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## HIGH COURT OF AUSTRALIA

**PERMEWAN WRIGHT CONSOLIDATED PTY LTD v TREWHITT**

Barwick CJ, Gibbs, Stephen, Mason, Murphy and Aickin JJ

1, 2 May, 22 November 1979

[1979] HCA 58; (1979) 145 CLR 1; 54 ALJ 54 98; 27 ALR 182

**CONSTITUTIONAL LAW (CTH) – FREEDOM OF INTERSTATE TRADE AND COMMERCE – STATE LAW PROHIBITING RETAIL SALE OF EGGS UNLESS GRADED AND TESTED BY STATE AUTHORITY – FEE PAYABLE TO AUTHORITY FOR GRADING AND TESTING – RETAIL SALE BY AGENT OF PRODUCER IN ANOTHER STATE – WHETHER REGULATORY LAW – VALIDITY: *THE CONSTITUTION* (63 & 64 VICT. C 12), S92; *MARKETING OF PRIMARY PRODUCTS ACT* 1958 (VICT.), SS41C, 41D.**

Permewan Wright Consolidated Pty Ltd (Permewan) was prosecuted at Springvale, Victoria, on informations laid by the respondent, an officer of the Victorian Egg Marketing Board (the Board) containing two charges respectively: (1) selling eggs by retail contrary to the provisions of the *Marketing of Primary Products Act* 1953 (Vic.), as amended (the Act), which eggs had not been graded and tested for quality and standard, and marked or stamped in accordance with the Act and the Regulations made thereunder; (2) displaying for sale eggs not so graded, tested, marked or stamped, contrary to the Act and these Regulations.

The alleged offences were against s41D(1) of the Act. Permewan was convicted by the Magistrate on both charges, and later applied to the Supreme Court of Victoria for, and obtained an order nisi to review the Magistrate's decision. The proceedings were removed into the High Court pursuant to an order made under s40 of the *Judiciary Act* 1903 (Cth.), as amended. It was not disputed that the eggs subject of the charges had not been graded, tested, marked or stamped by the Board in accordance with the Act and the Regulations thereunder, but it was claimed on behalf of Permewan that, in as much as the eggs were produced in New South Wales, and brought into Victoria for sale, the Act and the Regulations in their application were contrary to s92 of the *Constitution* (Cth) as constituting an interference with the freedom of interstate trade and commerce so that in accordance with s3 of the *Acts Interpretation Act* 1958 (Vic.) they must be read down so as not to apply to the eggs, with the result that no offences had been committed as claimed.

The eggs were produced in New South Wales by a group of companies incorporated in that State and trading as Bartter's Enterprises (Bartter's). Bartter's appointed Permewan as its agent to sell eggs on its behalf, such eggs to be delivered from Hanwood, New South Wales, to various premises of Permewan in Victoria. They were graded and tested for quality and standard, and candled at the premises of Bartters in Hanwood, in the same manner as those destined for sale in New South Wales, but they were not marked or stamped in any way. It was common ground that the eggs were in fact at least of the same freshness and wholesomeness as those available from the Board in Victoria. Bartter's were not obliged by the law of New South Wales to test or grade any eggs which they sent to Victoria for sale.

**HELD: by Gibbs, Stephen, Mason and Murphy JJ, Barwick CJ and Aickin J dissenting:**

**1. The relevant provisions of the Act in their application to the interstate trade in eggs conducted by Permewan did not infringe s92 of the *Constitution*, and Permewan had been rightly convicted of the offences charged.**

**2. The order nisi to review the convictions should accordingly be discharged with costs. So held by the majority of the Court because:- (Per Gibbs, Stephen and Mason JJ) The requirements of the Act as to grading, testing for quality and standard, marking and stamping of eggs represented a reasonable permissible regulation as to the trading in eggs in Victoria, in the interests of public health and of consumers in Victoria applying without discrimination both to intrastate and interstate trade. The submissions on behalf of Permewan that these requirements were unreasonable in that Bartters voluntarily tested and graded their eggs in New South Wales, and that the object of the Victorian legislation could have been better achieved by means (for example, punitive measures) other than the allegedly excessively restrictive and preventative provisions in the Act, could not be accepted. Nor could it be accepted that the fees imposed by s41C of the Act, in order to defray the expenses in grading, etc. by the Board, rendered the legislation invalid in its application to the interstate trade in eggs, Mason J being of the view that even if sub-s(8) of s41C, giving the Board in effect an uncontrolled power to fix fees, was open to challenge, it was clearly severable from the other relevant provisions.**

*Harper v State of Victoria* [1966] HCA 26; (1966) 114 CLR 361; [1966] ALR 731; (1966) 40 ALJR 49, and

*Cantarella v Egg Marketing Board (NSW)* [1972] HCA 16; (1972) 124 CLR 605; [1972-73] ALR 295; 46 ALJR 218, followed and applied.

(Per Murphy J) Section 92 of the *Constitution* is concerned with freedom from customs duties and other discriminatory fiscal imposts. The only fiscal impost is that levied by s41C(5) of the Act, requiring fees to be paid to the Board to defray its expenses in the grading, etc., of eggs. As there was no discrimination in the impost against trade and commerce among the States, either in the legislation or in its administration, s92 of the *Constitution* was not offended.

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