the result of an inter-State conference, as appears from a minute of a meeting of the Board on 24th February 1927. Apparently the Board had not much hope that James would pay any more attention to this determination than he had to those of 1926, and they decided to adopt with regard to him a different procedure, as appears from the minutes of a meeting of the Board on 4th March 1927:—"Minutes of Meeting of Board held 4th March 1927, at 10.30 a.m.—The following line of action was agreed to in respect of James, and Secretary was instructed accordingly:—(1) To ascertain when the Minister would be returning and how long he will remain in the city. (2) To ascertain if James has any fruit in his shed on the date the Minister is likely to return to the City. (3) Secretary then to apply to the Minister for order

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of acquisition. (4) On receipt of the order from the Minister, Inspector Carne to be despatched immediately to Berri with order of acquisition, with instructions to serve same on James, at the same time Inspector Carne to serve notice on James to supply particulars of all his selling contracts (under section 7 of the amending Act). Mr. Benham's draft notice (referred to in 4 above) was submitted and approved, subject to the striking out of the words 'likely to be sold,' wherever these appear in the notice. Secretary was directed to communicate immediately with Supervisor Haynes of Berri, instructing him to telephone Secretary on Monday afternoon next what fruit, if any, had been delivered to James' shed in order that the above programme may be carried out." Accordingly, on 7th March 1927, Mr. Butterfield, then Minister of Agriculture, authorized the Dried Fruits Board to acquire on his behalf 77,150 lbs. of dried fruits which were on 5th March in the registered packing shed of James, and on the same day the Board made an order declaring that the said quantity was acquired by His Majesty the King, and on the same day authorized the defendant Carne, an officer of the Board, to seize and take possession of the fruit. The order was taken by Carne, who attended at James' packing shed on 8th March with two other officers and seized and marked the packages of fruit. After the first two or three orders the practice was for the Minister himself to declare the acquisition, and the Board then gave the necessary authority to seize to their officer. The defendant Mr. Cowan did not become Minister till April, and the first order made by him was on 13th April 1927, and may be set out :—"*Order made under the Dried Fruits Acts* 1924 *to* 1926.—I, the Honourable John Cowan, M.L.C., the Minister of Agriculture for the State of South Australia, the Minister of the Crown to whom the administration of the *Dried Fruits Acts* 1924 *to* 1926 is for the time being committed by the Governor, do hereby, pursuant to the powers conferred on me by section 29 of the said Act and all other powers me enabling, declare that the dried fruits described in the schedule hereunder are acquired by His Majesty the King.—Schedule: The whole of the dried fruit which at the hour of five o'clock in the afternoon of the twelfth day of April 1927 was in or about the packing shed of Frederick Alexander James at Berri, in the State of South

Australia, and which under orders previously served upon the said Frederick Alexander James has not been acquired by His Majesty the King.—Dated the 13th day of April 1927.—J. Cowan, Minister of Agriculture." Subsequent orders, as, for instance, on 30th April 1927, were made on separate forms, the first defining the fruit as not marked " I.S.C.," or " Required for inter-State Contracts," the second as marked " I.S.C.," or " Required for inter-State Contracts." Both alike were to be seized. The result was that by a series of orders, the last of which was made on 15th August 1927, most of the plaintiff's fruit was seized. There appears to their Lordships to be little doubt that the intention was to seize the whole of the fruit, but apparently in the intervals between the different orders James was able to get away a certain quantity of fruit to satisfy his inter-State trade. It is beyond dispute that unless the seizures can be justified under the Act they were legal wrongs for which the plaintiff had a remedy, and the trial Judge assessed the damages on that footing at £12,145 4s. 10d., though, being of opinion that the defendants could justify under the Act, he gave judgment for the defendants.

