

[HIGH COURT OF AUSTRALIA.]

ROCHE AND OTHERS . . . . . PLAINTIFFS ;

AND

KRONHEIMER AND ANOTHER . . . . . DEFENDANTS.

ON REFERENCE AND REMOVAL FROM THE SUPREME COURT OF  
VICTORIA.

*Constitutional Law—Legislative powers of Parliament of Commonwealth—Defence—* H. C. OF A.  
*External affairs—Treaty of Peace—Regulations to give effect to Treaty—Validity* 1921.  
*of Act and Regulations—Judicial power—The Constitution (63 & 64 Vict. c. 12),* ~~~~~  
*secs. 51 (VI.), (XIX.), (XXIX.), 71—Treaty of Peace Act 1919 (No. 20 of 1919), sec.* MELBOURNE,  
*2—Treaty of Peace Regulations (Statutory Rules 1920, No. 25), reg. 20.* Feb. 15-18 ;  
21-22 ;  
The *Treaty of Peace Act 1919* is within the legislative power of the Parliament Mar. 14-16,  
of the Commonwealth ; and reg. 20 of the *Treaty of Peace Regulations* is author- 23 ; June 2.  
ized by sec. 2 of that Act, both so far as it purports to re-enact the provisions  
of Part X. of the *Treaty of Peace* and so far as it purports to provide machinery  
for enforcing those provisions within the Commonwealth.

Knox C.J.,  
Higgins,  
Gavan Duffy,  
Rich and  
Starke JJ.

*Per Higgins J.* : The Act can be upheld under the power to make laws as to  
naval and military defence (sec. 51 (VI.) ) ; and, *semble*, also under the power  
to make laws as to external affairs (sec. 51 (XXIX.) ).

*Farey v. Burvett*, 21 C.L.R., 433, *Pankhurst v. Kiernan*, 24 $\frac{1}{2}$  C.L.R., 120,  
*Ferrando v. Pearce*, 25 C.L.R., 241, and *Sickerdick v. Ashton*, 25 C.L.R., 506,  
followed.

QUESTIONS referred and removed to the High Court by and from the  
Supreme Court of Victoria.

Joseph Kronheimer, who died in Victoria on 16th July 1914, by  
his will dated 12th December 1913 made bequests and gave interests  
in the residue of his estate to a number of German nationals, including  
Max Kronheimer of Hamburg, Germany, who was appointed one

H. C. OF A. of the executors. Probate of the will was, on 10th October 1914,  
 1921. granted to the other executors, namely, Joseph Francis Roche,  
 ROCHÉ Louis Stanley Benjamin, Jacob Englander and the Equity Trustees,  
 v. Executors and Agency Co. Ltd., leave being reserved to Max  
 KRON- Kronheimer to come in and prove.  
 HEIMER.

On 7th October 1920 the Minister for Trade and Customs, purporting to act in pursuance of the *Treaty of Peace Regulations* (Statutory Rules 1920, No. 25), made an order vesting in the Public Trustee all the property, rights and interests of Max Kronheimer which he acquired under the will of the testator, and on the same day made similar orders in respect of the other beneficiaries who were German nationals.

An originating summons in the Supreme Court of Victoria was taken out by the executors asking, among other questions, what was the duty of the executors in respect of bequests under the will to persons who were German nationals, and whether such bequests should be paid to the Acting Deputy Comptroller-General or the Public Trustee. The defendants to the summons were Max Kronheimer, who was authorized to defend on behalf of himself and all other beneficiaries who were German nationals, Robert McKeeman Oakley, Acting Deputy Comptroller-General and the Public Trustee under the *Trading with the Enemy Act* 1914-1916.

At the hearing of the summons *Hood J.* ordered that those questions (*inter alia*), so far as they might be referred to the High Court under sec. 18 of the *Judiciary Act*, should be so referred, and, so far as they involved any questions within sec. 40A of the *Judiciary Act*, should be removed to the High Court.

The matter now came on for argument before the High Court.

During the course of the argument the Court intimated that it would do no more than inquire into the validity of reg. 20 of the *Treaty of Peace Regulations*; and the arguments on that point only are reported.

*Weigall K.C.* and *Gregory*, for the plaintiffs.

