[HIGH COURT OF AUSTRALIA.]

JAMES MACKAY . . . . . APPELLANT;
PLAINTIFF,

AND

WALTER W. BACON . . . . . RESPONDENT.
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

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SYDNEY, *Dec.* 13, 14.

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

Defamation—Slander uttered at public meeting—Evidence of other speeches made at the meeting by third persons—Fair comment—Plea of truth.

The plaintiff, who was a licensed slaughterman and carcase butcher, was the licensee of slaughter-house premises in the Canterbury Municipality which, in his application for the licence, were described by the plaintiff as an area of about 100 acres. In addition to his slaughter house, the plaintiff had also a fat extraction licence for works situated on portion of the 100 acres, but this licence did not authorize the plaintiff to boil down diseased cattle which had not been slaughtered there. The plaintiff had taken carcases of diseased cattle on to these premises of 100 acres. The plaintiff sued the defendant for oral defamation uttered at a public meeting of a ratepayers' association called "to protest against the manner in which the *Noxious Trades Act* was being administered in the Municipality of Canterbury, especially in regard to the carrying on of a knacker boiling down establishment without a licence." The meeting was opened by a speech by the Chairman, and certain correspondence was read, which had passed between the Ratepayers' Association, the Board of Health, and the Canterbury Municipality, in reference to the matters to be discussed at the meeting, and reflecting upon the conduct of the plaintiff in carrying on his business. The defendant in moving a resolution said in reference to the plaintiff's business: "If this establishment is not breaking the law and regulations it will take a very clever lawyer to get him out of it."

In a second passage in his speech the defendant said :—"If Mr. Mackay (the plaintiff) would like it publicly known that diseased carcases are being carted on to his premises we will do our best to advertise it for him."

Held, that it was for the jury to say what was the meaning of the words used by the defendant, and that they were properly directed that they could regard the first statement of the defendant as fair comment, and were entitled to find that the publication of the second statement was for the public benefit.

Held, also, that the speech made by the Chairman and the correspondence referred to were admissible in evidence.

Decision of the Supreme Court, 1st July, 1910, affirmed.

APPEAL by the plaintiff from the decision of the Supreme Court refusing an application for a new trial. The action was for slander uttered by defendant at a public meeting.

The declaration alleged that the plaintiff carried on the business of a licensed slaughterman and carcase butcher, and had for a long time supplied in his said business large numbers of the carcases of animals intended for human food to retail butchers and others whose business was connected with providing meat for the consumption of the public, and the defendant spoke and published of and concerning the plaintiff, and his said business of a licensed slaughterman and carcase butcher, the words following, that is to say: "If this establishment" (meaning and including the establishment of the plaintiff in which he carried on his said business of a licensed slaughterman and carcase butcher) "is not breaking the law and regulations then it will take a very clever lawyer to get him out of it. I do not think there is a shadow of a doubt but that some drastic measures will have to be taken. By the regulations under the *Cattle Slaughtering Act* 'No animals but such as are intended to be used for the food of man shall be killed or allowed to enter slaughter-house premises, deposited or brought into slaughter-house premises, and no diseased animal shall be boiled down on such premises unless its diseased condition shall have first become known after its slaughter, and in course of preparing it for the food of man' "—meaning thereby that the plaintiff should be prosecuted for allowing animals not intended for the food of the public to be brought into his said slaughtering establishment, or for boiling