On 22nd August 1927, in the action of *James* v. *South Australia* (1), the High Court held that the provisions of sec. 20 and the determinations of the Board made thereunder were invalid, as offending against sec. 92 of the Constitution, which provides that trade, commerce and intercourse among the States shall be absolutely free. It was contended that this decision was wrong. The restriction imposed upon the powers of the State was, it is said, limited to interference with inter-State commerce " as such." Legislation which applied equally to commerce within the State, as well as to inter-State commerce, and was designed for the welfare of the State, was not affected by sec. 92. It appears to their Lordships unnecessary to undertake the difficult task of defining the precise boundaries of the absolute freedom granted to inter-State commerce by sec. 92. In the present case they are clearly of opinion that sec. 20 and the determinations made under it were directed at inter-State commerce as such. They were intended to prevent persons in South Australia from selling more than the fixed quota

(1) (1927) 40 C.L.R. 1

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in any of the Australian States. The quota was fixed by reference to the needs of all the States; and the prohibition of the sale of the surplus was against selling to any of the States. As the determination said, "The proportion . . . which may be marketed in the Commonwealth of Australia . . . shall not be more than" the prescribed proportion. If this leaves inter-State commerce "absolutely free," the constitutional charter might as well be torn up. Their Lordships have no hesitation in agreeing with the decision of the High Court on this point.

Their Lordships have not failed to notice a suggestion made by Mr. Justice *Isaacs* that the fixing and enforcement of a quota was an essential part of the whole Act, and that what is left is so substantially different from the original that the residue could not fairly be said to represent the meaning of the Legislature. The learned Judge did not, however, proceed to found his judgment on what he calls this "annihilating principle" (1), and as it was not pressed upon this Board by the appellant, their Lordships also forbear from further discussion of a matter which upon another occasion may require serious consideration.

The conclusion that sec. 20 and the determinations made thereunder violate sec. 92 of the Constitution has a direct bearing upon the immediate question raised on this appeal, namely, whether the orders for acquisition made by the Minister are valid. The orders were attacked by the plaintiff on two grounds: (1) That they were not made "for the purposes of the Act" within the meaning of those words in sec. 28; (2) that they violated sec. 92 of the Constitution.

On the first contention the plaintiff's argument was that the purposes of the Act are to be ascertained by reference to secs. 19 and 20 of the Act. The orders of acquisition were, it is said, certainly not made for any of the purposes named in sec. 19, and they were not made for the purpose of supporting the determinations or for maintaining any quota, whether fixed by the Board or the Minister: for the fact that the Minister purported to seize all the plaintiff's fruit, and that whether intended for inter-State trade or not, showed that the Minister had no quota in his mind. The

(1) (1930) 43 C.L.R., at p. 403.

plaintiff urged in support of this view the damaging and uncontradicted statements made to a representative of the Press by Mr. Twiss, the Secretary of the Dried Fruits Board, one of the defendants. In view of the finding of the trial Judge, their Lordships do not think it would be right to adopt any view of the facts which would appear to suggest bad faith on the part of the Minister or his advisers. Without any suggestion, however, of any indirect motive, they cannot avoid being impressed with the view that the action taken was due to the initiative of the Board, that the essence of the matter was that the determinations of the Board as to a quota must be observed in order that the Act should operate fairly amongst all producers, and that the method of acquisition was adopted with that object.

The learned trial Judge, however, thus stated his view of the facts: —"But the truth is, I think, that the Minister and the Board were doubtful of both the validity and the practical efficacy of the determinations, and resolved to regulate and control the marketing of dried fruits, and particularly the plaintiff's dried fruits, by another method sanctioned by the Act, namely, compulsory acquisition. They did not do it with the object or intention of bolstering up invalid determinations, or of punishing the plaintiff, or of benefiting particularly the members of the Australian Dried Fruits Association, or of obstructing, interfering with or preventing the plaintiff carrying on his business, whether domestic or inter-State, or of deterring or intimidating the plaintiff and others, or of obtaining the approval and support of the members of the Australian Dried Fruits Association, or with any like intent. As the consumption of dried fruits in Australia was not sufficient to absorb the output, the Government of the Commonwealth, the fruit-growing States, the Minister and the Board were convinced that the surplus would glut the Australian market and cause a fall in prices, which, it was supposed, would be detrimental to the progress and stability of the dried fruits industry, however beneficial it might be to the consumers of dried fruits. So, in pursuance of the scheme in which the Commonwealth and the fruit-growing States had joined, the Minister and the Board resolved to use the powers apparently conferred upon them by legislation to prevent the evils feared, and to force the surplus fruit off the

