

12/83

O N A P P E A L

FROM THE COURT OF APPEAL OF NEW ZEALAND

B E T W E E N:

WILLIAM DAVID WISEMAN

Appellant

- and -

THE CANTERBURY BYE PRODUCTS COMPANY LIMITED

Respondent

CASE FOR THE APPELLANT

10

1. THE ISSUES RAISED ON THE APPEAL

Are the rules made by the Respondent a form of delegated or subordinate legislation?

If they are, then do they, by virtue of that status alone, survive the demise of the rule-making authority?

If the rules are not a form of delegated or subordinate legislation, then do they survive the demise of the rule-making authority?

20

If the rules do survive the demise of the rule-making authority, can they be relied upon by the Respondent when it again achieved the status of a rule-making authority without the further approval of the Minister of Agriculture?

2. MATTERS OF FACT

30

1. The Respondent (now in Receivership) is a Limited liability Co-operative Company whose shareholders are wholesalers and retailers in the Christchurch area of the South Island of New Zealand. On the 1st October 1950 the Christchurch City Council delegated to the respondent the statutory right, and indeed obligation, imposed upon the Council by the

Meat Act 1939 to operate an abattoir in the City of Christchurch.

- (Record pg 30)
- (Record pg 41)
- (Record pg 94)
- (Record pgs 86 92)
- (Record pg 31)
- (Record pg 42)
- (Record pg 42)
2. The Meat Act 1939 required such delegation to be by Deed and the requisite deed was entered into between the Respondent and the Christchurch City Council, on 29th September 1950, and was approved by the Minister of Agriculture pursuant to s.16 of the Act on 2nd October 1950.
  3. On 25th September 1950 the Respondent promulgated a set of Rules covering the conditions under which the abattoir was to be operated and fixing the fees payable for the use of the abattoir. These rules were approved by the Minister of Agriculture as required by s.22 ss.7 of the Meat Act on 2nd October 1950. These Rules were expressed to come into force on 5th October, 1950, or such later time as the Minister endorsed his approval. The Christchurch City Council also endorsed its approval to the Rules.
  4. Included in the Rules were Rules 38 and 40(5) as amended from time to time which authorised the Respondent to levy fees in respect of animals slaughtered elsewhere than in the district covered by the deed of delegation but sold in such district. It is pursuant to these rules that the Respondent has brought its claim against the Appellant and other Butchers. The fees will be referred to as "hanging fees".
  5. For the purpose of this Appeal it is conceded that the Appellant sold meat in the Respondent's District which had not been slaughtered in the Christchurch abattoir and that he had not made the returns provided for in Rule 38. The Appellant says that he is not obliged to do so because the Respondent's rules have, since 1st October 1960, when the first deed of delegation expired, or if not on that date, then from the 30th September 1970 when the second deed of delegation expired, been void and of no effect.
  6. A second Deed of Delegation was entered into on 16th October 1961. It provided for a right of renewal for 10 years from 1st October 1970 upon the Respondent giving to the Council 12 months notice in writing of its desire so to do. The Respondent did not avail itself

of this right. The delegation expired by effluxion of time on 30th September 1970.

7. A third Deed of Delegation was entered into and dated 23rd May 1973. This deed is expressed to have come into force on 1st June (Record pg 46) 1973.
8. The 1973 Deed contained provisions which were materially different from those contained in the earlier deeds, and is not an extension of the previous deed.

10 3. THE RELEVANT LEGISLATION

1. The relevant history of the legislation is that the right to charge "hanging fees" was first introduced by the Slaughtering and Inspection Act 1900.

This Act was repealed by the Meat Act 1939 which in turn was repealed and consolidated by the Act of 1964. Both Acts preserved the right to charge hanging fees. The Meat Amendment Act 1976 provides that from 1st July 1981 all deeds of delegation shall expire and the power to make rules and charge hanging fees also ceases. It is accepted that the Respondent's right to continue this litigation is preserved by s.20(g) of the Acts Interpretation Act 1924.

4. THE JUDGMENTS

1. The Supreme Court - Cook J

His Honour held that irrespective of whether or not the rules are a form of delegated or subordinate legislation, if the Respondent ceased to be the controlling authority then any Rules made by it came to an end.

(Judgment  
pg 465  
lines 10  
25)

His Honour dismissed the Respondent's claim with costs.

2. The Court of Appeal

(Richmond P. McMullin and Quilliam J.J.)

Their Honours held:

- (i) That the rules are a form of delegated legislation and therefore did not lapse when the Respondent ceased to be the controlling authority.

(Judgment  
pg 472  
lines 12 - 31  
pg 473  
lines 32 - 37  
pg 474  
line 15)

(Judgment  
pg 472  
lines 31 - 35  
pg 474  
line 50 -  
pg 475 line 21)

(ii) There is no general rule that where a power to make subordinate legislation is conferred on the holder for the time being of a particular office, rules made by one incumbent automatically lapse when the office falls vacant or there is a change of incumbent.

