[HIGH COURT OF AUSTRALIA.]

CRIBB . . . . . APPELLANT;
DEFENDANT,

AND

KORN . . . . . RESPONDENT.
PLAINTIFF,

ON APPEAL FROM THE SUPREME COURT OF QUEENSLAND.

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BRISBANE, *April* 25, 26, 27.

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

Employer and Workman—Compensation—Workers' Compensation Act 1905 (*Qd.*), (5 *Edw. VII. No.* 26), *sec.* 10*—*Contract for the execution of work by or under a contractor—Work part of, or a process in, the trade or business of a principal —Tenancy at will—Licence—Partnership.*

*Sec. 10 of the *Workers' Compensation Act* 1905 (Queensland) provides that :—

"In any case where any person (hereinafter called the 'principal') contracts with any other person (hereinafter called the 'contractor') for the execution of any work by or under the contractor, and the contractor employs any worker thereon, the following provisions shall apply :—

"(1) Both the principal and the contractor shall be deemed to be employers of the worker, and shall be jointly and severally liable to pay to the worker any compensation which the contractor if he were the sole employer would be liable to pay under this Act ;

"(2) The principal shall be entitled to be indemnified by the contractor against the principal's liability under this section ;

"(3) The principal shall not be liable under this section except in cases where the work to be executed under the contract, and in which the worker is employed, is directly a part of, or a process in the trade or business of the principal ;

"Provided that his liability shall be presumed until the contrary is shown ;

"(4) In the case of sub-contracts, the expression 'principal' shall extend to and include not only the original principal, but also each contractor who constitutes himself a principal with respect to a sub-contractor by contracting with him for the execution by him of the whole or any part of the work ; and the expression 'contractor' shall extend to and include not only the original contractor, but also each sub-contractor ;

"Provided that each principal's right of indemnity shall be a right over against every contractor standing between him and the contractor by whom the worker was employed at the time when the accident occurred, and including such last mentioned contractor.

"(5) The mode in which any right of indemnification arising under this Act may be enforced may be prescribed by regulations."

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K. was engaged by R. to assist in agricultural or pastoral work at a place called Barncleuth, of which C. was the owner. C. had verbally agreed with R. to let him two cultivation paddocks at Barncleuth, and any other area he could effectually cultivate, with a right to graze any horses and cattle necessary for his operations in working the place as a farm and dairy. C. stipulated, however, that R. was not to keep any animals of his own on the place, with the exception of one horse; in consideration, R. was to pay C. one-half of the proceeds of the produce when realized. Subsequently C. supplied certain farming implements for use by R. in his operations, and R. milked four cows and worked four horses. R. also had the use of all the implements on the place as long as he remained there, but no definite period was agreed upon as to his length of tenure, or as to the use of the implements, or as to the times at which the half proceeds of the produce were to be paid to C.

In an action by K. against C. under the *Workers' Compensation Act* 1905,

Held: That the agreement was inconsistent with the existence of a partnership between C. and R.; that R. had not contracted to execute any work on behalf of C., and therefore C. was not a principal within the meaning of sec. 10 of the *Workers' Compensation Act* 1905, and was not liable to pay compensation to K. under the Act.

Decision of the Supreme Court: *Korn* v. *Rano & Cribb*, 1911 St. R. Qd., 1, reversed.

APPEAL from a decision of the Supreme Court of Queensland.

John Korn brought an action in the Court of Petty Sessions at Gayndah, under the *Workers' Compensation Act* 1905, against William August Rano and William Alfred Cribb, in respect of an injury by accident alleged to have arisen out of and in the course of his employment.

The Police Magistrate found that Korn had failed to prove that Cribb stood in the relation to him of an employer liable to him in compensation under the Act, but ordered certain compensation to be paid by Rano.

Korn appealed to the Supreme Court, who reversed the decision of the magistrate *quâ* Cribb's liability, holding that Cribb was a principal in relation to Rano within the meaning of sec. 10 of the Act (1). Against this judgment the present appeal was brought.

The relevant facts as to the relations between Korn, Cribb and Rano are sufficiently set forth in the judgment of *Griffith* C.J. hereunder.

(1) 1911 St. R. Qd., 1.

