

There being a difference of opinion amongst us as to the answer to the question propounded by the Commission, we have thought it best that there should be two reports, one by the majority consisting of the Chief Justice and Mr. Justice Kennedy, and the other by the minority consisting of Mr. Justice Johnston. We accordingly have the honour to forward these two reports, together with a complete transcription of the shorthand notes of argument and the various documents referred to in the argument and submitted to us for our consideration.

We have the honour to be,

Sir,

Your Excellency's obedient servants,

(Sgd.) MICHAEL MYERS.

(Sgd.) ROBERT KENNEDY.

(Sgd.) H. JOHNSTON.

MAJORITY REPORT: THE CHIEF JUSTICE AND MR. JUSTICE KENNEDY

In substance the Commission directs us to consider and report upon the interpretation of an agreement constituted by a letter of the 18th June, 1943, from the Honourable the Minister of Industries and Commerce to the Secretary of the Farmers' Federation, and the reply of the same date to that letter having regard to all relevant circumstances.

We have carefully considered the arguments of counsel and the documentary material placed before us, but many of the matters that were debated by counsel, although very properly introduced if only by way of narrative and for the purpose of explanation, do not, we think, call for reference in this report.

The agreement applies generally to all primary products produced in New Zealand. The particular products, the transactions in respect of which have given rise to the present controversy, are butter and cheese. By agreement between counsel, however, the inquiry was limited to the transactions in butter, because it is common ground that whatever conclusion is arrived at in regard to butter applies equally to cheese, and the findings on the one are to be deemed to apply to both. Although the proceedings took the form of a Commission of Inquiry, we were informed by counsel (and this is confirmed by the correspondence and by the recent history of the dispute) that they were intended to be in substance an arbitration, and the Commission was asked by counsel to hear and determine the matter on that basis. The position is different, therefore, from a Commission set up for the purpose of inquiring into some social or other question of a controversial nature where it is necessary for the Commission to make a lengthy report with detailed findings of fact. The subject-matter of this Commission is really in the nature of a commercial dispute between the Government and the dairy producers, and all those interested may be taken to be fully acquainted with the facts and the history of the matter. All that seems to be necessary, therefore, is that we should deal with the case very much as if it were an action at law or an arbitration in which we were giving judgment or publishing an award.

It is, however, necessary to give a brief explanation of the events leading up to the making of the agreement. Prior to 1936 the marketing and disposal of dairy products were under the free and unfettered control of the industry itself conducting its operations by dairy-factory companies and other agents. This was completely altered by the Primary Products Marketing Act, 1936, the title of which was later amended to "the Marketing Act, 1936." Under that Act all dairy-produce intended for export was to be acquired by the Crown. The produce was exported by the Government and sold in overseas markets. The proceeds of sale were paid into an account called "the Dairy Industry Account." As and when produce was placed on board ship for export it became the property of the Crown, and the Government paid to the owners of