[HIGH COURT OF AUSTRALIA.]

TINDAL . . . . . APPELLANT;
DEFENDANT,

AND

CALMAN . . . . . RESPONDENT.
INFORMANT,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1905.

SYDNEY, *Sept.* 29, 30.

Griffith C.J., Barton and O'Connor JJ.

Exemption—Statutory duty—Requirement of giving notice—Certain class exempt—Construction — Cattle Slaughtering and Diseased Animals and Meat Act (*N.S.W.*), (*No.* 36 *of* 1902), *secs.* 5, 8—*Noxious Trades Act* (*N.S.W.*), (*No.* 82 *of* 1902), *sec.* 14.

The proprietor of an establishment for the extraction of tallow from the carcasses of cattle and for the salting of beef for exportation, duly licensed under Division II. of the *Cattle Slaughtering and Diseased Animals and Meat Act* 1902, is, by sec. 8 of that Act, exempt from the necessity of giving to the inspector the notice required by sec. 5 to be given by all persons intending to slaughter cattle in any district in which an inspector has been appointed. Such a proprietor does not lose the exemption by reason of the mere fact that he also sells locally a certain amount of fresh meat from the cattle slaughtered and a portion of the residual products of the main processes of the establishment.

Decision of *Pring* J., *Calman* v. *Tindal*, 22 N.S.W. W.N., 176, reversed.

APPEAL from a decision of *Pring* J. in Chambers on a special case stated under the *Justices Act* 1902.

The following statement of the facts is taken from the special case.

The appellant was the proprietor of the Ramornie Meat Works, near Grafton, which were established for the extraction of tallow from the carcasses of cattle, and for preserving meat for exportation. The premises were duly licensed for the slaughter of cattle

under the *Cattle Slaughtering and Diseased Animals and Meat Act* 1902, and the proprietors had entered into the recognizance required by sec. 14 of the *Noxious Trades Act* 1902. The information was laid under sec. 5 of the former Act, and alleged that on 22nd June, 1905, at Ramornie, in the police district of Grafton, in which an inspector had been appointed, the appellant slaughtered a number of cattle without having first given twelve hours' notice in writing to the inspector of the cattle intended to be slaughtered, specifying the time and place. The evidence showed that about 700,000 lbs. of beef were treated at the establishment in 1905. Of the products of these operations about 680,000 lbs. of meat and soups were either exported or kept for export, and about 27,000 lbs. sold locally, in the form of fresh meat, tinned meat, or soups. More than 100 tons of tallow were produced. The killing of the cattle charged was admitted, as was also the fact that the proprietor had habitually, during May, June, and July, sold beef, fresh and tinned, locally, to employés, retail traders, and others in small quantities.

The appellant was fined £5 for each of the cattle slaughtered.

On an appeal by way of special case stated under the *Justices Act* 1902, *Pring* J. held that the conviction was right, and dismissed the appeal with costs: *Calman* v. *Tindal* (1).

From this decision the present appeal was brought.

The material parts of the various sections referred to are set out in the judgment.

Gordon K.C. (with him *Blacket*), for the appellant. The appellant's establishment, being duly licensed, comes within the words of sec. 8 of the Act No. 36 of 1902, and he is therefore entitled to the exemption, unless by some other provision of the Act that exemption is taken away in this particular case. But there is no provision in the Act that the proprietor of an establishment, who is entitled to exemption under this section, shall lose the benefit of that exemption if any operation connected with cattle slaughtering, other than those mentioned in the section, is carried on there. Once the proprietor is licensed, he enjoys

(1) 22 N.S.W. W.N., 176.

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the exemption. It is a personal exemption, conferred upon the proprietors of a certain class of licensed premises.

There is nothing contrary to the policy of the Act in allowing the products of the operations of such an establishment to be used in part for other purposes. By sec. 14 of the *Noxious Trades Act* 1902 the proprietor must enter into a bond, among the conditions of which is that he shall keep a record of all the particulars which in ordinary cases have to be furnished to and recorded by the inspector. It was the inconvenience of giving notice and sending in particulars on each occasion when cattle were to be slaughtered in such establishments, where sometimes hundreds are slaughtered daily, that led the legislature to confer the exemption. This appears from the preamble to sec. 19 of the Act 15 Vict. No. 13, from which sec. 5 of the consolidating Act No. 36 of 1902 was taken. Sec. 20 of the earlier Act, which provided for the granting of licences, and the giving of a bond by the proprietor of such an establishment, is now sec. 14 of the *Noxious Trades Act* 1902. This safeguard ensures that the object of the Act, that is, the prevention of cattle stealing, will be carried out, notwithstanding the exemption, and this object is not in any way hampered or defeated by the local sale of a portion of the products of such an establishment, if the proprietor has entered into the necessary bond and been duly licensed. [He referred also to 5 Will. IV. No. 1, sec. 4, and secs. 21 and 25 of the Act No. 36 of 1902.]

