

HIGH COURT OF AUSTRALIA

Arthur Yates & Company Pty Ltd

Vs.

Vegetable Seeds Committee

(Williams J.)

21 November 1945)

Williams J

The summons asks, as far as it has been pressed, that pars. 10, 11, 12, 13, 14, 15, 17, 18, 22, 25, 26, 27, 28, 29, 30 and 34 of the statement of claim may be struck out on the grounds that the allegations therein contained are unnecessary and tend to prejudice, embarrass or delay the fair trial of the action, or in the alternative that further and better particulars of certain matters stated in pars. 10, 12, 15, 19, 25, 26, 27, 28, 30, 31 and 34 may be given to the defendant.

The defendant committee is a body which is incorporated by reg. 10 of the *National Security (Vegetable Seeds) Regulations*. Regulation 4 provides that the objects of the Regulations are to ensure, for the purposes of the defence of the Commonwealth and the effectual prosecution of the war, that an adequate supply of vegetable seed is available in Australia, that those seeds are true to type and of a satisfactory standard of purity and germination and that those seeds are effectively distributed, and that the regulations shall be administered and construed accordingly. ...

Regulations 14A, 17 and 18, so far as material, provide as follows:— 14a. (1) The Committee may, by order, control and regulate the processing, treatment, distribution and disposal of vegetable seeds. (2) An order under this regulation may—(a) be made to apply to any person specified in the order, to the person included in any class of persons or to persons generally; (b) be made to apply either throughout Australia or to any part thereof; (c) make different provisions with respect to different vegetable seeds. 17. (1) Upon application made by any person, the Committee may, in its absolute discretion, register that person as a vegetable seed merchant in respect of any vegetable seeds; (3) The Committee may, at any time, for reasons which it thinks fit, cancel any such registration. 18. (1) A person shall not sell any vegetable seeds for valuable consideration unless he is a registered vegetable seed merchant in respect of those seeds; (2) A registered vegetable seed merchant shall not sell any vegetable seeds for valuable consideration otherwise than in accordance with such directions, if any, as the Committee gives to him in writing.

Order XVII of the Rules of this Court, which relates to pleadings generally, provides, so far as material: (1) Every pleading shall contain a statement, as brief as the nature of the case allows, setting out the material facts on which the party pleading relies to support his claim or defence, as the case may be, but not the evidence by which they are to be proved. (5) If the party pleading relies on (*inter alia*) fraud and in all other cases in which particulars are necessary, particulars, with dates and items if necessary shall be stated in the pleading. (30) The Court or a Justice may order any pleading to be struck out on the ground that it discloses no reasonable cause of action. (31) The Court or a Justice may at any stage of the proceedings order to be struck out or amended any matter in any pleading which is unnecessary or which tends to prejudice, embarrass or delay the fair trial of

the action.

Order XVIII (1) of the same Rules provides that the Court or a Justice may in any case order either party to deliver to the other further and better particulars of any matter stated in any pleading.

Rules 30 and 31 of Order XVII are the same as Rule 4 of Order XXV and Rule 27 of Order XIX of the English Rules and under those rules it has been frequently stated that they should only be availed of in cases which are so plain and clear that they are worse than demurrable, or in other words are so beyond doubt that no legitimate amendment could save them from being demurrable (*Republic of Peru v. Peruvian Guano Co.*^[1] ; *Mayor &c. of City of London v. Horner*^[2] ; *Maas v. McIntosh*^[3]). Matter should only be struck out as unnecessary where the statement of claim sets out immaterial matter in such a way that the defendant must plead to it and so raise irrelevant issues which may involve expense, trouble and delay and thereby prejudice the fair trial of the action.

The statement of claim in ... the present action contains grave charges concerning the manner in which the defendant has exercised the extremely wide powers conferred upon it by the Regulations. It is the paragraphs containing these charges which the defendant is seeking to have struck out. ...

The allegations ... fall into two portions. Those in the first portion, which are contained in pars. 1 to 22, refer to four documents dated 17th March, 18th October, 4th November 1944 and 15th February 1945 whereby the defendant purported to place restrictions upon the sale of certain vegetable seeds by all registered vegetable seed merchants, the restrictions in the first three documents relating to seeds harvested between 1st July 1943 and 30th June 1944, and those in the fourth document relating to seeds harvested between 1st July 1944 and 30th June 1945.

