[HIGH COURT OF AUSTRALIA.]

THE METROPOLITAN MEAT INDUSTRY BOARD . . . . . } APPELLANTS;

AND

FINLAYSON AND OTHERS . . . . RESPONDENTS.

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

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SYDNEY, *Dec.* 12, 13, 14.

Griffith C.J., Barton, Isaacs and Rich JJ.

Public Authority—Regulation of trade—Consent—Discretion—Duty to hear and determine—Duty to give reasons—Abattoirs—Mandamus—Meat Industry Act 1915 (*N.S.W.*) (*No.* 69 *of* 1915), *secs.* 19, 20.

Sec. 19 of the *Meat Industry Act* 1915 (N.S.W.) provides that "After this Act comes into force—(1) No person shall, except with the consent of and under the conditions prescribed by the" Metropolitan Meat Industry "Board, within the metropolitan abattoir area, slaughter any cattle or dress any carcase for human consumption, except at a public abattoir." Sec. 20 provides that "The consent of the Board, under the last preceding section, may be given in such form, and subject to such terms and conditions as the Board may in its absolute discretion determine."

Held, that under those sections the Metropolitan Meat Industry Board have an absolute and unfettered discretion to grant or withhold their consent and, therefore, that on an application for their consent they need not give reasons for withholding it, or, before determining whether to grant or withhold it, inform the applicant of any objection which they think stands in his way so that he may have an opportunity of meeting it.

Ex parte J. C. Hutton Proprietary Ltd., 16 S.R. (N.S.W.), 387, discussed.

Decision of the Supreme Court of New South Wales: *Ex parte Finlayson*, 16 S.R. (N.S.W.), 591, reversed.

APPEALS from the Supreme Court of New South Wales.

Pursuant to by-laws made by the Metropolitan Meat Industry Board under the power contained in the *Meat Industry Act* 1915, William Finlayson on 26th August 1916 applied to the Board for their consent to the slaughter of cattle for human consumption at certain premises owned by him within the metropolitan abattoir area. On 6th September 1916 Finlayson received from the Secretary of the Board a letter stating that the Board, having carefully considered all the facts of the case and in exercise of the discretion vested in them by the *Meat Industry Act* 1915, declined to consent to slaughtering being carried on at the premises in question. On 2nd October Finlayson wrote to the Board a letter asking them to inform him on what grounds they refused their consent. On 16th October Finlayson received a reply stating that the Board were not prepared to supply their grounds of refusal. Finlayson thereupon obtained a rule *nisi* for a mandamus directed to the Board, requiring them to give their consent as asked, or, in the alternative, to hear and determine the application for such consent according to law. The grounds stated in the order *nisi* were: (1) that it is the duty of the Board to give such consent subject to the conditions prescribed; (2) that the Board have no power to refuse their consent so as to prohibit such slaughtering absolutely under any conditions at private abattoirs in the metropolitan abattoir area; (3) that the action of the Board is not an exercise of the discretion vested in them under and within the authority of the *Meat Industry Act*; (4) that the Board have no power to refuse a licence without disclosing the grounds of such refusal, and affording the applicant an opportunity to correct and remove the objections, if any.

On the return of the rule *nisi* the Full Court made it absolute, and directed that a writ of mandamus should issue commanding the Board to hear and determine according to law the application for their consent: *Ex parte Finlayson* (1).

From that decision Finlayson now, by special leave, appealed to the High Court.

Three other appeals by Silvester Brothers Ltd., Clifton Small-goods

(1) 16 S.R. (N.S.W.), 591.

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Ltd. and John Francis Kennedy, respectively, brought under similar circumstances, were heard at the same time.

Leverrier K.C. (with him *Alec Thomson*), for the appellants. Under the *Meat Industry Act* 1915 the Board have an absolute discretion to grant or refuse their consent, and they are under no duty to hear and determine in the judicial sense (*Randall* v. *Northcote Corporation* (1); *R.* v. *Arndel* (2)). They are not bound to give reasons for refusing their consent (*R.* v. *Mayor &c. of London* (3); *R.* v. *Bishop of Gloucester* (4); *Allcroft* v. *Lord Bishop of London* (5)). [He was stopped].