Piddington, for the respondent. This is not a case of taking away an exemption from a person who previously had it. The appellant, under the circumstances disclosed in the evidence, never was entitled to the exemption. Before the exemption arises, two distinct requirements must be fulfilled, first the establishment must be actually one for the extraction of tallow and for the preserving of beef for exportation, and secondly it must be a licensed place. This place, although licensed, was not in point of fact an establishment within the meaning of the section. The evidence showed that a very large amount of business was carried on there which was outside the proper business of such an establishment. This other business, though perhaps small relatively to

the main business, was actually very considerable, and would have been considered decidedly large in a local butchering or preserving establishment. During a large part of the year this was practically the only business carried on, and during that time it could not be said that the establishment was one within the words of sec. 5. The question is what was the establishment used for? It may be that the sale of any by-products, the production of which was inseparable from the main process, would not disentitle the proprietor from exemption, but, as soon as he goes beyond that, he must suffer the same consequences as any person carrying on the local business only. Otherwise the Act gives him a very unfair advantage over such a person. Persons claiming exemption from a statutory duty or liability by virtue of a section prescribing exceptions must show that they come strictly within the exceptions: *England* v. *Webb* (1); *Essendon (Corporation of)* v. *Blackwood* (2); *Borough of Randwick* v. *Dangar* (3); and *Sutherland on Statutory Construction*, p. 297, citing *Story* J. from *United States* v. *Dickson* (4). The proportion of the local business to the main business cannot affect the question of liability; nor can the fact that both are carried on under one roof. It is a matter of definition, and the appellant's establishment does not satisfy the definition.

To hold such an establishment exempt would defeat the purpose of the Act. The Act 15 Vict. No. 13 is directed almost wholly to the protection of the public health. The sections providing for licences and the giving of notice, and for inspection, are clearly for that purpose. The exemption is conferred for the reason that the processes carried on in such establishments do not affect the public health. The products are either substances not intended for human consumption or food to be sent abroad. For that reason inspection is, as recited in sec. 19, not only inconvenient but "unnecessary." The recording of particulars of cattle slaughtered, by the proprietor instead of the inspector, is sufficient as a check upon cattle stealing, and that obligation is still imposed on him, but the protection to the public health is completely lost if he may sell his meat locally without an oppor-

(1) (1898) A.C., 758.
(2) 2 App. Cas., 574, at p. 584.
(3) 15 N.S.W. W.N., 37.
(4) 14 Curtis, 60; 15 Peters, 141.

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tunity for inspection and detection of disease. For that reason the exemption should be restricted to establishments whose operations are exclusively devoted to the production of foodstuffs for export, or the extraction of substances not intended for human consumption. That would be in accordance with the general principle applicable to the construction of sections conferring exemptions, and with the purpose of the Act.

Gordon K.C. in reply.

The judgment of the Court was delivered by

Nov. 30.

GRIFFITH C.J. In this case this Court is asked, as it has been asked more than once before, to construe a Statute, not according to the language used by the legislature but according to some notion of what the legislature might have been expected to have said, or what this Court might think it was the duty of the legislature to have said or done. But the duty of a Court is to examine the language used, and to give effect to it, whether it approves or disapproves of what the legislature has provided, or whether it thinks or not that the legislature might more properly have done or said something else. We make these observations because on several occasions a similar argument has been addressed to us sitting here.

The question is as to the proper construction of the *Cattle Slaughtering and Diseased Animals and Meat Act*, No. 36 of 1902. That Act by sec. 5 provides that "every person intending to slaughter any cattle in any city, town, district, or municipality in which an inspector has been appointed, shall first give twelve hours' notice in writing to such inspector of the cattle intended to be slaughtered, specifying the place and time" with a penalty of five pounds for every head of cattle slaughtered, in "default of notice." That section is followed by sec. 8 which provides that: "It shall not be necessary for the proprietor or manager of any establishment for the extraction of tallow from the carcasses of cattle, or for salting beef for exportation, and being a licensed house or place, to give notice to any inspector of the cattle intended to be slaughtered by him." The term "licensed house or place" means premises in respect of which a licence has been issued under

the provisions of Part II. of the Act. The licence is issued by the local authority under sec. 25. The application for a licence must be made with a description of the premises and buildings in respect of which the licence is applied for, and accompanied by payment of the prescribed fees.