Stumm K.C. and *Grove*, for the appellant. The case turns on the construction of sec. 10 of the *Workers' Compensation Act* 1905. Two questions arise under that section. First, has Cribb contracted with Rano for the execution of work for Cribb by or under Rano? Secondly, was such work part of, or a process in, the trade or business of Cribb? Both these questions must be answered in the negative. The agreement between the parties constituted a tenancy at will. [They referred to *Greenwood Lumber Co. Ltd.* v. *Phillips* (1).]

[GRIFFITH C.J. referred to *Landale* v *Menzies* (2).]

BARTON J. referred to *O'Keefe* v. *Williams* (3)].

Dry v. *Boswell* (4) has no application because here there is no partnership. The agreement that Rano was to pay Cribb one half of the proceeds of the produce when realized, as found by the magistrate, was equivalent to the payment of rent by R.: *Foa, Landlord and Tenant*, 4th ed., p. 115. Assuming there was no tenancy, then Rano was a licensee: *Foa*, p. 9; *Liggins* v. *Inge* (5); *Winter* v. *Brockwell* (6); *Selby* v. *Greaves* (7). In no aspect of the case was Cribb a principal, he had no control or authority whatever over Rano. Even if it were proved that no tenancy existed between the parties, Cribb would not be liable until it was established that he was a principal or contractor within the meaning of the Act: *Waites* v. *Franco-British Exhibition Co.* (8); *Butterworth's Workmen's Compensation Cases*, vol. II., p. 199.]

[They referred to sec. 4 of the *Workmen's Compensation Act* 1906 (Imperial) (6 Edw. VII. c. 58); *Daniel* v. *Gracie* (9); *Doe* v. *Benham* (10); *Foa*, 4th ed., 482; *Storey on Partnership*, 7th ed., p. 43, sec. 43; *Zugg* v. *Cunningham* (11); and *Skates* v. *Jones & Co.* (12).]

[BARTON J. referred to *Clayton* v. *Blakey* (13).

Henchman, for the respondent. Whether Rano was a tenant, or a partner, or a licensee of Cribb, the evidence has established

(1) (1904) A.C., 405.
(2) 9 C.L.R., 89.
(3) 11 C.L.R., 171.
(4) 1 Camp., 329.
(5) 7 Bing., 682, at pp. 691, 2, 3.
(6) 8 East., 308.
(7) L.R. 3 C.P., 594, at p. 596.
(8) 25 T.L.R., 441.
(9) 13 L.J. Q.B., 309; 6 Q.B., 145.
(10) 14 L.J. Q.B., 342; 7 Q.B., 796.
(11) (1908) Sc. L.R., 67; 1 Butterw. W.C. Cas., 257.
(12) 3 Butterw. W.C. Cas., 460.
(13) 8 T.R., 3; 2 Sm. L.C., 136.

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a contract for the execution of work by Rano. Further, it has established that that work was to be done for Cribb. There is no evidence that Cribb ever intended to divest himself of his possession and give possession of anything to Rano. The use of the word "let" or "demise" is not of itself sufficient to create a tenancy. The Court will regard the intention of the parties: *Encyclopædia of Laws*, vol. VII., 2nd ed., 633, 4. Further, the rent is not payable at a time certain. [He referred to *Kent's Commentaries*, 14 ed., vol. IV., p. 95; *Hare* v. *Celey* (1); *Edwardes* v. *Barrington* (2); *Hogg, Conveyancing Precedents*, 1st ed., 414.] Assuming Cribb does not come within the purposes of the *Workers' Compensation Act*, then he was either a partner or a co-adventurer with Rano: *Piercey* v. *Macklow Bros.* (3).

[O'CONNOR J. referred to *Hart* v. *MacDonald* (4)].

If Cribb and Rano were not partners in fact, Rano was made a partner by being held out to others by Cribb as a partner. [He referred to *Lindley on Partnership*, 7th ed., p. 50; *French* v. *Styring* (5); *Steel* v. *Lester* (6); *Doggett* v. *Waterloo Taxi-Cab Co. Ltd.* (7).

Stumm, in reply, referred to *Lyon* v. *Knowles* (8).

Cur. adv. vult.

The following judgments were read:—

April 27, 1911.

