

William David Wiseman - - - - - *Appellant*

v.

The Canterbury Bye-Products Company Limited - - *Respondent*

FROM

THE COURT OF APPEAL OF NEW ZEALAND

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 12TH APRIL 1983

Present at the Hearing :

LORD DIPLOCK
LORD WILBERFORCE
LORD KEITH OF KINKEL
LORD TEMPLEMAN
SIR JOHN MEGAW

[*Delivered by LORD DIPLOCK*]

This Appeal raises a question of construction of certain provisions of the Meat Act 1939 and the corresponding provisions of the Meat Act 1964 which replaced them without any relevant alteration in their wording. As it was the provisions of the 1939 Act that were referred to and cited in the Court of Appeal, their Lordships will follow a similar course.

With the preliminary observation that the City of Christchurch ("the Council") was in 1950, and all times thereafter that are relevant to this appeal, a local authority which was required by section 7 of the Meat Act 1939 to establish and maintain an abattoir for the purposes of its district, it is convenient to set out straightaway the particular provisions of that Act upon the construction of which the present appeal depends:

"2. Interpretation—(1) In this Act, unless the context otherwise requires,—

"Controlling authority", in relation to an abattoir, means the local authority for the time being having control of the abattoir, and includes any person to whom a local authority has delegated its power to establish or to maintain the abattoir:

16. Local authority may delegate power to establish abattoir—
(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.

(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.

(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.

(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.

(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.

22. Controlling authority may make bylaws or rules relating to use of abattoir, and other matters—(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—

- (a) Regulating the working and management of the abattoir:
- (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:
- (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:
- (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.

(3) The fees to be paid to the controlling authority pursuant to bylaws or rules made under paragraph (c) of subsection one hereof shall, in the case of meat derived from stock slaughtered in an abattoir, be payable by the person by whom the meat was sold or deemed to have been sold for consumption in the abattoir district, or, in the case of any such meat in respect of which there has been more than one sale, such fees shall be payable by the person by whom that meat was first sold or deemed to have been sold for consumption in the abattoir district. In the case of meat derived from stock slaughtered in a meat export slaughterhouse, such fees

shall be payable by the licensee of that slaughterhouse. Such fees shall be fixed separately for different classes of stock, and shall be fixed at a rate per head of each such class. The rate shall be the same as the rate of the charge made for the use of the abattoir in respect of stock of the same class slaughtered therein.

(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.

(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.

(9) Bylaws made by any local authority for the purposes of this section shall be made in the same manner as other bylaws are required to be made by that local authority."

The facts which have given rise to the question of construction of these provisions the answer to which is determinative of this appeal can be stated shortly.

On 1st October 1950, the Council by duly executed deed ("the first delegation deed") delegated to the respondent ("the Company") the Council's power to maintain the abattoir that prior to such delegation the Council was itself maintaining in its district. The first delegation deed, which was duly approved by the Minister on 2nd October 1950, was for a period of ten years, expiring on 1st October 1960. It contained a provision that any rules made by the Company should be submitted to the Council for its approval and should not be submitted to the Minister for his approval unless the Council's approval had been first obtained.

On 25th September 1950, the Company had made rules relating to the use of the abattoir which, among other things, prescribed the rates of fee to be paid to the Company in respect of meat sold for consumption within the abattoir district and derived from stock slaughtered in another abattoir or in a meat export slaughterhouse. Such fees are commonly called "hanging fees". These rules were approved by the Council and the Minister on 2nd October 1950.

Although shortly before the expiry of the ten year period of the first delegation deed, the Council had agreed to renew the delegation for a further period of ten years from 1st October 1960, the deed to give effect to this resolution ("the second delegation deed") was not executed until 16th October 1961 and approval to it was given by the Minister on 8th November 1961. The deed contained an option to the Company to obtain the extension of the delegation for a further term of ten years from 1st October 1970, upon giving at least twelve months notice of its intention to exercise the option.

The Company did not exercise the option so the second delegation deed expired on 30th September 1970. Thereafter negotiations took place between the Company, the Council and the Department of Agriculture, about the modernisation of the abattoir, and it was not until 23rd May 1973 that the third delegation deed was executed by the Council. It was expressed to come into force on 1st June 1973 and to

expire on 1st October 1980 subject, however, to extension for a further period of ten years at the Company's option. This delegation did not receive the approval of the Minister until 15th January 1974.

The appellant, Wiseman, during a period after 15th January 1974, sold for consumption within the Christchurch abattoir district meat derived from stock slaughtered in another abattoir, but failed to pay to the Company in respect of such sales the hanging fees prescribed by the rules as from time to time amended after 15th January 1974 by the Company with the approval of the Council and the Minister. In the action which is the subject of the present appeal, the Company claimed a declaration that Wiseman was liable to pay to it the prescribed hanging fees, an account of the amount due in respect thereof and judgment for the sum awarded on the taking of the account.