By another Act called the *Noxious Trades Act*, No. 82 of 1902, it is provided, sec. 14, that "no licence shall be granted or being granted shall be operative for or in respect of any house or premises used as an establishment for the extraction of tallow from the carcasses of cattle or for the salting of beef for exportation as aforesaid, unless the proprietor thereof shall have entered into a recognizance to His Majesty with two sufficient sureties—himself in two hundred pounds and the sureties in one hundred pounds each in the form and with the conditions set out in the Second Schedule hereto."

In the present case the appellant is the manager of an establishment for the extraction of tallow from the carcasses of cattle and the salting of beef for exportation, and the establishment is a licensed house or place within the meaning of the Act first referred to. He comes exactly within the words of the exemption in that Act. The magistrate has convicted him on the charge of not giving notice before slaughtering of the cattle intended to be slaughtered by him. On an appeal from that conviction by way of special case stated for the opinion of the Supreme Court, the learned Judge who heard the appeal was of the opinion that the contention of the appellant was plainly and unmistakably wrong. But, as I have already pointed out, it is obvious that the appellant comes plainly within the literal provisions of the Act conferring the exemption. Why then should the Act not apply to him? The answer given is this, that, notwithstanding the fact that his establishment is one for the extraction of tallow from the carcasses of cattle and for the salting of beef for exportation—either of these is sufficient—the evidence showed that he sometimes sells beef there, sometimes to his workmen, sometimes in the form of tinned meat to labourers and others in the neighbourhood, and occasionally small quantities of beef to persons passing by. It is said that, that being so, he therefore ceases to be the proprietor of an

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establishment for the extraction of tallow or salting beef for exportation within the meaning of the Act. In support of that contention we were referred to the case of *Essenden (Corporation of)* v. *Blackwood* (1), which was a case upon the construction of a Statute, which exempted from rateability "land, the property of Her Majesty, which is unoccupied or used for public purposes," and that was held to mean land exclusively used for public purposes. But what is there in the nature of this case to show that an establishment ceases to be an establishment for the extraction of tallow and the salting of beef for exportation simply because some of the residual products of these processes are sold locally, or because some of the cattle slaughtered are not boiled down and salted? I must confess that I, for my part, fail to apprehend the argument. And if the history of the legislation on the subject is considered, the matter becomes, to my mind, even more clear.

The 5th section of the Act No. 36 of 1902 is taken from an Act passed in 1834 for the regulation of the slaughtering of cattle, 5 Wm. IV. No. 1, and its terms are practically the same as in the original. That Act was obviously intended to guard against cattle stealing. It contained various provisions for the giving of notice to the inspector by a person intending to slaughter cattle, and provided that, if that were not done, the skins of the cattle slaughtered were to be kept for the inspector to examine. The keepers of licensed slaughtering places where inspectors were not appointed, were to keep records of all cattle slaughtered and make returns of them to the justices. The skins of all cattle slaughtered were to be kept for a month, and shown on demand to the magistrates; and any person who failed to produce such skins or to give a satisfactory explanation of his failure to do so was liable to a penalty of £10. There was a provision that no person should destroy or deface the brand upon any skin, and a penalty was imposed on any person who committed a breach of that provision. There were other provisions for the watching of places suspected to contain stolen cattle, and entering them for the purpose of inquiry into cases of suspicion. All these provisions were obviously directed against the offence

(1) 2 App. Cas., 574.

of cattle stealing, the main provisions being that before slaughtering notice should be given to the inspector. It then became his duty to examine the cattle slaughtered, to take a full and particular description of the colours, age, brands, marks, together with the name of the owner. These were to be entered by him in a book for the examination of a justice, and a weekly return was to be made of the number of cattle slaughtered in his district. The plain object of these provisions, as I have already pointed out, was the prevention of cattle stealing.