Rolin K.C. (with him *W. J. Sheppard*), for the respondents. The *Meat Industry Act* 1915 confers on the Board a power to conduct their own abattoirs and also a power to regulate slaughtering at private abattoirs, but it gives no power to prohibit slaughtering at private abattoirs. See 5 Will. IV. No. 1; *Noxious Trades and Cattle Slaughtering Act* 1894; *Cattle Slaughtering and Diseased Animals and Meat Act* 1902; *Co-operative Brick Co. Proprietary Ltd.* v. *Mayor &c. of the City of Hawthorn* (6); *Toronto Corporation* v. *Virgo* (7). The discretion conferred upon the Board to grant or withhold their consent to slaughtering in a private abattoir is not absolute and uncontrolled, but it is a discretion to be exercised judicially (*Sharp* v. *Wakefield* (8); *R.* v. *London County Council*; *Ex parte Akkersdyk* (9)). They are bound to grant their consent subject to conditions. As their discretion must be exercised judicially, they must give the applicant an opportunity of being heard (*Board of Education* v. *Rice* (10); *Sydney Corporation* v. *Harris* (11)). In order that the applicant may be heard the Board should, before giving their decision, inform him what are the grounds upon which they propose to act—whether such grounds depend upon the fitness of his premises, his character, or the situation of the premises with regard to the surrounding district. When

(1) 11 C.L.R., 100.
(2) 3 C.L.R., 557.
(3) 3 B. & A., 255.
(4) 2 B. & A., 158.
(5) (1891) A.C., 666.
(6) 9 C.L.R., 301.
(7) (1896) A.C., 88.
(8) (1891) A.C., 173.
(9) (1892) 1 Q.B., 190, at p. 195.
(10) (1911) A.C., 179, at p. 182.
(11) 14 C.L.R., 1, at p. 5.

they have given their decision they are bound to give their reasons for it. [Counsel also referred to *Ex parte J. C. Hutton Proprietary Ltd.* (1); *R.* v. *Local Government Board*; *Ex parte Arlidge* (2).]

[ISAACS J. referred to *Davis* v. *Bromley Corporation* (3); *In re Coalport China Co.* (4).

BARTON J. referred to *Cooper* v. *Wandsworth Board of Works* (5).]

Cur. adv. vult.

Dec. 14.

GRIFFITH C.J. read the following judgment:—In these cases the Court is called upon to interpret the very plain provisions of an Act of the Legislature of New South Wales passed in 1915, called the *Meat Industry Act*. Before that time the business of slaughtering animals for food in New South Wales had been carried on largely by private enterprise, subject to regulation under various Statutes, which provided for granting licences to approved persons for approved works and for inspection. The power of approval was conferred on, and exercised by, various local authorities designated in the Statutes. In 1915 the Legislature thought fit to establish Government abattoirs for the Metropolitan District, and to create a Board for their management. The Board was to consist of three persons appointed by the Governor in Council, and was to be a corporate body. It was in effect a sub-department of the State Government.

Sec. 19 of the Act provides that from and after its coming into force "no person shall, except with the consent of and under the conditions prescribed by the Board, within the metropolitan abattoir area, slaughter any cattle or dress any carcase for human consumption, except at a public abattoir." These words are plain enough. On their face they mean that the business of slaughtering of cattle in the metropolitan district is to be a Government monopoly, except so far as the Board may consent to its being carried on by private persons. This meaning is confirmed by a proviso which enacts that in the case of certain specified slaughtering establishments the Board shall not refuse their consent except for certain specified

(1) 16 S.R. (N.S.W.), 387.
(2) (1913) 1 K.B., 463, at p. 479.
(3) (1908) 1 K.B., 170.
(4) (1895) 2 Ch., 404, at p. 409.
(5) 14 C.B. (N.S.), 180.

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reasons. The inference seems to me irresistible that in all other cases their discretion was to be absolute and uncontrolled.

It is contended by the respondents, however, and this contention was accepted by a majority of the Supreme Court, following their previous decision in the case of *Ex parte J. C. Hutton Proprietary Ltd.* (1), that the case falls within the well known rule that a man cannot be affected in his rights of property under a discretionary power conferred on a public authority unless the question is dealt with on judicial principles and after giving him an opportunity of showing reasons against a refusal of his request. In my opinion this doctrine, which is well established, has no application to a case in which a man who has by law no right at all except to ask for a grant of a privilege asks for that privilege. I asked in vain during the argument for some indication of the matters to which the Board were required to direct their minds in considering such an application, but received no answer except that the Act contemplated that private slaughtering establishments should continue to be carried on as before, and that consent should therefore always be given unless some special reason should be shown for refusing it. It was therefore, it was said, the duty of the Board to indicate to the applicant the reasons which they thought to exist. The answer to this argument is that the Act expressly negatives it. It says that what has hitherto been conditionally lawful shall in future be unlawful except on one condition. In my opinion the discretion of the Board is unfettered. If they think, for instance, that it is in the public interest to confine all slaughtering to the Government abattoirs I do not think that any Court can review their opinion.

