[HIGH COURT OF AUSTRALIA.]

RUDOLPH BOESE . . . . . APPELLANT;
PLAINTIFF,

AND

THE FARLEIGH ESTATE SUGAR COMPANY LIMITED . . . . . RESPONDENT.
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF QUEENSLAND.

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BRISBANE, *July* 22, 23, 25.

Isaacs, Gavan Duffy and Rich JJ.

District Court (Queensland)—Appellate jurisdiction—Case stated—Jurisdiction of Supreme Court—Inferences of fact—District Courts Act 1891 (*Qd.*) (55 *Vict. No.* 33), *sec.* 159.

By sec. 159 of the *District Courts Act* 1891 (Qd.) it is provided that an appeal to a District Court under that section "shall be heard and determined by the Judge of that Court," and that "in any such case, the Judge may state in the form of a special case for the opinion of the Supreme Court any question of law arising upon the facts of the case, and his judgment shall be affirmed, amended, or reversed, as the Supreme Court, upon the hearing of the special case, directs."

Held, that in a case stated under that section by a Judge of the District Court the ultimate, and not the evidentiary, facts must be clearly and explicitly set out.

Held, further, that under the section the District Court is the final tribunal of fact, and that the Supreme Court has no function of finding facts or drawing inferences of fact.

Merchant Service Guild of Australasia v. *Newcastle and Hunter River Steamship Co. Ltd.* [*No.* 1], 16 C.L.R., 591, and *Schumacher Mill Furnishing Works Proprietary Ltd.* v. *Smail*, 21 C.L.R., 149, followed. *Stenhouse* v. *Forth*, (1908) S.R. (Qd.), 226, approved.

Judgment of the Supreme Court of Queensland: *Farleigh Estate Sugar Co. Ltd.* v. *Boese*, (1919) S.R. (Qd.), 98, discharged.

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APPEAL from the Supreme Court of Queensland.

On an appeal by the Farleigh Estate Sugar Co. Ltd., to the District Court of Queensland held at Mackay, against the decision of the Court of Petty Sessions at Mackay upon a plaint wherein Rudolph Boese was plaintiff and the Company was defendant, a case, which was substantially as follows, was stated by the District Court Judge for the opinion of the Supreme Court of Queensland :—

1. The defendant is a company duly incorporated and registered under the *Companies Acts* 1863-1913, and carries on the business of a sugar manufacturer, and is the owner of the Farleigh Mill, a sugar-mill to which sugar-cane is sold and supplied for the purpose of being treated and manufactured into sugar.

2. The plaintiff is a cane-grower residing near Farleigh, and during the 1917 season sold and delivered 223 tons 4 cwts. 2 qrs. 14 lbs. of sugar-cane to the defendant.

3. The said mill commenced crushing for the 1917 season on or about 14th June 1917, and ceased crushing on or about 14th December 1917.

4. At the commencement of the 1917 season the whole of the suppliers of sugar-cane to the said mill, including the plaintiff, formed themselves into a single group, and agreed to accept payment for the cane supplied by them on the basis of bulk or collective analysis.

5. After the commencement of the 1917 season and after the formation of the group as in the last preceding paragraph set forth, the Central Sugar Cane Prices Board, under and in pursuance of the *Regulation of Sugar Cane Prices Act of* 1915, on or about 27th July 1917, made an award regulating the supply of sugar-cane to and payment therefor by the said mill during the 1917 season.

6. After the making of the said award one Thomas Alfred Powell, a cane-grower and a supplier during the 1917 season to the said mill, and a member of the group in par. 4 hereof mentioned, claimed to be entitled, under clause 1 (*b*) of the said award, to payment for cane supplied by him on individual analysis, and instituted proceedings against the defendant for a breach of the award in that the defendant failed to pay him in accordance with the said award in

respect of certain cane supplied by him to the mill, and the defendant was convicted and fined £100 in respect of the said alleged breach.

7. Powell's withdrawal or attempted withdrawal as a member of the said group was without the plaintiff's consent, and I held that such withdrawal could not alter plaintiff's rights as between himself and the defendant unless it had the effect of dissolving the group, in which event the plaintiff would have been entitled to payment on the basis of 14 per cent. c.c.s. (that is, commercial cane sugar) under the award, instead of on the basis of 12.01 per cent. c.c.s.

8. From and after 7th August 1917 all cane supplied by Powell to the defendant was made the subject of individual analysis, and Powell was paid in respect of cane supplied by him on the basis of the individual analysis of such cane. Powell has been paid in respect of cane supplied by him to the said mill on individual analysis on 1,278 tons on a basis of 14.71 per cent. c.c.s.

9. The total quantity of cane supplied to and crushed at the same mill, including the cane supplied by Powell, was 75,166.30 tons.