Then in the year 1851, an Act was passed, 15 Vict. No. 13, to amend the laws for the slaughtering of cattle and to secure the immediate destruction of animals dying of disease. The first seventeen sections of that Act referred entirely to the subject of animals dying of disease, and the prevention of their being used by the public for food. But after sec. 18 there follows a fresh preamble, at the beginning of sec. 19. That preamble and section are as follows: "Whereas it has been found inconvenient and is considered unnecessary to require cattle slaughtered at places or establishments for the extraction of tallow from the carcasses of such cattle or for the salting of beef for exportation to be regularly inspected by the inspectors of slaughter-houses Be it therefore enacted That after the passing of this Act it shall not be necessary for the proprietors or managers of establishments for the extraction of tallow from the carcasses of cattle or for salting beef for exportation and licensed as slaughter-houses to give notice to any inspector of slaughter-houses of the cattle intended to be slaughtered by them nor shall any inspector be required to examine any such cattle or to take or make entries of the descriptions or other particulars now by law required to be taken and entered by him upon making such examinations." Then follows sec. 20, which is a proviso to sec. 19, that no licence shall be granted, or being granted shall be operative for or in respect of any house or premises used as an establishment for the extraction of tallow from the carcasses of cattle or for the salting of beef for exportation until the proprietor has entered into a recognizance with two sufficient sureties. The form of the recognizance is set out in the schedule, the condition being "that whereas the said A. B. is to be licensed to slaughter cattle

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on his premises situate at . . . and the said A. B. intends to employ his said premises as a place or establishment for the extraction of tallow from the carcasses of cattle or for salting beef for exportation (as the case may be) if the said A. B. shall keep a book in which he shall enter a particular and faithful account and description of all cattle slaughtered on the said premises specifying the colours marks brands sex and apparent age of such cattle and the time of slaughter and the names of the persons by whom such cattle were delivered at the said premises and of the persons on whose account the said cattle were received and of the persons to whom or for whose use the tallow extracted from the same or the beef salted has been delivered and shall permit such book and all cattle intended to be slaughtered to be inspected by any person who may require to see the same and shall transmit once in each fortnight to the Bench of Justices at . . . a report of all cattle slaughtered together with the particulars above mentioned in writing under his hand or in his absence under the hand of the manager of the said establishment. Then this recognizance to be void otherwise to remain in full force." That is to say, the legislature, reciting that it was inconvenient and unnecessary to require an inspection in these establishments, exempted the proprietors of them from that liability upon their undertaking to perform themselves the duties which the inspector would otherwise have had to perform. And, if we are to apply the historical knowledge which we must be taken to possess, we cannot fail to know that by the year 1851 what were called boiling down establishments and meat works for the salting of beef for exportation had been established in this country, and that in these places the slaughtering of cattle went on wholesale, and the legislature, taking this into consideration, and knowing that these places were very different from ordinary slaughtering yards, and that for the purpose of carrying on such a business buildings and plant would be erected which could easily be seen, and by which the nature of the establishment could be known at once, and that when application was made for a licence to slaughter, it would be obvious on inspection what sort of a place it was, made provision that the proprietor, on entering into a recognizance to do

himself what the inspector would otherwise have had to do, should be exempt from the necessity of giving notice of his intention to slaughter. But even if we had no knowledge of these facts, any doubt would be set at rest by the language of the Act, without reference to them. The only condition, therefore, that has been imposed by the legislature is that the establishment shall be one of a particular kind. If the establishment is of that kind, it falls within the exemption. What more then is there to be said? I confess that I am altogether unable to bring myself to understand the argument that a man, who is exempted by law from an obligation, is nevertheless liable to fulfil that obligation because he has done something which the legislature did not contemplate that he would do when it granted the exemption. I am really unable to deal with the argument any more in detail. Out of respect to the learned Judge who decided the point, and the strenuous argument that was addressed to us by Mr. Piddington, I should have been pleased if I could have appreciated the contention raised on behalf of the inspector, but I am unable to do so.

The appellant is clearly within the exemption, and the fact that he, to a small extent, disposed locally of the waste products of the boiling down and other processes seems to me an entirely irrelevant matter.

I may mention that it was stated in evidence that the proportion of this local business to the general operations of the establishment does not exceed four per cent. This, though in one sense large, the operations of the establishment being very large indeed, was relatively trivial.

For these reasons we are of opinion that the appeal should have been allowed by the Court below, and that the conviction should be quashed.

Appeal allowed with costs. Order appealed from discharged. Conviction quashed with costs.

Solicitors, for appellant, *Macnamara & Smith.*

Solicitor, for respondent, *The Crown Solicitor of New South Wales.*

C. A. W.