

[HIGH COURT OF AUSTRALIA.]

THE PRODUCERS' CO-OPERATIVE DIS- }
TRIBUTING SOCIETY LIMITED . . . } APPELLANT :

AND

THE COMMISSIONER OF TAXATION (N.S.W.) RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF
NEW SOUTH WALES.

*Income Tax (N.S.W.)—Assessable income—Exemption—Co-operative rural society—
Manufacture, treatment or disposal of “agricultural products of its members”—
Principal business of rural society—Sale on commission of butter manufactured
by member co-operative societies—Products “of its members”—Income Tax
Management Act 1941 (N.S.W.) (No. 48 of 1941), s. 19 (o)—Co-operation Act
1923-1941 (N.S.W.) (No. 1 of 1924—No. 44 of 1941), ss. 5, 7.*

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Nov. 20 ;
Dec. 11.

Section 19 (a) of the *Income Tax Management Act 1941* (N.S.W.) provides that “the income of a rural society registered as such under the *Co-operation Act, 1923-1941* . . . if the principal business of that rural society is the manufacture, treatment or disposal of the agricultural products (as defined in that Act) or livestock of its members” shall be exempt from income tax.

Latham C.J.,
Rich, Starke,
Dixon and
Williams JJ.

Section 5 of the *Co-operation Act 1923-1941* (N.S.W.) defines “Agricultural products” as the “products of any rural industry” and “Rural industry” as “the cultivation or use of land for” *inter alia* “any . . . dairying, or rural purpose.”

The principal business of the appellant, a rural society registered as such under the *Co-operation Act 1923-1941*, was the sale on commission on behalf of members, which were also registered co-operative societies, of butter manufactured by such last-mentioned co-operative societies from cream sent to them by their members, being dairy farmers.

Held, by Latham C.J., Dixon and Williams JJ. (Rich and Starke JJ. dissenting), that the butter thus disposed of by the appellant was not “the agricultural products . . . of its members” within the meaning of s. 19 (o) of the *Income Tax Management Act 1941* and accordingly the appellant was not entitled to the exemption conferred by that section.

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Decision of the Supreme Court of New South Wales (Full Court): *The Producers' Co-operative Distributing Society Ltd. v. Commissioner of Taxation*, (1944) 45 S.R. (N.S.W.) 44; 61 W.N. 269, by majority, affirmed.

APPEAL from the Supreme Court of New South Wales.

The Producers' Co-operative Distributing Society Ltd. was incorporated on 9th May 1929 as a rural society under the *Co-operation Act* 1923-1929 (N.S.W.), and a certificate of registration under that Act has been issued to the society.

The society, referred to herein as the appellant, claimed that its income for the year ended 30th September 1941 was exempt under s. 19 (o) of the *Income Tax Management Act* 1941 (N.S.W.). Section 19 provides, *inter alia*, that "the following income shall be exempt from income tax . . . (o) . . . the income of a rural society registered as such under the *Co-operation Act*, 1923-1941 . . . if the principal business of that rural society is the manufacture, treatment or disposal of the agricultural products (as defined in that Act) or livestock of its members."

Section 5 of the *Co-operation Act* 1923-1941 defines "Agricultural products" as meaning the products of any rural industry, and defines "Rural industry" as meaning "the cultivation or use of land for any agricultural, pastoral, dairying, or rural purpose." The Act, by s. 7 (1), provides that a rural society may be formed for all or any of the nineteen objects therein set forth, including "(a) to dispose of the agricultural products or live stock of its members or other persons; (b) to manufacture or treat the agricultural or live stock products of its members or other persons, and to dispose of the products so manufactured or partly manufactured . . . (g) to purchase or otherwise acquire, and manufacture or treat and dispose of agricultural or live stock products and farming requisites . . . (p) to purchase or otherwise acquire goods and sell products on behalf of its members or other persons." Section 7 (2) provides that the expression "to dispose of" in relation to the agricultural products or live stock of members or other persons shall include "receiving and storing, grading and packing, establishing agencies in the State and elsewhere, arranging freight, shipping, and insurance, arranging transport by land, entering into contracts, and guaranteeing the performance of members' obligations under contract." Section 9, by sub-s. 1, provides for the formation of trading societies for all or any of the four objects set forth therein, and, by sub-s. 3, that "it shall not be competent for a trading society to dispose of the agricultural products or live stock of any of its members in the

manner provided in this Act for the disposal by a rural society of the agricultural products or live stock of the members of a rural society.”

