Then as to the meaning of the words "in the first instance" in sec. 33, I agree with what has been said about that. In my opinion they mean that the beneficiary for whose benefit the land is held at the time the question arises derives the title to his share directly from the instrument itself and independently of any intermediate transaction operating on a share derived directly from the instrument.

On the facts of this case the shares of the beneficiaries are derived immediately from the codicil, and from that alone. Therefore, I think the first question should be answered as the learned Chief Justice has indicated.

Questions answered accordingly.

Solicitors, for the appellants, *Walker, Wolfhagen & Walsh*, for *Ritchie & Parker*, Launceston.

Solicitor, for the respondent, *C. Powers*, Crown Solicitor for the Commonwealth.

B. L.

[HIGH COURT OF AUSTRALIA.]

HENRY BULL & CO., LTD. . . . APPELLANTS;
DEFENDANTS,

AND

HOLDEN . . . . . RESPONDENT.
PLAINTIFF,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

"Factory," meaning of—"Preparing articles for trade or sale"—Warehouse—Workmen's Compensation Act 1910 (*N.S.W.*) (*No.* 10 *of* 1910), *sec.* 3—*Factories and Shops Act* 1896 (*N.S.W.*) (60 *Vict. No.* 37), *sec.* 2.

H. C. OF A. 1912.

HENRY BULL & CO. LTD. v. HOLDEN.

By sec. 3 of the *Workmen's Compensation Act* 1910 (N.S.W.) that Act applies to employment by an employer on, in or about any (*inter alia*) "factory or workshop," and "factory" is defined to mean factory as defined by the *Factories and Shops Act* 1896. By sec. 2 of the latter Act a "factory" is defined as meaning "any office building or place in which four or more persons are engaged directly or indirectly . . . in preparing or manufacturing articles for trade or sale."

Held, that the phrase "preparing articles for trade or sale" involves doing something to an article which has the effect of altering its character or condition in such a manner as to make it fit (if not already fit) or fitter (if already fit) for trade or sale, and is not satisfied by merely doing something with respect to an article that retains its original character and condition so as to make it more convenient to sell it.

Held, therefore, that the warehouse of the appellants, who were importers and distributors of soft goods, in which goods when received were unpacked, ticketed, sold and, when sold, repacked for delivery to purchasers, was not a "factory" within the meaning of either of the Acts.

Decision of the Supreme Court: *Holden* v. *Henry Bull & Co. Ltd.*, 11 S.R. (N.S.W.), 564, reversed.

APPEAL from the Supreme Court of New South Wales.

An action was brought in the District Court at Sydney by George Bennett Holden against Henry Bull & Co. Ltd. claiming damages under the *Workmen's Compensation Act* 1910 for injuries sustained by him while in the employment of the defendants. The defendants were wholesale softgoods warehousemen carrying on business in a warehouse at the corner of York and Market Streets, Sydney. It appeared from the evidence that no manufacturing was done in the warehouse, but all that was done there was that goods brought to the warehouse in cases were unpacked there, that the goods when unpacked were labelled, and when sold were repacked to be forwarded to purchasers. The plaintiff was engaged as a packer and while so engaged fell from the top of some cases down a lift-well and was injured. One of the defences was that the plaintiff was not a workman within the meaning of the *Workmen's Compensation Act* 1910. The Judge of the District Court having given judgment for the plaintiff, the defendants appealed to the Supreme Court which dismissed the appeal: *Holden* v. *Henry Bull & Co.*

Ltd. (1). From this decision the defendants now appealed to the High Court.

Lamb K.C. (with him *Pickburn*), for the appellants. The question whether the respondent came within the provisions of the *Workmen's Compensation Act* 1910 depends on whether the warehouse of the appellants was a "factory" or a "workshop." It has not been contended that it is a "workshop" and whether it is a "factory" depends on what is the meaning of "preparing articles for trade or sale" in sec. 2 of the *Factories and Shops Act* 1896. That phrase means doing something to articles which adapts them for sale and does not apply to unpacking and labelling goods, so that purchasers may see them, and repacking them after sale. There must be some alteration of the article itself. Otherwise the term "factory" would include every retail shop.

[He referred to *Fullers, Ltd.* v. *Squire* (2); *Law* v. *Graham* (3); *Hoare* v. *Robert Green, Ltd.* (4); *Green* v. *Britten & Gilson* (5); *Moreton* v. *Reeve* (6); *Paterson* v *Hunt* (7); *Alderson* v. *Gold* (8); *Workmen's Compensation Act* 1910, secs. 2, 3; *Factories and Shops Act* 1896, secs. 2, 5, 6, 12, 15, 18, 19, 20; 42 Geo. III. c. 73; 7 Vict. c. 15, sec. 73; *Factories Extension Act* 1867 (30 & 31 Vict. c. 103), sec. 3; *Factories and Workshops Act* 1878 (41 & 42 Vict. c. 16), sec. 93; *Workmen's Compensation Act* 1897 (60 & 61 Vict. c. 37), sec. 7; *Workmen's Compensation Act* 1906 (6 Edw. VII. c. 58); *Ruegg's Employers' Liability and Workmen's Compensation*, 8th ed., p. 269.]

