

Canterbury Bye-Products Co Ltd v Wiseman 5

High Court Christchurch 10
18 February; 22 April 1980
Cook J

Court of Appeal Wellington
24 October; 19 December 1980 15
Richmond P, McMullin and Quilliam JJ

Bylaw and rule-making powers — Council delegated by deed its power to maintain abattoir — Statute authorised delegate to make rules — Rules validly made in 1950 — Delegation of authority lapsed for two periods between 1960-1961 and 1970-1973 — Whether rules remained in force — Meat Act 1939, ss 16 and 22. 20

Section 16 of the Meat Act 1939 provided that, with the approval of the Minister of Agriculture, the Council was permitted to delegate to any person its power to establish or maintain an abattoir but required that every instrument of delegation should be by deed. By deed dated 29 September 1950 the Christchurch City Council delegated to Canterbury Bye-Products Co Ltd for a period of 10 years its power to maintain an abattoir for the Christchurch district. Section 16(4) of the Act provided that while the instrument of delegation continued in force, the person or persons to whom any delegation was made should be deemed to be the controlling authority of the abattoir; and s 22 gave power to the controlling authority to make bylaws or rules relating to the use of the abattoir. In September 1950 the company acted under these provisions and made rules, which were approved by the Minister, inter alia, for charges, known as "hanging fees", for meat sold for consumption within its district; but slaughtered in another abattoir or in any meat export slaughterhouse. 25 30 35

The original deed of delegation expired on 1 October 1960. A second deed of delegation, executed on 16 October 1961, extended the term of delegation to 30 September 1970. On 23 May 1973 a third deed was executed for a further 10 years. This deed provided that it was to take effect and to be deemed to have come into force on 1 June 1973. Therefore, for two periods (from October 1960 to October 1961 and from September 1970 to May 1973) there was no formal instrument in existence evidencing the delegation from the Council to the company. 40

In 1979 the company sought a declaration that the defendant was liable to pay it the hanging fees prescribed in its rules for stock killed outside its district but sold or traded within it by the defendant. In the High Court the defendant successfully argued that the rules in question ceased to have effect at least from 1 October 1970. The company appealed. In the Court of Appeal the central question was whether the 1950 rules remained in force during the period from 1 June 1973 onwards. 45

Held: The 1950 rules, as amended to 30 September 1970, applied during the period of delegation created by the deed of 23 May 1973. The rules could only be enforced in respect of periods when the company was in law the controlling authority. But there was nothing in the Act which expressly or impliedly provided that rules made under the Act, either generally or in particular as to hanging fees, should completely 50

lapse merely because of a temporary gap in the tenure of office of the controlling authority. Once the company resumed the status of controlling authority it was again capable of enforcing the rules which were validly made in 1950 (see p 472 line 47, p 473 line 24, p 474 line 49). Appeal allowed.

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Cases mentioned in judgment of Cook J

Carr v New Zealand Refrigerating Co Ltd [1976] 2 NZLR 135.

Graham v Attorney-General [1966] NZLR 937.

Multiplex Industries Ltd v Speer [1965] NZLR 592.

- 10 *New Zealand Institute of Agricultural Science Inc v Ellesmere County* [1976] 1 NZLR 630.

Cases mentioned in judgment of Court of Appeal

R v Kelly (1952) 85 CLR 601.

- 15 *Watson v Winch* [1916] 1 KB 688.

Note

Refer 9 Abridgement 426; 15 Abridgement 244.

20 **Action**

This was an action in which the plaintiff, an incorporated company carrying on business as an abattoir in Canterbury, sought a declaration that the defendant was liable to pay to it the hanging fees prescribed in its rules for stock killed outside its district but sold or traded within it by the defendant, and the taking of accounts between the parties.

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J G Fogarty and *A A Couch* for the plaintiff.

A A P Willy for the defendant.

Cur adv vult

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COOK J. This is a claim by Canterbury Bye-Products Co Ltd that the defendant is liable to pay to it certain prescribed fees, known as "hanging fees", for stock killed outside the plaintiff's district but sold or traded in it by the defendant. It is not denied by the defendant that he has sold meat in the way alleged. As to the allegation that he has failed to pay the hanging fees, he admits that he has not paid them, but says that he is not nor ever has been under any obligation to pay such fees to the plaintiff. In respect of the allegation in para 8 of the statement of claim that he has failed to make returns, he again admits that he has not done so but maintains that the plaintiff has no authority or right to require or demand them.

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In respect of certain documents the following was admitted:

(1) The existence of a Deed of Delegation dated 29 September 1950 and its approval pursuant to the Meat Act.

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(2) The existence of the other deeds referred to in para 2 of the statement of claim; that is, the Deeds of Delegation dated 16 October 1961 and 23 May 1973, and that they were duly made.

(3) The rules referred to in para 3 of the statement of claim ie rules made by the plaintiff in its capacity as the authority in respect of the abattoir in Canterbury pursuant to s 22 of the Meat Act 1939, and that they were duly made.

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The question at issue is whether the rules mentioned above continued in force and are still in force, as submitted by the plaintiff, or whether they lapsed or expired on 1 October 1960 and no further rules were made in their place or, if they remained in force after 1 October 1960, whether they lapsed or expired on 1 October 1970 and

have not been re-made; in other words, whether the plaintiff is able to enforce the 1950 rules against the defendant.

Section 16 of the Meat Act 1939 provides, *inter alia*:

“(1) Any local authority that by this Act is required to establish or to maintain an abattoir, or any local authority that, in accordance with section nine hereof, has made a special order for the establishment of an abattoir, may, with the approval of the Minister, delegate to any fit person or persons (including a company) its power to establish or to maintain the abattoir. 5

“(2) Every instrument of delegation by a local authority under this section shall be by deed under the seal of the corporation, and shall be signed by or on behalf of the person or persons to whom the delegation is made. Where the delegation is to a company, the seal of the company shall be affixed to the instrument of delegation. 10

“(3) Every such instrument of delegation shall contain only such terms, conditions, and provisions as the Minister may approve, and shall operate as an agreement between the local authority and the person or persons to whom the delegation is made. 15

“(4) The person or persons to whom any delegation is made as aforesaid shall, while the instrument of delegation continues in force, be deemed to be the controlling authority of the abattoir, and in relation to the abattoir shall, subject to the provisions of this Act and of the instrument of delegation, have all the rights, powers, duties, and functions which the local authority would have had if the instrument of delegation had not been executed.” 20

In 1950 the Christchurch City Council was a local authority required by the Act to maintain an abattoir and consequently had power, by virtue of this section, to delegate. By deed made the 29th September 1950 the Council delegated to the plaintiff the Council's power to maintain the abattoir in accordance with the provisions of the Meat Act 1939 and subject to the provisions contained in the deed and the plaintiff accepted the delegation. Clause 2 states: 25

“The term of the delegation shall be for a period of ten years from the 1st day of October 1950.” 30

Various clauses which follow relating to the payment of rent and containing covenants on behalf of the plaintiff and other provisions, do not appear to be material. The deed was duly approved by the acting Minister of Agriculture, that Department being responsible for the administration of the Act. As indicated above, there is no dispute that this was a proper deed of delegation. A supplemental deed was entered into in 1957, but this has no bearing on the present issue. 35

It is necessary to turn now to s 22 of the Meat Act 1939 which provided (*inter alia*): 40

“(1) The controlling authority of an abattoir (including any person to whom a local authority has delegated its powers and functions in respect of the abattoir in accordance with section sixteen hereof) may from time to time make bylaws (where the controlling authority is a local authority) or rules (in any other case), not inconsistent with this Act or with any regulations thereunder — . . . 45

“(c) Prescribing rates of fees to be paid to the controlling authority in accordance with subsection three hereof in respect of meat sold for consumption within the abattoir district and derived from stock slaughtered in another abattoir or in any meat export slaughterhouse: 50

. . .