GRIFFITH C.J. The *Workers Compensation Act* 1905 provides (sec. 4) that if, in any employment to which the Act applies, any personal injury by accident, arising out of or in the course of the employment, is caused to a worker, his employer shall, subject to the provisions of the Act, be liable to pay compensation. Sec. 3 provides that the Act shall apply only to employment by the employer on, in or about certain specified kinds of work, one of which is "any agricultural or pastoral work carried on by or on behalf of the employer as part of his trade or business." There are thus two conditions of liability;

(1) 1 Cro. Eliz., 143.
(2) 85 L.T., 650.
(3) 11 N.Z.G L.R., 647.
(4) 10 C.L.R., 417.
(5) 2 C.B.N.S., 354.
(6) 3 C.P.D., 121, at pp. 127, 8.
(7) (1910) 2 K B., 336, at p. 341.
(8) 3 B. & S., 556.

(1) the work must be carried on by or on behalf of the employer; and (2) it must be carried on as part of his trade or business.

Work may be carried on either by a man himself or by another on his behalf. In the latter case it may be carried on by a servant or agent or by a person who, though neither a servant nor agent properly so called, undertakes or contracts to do the work for the principal. The latter case is dealt with by sec. 10, which provides that "in any case where any person (hereinafter called the 'principal') contracts with any other person (hereinafter called the 'contractor') for the execution of any work by or under the contractor . . . (1) both the principal and the contractor shall be . . . jointly and severally liable to pay to the worker any compensation which the contractor if he were the sole employer would be liable to pay under this Act." Sub-paragraph (2) provides that the principal shall not be liable unless the work to be executed under the contract, and in which the worker is employed, is directly a part of, or a process in, the trade or business of the principal, with a proviso that the liability of the principal shall be presumed until the contrary is shown. When this section is read with sec. 3, it is manifest that the contract intended is a contract by the contractor to execute work on behalf of the principal, and not on his own behalf. The effect of sec. 10 is that in such a case the contractor is regarded as an agent of the principal for the purposes of determining the liability of the latter, the condition of liability being that the principal shall have contracted with another person for the execution of work by or under the contract, or as part of, or a process in, the trade or business of the principal, that is, for the execution of the work on behalf of the principal. When it is established that the work is to be executed on his behalf, the proviso comes into operation, but not until then.

I proceed to apply this rule to the facts of the present case. The respondent was a worker in the employment of one Rano in agricultural or pastoral work at a place called Barncleuth. The relations between Rano and appellant are thus found by the magistrate:—"The respondent Cribb was at all material times the owner of Barncleuth aforesaid, and about October 1909 he verbally arranged with the other respondent Rano to let him

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the two cultivation paddocks on Barncleuth, and any other area he could effectually cultivate, with a right to graze in Barncleuth paddocks any horses and cattle necessary for his operations in working the place as a farm and dairy, with a stipulation that Rano was not to keep any animals of his own on the place with the exception of one horse, in consideration whereof Rano was to pay Cribb, in lieu of rent, one-half of the proceeds of the produce when realized. Subsequently Cribb supplied certain farming implements for use by Rano in his operations, and Rano milked four cows and worked four horses. Rano had also the use of all the implements on the place as long as he remained there, but no definite period was agreed upon for him to remain there, or for him to have the use of the said implements, nor was any time agreed upon when the one-half of the proceeds of the produce was to be paid to the respondent Cribb; in short, respondent Cribb supplied lands, tools, implements, and live stock, and respondent Rano labour, and they were each to take one-half of the proceeds of the produce grown when the same was realized and marketed." Upon this state of facts it appears to me that Rano did not contract to execute any work on behalf of appellant. If he contracted at all to cultivate the land—and I am disposed to think that a contract to cultivate some land may be implied—the contract was to cultivate on his own behalf. If it were necessary to decide the point, I should be strongly disposed to hold that the transaction operated as a lease of the land by appellant to Rano at a rent equal to one-half of the gross proceeds of the produce. Rano was entitled to exclusive occupation of the land under cultivation, and appellant had no right to control his operations. The fact that the period for which his occupation was to continue was indefinite is not material: *Landale* v. *Menzies* (1). Nor is it any objection that the amount of rent was made dependent upon the amount realized from the produce of the land. But it is not necessary to decide the question, since, whatever is the formal category to which the transaction should be assigned, Rano's contract, if any, to execute the work in which respondent was employed, although a contract with appellant to execute the work, was not a contract to execute

(1) 9 C.L.R., 89.

it on behalf of the appellant. There is no foundation for the contention that he and Rano were partners. The case is, in my opinion, not distinguishable from *Waites* v. *Franco-British Exhibition Co.* (1). The concept expressed by the words "work undertaken by the principal" in the English Statute is, so far as regards the present question, the same as that of "work to be executed on behalf of the principal," which I hold to be the meaning of the Queensland Act.

