[HIGH COURT OF AUSTRALIA.]

WILLIAMS AND ANOTHER . . . . PLAINTIFFS;

AND

METROPOLITAN AND EXPORT ABATTOIRS BOARD AND OTHERS . . . . DEFENDANTS.

H. C. OF A. 1953.

MELBOURNE, *Oct.* 14, 15.

SYDNEY, *Dec.* 15

Kitto J.

Constitutional Law (Cth.)—Freedom of inter-State trade, commerce and intercourse —State statute—Validity—Qualified prohibition on importation into metropolitan abattoirs area of South Australia or sale within area of meat slaughtered outside area—Meat slaughtered and cooked in Victoria sold to customers within area—Severability—" Meat "—Cooked meat included—The Constitution (63 & 64 *Vict. c.* 12), *s.* 92—*Metropolitan and Export Abattoirs Act* 1936-1948 (*No.* 2291 *of* 1936—*No.* 17 *of* 1948) (*S.A.*), *ss.* 3, 70 (*c*), 77—*Acts Interpretation Act* 1915-1949 (*No.* 1215 *of* 1915—*No.* 58 *of* 1949) (*S.A.*), *s.* 22a

Tort—Compulsion by means of threat of illegal act.

Section 3 of the *Metropolitan and Export Abattoirs Act* 1936-1948 (S.A.) defined meat to mean " the flesh of any slaughtered stock, whether such meat . . . is in its natural state, or has been subjected to any freezing, chilling, salting, or other preservative process ".

Held, that cooked meat was meat within the meaning of the definition.

Section 70 of the Act provided that while abattoirs are available under the Act for slaughtering stock no person should within the metropolitan abattoirs area—(*c*) sell or attempt to sell or expose for sale or allow or cause to be sold or exposed for sale any carcass or meat slaughtered outside the metropolitan abattoirs area unless the carcass thereof together with certain organs attached in natural connection has been first brought to the abattoirs and inspected and branded by an inspector as provided in s. 93. Section 93 provides, *inter alia*, that if, upon examination, a carcass is found to be free from disease, the inspector shall give a certificate in writing to that effect, and shall brand the carcass. Section 77 provides that, subject to certain exceptions, no person shall bring into the metropolitan abattoirs area from any place outside that area any carcass or meat which has been derived from stock slaughtered outside that area, unless he has first obtained a permit from the Metropolitan and Export Abattoirs Board. A permit may be granted for any reasons which, in the board's opinion, justify the grant.

T., in Adelaide, on behalf of W., a manufacturer of cooked meat carrying on business in Victoria, obtained orders from retailers for roast seasoned pork. T. telegraphed to W. the quantities of pork required which were sent by W. from Melbourne to Adelaide addressed to T. T. took delivery of the pork and distributed it to the customers according to their orders. It was no part of the description of the pork nor in any way a term of the sale agreement in any instance that the pork was to be supplied from Victoria or from any particular place. W. and T. ceased to carry on business following an intimation by an inspector of the Metropolitan and Export Abattoirs Board that the course of business they had been following was contrary to ss. 70, 77 of the *Metropolitan and Export Abattoirs Act* 1936-1948 and threats that pork held by them in Adelaide would be seized unless returned to Melbourne on that day and that pork brought to Adelaide in similar circumstances by them in future would be seized by the board. An application by W. for a permit under s. 77 was refused without any reason being given.

Held, that s. 70 (*c*) applied at the point of sale, and although the business carried on by W. and T. involved inter-State communication and carriage of goods the sales were made in the course of intra-State trade and were not so inseparably connected with the importation of the goods from the State of Victoria that s. 70 (*c*) in its application to them imposed a direct prohibition or burden upon inter-State trade. *Wragg* v. *New South Wales* (1953) 88 C.L.R. 353, at p. 385 applied. *Commonwealth and Commonwealth Oil Refineries Ltd.* v. *South Australia* (1926) 38 C.L.R. 408, and *Vacuum Oil Co. Pty. Ltd.* v. *Queensland* (1934) 51 C.L.R. 108 distinguished. Even if s. 70 (*c*) were inoperative in relation to inter-State sales it was effective, by virtue of s. 22a of the *Acts Interpretation Act* 1915-1945 (S.A.), to render sales in the course of intra-State trade unlawful.