The first declaration claims that these orders are beyond the powers conferred upon the defendant by the Regulations and are void, whilst the second declaration claims alternatively that they are void as being made in bad faith. Paragraphs 10, 11, 12, 13, 14, 15, 17, 18 and 22 contain the allegations upon which the charges of bad faith are based. The defendant by its statement of defence does not dispute the invalidity of the first two orders, so that it has become unnecessary for the plaintiff to prove that they were made in bad faith. It will be entitled to a declaration that they are void and to claim any consequential damages which it can establish.

The ground on which the defendant seeks to have the allegations of bad faith with respect to the third and fourth orders struck out is that they are of a legislative nature made under a power to legislate conferred upon the defendant by reg. 14A, and that the Court cannot inquire into the motives which actuate a legislative body, so that these allegations relate to a matter which is not justiciable.

It is clear, I think, that such motives are not the concern of the Court (*Co-operative Brick Co. v. Mayor &c. of City of Hawthorn*^[4]). Two recent statements on this point are, one by the Supreme Court of the United States of America in *Bowles v. Willingham*^[5] and the other by the Privy Council in *King-Emperor v. Benoari Lal Sarma*^[6] (a case of delegated legislation).

Assuming, therefore, that the third and fourth orders are of a legislative character these allegations are irrelevant on the question of motive. It is, of course, open to the plaintiff to challenge the validity of these orders on the ground that reg. 14A is beyond the power conferred upon the Governor-General by the *National Security Act* and that the orders are beyond the powers conferred upon the defendant by reg. 14A; and, since the Commonwealth Parliament cannot delegate wider

powers than it possesses, that reg. 14A and the orders are beyond the ambit of the defence power. But in order to determine these grounds it would only be relevant for the Court to consider the language of the defence power and of the *National Security Act* and compare the provisions of reg. 14A and the orders.

The only facts that the Court could take into consideration would be any public general knowledge of which the Court would take judicial notice. Regulation 4 states what are the objects of the Regulations. This regulation is entitled to respect but is in no way conclusive in deciding whether legislation under reg. 14A is within power: See the cases cited in *Reid v. Sinderberry*^[7]. Its presence in the Regulations does not make evidence of motive admissible. The defence power is defined by the purpose for which it is granted (per Dixon J. in *Stenhouse v. Coleman*^[8]) but it has never been the practice of this Court to take cognizance of any other facts. The legislation before the Privy Council in *Abitibi Power & Paper Co. Ltd. v. Montreal Trust Co.*^[9] contained a recital of the objects for which it was passed. Lord Atkin delivering the judgment of the Privy Council, said: "This Board must have cogent grounds before it *arising from the nature of the impugned legislation* before it can impute to a provincial legislation some object other than what is to be seen on the face of the enactment itself" ^[10]. (The italics are mine.)

If the effect of the orders was not clear, evidence to show their operation might be admissible (*Attorney-General for Alberta v. Attorney-General for Canada*^[11]), but that is a different question. Here the effect of the orders is quite clear.

The crucial question is, therefore, whether the orders are of a legislative nature. In order to determine this question the test laid down by the Supreme Court of the United States of America in *J. W. Hampton Jr. & Co. v. United States*^[12] has frequently been adopted:—"The true distinction, therefore, is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring an authority or discretion as to its execution, to be exercised under and in pursuance of the law."

Regulation 14A confers upon the defendant an absolute discretion to determine the extent to which and the manner in which the processing, treatment, distribution and disposal of vegetable seeds shall be controlled and regulated. Until an order is made no directions exist prescribing these matters or the persons to be affected. It is of the same nature as an order made under reg. 59 of the *National Security (General) Regulations*. Two of these orders came before this Court, the Bread Industry (N.S.W.) Order in *Stenhouse v. Coleman*^[13] and the Fly and Insect Sprays Order in *Wertheim v. The Commonwealth*^[14]. In both these cases I considered that the orders were of a legislative nature and the other members of the Court presumably took the same view since in order to determine their validity they applied tests which were only relevant to legislation. The documents in question are, I think, clearly legislative, so that the paragraphs under discussion are unnecessary and should be struck out.