For these reasons I think that the appeal must be allowed.

BARTON J. As the facts are set out in the special case, they need no further narration. The only question is whether, so far as they are material, they warranted the Police Magistrate in inferring that Cribb, the appellant, was not the principal of Rano at common law, so as to be answerable to Korn, the respondent, as his real employer under secs. 2-6 of the Act of 1905, and that Cribb and Korn did not stand in the relation of employer and employé by reason of sec. 10 of that Act.

The appellant is liable to the respondent—

(1) If Rano was in point of fact the servant or agent or employé or partner of the appellant; or

(2) If Rano, not being in fact his servant or agent or employé or partner, is to be deemed such by virtue of sec. 10.

One or other of these propositions it lay upon the respondent to establish at the hearing before the Police Magistrate, whose decision on matters of mere fact we cannot disturb. Rano is not the servant or agent or employé or partner of the defendant in fact, unless under the agreement he was to work for or on behalf of the appellant, or for their joint profit. If he was to work for himself, and pay the appellant a consideration for the right to do so on the appellant's land, then, whether he was to pay the consideration as the appellant's tenant or as the appellant's licensee, or otherwise, but so that his work was for himself, and not for the appellant, this appeal must succeed, unless sec. 10 so operates as to make the latter the factitious employer of the respondent.

The object of sec. 10 on its face is to make the person who may be called the secondary or ultimate employer, and the person who

(1) 25 T.L.R., 441.

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is the immediate employer, jointly and severally responsible in cases of injury to workmen employed by the latter, subject to indemnification of the former by the latter against the liability created by the section. Take the position which arises when a workman, A., injured in the service of a sub-contractor, B., finds that his immediate employer is a man of straw, and that the principal contractor, C., with whom his immediate employer has contracted for the execution of the work wholly or in part, meets his demand for compensation with the reply, "Oh, you are not my employé but B.'s—it is he who must pay." In such a case the employé, A., may sue B. and C. together, or he may sue either B. or C. separately; but if he recovers against them jointly or against C. separately, C. is entitled to be indemnified by B. against the liability. But I do not think the state of things contemplated by the section arises unless B.'s contract is to do something for or on behalf of C. In other words, the section does not impose liability on anyone who is not the principal of the immediate employer, either as his employer, or as the principal contractor, or as his principal, as that term is used in the relation of principal and agent. The object of the section is to facilitate the recovery of compensation by workmen. For instance, the relation of partnership is not within the section so as to advance the workman's remedies against a co-partner of his immediate employer to an extent greater than those secured to him by the rest of the Act, under which he is at liberty to enforce the liability of all the partners to him. But where his immediate employer is the agent of a principal, or the employé of one, or a sub-contractor under one, then the fuller remedies enumerated in the section are available, with the qualification in favor of the principal afforded by sub-sec. (2). Hence, if the appellant and Rano were partners by or under the agreement proved, the respondent was right in suing them jointly, and did not require the help of sec. 10 to enable him to recover. If they were not partners, but Rano was under the agreement the employé or agent of the appellant, then sec. 10 enables the respondent to sue the appellant and Rano jointly, as he has done, and to recover from both of them; and the appellant's only recourse is his right of indemnity against Rano. The construction contended for by the respondent

would expose to liability at the suit of a workman who has suffered injury "arising out of and in the course of his employment," such a person, for example, as a landowner for whom a contractor employing the workman is building a residence, or as a shipowner for whom a shipbuilder is building a ship. That construction is, I think, disposed of by sec. 3, which limits the operation of the Statute to cases in which the work, in the course of which the employé suffers injury, is carried on "by or on behalf of" the employer and "as part of his trade or business." In the cases I have enumerated and their like, the work is carried on by and on behalf of the contractor, or the shipbuilder, as the case may be, and the interest of each of these persons is separate from and independent of the interest of the landowner, or the shipowner, or their like. It is only in a special and secondary sense that the first of these is building a house, or the second is building a ship. These operations are not carried on by or on behalf of either of them "as part of his trade or business," for it is not the business of a landowner as such to build houses, or of a shipowner as such to build ships.