Held, further, that even if s. 77 were invalid as contravening s. 92 of the Constitution, and therefore the inspector's threats and the statement in the board's letter went further than was justified, still W. and T. had not proved that they had sustained loss attributable to a threat of action derogating from the freedom guaranteed by s. 92.

Whether damages may be recovered in respect of loss suffered in consequence of a threat to enforce a statutory provision inoperative by reason of irreconcilability with s. 92 of the Constitution, *quaere*.

ACTION.

On 27th November 1952, Ernest Walter Williams of Cremorne Street, Richmond, Victoria, and Desmond Scott Thompson of 56 Flinders Street, Kent Town, South Australia, commenced an action in the High Court of Australia against the Metropolitan and Export Abattoirs Board, a body corporate, incorporated by the *Metropolitan and Export Abattoirs Act* 1936-1948 (S.A.), Edwin Spashett Rainnie, the general manager of the defendant board, and John Herbert Whelan, an inspector employed by the defendant board.

H. C. OF A. 1953.

WILLIAMS v. METROPOLITAN AND EXPORT ABATTOIRS BOARD.

The facts sufficiently appear in the judgment hereunder.

D. I. Menzies Q.C. and *G. H. Lush*, for the plaintiffs.

Kevin Ward Q.C., *A. L. Pickering* Q.C. and *R. F. Mohr*, for the defendants.

Cur. adv. vult.

Dec. 15.

The following written judgment was delivered by :—

KITTO J. The plaintiff Williams is, and has been for a number of years, a manufacturer of cooked meat, carrying on business under the firm name "Canserve". His main product is roast seasoned pork. He buys fresh pork by the side from wholesale butchers at or near Melbourne, and has it cut into portions, boned, seasoned, rolled and cooked in electric ovens at his business premises at Richmond, Victoria. He sells the product to the proprietors of small goods shops or delicatessens in places throughout Victoria and in some country towns in New South Wales. At times he has had customers in Queensland, Tasmania and South Australia also.

Early in 1952 Williams advertised for an agent in South Australia. He received a reply from the plaintiff Thompson and appointed him as his South Australian agent at an interview which took place on or about 18th February 1952. The agreement between them was made verbally and was never put into writing. I find that its terms were as follows : Thompson was to obtain on behalf of Williams orders from retailers for roast seasoned pork at prices fixed from time to time by Williams. He was to telegraph to Williams, daily or as occasion should require, the total quantities required to fulfil these orders. Williams was to consign the goods by air from Melbourne to Adelaide addressed to Thompson, and Thompson was to take delivery of them at the Adelaide airport and distribute them to the customers according to their several orders. Thompson was to receive payment on behalf of Williams, deduct a commission of seven and one-half per cent as his own remuneration, and remit the balance to the credit of Williams' bank account in Melbourne. Thompson's out-of-pocket expenses, e.g., for telegrams, were to be recouped to him by means of deductions which he was to make monthly from moneys of Williams before paying them into the bank.

The first orders obtained in Adelaide were obtained by Williams and Thompson together by their jointly interviewing certain prospective customers. Later orders from the same customers were

