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91, 1947

No. 57 of 1946.

In the Privy Council.

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

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BETWEEN  
THE PRODUCERS' CO-OPERATIVE DISTRIBUTING  
SOCIETY LIMITED - - - - - *Appellant*  
AND  
THE COMMISSIONER OF TAXATION - - - *Respondent.*

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RECORD OF PROCEEDINGS.

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LONDON WALL, E.C.2,  
*Solicitors for the Appellant.*

LIGHT & FULTON,  
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*Solicitors for the Respondent.*

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25, RUSSELL SQUARE,  
LONDON,  
W.C.1.

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

15225

BETWEEN  
 THE PRODUCERS' CO-OPERATIVE DISTRIBUTING SOCIETY  
 LIMITED *Appellant*  
 AND  
 THE COMMISSIONER OF TAXATION *Respondent.*

**RECORD OF PROCEEDINGS.**

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

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BETWEEN  
THE PRODUCERS' CO-OPERATIVE DISTRIBUTING  
SOCIETY LIMITED *Appellant*  
AND  
10 THE COMMISSIONER OF TAXATION *Respondent.*

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RECORD OF PROCEEDINGS.

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No. 1.  
NOTICE OF OBJECTION by Appellant.

To The Commissioner of Taxation,  
Department of Taxation,  
Savings Bank Building,  
14 Castlereagh Street,  
Sydney.

GG.KH.

*Before  
Commissioner of  
Taxation.*

No. 1.  
Notice of  
Objection  
by  
Appellant,  
22nd June  
1942.

NOTICE OF OBJECTION AGAINST ASSESSMENTS.

20 (File No. 11069.)

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

(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.

30 (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.

Dated the Twenty-second day of June, 1942.

THE PRODUCERS' CO-OPERATIVE DISTRIBUTING SOCIETY LIMITED,  
By its Public Officer,  
GEORGE GASKIN.

10th November, 1942, objection disallowed by Commissioner.

*Before  
Commissioner of  
Taxation.*

No. 2.

**NOTICE by Respondent of Disallowance of Objection.**

File No. 11069.

No. 2.  
Notice by  
Respondent  
of Dis-  
allowance  
of  
Objection,  
10th  
November  
1942.

Department of Taxation, N.S.W.,  
Savings Bank Building,  
14 Castlereagh Street,  
Sydney.

10th November, 1942.

The Public Officer,  
The Producers' Co-op. Dis. Scty. Ltd.,  
Quay & Valentine Streets,  
Sydney.

10

Dear Sir,

STATE INCOME TAX.

With reference to the Objection lodged against the assessment of income of the Company for the year ended 30th September, 1941 (1941 tax), I desire to inform you that the claims made have been fully considered but cannot be admitted.

The Objection has accordingly been disallowed.

If you are dissatisfied with this decision you may have the objection 20 treated as an appeal and heard by either the Board of Appeal or the Supreme Court of New South Wales. If you desire the objection treated as an appeal, it will be necessary for you to forward to me, within sixty days after service of this communication, a written request that your objection be treated as an appeal, and stating whether you desire it to be forwarded to the Board of Appeal or to the Supreme Court. This is in accordance with the provisions of Section 240 of the Income Tax Management Act, 1941.

It is also desired to point out that a taxpayer who is dissatisfied with any opinion, decision or determination of the Commissioner, and 30 who has objected to an assessment, involving such opinion, decision or determination, has a right of appeal in respect of such opinion, decision, or determination. Where an appeal, however, is against an opinion, decision or determination of the Commissioner, the appeal may only be heard by the Board of Appeal, and this fact should be specially considered when deciding the Tribunal to which you desire the appeal to be referred.

If you elect to have the objection referred to the Board of Appeal or to the Court your written request should be accompanied by a fee of one pound (£1).

Yours faithfully,

40

J. W. HUGHES,  
Commissioner of Taxation.

## No. 3.

**REQUEST by Appellant for reference to Board of Appeal.**

To :

THE COMMISSIONER OF TAXATION.

File Number 11069.

10 THE PRODUCERS' CO-OPERATIVE DISTRIBUTING SOCIETY LIMITED HEREBY REQUESTS you to treat its objection dated the twenty-second day of June One thousand nine hundred and forty-two against the assessment of Income Tax based on income derived during the year ended 30th September, 1941, and issued to it by Notices of Assessment dated 25th May 1942 (No. S430495/11069 and No. S2011/11069) which objection has been disallowed by you as an Appeal and to forward it to the Board of Appeal to be heard and determined.

Dated the Twenty-second day of June, 1943.

THE PRODUCERS' CO-OPERATIVE DISTRIBUTING SOCIETY LIMITED,

By its Public Officer,

G. GASKIN.

*Before  
Commissioner of  
Taxation.*

No. 3.  
Request  
by  
Appellant  
for  
reference  
to Board  
of  
Appeal,  
22nd June  
1943.

## No. 4.

**PROCEEDINGS before Board of Appeal.**

20

INCOME TAX BOARD OF APPEAL.

3rd Floor, Dalton House,  
115 Pitt Street,  
Sydney.

Monday, 21st February, 1944.

Chairman : Mr. R. I. Gibson.

Members : Mr. J. P. Hannan.  
Mr. R. M. Lightband.

*Income  
Tax Board  
of Appeal.*

No. 4.  
Proceedings  
before  
Board of  
Appeal,  
21st  
February  
1944.

APPEAL OF THE PRODUCERS' CO-OPERATIVE DISTRIBUTING COMPANY LIMITED.

30 Mr. MASON, K.C., and Mr. ASPREY appeared for the Appellant Taxpayer.

Mr. CALLAGHAN appeared for the Commissioner of Taxation.

Mr. MASON : This is an appeal in respect of State Income Tax based on the income derived by the Company during the year ended 30th September 1941. A notice of Objection was lodged on the 22nd June. The objection is based on these grounds (read). The relevant section is sub-section (o), the income of Rural Societies (read).

The CHAIRMAN : There is nothing in the general grounds B and C that is intended to go beyond that.

*Income  
Tax Board  
of Appeal.*

No. 4.  
Proceedings  
before  
Board of  
Appeal,  
21st  
February  
1944,  
*continued.*

Mr. MASON : No, it is not intended to go beyond my first ground, sub-sec. (o) of sec. 19. That raises the question as to whether or not the Society is a Rural Society registered as such under the Co-operation Act. If there is any question as to that, I propose to tender the certificate of incorporation.

Mr. CALLAGHAN : Yes, that will be in question.  
(Certificate of Incorporation tendered and marked Exhibit " A.")

The CHAIRMAN : This is a certificate of registration which means of course that the Society is registered under the Act.

Mr. MASON : Yes. You will notice it is registered as a Rural Society 10 under the Act. The other question is, 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. I refer to the Co-operation Act 1923/37 and the definition section, sec. 5 at p. 631 on the green Volume of Statutes. (Definition read.) The material matters for consideration here will be the words " dairying " and " rural purpose." Agricultural products, as far as we are concerned with the matter, mean the products of any industry concerned with dairying or any rural purpose.

I might indicate what the Society does. It is a Rural Society under the Co-operation Act and I tender a copy of the rules of the Society. 20  
(Rules of Society tendered and marked Exhibit " B.")

No. 4 (A).

JAMES McNAUGHT MURDOCH.

*Sworn : Examined : Deposed :*

*Appellants  
Evidence.*

No. 4(A).  
James  
McNaught  
Murdoch,  
21st  
February  
1944,  
Examina-  
tion.

To Mr. MASON : I am the accountant of the Appellant, I have held that position for twenty-five years. I was its accountant in respect of the year ending 30th September 1941. I have had a schedule prepared showing the turnover of the Company for that year, differentiating between the different lines in which the Company dealt.

(Schedule tendered and marked Exhibit " C.")

Taking the butter, part of that is butter sold locally and part of it is 30 butter sold abroad. The Society has facilities for storing the butter. The first figure is local and overseas sales. Sales to the Middle East and for soldiers in New Guinea and so on. We sell to all States but the biggest proportion goes to N.S. Wales. Sydney is the main centre of distribution. We store our butter in the various cold stores—Fresh Food, Dairy Farmers, Waterside and we draw on it as we require it. We have our own selling organisation in London, we are members of the Overseas Farmers' Federation in London, which takes charge of the exported goods to Britain.

In regard to the butter, 50 of the 60 per cent. would be the products 40 of members of the Society. By members I mean shareholders. The butter factories are members of the Society. We might hold a few shares in odd factories but they are very small. We have individual members.

Mr. HANNAN : I understand the members of the Co-operative Butter Factories are farmers?—A. They are, but quite a lot of them are also members of the P.D.S. We have 9,500 shareholders who are mostly individual farmers.



The CHAIRMAN : You said that this butter is produced by members, is that right ?—A. That is so.

Mr. MASON : In regard to bacon, that is 4·20 per cent. of your turnover, what percentage of that would be the product of your members ? —A. I would say three of the 4·2 per cent. Five parts of the turnover in cheese would be from members. Of the honey, one part would be from members. Eggs are not claimed by us now because the poultry farmer shareholders have no option but to send their eggs to the Egg Board and we have to buy from them. In regard to poultry I should say that ·75 of the 1 per cent. would be from members. Three-quarters of the grain would be from members. Eighty per cent. of our fruit and vegetable turnover would be from our own members.

I have been associated with the dairying industry for a long time. The practice to-day is that the man that produces the milk in the great majority of cases separates it and takes it to the butter factory—the butter factories are mostly co-operative in N.S. Wales. There are proprietary butter factories such as Foley Bros. The practice was, in the year ended 30th September 1941, for the Co-operative Butter Factories to produce butter from the cream of their shareholders and to send that butter to our Company for sale. Our Company carries on business on a strictly co-operative basis, the dividend for the last ten years has been 4 per cent.—prior to that it was lower for a couple of years and for a couple of years there was no dividend. I have taken out the figures showing the rebates made to members.