In a case in which it is urged that by virtue of sec. 10 the "principal" as well as the immediate employer ("the contractor") is to be deemed to be an employer, the terms of sec. 3 make it clear that the Act does not apply to the employment as against the principal unless the work is carried on by him or on his behalf as part of his own trade or business. The force of this section as a matter of construction is not impaired by the fact that, where the principal has contracted with the contractor for the execution of the work by or under him, sub-sec. (3) of sec. 10 raises the presumption that the work to be so executed is *directly* a part of or a process in the trade or business of the principal unless it is proved not to be directly such part or process, in which event the principal is protected.

The first question to which I address myself is whether on the facts stated by the Police Magistrate the case is within sec. 10. The question of partnership I will deal with later.

By the verbal agreement stated in the special case the appellant engaged to "let" to Rano the two cultivation paddocks, with apparently an option to occupy on the terms of the agreement

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any further area on the appellant's Barncleuth Station that Rano might find he could effectually cultivate. It does not appear whether he did cultivate any land in addition to the two paddocks. No time was specified for the duration of the agreement. Rano was to have the further right to graze in Barncleuth paddocks any cattle or horses "necessary for his operations in working the place as a farm and dairy." These animals were apparently to be some of those owned by the appellant, as there follows a stipulation that Rano was not to keep any animals of his own on the place with the exception of one horse. As consideration, Rano was to pay the appellant one half of the proceeds of the produce when realized, so that apparently payments were not to become due until Rano received such proceeds. Clearly the proceeds referred to were gross proceeds. As a matter of fact the appellant not only admitted Rano to the land, but also supplied the tools, the implements and the necessary live stock—and of the latter Rano worked some horses and milked some cows. He appears also to have exercised his grazing rights on the Barncleuth paddocks to feed the working horses and dairy cows. As Rano was to pay the appellant half of the gross proceeds of the farm products as sold, it rested with him to pay for any labour he required in addition to his own. He did cultivate, as there were at least two sales of chaff.

A great deal of argument took place on the question whether this agreement amounted to a lease. If it was a lease, then it is admitted that the claim against the appellant must fail, as the appellant could not be held to be Rano's principal. I do not think it necessary to decide that question for the purpose of arriving at a conclusion. The point is very arguable on either side. I will assume that the strict relation of landlord and tenant did not arise. Even so, the relation of employer and employé or principal and agent as between the appellant and Rano is not the necessary alternative. If there was not a lease, it becomes abundantly clear that there was a licence from the appellant to Rano to occupy the land and to raise farm and dairy products therefrom. The licence was granted upon consideration, and Rano, having entered and farmed the land, and having expended labour in raising produce, had acted in execution of it. In these

circumstances, clearly the appellant was not entitled to recall it at pleasure. Hence Rano was not to be treated as a mere trespasser: *Winter* v. *Brockwell* (1). I think he was entitled to the exclusive occupation of the land on which he was licensed to farm, until after the expiration of some reasonable notice to determine the licence: see *Landale* v. *Menzies* (2). Whether that position amounted to a tenancy at will it is not necessary to decide. But what stands out in these circumstances is that Rano was working the land on his own account and for his own benefit. He obtained the permission to use it to benefit himself. He was in no sense the employé or servant or agent of the appellant, indeed, it was he who was to pay and the appellant who was to receive money on the footing of the agreement. The effect of that fact is not lessened because the consideration to be paid was the half of what he should receive. I could not hold that by this agreement the appellant was contracting "with any other person for the execution of any work by or under the contractor" within the meaning of sec. 10, even if that section stood alone: but when sec. 3 is considered as well, it is out of the question to say that the respondent's work was carried on by or on behalf of the appellant, the person to be deemed the employer, as part of his trade or business. There is absolutely no evidence that farming was any part of Cribb's trade or business, and I am at a loss to understand how the working of a farm, whether under a lease or under a licence for which consideration is paid, can be said to be carried on by or on behalf of the lessor or the licensor.

I should like to add that I do not wish to be taken as deciding that where a person grants to another, without specifying any term, a licence to exclusively occupy certain land, on the terms of receiving consideration therefor, though not under the name of rent but in the form of a share of the produce, the relation of landlord and tenant does not arise. It may be maintained with some force that there is a tenancy at will, determinable upon a notice which is reasonable having regard to what has been done in execution of the licence: *Landale* v. *Menzies* (2).

If then the case depended only on sec. 10, the appellant would, in my judgment, be entitled to succeed.

(1) 8 East., 308.

(2) 9 C.L.R., 89.