*Owen Dixon* (with him *Martin*), for the defendant Max Kronheimer. The *Treaty of Peace Act* 1919 is invalid. It is not within

any of the powers conferred by sec. 51 of the Constitution. The defence power (pl. vi.) does not authorize it. The Treaty of Peace does not add to that power. The power does not include a power to make war or to terminate it by a treaty of peace, nor does it include a power to make laws for securing the observance of such a treaty made by the King acting for the whole Empire. The *Treaty of Peace Act* is not within the power as to external affairs (pl. xxix.). That only enables laws to be made relating to affairs external to the Commonwealth, and does not enable laws to be made as to matters within the Commonwealth. Neither the fact that there is property within the Commonwealth to which an alien, whether an enemy or not, is entitled, nor the relationship of debtor and creditor between a citizen of Australia and an alien, is a matter within that power. The Act is not within the power as to aliens. It is wholly directed to depriving certain aliens of their property, and is not concerned with their being aliens. A law as to aliens means a law dealing with the status of aliens. This is a law relating to deprivation of property (see *Cunningham v. Tomey Homma* (1) ).

[STARKE J. referred to *Lefroy on Canada's Federal System*, p. 308.]

The Act does not relate only to aliens, for under it the Governor-General might make regulations, as he has done in reg. 20 of the *Treaty of Peace Regulations*, dealing with persons who are not aliens and their rights and liabilities. [Counsel referred to *Huddart, Parker & Co. Proprietary Ltd. v. Moorehead* (2).] Sec. 2, which gives power to the Governor-General to make such regulations as appear to him necessary for carrying out Part X. of the Treaty of Peace, is invalid. It is not conditional legislation as was the case in *Barter v. Ah Way* (3), but it bestows on the Executive full legislative power upon a particular matter. Just as the Constitution does not permit the judicial power of the Commonwealth to be vested in any tribunal other than the High Court and other Federal Courts (*New South Wales v. The Commonwealth* (4); *Waterside Workers' Federation of Australia v. J. W. Alexander Ltd.* (5)), so the vesting of the legislative power in any other body than Parliament is prohibited. A law merely authorizing the Executive to make laws

H. C. OF A.

1921.

ROCHE

v. §

KRON-  
HEIMER.

(1) 1903 A.C., 151, at p. 157.

(4) 20 C.L.R., 54.

(2) 8 C.L.R., 330.

(5) 25 C.L.R., 434.

(3) 8 C.L.R., 626.

H. C. OF A.  
1921.

ROCHE

v.

KRON-  
HEIMER.

with respect to a particular subject matter is not a law for the peace, order and good government of the Commonwealth with respect to that subject matter. Sec. 2 of the *Treaty of Peace Act* is not conditional legislation such as was upheld in *R. v. Burah* (1), *Hodge v. The Queen* (2), *Powell v. Apollo Candle Co.* (3) and by this Court in *Baxter v. Ah Way* (4), but it is a handing over of the whole power of legislation upon a particular matter to the Executive, which is not permitted by the Constitution.

[STARKE J. referred to *Dobie v. Temporalities Board* (5).

[HIGGINS J. referred to *The Fama* (6).]

If the *Treaty of Peace Act* is valid, reg. 20 of the *Treaty of Peace Regulations* is invalid because it is not such a regulation as could appear to be necessary to the Governor-General for carrying out the provisions of Part X. of the Treaty of Peace, and also because reg. 20 (5) purports to confer judicial power upon the Minister for Trade and Customs. Reg. 20 misconceives what art. 297 and the annex to it require to be done. The charging of the whole of the property of German nationals irrespective of its present ownership is beyond what is necessary to carry out art. 297. The option to charge or not to charge property of German nationals must under art. 297 be exercised by the Imperial Government once for all, and cannot be left to the several Dominions. The making of a vesting order under reg. 20 (5) is judicial in its nature (*Werner v. Boehm* (7)).

[GAVAN DUFFY J. referred to *Burkard v. Oakley* (8).]

*D. Claude Robertson*, for the Acting Deputy Comptroller-General and Public Trustee. The Treaty of Peace is binding in law throughout the British Empire without any legislative enactment. That is recognized in the Acts which have been passed in Great Britain and the Dominions for giving effect to its provisions, in which Acts all that has been done is to give authority for the making of regulations to carry the Treaty into effect (see 9 & 10 Geo. V. c. 33; 10 Geo. V. No. 20 (N.Z.); 10 Geo. V. c. 30 (Can.); Act No. 49 of 1919 (South Africa)). [Counsel also referred to *Walker v.*

(1) 3 App. Cas., 889.