In substance, although it has been sought to be put in a variety of ways, Wiseman's defence is that the rules made by the Company in 1950 lapsed either (1) on the expiring of the first delegation deed when there was a gap from 30th September 1960 to 16th October 1961 between it and the second delegation deed; or (2) if that gap had been filled retroactively by the provision in the second delegation deed that it should operate as an extension from 1st October 1960 of the period of delegation, the rules nevertheless lapsed on the expiry of the second delegation deed when there was a gap from 30th September 1970 to either 1st June 1973, when the third delegation deed was expressed to come into force, or until 15th January 1974 when the Minister approved it. As respects this second gap, which was that upon which counsel for Wiseman principally relied, no question of possible retroactive filling is involved.

This argument commended itself to Cook J. in the High Court. He dismissed the Company's action. His *ratio decidendi* is expressed succinctly in the last two sentences of an extract from his judgment that was cited by Richmond P. in the Court of Appeal:

“ . . . 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 Court of Appeal (Richmond P., McMullin and Quilliam JJ.) unanimously reversed Cook J.'s judgment. In brief, Richmond P. and McMullin J. held that the crucial last nine words in the passage cited from the judgment of Cook J. were a *non sequitur* and that in view of the provisions of the Meat Act 1939 and of sections 20(d) and 25(h) of the Acts Interpretation Act 1924 the *non sequitur* was erroneous in law.

Their Lordships agree with the Court of Appeal. Section 16(4) of the Meat Act 1939 leaves no room for ambiguity. So long as a delegation deed in its favour was in force the Company was deemed to be the controlling authority *pro tempore* and, as such, had all the rights, powers, duties and functions which the Council itself would have had as controlling authority if the delegation deed had not been executed, subject only to any relevant limitation of such rights, powers, duties or functions as might be contained in the delegation deed. The powers so vested in the Company as controlling authority under the first delegation deed, included the power under section 22(1)(c) of making rules prescribing hanging fees, which under section 22(6) were recoverable by the controlling authority by civil action in a court of law. The Company's power to make rules under the first delegation was subject to the limitation that any rules made by the Company should not be submitted

to the Minister for his approval under section 22(7) unless they had first been approved by the Council itself. This limitation was complied with as respect the rules made by the Company and approved by the Minister on 2nd October 1950.

The only legal source of the Company's power to make rules for the payment of hanging fees that were binding upon third parties, such as Wiseman, who made no use of the abattoir and entered into no contractual relationship with the Company, was section 22 of the Meat Act 1939. The Act required that in relation to an abattoir in a district where the maintenance of an abattoir was compulsory there should at all times be a controlling authority capable of exercising the power under section 22 to make rules binding upon third parties. The controlling authority of an abattoir, it was contemplated by the statute, might change from time to time. So long as a delegation deed executed by the Council was in force, the other party to the deed was the controlling authority, but the delegation might be (as in the instant case) for a fixed period and on the expiry of that period the Council would again become the controlling authority, as section 16(5) provides, and would continue to be so unless and until it executed a fresh delegation deed in favour of the other party to the former deed (as in the instant case) or in favour of some other person.