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down in his said slaughtering establishment diseased animals known by him to be such prior to their slaughter and preparation for the food of the public: and also "Now if Mr. Mackay" (meaning the plaintiff) "would like it publicly known that some of the meat he is carting on his premises which are public slaughterhouse premises—the Lord only knows what they are—if he would like it publicly known that diseased carcases are being carted on to his premises (meaning or including the plaintiff's said slaughtering premises) "we" (meaning the defendant and other persons) "will do our very best to advertise it for him. We do not trust to hearsay evidence. We saw and know. We saw the carcase of a beast there" (meaning or including the plaintiff's said slaughtering establishment) "from which a large cancer had been cut and on the strength of that—knowing that—we made it our business to inquire the procedure under which these animals are slaughtered at Flemington," (meaning the sheep and cattle sale yards of that name), meaning thereby that the plaintiff was recklessly callous and indifferent as to whether his said slaughtering establishment was or was not lawfully and properly managed as such, and that the plaintiff had been bringing into his said slaughtering establishment the carcases of animals which were conspicuously infected with disease, and carcases dangerous to public health for the purpose of treating the same on his said slaughtering premises, and in connection with his said slaughtering and carcase butchery business, and was recklessly indifferent as to whether or not the diseased carcases were supplied by him in the course of his said slaughtering and butchery business to retail butchers and others for consumption by the public, whereby the plaintiff was greatly injured in his personal and business credit and reputation, and in the conduct and custom of his business as a slaughterman and carcase butcher.

The defendant pleaded not guilty, and as to the second passage in the defendant's speech complained of that it was true, and that it was for the public benefit that the public should know that the carcases of diseased animals were conveyed by the plaintiff to premises where animals intended for human consumption were slaughtered.

At the trial before the Acting-Chief Justice evidence was

admitted of the speech made by the Chairman of the meeting, at which the alleged defamatory statements were made by the defendant, and of certain correspondence that had passed between the Ratepayers' Association, the Board of Health, and the Canterbury Municipal Council. The learned Judge directed the jury that statements in the passage first complained of could be regarded by them as fair comment. The jury found a verdict for the defendant. The Supreme Court refused an application for a new trial.

The facts are sufficiently stated in the judgment of *Griffith* C.J.

Pilcher K.C. and *Mocatta*, for the appellant. The Supreme Court were in error in holding that the statements admitted to have been made by the defendant could be regarded as fair comment, as the whole of the relevant facts were not put before the meeting. Further, the evidence of the speech made by the Chairman and the correspondence read at the meeting was wrongly admitted.

Shand K.C. and *James*, for the respondent, were not called upon.

GRIFFITH C.J. This was an action for oral defamation uttered at a public meeting convened, according to the circular convening it, by the West Ward Ratepayers Association of the Canterbury Municipality "to protest against the manner in which the *Noxious Trades Act* was being administered in the Municipality, especially in regard to the carrying on of a knacker boiling down establishment without a licence, despite the protest of the Association." The circular further stated that neither the Canterbury Municipal Council nor the Board of Health would take any steps, although they had been notified that carcases, which had been "condemned with cancer," had been carted on to slaughtering premises from the condemned yard at Flemington Sale Yards. At the meeting the defendant made a speech, and moved a resolution to the effect "that the ratepayers and residents of the Canterbury Municipality in public meeting assembled enter their emphatic protest against the maladminis-

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tration of the *Noxious Trades Act* and the *Cattle Slaughtering and Diseased Animals and Meat Act* by the Canterbury Municipal Council and the Board of Health in the Municipal District of Canterbury, and that a petition be signed for presentation to the Canterbury Council asking the Council to refrain from granting any licences for boiling down in the Canterbury Municipal District." At the opening of the meeting the Chairman had made a speech informing those present of the purpose for which it had been called and read the circular. Correspondence that had passed between the Ratepayers' Association, the Board of Health, and the Canterbury Municipal Council was also read. The respondent then moved the resolution. Two passages in his speech are complained of in the declaration. The first was as follows:—"If this establishment (meaning the plaintiff's establishment) is not breaking the law and regulations, then it will take a very clever lawyer to get him out of it. I do not think there is a shadow of a doubt but that some drastic measures will have to be taken." He then read a regulation under the *Cattle Slaughtering Act*, which is in the following terms:—"No animals but such as are intended to be dressed for the food of man shall be killed or allowed to enter slaughter house premises, deposited or brought into slaughter house premises, and no diseased animal shall be boiled down on such premises unless its diseased condition shall have first become known after its slaughter and in course of preparing it for the food of man." The second part of the defendant's speech complained of was in these words:—"Now if Mr. Mackay would like it publicly known that some of the meat he is carting on his premises which are public slaughter house premises—the Lord only knows what they are—if he would like it publicly known that diseased carcases are being carted on to his premises we will do our very best to advertise it for him. We did not trust to hearsay evidence. We saw and know. We saw the carcase of a beast there from which a large cancer had been cut and on the strength of that, knowing that, we made it our business to inquire the procedure under which these animals are slaughtered at Flemington." The defendant pleaded not guilty, and as to the second passage he also pleaded truth and that the publication was for the public benefit. It appeared on