(2) 9 App. Cas., 117.

(3) 10 App. Cas., 282.

(4) 8 C.L.R., 626.

(5) 7 App. Cas., 136, at p. 146.

(6) 5 Rob. Adm., 106.

(7) 16 V.L.R., 73; 11 A.L.T., 128.

(8) 25 C.L.R., 422.



*Baird* (1); *Hugh Stevenson & Sons v. Aktiengesellschaft für Carbonnagen-Industrie* (2); *In re Schiff*; *Henderson v. Schiff* (3).]

[RICH J. referred to *The Parlement Belge* (4).]

The *Treaty of Peace Act* is valid under the defence power. It was passed at a time when a state of war existed, and it is within the defence power to legislate with respect to bringing a state of war to an end by a treaty of peace. A law confiscating the property of aliens is a law as to aliens, just as is a law excluding aliens of a certain nationality from working in mines (*Union Colliery Co. of British Columbia v. Bryden* (5)), or prohibiting foreign companies from trading (*Attorney-General for Canada v. Attorney-General for Alberta* (6)). It is within the power as to external affairs to enact a law to put into execution the terms of a treaty. The Act is also within the incidental power (sec. 51 (xxxix.) of the Constitution). The King is one and indivisible throughout the Empire, and he acts in the Commonwealth through the Executive of the Commonwealth. When a treaty of peace is made by the King, his Executive in the Commonwealth has to carry out its terms there. The Commonwealth Parliament may therefore make laws which are incidental to the power of the Executive in that respect. (See *Burkard v. Oakley* (7); *Joseph v. Colonial Treasurer of New South Wales* (8).) The *Treaty of Peace Act* should be construed as incorporating Part X. of the *Treaty of Peace* (*Maxwell on Statutes*, 6th ed., pp. 615-623). With regard to the giving of power to make regulations the Act is valid on the authority of *Baxter v. Ah Way* (9).

Sir Robert Garran S.-G., for the Attorney-General of the Commonwealth, intervening. The Commonwealth Parliament has power to make laws to give the force of law to any provision of the *Treaty of Peace* and to provide for its execution. The *Treaty* is an act of the King, and has force apart from any legislative Act. It determines questions of cession of territory and status of individuals. A state of peace flows from it, with all its consequences. It creates some legal

H. C. OF A.  
1921.

ROCHE

v.

KRON-  
HEIMER.

(1) (1892) A.C., 491.

(2) (1918) A.C., 239.

(3) 37 T.L.R., 31.

(4) 5 P.D., 197.

(5) (1899) A.C., 580.

(6) (1916) 1 A.C., 588, at p. 597.

(7) 25 C.L.R., at p. 426.

(8) 25 C.L.R., 32, at p. 46.

(9) 8 C.L.R., 626.

H. C. OF A. 1921.  
 ROCHE  
 v.  
 KRON-  
 HEIMER.

rights and obligations to which the Courts of the Commonwealth must give effect; *e.g.*, those rights and obligations which follow from certain persons ceasing to be enemy subjects. The legislation enacted by the Parliament of the United Kingdom and the Parliaments of the other Dominions for the purpose of enabling the Executives to carry into effect the provisions of the Treaty are substantially identical with the Commonwealth *Treaty of Peace Act*, and the Commonwealth Parliament had power to make such a law. See *In re Nierhaus* (1); *The Marie Gartz* (2); *The Marie Gartz* [No. 2] (3); *In re Schiff*; *Henderson v. Schiff* (4).

[HIGGINS J. referred to *Damodhar Gordhan v. Deoram Kanji* (5).]

The power to legislate in respect of the Treaty of Peace is part of the defence power. The termination of the War involves rights and obligations in Australia, and the defence power includes a power to enforce the terms and conditions of the Treaty which affect Australia (*Farey v. Burvett* (6)). The *Treaty of Peace Act* is also within the power as to external affairs. The execution of anything relevant to ending the War contained in the Treaty of Peace is a matter relating to external affairs. Pl. xix. and pl. xx. of sec. 51 of the Constitution cover everything in the Act. The *Treaty of Peace Act* is a declaration of intention to give effect by it to the Treaty. The Act is not invalidated by giving the Executive power to make regulations to give effect to Part X. of the Treaty of Peace. The Legislature makes the primary rule of conduct, and the Executive is left to fill in the details (*Buttfield v. Stranahan* (7); *Wiloughby on the Constitution of the United States*, vol. II., p. 1317). The making of such regulations is subordinate or delegated legislation (*R. v. Burah* (8); *Hodge v. The Queen* (9)). Where the Parliament has vested in it a power of legislation it may exercise that power by assigning portion of the power to a subordinate rule-making body. That is a recognized constitutional usage. The question of vesting the judicial power in a tribunal other than a Federal

(1) 36 T.L.R., 425.