(Above statement of rebates tendered and marked Exhibit “ D ”—Rebates for years 1936 to 1943.)

That 20 per cent. rebate shown on the exhibit would be a rebate of 20 per cent. of the commission charged on goods consigned by the member. The commission charged is  $3\frac{1}{2}$  per cent. and that is a reduction of one-fifth of that. We take the point that the selling commission is a nominal charge when it is made, it is subject to the rebate if there is any profit.

Mr. MASON : What is the distinction between the shareholders and non-shareholders as regards rebate ?—A. Under the Act we are not allowed to pay a cash rebate to non-shareholders. Any rebate due to a non-shareholder must be placed to a share suspense account until he has sufficient there to take up a minimum number of shares allotted by the Society, which is 10. Once the amount in the share suspense account reaches the necessary figure we allot the minimum number of shares of £1 each, fully paid up. Once he is in possession of those shares he is entitled to a rebate on commission. Non-shareholders would not get the dividend rate on the money in the share suspense account.

Mr. LIGHTBAND : Is there any limit to the number of shares that can be held ?—A. According to the rules it is 500 for an individual. From the point of view of a shareholder it is not very attractive because the biggest dividend has been 4 per cent.

Mr. LIGHTBAND : A man with ten shares would get as much benefit in rebates as a man with 500 ?—A. That is so.

*Income  
Tax Board  
of Appeal.*

*Appellant's  
Evidence.*

No. 4(A).  
James  
McNaught  
Murdoch,  
21st  
February  
1944,  
Examina-  
tion,  
*continued.*

*Income  
Tax Board  
of Appeal.*

Mr. GIBSON : With the Co-operative Societies there is a maximum of £10,000.

Mr. MASON : Yes.

*Appellant's  
Evidence.*

Mr. MASON : All the butter factories that consign butter to you are members of the Society ?—A. Yes.

No. 4(A).

James  
McNaught  
Murdoch,  
21st  
February  
1944,  
Examina-  
tion,  
*continued.*

Q. Would it also be correct that all the members of the butter factories who consign butter to you are members of your Society ?—A. No.

Q. What percentage ?—A. That is something I could not say, I only know that quite a lot of the individual farmers who are shareholders in the various butter factories are also shareholders in the P.D.S. The total number of members is 9,500 and I would say that there would be less than one hundred factories among its members. 10

In the early days, say 45 years ago, the dairy farmer made butter on his own premises, there were hardly any, if any, butter factories at all. In those days the butter arrived in Sussex Street in kegs, tubs, boxes, sent down by the individual farmers. It was just about the time of my entry into Sussex Street that the change came about. I joined up with the N.S.W. Creamery Butter Coy. and they started building creameries in the various producing centres. The farmer then separated his own cream and sent it to the creamery, and the creamery turned it into butter and sent it down to the creamery butter company in Sydney to sell. That is my own personal knowledge. The co-operative movement then developed—the N.S.W. Creamery Butter Company was a private concern. 20

The Co-operative people then developed and about five years after the creamery butter company closed up the Co-operative movement went right ahead. Butter factories were built all over the State and eventually the proprietary concerns were pushed aside and now there are very few of them. At that stage the co-operative company not only turned the cream into butter, but also sold the butter. The P.D.S. was formed in 1925 by the amalgamation of two co-operative societies, the Coastal Farmers and Berrima District. 30

The CHAIRMAN : The two ingredient companies were distributors and not producers ?—A. Yes. They existed for about 25 years before the P.D.S. was formed.

Mr. MASON : Since the advent of the P.D.S. the whole of the selling for the co-operative societies throughout the State has been handled by the P.D.S. ?—A. Not the whole of it, some of the co-operative factories still send their butter to other houses, but I do not think we get 100 per cent. of the co-operative butter that is made, but we would get the majority. The Norco Company handle their own selling. Norco is different from us in this sense ; they own their factories, 20 or 30 throughout the State. At one time we used to sell their butter as well but they got that big by acquiring extra factories that they thought it was cheaper to have their own selling organisation. They sell purely their own produce. 40

#### CROSS-EXAMINATION.

*Cross-  
examina-  
tion.*

Mr. CALLAGHAN : Who prepared these documents that are the exhibit ?—A. I did.

Q. Are they exact figures or simply an estimate ?—A. I would not say they are exact, but they are practically exact. The percentages

that I give there in the first figures as to butter exported and so on are exact.

Q. In reply to Mr. Mason you told him that 50 out of that 60 per cent. turnover in butter came from the members, but, if I remember rightly, that was an estimate?—A. Yes, that is an estimate.

Q. Could that estimate be very much out?—A. No.

Q. How do you arrive at your estimate?—A. Just from my general knowledge of the whole business and going over the same figures every year. They do not vary much from one year to another. This year there is a bigger proportion of non-members' butter than there would be in an ordinary year on account of the low production in New South Wales.

Q. To what extent would you say your estimate was accurate? Would it be five per cent. either way, under or over?—A. It would not be more than five per cent.

Q. On the question of butter received from members, what are the qualifications for membership? Can anyone be a member who is not a shareholder?—A. No, they must be a shareholder.

Q. Every shareholder is a member?—A. Yes.

Q. Most of the butter received is received from societies who receive in turn from their members the raw material for manufacture into butter?—A. Yes.

Q. Would your company, to your knowledge, receive any butter manufactured other than by those societies?—A. Yes.

Q. Included in this 50 per cent. from members?—A. No, that is from members.

Q. Those members are all members of society?—A. Co-operative societies.

Mr. LIGHTBAND: Fifty per cent. of the butter that you dispose of is received from non-members?—A. No, only 10 of the 60 per cent.

The CHAIRMAN: This figure credited to non-shareholders gives some idea of the extent to which butter was received from members and non-members; that is, assuming the rebate is 45 per cent. in each case?—A. It does show after that.

Q. Total rebates of £62,000 altogether in respect of butter as against 5,000 odd for butter from non-shareholders?—A. That is right, that £62,000 is the rebate on all consignments, not only butter. It indicates the small amount that is done with non-shareholders.

Q. It rather indicates that your figures for non-shareholders, which we get by implication, are really the maximum?—A. Yes, I was conservative.

Mr. HANNAN: That is assuming the rebate to shareholder consignors is equal to the credit rebate to the non-shareholders?—A. Yes, the same rate.

(Witness retired.)

**No. 4 (B).**

**EDWARD SYDNEY WATKINS:**

*Sworn: Examined: Deposed:*

To Mr. MASON: I am a chartered accountant, practising in Sydney. I am auditor for several co-operative butter factories. As a general

*Income  
Tax Board  
of Appeal.*

*Appellant's  
Evidence.*

No. 4(A).

James  
McNaught  
Murdoch,  
21st  
February  
1944,

Cross-  
examina-  
tion,  
*continued.*

No. 4(B).

Edward  
Sydney  
Watkins,  
21st  
February  
1944,

Examina-  
tion.

*Income  
Tax Board  
of Appeal.*

*Appellant's  
Evidence.*

No. 4(B).  
Edward  
Sydney  
Watkins  
21st  
February  
1944,  
Examina-  
tion,  
*continued.*

rule the dairy farmer separates the milk and brings the cream into the butter factory and at the end of each month the butter factory, having discovered the return it has received from the selling agents and the expenses to which it has been put, strikes what is known as a "pay." It may vary, sometimes a ha'penny or even less, and then at the end of each half-year as a general thing, when the figures have been taken out the factory probably has a surplus and they declare a rebate of so much per pound on the butter manufactured during the period and that is paid to the supplier. That means that each month the supplier gets a pay cheque which I think is regarded as a cheque on account. Of course, if the factory manager has overstepped himself and paid out too much during the half-year, he cannot recover from the supplier. 10

The CHAIRMAN: But it is a payment for what he supplies?—  
A. Yes.

Mr. HANNAN: It is a final payment for what he supplies, subject to any rebate?—A. I would say so.

Mr. LIGHTBAND: The supplier has no further interest in that butter?—A. He has an interest—definitely.

Mr. HANNAN: He might get two rebates?—A. Yes.

Mr. LIGHTBAND: When the accounts are squared up and he gets rebate on butter sold, he gets no further rebate?—A. Unless in the following half-year the butter supplied during the first half-year might be taken into account, but it is not usual to run past a full year. 20

The CHAIRMAN: The butter is the property of the Co-operative Society?—A. I suppose it is at the disposal of the directors of the butter factories.

Mr. LIGHTBAND: The supplier of the cream has no further interest; that is to say, he has no title at all in that butter?—A. I do not think so. The cream is all mixed up and it loses its identity.

Mr. CALLAGHAN: You are also the auditor of the Producers, Co-operative Distributing Society?—A. I am. 30

Q. Do you know that the Society sells butter overseas?—A. I do.

Q. A large amount?—A. During the year in question? No, I don't.

Q. It would not export butter to Great Britain?—A. It does at times.

Q. To a reasonably large amount?—A. Yes.

Q. During that relevant year?—A. I have not looked at the figures.

Q. How is payment made for butter exported overseas? Is it made promptly on sale or would there be some considerable time before payment is made?—A. I think it is made promptly on sale. The Account Sales go to the various factories on whose account the butter is consigned. 40

Q. From the time the butter is received by your company for distributing what would you say would be the minimum period that would elapse before the payment on returns from overseas?—A. I do not think I could answer that question.

(Witness retired.)

Case for the Appellant closed.

No Evidence was called by the Commissioners.

No. 5.

## DECISION of Board of Appeal.

STATE OF NEW SOUTH WALES.

Appeal No. 4/1943.

INCOME TAX BOARD OF APPEAL.

Appeal by

THE PRODUCERS' CO-OPERATIVE DISTRIBUTING SOCIETY  
LIMITED

under

10 The Income Tax Management Act 1941.

Twenty-first day of February, 1944, at Sydney.