obtained by Thompson alone, and he also obtained some new customers. Whenever he approached prospective customers he described himself as representing Canserve. I am satisfied that all sales of Williams' products which were effected in Adelaide were sales in which Williams was the seller, Thompson acting only as his agent. I am also satisfied that all such sales were sales of roast seasoned pork (or in some cases ham and chicken or fish patties though I shall ignore these as relatively insignificant) to be delivered to the retailers at their respective places of business in Adelaide, but that it was no part of the description of the goods, nor was it in any way made a term of the sale agreement in any instance, that the goods were to be supplied from Victoria or from any particular place. Thompson told some but not all of the retailers from whom he obtained orders that the goods were in fact coming from Melbourne, but this information was given, when it was given, simply by the way, as a matter of incidental interest, and had no contractual significance or effect. Invoices used in connection with Adelaide sales were always in the name of Canserve as seller, Thompson's name being added and the only address given being Thompson's home address in a suburb of Adelaide, namely, 56 Flinders Street, Kent Town. I should add that in Williams' books the goods he sent to Adelaide were debited to Thompson as if the latter were the buyer; but this was done for the sake of convenience in book-keeping and for no other reason. Thompson never bought goods from Williams; he was throughout a selling agent only.

The first supply of roast seasoned pork to a retailer in Adelaide in accordance with the arrangement made between the plaintiffs took place on 25th February 1952, or thereabouts, and the course of business I have outlined was followed then and continuously thereafter until 9th July 1952. In the intervening period of twenty-three weeks Williams sent to Adelaide pork which brought about £3,500 gross. Its quality has never been called in question. On 9th July 1952, however, Williams' trade in Adelaide was brought to an end by the intervention of the defendant board, acting through its co-defendants who are respectively its general manager and one of its inspectors.

On that date the defendant Whelan, the inspector, interviewed both the plaintiffs at Thompson's home in Adelaide and referred them to ss. 70 and 77 of the *Metropolitan and Export Abattoirs Act* 1936-1948 (S.A.), (since amended by Act No. 24 of 1952). The conversation which took place was recounted in evidence by both the plaintiffs. (I may interpolate that they were entirely

H. C. OF A. 1953.

WILLIAMS v. METROPOLITAN AND EXPORT ABATTOIRS BOARD.

KITTO J.

candid and satisfactory witnesses, and if at any point their evidence conflicts with that of Whelan I accept them in preference to him.) It is not necessary here to recall the details of the conversation. All I need say is that Whelan informed the plaintiffs that the course of business they had been following was contrary to ss. 70 and 77 of the Act, that they were not permitted to bring meat into the metropolitan abattoirs area of Adelaide from Victoria or at all without a licence; that the pork Thompson had on hand in Adelaide would be seized on behalf of the board if it were not returned to Melbourne that day, and that if in future pork should be brought to Adelaide or be in Thompson's possession there in contravention of any provision of the Act, it would likewise be seized on behalf of the board.

The plaintiffs bowed to this edict, for neither of them had a licence under s. 77, and Williams' pork was, of course, from carcasses which had been slaughtered in Victoria and had never been inspected or branded under the South Australian Act. The pork on hand was re-consigned to Melbourne the same day. Williams ceased to sell his roast seasoned pork in Adelaide (though he later sold a little in South Australian towns in which the Act does not apply), and Thompson turned to other employment. I am satisfied that they did so because and only because of the board's threats. Each of them claims to have suffered loss in consequence. Williams applied through his solicitors to the defendant board on 31st July 1952 for a permit under s. 77 of the Act to bring cooked meat from Victoria for sale in the metropolitan abattoirs area, but the application was refused by letter dated 12th August 1952, without any reason being given.

In this action the plaintiffs sue for a declaration either that the Act on its true construction does not render unlawful any of the acts they were doing up to 9th July 1952 in relation to the sale, consignment or purchase of meats, and does not authorize the seizure of the meats, or that in so far as the Act does purport to render any such act unlawful or to authorize any such seizure it is contrary to s. 92 of the Constitution of the Commonwealth and invalid. In addition, the plaintiffs claim an injunction against the repetition of the acts of the defendants of which they complain and the commission of similar acts, and damages for the loss they have suffered by reason of the conduct of the defendants.

It is necessary first to mention the material provisions of the Act. They apply (see s. 6) within the metropolitan abattoirs area, which is defined by s. 7 and may be described sufficiently for present purposes as comprising the metropolitan area of Adelaide.