In the rules of the appellant its objects are stated to be : (a) to carry on the business of the purchase, production and sale of dairy, farm and other produce, and generally the business of a produce and commission agency, the policy of the appellant being to facilitate and encourage direct export of and the elimination of speculation in any of the products aforesaid. Then follow eighteen of the nineteen objects set forth in s. 7 (1) of the *Co-operation Act*, including those set forth in pars. (a), (b), (g) and (p) of that sub-section.

The appellant's business consists of the disposal, by way of sale on commission, of the products of its members and others, but principally of its members. Butter is the predominant product but the appellant also sells considerable quantities of bacon, cheese, honey, poultry, grain, fruit, vegetables and other items. During the year of income ended 30th September 1941 its total turnover was £6,787,266, of which 60.03 per cent (£4,113,606) consisted of sales of butter produced by the appellant's members. Other products sold were also mainly the products of its members.

About forty-five years ago, when there were very few butter factories, butter was in most cases produced by dairy farmers and sent by them to the wholesale markets in Sydney for sale. This position was altered by a rapid growth in the number of butter factories in the producing centres. These factories were owned and conducted by proprietary companies which bought the cream from the farmers and produced and sold the butter for profit to the companies. Then a movement began for the establishment of co-operative butter factories, and this movement eventually became so widespread that very few factories are now owned and conducted by proprietary companies. The co-operative factories at first attended to the marketing of the butter produced thereat, but after some time had elapsed the advantage was seen of establishing co-operative societies to attend solely to the disposal of the butter. This led to the formation in 1925 of the appellant, which now handles the greater part of the butter produced by co-operative societies in New South Wales.

The membership of the appellant is limited by its rules to farmers and others directly interested in dairy, farm and other produce and to duly incorporated co-operative societies, companies and associations of the same engaged in or connected with the manufacture or handling of such produce. Under the appellant's rules producers are limited to a holding of a minimum of ten and a maximum of

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five hundred shares, and dairy companies or societies to a minimum of fifty and a maximum of ten thousand shares. It is under this provision that butter factories are admitted. The procedure there is that, whilst the appellant is permitted by its rules to pay dividends not exceeding eight per cent of the amount paid up on its shares, it usually only pays a dividend of four per cent. The appellant has about 9,500 members and of those probably fewer than 100 are co-operative societies engaged in the production of butter. These societies are the members on whose behalf the appellant sells butter—the balance of the butter which it sells is apparently received by it from butter factories owned and conducted by proprietary companies. Much of the other produce sold is received by the appellant from the many individual members.

For the last ten years the appellant has paid an annual dividend of four per cent. In addition it has allowed in each year a rebate of a certain amount per cent of its commission on sales. The rebate was allowed to the producers whose goods were sold. In the case of any non-shareholder, however, it could not be paid in cash but was required to be placed to the credit of a share suspense account until the credit in that account was sufficient to enable the non-shareholder to take up a minimum of ten shares. Out of the total rebates allowed by the appellant in respect of all agricultural products handled by it during the income year, including bacon, cheese, eggs, grain, fruit or vegetables, &c., amounting to £21,161, the sum of £2,416 only was credited to non-shareholders.

The disallowance by the Commissioner of Taxation of the appellant's claim was upheld by the Board of Appeal, and an appeal pursuant to s. 255 of the *Income Tax Management Act* 1941 was dismissed, by a majority, by the Full Court of the Supreme Court of New South Wales: *The Producers' Co-operative Distributing Society Ltd. v. Commissioner of Taxation* (1).

From that decision the appellant appealed to the High Court.

