the Act were extremely detailed and severe, and suggested that Parliament had considered in detail all the cases in which bookmaking was felt to be undesirable. Therefore it was possible to infer an intent by Parliament that a person who complied with all the restrictions obtained a right to act as a bookmaker; and it followed, of course, that such a right could not be removed by a by-law.

The whole question of "inconsistency" or "repugnancy" has been much more fully analysed in this country, because of its frequent occurrence in cases concerning the relation between State and Federal law under s. 109 of the Constitution. It may be doubted, with respect, whether an Australian Court would have regarded the legislation in *Powell v. May* as doing more than restricting a common law liberty, without prejudice to the power of the Council to restrict it further.

R. L. FRANKLIN.

CONSTITUTIONAL LAW: STATUTORY CORPORATIONS AND THE SHIELD OF THE CROWN.

The ever-recurring question whether a statutory body created for the purpose of discharging functions and duties of a public commercial nature is entitled to Crown immunities and prerogatives was raised in *Grain Elevators Board of Victoria v. Shire of Dunmunkle.*[1] The appellant board was a body corporate constituted under the *Victorian Grain Elevators Act*, 1934. The Shire claimed that the Board was liable to the payment of rates under the *Local Government Act.* The Board claimed that it was exempt from rating under s. 249 (1) of that Act, which exempts "land, the property of His Majesty which is occupied or used for public purposes." The Supreme Court held for the municipality and on appeal the High Court confirmed this decision, Rich J. dissenting.

In the High Court, only Latham C.J. and Williams J. based their decision on general principles governing the relation between statutory corporations and the Crown. Their observations may be summarized as follows. In determining whether a statutory body is under the shield of the Crown, each case must be resolved by a consideration of the purpose and effect of the particular statute by which the statutory body is established. In order to be entitled to the immunities of the Crown, the authority set up under statute must show that the functions which it discharges are governmental in character. An incorporated body may be a government department and hence entitled to Crown immunities[2] if the financial control of the body is in the hands of the Crown: if revenues of the body are paid into consolidated revenue and expenses appropriated thereout, there is a probability of its being "under the shield."[3] Where persons or corporations are subject to ministerial control in the performance of

1. [1946] A.L.R. 273.
2. *Repatriation Commission v. Kirkland*, (1923) 32 C.L.R. 1; [1923] A.L.R. 297.
3. *Metropolitan Meat Industry Board v. Sheedy*, [1927] A.C. 899; *Fox v. Newfoundland*, [1898] A.C. 667; for a recent example see *In re Mathrick*, 12 A.B.C. 212.

their official functions then again they may be "under the shield."[4] The present Board had independent finances and a wide independent discretion, and therefore *prima facie* was not "under the Shield." Amongst detailed provisions of the relevant Act confirming these *indicia* their Honours emphasized Sec. 22 (3), which empowered an officer of the Department of Agriculture to arbitrate disputes between owners of wheat and the Board relating to dockages. Williams J. said that an elementary principle of natural justice is that no person shall be judge in his own case. This would be infringed by the arbitration section if the Board were under the Crown, since if it were it would be a part of the Department of Agriculture.

Dixon J. held that it was not necessary to determine whether the Board was in a general sense under the shield of the Crown. The basis of the exception in Sec. 249 (1) of the *Local Government Act* was "property," not occupation, and it was based on conceptions of property rights rather than governmental relations. The question resolved itself into whether the legal estate was vested in the Board, and if so whether there were equitable or beneficial interests or statutory interests vested in the Crown. Here it was the plain intention of the legislature that the Board should be an independent corporation as far as property title was concerned ; the Board held the whole legal and beneficial interest in the land.

Starke and McTiernan JJ., who concurred in the order of the majority, based their opinions on a combination of the considerations urged by Latham C.J., Williams and Dixon JJ. so that it is not easy to classify their opinions entirely under the one doctrine or the other ; *semble* they might be taken as approving both. But Starke J. said *inter alia* that in any event, the land was not being used "for public purposes" within the meaning of Sec. 249 (1), *semble* because it was being used for a *quasi* commercial purpose.