By s. 9 the defendant board is incorporated and charged with the administration of the Act. By s. 68 it is empowered to erect and establish abattoirs, and by s. 82 it is given the exclusive right to slaughter stock thereat.

Section 70 makes it an offence for a person to do certain things within the metropolitan abattoirs area while abattoirs are available under the Act for slaughtering stock. The conduct thus prohibited is described in four paragraphs. Paragraph (*a*) refers to slaughtering any stock for sale for human consumption, or dressing any carcass for sale, elsewhere than at the abattoirs. Paragraph (*b*) refers to selling, or attempting to sell, or exposing for sale, or allowing or causing to be sold or exposed for sale, any carcass or meat not slaughtered at the abattoirs. (On reading the whole context it is clear, I think, that this applies only to a carcass or meat slaughtered within the metropolitan area.) Paragraph (*c*) deals with selling, or exposing for sale, or allowing or causing to be sold or exposed for sale, any carcass or meat slaughtered outside the metropolitan abattoirs area unless the carcass thereof, together with certain organs attached in natural connection, has been brought to the abattoirs (or some other premises established by the board for that purpose within certain wards in the City of Adelaide) and inspected or branded by an inspector as provided in s. 93. (That section refers only to carcasses, but the word "carcass" is defined by s. 3 to include the whole or any part of the flesh of any stock. It provides for examination by an inspector, and makes it obligatory upon him, if carcasses are found on examination to be free from disease, to give a certificate to that effect, and brand the same.) Paragraph (*d*) of s. 70 has no present materiality. Section 72 makes it a defence to a charge of an offence under s. 70 to prove that the meat or carcass or part of a carcass in respect of which the offence is alleged was not sold or intended to be used for human consumption. Limited classes of goods are exempted by s. 76 from the prohibition imposed by s. 70 upon exposing for sale or selling, subject in some cases to compliance with stated requirements.

Next comes s. 77, which was inserted by amendment in 1937. It enacts that, subject to exceptions which will be mentioned, no person shall bring into the metropolitan abattoirs area from any place outside that area any carcass or meat which has been derived from stock slaughtered outside that area, unless he had obtained from the board a permit under this section. A permit may be granted for any of several purposes, of which one is to authorize

H. C. OF A. 1953.

WILLIAMS v. METROPOLITAN AND EXPORT ABATTOIRS BOARD.

Kitto J.

any person to bring any specified carcass or meat into the metropolitan abattoirs area in circumstances which in the board's opinion justify the grant of a permit. A permit granted under the section may, if it applies to any meat intended for human consumption, authorize the sale and exposure for sale of such meat. It renders lawful anything done in accordance with its terms and conditions. The exceptions apply, first, to meat brought into the area by a person for consumption by himself or the members of his household; and, secondly, to meat which has been brought into the area and in respect of which the requirements of par. (*c*) of s. 70 or of s. 76 have been complied with.

Section 87 contains several provisions. It provides in sub-s. (1) for the branding of all carcasses (except carcasses of diseased stock) slaughtered at the abattoirs and the part of any carcass removed from the abattoirs or the other premises established by the board in the named wards in the City of Adelaide, and it goes on in sub-s. (2) to make it an offence within the metropolitan abattoirs area to sell, offer for sale, keep for sale, expose for sale, deliver on sale, or carry for delivery on sale, a carcass which is not branded as required by the Act or any portion of any carcass not so branded. Sub-section (3) creates certain presumptions to arise from proof of possession of a carcass or portion of a carcass, and sub-s. (4) provides that if it is proved that portion of a carcass was unbranded while in the defendant's possession, it shall be presumed that the carcass of which it was a portion had not been branded, unless the defendant proves the contrary.

Section 90 provides for the seizure by an officer of the board, any inspector, or member of the police force, or any special or district constable, of any carcass not appearing to have been branded, or meat which does not appear to be derived from a carcass which has been branded, if the carcass or meat is either exposed for sale or is in the possession of any person apparently for the purpose of sale for human consumption.