The summons also asks that pars. 25, 26, 27, 28, 29, 30 and 34 should be struck out. These paragraphs are contained in the second portion of the allegations in the statement of claim. They relate to the importation by the plaintiff into Australia of pea and carrot seeds from New Zealand between 1943 and January 1945. They allege that the defendant first gave permission to the plaintiff to import the pea seeds but subsequently withdrew its permission, and refused to give the plaintiff permission to import the carrot seeds.

When the plaintiff was re-registered as a vegetable seed merchant on 31st October 1944 the form

contained directions that such a merchant should not sell or otherwise dispose of for valuable consideration any vegetable seed imported into Australia unless such seed had been imported with the consent of the defendant. The plaintiff claims that the defendant is not entitled to refuse permission to import seeds or to sell imported seeds, or alternatively that the refusal of permission was in bad faith.

The defendant seeks to have the paragraphs alleging bad faith struck out on the grounds that the plaintiff's proper and only remedy is a mandamus to compel the defendant to register the plaintiff without the restrictive conditions. But I cannot accept this contention. The plaintiff is entitled to sue for the declaration that the defendant is not entitled to refuse this permission or to impose this restrictive condition on the registration. If the defendant has this power under reg. 18 (2) but has exercised it mala fide it is an executive power so that the plaintiff is entitled to a declaration to this effect, and an injunction against the defendant enforcing such a condition, so that if the restriction is bad on either ground there is no binding restriction imposed within the reg. 18 (2). The application to strike out the paragraphs under discussion therefore fails.

There remains the question whether the defendant is entitled to further and better particulars of these paragraphs. They are not, in my opinion, as clear and precise as they should be and I think that it is difficult for the defendant to know the case which it has to meet when the action comes on for trial. I think that I should order the particulars asked for of pars. 25, 26, 27, 30, 31 and 32. I do not think it necessary to order further particulars of par. 28. During the hearing Mr. *Kitto* said that the determination referred to in par. 34 is the decision mentioned in par. 24 and Mr. *Sugerman* expressed himself as satisfied with this statement, so that I need not order further particulars of par. 34.

I give the plaintiff and defendant general leave to amend. I order the plaintiff to deliver the particulars to the defendant within 14 days and I give leave to the plaintiff to amend within 28 days. I also give leave to the defendant to amend within 14 days after the plaintiff's amendments have been delivered to it or if the plaintiff does not amend within 14 days after the plaintiff's solicitor has notified the defendant's solicitor to this effect or ... after the delivery of the particulars, whichever is the later date. ... The costs of the summons to be the defendant's costs in the action.

From that decision, so far as it related to the striking out of pars. 10 to 15 inclusive, 17, 18 and 22 of the statement of claim, the plaintiff appealed to the Full Court of the High Court.

During the argument the statement of claim was, by consent, amended by adding thereto as defendants the Commonwealth and the Attorney-General for the Commonwealth.

Appeal allowed. Order discharged in so far as it directs that paragraphs of the statement of claim be struck out. Defendants to pay costs of appeal. Costs of summons to be costs in the action.

Solicitors for the appellant, Parish, Patience & McIntyre.

Solicitor for the respondents, H. F. E. Whitlam, Crown Solicitor for the Commonwealth.

H C of A

21 November 1945

Latham C.J., Rich, Starke and Dixon JJ.

Sugerman K.C. (with him Dignam), for the applicant-defendant.

Kitto K.C. (with him McKillop), for the respondent-plaintiff.

May 11

Williams J

. delivered, so far as material, the following written judgment:—

The summons asks, as far as it has been pressed, that pars. 10, 11, 12, 13, 14, 15, 17, 18, 22, 25, 26, 27, 28, 29, 30 and 34 of the statement of claim may be struck out on the grounds that the allegations therein contained are unnecessary and tend to prejudice, embarrass or delay the fair trial of the action, or in the alternative that further and better particulars of certain matters stated in pars. 10, 12, 15, 19, 25, 26, 27, 28, 30, 31 and 34 may be given to the defendant.

The defendant committee is a body which is incorporated by reg. 10 of the *National Security (Vegetable Seeds) Regulations*. Regulation 4 provides that the objects of the Regulations are to ensure, for the purposes of the defence of the Commonwealth and the effectual prosecution of the war, that an adequate supply of vegetable seed is available in Australia, that those seeds are true to type and of a satisfactory standard of purity and germination and that those seeds are effectively distributed, and that the regulations shall be administered and construed accordingly. ...

