

[HIGH COURT OF AUSTRALIA.

PALMER APPELLANT;
INFORMANT,

AND

CHRISP RESPONDENT.
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF
NEW SOUTH WALES.

H. C. OF A. *Pastures Protection Act 1902 (N.S.W.) (No. 111 of 1902), secs. 4, 49—Failure to
1908. destroy rabbits—"Occupier"—"Resident manager"—Evidence—Special leave
to appeal to High Court.*

MELBOURNE,
October 2.

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

An information charging that the defendant as "occupier" of certain land failed to destroy rabbits on the land as provided by sec. 49 of the *Pastures Protection Act 1902 (N.S.W.)* was dismissed, the magistrate holding that the defendant was not an "occupier." There was evidence that the defendant was a boundary rider charged with the duty of looking after sheep depasturing in a paddock of which he was alleged to be the occupier, and of which he had the keys. No one lived in the paddock. On appeal to the Supreme Court, *Sly J.* held that there was evidence upon which the magistrate could so find, and dismissed the appeal. (*Palmer v. Chrisp*, 25 W.N. (N.S.W.), 150).

Special leave to appeal to the High Court was refused on the ground that there was no reason to doubt the correctness of the magistrate's decision.

APPLICATION for special leave to appeal.

At the Court of Petty Sessions at Germanton, New South Wales, an information was heard whereby the informant, Henry Edmond Palmer, charged that John Chrisp, the defendant, being the occupier of certain land within the Pastures Protection District of Hume, a duly proclaimed rabbit infested district, did

fail fully and continuously to perform his duty as such occupier from time to time to suppress and destroy by all lawful means and at his own cost, and in accordance with the requirements of the Hume Pastures Protection Board, as specified under the provisions of sec. 52 of the *Pastures Protection Act* 1902, all rabbits from time to time on such land, contrary to sec. 49 of that Act.

It appeared that some of the land belonged to one William Andrew Lamb and the rest of it to one William Alexander Stewart, and that the whole of it was leased to the Mahonga Company, who used it for grazing sheep; that the defendant was in charge of the sheep on the land and had employed a man to lay poison for rabbits on parts of the land; that the defendant took delivery of sheep upon the land and had the keys of the only paddock which was locked; that no one lived on the land, but that the defendant boarded at a house on land adjoining the land in question and was daily on the land and acted as a man in possession of the land. The defendant in the course of his evidence said:—"I am a boundary rider and reside at Albury. I was employed at the time mentioned in the information by the Mahonga Company to look after sheep. That was the extent of my duties. I got my instructions sometimes from the Mahonga Company and sometimes from Mr. Baker, the overseer. Mr. Baker paid a visit to the property about once a month. I was instructed from Mahonga by letter to destroy the rabbits. I was paid £2 10s. a week. I could only act by instructions from the company. I was engaged there a little over three months. That was my first and only engagement. I poisoned only as far as I had permission. I have not exercised any act of ownership other than to look after the sheep. I got £1 as a boundary rider at various stations, but in addition I got tucker, horses and saddles. Here I got £2 10s. and had to pay my own board and find my own horse. I consider I was boundary riding looking after the sheep. I got my instructions every week. I could not do anything on my own account. I had an overseer and a manager over me."

Sec. 4 of the Act defines "Occupier" as follows:—" 'Occupier' means the person for the time being entitled to possession of a holding or land, and includes the resident manager of the occupier

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The Police Magistrate found that the defendant was not the occupier, and he dismissed the information. At the request of the informant a case was stated for the opinion of the Supreme Court, the question being whether the determination was erroneous in point of law.

The special case was heard by *Sly* J. who answered the question in the negative and dismissed the appeal: *Palmer v. Chrisp* (1).

From that decision the informant now applied for special leave to appeal to the High Court.

Russell, for the informant. On the uncontradicted evidence the defendant was the person for the time being entitled to the possession of the land, or he was the resident manager of the occupier and was therefore an "occupier" within the definition in sec. 4 of the *Pastures Protection Act* 1902. A person who is daily employed on the land is resident on it within the meaning of that definition especially where no one else is upon the land. A local employé in sole charge of land is a "manager" within that definition. The Act contemplates that in every case there will be an "occupier" of the land. There is no means of enforcing sec. 49 against a company.

[GRIFFITH C.J. referred to secs. 159, 160.]

The decision of the Court was delivered by

GRIFFITH C.J. There is no reason for doubting the correctness of the decision of the magistrate. Leave to appeal will be refused. It must not be assumed that proceedings cannot be taken against a company under this section.

Special leave refused.

Solicitors, for the informant, *Mackenzie & Mackenzie*; for *C. E. A. MacNevin*, Germanton.

B. L.