One submission which was made for the plaintiffs was that cooked meat is not meat within the meaning of the Act. The word is defined in s. 3 to mean "the flesh of any slaughtered stock, whether such meat is intended to be consumed within the metropolitan abattoirs area or not, and whether the same is in its natural state, or has been subjected to any freezing, chilling, salting, or other preservative process". The concluding portion of the definition certainly lends some colour to the suggestion that, to be "meat", flesh must either be in its natural state or have been subjected to a freezing, chilling, salting or other preservative

process; and that cooked meat which has not been subjected to any such process is therefore excluded. The definition is awkwardly expressed, but it does not convey to my mind an intention to exclude cooked meat. The flesh of slaughtered stock is still the flesh of slaughtered stock after it has been cooked; and to regard the portion of the definition beginning with the words "and whether" as included only for the sake of specifically covering some anticipated cases which otherwise might have been the subject of argument seems to me more natural than to treat them as implying an exception in favour of cooked meat. An indication that cooked meat is not outside the purview of the Act is to be found in the fact that s. 76 specially excepts from the scope of s. 70 "small goods" in certain circumstances, and "small goods" is defined in s. 3 to mean any article of food "prepared"—and presumably prepared by any process, including cooking—either wholly or in part from small parts of meat. In my opinion meat does not cease to be meat for the purposes of the Act when it is cooked.

The arguments based upon s. 92 of the Constitution must therefore be considered. The plaintiffs contend that the two sections of the Act upon which the board's officers relied, viz., ss. 70 and 77, if they were to take effect according to their terms, would curtail the freedom of trade and commerce among the States, contrary to s. 92 of the Constitution. Therefore, they say, those sections must be held to be so confined in their operation as to leave inter-State trade and commerce free, and that this result must be reached either by holding that the sections have no valid operation to the extent to which they would conflict with s. 92, or by placing upon them a construction which would reconcile them with s. 92 by the application of s. 22a of the *Acts Interpretation Act* 1915-1949 (S.A.). The last-mentioned section, which was enacted in 1945 but applies to Acts passed before as well as after its enactment, provides that every Act and every provision of an Act shall be construed so as not to exceed the legislative power of the State, and that any Act or provision which, but for the section, would exceed the power of the State, shall nevertheless be a valid enactment to the extent to which it does not exceed that power.

The relevant provision of s. 70 of the *Metropolitan and Export Abattoirs Act* is in par. (*c*). There is no denying that this provision, if it has literal effect, operates directly and immediately upon inter-State trade; for it is a prohibition upon sale generally, and sale is at the heart of trade. It does not follow, however, that to give full effect to the provision according to its terms would be

H. C. OF A. 1953.

WILLIAMS v. METROPOLITAN AND EXPORT ABATTOIRS BOARD.

Kitto J.

inconsistent with the constitutional guarantee; for the freedom which s. 92 protects is the freedom of trade, commerce and intercourse in a community regulated by law, and that conception presupposes some degree of restriction on the individual: *The Commonwealth* v. *Bank of N.S.W.* (1). Whether the provision does so offend is a question depending upon the nature and extent of the restriction it imposes. A legislative prohibition, even one operating directly upon a matter so much of the essence of trade as the sale of a commodity, if it is not absolute but applies only while some stated condition is unfulfilled, may not be an impairment of freedom in the relevant sense. The question must always be whether it constitutes an actual burden upon inter-State trade —a real impediment in its way: *Wilcox Mofflin Ltd.* v. *New South Wales* (2). In particular, freedom may be found not to be really impaired, for the reason that the provision which contains the prohibition is truly regulatory in character. When it comes to be considered whether s. 70 (*c*) involves a derogation from the guaranteed freedom, it will be important to observe that the prohibition which it imposes is a prohibition *sub modo* only. It ceases to apply in respect of a carcass when it has been brought in a particular condition to the abattoirs or other specified premises of the board, and has been inspected and branded by an inspector who is under a duty (s. 93) to brand it if it is found to be free from disease. And it may be the true view that a provision of this character is merely a form of regulation as distinguished from an impairment of freedom.