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I turn now to the question of partnership. It has already become apparent that the view I take of the agreement is inconsistent with the existence of the relation of co-partners between the appellant and Rano. To be partners, they must be shown to have agreed to carry on some business—in this case the business of farming—in common with a view of making profits and afterwards of dividing them, or of applying them to some agreed object. There is nothing to show that the appellant intended to engage in farming at all, or to be concerned in the transaction beyond his right to compensation. It is Rano of whom the agreement speaks as working the place as a farm and dairy, and it is Rano by whom any profits, after paying the appellant consideration for the use of the land, would be retained. Clearly, he alone was to work the farm either with or without additional labour to his own, and for its cost he had no claim against the compensation which he was to render to the appellant. It seems a far-fetched notion to think of a partnership as arising either from the terms or the operation of such an agreement, and it is not suggested that in this respect any difference arose between its terms and its subsequent operation. The fact that the appellant was not only to allow his land to be used, but to supply tools, implements and working cattle and horses, does not of itself constitute an agreement for partnership. It is not associated with any visible design to create such a relation, and is perfectly consistent with the intention that Rano should use them for his own benefit. Had the appellant not supplied these additions, the only difference, so far as one can see, would have been that the consideration for the use of the land alone might have been a smaller proportion of the proceeds of the farm products. The absence of any term binding Rano to work the farm is consistent with either view of the relation constituted by the agreement, as in either view it was to the interest of both parties that the farm should be worked. It is probable that the appellant assumed that Rano would work it as a matter of self-interest, and that he was content to base his expectation of a sufficient consideration for the use of his land and chattels on that reasonable assumption.

I am of opinion that there was nothing in the agreement or

in the conduct of the parties from which the Police Magistrate was bound to infer that they were partners, and therefore that Rano had authority to bind the appellant by his engagement of the respondent as a workman. Neither on that ground nor on any argument founded on sec. 10 can I conclude that the appellant is liable, and therefore I agree that the appeal must be allowed.

O'CONNOR J. Where a claim for compensation under the *Workers' Compensation Act* 1905 is heard by a Police Magistrate, his decision is, by sec. 5, made final, subject to a right of appeal on any question of law. In this case the Police Magistrate decided that the plaintiff was entitled to succeed as against Rano only, holding that the evidence as against Cribb was insufficient to establish his liability under the Act. If it was legally open to the Police Magistrate to find as he did on the evidence before him, his decision cannot be interfered with by the Supreme Court. The Supreme Court, however, has not only set aside the Police Magistrate's finding that the plaintiff could not recover as against Cribb, but has entered judgment for the plaintiff as against Cribb. The judgment cannot now stand unless it is shown not only that the Police Magistrate could not have found in Cribb's favour, but that he was in law bound to determine that both defendants were liable. In other words, the respondent cannot hold the judgment which the Supreme Court has entered in his favour, unless he can establish that, on the facts before him, the Police Magistrate could have come to no other conclusion than that Cribb had, within the meaning of sec. 10, contracted with Rano for the execution by Rano on Cribb's behalf of the work in the doing of which the plaintiff was injured. I need not refer to the qualification of liability in sub-sec. 3 of the section further than to say that, if Cribb did so contract with Rano, that is in itself unanswerable evidence of the fact that he was then carrying on the business of farming on that portion of his land, whatever other business he might be carrying on in other places. The substantial matter to be determined is therefore whether, on the evidence before him, the Police Magistrate was bound to find that the arrangement between the parties amounted to a

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contract within the meaning of sec. 10. The language of the sections material to be considered is, it seems to me, clear beyond the possibility of controversy. By sec. 3 the Act is made applicable to employment in and about agricultural work carried on by or on behalf of the employer as part of his business. Sec. 4 confers the right to compensation against the employer. Apart from the contention as to partnership, which I shall refer to later, it must be taken that the actual employer was Rano, not Cribb. The plaintiff had, therefore, to make his claim under sec. 10. The object of the section was, no doubt, to prevent a person who carried on any portion of his business by the hands of a contractor from throwing liability on to some insubstantial person on the ground that it was the contractor who was the employer of the workman. The provision prevents that evasion of liability, and ensures for the workman a remedy against the person for whose benefit the business in which the work was done is being carried on, as well as against the actual employer. The section must therefore be read in connection with sec. 3, and is applicable only where the contractor is executing the work for and on behalf of the person for whom the work is being carried on, in other words, for and on behalf of the person who is getting the substantial benefit of the workman's labour.

