Privy Council Appeal No. 103 of 1918.

Edward Granville Theodore and another - - - - *Appellants*

v.

Laura Duncan and another - - - - - - *Respondents*

George Lansley Beal - - - - - - - *Appellant*

v.

Laura Duncan and another - - - - - - *Respondents*

(Consolidated Appeals)

FROM

THE HIGH COURT OF AUSTRALIA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 2ND MAY, 1919.

Present at the Hearing:

VISCOUNT HALDANE.
VISCOUNT FINLAY.
LORD DUNEDIN.
LORD ATKINSON.
LORD SHAW.

[*Delivered by* VISCOUNT HALDANE.]

The questions for decision on these appeals are of public interest. They relate to the interpretation of legislation of the State of Queensland, passed for war purposes, and to the action of the Executive Government under the Statutes so passed.

The respondents, who were plaintiffs in the Court of first instance, claimed damages for trespass and detinue by reason of the enforcement of certain Proclamations (dated the 12th November, 1915, and the 1st June, 1916) alleged to have been unlawful. The actions were tried before the Chief Justice of Queensland and a jury. The plaintiffs obtained a verdict and

judgment for £2,900, afterwards by agreement reduced to £2,000. The defendants appealed to the Full Court of Queensland, which set aside the judgment at the trial and entered judgment for the defendants. The plaintiffs then appealed to the High Court of Australia, and that Court by a majority reversed the judgment of the Full Court of Queensland, and directed judgment to be entered for the plaintiffs, the present respondents, for the agreed amount of damage.

In order to make plain the nature of the questions which have arisen, questions about which there has been great divergence of judicial opinion in the Courts below, it will be convenient in the first place to refer to the origin and character of the legislation under which the Proclamations referred to were made. On the 12th August, 1914, almost immediately after the declaration of war, the Parliament of Queensland passed an emergency Act, known as the Meat Supply for Imperial Uses Act of 1914. This Statute was, by section 1, to remain in force during such period or extended period as the Governor in Council should by Proclamation declare, and it was, by section 5, to be administered by the Chief Secretary of the State. Section 6 declared that all stock and all meat in any place in Queensland were to be subject to the Act, and to be held for the purposes of and to be kept for the disposal of His Majesty's Imperial Government in aid of the supplies for His Armies in the war. By subsection 2 of section 6, upon the making of an Order in writing under the hand of the Chief Secretary or his Under-Secretary, all stock and meat mentioned in such Order were to cease to be the property of the then owners and become the absolute property of His Majesty, free from any other title. Peaceable possession was to be given to His Majesty and the title of the owners was to be changed into a right to receive payment of the value of what was taken under the Act. By section 7 (subsection 2) every authority, order or direction prejudicial to the Sovereign's title, and given or made before or after the Act, was declared void, a Board of Control was to be appointed to fix the prices payable in respect of appropriations by the Chief Secretary. By a subsequent Act, called the Sugar Acquisition Act of 1915, provision was made for validating and giving statutory effect to a certain Proclamation which had been made previously to the passing of this Act, on the 30th June, 1915. The provisions of this Proclamation are similar to those of one of the Proclamations in question, both of which were made under the Sugar Acquisition Act of 1915. For that Act, as will be seen, contained a section enabling its operation to be extended to live stock, in relation to which the present litigation has arisen.

By this Sugar Act it was provided that the Statute should have effect, notwithstanding anything to the contrary, whether express or implied, in any other Statute or document. By section 5 a Proclamation of the 30th June, 1915, which enabled the raw sugar in Queensland, the product of the crop of 1915, to be taken by the Government of the State, was ratified, and

was to be read as one with the Act. By section 7 no action or claim was to lie against His Majesty, or the Treasurer of the State (who, under section 4, was to administer the Act), or any officer or person acting in execution of the Proclamation ratified or any other Proclamation under the Act, for or in respect of any damage or loss or injury sustained by reason of the Act or any such Proclamation or anything done thereunder, save only the value of the sugar acquired. By section 10 the Governor in Council might extend the operation of the Act by Proclamation, so as to authorise the acquisition of other commodities to be mentioned in such a Proclamation, including *inter alia*. live stock. Thereupon such commodities might be acquired by a Proclamation containing provisions similar to those of that scheduled, with such modifications as might be deemed necessary, and the Act was to extend and apply to such a commodity to the same extent and in the same manner as if it were expressly mentioned in the Act. By section 11 such a Proclamation might order, either in general terms or by particular order directed to any person or class of persons, returns with respect to such a commodity. The Statute further provided that the Governor in Council might make and publish from time to time all Proclamations required for giving effect to it, and every Proclamation made under the Act was to be read as one with the Act and as of equal validity with it.