I should point out that this Act contemplates and makes provision for allowing private master butchers to make use of the Government abattoirs on terms to be regulated by by-laws, so that the sentimental grievance adverted to in argument is limited to the prevention of the use of yards and buildings.

BARTON J. I am entirely of the same opinion.

ISAACS and RICH JJ. (read by ISAACS J.). These are four appeals which stand on the same footing for the purposes of this decision.

(1) 16 S.R. (N.S.W.), 387.

The respondents claimed a mandamus to compel the appellant Board to hear and determine according to law four several applications for the Board's consent under sub-sec. 1 of sec. 19 of the *Meat Industry Act* 1915 (No. 69). The rule absolute for mandamus as granted by the Supreme Court refers to an application dated 16th May 1916. The facts show that that application was entirely superseded by a later application in each case. If anything turns on the distinction between the two applications, the appellant is entitled to the benefit of that distinction. But in the view we take, the respondents fail whichever application is regarded.

The Supreme Court has held by a majority that the Board must give reasons for its decision—that is, *after* deciding. Mr. *Rolin*, appreciating the difficulty of insisting on that view, contended that the Board must intimate to the applicant, *before* giving its decision, whatever objection it thinks stands in the way, so that he may have a full opportunity of meeting it. Whatever be the desirable course in any given case, it is clear, in our opinion, that there is no legal obligation on the Board to do either that which the Court has held it must do, or that which the respondent now contends for. The words of the Act are simple, clear and unambiguous. The legislation is novel. Construing it in the manner described by Lord *Haldane* L.C. in *Commissioners of Inland Revenue* v. *Herbert* (1) there is really no standing ground left for the respondents. Sec. 19 is a self-executing prohibition against slaughtering elsewhere than at a public abattoir "except with the consent of the Board." No act of the Board is required to make the act of the party illegal. The Statute does that unless he procures the Board's consent. The effect of such a provision is illustrated by the case of *Salisbury Gold Mining Co. Ltd.* v. *Hathorn* (2). That was a case where the chairman of a company meeting could by an article adjourn it "with the consent" of the members present. The Privy Council, by Lord *Herschell*, said of the article: "It provides for the 'consent' of the members present, which implies that the act is not theirs, but his." Applying that principle to the present case, it is not true to say that the Board by not consenting

(1) (1913) A.C., 326, at p. 332.

(2) (1897) A.C., 268, at p. 275.

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shuts up any business premises. It is only by introducing considerations entirely extraneous, and by conjecturing the intention of Parliament on grounds not contained in its language, that any argument could be built up to support the judgment appealed from. Mr. *Rolin* paraphrased sec. 19, but, in doing so, reversed its natural meaning. To arrive at that paraphrase prior legislation was invoked. Prior legislation may in case of ambiguity materially assist in ascertaining the intention of the Legislature. Here there is no ambiguity, but, if there were, the prior legislation militates strongly against the respondents.

The *Meat Industry Act* 1915 was passed in December last year. It applies (except where otherwise expressly stated) only to the County of Cumberland, which includes Sydney and a considerable distance around it, approximately 60 miles from north to south and 40 miles from east to west. The Act replaces (*inter alia*, for the area it covers) two enactments of the year 1902. One is No. 37, relating to the City of Sydney and three miles around it. Under that Act no person was allowed under any consideration, with two exceptions only, to slaughter "cattle" within the City of Sydney or within three miles of it, except only in the public abattoir at Glebe Island (secs. 3 and 5). "Cattle" included many kinds of animals. The exceptions were (*a*) the slaughter of pigs, calves, or sheep in licensed places; and (*b*) premises used since 1850 for slaughtering for preserved meats. The power to license places for the slaughter of pigs, calves, or sheep in the City limits, was by sec. 148 of the *Sydney Corporation Act* 1902 in the widest and most unfettered terms. There was no power in any person or body to give permission to exceed those exceptions. Then Act No. 36 of 1902 applied to all the rest of New South Wales, and it was under this Act the respondents carried on the business, and held licences.

Now, by that Act, by sec. 27, there was power to establish abattoirs as public slaughter-houses, and where that was done in any municipality there was an absolute prohibition beyond the reach of any consent or licence to the contrary against slaughtering any cattle for trade or business to be used within the municipality for the food of man, except in the public abattoir. To that extent there was a clear deprivation of the ordinary private right to carry on a business.