Mason K.C. (with him *Asprey*), for the appellant. The principal business of the appellant is the disposal of butter. Butter is an "agricultural product" within the meaning of that expression as defined in s. 5 of the *Co-operation Act*. The expression "any rural industry" in that definition is intentionally wide and includes the use of land for agricultural, pastoral or dairying purposes. "Dairying" means the business of conducting a dairy. "Dairy" includes a place where either milk, butter or cheese is produced. Butter is the product of a dairy whether produced in butter form by the

dairyman himself on his farm or whether that stage is performed by some other person elsewhere. Section 7 (1) (b) of the *Co-operation Act* supports the appellant's contention. The word "manufacture" as there used does not mean "manufacturing into"; it is a transitive verb. The product so manufactured remains an agricultural product within the meaning of the Act. The provisions of sub-s. 2 of s. 7 aptly describe the activities of the appellant in disposing of the butter. The words "of its members" in s. 19 (o) of the *Income Tax Management Act* 1941 mean "belonging to the members" of the particular society as distinct from "produced by" those members. The business of the appellant is the "disposal of the agricultural products . . . of its members" within the meaning of those words in s. 19 (o). Having regard to the long time during which the co-operative movement has been in existence it must be assumed that at the time s. 19 (o) was enacted the legislature of New South Wales was fully conversant with all the facts relating to the nature and conduct of the business of co-operative societies as referred to in Part II. of the *Co-operation Act*. Qualification for membership of a rural society is dealt with in s. 38 (5) of the Act. Butter is the product of a dairy farm irrespective of whether the final step of converting the milk or cream into butter is taken by the dairy-farmer or some other person or body. The mere fact that a part of the process takes place at a butter factory does not render the butter any the less an agricultural product.

Sugerman K.C. (with him *E. J. Hooke*), for the respondent. The appellant stands in a special position for the reason that, actually, it does three classes of business, that is, it sells (1) on behalf of its members, things which are undoubtedly agricultural products; (2) on behalf of co-operative butter factories, butter; and (3) butter on behalf of non-co-operative butter factories to the extent of approximately ten per cent of its turnover. Its position depends in each income year upon the particular balance amongst those three activities. It should not be assumed that the appellant or its activities were in the mind of Parliament when the *Income Tax Management Act* 1941 was enacted, although Parliament may then have had in mind that for many years past farmers had not performed on their respective farms secondary operations. It may well be that the case of a company in the position of the appellant is a *casus omissus*. Section 19 (o) of that Act was carefully drawn having in mind the *Co-operation Act* so as not to bring in those co-operative societies whose principal business consists in the mere disposal on a commission basis of products which are not the

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immediate or direct result of the cultivation or use of land but are products which involve some further processes. The legislature cannot be taken to have intended that a group of persons or organizations who ordinarily manufacture butter should form themselves into a co-operative distributing society and thus gain exemption under s. 19 (o). It has used language which does not include co-operative societies formed of co-operative societies. A distinct line must be drawn between treatment and manufacture on the one hand and disposal on the other hand. The *Co-operation Act* does distinguish between an ordinary agricultural product and a manufactured product, that is, in the circumstances, as between milk and butter. The exemption is not in respect of the article but is in respect of the function performed by the particular co-operative society. The word "disposal" in s. 19 (o) of the *Income Tax Management Act* catches up cases in which the principal business of the society is within s. 7 (1) (a) of the *Co-operation Act*; the words "manufacture" and "treatment" in s. 19 (o) catch up societies whose principal business *qua* their members is within s. 7 (1) (b) of the *Co-operation Act*; but nothing in the *Income Tax Management Act* catches up societies which merely fall within s. 7 (1) (p) of the *Co-operation Act*. Pars. (a) and (b) of s. 7 (1) together show that agricultural products as referred to in the *Co-operation Act* are confined to the direct or immediate products of the land and not to products such as butter, flour or jam which have been subjected to further process. It is significant that the exemption in s. 19 (o) of the *Income Tax Management Act* is confined to rural societies; it does not extend to trading societies as referred to in s. 9 of the *Co-operation Act*. What is permitted by s. 7 (1) (a) to a rural society is forbidden by s. 9 (3) to a trading society. All the functions carried out by the appellant are objects permitted to a trading society by s. 9 (1) (a). The words "agricultural products" should be given a meaning similar to the meaning given in s. 5 of the *Income Tax Management Act* to the words "primary production." Even assuming that butter is an "agricultural product" it is not an agricultural product of the appellant's members. It is not something produced by such members. The words "of its members" in s. 19 (o) do not mean "belonging to its members." The question of property or ownership does not arise. The real question is whether the particular article or commodity is the product "of its members" in the ordinary meaning of the phrase, that is, something produced by a member or members. The appellant is not within the exemption either on the ground that the phrase "agricultural products" does not include butter, or on the ground that the