But this is not the occasion to pursue the matter; for the evidence establishes quite clearly, in my opinion, that the business in which the plaintiffs were engaged before the board intervened, and by reason of which alone they have an interest to maintain this action, did not include any sales in inter-State trade. It involved, of course, inter-State intercourse in the form of communications and remittances passing between the plaintiffs, and it involved the inter-State consignment and carriage of goods. Freedom in respect of these matters cannot be legislatively denied or burdened. But the application of s. 70 (*c*) is at the point of sale only; and all the sales in which the plaintiffs were concerned were sales in intra-State trade. They were made in Adelaide, pursuant to orders solicited and given in Adelaide, for the supply in Adelaide of goods described only as roast seasoned pork, without any stipulation being made, expressly or impliedly, as to the place from which

(1) (1950) A.C. 235, at p. 310; (1949) 79 C.L.R. 497, at p. 639.

(2) (1952) 85 C.L.R. 488, at p. 523.

the goods should be obtained by the seller for the purpose of fulfilling the orders. The fact that Williams found it convenient, or commercially necessary, to equip Thompson with the goods required by the customers by sending him from Victoria pork derived from carcasses which had not been branded under the South Australian Act is not a fact which suffices to bring the sales themselves within the protection of s. 92 of the Constitution. All agreements for sale made by Williams, or by Thompson on behalf of Williams, were similar in kind to those made according to the third of the methods of trade considered in *W. & A. McArthur Ltd.* v. *Queensland* (1), and none of them resembled those made according to the fourth of those methods. This situation was squarely faced by counsel for the plaintiffs, but they argued that, in the circumstances of this case, from order to delivery was one inter-State transaction. They submitted that the sales made in Adelaide were the culmination of a form of inter-State activity on the part of the plaintiffs which was effectively ended by the prohibition in s. 70 (*c*), and for that reason the prohibition could not be said to leave the plaintiffs' inter-State trade, commerce and intercourse absolutely free.

The submission fails to attend sufficiently to the crucial distinction between the direct operation of a law and an effect which is merely consequential or remote. If a law operates directly upon sales of goods, and it is found that goods of the kind to which the law refers cross State boundaries at some stage of their journey to the hands of a purchaser, the question whether the law operates directly or only consequentially upon inter-State trade depends upon the further question whether sales affected by the law are so inseverably bound up with the inter-State movement of the goods sold that together they constitute an example of inter-State trade. If it is only as a repercussion depending upon practical business or economic considerations that an effect upon the inter-State movement will follow when the law makes its impact upon the sales, the law cannot be said to burden inter-State trade by its direct operation, and it therefore cannot be in collision with s. 92.

Counsel for the plaintiffs referred to the cases of *Commonwealth and Commonwealth Oil Refineries Ltd.* v. *South Australia* (2) and *Vacuum Oil Co. Pty. Ltd.* v. *Queensland* (3). But those were very different cases. The law in question in each of them imposed a direct burden upon the importation of goods into a State, in the one case by selecting the importation as a fact entailing liability

(1) (1920) 28 C.L.R. 530, at p. 540.
(2) (1926) 38 C.L.R. 408.
(3) (1934) 51 C.L.R. 108.

H. C. OF A. 1953.

WILLIAMS v. METROPOLITAN AND EXPORT ABATTOIRS BOARD.

Kitto J.

to pay a tax on the happening of a later event, and in the other case by adopting as a condition for the imposition of a burdensome obligation a fact which was inseparable from the importation. There is no analogy here. The principle to be applied in this case may be found expressed by *Dixon* C.J. in a passage in *Wragg* v. *State of New South Wales* (1): "It is of course clear that in the case of most imported articles sales which take place in the course of distribution to the consumer are, when considered by themselves, entirely intra-State transactions. If they take on the character of inter-State commerce it must be in virtue of some inseparable connection with the importation of the article from another State" (2). On the facts of the present case, it is not possible to find any such inseparable connection.