But until such a public slaughter-house was established, the provisions of secs. 21 and 22 prevailed. These are highly important as showing the system which the Legislature in the later enactment deliberately abandoned.

By sec. 21 an applicant had in certain circumstances an absolute right to a licence. It says: "It shall be the duty of every local authority within its district—(*a*) to keep a register of the name and address of every person using or about to use or build premises as a slaughter-house, and of the said premises, and such other particulars as may be prescribed; and, on being satisfied that the requirements of this Division and of the regulations made thereunder relating to the slaughtering of cattle have been fulfilled, to issue annual licences in the prescribed form and manner, upon payment of the prescribed fees." Sec. 22 says: "The local authority shall, for the purpose of regulating the slaughtering of cattle within its district, have the following powers in addition to any other powers conferred by this Division or by any regulation made thereunder, namely:—(*a*) to enter or authorize the entry at any time into or upon any premises used, or reasonably suspected of being used as a slaughter-house, and to inspect the same, and the utensils and appliances, carcasses, blood, offal, garbage, and material therein and thereon; (*b*) to require, by notice in writing, any person using premises as a slaughter-house to place and maintain those premises in a sanitary condition; and (*c*) to refuse or cancel the registration of any person in respect of any premises which are on an unsuitable site or in an insanitary condition, or in, on, or about which the provisions of this Division, or of any regulation made thereunder dealing with the slaughtering of cattle, are not carried out."

Now these sections evidence an attempt by Parliament, while conserving private rights, to state what conditions and requirements in the public interests are sufficient. But even so far private rights were almost entirely subordinated to the public safety wherever a public abattoir was established.

In 1915, the whole system was changed so far as concerned the vast and concentrated population existing in the County of Cumberland; the rest of New South Wales being left unaltered. For the County of Cumberland it was evidently thought by the Legislature

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that the existing precautions against public danger were insufficient. In other words, the Legislature determined to make more effective provision to regulate the slaughtering of cattle for food. Of course, as Mr. *Rolin* says, regulation does not mean prohibition; but regulation necessarily involves some prohibition.

As was said in the passage quoted from *Toronto Corporation* v. *Virgo* (1), regulating a matter implies its continued existence. But it also implies an altered existence. That the contention of the respondents on this point has been pressed far beyond what the Privy Council thought the real limits of the matter is clear from what their Lordships said during the argument in the Liquor Prohibition Case (*Attorney-General for Ontario* v. *Attorney-General for Dominion of Canada* (2)). That appears in Mr. *Lefroy's* original work, *Legislative Power in Canada*, at p. 558, note 2:— "Lord *Herschell* observed:—'One may be said to regulate trade by prohibiting or putting a fetter on a particular trade. If you prohibit all trades, you certainly do not regulate trade; but you may be said to regulate trade by saying certain trades shall be unlawful': printed report of the argument at p. 190. And the Lord Chancellor (Lord *Halsbury*) also said:—'Trade generally may be regulated by prohibiting a particular trade. Take the case of the prohibition of the exportation of wool with which this country was familiar at one time. That was a regulation of trade, and it was a prohibition of a particular trade.' Whereupon Lord *Watson* observed:—'We regulate the trade of these islands in tobacco by prohibiting its production, except to a very limited extent': *ibid.*, at p. 226. See, also, *ibid.*, at p. 179." Then observes Mr. Lefroy: "There seems nothing inconsistent here with the fact that in their judgment in this case" (2) the passage from *Virgo's Case* was repeated.

The two enactments of 1902 referred to were, in respect of the area stated, replaced by one uniform enactment which in some degree enlarged the private right, and in another direction restricted it, but in any case defined it. A Board is provided for; a public abattoir at Homebush replaces the Glebe Island abattoir, and other public abattoirs may be provided by the Board. Sec. 13 says it is

(1) (1896) A.C., 88, at p. 93.

(2) (1896) A.C., 348, at p. 363.

the duty of the Board to manage and maintain all public abattoirs, and also " to do all such things as may be expedient and in accordance with this Act to prevent diseased or unwholesome meat from passing into consumption in the metropolitan abattoir area " that is the County of Cumberland. That section is the paramount provision in the Act. The rest is incidental and accessory. Sec. 14 gives discretionary powers to the Board which it may exercise if it thinks fit.