Regulations 14A, 17 and 18, so far as material, provide as follows:— 14a. (1) The Committee may, by order, control and regulate the processing, treatment, distribution and disposal of vegetable seeds. (2) An order under this regulation may—(a) be made to apply to any person specified in the order, to the person included in any class of persons or to persons generally; (b) be made to apply either throughout Australia or to any part thereof; (c) make different provisions with respect to different vegetable seeds. 17. (1) Upon application made by any person, the Committee may, in its absolute discretion, register that person as a vegetable seed merchant in respect of any vegetable seeds; (3) The Committee may, at any time, for reasons which it thinks fit, cancel any such registration. 18. (1) A person shall not sell any vegetable seeds for valuable consideration unless he is a registered vegetable seed merchant in respect of those seeds; (2) A registered vegetable seed merchant shall not sell any vegetable seeds for valuable consideration otherwise than in accordance with such directions, if any, as the Committee gives to him in writing.

Order XVII of the Rules of this Court, which relates to pleadings generally, provides, so far as material: (1) Every pleading shall contain a statement, as brief as the nature of the case allows, setting out the material facts on which the party pleading relies to support his claim or defence, as the case may be, but not the evidence by which they are to be proved. (5) If the party pleading relies on (*inter alia*) fraud and in all other cases in which particulars are necessary, particulars, with dates and items if necessary shall be stated in the pleading. (30) The Court or a Justice may order any pleading to be struck out on the ground that it discloses no reasonable cause of action. (31) The Court or a Justice may at any stage of the proceedings order to be struck out or amended any matter in any pleading which is unnecessary or which tends to prejudice, embarrass or delay the fair trial of the action.

Order XVIII (1) of the same Rules provides that the Court or a Justice may in any case order either party to deliver to the other further and better particulars of any matter stated in any pleading.

Rules 30 and 31 of Order XVII are the same as Rule 4 of Order XXV and Rule 27 of Order XIX of the English Rules and under those rules it has been frequently stated that they should only be availed of in cases which are so plain and clear that they are worse than demurrable, or in other words are so beyond doubt that no legitimate amendment could save them from being demurrable (*Republic of Peru v. Peruvian Guano Co.*[\[15\]](#) ; *Mayor &c. of City of London v. Horner*[\[16\]](#) ; *Maas v. McIntosh*[\[17\]](#)). Matter should only be struck out as unnecessary where the statement of claim sets out immaterial matter in such a way that the defendant must plead to it and so raise irrelevant issues which may involve expense, trouble and delay and thereby prejudice the fair trial of the action.

The statement of claim in ... the present action contains grave charges concerning the manner in which the defendant has exercised the extremely wide powers conferred upon it by the Regulations. It is the paragraphs containing these charges which the defendant is seeking to have struck out. ...

The allegations ... fall into two portions. Those in the first portion, which are contained in pars. 1 to 22, refer to four documents dated 17th March, 18th October, 4th November 1944 and 15th February 1945 whereby the defendant purported to place restrictions upon the sale of certain vegetable seeds by all registered vegetable seed merchants, the restrictions in the first three documents relating to seeds harvested between 1st July 1943 and 30th June 1944, and those in the fourth document relating to seeds harvested between 1st July 1944 and 30th June 1945.

The first declaration claims that these orders are beyond the powers conferred upon the defendant by the Regulations and are void, whilst the second declaration claims alternatively that they are void as being made in bad faith. Paragraphs 10, 11, 12, 13, 14, 15, 17, 18 and 22 contain the allegations upon which the charges of bad faith are based. The defendant by its statement of defence does not dispute the invalidity of the first two orders, so that it has become unnecessary for the plaintiff to prove that they were made in bad faith. It will be entitled to a declaration that they are void and to claim any consequential damages which it can establish.

The ground on which the defendant seeks to have the allegations of bad faith with respect to the third and fourth orders struck out is that they are of a legislative nature made under a power to legislate conferred upon the defendant by reg. 14A, and that the Court cannot inquire into the motives which actuate a legislative body, so that these allegations relate to a matter which is not justiciable.

It is clear, I think, that such motives are not the concern of the Court (*Co-operative Brick Co. v. Mayor &c. of City of Hawthorn*[\[18\]](#)). Two recent statements on this point are, one by the Supreme Court of the United States of America in *Bowles v. Willingham*[\[19\]](#) and the other by the Privy Council in *King-Emperor v. Benoari Lal Sarma*[\[20\]](#) (a case of delegated legislation).