phrase “agricultural products . . . of its members” does not include butter received for sale as on the facts of this case, but is limited to things produced by the members in the use by them of land for dairy purposes.

Mason K.C., in reply. Section 19 (o) is a special provision made in favour of co-operative societies. That provision is something entirely different from the provisions made in respect of primary production and primary producers. The activities of the appellant do not in any way come under par. (p) of s. 7 (1) of the *Co-operation Act*.

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Cur. adv. vult.

The following written judgments were delivered :—
LATHAM C.J. This is an appeal from an order of the Full Court of the Supreme Court of New South Wales (*Davidson and Halse Rogers JJ.*, *Jordan C.J.* dissenting) dismissing an appeal from a decision of an Income Tax Board of Appeal by which it was decided that the appellant company, which is registered as a rural society under the *Co-operation Act* 1923-1941 (N.S.W.), is not entitled to exemption from income tax under the *Income Tax Management Act* 1941 (N.S.W.), s. 19 (o). This latter provision is in the following terms :—“The following income shall be exempt from income tax :—
. . . (o) the income of a co-operative building society, and the income of a rural society registered as such under the *Co-operation Act*, 1923-1941, as amended by subsequent Acts, if the principal business of that rural society is the manufacture, treatment or disposal of the agricultural products (as defined in that Act) or livestock of its members”.

The appellant company is a rural society registered as such under the *Co-operation Act* 1923-1941. Section 45 of that Act provides that a certificate of registration under the Act shall be conclusive evidence that all the requirements of the Act in respect of registration have been complied with. A certificate of registration under the Act has been issued to the society.

The business of the society is the sale on commission of butter, bacon, cheese, honey, eggs, poultry, fruit and vegetables and similar commodities. Its members consist of a large number of individual farmers, but also of nearly one hundred co-operative societies which are also registered under the Act. Its principal business consists in selling on commission butter manufactured by those co-operative societies. The society does not manufacture or treat the butter in any way, but it disposes of the butter belonging to the co-operative

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societies which employ it. It is argued, therefore, for the company that its principal business consists in the disposal of an agricultural product (as defined in the *Co-operation Act*) of its members, namely, butter. The questions which have been argued upon the appeal are, first, whether this butter is an "agricultural product" as defined in the *Co-operation Act* and, secondly, if so, whether it is an agricultural product "of the members" of the society. The argument upon the latter point has been directed to the question whether "of its members" means "belonging to its members" or "produced by its members."

The *Co-operation Act* 1923-1941, s. 5, defines "agricultural products" as meaning "products of any rural industry." The same section defines "rural industry" as meaning "the cultivation or use of land for any agricultural, pastoral, dairying, or rural purpose." It is argued for the appellant that butter is essentially a product of the use of land for dairying purposes. In an ordinary use of language milk, cream, butter and cheese are all dairy produce. The dictionaries define "dairy" as including a place where butter and cheese are made. But a rural industry as defined involves the cultivation or use of land for dairying or other rural purposes. If a farmer grazes cows, produces milk and makes butter, there is, I should think, no doubt that he is engaged in a rural industry within the meaning of the Act, because he is plainly using land for a dairying purpose. The evidence, however, shows that to-day the making of butter has become a factory process, separated from the farm. Formerly the farmer made butter on the farm, but now the farmer milks his cows, separates the cream and disposes of the cream to a butter factory, either co-operative or proprietary. In the present case the cream which becomes the butter which the appellant company sells is sold to co-operative societies which conduct factories. Those factories manufacture the cream into butter. It cannot be said that the factories cultivate or use land for a dairying purpose, because they do not cultivate or use any land for that purpose. The butter which a factory produces is not the product of the land which the factory occupies. The factory is not, in my opinion, engaged in a rural industry within the meaning of s. 5 of the *Co-operation Act*. If this be so, the butter made by the factory is not "a product of any rural industry" and therefore it is not an agricultural product as defined in s. 5.