10. No individual analysis was made in respect of cane supplied by the plaintiff, and he was duly paid in accordance with clause 2 of the said award at the rate of 28s. 6d. per ton on delivery.

11. The plaintiff on or about 27th June 1918 instituted proceedings in the Court of Petty Sessions against the defendant to recover the sum of £33 15s. 8d., being the balance alleged to be due in respect of the cane sold and supplied to the defendant.

12. The action came on for hearing before the Police Magistrate at Mackay on 4th July 1918, and on 15th July the Magistrate gave judgment for the plaintiff for the full amount of the claim and costs.

13. The defendant duly appealed from that judgment to the District Court on the grounds (1) that the decision was contrary to law, (2) that there was no evidence to support the verdict, and (3) that evidence was wrongfully admitted.

14. The said appeal came on for hearing before me at Mackay on 9th December 1918.

15. At the hearing of the said appeal it was admitted that the average c.c.s. of the whole of the cane supplied to the mill during the 1917 season was 12.01 per cent.; that the average c.c.s. of the whole of the cane supplied to the mill, excluding all cane supplied

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by Powell, was 11.962 per cent. ; and that there would be a difference of 2.13d. in the price per ton according to the basis adopted for ascertaining the amounts payable to the suppliers to the said mill.

16. On 10th December 1918 I dismissed the appeal without costs.

17. The defendant duly applied to me to state a special case for the opinion of the Supreme Court, and by consent I ordered that proceedings should be stayed till further order.

The questions stated for the opinion of the Court were as follows :—

(1) Should the price payable to the plaintiff in respect of cane supplied by him to the defendant be based on (*a*) the average c.c.s. of the whole of the cane supplied to the said mill during the 1917 season, that is to say 12.01 per cent., or (*b*) the average c.c.s. of the cane supplied to the said mill with the exclusion of cane supplied by Powell, that is to say 11.962 per cent. ?

(2) Is the plaintiff entitled to judgment for the sum of £33 15s. 8d., or for any and what sum ?

The Full Court answered question 1 (*a*) in the negative, and question 1 (*b*) in the affirmative : See *Farleigh Estate Sugar Co. Ltd.* v. *Boese* (1). For the purpose of answering the questions it was necessary for the Court to determine, and it did determine, as a fact that Powell was not a member of the group, and that the plaintiff was a member of the group composed of all the cane-growers other than Powell.

Further material facts appear in the judgment *infra*.

From the decision of the Supreme Court the plaintiff now, by special leave, appealed to the High Court.

Feez K.C. (with him *Drake*), for the appellant.

Real, for the respondent.

Cur. adv. vult.

July 25. The judgment of the COURT, which was read by ISAACS J., was as follows :—

(1) (1919) S.R. (Qd.), 98.

This is an appeal from the judgment of the Full Court of Queensland reversing a decision of Judge *O'Sullivan* in the District Court at Mackay. The respondent is a sugar-mill owner; and the appellant sued in the Petty Sessions Court at Mackay for £33 15s. 8d. for cane supplied by him, claiming that amount on the basis of commercial cane sugar content of 12.01 per cent. The defence was that he was entitled to be paid only on the basis of commercial cane sugar content of 11.962 per cent. The contest arose in this way :— Before the award of 1917 was made, the appellant and several other cane-growers, including one Powell, had agreed to form one group for the coming season, and accept payment on the basis of collective analysis. But Powell, whose output was extensive and whose cane was of particularly high sugar content, was dissatisfied with having to average it with other cane. A clause, however, was inserted in the award enabling him and others having large areas under cultivation to be paid on individual analysis. The award, when made, also contained a clause empowering and directing groups to be formed, and in that case each member of the group would be paid on a group analysis. The contest between the parties, both before the Magistrate and afterwards on appeal from him to the District Court, was whether Boese was a member of a group whose cane as a totality gave a c.c.s. content of 11.962 per cent. That depended on whether Powell was or was not a member of the group. The District Court held in favour of the 12.01 claim. The Supreme Court, on appeal, held in favour of the 11.962 contention, but in order to reach that conclusion had to determine as a fact that Powell was not a member of the group, and that the plaintiff Boese was a member of the group composed of all the cane-growers other than Powell. On the question of law the Court said : "We think that on the publication of the award the mill-owner and the sugar-cane growers were entitled to exercise their rights thereunder, notwithstanding any previous arrangement or agreement, and that groups formed prior to the operation of the award were not groups under that award until the members thereof had expressly by agreement or impliedly by conduct constituted themselves into a group or continued to remain as such thereunder or were formed into one by the mill-owner." We agree with that statement of the law. The Court then proceeded