(2) 36 T.L.R., 417.

(3) 36 T.L.R., 864.

(4) 37 T.L.R., 31.

(5) 1 App. Cas., 332.

(6) 21 C.L.R., 433, at p. 457.

(7) 192 U.S., 470.

(8) 3 App. Cas., at p. 906.

(9) 9 App. Cas., at p. 132.

Court is not analogous. The decision in *Waterside Workers' Federation of Australia v. J. W. Alexander Ltd.* (1) was founded, not on the provision in sec. 71 of the Constitution vesting the judicial power in the Federal Courts alone, but on the whole of Chap. III. of the Constitution. There was no question in that case of delegation of power. That the Commonwealth Parliament has power to confer authority to make regulations upon a subordinate body is affirmed in *Farey v. Burvett* (2) and *Baxter v. Ah Way* (3); and, when this is done, the legislative power still remains in the Parliament but is exercisable by the subordinate body. There is no indication in the Treaty that there should be one election by the whole British Empire to charge or not to charge the property of German nationals. The power to charge may be exercised whenever the Governor in Council chooses. The *Treaty of Peace Regulations* do not confer any judicial power on the Executive. The Executive makes no finding of fact as to whether a person is or is not a German national. If it makes an order against any person who turns out not to be a German national, the order is a nullity. [He referred to *Wong Wing v. United States* (4).]

H. C. OF A.  
1921.

ROCHE

v.  
KRON-  
HEIMER.

*Owen Dixon*, in reply. The defence power was not so construed in *Farey v. Burvett* (5) as necessarily to lead to the conclusion that it includes a power to make laws calculated to give force to a treaty of peace. The defence power includes everything reasonably proper to defend the Commonwealth by arms or other defensive measures, to carry on war and assist in it; but it does not extend to ending a war by a peace. The Constitution, by dividing the powers of the Commonwealth into the legislative, the executive and the judicial powers and vesting each of those powers in a distinct body, impliedly prohibits the vesting of each of those powers in any other body than that in which it is specifically vested. That applies to the legislative power just as it does to the judicial power. The making of a law that another body may make laws upon a particular subject matter is not making a law on that subject. There is no authority for the proposition that a treaty of peace can have the effect of law

(1) 25 C.L.R., 434.

(2) 21 C.L.R., 433.

(3) 8 C.L.R., 626.

(4) 163 U.S., 228, at pp. 236-237.

(5) 21 C.L.R., 433.