“(7) Notwithstanding anything in the foregoing provisions of this section, no bylaws or rules made thereunder shall come into force unless and until they have been approved by the Minister. The Minister may at any time disallow, in whole or in part, any bylaw or rule theretofore approved by him, by giving to the
5 controlling authority not less than three months’ notice in writing of his intention so to do.”

Acting pursuant to this section the plaintiff made certain rules entitled “Rules of the Canterbury Bye-Products Company Limited relating to the use of the abattoir in the Christchurch district”. I note that, whereas the delegation to the plaintiff company
10 commenced on 1 October 1950, the rules were made by resolution of the directors on 25 September 1950 and embodied in a deed enacted on the 29th. It has been acknowledged that they were duly made and presumably nothing turns on this point. The rules fixed fees which have frequently been altered since but the precise contents are not of importance, the question being whether the rules have remained
15 in force or whether they have lapsed or expired.

It is to be noted that the Deed of Delegation was for a finite term of 10 years from 1 October 1950. To follow the history of the matter, on 21 September 1960 the Council adopted a recommendation of the Abattoir and Reserves Committee which
20 was in the following terms:

“It is *recommended* that the Canterbury Bye-Products Company Limited be granted a renewal of the Deed of Delegation until 30th September 1970 with the right of renewal from that date.”

And on 6 October the acting Town Clerk wrote to the plaintiff company advising it
25 of this decision. The matter must then have been referred to the Department of Agriculture as a letter was produced from the Department to the Council’s solicitors approving the Council’s proposal to extend what is referred to as “the present delegation” for a further period of 10 years from 1 October 1960 and to give the company the right to ask for a further renewal of 10 years from 1 October 1970, the
30 term to be renewed on the same conditions as previously obtained with the exception of the right of renewal. A deed between the Council and the company, expressed to be supplemental to the original Deed of Delegation, was then prepared and executed on 16 October 1961. Apart from a reference to certain lands which is not material, it provided that:

35 “1. The term of the delegation is hereby extended to the 30th day of SEPTEMBER 1970 SUBJECT to the same terms and conditions as are contained and implied in the original deeds.

40 “2. If the Company shall during the extended term hereby granted pay the rent reserved under and by virtue of the original deeds and observe and perform the covenants and conditions on the part of the Company therein contained or implied up to the 30th day of September 1970 and shall give notice in writing to the Council at least 12 calendar months before the expiration of the said
45 extended term of its desire to extend the term of the delegation for a further term of TEN YEARS from the 1st day of OCTOBER 1970 THE COUNCIL will at the cost of the Company grant to the Company an extension of the term of the delegation for TEN YEARS from the 1st day of OCTOBER 1970 SUBJECT to the same terms and conditions as are contained and implied in the original deeds.”

50 This deed was approved by the Minister on 8 November 1961.

Prior to the expiry of the second term of 10 years, that is in 1970, the matter was again given consideration by the Council. A report from the Works and Services Committee referred to the fact that the abattoir Deed of Delegation was due for renewal in October 1970 for a further period of 10 years and that under the terms of

the deed the company was entitled to the renewal under the existing terms and conditions. Then followed some reference to the maintenance of the property and the recommendation was that the Chairman be authorised to approve any alterations of a minor nature relating to the matters discussed. A resolution was passed:

“It was resolved to authorise the Abattoir Sub-Committee to approve any alterations of a minor nature relating to the Deed of Delegation and to negotiate the removal from the Schedule of several parcels of land in Haytons Road which are not directly connected to the Abattoir site.”

The matter came before the Council on 19 October 1970. The Minute is lengthy and need not be quoted in full. It commences:

“The Deed of Delegation by which the Canterbury Bye-Products Co Limited operates the Christchurch Abattoirs on Council’s behalf expired on the 30 September last. Under this Deed, the Company is entitled to a renewal on the same terms and conditions, for a further period of ten years.”

It refers to amendments to the deed which were considered desirable and concludes:

“It is now *recommended* that the proposals as outlined above be referred to the City Solicitors for incorporation in the renewed Deed of Delegation and that the Sub-Committee’s action in this matter be confirmed.”

A letter was written to the Council’s Solicitors on 30 October 1970 advising them that the Deed of Delegation was to be renewed for a further period of 10 years and informing them of amendments to be made. For reasons which will be mentioned it was not until 23 May 1973 that a new deed was executed and this took the form of a fresh Deed of Delegation replacing the original deed. The preamble to the deed makes reference to the previous deeds but, beyond reciting the provision in the 1961 deed for an extension if the company should seek one, there is no reference to the gap between 1 October 1970 and 23 May 1973. Clause 1 of this new deed reads as follows:

“(a) The Council doth hereby delegate to and the Company doth hereby accept the delegation of the Council’s power to maintain the abattoir land and premises more particularly described in the First Schedule hereto (which abattoir land and premises are hereinafter called ‘the Abattoir’) in accordance with the provisions of The Meat Act, 1964 and subject to the provisions hereinafter contained, the Company thereby becoming a Controlling Authority under such Act.”

The provisions which follow are not material except that the following should be mentioned:

“12. During each and every year of the term of the delegation THE COMPANY shall: . . .

“(e) Submit to the Council for its approval all Rules relating to the use of the Abattoir and other matters made by the Company in pursuance of the provisions of Section 23 of the Meat Act, 1964 and shall not submit any such Rules to the Minister of Agriculture for his approval until they have first been approved by the Council.”

In the interval between the 1961 deed and 1970, the Meat Act 1964 was enacted for the purpose of consolidating and amending the enactments relating to the slaughtering, inspection and export of meat. In the new Act, s 14 corresponds with s 16 of the 1939 Act; it contains corresponding provisions and additional ones but, essentially, the power to delegate and the method of delegation remain unchanged. Section 23 replaces s 22 of the 1939 Act in substantially the same terms. There was no suggestion that any differences between the two Acts were material for

present purposes and it was agreed that if the rules were in force at the time of the passing of the 1964 Act and the repeal of the 1939 Act, they would remain in force by virtue of s 20(d) of the Acts Interpretation Act 1924.