On the 12th November, 1915, a Proclamation was duly made and published extending "the operation of the Sugar Acquisition Act of 1915, so as to authorise the acquisition by His Majesty of cattle now or hereafter to come within Queensland."

On the 1st June, 1916, a Proclamation was duly made and published by which, on the recital that, by reason of the continued existence of the war and the expected shortage in the supply of livestock, it had become necessary to take such action as appeared to be most conducive towards safeguarding the interests of the public, the Governor in Council declared that all the cattle now on Mooraberrie Station (the property of the respondents), to the number of seventeen hundred cattle, including six hundred fat bullocks, were to be held for the purposes and at the disposal of His Majesty's Government of the State of Queensland, the title to be vested free from incumbrances in such Government, and that of the owners to be changed into a right to receive payment of the value of the cattle; peaceable possession thereof to be given to the Treasurer or to any person authorised by him to take possession. Every existing order or direction, express or implied, which might interfere with this right of His Majesty was to be of no effect. This Proclamation followed the form of that already referred to relating to sugar and scheduled to the Act, excepting that it was applied to cattle and to the specific cattle of the owners of a particular station. There were other Proclamations of the same kind, also dealing with specific cases.

On the 3rd June, 1916, the appellant Theodore, acting on behalf of the Queensland Government, instructed the appellant Balfour to take possession of the cattle at Mooraberrie, referred to in the Proclamation. Balfour proceeded to the station to do so and entered, but the appellant Duncan refused to muster the cattle as requested by him. About the 27th July Balfour withdrew, the six hundred fat cattle having been handed over to the Government under an agreement between the Government and the respondents, a price which had been settled having been paid for them.

On the 19th December, 1916, one of the writs in the present action was issued against Theodore and Balfour claiming damages for trespass and detinue by reason of Balfour's entry and action, which were alleged to be illegal. On the 18th January, 1917, a second action was commenced against the appellant Beal who was the proper person to be sued, under the Queensland Claims against Government Act of 1866, as representing the Queensland Government, claiming a declaration that the Proclamations of the 12th November, 1915, and the 1st June, 1916, were *ultra vires* and invalid and damages for the consequent trespass and detinue. By virtue of this Act the Crown can be sued in Queensland for tort. An Order was made by the Supreme Court consolidating these actions, and they were tried and disposed of as already stated.

Several questions have been argued before their Lordships. One of these was whether, so long as the Meat Act remained operative, a valid Proclamation for the acquisition of stock within the meaning of that Act could be made by the Queensland Government under the Sugar Act. It was contended for the respondents that the second Proclamation could not render lawful the direction to Balfour to enter in order to take possession of the seventeen hundred cattle on the station. It was said that under the terms of the Meat Act all stock in Queensland (which included, by definition, cattle intended for export, and therefore the six hundred fat bullocks) was expressly put at the disposal of His Majesty's Imperial Government in aid of the supplies for His Armies in the field in the war, and that although the Sugar Act by section 2 was to have effect, notwithstanding anything to the contrary express or implied, in any other Act, its provisions, which were couched only in general terms without express reference to the Crown, could not be construed as trenching on any proprietary or prerogative interest conferred on the Crown by the Meat Act. Upon this argument their Lordships have to observe that even if the well-known maxim of construction can be treated as applying as between two Statutes passed by the same Parliament and relating only to the duties of the Minister of the Crown responsible to that Parliament in matters of administration, it does not assist the respondents. For it cannot be assumed that the Queensland Ministry would have acted in any fashion inconsistent with such duty as they had been entrusted with by the representative of the Sovereign. The Sugar Act