Wise K.C. (with him *Curtis*), for the respondent. The work done in this case rendered the articles capable of being sold under more favourable circumstances or under different circumstances, and that is what is meant by "preparing for trade or sale." It includes making goods ready for sale. That is the reason why retail shops are excepted. [He referred to *Moreton* v. *Reeve* (6); *Paterson* v. *Hunt* (7); *Hoare* v. *Truman, Hanbury, Buxton &*

(1) 11 S.R. (N.S.W.), 564.
(2) (1901) 2 K.B., 209.
(3) (1901) 2 K.B., 327.
(4) (1907) 2 K.B., 315.
(5) (1904) 1 K.B., 350.
(6) (1907) 2 K.B., 401.
(7) 101 L.T., 571.
(8) (1909) V.L.R., 219; 30 A.L.T. 189.

H. C. OF A. 1912.

HENRY BULL & CO. LTD. v. HOLDEN.

Co. (1); *Factory and Workshop Act* 1895 (58 & 59 Vict. c. 37), sec. 23.]

Lamb K.C., in reply, referred to *Macbeth & Co.* v. *Chislett* (2).

GRIFFITH C.J. This was an action brought by the respondent against the appellants under the *Workmen's Compensation Act* 1910. That Act by sec. 3 applies to employment by an employer on, in or about any "railway, tramway, factory, workshop, mine, quarry, wharf, vessel, engineering or building work . . . carried on by or on behalf of the employer as part of his trade or business." The only words that are relevant to the present case are "factory" and "workshop." The term "factory" is defined to mean factory as defined by the *Factories and Shops Act* 1896. That Act defines "factory" as meaning "any office building or place in which four or more persons are engaged directly or indirectly in working at any handicraft or in preparing or manufacturing articles for trade or sale," and including certain other things not material to the present case. The relevant words in that definition are "any place in which four or more persons are engaged in preparing or manufacturing articles for trade or sale." No matter what sort of building it is, if four persons at least are engaged in preparing articles for trade or sale, it is a "factory" for the purposes of that Act and for the purposes of the *Workmen's Compensation Act* 1910.

The appellants' premises are what is called in Australia a warehouse—a term used, I think, with a different nuance in Australia from that with which it is commonly used in England. The appellants are described as wholesale softgoods warehousemen, that is to say, they import softgoods from abroad and distribute them in Australia, and that according to the evidence is all they do. Of course they receive their goods in cases, probably large ones, which, before the goods are distributed, must be opened and the goods must be taken out. Whether it appears directly from the evidence or not, every one must know that in order to distribute goods by way of re-sale, they must be put in some place where they can be seen, so that persons who

(1) 71 L.J. K.B., 380; 86 L.T., 417. (2) (1910) A.C., 220.

want to buy can see what they are ordering; and when an order for goods is given by a purchaser, it is necessary to pack them up so that they can be sent away. That is the sort of work that is done in the appellants' building. It may be summarized as unpacking goods, sorting them, marking the prices on them and re-packing them. The question is whether these occupations fall within the words "preparing articles for trade or sale." A number of English cases were referred to in which the word to be interpreted was "adapting," the definition using the words "adapting articles for trade or sale." Each of those cases turned upon its own particular facts. When, however, we have to construe an Australian Act, not framed upon an English Act, but having marked differences from the English legislation on the same subject, it is better to have regard to our own law and not to be guided by what has been held to be the construction of different Acts framed in different language. Without attempting to give an exhaustive definition of what the word "preparing" means, I think it at any rate involves doing something to an article which has the effect of altering its character or condition in such a manner as to make it fit (if not already fit) or fitter (if already fit) for trade or sale, and is not satisfied by merely doing something with respect to an article that retains its original character and condition so as to make it more convenient to sell it, such as exposing it for sale, or marking its name or price upon it, or packing it after it has been sold. That seems to me what the word means in the ordinary sense of the term. There is nothing in the Act to suggest that it ought to receive a wider meaning. As Mr. *Lamb* pointed out, the wider construction would give the word "preparing" the effect of "handling preparatory to sale," and Mr. *Wise's* argument went to that length. But the words "preparing for trade or sale" do not to my mind suggest that idea, and many other provisions of the Act certainly confirm my view. For instance the *Factories and Shops Act* makes a distinction between factories and shops and makes very different provisions as to them. According to the interpretation sought to be put on the word "factory" by the respondent, every shop where four persons are employed is a factory within the definition of the Act,

H. C. OF A. 1912.

HENRY BULL & CO. LTD. v. HOLDEN.

Griffith C.J.

because such acts as are done in this case are a necessary part of the everyday work of every shop in which four persons are employed. That is one very strong reason for restricting the meaning of the word "preparing." It is unnecessary to refer in detail to other sections of the Act which support this conclusion.