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Australian market. And, if a grower would not fall in voluntarily with the scheme, then he must be compelled to do so, and the marketing and sale of his fruit regulated and controlled by some method allowed by the Act" (1). In view of this finding, which was accepted on appeal, their Lordships are not disposed to decide the case on the first contention of the plaintiff.

On the second contention, namely, that the orders made by the Minister were invalid because they infringed sec. 92, in their Lordships' opinion the plaintiff is entitled to succeed. *Starke* J. appears to have decided this part of the case by reference to the decision of *Griffith* C.J. in *New South Wales* v. *The Commonwealth* (2), generally known as the *Wheat Case*. This is based on the view that sec. 92 does not affect powers of acquisition, which, it is said, merely change the ownership, and do not regulate the disposition of goods by the owner. In substance it means that the Crown becomes the owner, and the Crown can do what it pleases with its own, dispose of it inter-State or not as it chooses. This doctrine was repudiated by counsel for the defendants. Their Lordships would not be prepared to assent to it stated in the simple form which commended itself to *Griffith* C.J. If the real object of arming the Minister with the power of acquisition is to enable him to place restrictions on inter-State commerce, as opposed to a real object of taking preventive measures against famine or disease and the like, the legislation is as invalid as if the Legislature itself had imposed the commercial restrictions. The Constitution is not to be mocked by substituting executive for legislative interference with freedom. But in the present case the Courts are not faced with the problem of construing an Act of the Legislature which contains no reference to sec. 92. In this case the powers given to the Minister are expressly conditioned as subject to the section. Sec. 28 appears to mean that the Minister may acquire compulsorily so that he does not interfere with the absolute freedom of trade among the States and acquires for the purposes of the Act. Thus the only question in this case appears to be whether the Minister did exercise his powers so as to restrict the absolute freedom of inter-State trade. It may be conceded that even with powers granted in this form, if the Minister exercised them for a

(1) (1930) 43 C.L.R., at pp. 390, 391. (2) (1915) 20 C.L.R. 54.

primary object which was not directed to trade or commerce, but to such matters as defence against the enemy, prevention of famine, disease and the like, he would not be open to attack because incidentally inter-State trade was affected. But in the present case it appears to their Lordships as it did to *Isaacs* J., that the statement of the objects of the Minister and the Board as expressed in the finding of *Starke* J. set out above makes it plain that the direct object of the exercise of the powers was to interfere with inter-State trade. "To force the surplus fruit off the Australian market" appears necessarily to involve two decisions: first, the fixing of a limited amount for Australian consumption (a necessary element in the conception of a "surplus"); secondly, the prevention of the sale of the balance of the output in Australia. In the result, therefore, one returns to the precise situation created by sec. 20 with its determination of where and in what quantities the fruit is to be marketed. Sec. 20 and the determinations are invalid, and for precisely the same reasons it appears to their Lordships inevitable that the exercise of the powers of the Minister, crediting him with the precise object and intention found by the High Court, were also invalid. It follows from what has been said that the plaintiff established his cause of action and was entitled to have judgment for the amount of damages found by the trial Judge.