The co-operative society which conducts the butter factory enjoys the advantage of the exemption granted by s. 19 (o) of the *Income Tax Management Act*, not because it "disposes" of an agricultural product of its members (the society does not dispose

of the cream produced by the farmers) but because it manufactures or treats an agricultural product, namely, cream, of its members, whether the phrase "of its members" is construed as meaning "belonging to" or "produced by" its members. But the exemption does not, in my opinion, carry on to another company, such as the appellant, which manufactures and treats nothing, and which (in its relevant operations) only disposes of a product manufactured by another co-operative society out of the original agricultural product.

Section 19 (o) limits the exemption to cases where the principal business of a rural society is the manufacture, treatment or disposal of the agricultural products as defined in the *Co-operation Act* or livestock of its members. In my opinion under this provision it is proper to look at the *Co-operation Act* only so far as that Act defines that term. The words "agricultural products" in the *Income Tax Management Act* are to be replaced by the definition derived from the *Co-operation Act*. The definition of "agricultural products" in the *Co-operation Act* is "products of any rural industry." It is proper therefore to consider also the definition of rural industry—as I have done above. But in my opinion there should be no further investigation of the *Co-operation Act* for the purpose of determining the meaning of "agricultural products." It is only the definition of that term (ascertained in the manner stated) and not other provisions of the *Co-operation Act*, which is transferred to the later Act, and references in such other provisions to the term defined should not, in my opinion, be considered for the purpose of interpreting that term in the later Act: See *In re Wood's Estate*; *Ex parte Her Majesty's Commissioners of Works and Buildings* (1).

It has been held that where a section of one Act is incorporated in another Act, reference may be made to other sections of the earlier Act for the purpose of interpreting the section so incorporated (*Portsmouth Corporation v. Smith* (2)). Whether or not this principle can be reconciled with that stated in *Wood's Case* (3), it appears to me that the incorporation of a definition of a particular term stands upon a different footing from the incorporation of a section of an Act. The meaning of a section may be ascertainable only by a consideration of other sections with which it is associated. But it would be an inversion of ordinary methods of approach to seek to interpret a definition by reference to provisions in which the defined term was used. In the present case the definitions in the *Co-operation Act*, s. 5, are prefaced by the words, "unless the context or subject-matter otherwise indicates or requires." Context or

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(1) (1886) 31 Ch. D. 607, at p. 615.
(2) (1835) 10 App. Cas. 364, at p. 371.

(3) (1886) 31 Ch. D. 607.

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subject matter may modify in a particular provision the prima facie meaning of a defined term, but cannot modify or affect in any way the definition itself which is introduced into the later Act.

If, however, it were proper to consider, not merely the relevant definitions as set forth in the *Co-operation Act*, but other provisions in the Act as possibly explaining, extending or limiting those definitions, then the same conclusion would, in my opinion, be reached, namely, that the relevant butter in this case is not an agricultural product. The *Co-operation Act* distinguishes between agricultural products and the products of a process of manufacture applied to agricultural products. The distinction is perhaps most clear in various provisions of s. 7 of the Act, but particularly in s. 7 (1), pars. (a) and (b). Section 7 (1) provides that "a rural society may be formed for all or any of the following objects:— (a) to dispose of the agricultural products or live stock of its members or other persons; (b) to manufacture or treat the agricultural or live stock products of its members or other persons, and to dispose of the products so manufactured or partly manufactured . . ." The concluding words of par. (b) would be unnecessary if the words "dispose of . . . agricultural products" contained in par. (a) applied to a disposition of a product manufactured out of agricultural products. If a society takes advantage of the provisions quoted by adopting objects corresponding to pars. (a) and (b), then under the power referred to in par. (a) it may dispose of agricultural products, and under par. (b) may manufacture agricultural products into something else and dispose of the resulting manufactured product. Section 19 (o) applies in favour of a society so far as it either disposes of the agricultural products of its members or manufactures or treats those agricultural products. But the provision does not apply in favour of a society so far as it disposes of products (such as butter) manufactured out of agricultural products (such as cream).