Assuming, therefore, that the third and fourth orders are of a legislative character these allegations are irrelevant on the question of motive. It is, of course, open to the plaintiff to challenge the validity of these orders on the ground that reg. 14A is beyond the power conferred upon the Governor-General by the *National Security Act* and that the orders are beyond the powers conferred upon the defendant by reg. 14A; and, since the Commonwealth Parliament cannot delegate wider powers than it possesses, that reg. 14A and the orders are beyond the ambit of the defence power. But in order to determine these grounds it would only be relevant for the Court to consider the language of the defence power and of the *National Security Act* and compare the provisions of reg. 14A and the orders.

The only facts that the Court could take into consideration would be any public general knowledge of which the Court would take judicial notice. Regulation 4 states what are the objects of the Regulations. This regulation is entitled to respect but is in no way conclusive in deciding whether legislation under reg. 14A is within power: See the cases cited in *Reid v. Sinderberry*[21] . Its presence in the Regulations does not make evidence of motive admissible. The defence power is defined by the purpose for which it is granted (per Dixon J. in *Stenhouse v. Coleman*[22]) but it has never been the practice of this Court to take cognizance of any other facts. The legislation before the Privy Council in *Abitibi Power & Paper Co. Ltd. v. Montreal Trust Co.*[23] contained a recital of the objects for which it was passed. Lord Atkin delivering the judgment of the Privy Council, said: "This Board must have cogent grounds before it *arising from the nature of the impugned legislation* before it can impute to a provincial legislation some object other than what is to be seen on the face of the enactment itself" [24] . (The italics are mine.)

If the effect of the orders was not clear, evidence to show their operation might be admissible (*Attorney-General for Alberta v. Attorney-General for Canada*[25]), but that is a different question. Here the effect of the orders is quite clear.

The crucial question is, therefore, whether the orders are of a legislative nature. In order to determine this question the test laid down by the Supreme Court of the United States of America in *J. W. Hampton Jnr. & Co. v. United States*[26] has frequently been adopted:—"The true distinction, therefore, is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring an authority or discretion as to its execution, to be exercised under and in pursuance of the law."

Regulation 14A confers upon the defendant an absolute discretion to determine the extent to which and the manner in which the processing, treatment, distribution and disposal of vegetable seeds shall be controlled and regulated. Until an order is made no directions exist prescribing these matters or the persons to be affected. It is of the same nature as an order made under reg. 59 of the *National Security (General) Regulations*. Two of these orders came before this Court, the Bread Industry (N.S.W.) Order in *Stenhouse v. Coleman*[27] and the Fly and Insect Sprays Order in *Wertheim v. The Commonwealth*[28] . In both these cases I considered that the orders were of a legislative nature and the other members of the Court presumably took the same view since in order to determine their validity they applied tests which were only relevant to legislation. The documents in question are, I think, clearly legislative, so that the paragraphs under discussion are unnecessary and should be struck out.

The summons also asks that pars. 25, 26, 27, 28, 29, 30 and 34 should be struck out. These paragraphs are contained in the second portion of the allegations in the statement of claim. They relate to the importation by the plaintiff into Australia of pea and carrot seeds from New Zealand between 1943 and January 1945. They allege that the defendant first gave permission to the plaintiff to import the pea seeds but subsequently withdrew its permission, and refused to give the plaintiff permission to import the carrot seeds.

When the plaintiff was re-registered as a vegetable seed merchant on 31st October 1944 the form contained directions that such a merchant should not sell or otherwise dispose of for valuable consideration any vegetable seed imported into Australia unless such seed had been imported with the consent of the defendant. The plaintiff claims that the defendant is not entitled to refuse permission to import seeds or to sell imported seeds, or alternatively that the refusal of permission was in bad faith.

The defendant seeks to have the paragraphs alleging bad faith struck out on the grounds that the plaintiff's proper and only remedy is a mandamus to compel the defendant to register the plaintiff without the restrictive conditions. But I cannot accept this contention. The plaintiff is entitled to sue for the declaration that the defendant is not entitled to refuse this permission or to impose this restrictive condition on the registration. If the defendant has this power under reg. 18 (2) but has exercised it mala fide it is an executive power so that the plaintiff is entitled to a declaration to this effect, and an injunction against the defendant enforcing such a condition, so that if the restriction is bad on either ground there is no binding restriction imposed within the reg. 18 (2). The application to strike out the paragraphs under discussion therefore fails.