Objections were lodged by the Producers' Co-operative Distributing Society Limited against assessments, of which notices were issued on 25th May, 1941, namely :

(A) Assessment of income tax ; and

(B) Assessment of further tax under Division 9 of Part III of the Income Tax Management Act 1941

in respect of income derived by the company during the period of twelve months ended 30th September, 1941.

20 2. The objections were disallowed by the Commissioner of Taxation.

3. The company, being dissatisfied with the decisions of the Commissioner, requested in writing that the objections be treated as appeals and forwarded to the Board of Appeal.

4. At the hearing Mr. H. H. Mason K.C. with him Mr. K. W. Asprey of Counsel (instructed by Messrs. Duncan Barron & Co.) appeared for the company and Mr. W. J. Callaghan represented the Commissioner of Taxation.

5. For the reasons herewith the Board decides not to uphold the company's claims.

30 6. Assessments confirmed.

Dated at Sydney this Tenth day of May, 1944.

R. R. GIBSON Chairman.

R. M. LIGHTBAND Member.

J. P. HANNAN Member.

Income Tax Board of Appeal,  
Commonwealth Bank Chambers,  
108-120 Pitt Street, Sydney.

## REASONS of Board of Appeal.

(A) Joint reasons of—  
Mr. R. R. Gibson, Chairman, and  
Mr. R. M. Lightband, member.

STATE OF NEW SOUTH WALES.

Appeal No. 4/1943.

INCOME TAX BOARD OF APPEAL.

Appeals by

THE PRODUCERS' CO-OPERATIVE DISTRIBUTING SOCIETY 10  
LIMITED.

The Income Tax Management Act 1941.

Twenty-first day of February, 1944, at Sydney.

## REASONS.

Section 19 (o) of the Income Tax Management Act 1941 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, as amended by subsequent Acts, if the principal business of that rural society is the manufacture, 20  
treatment or disposal of the agricultural products (as defined in that Act) or livestock of its members."

The Producers' Co-operative Distributing Society Ltd. claims that its income for the year ended 30th September 1941 is exempt under these provisions. The claim is made in a combined objection against an assessment of income tax, and an assessment of further tax under Division 9 of Part III of the Act, in respect of its income for that year.

2. The statutory authority acknowledged by the Society's rules is the Co-operation, Community Settlement and Credit Act, 1923, and Rule 2 30  
declares that the Society shall be a Rural Society within the meaning of the Act. The Society's certificate of incorporation is in the following terms :—

## " Certificate of Incorporation

Co-operation, Community Settlement and Credit Act 1923.

I certify that the Producers' Co-operative Distributing Society Limited is this day incorporated as a Rural Society under the above Act.

The incorporation of the Society does not imply any approval by me of the policy of its rules or any guarantee of its good management or financial stability. 40

(Signed) T. WAITES (L.S.)

Registrar of Co-operative Societies,  
9th May, 1929."

The 1923 Act, as amended up to the end of 1941, is the Co-operation Act, 1923–1941—the short title having been changed by the Co-operation

(Amendment) Act, 1928. By Section 7 of the Act, a rural society may be formed for all or any of 19 specified objects and these objects have been practically adopted verbatim by the Society (Rule 4). The Society's certificate of incorporation is in the form and terms required by Section 45 of the Act and by sub-section (2) of that section "the certificate shall be conclusive evidence that all the requirements of this Act in respect of registration have been complied with."

3. This is sufficient to show that the first condition in the quoted provisions of Section 19 (o) is satisfied. Mr. Callaghan, while admitting that the Society was registered as a rural society under the Co-operation Act, contended that it was not "a rural society registered as such" under the Act. We can find no reasonable grounds for that contention.

4. As to the remaining condition, the Society's activities are admittedly such that the sole question is whether its principal business is the disposal of the agricultural products (as defined in the Co-operation Act) of its members. By Section 5 of that Act—

" 'Agricultural products' means the products of any rural industry "; and

" 'Rural industry' means the cultivation or use of land for any agricultural, pastoral, dairying or rural purpose."

5. The Society'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 Society also sells considerable quantities of bacon, cheese, honey, poultry, grain, fruit, vegetables and other lines. 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 Society's members. Other products sold were also mainly the products of the members but it is evident from the figures given that the success or failure of the Society's claim for exemption depends upon whether or not it is proper to hold that the selling of the members' butter was a disposal of the "agricultural products" (as defined above) of the members. It was, of course, a *disposal* of their *products*. The remaining facts will be stated mainly from the evidence of Mr. Murdoch who has been the society's accountant for 25 years and who for many years previously was associated with butter factories.

6. About 45 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 city markets for sale. This position was altered by a rapid growth in the number of butter factories in the producing centres. These were proprietary concerns which bought the cream from the farmers and produced and sold the butter for their own profit. Then a movement began for the establishment of co-operative butter factories, and this eventually became so widespread that very few proprietary factories now remain. The co-operative factories at first attended to the marketing of their own butter, but after a while 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 Society, which now has the handling of the greater part of the butter produced by Co-operative Societies in New South Wales.

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Tax Board  
of Appeal.*

No. 6.

(A) Joint  
Reasons of  
Mr. R. R.  
Gibson  
(Chairman)  
and  
Mr. R. M.  
Lightband  
(a member),  
10th May  
1944,  
*continued.*

*Income  
Tax Board  
of Appeal.*

No. 6.

(A) Joint  
Reasons of  
Mr. R. R.  
Gibson  
(Chairman)  
and  
Mr. R. M.  
Lightband  
(a member),  
10th May  
1944,  
*continued.*

7. The membership of the Society is limited by its rules (Rule 7) 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. The Society has about 9,500 members and of these probably fewer than 100 are co-operative societies engaged in the production of butter. These societies are the members on whose behalf the Society sells butter—the balance of the butter which it sells, evidently coming from proprietary factories. Assumably much of the other produce sold comes from the many individual members.

10

8. For the last ten years the Society has paid an annual dividend of 4 per cent. In addition it allows a rebate every year of a certain amount per cent. of its commission on sales. The rebate is allowed to the producers whose goods are sold, but in the case of any non-shareholder it cannot be paid in cash but must be placed to a share suspense account until the credit there is sufficient to enable the non-shareholder to take up a minimum of 10 shares.

9. It was said by Mr. Mason that the incomes of those of the society's members which are co-operative butter factory societies are exempt under Section 19 (o) and this would appear to be so if they are registered as rural societies under the Co-operation Act because there is not much room for doubt that their businesses (and their principal businesses) are the manufacture of the "agricultural products" of their members. Such members are, of course, the dairy farmers who supply their societies with cream. For the purposes of paying for the cream these societies at the end of each month usually strike what is known as a "pay", calculated conservatively on the basis of their receipts from the selling agents (i.e., the Appellant Society) and their expenses, and divide it among their suppliers according to quantities supplied, and then at the end of each half-year declare out of any surplus then disclosed a rebate of so much per pound of butter manufactured during the period and pay it to the suppliers proportionately to their respective supplies.

20

30

10. The general tenor of Mr. Mason's argument for the society seems to be based on the view that "agricultural products" means (so far as the definition is relevant) "the products of any industry connected with dairying or any rural purposes." (Those were the terms in which he sought to paraphrase the definition.) To show that the butter, produced by the society's members (the butter factory societies) was within this meaning, he referred to dictionaries which define "dairying" to mean "The business of conducting a dairy" and "Dairy" to include "the place where either milk, butter or cheese is produced."

40

11. The definitions in paragraph 4 show that the words to be interpreted are "the products of the use or cultivation of land for any dairying purpose." This was not overlooked by Mr. Mason but it is quite inconclusive to contend, as he did in one part of his submission, that butter fits the quoted description because it comes from the use of land in the sense that it is traceable through a course of successive processes from a product directly derived by a farmer from the use of his land. Of the innumerable products which are so traceable it is sufficient to mention flour, bran, pollard, bread edible pastes (macaroni, etc.) and condensed and powdered milk.

50



The first three mentioned products are the most apt illustrations for they are closer to the actual primary product than is butter; they are immediately and entirely the products of the mere processing of the wheat—the product actually obtained from the cultivation of land. Yet no reasonable person would say that in selling these products the flour miller is disposing of the products of the use or cultivation of land for agricultural purposes.

12. A more attractive argument lies in the fact that once upon a time the dairy farmers themselves were the producers of butter for market. No doubt this has influenced the meaning of the words “dairy” and “dairying” and so much so that it could hardly be questioned that butter would have been an “*agricultural product*” if the definition had included “the products of the dairying industry.” On the other hand it is clear from the case of *Commissioners of Inland Revenue v. The Cavan Central Co-operative Agricultural and Dairy Society Ltd.* (12 T.C. 1) that the society’s present claim could not have succeeded if “agricultural products” had been defined to mean “the products of husbandry.” The following dicta of Madden J. in that case are very illuminating:—

20 “What, then, is the meaning in the English language of the  
 “word ‘husbandry’? According to the New English Dictionary  
 “it signifies the business or occupation of a ‘husbandman’ or  
 “‘farmer’ and ‘husbandman’ is defined as ‘a man who tills or  
 “‘cultivates the soil, a farmer.’ The word in the time acquired  
 “a more extended signification than the mere cultivation of the  
 “soil. To the definition of ‘husbandry’ which I have quoted  
 “it is added, ‘including also the rearing of live stock or poultry,  
 “‘and sometimes extended to that of bees, silkworms, etc.’ The  
 “word would certainly include the conversion by the husbandman  
 “of milk produced on his farm into butter or cheese. In a once  
 30 “famous book, published in the year 1557, by T. Tusser, entitled  
 “‘The Five Hundred Points of Husbandry’ which was many  
 “times reprinted during three centuries, these and other industries,  
 “such as malting and brewing and candlemaking, when practised  
 “by the farmer, are included in the five hundred points. The book  
 “is a quaint rhyming production, but I know of none of more  
 “value in ascertaining the meaning of the word ‘Husbandry’  
 “in its ordinary sense.”