In support of the plaintiff's claim, evidence was given by Mr P G Scoular, the
5 Deputy General Manager and City Engineer of the Christchurch City Council and by Mr A S Marshall, Managing Director of the plaintiff company. The former's understanding was that the company had continued to act as the delegate of the Council throughout the period since 1950. He could not speak with personal knowledge of the situation in 1960-1961, but referred to a modernisation
10 programme that commenced in 1964:

"The initiative for modernisation initially came from the Council but it appeared that almost coincidentally the Department of Agriculture set out to raise the standards generally of abattoirs and slaughterhouses throughout the country."

15 He explained the negotiations that took place between the Council, the Department and the company but, in response to a question, replied:

"As to what document regulated the relationship between the parties during the period 1970-1973, I can't speak from the legal situation but as a matter of fact I
20 assumed and I believed the Council did, that the Deed was to be extended under right of renewal and was adopted. The 1961 Deed. My assumptions relating to the 1950 Deed at that time, I don't think I considered it. I was assuming that there was a Deed. As a matter of fact there was no change in the relationship between the parties."

25 Regarding the 1970-1973 period, he thought that the deed of 1961 was regulating the position. He agreed that between 1970 and 1973 the relations between the company and Council, in respect of the operation of the abattoir, were undergoing a major change. The picture is one of continuing discussions and negotiations between the Council, the company and the Department, culminating in agreement which was
30 recorded in the 1973 deed. During this period everyone concerned acted on the assumption that the delegation continued in force but it is clear that there was no deed of delegation expressly relating to that period.

Mr Marshall made it clear that his company regarded itself as the delegate of the Council during the period in question. He said he could not speak in particular of the
35 1960/1961 period, as he was not then with the company, but in respect of the later period he stated:

"October 1970 and the months following did not mark any change in the procedure between the company and Council, there was absolutely no change in that period. The status quo remained as had been the case in previous years."

40 He produced extracts from the company's Minutes showing that resolutions had been passed within the period in question containing amendments to certain clauses of the rules relating to charges for services at the abattoir. He produced Certificates of Renewal of Registration of the abattoir addressed to his company and issued by
45 the Department of Agriculture in respect of the years ending 30 June 1971, 1972, 1973 and 1974. As to the 1973 deed, he stated as follows:

"As to what led up to the execution of the 1973 deed, the position was that during the mid 1960s the Department of Agriculture as it was called then was requiring considerable upgrading at all meat works. A plan was worked out in
50 1967 between the Council and the company and the Ministry governing the upgrading of the Christchurch City Abattoir. A system of financing this upgrading through revenue was agreed on by all parties. The Ministry of Agriculture towards the end of the 1960s were not happy with the speed at which the upgrading was taking place. Early in 1970 the then director of the meat

division Mr Watt retired and a new director, Mr McNabb, was appointed. With this appointment considerably more pressure came on upgrading the abattoirs and I think all other meat works in the country. Many meetings took place between the Council, ourselves, and the Ministry during 1970, 1971 and 1972. It was becoming clear at that stage that an alteration to the terms that we were operating under was required. The terms of the 1950 deed which we had operated under through to 1970 were now not covering the changing circumstances which were being brought about by the implementation of the 1969 Meat Regulations. This in turn led to the situation where between ourselves and the Council we could see that for the smooth operation of the upgrading and modernisation greater authority to negotiate with the Department was required. And these alterations were eventually recorded in the 1973 agreement.”

He concluded his evidence-in-chief:

“I am not aware of any break in operation of the abattoir by the company since October 1950. To my knowledge there has been no break whatsoever in the administration of the abattoir by the Canterbury Bye-Products Co.”

Cross-examination elicited the fact that no formal notice had been given by the company in terms of the 1961 deed for an extension of the term but there had been discussions and agreement had been reached. In respect of the period 1970, 1973, there was the following exchange:

“What deed did you think you were operating under in 1970-1973? — We didn’t merely think, we knew we were operating under the 1950 deed as amended and extended in 1961 and as the Council had indicated with their concurrence to its extension. That was a 10 year right of renewal in the 1961 amendment.”

In brief, he presented a similar picture to that given by Mr Scoular ie acceptance between the Council and the company that the delegation of the former’s authority to the latter would continue; negotiations as to the modernisation of the abattoir and the terms of future delegation, stimulated to a considerable extent by the Ministry, and finally agreement permitting the new deed to be drawn. During this period it seems to have been presumed by the Council, the company and the Department that the delegation embodied in the 1950 deed with the minor modifications contained in the 1957 deed and with the extension of the term continued in the 1961 deed continued in being.

For the plaintiff, Mr Fogarty, after traversing the history of the legislation and indicating the reasons for the need for payment of fees to the controlling authority in respect of meat slaughtered elsewhere, first submitted that the rules made by the plaintiff company constituted a form of delegated legislation and that, in approaching the question of their validity, duration and demise one should apply the standard principles relating to such legislation. This submission presupposed that there was a period of time when no instrument of delegation was in force. In support he referred to *Craies on Statute Law* (7th ed, 1971) p 289, where the chapter commences with the following statement:

“In addition to the common law and statute law, the law of the land includes a great deal of what may be termed subordinate or ‘delegated’ legislation. It comprises Orders in Council, departmental orders, rules, regulations, schemes, by-laws, etc, made under statutory powers.”

He submitted that, if it were to be argued that the rules had lapsed, then the argument in support of such a proposition must point to a provision of a statute which expressly or impliedly provided that the rules would lapse in certain

circumstances. He contended that in the absence of express revocation or, I think he would have included, the repeal of the empowering statute in circumstances in which the Acts Interpretation Act, s 20 (d) did not apply, the rules made by a controlling authority would remain in force notwithstanding that the controlling authority might cease for a period to be such.

He stressed that a law is not repealed merely because it becomes obsolete and drew my attention to the fact that the only reference in the Meat Act to a rule ceasing to have force is in s 23(7) (1964 Act) where there is provision for the Minister to disallow a rule previously approved by him.

Whether rules made by a controlling authority to whom the maintenance of an abattoir is delegated constitute delegated legislation or not. I cannot think that this submission is tenable. Under the Act the local authority may delegate:

“to any fit person (including a company) its power to establish or maintain an abattoir”.

The delegation may expire by effluxion of time; the delegate, if a person, may die or, if a company, be wound up; if the delegate does not carry out its obligations the delegation may be terminated. It appears contrary to common sense that, in such circumstances, rules made by that delegate should preserve some strange form of existence in the hope that their maker will some day resume authority and revive their efficacy. The flaw in the argument must lie in the fact that, in the case of a delegate, the power to make rules lies not in the statute alone but in the statute coupled with an instrument of delegation. If the former were repealed, with no saving provision in respect of rules made under it, they would cease to have effect and, if the latter terminates, so surely must the rules.

