

## DAIRY INDUSTRY AMENDMENT BILL.

### EXPLANATORY MEMORANDUM.

Clause 2: It has recently been held by the Supreme Court, in the case of *Macdonald v. the Normanby Co-operative Dairy Factory Company, Limited* (New Zealand Law Reports, 1923, pages 123-148), that a co-operative dairy company has no authority, apart from express contract with individual shareholders, to require its members, by virtue of provisions in the articles of association, to accept additional shares in the company. By reason of this decision, doubts have arisen as to the validity of certain past allotments of shares. One of the objects of the Bill is to validate the allotment of such shares, with two exceptions, namely:—

(1.) The Bill does not interfere with the particular allotment of shares which was the subject-matter of the case above referred to.

(2.) The Bill does not validate allotments which were objected to in writing by the shareholders, if the shareholders, on lodging their objection, ceased to supply milk to the company.

It has recently been further decided in *Shalfoon v. The Cheddar Valley Co-operative Dairy Company* (New Zealand Law Reports, 1924, pages 561-596) that a co-operative dairy company cannot by means of its articles of association require its shareholders to supply milk, cream, or other dairy-produce to the company, but that the supply of such produce must be the subject-matter of special agreements. It is provided by the Bill that existing articles of association shall be deemed to be valid and effective, notwithstanding the judicial determination aforesaid; and, further, that co-operative dairy companies may hereafter effectively provide by their articles for the supply of milk and other produce by shareholders.

Clause 3: This clause enable companies whose principal object is the testing and improvement of dairy herds to be registered under Part III of the principal Act.

[AS REPORTED FROM THE AGRICULTURAL AND PASTORAL INDUSTRIES, AND STOCK COMMITTEE.]

House of Representatives, 27th October, 1924.

Hon. Mr. Nosworthy.

DAIRY INDUSTRY AMENDMENT.

Title.	ANALYSIS.
1. Short Title.	of such supply agreements as would otherwise be invalid as being in restraint of trade.
2. Validation of certain allotments of shares in co-operative dairy companies. Validation of certain articles of association of co-operative dairy companies as to supply of dairy-produce by shareholders. Validation	3. Extension of provisions of Part III of principal Act (relating to co-operative dairy companies).

A BILL INTITULED

AN ACT to amend the Dairy Industry Act, 1908.

Title.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Dairy Industry Amendment Act, 1924, and shall be read together with and deemed part of the Dairy Industry Act, 1908 (hereinafter referred to as the principal Act).

Short Title.

10 a co-operative dairy company heretofore made by the directors of the company shall, if made in conformity with the terms of the articles of association or of any amendment of such articles, and notwithstanding that such articles or amendment thereof may be *ultra vires* of the company, be deemed to have been validly made, and the shares so

15 allotted shall be deemed to have been accepted by the shareholders to whom they were respectively allotted in accordance with the terms of the allotment, save that nothing herein shall apply with respect to the allotment of shares being the subject-matter of the judicial determination of the Supreme Court in the case of *Macdonald versus The*

20 *Normanby Co-operative Dairy Factory Company, Limited* (reported in the New Zealand Law Reports, 1923, pages 123 to 148); or with respect to the allotment of shares to any shareholder who, within ~~three~~ *six* months after receiving notice of such allotment, heretofore gave to the company notice in writing of his objection to receive such

25 shares, and ~~thereupon ceased~~ *within the said period of six months permanently ceased* to be a supplier of milk, cream, or other dairy-produce to the company. Nothing in this subsection shall be construed to authorize the allotment of any shares after the passing of this Act, or to validate any allotment made after that date, if such

30 allotment would be invalid if this Act had not been passed.

Validation of certain allotments of shares in co-operative dairy companies.

*New.*

(1A.) Every person to whom the directors of any co-operative dairy company have heretofore purported to allot shares in the company, but who was not a shareholder prior to such allotment, shall be estopped from denying the validity of the allotment if, being at the date of the allotment a supplier of milk, cream, or other dairy-produce to the company, he did not within six months after receiving notice of such allotment, give to the company notice in writing of his objection to receive such shares, and within the said period of six months permanently cease to be a supplier of milk, cream, or other dairy-produce to the company.

Validation of certain articles of association of co-operative dairy companies as to supply of dairy produce by shareholders.

(2.) The provisions in the *existing* articles of association of any co-operative dairy company, ~~whether made before or after the passing of this Act,~~ purporting to oblige the shareholders of that company to supply milk, or cream, or other dairy-produce to the company, shall be deemed to be and at all times since the making thereof to have been valid and effective, and to have imposed on the shareholders, according to the tenor of those articles, an obligation to supply such milk, cream, or other dairy-produce to the company; and any penalty prescribed by such articles for failure so to supply such milk, cream, or other dairy-produce shall be deemed to be and to have been lawfully fixed, and every shareholder who *hereafter* makes ~~or has heretofore made~~ default in complying with the terms of the articles shall be liable accordingly:

Provided that nothing in this subsection shall apply with respect to the articles of association of the Cheddar Valley Co-operative Dairy Company, Limited, in their application, before the passing of this Act, to the appellant in the case of *Shalfoon versus The Cheddar Valley Co-operative Dairy Company, Limited* (reported in the New Zealand Law Reports, 1924, pages 561 to 596).

*New.*

Provided also that nothing in this subsection shall be construed to authorize the inclusion, after the passing of this Act, of provisions in any articles of association purporting to oblige the shareholders of any company to supply milk, cream, or other dairy-produce to the company, and all articles of association to which this subsection applies (being articles made before the passing of this Act) shall, on the expiration of six months after the passing of this Act, cease to have any force or effect, save so far as they may be valid and effective irrespective of the provisions of this subsection.

*Struck out.*

(3.) No agreement made before or after the passing of this Act, between a co-operative dairy company and any shareholder of that company or any other person for the supply of milk, cream, or other dairy-produce to the company shall, in any judicial proceedings, be held to be invalid merely on the ground that it is in restraint of trade (where such is the case).

Validation of such supply agreements as would otherwise be invalid as being in restraint of trade

Extension of provisions of Part III of principal Act (relating to co-operative dairy companies).

3. Section forty-eight of the principal Act, as amended by section ten of the Dairy Industry Amendment Act, 1922, is hereby further amended by adding to subsection one the words "or the testing and improvement of dairy herds."