Accordingly whether attention is limited to the relevant definitions in the *Co-operation Act*, regarded as transferred to s. 19 (o) of the *Income Tax Management Act*, or whether, on the other hand, other provisions of the *Co-operation Act* are also taken into account, in my opinion the same conclusion follows, namely, that the butter the sale of which constitutes the principal business of the appellant company is not an agricultural product within the definition of that term contained in the *Co-operation Act*.

This conclusion renders it unnecessary for me to examine the further question whether the butter is an agricultural product "of the members" of the appellant society, that is, the question whether the phrase "of its members" means "belonging to its members"

or in some sense “ produced by its members.” If I were of opinion that the butter was an agricultural product within the meaning of the definition in the *Co-operation Act* I should have difficulty in seeing how it could be held that it did not fulfil the description of both belonging to the co-operative factory societies and of being produced by them in the sense of manufactured by them. But if the butter is not (as in my opinion it is not) an agricultural product within the meaning of the Act, the question does not arise. In my opinion the appeal should be dismissed.

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RICH J. The present appeal turns upon a narrow question. It is whether butter is a product of a use of land for a dairying purpose, within the meaning of an Act of Parliament which provides that a rural co-operative society may be formed to dispose of the agricultural products or livestock of its members or other persons, such agricultural products being the products of any use of land for, *inter alia*, any dairying purpose. It has been contended for the respondent that, although butter is a product of a use of land for a dairying purpose when made by a dairy-farmer on his own land from cream derived from his own cows, it is not so when made by the co-operative butter factory to which he sells his cream. I do not think this distinction to be warranted by the provisions of the Act. It is only Schlaraffenland, the land of Cocaigne, that flows with milk and honey in a literal sense. In the land of reality, these commodities are not products of land or of the use of land, like natural grass or sown crops. They are the products of cows and bees. It is in relation to reality that phraseology such as “ products of any use of land for any dairying purpose ” must be interpreted. In such a context, “ products ” evidently means products derived at some remove from land. When this is apparent, it is apparent also that to give effect to the intention of the phraseology in its present context it is necessary to regard “ any dairying purpose ” as intended to be the dominating phrase. So long as the products are the result of a dairying purpose, the land used for the purpose is a secondary consideration. Any use of land directed to the purpose is sufficient. This being so, I am unable to see why a rural co-operative society, which uses its land to produce butter from cream which it has bought, does not obtain, in its butter, a product of a use of land for a dairying purpose ; or why a rural co-operative marketing society, which has as its principal business the disposal of the agricultural products, including the butter, of its members, whether dairy-farmers or co-operative butter factories, should not

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be regarded as within the provisions of s. 19 (o) of the New South Wales *Income Tax Management Act* 1941.

For these reasons I am of the opinion that the appeal should be allowed.

STARKE J. The income of a rural society registered under the *Co-operation Act* 1923-1941 (N.S.W.) is exempt from income tax under the *Income Tax Management Act* 1941 (N.S.W.), s. 19 (o), if the principal business of that rural society is the manufacture, treatment or disposal of the agricultural products (as defined by the *Co-operation Act*) or the livestock of its members. Unless the context or the subject matter otherwise indicates or requires, the *Co-operation Act* 1923-1941, s. 5, prescribes that "agricultural products" means products of a rural industry and that "rural industry" means the cultivation or use of land for any agricultural, pastoral, dairying, or rural purpose.

Admittedly the appellant is a rural society registered under the *Co-operation Act* already mentioned and it is a co-operative society. Its principal business is the disposal of the products of its members and other persons, such as butter, cheese, bacon, honey and other commodities. Its turnover for 1941 approached seven million pounds, of which about sixty per cent comprised sales of butter of its members and the greater proportion of its sales of other commodities also comprised the products of its members. The members of the appellant consisted of co-operative companies and of individuals. Most of the butter received by the appellant for sale and disposal came from the co-operative companies. The practice was for the shareholders of the co-operative companies to send their cream to the companies, which paid them for it, and the companies converted the cream into butter, and sent it to the appellant for sale and disposal.