I will say a word as to two of the English cases. One was *Fullers, Ltd.* v. *Squire* (1), where the work done, which was said to be adapting articles for sale, was putting up sweetmeats into boxes, *i.e.*, sorting out the sweetmeats according to size and colour and arranging them tastefully in ornamental boxes, and so rendering them more apt for sale. In that case, although the sweetmeats remained the same as before, still the completed article was something different from the same quantity of sweetmeats in a paper bag. It was substantially a different thing; its character was altered. The other case is *Hoare* v. *Robert Green, Ltd.* (2). That was a case of making up bouquets of flowers. It is manifest that a bouquet of flowers tastefully arranged is substantially a different thing from the flowers lying unarranged on a counter. So that those cases have no bearing upon the present.

For the reasons I have given I think that the warehouse of the appellants is not a factory within the meaning of the *Workmen's Compensation Act*, and it clearly is not a "workshop" in any sense in which that word is ordinarily used. I think, therefore, that the appeal succeeds.

BARTON J. In my opinion it is not necessary, in order that the process may be within the Statute, that anything should be done to the articles to alter their structure or appearance. I do not think "preparing" necessarily means something akin to "manufacturing." In fact, I think the phrase was used to denote operations which might include no stage at all of manufacture. The preparing is to be done with the object of trade or sale. Naturally preparation with such an object will render the articles fitter for trade or sale. But articles may be so rendered fitter without alteration in their structure or even in their individual appearance. Thus a number of articles may be made fitter for sale by such arrangement as may make them more

(1) (1901) 2 K.B., 209. (2) (1907) 2 K.B., 315.

attractive in appearance, as in *Fullers, Ltd.* v. *Squire* (1); *Hoare* v. *Robert Green, Ltd.* (2); *Paterson* v. *Hunt* (3); or even by a rearrangement and repacking which may make them more suited to the needs of a class or classes of purchasers, and that is probably the reason on which the Victorian case of *Alderson* v. *Gold* (4) was decided. The use of the word "adapting" in English legislation throws some light on the matter, for "adapting" is a word of slightly larger meaning than "preparing," and where an article is not being adapted for trade or sale I should say it was not being prepared with that object. It is obvious that there are very numerous ways in which articles may be treated so as to render them better adapted for trade or sale which, I think, means more saleable *in se*. It is not necessary to describe the processes which fall short of this. But I think it clear that the Statute did not intend to include the mere rendering of the articles visible and more accessible to purchasers, as by an operation like that conducted in the present case, namely, opening the cases in which the goods were contained and laying them out for the inspection of probable buyers. This, at any rate, is clearly not within the Statute, and the appeal must be allowed.

ISAACS J. read the following judgment:—I agree. The question raised in this case is whether the defendants' place of business was one in which persons were engaged in preparing articles for sale.

To prevent any future misconception as to the meaning of this decision, I wish to state that the only material evidence of the nature of the operations carried on there amounts to this: That the appellants being importers and distributors of soft goods and not manufacturers, unpacked their goods when received in their warehouse, ticketed them in the ordinary way, sold them, and when sold packed them in cases for forwarding to purchasers.

There may be, as evidenced by what happened in the present case, as much danger to some of the workmen as in some manufacturing establishments, but unless the legislature has included such a place, there is not the same statutory liability.

(1) (1901) 2 K.B., 209.
(2) (1907) 2 K.B., 315.
(3) 101 L.T., 571.
(4) (1909) V.L.R., 219; 30 A.L.T., 189.

H. C. OF A. 1912.

HENRY BULL & CO. LTD. v. HOLDEN.

Isaacs J.

And the question raised and fought in this case is as to whether the work I have described as done in the place, amounted to preparing the goods for sale.

In a fanciful way one may say that dusting a china bowl or brushing a hat, or attractively arranging the folds of a dress, or gracefully hanging a curtain, or dressing a window is preparing an article for sale. But that is not what is meant by the Act. If it were, the unpacking of a bale of cloth would equally answer the description, but so would almost every act in every shop.

Preparing goods for sale I take to mean an act done to or in relation to the goods themselves which effects some alteration in their character or condition for the purpose of making them saleable at all, or of improving their chance of sale, or of obtaining a better price for them.

Neither the unpacking nor the packing in this case answers that test.

The unpacking here is simply undoing what has been done abroad for the preservation of the goods, that is for keeping them in an absolutely unaltered condition. And when they are taken out of their cases they are neither more nor less prepared for sale than they were when despatched or received.

The packing after sale is for delivery. But it is no different from the foreign packing which is equally for the purpose of delivery and not of sale. Merely taking an article out of its protective covering, which is no part of itself, and after that covering has served its temporary purpose, cannot, in my opinion, without an abuse of meaning, be called preparing it for sale.

It is therefore beyond the province of a Court whose function is simply to interpret the law as enacted, to give relief in such a case as this. That must be left for the consideration of the legislature.

Appeal allowed. Order appealed from discharged and appeal from District Court allowed. Judgment for defendant.

Solicitors, for the appellants, *Perkins, Stevenson & Co.*
Solicitor, for the respondent, *W. C. Clegg.*

B. L.