(Judgment  
pg 473  
lines 14 -  
15)

(iii) Even though the rule making authority ceases for a time to be the controlling authority there is no need to consider the rules as having lapsed or expired. Their status as rules remains. Only their enforceability is affected.

10

(Judgment  
pg 476  
lines 6 - 9

(iv) It may be in other more radical situations a different result would follow, as for example, the termination of a deed of delegation for misconduct followed by the appointment of a new delegate.

5. APPELLANT'S SUBMISSIONS

20

I. Submissions on Matters of Fact and Proper Inferences

1. (a) The Court of Appeal erred in finding as a fact that the gap between the expiration of the 1960 Deed of Delegation and the execution of the 1973 Deed and its subsequent approval by the Minister in 1974 was a "technical gap" (supra pg 475 line 5).

(b) There was no evidence upon which the Court of Appeal could hold that the delay in the re-appointment of the Respondent from 30th September 1970 to 15th January 1974, when the Minister consented to the 1973 Deed, was caused solely by the question of upgrading the premises.

30

(Record  
pg 470  
lines 40 - 45)

(c) The Court of Appeal erred in finding as a fact that in the case of the hiatus in the Respondent's appointment between 1st October 1960 and 16th October 1961; and between 30th September 1970 and 22nd May 1973, that the requisite ministerial approval had been given and the Council had agreed to grant or recognise the further delegations.

40

(d) The Court of Appeal erred in finding as a fact that "everybody acted upon the assumption that the deed of delegation continued in force".

(Record  
pg 470  
lines 48 - 50)

- 10 2. It is submitted that Your Lordships are not precluded from giving weight to the fore-going matters in that they are not concurrent findings of fact made in both Courts below. They are matters of inference relied upon by the Court of Appeal, for which there is no acceptable evidence.

Morgan v. Khyatt /1964/ N.Z.L.R. 66 is distinguishable and reliance is placed upon McCaul v. Frazer (1917) N.Z.P.C.C. 152 at 155 and Whitehouse v. Jordan /1981/ 1 All E.R. 267.

## II. Submissions of Law

1. That the respondent's rules are not a type of delegated or subordinate legislation.

- 20 2. Alternatively, if the Respondent's rules are a type of delegated legislation, then that status alone does not have the effect of allowing the Rules to survive the termination of the deeds of delegation.

- 30 3. If the rules are a type of delegated legislation and are capable of surviving the demise of the delegation and may be relied upon when the maker of the rules again becomes the controlling authority, then such rules only have legal effect if they are resubmitted to the Minister of Agriculture for his approval.

### 4. The Rules are not Delegated Legislation

40 (a) This submission proceeds on the basis that the question of whether or not the Rules are a form of delegated legislation is crucial to the decision of the Court of Appeal, and that if the Rules cannot be so characterised then the judgment of Cook J. would have been affirmed (McMullin J. pg 471 lines 44 - 46, pg 472 lines 12 - 25; Richmond P. pg 575 lines 15 - 20). It is clear from the judgment of Quilliam J. that it was the only consideration which weighed with him in allowing the appeal.

(Judgment  
pgs 471 472  
474)

(b) It is submitted that the Rules do not meet any known test for ascertaining whether or not they have the status of delegated legislation.

5. Assuming the Rules are Delegated Legislation

If the Rules are a form of delegated legislation they cannot survive the termination of the deed of delegation because :-

(a) The Rule making power of the Respondent lies in the deed of delegation coupled with the statute. The Rules cease to have effect if either the statute is repealed or the deed for whatever reason terminates. 10

(b) The same result must obtain howsoever the termination of the delegate's appointment occurs. Either the rules are capable of surviving the termination, or they are not. 20

6. Submissions of Rules to Minister upon the Respondent's resumption of office of Controlling Authority

(Record pg 45)

If the 1950 Rules are a form of delegated legislation and if they were available to the Respondent when it again became the controlling authority, then it is submitted that the 1950 Rules can only again acquire legal status by having them again submitted to, and approved by the Minister pursuant to s.23(7) of the 1964 Act.

(Record pg 46)

30

A.A.P. WILLY

IN THE PRIVY COUNCIL      No. 8 of 1982

---

---

O N    A P P E A L  
FROM THE COURT OF APPEAL OF NEW ZEALAND

---

---

B E T W E E N :

WILLIAM DAVID WISEMAN      Appellant

- and -

THE CANTERBURY BYE PRODUCTS COMPANY  
LIMITED

Respondent

---

---

CASE FOR THE APPELLANT

---

---

MACFARLANES  
Dowgate Hill House,  
London,  
EC4R 2SY

Solicitors for the Appellant