

PC
GDI. 4. 6

91, 1947

In the Privy Council.

No 57 of 1946.
UNIVERSITY OF LONDON
W.C.1.
-9 OCT 1956
INSTITUTE OF ADVANCED
LEGAL STUDIES

ON APPEAL
FROM THE HIGH COURT OF AUSTRALIA
(NEW SOUTH WALES REGISTRY).

44494

BETWEEN—

THE PRODUCERS' CO-OPERATIVE
DISTRIBUTING SOCIETY LIMITED
Appellant

— AND —

THE COMMISSIONER OF TAXATION
Respondent

CASE FOR RESPONDENT.

RECORD.

1. This is an appeal brought by special leave to His Majesty the King in Council by Order dated 20th day of March 1946 from a Judgment and Order of the High Court of Australia dated the 11th day of December 1944 upholding a Judgment and Order of the Supreme Court of New South Wales dated the 4th day of October 1944 which in turn had upheld a decision dated the 10th day of May 1944 of the Board of Appeal constituted by Part V of the New South Wales Income Tax Management Act, 1941.

p. 37
pp. 28-36
pp. 17-27
p. 9

10 The Appeal arises upon a disallowance by the Commissioner of Taxation (New South Wales) of an objection by The Producers' Co-operative Distributing Society Limited (hereinafter called "the Appellant") to the assessment of Income Tax based upon income derived by it during the year ended the 30th day of September 1941 and depends upon the construction and effect of Section 19 (o) of the said Act in conjunction with the definitions of the expressions "Agricultural Products" and "Rural Industry" in Section 5 of the New South Wales Co-operation Act, 1923-1941, which are called in aid by the said Section 19 (o).

20 2. The Appellant is a rural society registered as such under the Co-operation Community Settlement and Credit Act, 1923, which as amended up to the end of 1941 is known as the Co-operation Act, 1923-1941.

Its members at all material times have been either individuals or Co-operative Societies registered under the said Act.

Dairy farmers being members of the Appellant have at all material times respectively used land for the purpose of grazing cows thereon and have obtained milk from the said cows and having separated the cream from the said milk have sold the said cream to one of the said member societies. The said societies have at all material times been members of the Appellant. At all material times the said member societies have respectively manufactured butter from the said cream, and the Appellant has then sold the said butter for the said societies upon commission, such sales of butter being the principal business of the Appellant. 10

The Appellant does not manufacture or treat any of the said milk, cream or butter.

3. The substance of the said Section 19 (o) so far as material to the present case is that the income of a rural society registered as such under the said Co-operation Act is exempt from income tax 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. 20

The said definitions are contained in Section 5 of the said Co-operation Act which provides that in the interpretation of that Act unless the context or subject-matter otherwise indicates or requires "agricultural products" means products of any rural industry and "rural industry" means the cultivation or use of land for any agricultural, pastoral, dairying, or rural purpose.

4. The question for decision in this Appeal is:—

Whether the Appellant is entitled to the exemption from taxation provided for in Section 19 (o) of the said Income Tax Management Act, 1941, in respect of income derived by it during the year ended the 30th day of September 1941. 30

p. 1

5. By notice of objection dated the 22nd day of June 1942 the Appellant objected to assessments of income tax made by the said Commissioner in respect of income derived by it during the year ended the 30th day of September 1941. The grounds set forth in this notice of objection are as follows:—

The Producers' Co-operative Distributing Society Limited hereby lodges objection against the assessment of Income Tax based on income derived during the year ended the 30th day of September 1941, and issued to it by Notices of Assessment dated the 25th day of May 1942 (No. S430495/11069 and No. S2011/11069) on the following grounds:— 40

(a) That the Society is a Rural Co-operative Society within the meaning of Section 19, sub-section (o) of the Income Tax Management Act, 1941, and is therefore entitled to the total exemption provided for in that sub-section.

(b) That no portion of the income of the Society is taxable under the provisions of the said Act.

(c) That the Society should not have been assessed for the income tax shown in the said assessment, or for any income tax.

6. Having duly considered these grounds of objection the said Commissioner disallowed them and on the 10th day of November 1942 gave notice of such disallowance to the Appellant whereupon in accordance with the provisions of Section 240 of the New South Wales Income Tax (Management) Act, 1941, the Appellant requested
10 the said Commissioner to treat the notice of objection as an appeal and to forward it to the Board of Appeal to be heard and determined. p. 2

7. The original Appeal was heard before the said Board of Appeal consisting of Messrs. R. R. Gibson (Chairman), R. M. Lightband and J. P. Hannan on the 21st day of February 1944 when after hearing evidence and argument the Board on the 10th day of May 1944 dismissed the Appeal and confirmed the assessments. pp. 3-8
p. 9

8. The Appeal against this decision was heard in the Supreme Court of New South Wales on the 6th day of September 1944 before Jordan C.J. and Davidson and Halse Rogers JJ. and the said Court
20 on the 4th day of October 1944 by a majority decision, Jordan C.J. dissenting, dismissed the Appeal of the Appellant and ordered it to pay the taxed costs of the said Commissioner of and incidental to the Appeal. pp. 17-26
p. 26

9. The Appellant appealed to the High Court of Australia and the Appeal was heard on the 20th day of November 1944 before Latham C.J., Rich, Starke, Dixon and Williams JJ., and the said Court on the 11th day of December 1944 by majority, Rich and Starke JJ. dissenting, dismissed the Appeal and ordered the
30 Appellant to pay the taxed costs of the said Commissioner of and incidental to the Appeal. p. 36

10. By their judgments the Chief Justice and Dixon and Williams JJ. held:— pp. 28-35

(a) That the principal business of the Appellant was not the manufacture, treatment or disposal of agricultural products (as defined in the Co-operation Act, 1923-1941 (New South Wales)) of its members.

By their judgments Rich and Starke JJ. were for allowing the Appeal and held:—

40 (b) That the principal business of the Appellant was the disposal of agricultural products (as defined in the Co-operation Act, 1923-1941 (New South Wales)) of its members.

11. The matters at issue are whether such butter is an agricultural product as so defined and if so whether it is an agricultural product of the members of the Appellant.

12. The Respondent respectfully submits that the decision of the High Court should be affirmed for the following

REASONS.

- 10
- (a) DURING the financial year ended the 30th day of September 1941 the principal business of the Appellant was not the manufacture, treatment or disposal of the agricultural products (as defined by the said Co-operation Act) or livestock of its members.
 - (b) THE said butter so sold during the said year was not an agricultural product as so defined because it was not a product obtained by the said member societies or the said farmers by the cultivation or use of land for any agricultural, pastoral, dairying or rural purpose.
 - (c) THE said milk and cream were each an agricultural product as so defined: the said butter was not.
 - (d) THE said cream was sold to the said member societies and the butter made therefrom was until the said sale thereof the property of the said member societies respectively.
 - (e) EVEN if the said butter was an agricultural product as so defined it was not an agricultural product of the said member societies.

20

 - (f) THE Respondent contends that agricultural products as so defined do not include (as it understands the Appellant contends) every product of any industry concerned or connected with a dairying or rural purpose.

C. A. WESTON.

In the Privy Council.

ON APPEAL

FROM THE HIGH COURT OF AUSTRALIA
(NEW SOUTH WALES REGISTRY).

BETWEEN—

**THE PRODUCERS' CO-OPERATIVE
DISTRIBUTING SOCIETY LIMITED**

Appellant

— AND —

THE COMMISSIONER OF TAXATION
Respondent

CASE FOR RESPONDENT.

LIGHT & FULTON,
24 John Street,
Bedford Row, W.C.1,
Solicitors for the Respondent.