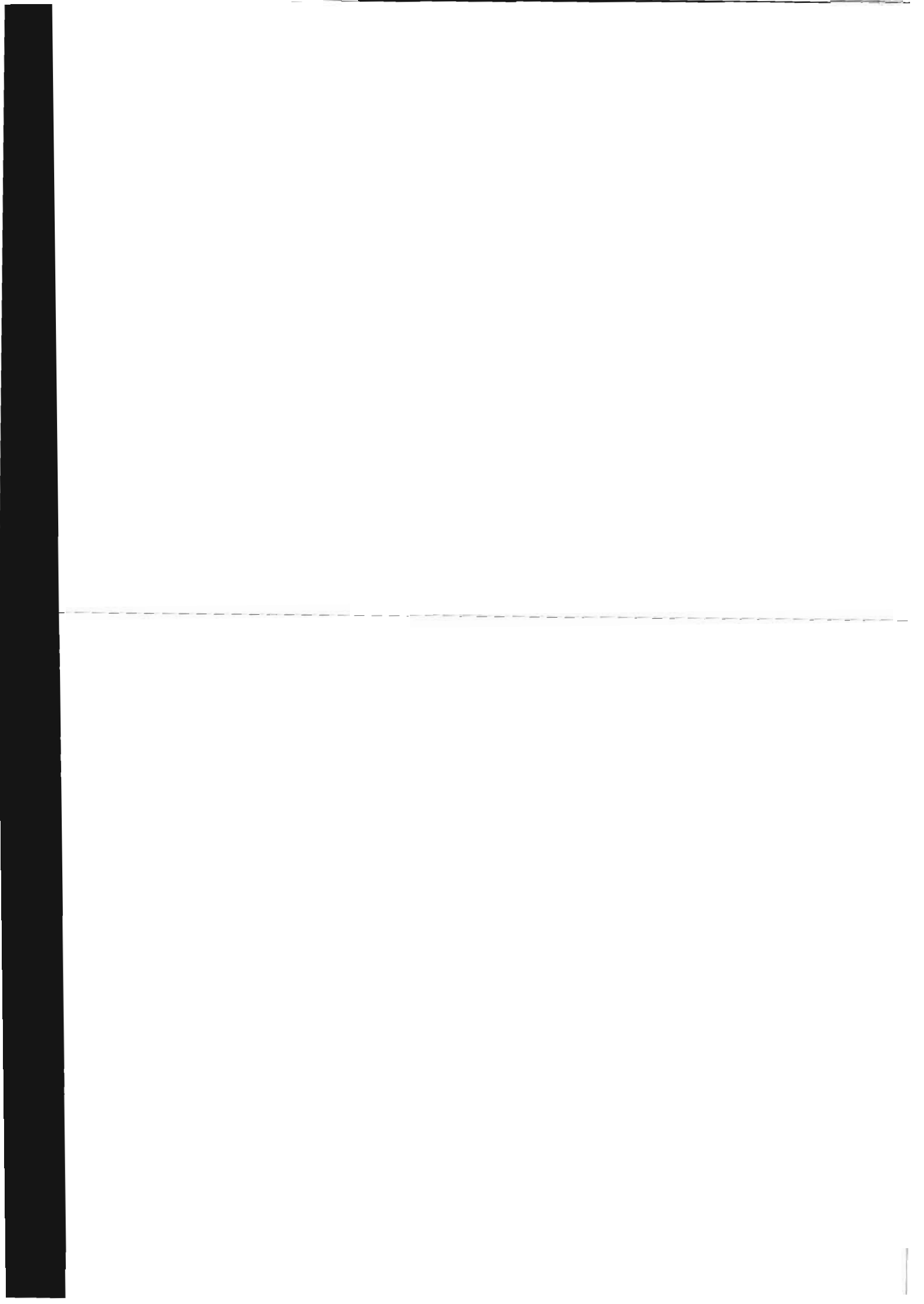
Their Lordships see no ground in law or common sense why rules validly made under section 22 by a controlling authority of an abattoir, at a time when it was empowered by statute to act in that capacity, should *ipso facto* become void merely because the person by whom the powers of the controlling authority of that abattoir had hitherto been exercised is succeeded by another person invested with the like rule-making powers, including (by virtue of section 25(h) of the Acts Interpretation Act 1924) the power to revoke and vary any rules made by his predecessor.

The general principle of public law, unless the empowering statute otherwise provides, is that subordinate legislation validly made by a statutory authority (*in casu* the controlling authority of an abattoir) continues in force notwithstanding any change in the person or persons who constitute the statutory authority. The Meat Act 1939 does not otherwise provide. On the contrary, to treat the general principle as inapplicable would lead to practical consequences so inconvenient that Parliament cannot be supposed to have so intended. It would mean, for instance, that if a local authority terminated a delegation for misconduct under the provision which section 16(5) requires it to include in a delegation deed, or if a company to which a delegation had been made went into compulsory liquidation, there would be an interregnum until the bylaw-making procedures of local authority were complete and the approval of the Minister to the new bylaws obtained; during the interregnum, although the local authority would be under an obligation to maintain the abattoir, there would be no enforceable rules as to its management or use and no power to charge any fees for the use of it.

Their Lordships accordingly agree with the Court of Appeal that the rules made by the Company in 1950 (as varied from time to time by the Company with the approval of the Council and the Minister during the continuance in force of any of the three delegation deeds) were valid and were in force during the period in respect of which the Company seeks to recover hanging fees from Wiseman. Throughout that period the rates of hanging fees payable were fixed by successive variations of the relevant rate. All of these variations were made in due form after the third delegation deed had been approved by the Minister.

Their Lordships thus are not, in the instant case, concerned with variations made to the rules during either of the two gaps already referred to, during the second of which, at any rate, there was no delegation deed in force. They have heard no argument and must not be taken as expressing any opinion on this topic.

Their Lordships will humbly advise Her Majesty that this appeal should be dismissed with costs.



In the Privy Council

WILLIAM DAVID WISEMAN

v.

**THE CANTERBURY
BYE-PRODUCTS COMPANY
LIMITED**

**DELIVERED BY
LORD DIPLOCK**