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to apply the facts. They examined the evidentiary facts supplied to them by the District Court Judge, and came to their own conclusions upon them. They held that Powell, although he had, before the award was made, arranged to become a member of the group under the award, yet had, after the making of the award, retired from the group and had been paid on the basis of individual analysis, and further that, on the occasion of a prosecution under sec. 14 of the *Regulation of Sugar Cane Prices Act*, the Magistrate had held that Powell was not a member of the group, and had fined the Company £100 for not paying him on individual analysis. The Court also arrived at the conclusion that the plaintiff and others had, by their conduct, agreed to constitute themselves a group independently of Powell. This at once raises a serious question of jurisdiction. The *District Courts Act* 1891 contains two distinct provisions for appeals to the Supreme Court. One class relates to cases where the District Court acts in original jurisdiction (secs. 144 to 149). There an appeal is given to the Supreme Court whereby the Supreme Court is empowered to draw certain inferences of fact as well as to determine the law. The other is given in cases of District Court appellate jurisdiction wherein the District Court is made the final tribunal of fact, the appeal to the Supreme Court being given by way of case stated, and on the facts therein set out the Supreme Court may express its opinion on questions of law, and according to that opinion may affirm, amend or reverse the decision of the District Court (sec. 159).

This case comes within the latter category. The law as to such cases is set out fully in *Merchant Service Guild of Australasia* v. *Newcastle and Hunter River Steamship Co.* [*No.* 1] (1), followed in *Schumacher Mill Furnishing Works Proprietary Ltd.* v. *Smail* (2). The relevant law is so fully stated there that it is unnecessary to repeat it now.

It may, however, be observed that the scope of sec. 159 had been already properly stated by the Full Court of Queensland in *Stenhouse* v. *Forth* (3). There *Real* J., for the Court, says (4) :—" The only appeal given to this Court from a decision by a District Court

(1) 16 C.L.R., 591.
(2) 21 C.L.R., 149.
(3) (1908) S.R. (Qd.), 226.
(4) (1908) S.R. (Qd.), at p. 228.

upon the hearing of an appeal from justices is that given by sec. 159 of the *District Courts Act* 1891, which provides that the Judge 'may state in the form of a special case for the opinion of the Supreme Court any question of law arising on the facts of the case.' This power of appeal applies only to questions of law. Unless a right of appeal is given by Statute, no appeal can be entered, and consequently on questions of fact the decision of the District Court Judge is final."

The position is, then, that the Supreme Court had no function of finding facts—including in that the drawing of inferences. They could only (as we can only) accept the facts stated expressly or impliedly by the District Court Judge in the case stated by him. It is true that in the case he stated, the learned District Court Judge appended a mass of material including the original plaint, the judgment of the Magistrate, the evidence taken, his own judgment, and the case stated. Very much of what is stated is not only immaterial but unauthorized. And, what is more important to the result, the requirements of sec. 159 of the *District Courts Act* are not satisfied. Some of the essential facts are wanting. It is not stated whether after the award was made requiring groups to be formed, there was or was not a group formed in fact, expressly or tacitly; nor is it stated whether, if a group was in fact formed after the award, Powell was a member of it. It is stated that before the award was made, all the growers, including Powell, agreed to form a group, and certain facts are stated from which a tribunal authorized to draw deductions and inferences of fact might or might not conclude as to the two essential facts referred to. But the conclusions as to those facts are not stated either explicitly or implicitly. And, that being so, the appellate tribunal cannot cure the defect.

It is impossible to find in the case stated any statement that the District Court found as a fact, either (1) that no group was formed after the award, in which case it might be that the appellant would be entitled, if he properly claimed it, to a basis of 14 per cent. c.c.s. content; or (2) that a group was formed after the award including Powell, in which case the question would arise whether, in view of the attempted withdrawal of Powell, the appellant was entitled to a basis of 12.01 per cent.; or (3) that a group was formed after the

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award not including Powell, in which case the appellant would be entitled only to a basis of 11.962 per cent. Nor is it to be found stated whether, as suggested in argument, the agreement of the appellant and others before the award to form a group was on the basis that Powell, among others, was to be a member.

All these matters are left undetermined in fact, and therefore cannot be pronounced upon in law. The only course that was open to the Supreme Court, and is now open to us, is to remit the case to the District Court to state the facts—the ultimate facts and not the evidentiary facts—clearly and explicitly, and return the case so stated to the Supreme Court for adjudication in accordance with the provisions of sec. 159 of the *District Courts Act*.

Appeal allowed. Judgment of the Supreme Court discharged. Case remitted to the District Court for statement of the facts, and then for transmission to the Supreme Court for its opinion on any question of law arising upon the facts so stated.

Solicitors for the appellant, *Gorton & Hartley*, Mackay, by *Tully & Wilson*.

Solicitors for the respondent, *S. B. Wright & Wright*, Mackay, by *Atthow & McGregor*.