It was not contended by counsel for the plaintiffs, and in view of s. 22a of the *Acts Interpretation Act* it could not be contended with any prospect of success, that s. 70 (*c*) is incapable of severance so as to have a valid operation in cases untouched by s. 92 notwithstanding that to some cases within the field of its purported operation s. 92 may extend its protection: cf. *Wilcox Mofflin Ltd.* v. *New South Wales* (3). The considerations I have stated lead me to the conclusion that s. 70 (*c*) was effectual to make unlawful the sales of roast seasoned pork in Adelaide which the plaintiffs were engaged in making up to 9th July 1952, whatever would have been the position with respect to sales, if there had been any, which formed part of inter-State trade.

This conclusion makes it unnecessary to consider in this case how s. 77 stands in relation to s. 92 of the Constitution, for unless the plaintiffs could lawfully sell their pork in the metropolitan abattoirs area they had no interest to serve by bringing it into that area. The provision in s. 90 for seizure, it may be observed, is ancillary to s. 70 and not to s. 77. I am therefore of opinion that Whelan was justified in asserting the illegality of the plaintiffs' conduct, and in warning them that, if that conduct should be continued, pork found in the possession of Thompson for sale would be seized. It is true that Whelan relied upon s. 77 as well as s. 70, and that the board in its letter of 12th August 1952 stated simply that cooked pork could not be imported without permits which it was not prepared to grant. It may be that, because of s. 92 of the Constitution, s. 77 would not have precluded the plaintiffs from bringing roast seasoned pork from Victoria into the metropolitan abattoirs area, and that s. 70 (*c*) would not have precluded

(1) (1953) 88 C.L.R. 353.
(2) (1953) 88 C.L.R., at p. 583.
(3) (1952) 85 C.L.R. 488, at p. 523.

them from selling the pork so introduced, by means of sales so carried out as to form part of inter-State trade. If so, Whelan's threats and the statement in the board's letter went too far. But their effect upon the plaintiffs was not due to this. It must necessarily have been exactly the same, in view of the provisions of s. 70 (*c*) and s. 90 of the Act, if s. 77 had not been mentioned and no reference to importation had been made. They cannot attribute any loss which they may have sustained in consequence of the closure of their business to any threat of the defendants made in disregard of s. 92 of the Constitution, because their business as it was in fact being conducted did not include any sales which s. 92 preserved their freedom to make.

In my opinion the plaintiffs are not entitled to any relief in this action, and there should be judgment for the defendants accordingly.

I may add that, as at present advised, I should doubt very much whether the plaintiffs would be entitled to recover any damages, even if it had been in consequence of a threat by the defendants to enforce a statutory provision which was void for irreconcilability with s. 92 that they had closed down their Adelaide business. Sir *John Salmond's* proposition, that " it is an actionable wrong intentionally to compel a person, by means of a threat of an illegal act, to do some act whereby loss accrues to him ", was relied upon in this connection by counsel for the plaintiffs, but they cited no authority which I am able to regard as supporting it. The proposition was quoted by *Dixon* J., in *James* v. *The Commonwealth* (1) but his Honour held it to be inapplicable to the facts of the case and did not express approval of it. I was referred to *Hodges* v. *Webb* (2), but I do not think that the observations there made by *Peterson* J. go far enough for the plaintiffs' purpose.

Judgment for the defendants. Action dismissed with costs.

Solicitors for the plaintiffs, *Akehurst, Friend & Haack.*

Solicitors for the defendants, *Pickering, Cornish & Lempriere Abbott,* Adelaide, by *Rodda, Ballard & Vroland,* Melbourne.

R. D. B.

(1) (1939) 62 C.L.R. 339, at p. 374.

(2) (1920) 2 Ch. 70, at pp. 87-89.