The next question is whether the 1950 deed continued in force despite the delay in extending the term which expired at the end of September 1960 and the longer delay between 1970 and 1973 before a new deed was executed.

Mr Fogarty submitted that it did and that as from 1 October 1960 the parties continued to look at the 1950 deed as the instrument of delegation required by the Act. He drew attention to the resolution of the Council on 21 September 1960 to grant a further term of 10 years coupled with a right of renewal for a further ten, should the company seek it and give the required notice, and urged that the deed of 1961 was evidence of the agreement between the parties and was a deed of extension of the term expressed as such; he drew attention, also, to the letter that was written and submitted that the facts constituted sufficient compliance with s 16(2) (1939 Act) and s 14(7) (1964 Act). He made submissions on similar lines in respect of the situation between 1970 and 1973; that the 1961 deed gave a right to an extended time, a provision which the Minister had approved; that there was agreement between the Council and the company that there should be a further term and that the negotiations related to the question of the provisions that were to apply and not to the fact that an extension of the term was to be granted. He stressed that everyone concerned (but apparently not the defendant) treated the plaintiff as the controlling authority. In brief either the deed of 1950 continued in force as an instrument of delegation or there was sufficient compliance with the requirement of the Act.

Whichever statute one might take, the wording is quite clear:

“Every instrument of delegation under this section shall be by deed under the seal of the corporation . . . and shall be signed by or on behalf of the person to whom the delegation is made.”

The subsection which follows in each Act should also be noted:

“(3) Every such instrument of delegation shall contain only such terms, conditions, and provisions as the Minister may approve, and shall operate as an agreement between the local authority and the person or persons to whom the delegation is made.”

It is understandable that there should be such a requirement. In the first place a delegation transfers from a local authority to a person or a company an obligation which would otherwise lie with the local authority. It is not a matter between the parties only, but affects the public or at least a section of the public. The act of delegation carries with it the power to make rules which have a force similar to that of bylaws made by the local authority. Should fees prescribed by the rules not be paid they are recoverable by the controlling authority by action in Court and a breach of the rules is an offence. It is apparent that delegation must be in clear, unequivocal terms and there must be a need for the delegate at any time to be able to prove its authority to maintain the abattoir and to make the rules which are necessary from the point of view of financing the operation.

I turn now to the question whether there can be substantial compliance with the requirements of the Act in this respect. I was referred first to *Carr v New Zealand Refrigerating Co Ltd* [1976] 2 NZLR 135. In that case Casey J considered the consequences of failure to comply precisely with the requirements of s 4 of the Companies Amendment Act 1963 which relate to take-over bids, and compared the situation in that case with the one which existed in *Multiplex Industries Ltd v Speer* [1965] NZLR 592. He found that there had been substantial compliance in that a notice in writing of a take-over scheme had been given although it failed in certain respects to comply with the requirements of the section, whereas in the *Multiplex* case there had been a total failure to comply with the Act. He stated at pp 145-146:

“The fundamental approach in seeking the intention of Parliament in these cases has been clearly and simply stated by Lord Penzance in *Howard v Bodington* (1877) 2 PD 203 in a frequently cited passage:

‘I believe, as far as any rule is concerned, you cannot safely go further than that in each case you must look to the subject-matter; consider the importance of the provision that has been disregarded, and the relation of that provision to the general object intended to be secured by the Act; and upon a review of the case in that aspect decide whether the matter is what is called imperative [later cases say “mandatory”] or only directory.’

“In that case — as, indeed, in many of these cases — there has been a single statutory requirement involving a simple ‘yes’ or ‘no’ answer to the question ‘is it mandatory?’”

It seems to me that this must be such a case.

I was referred also to *New Zealand Institute of Agricultural Science Inc v Ellesmere County* [1976] 1 NZLR 630, where the Court of Appeal considered whether an objection to a proposed district scheme made in an informal way not complying with the regulations could be regarded as valid. I do not think this decision helps in the present case, however, except possibly the following at p 636 from the judgment of the Court of Appeal given by Cooke J:

“Whether non-compliance with the procedural requirement is fatal turns less on attaching a perhaps indefinite label to that requirement than on considering its place in the scheme of the Act . . . and the degree and seriousness of the non-compliance.”

I have considered also *Graham v Attorney-General* [1966] NZLR 937 where there is lengthy discussion as to the principles to be applied in deciding whether a statutory provision is mandatory or directory and whether purported compliance with a directory provision is sufficient. It seems to me, however, that cases on other provisions of other Acts or regulations are not of great assistance. The matter must be determined by reference to the wording of the particular Act and the intention of the legislature as ascertained from a study of that Act.

To my mind the requirement "every instrument of delegation under this section shall be by deed . . ." cannot be anything except mandatory and there is no scope in such a simple requirement for other than complete compliance. This is particularly so as the Act does not stipulate the topics which the terms, conditions and provisions to be contained must embrace. If various matters were directed to be covered there might be scope for saying there was substantial compliance if reference to some were included but not to all. The only stipulation here, is that the terms, conditions and provisions must be approved by the Minister.

I turn now to the situation in 1960, 1961. Clearly the term of the delegation made in 1950 "... a period of ten years from the 1st day of October 1950" had concluded but there was agreement prior to the expiry of that period that the term should be extended, the Council so resolved, the deed recited this fact and then stated:

"1. The term of the delegation is hereby extended to the 30th day of SEPTEMBER 1970 SUBJECT to the same terms and conditions as are contained and implied in the original deeds."

It seems to me that despite the delay in time this does have the effect of extending the term and thereby prolonging the life of the 1950 deed and of doing so by an instrument which complies with the Act. It seems to me, further, that as the life of the delegation was extended the rules continued in existence. In view of my attitude to what happened in 1970, however it is probably unnecessary for me to decide this. The statement of claim says in para 6:

"That the plaintiff is not aware of the full extent of the defendant's trading of meat as pleaded in the foregoing paragraph but is aware that the defendant is currently trading in this manner and has been so trading since at least the month of August 1979 and has been for intermittent periods over the past few years."

I imagine from this that the trading of meat in question has been since 1970.

In that year the extension of the original term expired. The company, subject to due compliance with the provisions of the delegation and to giving notice, was entitled to an extension for a further period of 10 years. It did not in fact give notice, but I do not think this is material. It appears that agreement may have been reached between it and the Council that the terms should be extended. Whether or not there was a binding agreement between the parties on this point it would not be entirely easy to decide but, assuming there were, I cannot see that, of itself, it would have constituted an extension of the original delegation in the manner the Act requires. It might have given rise to rights or obligations as between the parties, but it would not have constituted compliance with the Act.