H. C. OF A. in any circumstances. If it alters the existing law it is legislation  
 1921. and legislation must be made by Act of Parliament. [Counsel also  
 ~~~~~  
 ROCHE referred to *Cooley's Constitutional Limitations*, 7th ed., pp. 163  
 v. *et seq.*; *F. W. Maitland's Constitutional History of England*, p. 424;  
 KRON- *Dicey's Constitutional Law*, 8th ed., p. 115.]  
 HEIMER.

*Cur. adv. vult.*

Mar. 23. KNOX C.J. announced that the COURT was of opinion that the *Treaty of Peace Act* and the *Treaty of Peace Regulations* made under the Act were valid, and the reasons would be delivered later.

June 2. The following written reasons were subsequently delivered:—  
 KNOX C.J., GAVAN DUFFY, RICH AND STARKE JJ. In this case we have already intimated that we shall do no more than inquire into the validity of reg. 20 of the Regulations under the *Treaty of Peace Act* 1919 (Statutory Rules 1920, No. 25); and we now proceed to give our reasons for declaring that regulation to be valid. The Statutory Rules are made under the authority of the *Treaty of Peace Act* 1919, and it is said that that Act is not within the competence of the Federal Parliament. The preamble recites the signing of the Treaty of Peace with Germany by representatives of the Commonwealth of Australia on behalf of His Majesty the King, and declares that it is expedient that the Government of the Commonwealth shall have power to do all such things as are necessary and expedient for giving effect to the said Treaty on the part of the Commonwealth. Sec. 2 is as follows: "The Governor-General may make such regulations and do such things as appear to him to be necessary for carrying out and giving effect to the provisions of Part X. (Economic Clauses) of the said Treaty." It is to be observed that the Act does not in express terms adopt or ratify the Treaty, and much argument was addressed to us as to whether its true effect was to make the provisions of the Treaty, or any of them, part of the statute law of the Commonwealth, or merely to enable the Governor-General to provide machinery for putting certain of those provisions into operation within the Commonwealth. We think that the intention of the Legislature, as expressed in the



words we have already cited, was to enable the Governor-General to enforce the provisions of Part X. of the Treaty within the Commonwealth, and, if he thought it necessary for that purpose, to make any of such provisions part of the statute law of the Commonwealth. Is such an enactment within the competence of the Federal Parliament? We think it is. A catena of cases commencing with *Farey v. Burvett* (1) has made it clear that the power of Parliament under sec. 51 (VI.) is not confined to military operations but extends to every measure of defence which circumstances may require as they present themselves. The termination of hostilities by the imposition of terms of peace and the enforcement of those terms are, in our opinion, such measures.

Next, it was said that, even if the Federal Parliament had authority to legislate for the purpose of carrying out and giving effect to the provisions of Part X. of the Treaty, it had no power to confer that authority on the Governor-General. On this topic we were referred by counsel to *Hodge v. The Queen* (2), and by our brother Rich to *R. v. Halliday* (3) and *In re Initiative and Referendum Act* (4); and much interesting argument was devoted to the real meaning and effect of the first of those cases. It is enough to say that the validity of legislation in this form has been upheld in *Farey v. Burvett* (1), *Pankhurst v. Kiernan* (5), *Ferrando v. Pearce* (6) and *Sickerdick v. Ashton* (7), and we do not propose to enter into any inquiry as to the correctness of those decisions.

Lastly, it was said that reg. 20 (5), under which the Minister acted, purported to bestow upon him a judicial power which, because of sec. 71 of the Constitution, could be vested only in a Federal Court. In our opinion the order which the Minister is empowered to make is not a judicial order. We see no reason why property should not be vested or divested by a legislative enactment or by an executive act done under the authority of the Legislature as well as by a judicial act.

It follows from what we have said, that sec. 2 of the *Treaty of Peace Act* 1919 is within the powers of the Federal Parliament, and

H. C. OF A.  
1921.

ROCHE  
v.  
KRON-  
HEIMER.

KNOX C.J.  
Gavan Duffy J.  
Rich J.  
Starke J.

(1) 21 C.L.R., 433.

(2) 9 A.C., 117.

(3) (1917) A.C., 260, at p. 307.

(4) (1919) A.C., 935, at p. 945.

(5) 24 C.L.R., 120.

(6) 25 C.L.R., 241.

(7) 25 C.L.R., 506.

H. C. OF A. reg. 20 is authorized by that section both so far as it purports to  
 1921. re-enact the provisions of Part X. of the Treaty and also as far as it  
 ~~~~~ purports to provide machinery for enforcing those provisions within  
 ROCHE the Commonwealth.  
 v.  
 KRON-  
 HEIMER.

Higgins J. HIGGINS J. Counsel for Max Kronheimer have not, in my  
 opinion, shown us any clause in Part X. of this Treaty which is not  
 within some power conferred on the Commonwealth Parliament  
 by the Constitution.

By the *Treaty of Peace Act* 1919, after reciting the signing of  
 the Treaty and that "it is expedient that the Government of  
 the Commonwealth should have power to do all such things as  
 are necessary and expedient for giving effect to the said Treaty  
 on the part of the Commonwealth," it is enacted (sec. 2) that "the  
 Governor-General may make such regulations and do such things  
 as appear to him to be necessary for carrying out and giving effect  
 to the provisions of Part X. (Economic Clauses) of the said Treaty."  
 The form of the enactment was probably adapted from the enact-  
 ment of the British Parliament (9 & 10 Geo. V. c. 33): "His  
 Majesty may make such appointments, establish such offices, make  
 such Orders in Council, and do such things as appear to him to  
 be necessary for carrying out the said Treaty, and for giving effect  
 to any of the provisions of the said Treaty." Part X. of this Treaty  
 clearly involves a grave interference with private rights; and, as  
 the question whether a treaty of peace in itself can authorize such  
 interference was deliberately left open by the Judicial Committee  
 of the Privy Council in *Walker v. Baird* (1), Parliament has by Act  
 expressly given power to the Governor-General to carry the pro-  
 visions of Part X. into effect. The Act was expedient, if not neces-  
 sary.