40 “When this book was written and the English language  
 “was in course of formation, many industries allied with the  
 “cultivation of the soil were carried on by the husbandman with  
 “the aid of his household. The wool of his sheep was converted  
 “into yarn by the spinsters of the yarns and woven into good  
 “homespun by the handloom in the farmhouse. His home brewed  
 “ale was a matter of pride, and his bread was baked from corn  
 “ground in the handmill or quern, which is an object of interest  
 “though its occupation is gone. All these and other industries,  
 “included in the comprehensive ‘et cetera’ of the New English  
 “Dictionary, were branches of husbandry as long as they were  
 “carried on by the husbandman. In course of time, under different  
 50 “social and economic conditions, many of these industries were  
 “divorced from the occupation of the soil, and when carried on

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“independently by individuals other than farmers in partner-  
ship or joint stock companies, the word ‘husbandry’ was no  
longer applicable.”

13. The decision in the case was that the Respondent Society (which was comparable in essential respect with the present Appellant), in manufacturing butter for sale from milk supplied by its farmer members and others, was not carrying on the business of husbandry. The case emphasises the distinction between the products of the cultivation of the soil, which were the products of “husbandry” in the original sense of that term, and the products manufactured therefrom, which in the course of time became recognised as the products of husbandry provided they were produced by the husbandman or farmer. 10

14. The words “manufacture, treatment or disposal of the agricultural products” (in Section 19 (o)) definitely point to a legislative differentiation between agricultural products and products manufactured therefrom. In that context the manufacture of a product means, of course, the processes of making therefrom a new product and if those processes are applied to a product of the use or cultivation of land the new product which thereby results is, in our opinion, necessarily not a product of the use or cultivation of land but solely a product of those manufacturing processes. 20

15. The words quoted from Section 19 (o) have their genesis in the terms of the following objects for which a rural society may be formed and which were adopted by the Appellant Society :—

“To dispose of the agricultural products or live stock products of its members or other persons.

“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.”

(Section 8 (1) (a) and (b) of the Co-operation Act and Rule 7 (b) and (c) of the Society.) 30

The words underlined strongly emphasise the distinction between agricultural products and products manufactured therefrom.

16. Against the possible suggestion that the Society’s principal business is within the first of the objects quoted in the preceding paragraph, we offer the opinion that the carrying on of that business is authorised by those of the Society’s rules which include among its objects “the business of a produce or commission agency” (Rule 4 (a)) and the selling of “products on behalf of its members or other persons” (Rule 4 (p)).

17. For these reasons the income of the Society for the year ended 30th September, 1941, is not, in our opinion, exempt from income tax under the provisions of Section 19 (o) of the Income Tax Management Act, 1941. 40

Dated at Sydney this Tenth day of May, 1944.

R. R. GIBSON Chairman.

R. M. LIGHTBAND Member.

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**(B) Reasons of Mr. J. P. Hannan, a member.**

I agree with the facts and conclusions stated by my colleagues and have nothing to add as regards the registration of the taxpayer Society. It is clearly "a rural society registered as such under the Co-operation Act 1923-1941."

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2. The only other question is whether the Society's principal business "is the manufacture, treatment or disposal of the agricultural products (as defined in that Act) or livestock of its members." The activities of the Society consist wholly in the *disposal of products* and the products are almost entirely those of its members. There is no disposal of livestock, and there is no manufacture or treatment.

3. The principal product handled by the Society is butter, and the claim can succeed only if butter is an agricultural product within the meaning of the Act.

4. Mr. Mason sought to show that the definition in the Co-operation Act could be read to include "the product of any industry connected with dairying or any rural purpose." That view, however, attaches little significance to the words "cultivation or use of land." In my opinion, agricultural products—within the meaning of Section 19 (o)—are products arising directly out of the cultivation or use of land for any of the purposes mentioned in the definition.

5. The cream received by the co-operative companies (members of the taxpayer society) is, of course, a product arising from the cultivation or use of land. It is because they *manufacture* cream into butter that the co-operative companies are considered to be entitled to the exemption under Section 19 (o). What they manufacture is a new product and it arises from the operations to which the cream is subjected—not from the cultivation or use of land.

6. There is an obvious distinction between a dairying process (by which butter or cheese is produced) and the use of land for a dairying purpose. Because of the importance which I think must be given to the words "cultivation or use of land," the distinction is a vital one in the present case.

Dated at Sydney this Tenth day of May, 1944.

J. P. HANNAN,  
Member Income Tax Board of Appeal.

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New South  
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Notice of  
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to Appeal,  
26th June  
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No. 7.

**NOTICE OF INTENTION TO APPEAL.**

IN THE SUPREME COURT OF NEW SOUTH WALES.

Term No. 108 of 1944.

IN THE MATTER of the Income Tax (Management) Act 1941

AND IN THE MATTER of an Appeal by THE PRODUCERS' Co-OPERATIVE DISTRIBUTING SOCIETY LIMITED to the Income Tax Board of Appeal which under and by virtue of the provisions of Section 236 of the Income Tax (Management) Act 1941 (as amended) was exercising the powers immunities 10 privileges conferred and imposed upon the "Board of Appeal" by Part V of the said Act

Between THE PRODUCERS' CO OPERATIVE  
DISTRIBUTING SOCIETY LIMITED *Appellant*

and

THE COMMISSIONER OF TAXATION *Respondent.*

**NOTICE OF INTENTION TO APPEAL.**

TAKE NOTICE that the Appellant herein intends to appeal to the Supreme Court of New South Wales from the whole of the decision and order of the above-mentioned Income Tax Board of Appeal given and made 20 on the tenth day of May One thousand nine hundred and forty-four in which appeal the now Appellant was the appellant and the now Respondent was the respondent which decided not to uphold the objections lodged by the Appellant against assessments of income tax and of further tax under Division 9 of Part III of the Income Tax (Management) Act 1941 in respect of income derived by the Appellant during the period of twelve months ended the thirtieth day of September One thousand nine hundred and forty-one notices of which assessments were issued to the Appellant on the twenty-fifth day of May One thousand nine hundred and forty-one and which confirmed the said assessments upon the following and other 30 grounds namely :—

- (1) THAT the said Income Tax Board of Appeal was in error in deciding not to uphold the said objections and in confirming the said assessments.
- (2) THAT the said Income Tax Board of Appeal should have decided to uphold the said objections.
- (3) THAT the said Income Tax Board of Appeal should have held that the said Income of the Appellant was exempt from income tax pursuant to the provisions of Section 16 (*n*) of the Income Tax (Management) Act 1936 as amended or (in the alternative) 40 pursuant to the provisions of Section 19 (*o*) of the Income Tax (Management) Act 1941.

(4) THAT the said Income Tax Board of Appeal should have held that the principal business of the Appellant was the manufacture treatment or disposal of the agricultural products (as defined in the Co-operation Act 1923-1941) or livestock of its members.

*In the  
Supreme  
Court of  
New South  
Wales.*

DATED the 26th day of June A.D. 1944.

DUNCAN BARRON,

Attorney for the Appellant.

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26th June  
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*continued.*

10 81 Elizabeth Street,  
Sydney.

NOTE.—This Notice of Intention to Appeal is filed by Messieurs Duncan Barron & Co., of No. 81 Elizabeth Street Sydney the Solicitors for The Producers' Co-operative Distributing Society Limited whose registered office is situate at Quay and Valentine Streets Sydney the above-named Appellant.

No. 8.

REASONS for Judgment.

(A) The Chief Justice.

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ment of  
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4th  
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IN THE SUPREME COURT OF NEW SOUTH WALES.

20

Coram : JORDAN, C.J.  
DAVIDSON, J.  
HALSE ROGERS, J.

4th October, 1944.

THE PRODUCERS' CO-OPERATIVE DISTRIBUTING  
SOCIETY LIMITED

V.

THE COMMISSIONER OF TAXATION.

JUDGMENT.

JORDAN, C.J. : This is an appeal, pursuant to Section 255 of the  
30 Income Tax Management Act 1941, against a decision of the Board of  
Review dismissing an appeal by The Producers' Co-operative Distributing  
Society Limited against its assessment for income tax based on income  
derived by it during the year ended 30th September, 1941.

The Society objected to the assessment on the ground that it claimed  
to be a rural co-operative society within the meaning of Section 19 (o)  
of the Income Tax Management Act 1941, and that the whole of its income  
was exempt from tax. Section 19 (o) provides that the following income  
shall be exempt from income tax—the income of a co-operative building  
society, and the income of a rural society registered as such under the  
40 Co-operation Act 1923-1941 as amended by subsequent Acts, if the principal

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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.

Since the right to exemption depends upon the provisions of the Co-operation Act, it is necessary in the first instance to consider the provisions of that statute.

The Appellant Society is a body of a class some types of which, being regarded with general favour, are encouraged and described as co-operative, other types of which, being regarded with disfavour, are discouraged and described as monopolies, trusts or combines, and other types of which, 10  
such as joint stock companies and trade unions, are regarded from a relatively neutral standpoint. The Appellant Society is one of the first type. It was for the benefit of such societies that the Co-operation Act 1923-1941 was passed. This statute provides that a society may be formed as a society, or association or union of societies, of any one of ten different kinds, of which the first is a rural society and the second a trading society (Section 6). Such a society (except a rural credit society) must be formed with limited liability, and, in general, any person is qualified to be a member (Section 38). Its name must include the word co-operative (Section 72). A society may be formed by any seven or more qualified 20  
persons. Certain preliminaries are necessary, and an application for registration, accompanied by the proposed rules (which must contain certain provisions—Section 82) signed by at least seven applicants for membership, must be made to the Registrar, who, if satisfied that the society has complied with the provisions of the Act and regulations, and that the proposed rules are not contrary to the Act or Regulations, must register the society and its rules, and issue a certificate that it is incorporated under the Act (Section 39).