As already noted, the deed that followed, that is the deed executed on 23 May 1973, did not purport to extend the term of the 1950 deed and, whatever the intention of those concerned may have been, it is a new deed of delegation expressed to take effect and be deemed to have come into force on 1 June 1973. In these circumstances I can only conclude that the term of the original delegation, extended by the 1961 deed, ended on 30 September 1970 and that the rules made in 1950 ceased to have effect at the same time; that a new delegation was effected by the 1973 deed and, as the plaintiff company has not since that time exercised its power to make rules, no rules have been in existence.

Accordingly the plaintiff's claim must be dismissed with costs.

Judgment for the defendant.

Solicitors for the plaintiff: *Weston, Ward & Lascelles* (Christchurch).

Solicitors for the defendant: *Loughnan, Jarman & Co* (Christchurch).

Appeal

The plaintiff appealed.

J G Fogarty and *A A Couch* for the appellant.
A A P Willy for the respondent.

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Cur adv vult

At the request of the President the first judgment was delivered by
McMULLIN J. This appeal raises the question as to whether rules made by the
 appellant at a time when it was the controlling authority of an abattoir under the
 Meat Act 1939, pursuant to a deed of delegation to it from the local authority, the
 Christchurch City Council ("the Council"), remained in force after the term of the
 deed had expired. The appeal falls to be decided on a consideration of the Meat Act
 1939 and the Meat Act 1964, by which the former was replaced on 18 November
 1964, and certain deeds of delegation entered into between the appellant and the
 Council pursuant to the provisions of these statutes.

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Immediately prior to 1 October 1950 the Council maintained an abattoir which
 served the Christchurch abattoir district. On 1 October 1950, and pursuant to a deed
 of delegation dated 29 September 1950, the appellant assumed the responsibility for
 running the abattoir. The obligation to establish and maintain such an abattoir was
 placed upon the Council by s 7 of the Meat Act 1939. But s 16 of the Act permitted
 the Council, with the approval of the Minister of Agriculture, to delegate to any
 person its power to establish or maintain the abattoir but required that every
 instrument of delegation should be by deed. By the deed of 29 September 1950 the
 Council delegated to the appellant its power to maintain the abattoir for a period of
 10 years from 1 October 1950 on the terms and conditions contained in it.

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The provisions of s 16 of the Meat Act 1939 are important. Section 16 provided:

"(1) Any local authority that by this Act is required to establish or to
 maintain an abattoir, or any local authority that, in accordance with section nine
 hereof, has made a special order for the establishment of an abattoir, may, with
 the approval of the Minister, delegate to any fit person or persons (including a
 company) its power to establish or to maintain the abattoir.

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"(2) Every instrument of delegation by a local authority under this section
 shall be by deed under the seal of the corporation, and shall be signed by or on
 behalf of the person or persons to whom the delegation is made. Where the
 delegation is to a company, the seal of the company shall be affixed to the
 instrument of delegation.

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"(3) Every such instrument of delegation shall contain only such terms,
 conditions, and provisions as the Minister may approve, and shall operate as an
 agreement between the local authority and the person or persons to whom the
 delegation is made.

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"(4) The person or persons to whom any delegation is made as aforesaid
 shall, *while the instrument of delegation continues in force, be deemed to be the
 controlling authority of the abattoir*, and in relation to the abattoir shall, subject
 to the provisions of this Act and of the instrument of delegation, have all the
 rights, powers, duties, and functions which the local authority would have had if
 the instrument of delegation had not been executed.

45

"(5) Every instrument of delegation under this section shall contain
 provisions for the termination of the delegation if the person or persons to whom
 the delegation is made fail to establish the abattoir, or to maintain its efficiency
 (having regard to the requirements of the district) or for any other sufficient
 reason. In the event of the termination of the delegation, the obligation of the
 local authority to establish an abattoir, or to maintain an abattoir, as the case may
 be, shall be immediately revived."

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Section 14 of the Meat Act 1964, which repealed the 1939 legislation, provided for a power of delegation in similar but more comprehensive terms. The differences in the two sections are not material to the issue raised by this appeal.

5 On 2 October 1950 the Minister of Agriculture approved the Council's delegation in terms of s 16(1) of the 1939 Act. Thereafter the appellant, in terms of the provisions of s 16(4), to which I have given added emphasis in the citation, was deemed to be the "controlling authority". See also s 2 for the definition of "controlling authority".

10 Section 22 of the Meat Act 1939, which is at the heart of the case, gave power to the controlling authority of an abattoir to make bylaws or rules relating to the use of the abattoir. There is a similar provision in s 23 of the Meat Act 1964. The relevant provisions of s 22 were:

15 "(1) The controlling authority of an abattoir (including any person to whom a local authority has delegated its powers and functions in respect of the abattoir in accordance with section sixteen hereof) may from time to time make bylaws (where the controlling authority is a local authority) or rules (in any other case), not inconsistent with this Act or with any regulations thereunder—

20 "(a) Regulating the working and management of the abattoir:

20 "(b) Prescribing rates of charges to be payable to the controlling authority in accordance with the next succeeding subsection by persons on whose account any stock is slaughtered in the abattoir:

25 "(c) Prescribing rates of fees to be paid to the controlling authority in accordance with subsection three hereof in respect of meat sold for consumption within the abattoir district and derived from stock slaughtered in another abattoir or in any meat export slaughterhouse:

30 "(d) Prescribing particulars of returns to be furnished to the controlling authority in respect of meat sold for consumption in the abattoir district and derived from stock slaughtered elsewhere than in the abattoir, and prescribing the person or persons required to furnish any such return.

35 "(6) All charges and fees payable to the controlling authority pursuant to any bylaws or rules made under this section shall be recoverable by the controlling authority by action in any Court of competent jurisdiction or by distress and sale of any stock, meat, carcasses, or hides for the time being in the abattoir on account of any person by whom such charges or fees are payable.

40 "(7) Notwithstanding anything in the foregoing provisions of this section, no bylaws or rules made thereunder shall come into force unless and until they have been approved by the Minister. The Minister may at any time disallow, in whole or in part, any bylaw or rule theretofore approved by him, by giving to the controlling authority not less than three months' notice in writing of his intention so to do."

On 29 September 1950 the appellant, as the controlling authority, acted under these provisions and made rules which were to come into force on 1 October 1950 or as soon as the Minister of Agriculture had approved them, as provided by s 22(7). This the Minister did on 2 October 1950. These rules provided, inter alia, for charges, known as "hanging fees", to be made by the appellant for meat sold for consumption within the abattoir district and slaughtered in another abattoir or in any meat export slaughterhouse. Some of the rules, particularly those relating to hanging fees, were applicable to the appellant only; others were of general application.

