

[HIGH COURT OF AUSTRALIA.]

McCANN APPELLANT;
INFORMANT,

AND

BUTCHER RESPONDENT.
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF
VICTORIA.

H. C. OF A. *Gaming and Wagering—Street betting—"Street"—"Enclosed or unenclosed land"*
1917. *in city or town—Police Offences Act 1915 (Vict.) (No. 2708), secs. 104, 106.*

MELBOURNE,
Sept. 17, 18.

Barton,
Gavan Duffy and
Powers JJ.

Sec. 104 of the *Police Offences Act 1915* (Vict.) provides (*inter alia*) that any person being in any street for the purpose of money being received by him as the consideration for an undertaking by him to pay thereafter money on any sporting contingency, shall be liable to a penalty. Sec. 106 provides that the word "street" includes and applies to every road street thoroughfare highway lane footway or footpath on any public or private property, and also extends and applies to any enclosed or unenclosed land (not including houses and race-courses) within any municipal district which on the sixth day of March one thousand eight hundred and ninety-six was a city or town."

Held, that the meaning of the words "enclosed or unenclosed land" in sec. 106 is not limited by the context, and, therefore, that a person who, for the purpose mentioned in sec. 104, was in enclosed land within a city, which land was used for foot-races and for admission to which a charge was made, was liable to the penalty thereby prescribed.

Decision of the Supreme Court of Victoria (*Cussen J.*): *McCann v. Butcher*, (1917) V.L.R., 214; 38 A.L.T., 171, reversed.

APPEAL from the Supreme Court of Victoria.

At the Court of Petty Sessions at Flemington an information was heard whereby John McCann, the informant, charged that on 26th January 1917 Alfred Butcher was in a certain street, to wit certain enclosed land known as Gurney's Running Ground, situate at the rear of Gurney's Hotel, Mount Alexander Road, within the municipal district of the City of Melbourne, for the purpose of money

being received by him as the consideration for an undertaking by him to pay thereafter money on certain sporting contingencies, to wit foot-races to be run on the said ground. The evidence showed that Gurney's Running Ground was enclosed by a fence and was licensed under sec. 33 of the *Police Offences Act* 1915 as a running ground; that on 26th January 1917 foot-races were being run there on a prepared track in the presence of a large number of persons, a charge being made for admission to the ground; and that the defendant was there making bets upon the foot-races. The information was dismissed, the Police Magistrate being of opinion that the definition of "street" in sec. 106 of the *Police Offences Act* 1915 was not intended to apply to a place such as Gurney's Running Ground. An order *nisi* to review this decision was obtained by the informant on the ground that the Police Magistrate was wrong in holding that Gurney's Running Ground was not a street within the meaning of the *Police Offences Act* 1915. On the return of the order *nisi*, *Cussen J.* discharged it, holding that the words "any enclosed or unenclosed land" in sec. 106 should be limited to places to which the public had practically unrestricted access whether as of right or not: *McCann v. Butcher* (1).

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

Mann, for the appellant. On the plain meaning of the definition of "street" in sec. 106 of the *Police Offences Act* 1915, the place in question here is within it. The case of *Sheahan v. Jackman* (2) dealt solely with the meaning of "thoroughfare," and was not concerned with the meaning of "any enclosed or unenclosed land." The fact that the result of giving to those words their plain meaning would be to cause an overlap is not a sufficient reason for cutting down that meaning.

Starke (with him *Cussen*), for the respondent. The words "any enclosed or unenclosed land" in sec. 106 should be restricted to land upon which there is a way over which people, whether as of right or not, pass. Otherwise the whole of the previous words of the definition are unnecessary. The dominant word in the definition is

(1) (1917) V.L.R., 214; 38 A.L.T., 171.

(2) 19 A.L.T., 184.

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“street” and the words “any enclosed or unenclosed land” should be limited to land which is used in the same way as a street or over which people commonly pass. Division 7 of Part IV. of the Act contemplates that betting on sports grounds is lawful, but on the wide interpretation of sec. 106 it would be unlawful.

BARTON J. In this case an information was laid, following the terms of sec. 104 of the *Police Offences Act* 1915, alleging that the defendant “was in a certain street, to wit certain enclosed land known as Gurney’s Running Ground . . . within the municipal district of the City of Melbourne, for the purpose of money being received by him as the consideration for an undertaking by him the said defendant to pay thereafter money on certain sporting contingencies.” By sec. 106 the word “street” used in this information “includes and applies to every road street thoroughfare highway lane footway or footpath on any public or private property, and also extends and applies to any enclosed or unenclosed land (not including houses and race-courses) within any municipal district which on the sixth day of March one thousand eight hundred and ninety-six was a city or town.” The locality on which the offence is alleged to have been committed is what is called Gurney’s Running Ground, and is shown to be within the municipal district alleged. The question really is whether such a place as Gurney’s Running Ground is within the second branch of the definition so as to be within the meaning of the Act a “street.” Now, it is very plain that fixing an artificial name for the description of a thing which in common parlance does not answer to that name is a thing very commonly done, especially in Statutes. Cases are numerous in which appellations are given to things, persons and circumstances which they could not in ordinary conversation bear or be supposed to bear. Therefore the fact that the word “street” is used to cover a multitude of things which do not ordinarily answer to the description of a street is a thing very much to be expected, according to the common practice of definition. Is this ground enclosed land, not being a house or race-course, within the City of Melbourne? That is the short question. If it is, it is a “street” unless the meaning of the words of the definition has been entirely altered by a

context which, to use the words of *Jessel M.R.*, is stronger or at least equally strong. Various other sections have been pointed out by Mr. *Starke*, and with great force, no doubt. This is a consolidating Act, and is a collection of enactments passed from time to time to answer various purposes, and it may very well be that Mr. *Starke* is right in saying that, if the language of sec. 106 is construed strictly, some things which it covers, or in some cases offences such as that now charged, are efficiently provided for in other parts of the Act. To my mind that is not a circumstance which should outweigh the unambiguous language of this Act. The words "enclosed or unenclosed land (not including houses and race-courses) within any municipal district which on the sixth day of March one thousand eight hundred and ninety-six was a city or town" are so clear as to be unmistakable, and it would take an extraordinarily strong context to show that they do not mean what they say. The circumstance that a consolidating Statute like this affords instances in which a thing which would be the result of a literal interpretation of this definition might also be made subject to prosecution by utilizing another part of the Act, cannot, to my mind, counter-vail the clear language of the section.

I am therefore of opinion that the information was erroneously dismissed, and that the appeal should be allowed.

I am at liberty to say that my brothers *Gavan Duffy* and *Powers* concur in this judgment.

Appeal allowed. Order appealed from discharged. Respondent convicted of the offence charged and fined £20, in default distress. Appellant to pay the costs of this appeal and of the proceedings below.

Solicitor for the appellant, *E. J. D. Guinness*, Crown Solicitor for Victoria.

Solicitors for the respondent, *Nolan & Nolan*.

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