Applying these provisions to the facts appearing on the special case, we have now to determine whether the Police Magistrate could reasonably have drawn the inference that Cribb did not contract with Rano to execute for him and on his behalf the work of cultivating the farm. It becomes necessary to consider the real nature and substance of the agreement apart from technical expressions.

Arrangements of this kind between the owners of farming land and working farmers are common enough throughout all the States. But they vary infinitely in form and in legal effect, and it must not be taken that, in determining the rights of the parties to this appeal, this Court is laying down any general principle applicable to all such arrangements. Each case must be decided on the applicability of the Act to its special facts. In the Supreme Court the case seems to have been dealt with on the

footing that the agreement between the parties amounted either to a tenancy as known to the law, or to a contract between principal and contractor within the meaning of sec. 10. I am unable to adopt the view that the facts must necessarily be dealt with in one or other of these alternative aspects.

If it were necessary to determine here, as it was in *Ex parte Duggan* (1), whether a tenancy as known to the law had been created, I would be disposed to agree with the learned Chief Justice in the Court below that there are wanting in the agreement some of the elements which the law deems necessary to constitute a tenancy. However that may be, it is quite clear that the parties intended that Rano should have the use and possession of land as tenant, and should pay Cribb, in respect of that use and possession, a sum of money when the product of the land had been harvested and sold, which was to stand for rent. Two main essentials of the relation of landlord and tenant were undoubtedly present. Rano's right to exclusive possession of at least a part of the land, namely, the cultivation paddocks, is of the essence of the arrangement. His right to put the land under any kind of cultivation he thought fit and farm by any method he thought fit is also undoubted. As regards the possession of the land and its management, he was his own master to the same extent as if he had had a lease in the most solemn form. His payment of what was equivalent to rent was capable of being fixed in amount with certainty when the crop was realized: *Daniel* v. *Gracie* (2). Cribb had no control whatever over the management or realization of the proceeds of the cultivation. His only right was to demand his half-share of the proceeds when the crop was sold. So that, although the relation of the parties may have been wanting in the technical elements of a tenancy as known to the law, it is clear that Rano must be taken to have had a right to the exclusive possession of the cultivation paddocks and to obtain the yield thereof in any manner he thought fit. The whole agreement is absolutely inconsistent with any rights on Cribb's part except to a share in the realized proceeds of what the land produced. Under these circumstances I find it impossible to see how Rano could be regarded as

(1) 19 W.N. (N.S.W.), p. 260. (2) 13 L.J. Q.B.N.S., 309.

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executing the work of the farm for Cribb or on Cribb's behalf. I quite assent to Mr. *Henchman's* argument that it was an implied term of the arrangement that Rano should farm the land or some portion of it with reasonable diligence, in order to secure some yield from which Cribb's half of the proceeds could be paid. *Hart* v. *Macdonald* (1), is a strong authority to show that where a payment is to be made out of moneys to be realized from the product of land there must of necessity be implied an undertaking to use the land so as to obtain the product. But a contract so implied would be a contract on Rano's part to cultivate the land on his own behalf so as to produce proceeds for himself. Rano was bound to divide the proceeds with Cribb, and to that extent the latter was interested. But until the product of the land was turned into money it belonged exclusively to Rano, and Cribb had, as I have pointed out, no rights of any kind in respect to it. The implied undertaking to cultivate therefore falls far short of the requirements of a contract within sec. 10, that is to say, a contract under which Cribb employed Rano to cultivate the farm for Cribb or on his behalf.

A contention was raised independently of sec. 10 that the arrangement between the parties constituted a partnership, and that Rano in employing the plaintiff acted as Cribb's agent. But in my opinion the arrangement is wanting in every essential of a partnership. I entirely agree with the view of Mr. Justice *Chubb* in the Court below in that aspect of the case (2).

For these reasons I have come to the conclusion, not only that it was open to the Police Magistrate to find as he did on the facts, but that he took the right view of the relations of the parties in holding that the plaintiff had failed to establish that Cribb stood in the relation to him of an employer liable to pay compensation under the *Workers' Compensation Act* 1905.

I therefore agree that the appeal must be allowed and the finding of the Police Magistrate restored.

Solicitors, for the appellant, *Atthow & McGregor*, for *H. C. Corser*, Gayndah.

Solicitor, for the respondent, *A. H. G. Drury*, for *F. T. Lukin*, Maryborough.

J. H.

(1) 10 C.L.R., 417.

(2) 1911 St. R. Qd., 1, at p. 11.