On 21 September 1960, shortly before the term of the deed of 29 September 1950 expired, the Council agreed to grant a renewal to the appellant of the deed of delegation until 30 September 1970 and to give a right of renewal to the appellant for

a further 10 years from 1 October 1970. The Minister approved both the renewal and the grant of the further extension and on 16 October 1961 a deed extending the term of the original deed of 29 September 1950 until 30 September 1970 was executed. This deed contained a provision giving the appellant the right to the further extension of 10 years. The operative provisions of the deed of 16 October 1961 were as follows:

- "1. The term of the delegation is hereby extended to the 30th day of SEPTEMBER 1970 SUBJECT to the same terms and conditions as are contained and implied in the original deeds. 10
- "2. If the Company shall during the extended term hereby granted pay the rent reserved under and by virtue of the original deeds and observe and perform the covenants and condition on the part of the Company therein contained or implied up to the 30th day of September 1970 and shall give notice in writing to the Council at least 12 calendar months before the expiration of the said extended term of its desire to extend the term of the delegation for a further term of TEN YEARS from the 1st day of OCTOBER 1970 THE COUNCIL will at the cost of the Company grant to the Company an extension of the term of the delegation for TEN YEARS from the 1st day of OCTOBER 1970 SUBJECT to the same terms and conditions as are contained and implied in the original deeds." 20

Although the deed of 16 October 1961 gave the appellant the right to an extension of its term of delegation for a further 10 years from 1 October 1970, provided that it first gave notice to that effect, no such notice was ever given and the renewed term expired on 30 September 1970. There was then a gap in the delegation until, on 23 May 1973, a further deed was executed in which the Council delegated its power to maintain the abattoir to the appellant for a further 10 years. It contained a provision that it was to "take effect and be deemed to have come into force on the 1st of June, 1973". It, too, was approved by the Minister, but not until 15 January 1974. The delay in preparing and executing the deed of 23 May 1973 seems to have been brought about by the need to upgrade the abattoir. During 1970, 1971 and 1972 there were a number of meetings between the Council, the appellant and officials of the Ministry of Agriculture with regard to the upgrading of the abattoir, and, as a result of these, agreement was ultimately reached on a number of matters relating to its future operation. The deed of 23 May 1973 incorporated the agreement reached. 30

From this history it emerges that for two periods, namely 1 October 1960, when the original deed expired, to 16 October 1961, when the second deed was executed, and again from 30 September 1970, when the second deed expired, to 22 May 1973, when the third was executed, there was no formal instrument in existence evidencing the delegation from the Council to the appellant, although in fact the requisite Ministerial approval had been given and the Council had either agreed to grant or recognise the further delegations. And throughout these periods the appellant carried on the abattoir as if in fact it had been the duly appointed controlling authority and it registered the abattoir as it was required to do, first by s 17 of the 1939 Act and later by s 16 of the 1964 Act. As Cook J said in his judgment, regarding the time which elapsed between the expiry of the second deed (1970) and the execution of the third one (1973): "During this period everyone concerned acted on the assumption that the delegation continued in force but it is clear that there was no deed of delegation expressly relating to that period". And at no time did the Council delegate the operation of the abattoir to any other person nor did it assume control of the abattoir itself. In fact the Council and the appellant were in constant communication on a programme of modernisation which envisaged that the plant would be operated beyond 1970. The cooperation of the Council on 40 45 50

the matter of modernisation was required because the terms of the delegation did not empower the appellant to carry out improvements as of right.

5 In 1979 the appellant issued proceedings in the High Court for a declaration that the respondent was liable to pay to it the hanging fees prescribed in its rules for stock killed outside its district but sold or traded within it by the respondent and it sought the taking of accounts between the parties.

10 In its pleadings the respondent raised a number of defences to the appellant's claim but at the trial the substantial point taken was that, after the expiry of the first deed of delegation, on 30 September 1960, or after expiry of the extended term on 30 September 1970, the appellant was no longer entitled to hanging fees from the respondent because the appellant's delegated authority had then lapsed with the consequence that the rules also expired. It was said that the power to make rules providing for the charging of hanging fees was founded not only on the Meat Act 1939 but also on an effective and continuing delegation by deed. The respondent 15 said that because there was no deed of delegation in existence after 1960, or 1970 if its term were taken as having been extended to that date, the rules had ceased to have effect and after that time the appellant's right to recover hanging fees had come to an end. In his judgment dismissing the appellant's claim, Cook J inclined to the view that the provision in the second deed extending "the term of the delegation to 20 the 30th day of September 1970 subject to the same terms and conditions as are contained and implied in the original deed" had the effect of extending the term retrospectively and thereby prolonging the life of the 1950 deed and of doing so by an instrument which complied with the Act. He was of the opinion that because the life of the delegation was extended the rules continued in existence with the result 25 that the fees charged between 1 October 1960 and 16 October 1961 could be sustained. Mr Willy accepts that this might be so in view of the purported extension of the deed of 29 September 1950. But Cook J held that, because the deed of 23 May 1973 did not purport to extend the term created by the earlier deeds, the term of the original delegation, as extended by the 1961 deed, ended on 30 September 1970 and 30 the rules made in 1950 ceased to have effect at the same time. He further held that because the appellant had not, after the delegation effected by the 1973 deed, exercised its power to make rules, those made previously did not carry over and were no longer in force. The ratio of his judgment is to be found in the following passage:

35 "It appears contrary to common sense that, in such circumstances, rules made by that delegate should preserve some strange form of existence in the hope that their maker will some day resume authority and revive their efficacy."

40 Mr Willy for the respondent supported the reasoning of the Judge and argued that, because the source of the appellant's rule-making power was founded both on the statute and the instrument of delegation, that power, and the rules made in reliance on it, ceased to have effect on the termination of the delegation unless the deed contained a saving provision in respect of rules already made under it.

45 Mr Fogarty's primary submission on appeal was that the rules were a form of delegated legislation which, once validly made, could only be replaced or amended by the appellant; be disallowed by the Minister pursuant to s 22(7) of the 1939 Act or s 23(7) of the 1964 Act; or cease to have effect upon the repeal of the statutory empowering provision. Consequently, so long as the rules had been validly made and approved at a time when the appellant was the controlling authority operating 50 the abattoir, the appellant had the right to enforce the charges claimed against the respondent. But he accepted that, to claim fees for any particular period, the appellant had to be the controlling authority for that same period. Unless that were so, it could not be said to be the controlling authority to whom fees were payable under s 22(1) (c) and s 22(6) of the Meat Act 1939. (See s 23(1) (c) and s 23(6) of the Meat Act 1964.)

The statutory authority for the making of rules has already been noted. They were not to come into force unless and until approved by the Minister who might, having initially approved them, disallow any rule in whole or in part at a later date on giving three months notice to that effect. However, s 22 of the 1939 Act made no other provision for the repeal or variation of the rules. 5

Section 16 of the 1939 Act is important to the issue of delegation but it did not relate to rule-making. It provided for the delegation of the powers of the local authority to another person which, on completion of the delegation, became the controlling authority. The relationship between ss 16 and 22 was that only a controlling authority properly appointed under s 16 could make rules under s 22. 10 The same position pertains with regard to ss 14 and 23 of the 1964 Act.