If the Registrar refuses to register a society, it may appeal to a Judge of the Supreme Court, and the Registrar must obey his order (Section 122). 30  
A certificate of incorporation is conclusive evidence that all the requirements of the Act in respect of registration have been complied with (Section 45). The registered society is a body corporate with perpetual succession and a common seal (Section 60), and no one except a registered society may trade under the word "Co-operative" (Section 61). The capital of the society must be divided into shares of fixed amount (Section 47 (2)), and (in general) no member may hold more than one-fifth of the shares (Section 47 (10)). The maximum dividend paid must not exceed 8 per cent. per annum on the amount paid up (Section 47 (14)).

In addition to the benefits arising from incorporation with limited 40  
liability, every registered society was for a time entitled to certain limited exemptions from State Income Tax (Section 63). Co-operative building societies, and also co-operative rural societies, subject to certain conditions, now enjoy the benefit of complete exemption from State income tax by virtue of Section 19 (o) of the Income Tax Management Act 1941. The question for our determination is whether, upon facts which do not appear to be in dispute, the Appellant Society is a rural society registered as such under the Co-operation Act 1923-1941, and, if so, whether its principal business is the manufacture, treatment or disposal of the agricultural products (as defined in that Act) or livestock of its members. 50

Section 7 (1) provides that a rural society may be formed for all or any of 19 objects, including (a) to dispose of the agricultural products or

livestock of its members or other persons, (b) to manufacture or treat the agricultural or livestock 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 livestock products and farming requisites, and (p) to purchase or otherwise acquire goods and sell products on behalf of its members or other persons.

The certificate of incorporation of the Appellant Society is dated 9th May 1929, and certifies that it is that day incorporated as a rural society under the Act. In the rules of the Society, 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 Society 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 specified in Section 7 (1), including those in clauses (a) (b) (g) and (p). If the provisions of Section 7 (1) (a), which are identical with those of the Society's Rule 4 (b), be read with the interpretation provisions of Section 5, it enacts that a rural 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. Section 7 (1) (b), which is identical with the Society's Rule 4 (c), if similarly read, provides that a rural society may be formed to manufacture or treat the agricultural or livestock products of its members or other persons and to dispose of the products so manufactured or partly manufactured, such agricultural products being the products of any use of land for (inter alia) any dairying purpose. By Section 7 (2) "to dispose of" includes 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 contracts.

The first question is, what is meant by "agricultural products or livestock of its members" in Section 7 (1) (a) and (b)? "Of" may, according to its context, mean "manufactured or produced by" or "belonging to": *Powell v. Horton* (2 Bing. n.c. 668). To read it in the former sense would, in relation to livestock, exclude from the benefits of the Act graziers who did not breed their livestock but bought and fattened livestock for the purpose of marketing it. I think that it should here be read in the larger sense of "belonging to." The next question is, what service is a rural society authorised to undertake for its members or other persons by Section 7 (1) (a) and (b)?

I think that they are, on behalf of its members and other persons, to dispose of agricultural products or livestock belonging to them, and manufacture or treat their agricultural products and on their behalf dispose of their products when so manufactured or partly manufactured. It is to be observed that Section 7 (1) (p) also authorises a rural society to undertake to sell products on behalf of its members or other persons.

There is an overlapping of the objects permitted to rural societies by Section 7 and to trading societies by Section 9, in that by Section 7 (1) (g) a rural society may purchase or otherwise acquire and manufacture or treat and dispose of agricultural or livestock products and farming

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requisites, and by Section 9 (4) a trading society may purchase from any of its members or any other person agricultural products or livestock and sell agricultural products or livestock so purchased. But by Section 9 (3) a trading society is prohibited from disposing of the agricultural products or livestock of any of its members in the manner provided by the Act for the disposal by a rural society of the agricultural products or livestock of the members of a rural society, no doubt because it was intended that the performance of agency work of this kind on behalf of members provided for by Section 7 (1) (a) (b) and (p) should be reserved for rural societies.

In the present case, according to the findings of the Board of Appeal, 10 the dairying industry in New South Wales has developed in the following manner during the last half century. At first, dairy farmers in the country districts made their butter themselves and despatched it to Sydney for sale in the city markets. Then, privately owned butter factories came to be set up in the dairying districts, and the practice grew up of the dairy farmers selling their cream to the factories, which made it into butter and sold it for their own profit. Next, the dairy farmers established co-operative butter factories which bought their cream but allowed their members to share in the profits which they made from the sale of the butter made from the cream so purchased ; and these co-operative butter factories 20 almost completely ousted the privately owned factories.

For a time, each of the co-operative butter factories marketed its own butter ; but in 1925, to relieve them of this, and obtain the advantage of still further co-operation, the present society was formed to sell their butter on their behalf. The membership of the society is limited by Rule 7 to farmers and others directly interested in the production of dairy farm and other produce and to duly incorporated co-operative societies, companies or associations of the same engaged in or connected with the manufacture or handling of such produce.

The Society has about 9,500 members, of whom probably fewer than 30 one hundred are co-operative societies engaged in the production of butter. Its business consists of the disposal, by way of sale on commission, of the products of its members and others, but principally of its members. During the year of income, its total turnover was £6,787,652, of which 60·03 per cent. or £4,113,606 was derived from the sale of butter. The butter which the Society sells on behalf of its members is the butter supplied by members which are co-operative butter factories. The rest of the butter which it sells is sold on behalf of proprietary butter factories which are not members. Only 10 per cent. out of the 60 per cent. of the Society's butter sales represents sales of butter supplied by non-members. 40

Further, out of the total rebates allowed to consignors in respect of all agricultural products handled by the Society during the year, including bacon, cheese, eggs, grain, fruit or vegetables, etc., amounting to £21,161, only £2,416 was credited to non-shareholders, so that it is evident that the principal business of the company was in the goods of its members.

The position, therefore, is that dairy farmers obtain milk from their cows, separate the cream, and sell it to the various co-operative butter factories. The co-operative butter factories make butter out of the cream so purchased, and employ the Appellant Society, which is registered as a rural society, and of which they are members, to sell their butter on their 50 behalf. The question is, is the Appellant Society, in so doing, disposing



of the agricultural products of its members (in the sense of the property of its members), being the products of any use of land for any dairying purpose? In my opinion, it is.

No doubt, the co-operative butter factories did not churn the cream which they had purchased into butter in the paddocks in which the cows had grazed, or in the bails in which they had been milked, or in the sheds in which the separators were housed; but I do not think that this matters. If the dairy farmers, when they took their cream to the factories, instead of selling it had employed the factories to churn it into butter on their behalf, I cannot see that, because the land on which the factories stood did not belong to the farmers and had not been used for the preliminary processes which had carried the product up to the cream stage, it would follow that the butter could no longer be regarded as the product of any use of land for any dairying purpose. Nor does it make any difference that it is not the farmer himself but a purchaser of cream from the farmer who makes the butter, and that it is not on the farmer's land that he makes it. It is still a product of the use of land for a dairying purpose.

It has been urged, on the one hand, that the march of progress has completely dissociated such comestibles as butter and cheese from dairying, and, on the other hand, we have been referred to dictionaries which define dairying as the business of a dairy, that is, of that department of farming which is concerned with the production of milk, butter and cheese. The time may come when a man who spreads butter on his bread or eats bread and cheese no longer regards himself as consuming a dairy product, but it has not arrived yet; and I feel no need to refer to dictionaries to hold that butter is necessarily the product of a dairying purpose, and of the use of land for that purpose, within the meaning of Section 7; cf. the definition section of the Dairy Industry Act 1915-1940.

This being so, it follows, in my opinion, that the principal business of the Society is the disposal of the agricultural products (as defined in the Co-operation Act 1923-1941) of its members.

Counsel for the Respondent has sought to harrow our feelings by reference to the dire effect which such a finding will have upon the public revenue. The trading community, he said, will hasten to form trusts and combines which will register themselves as co-operative rural societies, thereby gaining complete immunity from income tax, and the Government of the State will be faced with the melancholy spectacle of an empty treasury. I see no reason for apprehending the consequences suggested by these forebodings. The Co-operation Act is a liberal Act, designed to encourage co-operation.

The fact that the Legislature has adopted part of it, by reference, for the purpose of allowing to certain co-operative societies exemption from income tax, does not justify the construction of that part in an illiberal, grudging, cheeseparing spirit. The taxation authority must take it as it finds it; and, if the Co-operation Act is administered in a proper manner, I am unable to see that the public revenue will be exposed to any depletions not contemplated and intended by the Legislature when it enacted Section 19 (o).

For the reasons which I have stated, I am of opinion that the appeal should be upheld with costs.

*In the  
Supreme  
Court of  
New South  
Wales.*

No. 8.  
(A) Judgment of  
The Chief  
Justice,  
4th  
October  
1944,  
*continued.*

(B) Mr. Justice Davidson.

*In the  
Supreme  
Court of  
New South  
Wales.*

No. 8.  
(B) Judgment of  
Mr. Justice  
Davidson,  
4th  
October  
1944.

DAVIDSON, J. : The Appellant is registered under the Co-operation Act 1923-1941 as a Rural Society and in that capacity claims to be entitled to an exemption from income tax which is granted by Section 19 (o) of the Income Tax Management Act 1941, if the principal business of such a society is the manufacture treatment or disposal of the agricultural products (as defined in the Co-operation Act), or livestock, of its members. The claim was rejected by the Commissioner and the Income Tax Board of Appeal and hence there is an appeal to this Court.