There remains the question whether the defendant is entitled to further and better particulars of these paragraphs. They are not, in my opinion, as clear and precise as they should be and I think that it is difficult for the defendant to know the case which it has to meet when the action comes on for trial. I think that I should order the particulars asked for of pars. 25, 26, 27, 30, 31 and 32. I do not think it necessary to order further particulars of par. 28. During the hearing Mr. *Kitto* said that the determination referred to in par. 34 is the decision mentioned in par. 24 and Mr. *Sugerman* expressed himself as satisfied with this statement, so that I need not order further particulars of par. 34.

I give the plaintiff and defendant general leave to amend. I order the plaintiff to deliver the particulars to the defendant within 14 days and I give leave to the plaintiff to amend within 28 days. I also give leave to the defendant to amend within 14 days after the plaintiff's amendments have been delivered to it or if the plaintiff does not amend within 14 days after the plaintiff's solicitor has notified the defendant's solicitor to this effect or ... after the delivery of the particulars, whichever is the later date. ... The costs of the summons to be the defendant's costs in the action.

From that decision, so far as it related to the striking out of pars. 10 to 15 inclusive, 17, 18 and 22 of the statement of claim, the plaintiff appealed to the Full Court of the High Court.

During the argument the statement of claim was, by consent, amended by adding thereto as defendants the Commonwealth and the Attorney-General for the Commonwealth.

Appeal allowed. Order discharged in so far as it directs that paragraphs of the statement of claim be struck out. Defendants to pay costs of appeal. Costs of summons to be costs in the action.

Solicitors for the appellant, Parish, Patience & McIntyre.

Solicitor for the respondents, H. F. E. Whitlam, Crown Solicitor for the Commonwealth.

1. (1887) 36 Ch. Div. 489, at p. 496.
2. [\(1914\) 111 L.T. 512.](#)
3. [\(1928\) 28 S.R. \(N.S.W.\) 441](#); 45 W.N. 107.
4. [\[1909\] HCA 56](#); [\(1909\) 9 C.L.R. 301](#), at p. 309.
5. [\[1944\] USSC 49](#); [\(1944\) 321 U.S. 503](#), at p. 515.
6. (1945) A.C. 14, at p. 28.

7. [\[1944\] HCA 15](#); [\(1944\) 68 C.L.R. 504](#), at p. 523.
8. [\[1944\] HCA 36](#); [\(1944\) 69 C.L.R. 457](#), at p. 471.
9. (1943) A.C. 536.
10. (1943) A.C., at p. 548.
11. (1939) A.C. 117, at pp. 130, 131.
12. [\[1928\] USSC 69](#); [\(1928\) 276 U.S. 394](#), at p. 407.
13. [\[1944\] HCA 36](#); [\(1944\) 69 C.L.R. 457](#).
14. [\[1945\] HCA 2](#); [\(1945\) 69 C.L.R. 601](#).
15. (1887) 36 Ch. Div. 489, at p. 496.
16. [\(1914\) 111 L.T. 512](#).
17. [\(1928\) 28 S.R. \(N.S.W.\) 441](#); 45 W.N. 107.
18. [\[1909\] HCA 56](#); [\(1909\) 9 C.L.R. 301](#), at p. 309.
19. [\[1944\] USSC 49](#); [\(1944\) 321 U.S. 503](#), at p. 515.
20. (1945) A.C. 14, at p. 28.
21. [\[1944\] HCA 15](#); [\(1944\) 68 C.L.R. 504](#), at p. 523.
22. [\[1944\] HCA 36](#); [\(1944\) 69 C.L.R. 457](#), at p. 471.
23. (1943) A.C. 536.
24. (1943) A.C., at p. 548.
25. (1939) A.C. 117, at pp. 130, 131.
26. [\[1928\] USSC 69](#); [\(1928\) 276 U.S. 394](#), at p. 407.
27. [\[1944\] HCA 36](#); [\(1944\) 69 C.L.R. 457](#).
28. [\[1945\] HCA 2](#); [\(1945\) 69 C.L.R. 601](#).

</html</htm