Although Mr Willy put as one of his arguments in support of the judgment the proposition that the rules were not delegated or subordinate legislation I do not think that this is so. The terms "delegated" and "subordinate" are synonymous for present purposes. The rules made by the appellant were delegated legislation in the sense that they were legislation made by a non-parliamentary body acting pursuant to an Act of Parliament and subordinate in the sense that, if they were in conflict with an Act of Parliament, then the Act prevailed — Pearce, *Delegated Legislation in Australia and New Zealand*, (1977) paras 1-4. The essential difference between delegated legislation and statute law lies in the fact that a subordinate law-making authority is bound by the terms of its delegated or derived authority and Courts of law, as a general rule, will not give effect to subordinate legislation unless satisfied that all the conditions precedent to the validity of the same have been fulfilled. In the result, the validity of statute law cannot be impugned by the Courts; the validity of delegated legislation can be — *Craies on Statute Law* (7th ed, 1971) p 297. 15 20 25

There can be no challenge to the fact that, at the time the rules were made on 29 September 1950, the appellant was the controlling authority of the abattoir. The appropriate instrument of delegation had been executed on 29 September 1950 and approved by the Minister on 2 October 1950. The appellant was therefore the controlling authority as defined by s 2 of the Meat Act 1939 and entitled as such to make rules under s 22 of the 1939 Act. Indeed the respondent does not now contest that proposition. 30

It seems plain that, once validly made, the rules would continue in force until they came to an end either by a means provided within the Act itself or by some other enactment of general application. Within the first category is the right of the Minister under s 22(7) of the 1939 Act or s 23(7) of the 1964 Act to disallow any rule, in whole or in part, previously approved by him. Within the second is the right of the appellant to revoke or vary the rules in pursuance of the power contained in s 25(h) of the Acts Interpretation Act 1924, or the repeal of the empowering provision of s 22 of the 1939 Act without the substitution of a replacement. It is a consequence of the repeal of a statute which empowers the making of bylaws or rules that these, too, are repealed unless the subject of a saving provision — *Watson v Winch* [1916] 1 KB 688. There is such a provision in s 20(d) of the Acts Interpretation Act 1924. By virtue of it, any rules made under the 1939 Act continue in force notwithstanding the repeal of that Act by the Meat Act 1964 which is a consolidating statute. 35 40 45

In his judgment Cook J said that in the case of a delegation the power to make rules lies not in the statute alone but in the statute coupled with an instrument of delegation with the consequence that if the former were repealed, with no saving provision in respect of rules made under it, the rules would cease to have effect and, if the deed came to an end, so must the rules. For the reasons discussed I would accept that, without the saving effect of s 20(d) of the Acts Interpretation Act 1924, on the repeal of the Meat Act 1939 the rules would have ceased to have effect. But s 20(d) operated to save the rules. However, I think it is another matter altogether to 50

say that it followed that, if an instrument of delegation in force at the time that the rules were made ceased to have effect by effluxion of time, the rules automatically came to an end. The coexistence of the empowering authority of the statute and the deed of delegation are the basis for the making of the rules, but not for their continuance. There is no indication in either the 1939 or 1964 Act that the legislature intended the rules to come to an end upon termination of the delegate's status as controlling authority. If such a result had been intended, it would not have been difficult for the legislature to say so. And there seems no reason in principle why a delegate, which for a time has ceased to be the controlling authority, should not on subsequent reappointment as such, use rules previously made by it when it was the properly delegated controlling authority. I see no reason why rules should not remain in force 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. The power to claim fees prescribed under the rules is limited to the controlling authority. The power to recover fees, outside of any contractual claim, is confined to it — s 22(6) of the 1939 Act; s 23(6) of the 1964 Act.

For these reasons I am of the view that, although the appellant cannot claim hanging fees for the period from 1 October 1970 to 22 May 1973, because it was not then the controlling authority, it can maintain a claim for such fees for any other period for which it was the controlling authority. I would allow the appeal with the consequences set out in the judgment to be delivered by the President.

QUILLIAM J. I have had the advantage of reading the judgments prepared by Richmond P and McMullin J. I have in the end arrived at a conclusion similar to their's, although I confess not without a certain amount of difficulty. The proposition that rules made by a controlling authority can continue to have a valid existence notwithstanding that the controlling authority, to which alone they have relevance, may have gone out of existence (as, for example, by liquidation) is one I have not found it easy to accept. I recognise of course that this proposition may be of too general a nature and does not really relate to the present facts, and, in particular, to the present rules. I am finally persuaded that the matter has to be determined by the fact that the rules in question are delegated legislation. Once that is acknowledged (and I recognise that it must be) then it seems necessarily to follow that such rules will continue in force until repealed or disallowed by the Minister under s 23 (7) of the Meat Act 1964 (or its earlier equivalent) or until they cease to have effect on the repeal of the statutory empowering provision. Once, therefore, the appellant resumed its status of a controlling authority the rules, which were validly made in the first place, were again capable of being enforced by it.

I also would allow the appeal and agree with the consequences proposed by the President.

RICHMOND P. As is explained in the judgment which McMullin J has delivered, the central question in this appeal is whether or not rules made by the appellant ("the company") in 1950 remained in force during the period from 1 June 1973 onward. On behalf of the respondent (Mr Wiseman) it was successfully argued before Cook J in the High Court that the rules in question ceased to have effect at least from 1 October 1970. It was said that this result followed because from that date until 1 June 1973 the company had no legal status as "controlling authority" of the abattoir in the Christchurch District. This was because during the period in question, there was no operative deed of delegation in force as required by s 14(7) of the Meat Act 1964. Hence the provisions of s 14(9) could have no application until a new deed of delegation came into operation on 1 June 1973. The material provisions of subs (9) are:

“Where an abattoir is operated pursuant to an instrument of delegation, the controlling authority of the abattoir shall, while the instrument of delegation continues in force, be the person or company operating the abattoir under the instrument of delegation . . .”

The final and critical step in the argument submitted on behalf of Mr Wiseman was this. It was said that as the statutory power of the company to make rules, originally conferred by s 22 of the Meat Act 1939 and subsequently by s 23 of the Meat Act 1964, was vested in its capacity as “controlling authority” any rules made in that capacity would cease to have effect immediately the company lost its rule-making capacity.

This argument was accepted by Cook J in preference to an argument to the contrary submitted by Mr Fogarty on behalf of the company. That argument, which Mr Fogarty repeated at the hearing of this appeal, can be summarised as follows. The rules (as is now accepted by Mr Willy) were validly made in 1950. They are a form of delegated legislation, a proposition which I accept. Accordingly any question as to the period during which the rules remain operative should be answered by reference to ordinary principles governing the operation of subordinate legislation. The rest of Mr Fogarty’s argument, and the Judge’s conclusion thereon, appear from the following passage taken from the judgment under appeal:

“He [Mr Fogarty] submitted that, if it were to be argued that the rules had lapsed, then the argument in support of such a proposition must point to a provision of a statute which expressly or impliedly provided that the rules would lapse in certain circumstances. He contended that in the absence of express revocation or, I think he would have included, the repeal of the empowering statute in circumstances in which the Acts Interpretation Act, s 20 (d) did not apply, the rules made by a controlling authority would remain in force notwithstanding that the controlling authority might cease for a period to be such.