and the Proclamation under it in regard to live stock merely provide for enabling such action to be taken "as appears to be most conducive towards safeguarding of the interests of the public." It is quite consistent with the provisions introduced for this purpose that the Queensland Government should put the stock to be thus acquired at the disposal of the Imperial Government for the use of the Armies. The Crown is one and indivisible throughout the Empire and it acts in self-governing States on the initiative and advice of its own Ministers in these States. The question is one not of property or of prerogative in the sense of the word in which it signifies the power of the Crown apart from statutory authority, but is one of Ministerial administration, and this is confided to the discretion in the present instance of the same set of Ministers under both Acts. With the exercise of that discretion no Court of Law can interfere so long as no provision enacted by the Legislature is infringed. The Ministers are responsible for the exercise of their functions to the Crown and to Parliament only, and cannot be controlled by any outside authority, so long as they do nothing that is illegal. Their Lordships are of opinion, not only that the Proclamation in question was within the statutory powers of the Government, but that it rested within the discretion of Ministers whether and to what extent it should be applied to any particular matter falling within its scope.

It was said, however, that the Proclamation relating to Mooraberrie Station was *ultra vires* for another reason. It was argued on the construction of the Sugar Act that whether or not the preliminary Proclamation, required for the extension to other commodities of that Act, need apply to the whole of the commodity in Queensland, the second Proclamation, relating to its acquisition, must extend equally far to the full extent of the field covered by the preliminary Proclamation, and could be of no effect unless it covered the same field, and that it was therefore unlawful to issue under section 10 a Proclamation relating only to the live stock on a particular station, because this was less than the whole of the cattle then or thereafter to come within the State, to all of which the extension Proclamation extended, and imported discrimination of an unjustifiable kind. But the answer of the Queensland Government was that when a commodity had once been brought by an extension Proclamation within the Act, that Government could at any time determine, according to circumstances, how much, if any, of that commodity was required in the public interest. This appears to be *prima facie* a reasonable construction, for it avoids the result of the other view, under which the State might find itself compelled to take far more than it actually required. Moreover, it is at least in harmony with what is indicated by the language used in the Statute. For the expression "a Proclamation" in the second paragraph of section 10 includes "or Proclamations," by virtue of section 11 of the Queensland "Acts Shortening Act of 1867," if, as here, the contrary is not provided. Such an interpretation,

moreover, harmonises with the other provisions of the Sugar Act. For by section 11 of that Act any Proclamation may direct returns to be made either by Order of a general nature, or by Order directed to any one person or class of persons. Again, not only is the Proclamation scheduled applied, not to all the sugar in the State, but only to such as is the product of the 1915 crop, but, by section 10, the similar Proclamation as to further commodities which is to follow on an extension Proclamation, may contain "such modifications" as may seem necessary, words which, as their Lordships think, indicate that it may be confined to any particular portion that is required of what the extension covers. Their Lordships are in agreement with the view of the Act taken as the conclusion of the powerful reasoning of Isaacs and Powers, JJ. The first Proclamation merely confers a power to acquire a commodity, and this may, by subsequent Proclamations, be exercised from time to time over the whole of the commodity or any part or parts of it. As these learned Judges say, the fullest discretion is given as to the way in which the powers of proclamation are to be exercised, and times and quantities are to be chosen by those having the administration of the Act.

These considerations are sufficient for the decision of the crucial question on the appeals, and they render it unnecessary to enter on another point taken on behalf of the appellants, that even if they are wrong in their contention as to the validity of the Proclamation, section 7, already referred to, of the Sugar Act, which excludes any action or claim for injury sustained by reason of any Proclamation or anything done under the Act, is fatal to these actions.

Their Lordships will humbly advise His Majesty that the judgment of the High Court of Australia should be reversed and that of the Supreme Court of Queensland restored. Of the appeals to the High Court the present respondents must pay the costs. As to the appeals to the Sovereign in Council, their Lordships think that, having regard to the character of the question at issue, and to the discretion which was reserved when special leave to appeal was granted, the case is not one in which any order as to costs should be made.

In the Privy Council.

EDWARD GRANVILLE THEODORE
AND ANOTHER

v.

LAURA DUNCAN AND ANOTHER.

GEORGE LANSLEY BEAL

v.

LAURA DUNCAN AND ANOTHER.

(Consolidated Appeals.)

DELIVERED BY VISCOUNT HALDANE.

Printed by Harrison & Sons, St. Martin's Lane, W.C.

1919.