Modern Governments have found it necessary to set up statutory bodies, discharging functions or duties in the interest of the public, which are brought into contact with the trading community in general by supplying goods, and with the general public by such activities as building, shipping, roadmaking and acquisition of land. It should be standard practice with parliamentary draftsmen to insert in the relevant statutes a clause expressly defining the extent to which the body in question is to be treated as under the Shield of the Crown. Such a clause would save *bona fide* claimants from protracted and expensive litigation on preliminary questions as to who is the proper defendant. As it is, the Crown is always ready to invoke the niceties of the law relating to the Shield of the Crown, and to place at the disposal of statutory authorities ample financial means and legal talent for the purpose of establishing that such bodies are entitled to Crown privileges. The law falls into disrepute when a legal adviser has to inform a would-be plaintiff having a *bona fide* claim

4. *Marks v. Forest Commission*, [1936] V.L.R. 344 ; (1936) A.L.R. 476 ; *Kirkland's Case, ut sup* ; recent cases see *Commonwealth v. McSweeney*, [1944] V.L.R. 181 ; (1944) A.L.R. 348 ; *Merlino v. Australian Wheat Board*, 45 W.A.L.R. 12. In the latter case, it was held that the defendant board was an agency of the Commonwealth chiefly because of ministerial control. See also *W. A. Purves Stores v. Richardson*, [1941] V.L.R. 36 ; (1941) A.L.R. 53, where it was held that the Victorian Country Roads Board was not under the shield of the Crown, and accordingly could be garnisheed.

against a statutory authority that it is uncertain whether he can sue that authority or whether he has to sue the Crown. In all circumstances, this may affect the question of costs, and in Victoria, if the claim is other than in contract, it may make it impossible to launch an action at all against a defendant worth "powder and shot".

L. MASEL.

COPYRIGHT: MUSIC AND THE LAW.

Introduction

The recent action of the Australasian Performing Right Association Limited in making royalty charges against factories reproducing "music while you work" broadcasts may direct attention to the anomalies that have for so long existed in our copyright laws. Designed to meet the needs of an age when entertainment was largely of the "home-grown" variety, this branch of our law is in urgent need of revision if it is adequately to meet modern social requirements.

Nature of Copyright Law

The primary object of modern copyright law is the protection of the financial interests of the author of a literary, musical or artistic work. Indirectly, the law also endeavours, within the copyright period, to prevent the issue of mutilated or inaccurate copies of the copyright work. As, however, copyright is freely assignable and is in fact assigned, very often for totally inadequate rewards, the law will in many cases fall far short of its objects.

The right of the author to profit from his creation has long been recognized and was, until supplanted by Statute, governed by rules of Common Law.[1] The earliest copyright Statutes were, however, passed for the protection not of the author but of the bookbinder. Peculiarly expressed, the Statute 25 *Hen. VIII c.* 15 is concerned with those

> "having no other faculty wherewith to get their living."

The principle behind this enactment was applied for the protection of authors as early as 1585, through the medium of a decree of the Star Chamber; but with the abolition of the Star Chamber in 1640, this form of protection temporarily disappeared.

The first true Copyright Act did not appear until 1709[2]. This Act had the effect of extinguishing the Common Law of copyright in so far as published works were concerned[3], and the matter is now probably governed entirely by Statute. In Australia, the relevant provisions are to be found in the *Copyright Act*, 1912-1935 (*Cwlth.*), which incorporates the *Imperial Copyright Act*, 1911. Victoria has also made her contribution to the copyright legislation; but, as by Commonwealth Constitution, s. 51 (xviii), the Parliament of the Commonwealth is given power

> "to make laws for the peace, order, and good government of the Commonwealth with respect to . . . Copyrights, patents of inventions and designs, and trade marks,"

1. *Donaldson v. Beckett*, (1774) 4 Burr. 2408.
2. 8 *Anne* c. 19.
3. *Donaldson v. Beckett, cit. supra.*