But it remains to be seen whether the Commonwealth Parliament  
 has been empowered by the Constitution to pass such an Act. The  
 Constitution gives that Parliament power to make laws with respect  
 to (*inter alia*) (a) external affairs (pl. xxix.), (b) the naval and  
 military defence of the Commonwealth (pl. vi.), (c) trade and  
 commerce with other countries (pl. i.). It is difficult to say what

(1) (1892) A.C., at p. 497.

limits (if any) can be placed on the power to legislate as to external affairs. There are none expressed. No doubt, complications may arise should the Commonwealth Parliament exercise the power in such a way as to produce a conflict between the relations of the Commonwealth with foreign Governments and the relations of the British Government with foreign Governments. It may be that the British Parliament preferred to take such a risk rather than curtail the self-governing powers of the Commonwealth; trusting, with a well-founded confidence, in the desire of the Australian people to act in co-operation with the British people in regard to foreign Governments.

In this case, we have in Part X. of this Treaty provisions such as appear in annex 4 to art. 297, which in effect enable any Allied or Associated Power to deprive German subjects of property which is theirs, for the satisfaction of obligations of other German subjects or of Germany to the Allies or to subjects of the Allies. More specifically, "all property, rights and interests of German nationals within the territory of any Allied or Associated Power . . . may be charged by that Allied or Associated Power" (1) "with payment of amounts due in respect of claims by the nationals of that . . . Power with regard to their property," &c., "in German territory, or debts owing to them by German nationals"; (2) "with payment of claims growing out of acts committed by the German Government . . . since 31st July 1914, and before that Allied or Associated Power entered into the War"; (3) "with payment of the amounts due in respect of claims by the nationals of such . . . Power with regard to their property," &c., "in the territory of other enemy Powers." Australia is enabled to charge the Australian property of any German Schmidt with payment of any debts owing by any German or by Germany to any Australian Smith or to Belgium or to Italy. Apart from the power as to external affairs, such a law can be upheld, in my opinion, under the power as to naval and military defence; for, though there may be other reasons also, the weakening of an enemy and enemy subjects may contribute as effectively to defence as the increasing of one's own fighting force; and to punish an enemy severely may be reasonably regarded as a deterrent against future attacks, on Polonius's principle as to a

H. C. OF A.

1921.

ROCHE

v.  
KRON-  
HEIMER.

Higgins J.

H. C. OF A. 1921.  
 Roche  
 v.  
 Kron-  
 heimer.  
 Higgins J.

quarrel—"Bear't that the opposed may beware of thee." It is not for this Court to consider the wisdom of the Treaty; it has merely to find whether these provisions are within the Commonwealth powers.

If the Treaty of Peace, Part X., is valid, the regulations made under the *Treaty of Peace Act* by the Governor-General are, in my opinion, valid also (*Powell v. Apollo Candle Co.* (1), and the cases cited by my learned brothers).

I concur also in the opinion that reg. 20 (5) of the *Treaty of Peace Regulations* and the order of the Minister of Trade and Customs thereunder are not invalid as involving an exercise of the judicial power of the Commonwealth by other than Commonwealth Courts (sec. 71). I can hardly understand how the point is arguable; for the vesting is not the result of a judicial finding as to rights—it is in defiance of admitted rights. To give the property of A to B is not a judicial proceeding.

*Declare that the Treaty of Peace Act 1919 and the Treaty of Peace Regulations made thereunder are valid. Costs as between solicitor and client of all parties in the High Court other than those of Attorney-General of the Commonwealth to be costs in the summons.*

Solicitors for the plaintiffs, *P. D. Phillips, Fox & Overend.*

Solicitors for the defendants and the intervener, *Eggleston & Eggleston*; *Gordon H. Castle*, Crown Solicitor for the Commonwealth.

B. L.

(1) 10 App. Cas., at p. 291.