The question for determination depends upon the somewhat refined point whether butter is an agricultural product of the Appellant's members. "Agricultural products" are defined by Section 5 of the Co-operation Act as being the products of any rural industry and a "rural industry" as "the cultivation or use of land for any agricultural, pastoral, dairying or rural purpose." If the butter falls within such a category it is undoubted that the principal business of the Appellant is the disposal of the prescribed products. That commodity comprised 60·03 per cent. in value of the total turnover of £6,787,266 in the relevant year of income and that figure represents a usual proportion. Only 10 per cent. of that 60 per cent. is supplied by persons who are not members of the Society. 10

Under Sections 38 and 46 of the Co-operation Act a person is not qualified to become a member of a Rural Society in the absence of its own rules to the contrary, unless he is engaged in a rural industry in the State either for his own benefit or as a share farmer, employee or otherwise, and either exclusively or in conjunction with some other person or some other business, profession or occupation and membership does not cease merely because a person ceases to become so engaged in a rural industry. 20

By Section 7 (1) also a rural society may be formed with various objects including those of (A) disposing of the products or livestock of its members or other persons, and of disposing of the products so manufactured or partly manufactured; and (G) of purchasing or otherwise acquiring or manufacturing or treating and disposing of agricultural or livestock products and farming requisites. This section is important because of its relationship to butter factories which constitute an outstanding feature in the membership of rural societies such as the Appellant, although they are themselves registered in a similar capacity. 30

The history of butter as an agricultural product is that about 45 years ago it was mostly made and sold by the dairy farmers as part of their usual activities, but gradually proprietary factories were established which undertook this work. A movement then began which ultimately resulted in most of these ventures being superseded by co-operative factories which purchased the dairy farmers' cream and disposed of the butter as the factories' own product, but so that the producers ultimately got the full benefit of the transaction and thus eliminated the profits of the middleman. 40

Then in turn as the marketing of the butter became more difficult, particularly in relation to the overseas trade, and a large organisation for the purpose became essential, the co-operative selling agency was

introduced, but unfortunately in the elaborate co-operative and income tax legislation which had been evolved in the meantime, no specific provision had been made for this last step.

The membership of the Appellant Society consists of 9,500 shareholders who are mostly individual farmers' less than 100 butter factories are included which are almost, if not entirely, registered co-operative societies, but these entities furnish practically all the butter for the Appellant's business.

10 Under the Appellant's rules producers are limited to a holding of a minimum of 10 and a maximum of 500 shares, and dairy companies or societies to a minimum of 50 and a maximum of 10,000 shares. It is under this provision that the butter factories are admitted. The procedure there is that, whilst the Appellant is permitted by Rule 118 to pay dividends not exceeding 8 per cent. of the amount paid up on its shares, it usually only pays a dividend of 4 per cent.

20 The commission charge for selling is  $3\frac{1}{2}$  per cent., but out of extra profits additional sums are paid as a rebate in respect of this charge to the extent sometimes of 20 per cent. of its total. Persons who are not members may not receive this benefit in cash but their proportion is reserved for them until it is adequate to enable them to purchase shares and become members.

30 The co-operative butter factories so arrange their procedure that from the money received from the selling agency they pay a monthly cheque to the farmers for their cream but subsequently, upon receiving the rebates on the selling charge, add additional payments by way of bonus. It is almost impossible to say, however, that the factories' societies supply their butter to the Appellant as agricultural products of a rural industry in the sense of the commodity being produced from the cultivation or use of the land. They are in no different position from a co-operative factory which purchases livestock, such as pigs, which it treats and turns into hams, bacon and pork goods; or from a co-operative flour-mill which purchases wheat and manufactures flour pollard and bran; or from a co-operative butchery or canning factory which buys cattle and sheep and makes and sells sausages or cuts of meat or provides tinned goods as food.

40 During the argument reference was made to the alleged anomaly due to the inclusion of livestock as a product from the use of land which might arise if the animals were not bred there; but an ordinary and important branch of the grazing business consists in the purchase of young beasts or vealers and sheep in a low condition for the purpose of fattening and otherwise rendering them suitable for the beef or mutton market. Such a treatment of stock by means of the cultivation or use of the grazier's land must surely result in a product within the meaning of the section as regards the grazier, but not including the co-operative society which might purchase them for manufacture and disposal.

In the alternative it was suggested that the requirements of the section of the Income Tax Act are still fulfilled if the word "of" with reference to the phrase "of its members" means belonging to them. This is a possible meaning of the word but as regards the dairy farmers,

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No. 8.  
(13) Judgment of  
Mr. Justice  
Davidson,  
4th  
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1944,  
*continued.*

*In the  
Supreme  
Court of  
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No. 8.  
(b) Judg-  
ment of  
Mr. Justice  
Davidson,  
4th  
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*continued.*

their product is the cream and when that is purchased the manufactured butter does not belong to them. The butter belongs to the factory society ; but in my opinion that fact is of no assistance to the Appellant.

Although the factory society is a member its butter is not an agricultural product in the statutory sense of a product of a rural industry. The conduct of a factory is an industry but it produces its disposable commodity by manufacture and not by the cultivation or use of land for a dairying or a rural purpose.

It is perhaps regrettable that whilst the Appellant is not gaining profits of a middleman in the real acceptance of that term, but is filling 10 a vital niche in the whole scheme of co-operative system of rural production and marketing, it should be deprived of a material benefit designed by the Legislature for the very purpose of assisting co-operative associations in general, and in one of its branches, in the production and marketing in rural industries. But for the reasons stated, in my opinion the appeal fails and should be dismissed with costs.

(C) Mr. Justice Halse Rogers.

No. 8.  
(c) Judg-  
ment of  
Mr. Justice  
Halse  
Rogers,  
4th  
October  
1944.

HALSE ROGERS, J. : This is an appeal by the taxpayer from a decision of the Income Tax Board of Appeal dismissing objections of the taxpayer which, having been disallowed by the Commissioner, were 20 forwarded as appeals to the Board of Appeal.

The taxpayer was incorporated as a rural society under the Co-operation Community Settlement and Credit Act 1923—since 1941 called The Co-operation Act.

The principal business of the company consists in receiving from and selling for its members butter, bacon, cheese, honey, eggs, poultry, fruit and vegetables. A number of the members of the distributing company are co-operative companies whose business is to purchase the cream of individual farmers and from that cream to produce butter. These co-operative companies do not now, as was the case formerly, market 30 their own product—butter ; they send it to the Appellant company which does the marketing for them.

The Appellant distributes its own profit among its members partly by way of rebate and partly by way of dividends on shares. Over the last 10 year period the dividend has been steady at 4 per cent. The evidence shows that the Company has 9,500 shareholders who are mostly individual farmers. Sixty per cent. of the turnover of the Company is butter, and the bulk of that butter is sent to the Company by its members or shareholders. Under the Act the Company is not allowed to pay a cash rebate to non-shareholders, but any rebate due in respect of their product is 40 placed in a suspense account for the purchase of shares, so that new persons are always in process of becoming shareholders.

The Company having been assessed for tax on income earned in the year ending 30th September 1941, lodged notice of objection on the ground that the Society is a rural co-operative society within the meaning of the Section 19 (o) of the Income Tax Management Act 1941 and is therefore entitled to the total exemption provided for in that subsection.

The ground as so taken does not so well raise the contention between the parties as grounds 3 and 4 of this appeal which are as follows :—

(3) That the said Income Tax Board of Appeal should have 50 held that the said income of the Appellant was exempt from income

tax pursuant to the provisions of Section 16 (n) of the Income Tax (Management) Act 1936 as contended or (in the alternative) pursuant to the provisions of Section 19 (c) of the Income Tax (Management) Act 1941.

(4) That the said Income Tax Board of Appeal should have held that the principal business of the Appellant was the manufacture, treatment and disposal of the agricultural products (as defined in the Co-operation Act 1923-1941) or livestock of its members.

Section 19 of the Income Tax (Management) Act 1941 provides  
 10 (inter alia) that the following income should be exempt from income tax :  
 (o) " 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 by the Act) or livestock of its members."

There is no doubt that the Appellant Society is a rural society registered as such under the Co-operation Act 1923-1941. The certificate of incorporation is conclusive on that point. The real point at issue is whether the Society's principal business is the manufacture, treatment or disposal of the agricultural products (as defined in that Act) or livestock of its  
 20 members.

The first of the objects of the Society as set out in its rules is :  
 (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 ; and then under the same rule appears the statement of policy in these words : " The policy of the Society being to facilitate and encourage direct export of, and the elimination of speculation in, any of the products aforesaid."

The Appellant Company is admittedly carrying on business as a commission agent : that business is the primary object of its incorporation.  
 30 The Commissioner has rejected the Appellant's contention that that business consists in the disposal of the agricultural products of its members and the Board of Appeal has supported that view.

By Section 5 of the Co-operation Act 1923-1941 it is provided that " agricultural products " means products of any rural industry and " rural industry " means the " cultivation and use of land for any agricultural, pastoral, dairying or rural purpose." The main item dealt with on this appeal was butter, because the largest part of the Company's business is butter.

It was conceded that the cream from which butter is made is an  
 40 agricultural product of the individual farmer. And so the factory which purchases the cream and makes it into butter and disposes of such product is within the exemption provision if it is a co-operative rural society. And that is because the words " manufacture, treatment or disposal " cover all its operations with what are admittedly agricultural products. But the Appellant Company stands in a different position : it purchases and disposes of the products of manufacture. True it is that the basis of such products are themselves agricultural products but before the commencement of the Appellant's operations the agricultural products have by the process of manufacture been turned into something else.  
 50 So the Appellant does not manufacture, treat or dispose of agricultural products as defined in the Act.