The appellant claims the benefit of the exemption above set out because its principal business is the disposal of an agricultural product of its members, namely, butter. It should be observed that the exemption is based upon the carrying on of a business involving the manufacture, treatment or disposal of agricultural products, which makes plain that the business is not necessarily in products in their natural state but may be in agricultural products that have been manufactured or treated.

Butter, as it appears to me, is an agricultural product within the meaning of the *Income Tax Management Act* and the *Co-operation Act*. Dairying, in the ordinary signification and use of the word, is an industry or occupation concerned with the production of milk,

cream, butter and cheese. The *Oxford Dictionary*, I notice, speaks of dairying as the production of milk, and manufacture of butter and cheese. Therefore the use of land for a dairying purpose includes the production of butter. Accordingly butter is an agricultural product of a rural industry within the meaning of the Acts already mentioned. But is the butter sent to the appellant for disposal the agricultural product of its members? The butter, of course, belongs to its members, that is, the co-operative companies or the persons who forwarded it to the appellant for sale. But the Commissioner—the respondent—suggests that the emphasis should be upon the composite phrase “the agricultural products (as defined by the *Co-operation Act*) or live stock of its members” in the sense that the products are the result of the labour or exertion of its members. To read it in that sense would not, I think, exclude from the benefits of the Act a rural society which disposed of the livestock of its members who were graziers fattening stock for the purpose of sale, whatever might be the result if the members were dealers in livestock, merely buyers and sellers of livestock. However, the object of the Act is to relieve rural societies. And, in my opinion, the words “of its members” do not relate to the labour or exertions of the members of the society, but must be read in conjunction with the preceding words which are descriptive of the business that the society is doing. Accordingly the exemption applies if the principal business of the rural society is the disposal of agricultural products belonging to its members. The principal business of the appellant was therefore the disposal of butter, an agricultural product belonging to its members.

The appellant is entitled to the exemption claimed and this appeal should be allowed.

DIXON J. This appeal depends upon the application to the facts of the case of the provision exempting from New South Wales State income tax the income of a body registered under the *Co-operation Act* if its principal business is the manufacture, treatment or disposal of the agricultural products (as defined in that Act) or livestock of its members. The appellant is a body registered as a rural society under the *Co-operation Act*. It has established that its principal business is the disposal of butter consigned to it for that purpose by other co-operative societies who are members of the appellant society and who manufacture the butter from cream supplied by dairy farmers who are members of the manufacturing societies. The separation of the cream is done by the dairy farmers upon their dairy farms where the milk is produced.

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The exemption throws the reader back to the definition of "agricultural products" in the *Co-operation Act*. Recourse to that definition shows that it in turn refers to and depends upon the definition of "rural industry." However, combining these successive references, the material part of the exemption amounts to this:—It exempts from income tax the income of a rural society registered as such under the *Co-operation Act*, if the principal business of that rural society is the manufacture, treatment or disposal of the products of its members, being products of the cultivation or use of land for any agricultural, pastoral, dairying, or rural purpose or of the livestock of its members.

The question appears to me to be whether the sale by the appellant of the butter manufactured by its members can properly be said to be the disposal of the products of its members, being products of the use of land for a dairying purpose.

In favour of an affirmative answer it is maintained that butter, whether factory-made or churned in a dairy, is by common understanding the product of the use of land for a dairying purpose.

Butter is, of course, ordinarily included in the expressions "dairy produce" and "dairy products" and these are often employed in common speech.

But the words occurring in the definition, namely, "the product of the use of land for a dairying purpose," are descriptive and the description is specially constructed. It is not the mere adoption of a standing or constantly recurring expression. The definition expresses a condition in which "products of the cultivation or use of land" seem to be the dominant words. The description of purpose, agricultural, pastoral, dairying or rural, imposes, of course, a further limiting condition, qualifying the use.