“He stressed that a law is not repealed merely because it becomes obsolete and drew my attention to the fact that the only reference in the Meat Act to a rule ceasing to have force is in s 23 (7) (1964 Act) where there is provision for the Minister to disallow a rule previously approved by him.

“Whether rules made by a controlling authority to whom the maintenance of an abattoir is delegated constitute delegated legislation or not, I cannot think that this submission is tenable. Under the Act the local authority may delegate: ‘to any fit person (including a company) its power to establish or maintain an abattoir. . .’

The delegation may expire by effluxion of time; the delegate, if a person, may die or, if a company, be wound up; if the delegate does not carry out its obligations the delegation may be terminated. It appears contrary to common sense that, in such circumstances, rules made by that delegate should preserve some strange form of existence in the hope that their maker will some day resume authority and revive their efficacy. The flaw in the argument must lie in the fact that, in the case of a delegate, the power to make rules lies not in the statute alone but in the statute coupled with an instrument of delegation. If the former were repealed, with no saving provision in respect of rules made under it, they would cease to have effect and, if the latter terminates, so surely must the rules.”

The last two sentences are of obvious importance. With all respect, I find myself unable to support the Judge’s reasoning. It is true that the power of the company to make rules was derived from s 22 of the Act of 1939 plus the fact that it was a delegate by deed under s 16. But the deed was not a sub-delegation by the Christchurch City Council of a rule-making power. Its effect was simply to make the company a subordinate legislating authority in its own right as “controlling

authority” of the abattoir. I mention that point, although I am not sure that Cook J thought otherwise. The critical sentence is the last one. Again it is true that if s 22 of the Act of 1939 had been repealed with no saving provision in respect of rules made under it, such rules would have ceased to have effect. The reasons are explained in
5 *Craies on Statute Law* (7th ed, 1971) at p 336:

“If the statute under which by-laws are made is repealed, those by-laws are impliedly repealed and cease to have any validity unless the repealing statute contains some provision preserving the validity of the by-law notwithstanding the repeal. This follows from the rule . . . that when an Act of Parliament is
10 repealed it must be considered (except as to transactions past and closed) as if it had never existed.”

The same principle applies to the repeal of a part of a statute conferring the bylaw or rule-making power — see the passage from a judgment of Williams J cited in *The*
15 *Queen v Kelly* (1952) 85 CLR 601 at 626-627.

It might conceivably be possible to apply a similar principle to the case of cesser of a power upon the termination of an instrument of sub-delegation of the power. But, as I have said, that is not the present case. Under the Meat Acts the power has been conferred directly by Parliament upon the holder for the time being of a
20 particular office, namely the office of “controlling authority”. The only relevance of the deed of delegation is as an instrument of appointment to that office. Finally 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.
25 The inconveniences which would arise from such a rule are only too obvious. So I conclude that if the rules ceased to have effect after 1 October 1970 then they did so for some reason other than that which found favour with Cook J.

Of course the empowering statute, as is accepted by Mr Fogarty, may expressly or impliedly impose some limit on the life of subordinate legislation or the
30 circumstances to which it may be made applicable. Thus in the present case there is an express power given to the Minister to disallow any bylaws or rules previously approved by him — s 22(7) of the 1964 Act. And Mr Fogarty accepts that the power to prescribe hanging fees is limited to fees “to be paid to the controlling authority” — s 22(1) (c). It follows that the rules as to hanging fees made by the company can
35 only apply in respect of periods when the company was in law the controlling authority. However I agree with Mr Fogarty that there is nothing in the Act which expressly or impliedly provides that rules made under the Act, either generally or in particular as to hanging fees, should completely lapse merely because of a temporary gap in the tenure of office of the controlling authority.

In principle also an express or implied limitation could be found in the rules themselves simply as a matter of their interpretation. In the present case the rules were headed “Rules of the Canterbury Bye-Products Company Limited relating to the use of the abattoir in the Christchurch District”. In the rules “the company” means the Canterbury Bye-Products Company. It does not extend to any other
45 controlling authority for the time being. The resolution of the company adopting the rules recites the delegation to the company by the Council of their power to maintain the abattoir and the assumption by the company of that power on 1 October 1950. It may be that as a matter of construction the rules should be regarded as intended to apply only in circumstances where the company enjoys a power to maintain the
50 abattoir delegated to it by the Council. Certainly the rules prescribing hanging fees are introduced by the words — “The rates of fees to be paid to the company . . . etc”. But in spite of these obvious limitations on the scope of the rules there is no provision in the rules which expressly restricts their application to any particular period during which the company enjoys a delegated power to maintain the abattoir.

Nor do I think that such a restriction, for example to the period to 1 October 1960 covered by the first deed of delegation, can be read into the rules as a matter of necessary implication. All concerned would surely have intended the rules to remain in force during an extended or renewed term of delegation. The fact that a technical gap occurred for the reasons which McMullin J has described in his judgment should make no difference. I am being careful to limit my conclusions by reference to the actual facts of the case. It may be that in other more radical situations a different result would follow, as for example the termination of a deed of delegation for misconduct of the delegate, followed by appointment of a new delegate. 5

In my opinion there is no principle of law which would justify the Court in holding that the 1950 rules, as amended up to 30 September 1970, did not apply during the period of delegation created by the deed of 23 May 1973. 10

Notwithstanding Mr Fogarty's submissions to the contrary I agree with Cook J that from 30 September 1970 till the new delegation under the deed just referred to there was no instrument of delegation which continued in force for the purposes of s 14(9) of the Act of 1964. Amendments made to rates of hanging fees during that period were therefore ultra vires the company. But amendments made when the company was once again the controlling authority would be effective. 15

I also would allow the appeal.

The Court being unanimous the appeal is allowed accordingly and the judgment of the High Court is vacated. 20

In lieu of that judgment it is adjudged and declared that the Rules of the appellant company dated 25 September 1950, together with valid amendments thereto, remained in force during the period of delegation covered by the Deed of Delegation dated 23 May 1973 referred to in para 2 of the statement of claim. 25

The appellant is entitled to its costs in both Courts.

The case is remitted to the High Court for further consideration, with leave reserved generally to either party to apply to that Court for such further relief as may be thought necessary.

Appeal allowed. 30

Solicitors for the appellant: *Weston, Ward & Lascelles* (Christchurch).

Solicitors for the respondent: *Loughnan, Jarman & Co* (Christchurch).