*In the  
 Supreme  
 Court of  
 New South  
 Wales.*

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 No. 8.  
 (c) Judgment of  
 Mr. Justice  
 Halse  
 Rogers,  
 4th  
 October  
 1944,  
*continued.*

*In the  
Supreme  
Court of  
New South  
Wales.*

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(c) Judg-  
ment of  
Mr. Justice  
Halse  
Rogers,  
4th  
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1944,  
*continued.*

It follows that in my view the contention of the Commissioner must prevail and the appeal must be dismissed. I regret having to give this decision because in my opinion the aim of the Legislature probably was to exempt from taxation a society carrying on a business such as the Appellant's. In a sense that business is the ultimate and logical result—the apex, as it were—of the co-operative system, and I think that the method of drafting which has been adopted has brought about an unintended and unexpected result. I think that the Commissioner has been astute to increase the revenue but that the result of this decision will be that he is successfully casting his net into waters which were intended 10 to be preserved against him.

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**No. 9.**

**RULE of the Supreme Court of New South Wales Dismissing Appeal.**

Term No. 108 of 1944.

No. 9.  
Rule of  
Supreme  
Court of  
New South  
Wales  
dismissing  
Appeal,  
4th  
October  
1944.

**IN THE SUPREME COURT OF NEW SOUTH WALES.**

**IN THE MATTER** of the Income Tax (Management) Act 1941  
**AND IN THE MATTER** of an Appeal by **THE PRODUCERS'**  
**CO-OPERATIVE DISTRIBUTING SOCIETY LIMITED** to the  
Income Tax Board of Appeal which under and by virtue of  
the provisions of Section 236 of the Income Tax (Management) 20  
Act 1941 (as amended) was exercising the powers immunities  
privileges conferred and imposed upon the "Board of  
"Appeal" by Part V of the said Act.

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

and

**THE COMMISSIONER OF TAXATION** *Respondent.*

Wednesday, the Fourth day of October, One thousand nine  
hundred and forty four.

UPON MOTION made on the Sixth day of September last WHERE- 30  
UPON AND UPON READING the Notice of Intention to Appeal dated  
the Twenty-sixth day of June last past and the Appeal Book filed herein  
AND UPON HEARING what was alleged by Mr. H. H. Mason of King's  
Counsel with whom was Mr. K. W. Asprey of Counsel on behalf of the  
Appellant and by Mr. C. A. Weston of King's Counsel with whom was  
Mr. E. J. Hooke of Counsel on behalf of the Respondent IT WAS  
ORDERED that the matter stand for judgment and the same standing  
in the list this day for judgment accordingly IT IS ORDERED that the  
appeal herein be and the same is hereby dismissed AND IT IS FURTHER

ORDERED that the costs of and incidental to this appeal be taxed by the proper officer of this Court AND that such costs when so taxed and allowed be paid by the Appellant to the Respondent or to Mr. A. H. O'Connor State Crown Solicitor his Attorney.

*In the Supreme Court of New South Wales.*

By the Court.

For the Prothonotary,  
C. T. HERBERT (L.S.)  
Acting Chief Clerk.

No. 9.  
Rule of Supreme Court of New South Wales dismissing Appeal, 4th October 1944, *continued.*

10

No. 10.  
**NOTICE OF APPEAL.**

No. 49 of 1944.

IN THE HIGH COURT OF AUSTRALIA,  
New South Wales Registry.

*In the High Court of Australia.*

On Appeal from the Supreme Court of New South Wales.

IN THE MATTER of the Income Tax (Management) Act 1941

No. 10.  
Notice of Appeal, 20th October 1944.

AND IN THE MATTER of an Appeal by THE PRODUCERS' CO-OPERATIVE DISTRIBUTING SOCIETY LIMITED to the Income Tax Board of Appeal which under and by virtue of the provisions of Section 236 of the Income Tax (Management) Act 1941 (as amended) was exercising the powers immunities and privileges conferred and imposed upon the Board of Appeal by Part V of the said Act

20

Between THE PRODUCERS' CO OPERATIVE  
DISTRIBUTING SOCIETY LIMITED *Appellant*  
and  
THE COMMISSIONER OF TAXATION *Respondent.*

**NOTICE OF APPEAL.**

TAKE NOTICE that the above-named Appellant The Producers' Co-operative Distributing Society Limited appeals against the whole of the judgment order and decision of the Supreme Court of New South Wales delivered made and given on the fourth day of October One thousand nine hundred and forty-four in an appeal numbered 108 of 1944 against the whole of the decision and order of the above-mentioned Income Tax Board of Appeal whereby the said Supreme Court by a majority dismissed an appeal against the said decision of the said Board of Appeal upon the following amongst other grounds namely :—

30

1. THAT the said Supreme Court was in error in deciding not to uphold the said objections and in confirming the said assessments.

40

2. THAT the said Supreme Court should have decided to uphold the said objections.

*In the  
High Court  
of  
Australia.*

No. 10.  
Notice of  
Appeal,  
20th  
October  
1944,  
*continued.*

3. THAT the said Supreme Court should have held that the said income of the Appellant was exempt from income tax pursuant to the provisions of Section 16 (n) of the Income Tax (Management) Act 1936 as amended or (in the alternative) pursuant to the provisions of Section 19 (o) of the Income Tax (Management) Act 1941.
4. THAT the said Supreme Court should have held that the principal business of the Appellant was the manufacture treatment or disposal of the agricultural products (as defined in the Co-operation Act 1923-1941) or livestock of its 10 members.

DATED this 20th day of October One thousand nine hundred and fourty-four.

DUNCAN BARRON & CO.,

Solicitors for the Appellant,  
81 Elizabeth Street,  
Sydney.

NOTE.—This Notice of Appeal is filed by Messieurs Duncan Barron and Company of No. 81 Elizabeth Street Sydney the Solicitors for The Producers' Co-operative Distributing Society Limited the above-named 20 Appellant.

No. 11.  
(A) Judgment of  
Latham,  
C.J.,  
11th  
December  
1944.

No. 11.  
**REASONS for Judgment.**  
(A) Latham, C.J.

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 1923-41 (N.S.W.) is not entitled to exemption from income tax under the Income Tax Management Act 1941 (N.S.W.), Section 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 1923-41. 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 100 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 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 1923-41, Section 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 Section 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 Section 5.

The co-operative society which conducts the butter factory enjoys the advantage of the exemption granted by Section 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

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Latham,  
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(A) Judgment of  
Latham,  
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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* (1886, 31 Ch. D. 607 at p. 615).

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* (1885) 10 App. Cas. 364, at p. 371. Whether or not this principle can be reconciled with that stated in Wood's case, 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, Section 5, are prefaced by the words "unless the context or subject-matter otherwise indicates or requires." Context or 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 Section 7 of the Act, but particularly in Section 7 (1), paragraphs (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 livestock of its members or other persons, (b) to manufacture or treat the agricultural or livestock products of its members or other persons, and to dispose of the products so manufactured or partly manufactured . . ." The concluding words of paragraph (b) would be unnecessary if the words "dispose of . . . agricultural products" contained in paragraph (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 paragraphs (a) and (b), then under the power referred to in paragraph (a) it may dispose of agricultural products, and under paragraph (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  
10 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 Section 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.

20 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  
30 product within the meaning of the Act, the question does not arise. In my opinion the appeal should be dismissed.

## (B) Rich, J.

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  
40 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 Coccagne, 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  
50 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

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(B) Judgment  
of  
Rich, J.,  
11th  
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*continued.*

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, 10 should not be regarded as within the provisions of Section 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.

No. 11.  
(c) Judgment  
of  
Starke, J.,  
11th  
December  
1944.

(C) **Starke, J.**

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 (N.S.W.) No. 48 of 1941 Section 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, Section 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. 20

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 60 per centum 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. 30

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. 40

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 50 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 livestock of its members” in the sense that the products are the result of the labour or exertion of its members. To read  
 10 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  
 20 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.

(D) Dixon, J.

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  
 30 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.

The exemption throws the reader back to the definition of “agricultural products” in the Co-operation Act. Recourse to that  
 40 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  
 50 disposal of the products of its members, being products of the use of land for a dairying purpose.

*In the  
High Court  
of  
Australia.*

No. 11.  
(c) Judgment of  
Starke, J.,  
11th  
December  
1944,  
*continued.*

No. 11.  
(D) Judgment of  
Dixon, J.,  
11th  
December  
1944.

*In the  
High Court  
of  
Australia.*

No. 11.  
(D) Judg-  
ment of  
Dixon, J.,  
11th  
December  
1944,  
*continued.*

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. 10

It is correct, I think, that we are to give the definition of "agricultural products" and of "rural industry" the same meaning as they bear and the same combined operation as they have standing in Section 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. 20

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 Section 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 provisions. 30

In Section 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. 40

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. 50

I think that the appeal should be dismissed.

(E) Williams, J.

*In the  
High Court  
of  
Australia.*—  
No. 11.  
(E) Judg-  
ment of  
Williams,  
J.,  
11th  
December  
1944.

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 ending 30th September 1941 is not exempt from income tax under the provisions of Section 19 (o) of that Act.

10 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, 1932-1941, 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 " shall be exempt from income tax.

20 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.

30 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, Section 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  
40 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.

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*In the  
High Court  
of  
Australia.*

No. 12.  
ORDER.

No. 49 of 1944.

No. 12.  
Order,  
11th  
December  
1944.

IN THE HIGH COURT OF AUSTRALIA.  
New South Wales Registry.

On appeal from the Supreme Court of New South Wales.

IN THE MATTER of the Income Tax (Management) Act  
1941 of New South Wales

AND IN THE MATTER of an appeal by THE PRODUCERS'  
CO-OPERATIVE DISTRIBUTING SOCIETY LIMITED to the 10  
Income Tax Board of Appeal which under and by  
virtue of the provisions of Section 236 of the Income Tax  
(Management) Act 1941 (as amended) was exercising  
the powers immunities and privileges conferred and  
imposed upon the Board of Appeal by Part V of the  
said Acts.