It is correct, I think, that we are to give the definitions of "agricultural products" and of "rural industry" the same meaning as they bear and the same combined operation as they have standing in s. 5 of the *Co-operation Act*. It is also correct that if in the main provisions of that Act we find a context giving any guidance as to the meaning or application of such a phrase in the definition as "products of the use . . . of land" we should refer to it and in interpreting the definition give the context as much effect for the purpose of the income tax exemption as for the purpose of the *Co-operation Act*.

But, even so, I think that the definition must be read as meaning to exclude from its application commodities in a manufactured form, like cheese and butter, when the manufacturing process is not part of the use of the land for the dairying, or, as the case may

be, agricultural, pastoral or rural purpose. The language of the definition naturally bears this meaning.

Whatever may be the exact significance of the word "of" in the expression "of its members" in the exemption it certainly does nothing to weaken the impression produced by the definition in the *Co-operation Act*. In that Act the object stated in s. 7 (1) (b), though clumsily expressed, seems clearly to describe the manufacture by the rural society of the product of the member, the dairy farmer or agriculturist, into a manufactured product of which the society disposed. Thus if the appellant society manufactured its members' cream into butter of which it disposed, it would come within the provision.

In s. 7 (1) (a) and (b), within which alone the operations exempted seem to fall, the distinction appears to be intended between, on the one hand, the disposal of the products of the soil by the rural society or their manufacture and the disposal of the resultant commodity, and, on the other hand, operations which are more remote and therefore are not considered within the purposes of a rural society.

The co-operative manufacture of dairy produce may be done by a society co-operating with the person who produces, by the use of his land, the raw material of the particular manufacture and then the operation would qualify for the exemption. But it does not, in my opinion, extend to the case of the co-operative disposal of the product of a manufacturing process not itself involving the use of land for a dairying purpose or an agricultural, pastoral or rural purpose.

I think that the appeal should be dismissed.

WILLIAMS J. This is an appeal against an order made by the Supreme Court of New South Wales which by a majority dismissed with costs an appeal by the appellant against a decision of the Board of Appeal constituted under the New South Wales *Income Tax Management Act* 1941 that the income of the appellant for the year ended 30th September 1941 is not exempt from income tax under the provisions of s. 19 (o) of that Act.

The facts are fully set out in the reasons of their Honours in the Supreme Court and in the reasons of the members of the Board of Appeal and I need not repeat them.

Section 19 (o) provides that "the income of a co-operative building society, and the income of a rural society registered as such under the *Co-operation Act*, 1923-1941, as amended by subsequent Acts, if the principal business of that rural society is the manufacture,

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treatment or disposal of the agricultural products (as defined in that Act) or livestock of its members" shall be exempt from income tax.

The evidence establishes that the principal business of the appellant, which is a rural society within the meaning of the *Co-operation Act*, in the year of income was the disposal of butter belonging to some of its members. These members were about one hundred co-operative butter factories. There were three operations with respect to the butter disposed of by the appellant; (1) the milking of the cows and separation of the cream and its delivery to the co-operative butter factories by the dairy farmers; (2) the manufacture of that cream into butter and its delivery to the appellant by the co-operative butter factories; and (3) the sale of the butter on behalf of the co-operative butter factories by the appellant.

I feel no doubt that in ordinary parlance butter is an agricultural product, but the question is what is included in the description of agricultural products (as defined by the *Co-operation Act*) of the members of the appellant. The *Co-operation Act*, s. 5, defines "agricultural products" to mean the products of any rural industry, and "rural industry" to mean the cultivation or use of land for any agricultural, pastoral, dairying, or rural purpose. An agricultural product of the dairying industry within the meaning of the *Co-operation Act* is, therefore, something produced in that industry by the cultivation or use of land for that purpose. The only persons, therefore, who are owners of agricultural products within the meaning of that Act are those who are cultivating or using land for their production; or, in other words, in the case of dairying, the dairy farmers themselves, so that the co-operative butter factories which are members of the appellant are not members on whose behalf the appellant during the year of income was disposing of agricultural products as defined by the *Co-operation Act*.

For these reasons I would dismiss the appeal.

Appeal dismissed with costs.

Solicitors for the appellant, *Duncan Barron & Co.*

Solicitor for the respondent, *A. H. O'Connor*, Crown Solicitor for New South Wales.

J. B.