It remains, however, to dispose of the preliminary point that the decision of the High Court was a decision upon a question "as to the limits *inter se* of the constitutional powers of the Commonwealth and those of any State or States," and that by sec. 74 of the Constitution no appeal lay to His Majesty in Council from such a decision without a certificate of the High Court, which had not been asked for. It has been convenient to reserve discussion of this point until the effect of the legislation could be considered in the merits; but had their Lordships acceded to the objection they would, of course, not have dealt with the substance of the appeal. But, in their Lordships' opinion, the present case does not fall within sec. 74. At one time in the argument it was suggested that to determine the point it would be necessary to come to a conclusion on a matter which has been decided differently at different times

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by the High Court, namely, whether sec. 92 applies to the Commonwealth as well as to the individual States. If to both, it was almost conceded that no question of limits *inter se* would arise. If to the States alone, then the violation of sec. 92 would, it is said, amount to an invasion of Commonwealth powers which would involve a question under sec. 74. Their Lordships, however, do not find it necessary to decide the question as to the application of sec. 92, which will remain for them an open question. If the implied prohibition in sec. 92 applies to both Commonwealth and States it would seem reasonably clear that there are no competing powers; the prohibited area is denied to both. But similarly, if the prohibition is addressed to the States alone, no question arises as to limits of powers between State and Commonwealth. The State is forbidden to pass legislation or to grant executive powers of a certain kind (interfering with absolute freedom of inter-State trade, &c.). The only question is whether it has violated the prohibition or not. The Commonwealth powers on this footing are undisputed. There are no boundaries between the one and the other which come into question. Their Lordships see no difference in this respect between the provisions of sec. 92 and those of sec. 115, which prohibit a State from coining money. The Commonwealth has such a right, but if a State were alleged to be violating sec. 115 there would be only a simple question of whether the prohibition had been ignored or not: no question of the limits of State and Commonwealth powers *inter se* would arise. The case of *Jones* v. *Commonwealth Court of Conciliation and Arbitration* (1) appears to be a very different case. There the Commonwealth by its legislation as to industrial disputes had deliberately entered the State territory and automatically restricted the State's powers. There appears to have been a plain question as to the limits *inter se* of the respective powers. For these reasons their Lordships are of opinion that the appeal was competent.

In the result their Lordships find themselves in accord with the convincing judgment delivered by Mr. Justice *Isaacs* in the High Court. They are of opinion that the appeal should be allowed, the order of the High Court on appeal dated 21st March 1930 and

(1) (1917) A.C. 528; 24 C.L.R. 396.

of *Starke* J. dated 7th November 1929 should be set aside, and judgment should be entered for the plaintiff against the defendants for £12,145 4s. 10d., the plaintiff to have the costs of the action and of the appeal to the High Court; and will humbly advise His Majesty accordingly. The defendants must pay the costs of the appeal to His Majesty in Council.

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[HIGH COURT OF AUSTRALIA.]

HAMMILL . . . . . APPELLANT; APPLICANT,

AND

STEELE AND ANOTHER . . . . . RESPONDENTS. RESPONDENTS,

ON APPEAL FROM THE COURT OF BANKRUPTCY.

H. C. OF A. 1932.

MELBOURNE, *Oct.* 7.

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

Bankruptcy—Deed of arrangement—Appointment of debtor as manager of business—Power to dismiss clerks &c.—Dismissal of manager by trustees—Bankruptcy Act 1924-1930 (*No.* 37 *of* 1924—*No.* 17 *of* 1930), *Part XII.*

A debtor assigned her estate to trustees for the benefit of her creditors under the provisions of Part XII. of the *Bankruptcy Act* 1924-1930. The deed of arrangement provided that "the trustees shall employ the debtor as manager" of the business which she had been carrying on, and provided that they should have power to employ any person "as clerk agent traveller workman servant or in any other capacity" and "to suspend or dismiss any such person (including the debtor) employed in any of the capacities aforesaid in their discretion."

Held that the trustees had power under the deed to dismiss the debtor from the position of manager.

Decision of the Court of Bankruptcy affirmed.