Between THE PRODUCERS' CO OPERATIVE  
DISTRIBUTING SOCIETY LIMITED Appellant

and

THE COMMISSIONER OF TAXATION Respondent. 20

Before: Their Honours the Chief Justice, Mr. Justice Rich, Mr. Justice  
Starke, Mr. Justice Dixon and Mr. Justice Williams.

Monday the 11th day of December 1944.

WHEREAS by Notice dated the 26th day of June 1944 the above-named  
Appellant gave notice of intention to appeal to the Supreme Court of  
New South Wales from the whole of the decision and order of the Income  
Tax Board of Appeal given and made on the 10th day of May 1944 in  
which appeal the now Appellant was Appellant and the now Respondent  
was Respondent which decided not to uphold the objections lodged by the  
Appellant against assessments of income tax and of further tax under 30  
Division 9 of Part III of the Income Tax (Management) Act 1941 of New  
South Wales in respect of income derived by the Appellant during the  
period of 12 months ended 30th September 1941 notices of which  
assessments were issued to the Appellant on the 25th day of May 1941  
and which confirmed the said assessments AND WHEREAS the appeal  
came on to be heard before the Full Court of the Supreme Court of New  
South Wales on the 6th day of September 1944 AND WHEREAS on  
the last mentioned date IT WAS ORDERED by the said Supreme Court  
that the said appeal should stand for judgment AND WHEREAS the  
said appeal standing for judgment accordingly on the 4th day of October 40  
1944 the said Supreme Court did dismiss the said appeal and did order that  
the Appellant herein should pay the taxed costs of the Respondent of the  
said Appeal AND WHEREAS on the 20th day of October 1944 the  
Appellant filed in this Court a Notice of Appeal against the said Judgment



and Order of the said Supreme Court AND the said appeal coming on to be heard before this Court on the 20th day of November 1944 WHEREUPON AND UPON READING the transcript record of proceedings transmitted by the Deputy Prothonotary of the said Supreme Court to the New South Wales Registry of this Court AND UPON HEARING what was alleged by Mr. Mason of King's Counsel with whom was Mr. Asprey of Counsel for the Appellant and by Mr. Sugerman of King's Counsel with whom was Mr. Hooke of Counsel for the Respondent THIS COURT DID ORDER that this Appeal should stand for judgment and the same standing in the paper on the 11th day of December 1944 for judgment accordingly THIS COURT DOTH ORDER that this Appeal be and the same is hereby dismissed AND THIS COURT DOTH FURTHER ORDER that it be referred to the proper officer of this Court to tax the costs of the Respondent of and incidental to this Appeal to this Court and that such costs when so taxed and certified be paid by the Appellant to the Respondent or to Mr. A. H. O'Connor the Crown Solicitor for the State of New South Wales his attorney after service on the Appellant or its Solicitor of a copy of a Certificate of such Taxation.

*In the  
High Court  
of  
Australia.*  
—  
No. 12.  
Order,  
11th  
December  
1944,  
*continued.*

20

By the Court.

(L.S.)

F. C. LINDSAY,

District Registrar.

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No. 13.

**ORDER IN COUNCIL granting Special Leave to Appeal.**

AT THE COURT AT BUCKINGHAM PALACE.

The 20th day of March, 1946.

Present

THE KING'S MOST EXCELLENT MAJESTY	
LORD CHANCELLOR	SIR CYRIL ASQUITH
LORD PRESIDENT	MR. WHITELEY
LORD AMMON	SIR LIONEL COHEN

30

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 27th day of February 1946 in the words following, viz. :—

“ WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of The Producers' Co-operative Distributing Society Limited in the matter of an Appeal from the High Court of Australia between the Petitioner (Appellant) and The Commissioner of Taxation (Respondent) setting forth (amongst other matters): that The Producers' Co-operative Distributing Society Limited (thereinafter called ' the Society ' ) was incorporated on the 9th May 1929 as a rural society under the Co-operation Community Settlement and Credit Act 1923 of the State of New South Wales and was registered as such which

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*In the  
Privy  
Council.*  
—  
No. 13.  
Order in  
Council  
granting  
Special  
Leave to  
Appeal,  
20th March  
1946.

*In the  
Privy  
Council.*

No. 13.  
Order in  
Council  
granting  
Special  
Leave to  
Appeal,  
20th March  
1946.  
*continued.*

Act as amended by subsequent Acts may be cited as the Co-operation Act 1923–1941 : that at all material times the principal business of the Society was the sale on commission of butter belonging to members of the Society : that on or about the 25th May 1942 an assessment to income tax was made upon the Society in respect of its income for the year ended 30th September 1941 under the provisions of the Income Tax Management Act 1941 of the State of New South Wales : that on the 22nd June 1942 the Society lodged with the Commissioners of Taxation New South Wales objection against the assessment on the ground that the Society was entitled 10  
to exemption from the said income tax by virtue of paragraph (o) of Section 19 of the Income Tax Management Act, 1941 : that on the 10th November 1942 the objection was disallowed by the Commissioner of Taxation and on the 22nd June 1943 the Society appealed to the Board of Appeal : that on the 10th May 1944 the Board decided not to uphold the Society's objection against the assessment : that on the 26th June 1944 the Society appealed to the Supreme Court of New South Wales which Court on the 4th October 1944 dismissed the Appeal by a majority : that on the 20th October 20  
1944 the Society appealed to the High Court of Australia which Court on the 11th December 1944 dismissed the Appeal by a majority : And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal against the Judgment of the High Court dated the 11th December 1944 and for such other Order as to Your Majesty in Council may seem fit :

“ THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof Their Lordships do this day agree humbly to report to Your Majesty as 30  
their opinion that leave ought to be granted to the Petitioner to enter and prosecute its Appeal against the Judgment of the High Court of Australia dated the 11th day of December 1944 upon depositing in the Registry of the Privy Council the sum of £400 as security for costs :

“ AND Their Lordships do further report to Your Majesty that the proper officer of the said High Court ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the 40  
Petitioner of the usual fees for the same.”

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor-General or Officer administering the Government of the Commonwealth of Australia for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

E. C. E. LEADBITTER.

**EXHIBITS.****" A. "****CERTIFICATE OF INCORPORATION of Appellant Society.****COPY OF CERTIFICATE OF INCORPORATION OF P.D.S.**

" Certificate of Incorporation Co-operation Community Settlement and Credit Act, 1923.

I Certify that The Producers' Co-operative Distributing Society Limited, is this day incorporated as a Rural Society under the above Act.

10 The incorporation of the Society does not imply any approval by me of the policy of its rules or any guarantee of its good management or financial stability.

Signed T. WAITES (L.S.)  
Registrar of Co-operative Societies,  
9th May, 1929.

**" B. "****RULES of Appellant Society.**

(Not Printed.)

**" C. "****SCHEDULE showing Turnover of Society for year ending 30th September 1941.**

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

Turnover year ended 30th September 1941.

Butter .. .. .	1113606	60·03
Bacon .. .. .	281097	4·20
Cheese .. .. .	454888	6·80
Honey .. .. .	88706	1·33
Eggs .. .. .	213575	3·19
Poultry .. .. .	68787	1·03
Grain .. .. .	744617	11·13
Fruit and Vegetable ..	237670	3·55
Other lines .. .. .	584320	8·74
	<u>£6,787,266</u>	<u>100%</u>

*Appellant's Exhibits.*

" A. "  
Certificate of Incorporation of Appellant Society, 9th May 1929.

" B. "  
Rules of Appellant Society

" C. "  
Schedule showing Turnover of Society for year ending 30th September 1941.

*Appellant's  
Exhibits.*

“ D.”  
Statement  
showing  
Rebates to  
Members  
of Society  
for years  
1936/43.

“ D.”

STATEMENT showing Rebates to Members

EXHIBIT

## THE PRODUCERS' CO-OPERATIVE

Year Ended 30th Sept.	Paid Up Capital	Turnover	Profits (Less Bonus)	Rate of Rebate
1936	£ 202,446	£ 4,124,032	£ 11,482	20% Butter 12½% Other lines
1937	203,587	4,405,639	22,891	20% Butter 12½% Other lines
1938	203,914	5,716,562	25,841	22½% Butter 15% Other lines
1939	220,258	6,565,035	28,691	15% Butter 10% Other lines
1940	221,520	6,759,794	29,076	20% Butter 15% Other lines
1941	222,509	6,787,652	15,363	20% Butter 15% Other lines
1942	241,785	7,449,068	18,300	40% Butter 30% Other lines
1943	248,132	8,623,262	15,134	45% Butter 33½% Other lines

Rebate to Consignors for 1941 was paid in Fully Paid Shares.  
Amounts credited to Non-Shareholders and shown in brackets are

Society for years 1936 to 1943.

D.”

DISTRIBUTING SOCIETY LIMITED.

*Appellant's  
Exhibits.*

“ D.”  
Statement  
showing  
Rebates to  
Members  
of Society  
for years  
1936/43.

Rebate to Consignors	Credited to Non S/H.	Rate of Dividend	Amount of Dividend
£ 19,057	£ (1,650)	4%	£ 8,089
17,850	(1,718)	4%	8,144
23,814	(2,071)	4%	8,320
19,066	(1,356)	4%	8,810
23,700	(1,386)	4%	8,861
21,161	(2,416)	4%	8,900
44,000	(2,162)	4%	9,671
62,779	(5,307)	4%	9,925

included in Rebate to Consignors.

**In the Privy Council.**

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

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**BETWEEN**

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

**AND**

**THE COMMISSIONER OF TAXATION - - - *Respondent.***

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**RECORD OF PROCEEDINGS.**

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**HERBERT OPPENHEIMER, NATHAN & VANDYK,**  
**20 COPTHALL AVENUE,**  
**LONDON WALL, E.C.2,**  
*Solicitors for the Appellant.*

**LIGHT & FULTON,**  
**24 JOHN STREET,**  
**BEDFORD ROW, W.C.1,**  
*Solicitors for the Respondent.*