While placing that responsible public duty on the Board, Parliament makes certain regulations of its own guarding against the dangers of diseased and unwholesome meat.

By sec. 19 it forbids, as already stated, every person from slaughtering any cattle except at a public abattoir except " with the consent of and under the conditions prescribed by the Board."

In permitting slaughtering of cattle, even by official consent, otherwise than at a public abattoir, where one exists, a certain relaxation from the former law was introduced. But, in doing that, the full responsibility is cast upon the Board. First, the Board has to prescribe such conditions as it thinks necessary; even when it does that, Parliament insists on seeing that the conditions do not endanger public health, because either House may reject them (sec. 30). But even where general conditions are allowed, the consent of the Board in each particular instance is a requisite to lawful private slaughtering.

No such limitation of reasons is prescribed as formerly existed in the Act of 1902, not even the least indication is afforded that the Board is fettered in its discretion. Parliament has thrown a huge responsibility upon it in the public interest; and as Parliament has not thought fit to fetter the Board, no Court has any warrant for doing so.

And the reason that Parliament has not prescribed any fetters on the Board's discretion is that to do so would be inconsistent with sec. 13. If the Board is to be bound to do all things expedient and in accordance with the Act to prevent diseased and unwholesome meat from passing into consumption, and " expedient " must mean expedient, in its opinion, so long as it is in accordance with the Act, that is, not beyond its scope; how can the Board be fettered by

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limitations such as those suggested in argument, limitations discarded by Parliament itself when repealing the earlier legislation?

The only duty the Board has in this connection is to receive and consider any application for consent, to honestly deal with it, and to give or refuse its consent as it thinks the public interest in the performance of its mandate in sec. 13 requires. The main and overriding consideration is that mandate of sec. 13; if consistently with its own view of discharging that great function it thinks, for whatever reasons commend themselves to the Board, that the public welfare will be better served by granting or by refusing its consent, it should act accordingly. No Court can prescribe any narrower or stricter limits of duty. Indeed the very relaxation in favour of private interests which we pointed to indicates, when carefully considered, even apart from the express words of sec. 20, the absolute and complete discretion that Parliament has reposed in the Board. We are not prepared to say that the Board is not left at large to consider whether the Homebush abattoir is sufficient in existing circumstances for the needs of the population. If the Board thinks it is, and considers that no private slaughtering is necessary, that the attendant inspection would be risky and unnecessarily expensive, and that public danger would be thereby needlessly incurred, we must not be taken to deny the right of the Board in every case of application to act upon that view, and refuse consent until circumstances, in its opinion, alter.

It is not necessary now to decide definitely so much, but we say this in order to prevent it being supposed we are prepared to accede to the opposite contention.

The facts, in our opinion, do not indicate either directly or by inference any failure on the part of the Board to receive and consider, as it should, the various applications in question. (See *per Lindley* L.J. in *In re Coalport China Case* (1).)

Whatever view it might have entertained before *Ex parte J. C. Hutton Proprietary Ltd.* (2) was determined by the Supreme Court, it must, in the absence of evidence to the contrary—and there is none—be presumed that the Board loyally conformed to that decision.

There are three cases which may be usefully taken as authorities

(1) (1895) 2 Ch., 404, at p. 409.

(2) 16 S.R. (N.S.W), 387.

in the present case. The first is *R.* v. *Mayor of London* (1), particularly at p. 271, cited by *Ferguson* J.; the next is *Smith* v. *Chorley Rural Council* (2), particularly the judgment of *Lopes* L.J.; and the third is *Davis* v. *Bromley Corporation* (3). Several cases were relied on for the respondents relating to judicial or quasi-judicial functions in deciding controversies between two other contestants. They are manifestly of a class distinct from the present. In short, the words of the present Act are in themselves, when read in their plain and natural sense, quite opposed to the respondents' contention; when, in addition, the basic change in legislation is looked at, the literal interpretation of the new Act is confirmed; and finally the appellant Board is not shown to have in fact failed in its duty to the respondents.

We think that the opinion of *Ferguson* J. was correct, and that the appeals should be allowed.

Appeals allowed. Orders appealed from discharged. Rules nisi discharged with costs. Respondents to pay costs of appeal.

Solicitors for the appellants, *J. V. Tillett*, Crown Solicitor for New South Wales.

Solicitor for the respondents, *T. J. Purcell.*

B. L.

(1) 3 B. & Ald., 255.
(2) (1897) 1 Q.B., 678.
(3) (1908) 1 K.B., 170.