the evidence that the plaintiff was the licensee of slaughter house premises in the municipal district. By the regulations under the *Cattle Slaughtering and Diseased Animals Act* (No. 36 of 1902) an applicant for a licence must state the premises upon which the business is to be carried on. The plaintiff described his premises as an area of about 100 acres. I think it may be taken that the inhabitants of the Municipality of Canterbury, which is not a vast territory, had some information as to where the plaintiff's slaughter house was, and what were the premises upon which the business was carried on. The defendant had a verdict, which is now objected to on three grounds. The first is that at the trial evidence was wrongly admitted of the speech made by the Chairman, and of the correspondence read to the meeting before the defendant made his speech. In my opinion the evidence was clearly admissible. It was for the jury to say what the words complained of meant under the circumstances in which they were uttered, and it was impossible for them to know what they meant unless those circumstances were brought before their notice. As the learned Chief Justice said :—"You must know the text before you can properly appreciate the sermon." The learned Chief Justice expressed a doubt as to the admissibility of the Chairman's speech, but I think that it was clearly admissible. If it had been rejected and the plaintiff had had a verdict, the verdict could only have been supported upon the ground that the Chairman's speech was irrelevant.

The next objection taken was with regard to the learned Judge's direction to the jury that the first part of the defendant's speech might be regarded by them as fair comment. The proved facts were that the plaintiff had taken on to the premises of 100 acres the carcases of diseased cattle. It appeared that he had a "fat extraction licence" for works situated on another portion of the 100 acres, but that licence did not authorize him to boil down diseased cattle which had not been slaughtered there. Speaking in reference to these facts the defendant said :—"If this establishment is not breaking the law and regulations, then it will take a very smart lawyer to get him out of it." Surely it was possible for a jury, upon whom the duty lay to determine what the words meant, to say whether that was an assertion that the

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plaintiff was breaking the law, or an expression of the defendant's opinion that in doing what he admitted he had done in taking diseased carcases there he had broken the law. This was for the jury to decide, and the learned Judge properly told them so. The third objection was with regard to the plea of truth. The facts were as I have stated them. It was proved that the plaintiff had taken diseased carcases on to his licensed premises. The whole point made for the plaintiff on this part of the case was that the audience might have thought the statement that the plaintiff took diseased carcases on to his licensed slaughter house premises meant that he took them into his killing house. But it was for the jury to say whether the words conveyed that meaning. The jury apparently thought they did not. Personally, I should have come to the same conclusion. The audience, no doubt residents of the district, perfectly understood what was the subject of discussion. The sole question was what did the defendant mean by the words he used? If they bore one meaning the verdict was obviously right. In my opinion the case was one in which, as Mr. *Pilcher* admitted, the matter possessed so much of public interest that the defendant was justified in making comment upon it, provided that he did not do so maliciously, and provided that the comment was fair and fairly relevant to the subject matter. So far from the verdict being against the evidence, I think that anyone who reads the evidence would be surprised if the verdict had been different. The argument for the appellant is entirely fallacious. In my opinion the appeal should be dismissed with costs.

BARTON, O'CONNOR and ISAACS JJ. concurred.

Appeal dismissed.

Solicitor, for appellant, *E. R. M. Newton.*
Solicitor, for respondent, *J. J. McDonald.*

C. E. W.