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regular and both parties are concluded by the award as to both facts and law; and that ends the matter.

STARKE J. The appeal, I agree, must be dismissed.

Appeal dismissed with costs.

Solicitors for the appellants, *A. J. McLachlan & Co.*

Solicitor for the respondent, *Gordon H. Castle*, Crown Solicitor for the Commonwealth.

B. L.

Dist *C J Burland Pty Ltd v Metropolitan Meat Industry Board* (1968) 120 CLR 400

[HIGH COURT OF AUSTRALIA.]

JONES . . . . . APPELLANT;
PLAINTIFF,

AND

THE METROPOLITAN MEAT INDUSTRY BOARD . . . . . RESPONDENT.
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1925. SYDNEY, *Nov.* 18-20; *Dec.* 18. KNOX C.J., ISAACS, HIGGINS, RICH AND STARKE JJ.

By-law—Ultra vires—Reasonableness—Maintenance and control of abattoirs—Disposal of offal—Taking portions of slaughtered animals without payment—Meat Industry Act 1915 (*N.S.W.*) (*No.* 69 *of* 1915), *secs.* 6, 7, 11, 13, 14, 21, 28, 30.

By the *Meat Industry Act* 1915 (N.S.W.) a board was created to manage and maintain certain abattoirs and to do all things that might be expedient and in accordance with the Act to prevent diseased or unwholesome meat from passing into consumption (sec. 13). By sub-sec. 1 of sec. 30 power was given to make by-laws providing (*inter alia*) for the management and control of all

public abattoirs, and for regulating and controlling the use of the same, and for regulating the conduct of all persons resorting thereto or slaughtering therein. By sub-sec. 2 of sec. 30 it was provided that "Such by-laws shall be submitted to the Governor for his approval, and if by him approved, shall be published in the *Gazette*, and thereupon but not sooner nor otherwise, shall, subject to this Act, have the force of law. All such by-laws on being gazetted shall be laid before both Houses of Parliament within fourteen days after the next meeting of Parliament. If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such by-laws have been laid before such House disallowing any by-law, such by-law shall thereupon cease to have effect."

Held, by *Knox* C.J., *Isaacs* and *Rich* JJ., that the validity of a by-law, which was confined to the subject matters stated in sub-sec. 1 and which under sub-sec. 2 had been approved by the Governor, gazetted and not disallowed by Parliament, could not be challenged in a Court of law on the ground of unreasonableness.

A by-law made by the board provided that portions of animals slaughtered at the abattoirs might be taken by the board, some without payment and others at a price fixed by the board.

Held, by *Knox* C.J., *Isaacs* and *Rich* JJ. (*Higgins* and *Starke* JJ. dissenting), that the by-law was within the power conferred by sec. 30 (1), and was valid.

Decision of the Supreme Court of New South Wales (*Harvey* C.J. in Eq.): *Jones* v. *Metropolitan Meat Industry Board*, (1925) 25 S.R. (N.S.W.) 553, affirmed.

APPEAL from the Supreme Court of New South Wales.

On 31st May 1916 the Metropolitan Meat Industry Board, appointed under the *Meat Industry Act* 1915 (N.S.W.), purporting to act in pursuance of the provisions of that Act, made certain by-laws which, having been approved by the Governor in Council, were published in the *Government Gazette* on 23rd June 1916. One of the by-laws (No. 24), which was headed "Disposal of Offal," was as follows:—

"Cattle.—No offal shall be removed from the abattoir premises except as permitted by this by-law. The Board will take all sets of heads and feet, also tail-tips, and will pay for the same at a price to be fixed by the Board. The Board will permit the owner to take and remove from the abattoir all tongues, tails, and hearts, also livers, cheeks, palates, and scrag meat, sufficient for butchers' retail trade requirements, if desired. The Board will take all kidney-fat which has been removed from any carcase, caul, rough fat, and gut-fat

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(except such caul-fat as the Board is satisfied the owner has sold for butchers' retail trade requirements, or to margarine manufacturers for the purpose of conversion into oleo-margarine), and pay for same at the current market rate, to be fixed by the Board immediately before the end of each month, such price to hold good during the month then ensuing. All stomachs intended for the production of tripes shall be cleaned and cooked in the Board's tripery by or for the owner. Steam and water and the necessary conveniences will be supplied at a charge of 6d. per tripe. All stomachs not treated for production of tripes shall become the property of the Board without payment for same. The Board will take all other offal without payment for same.

"Sheep.—The Board will permit the owner to take tongues and kidneys, and also any heads and frys required for trade purposes, any surplus to become the property of the Board without payment for same. The Board will take all kidney fat which has been removed from the carcase, caul, gut-fat, and rough fat, and pay for same at the current market rate to be fixed by the Board immediately before the end of each month, such price to hold good during the month then ensuing. The Board will take all other offal without payment for same.

"Pigs.—The Board will take first quality pig fat, and pay for same at the current market rate, to be fixed by the Board immediately before the end of each month, such price to hold good during the month then ensuing. The Board will take all other offal, rough fat, pigs' hair, and trimmings without payment for same.

"Calves.—The Board will permit the owner to take and remove all heads and feet and frys, if required for trade purposes. Any surplus not so required, and all other offal, shall become the property of the Board without payment for same. The Board will take all caul fat and pay for same at the current market rate, to be fixed by the Board immediately before the end of each month, such price to hold good during the month then ensuing.

"Casings.—The Board will permit the owner to sell all cattle, sheep, and pig casings to any person who shall have obtained permission from the Board to treat such casings on the abattoir

premises; but will not, under any circumstances, permit their removal from the abattoir premises prior to treatment.

"Meat condemned as unfit for human consumption.—The Board will purchase all meat condemned as unfit for human consumption at prices to be fixed by it."

A suit was brought in the Supreme Court in its equitable jurisdiction by John Henry Jones against the Board, the plaintiff claiming (so far as is material) a declaration that by-law No. 24 was *ultra vires* and was null and void and inoperative. The suit was heard by *Harvey* C.J. in Eq., who dismissed it with costs: *Jones* v. *Metropolitan Meat Industry Board* (1)).

From that decision the plaintiff now appealed to the High Court.

Brissenden K.C. (with him *Weston*), for the appellant. Notwithstanding that the provisions of sec. 30 (2) of the *Meat Industry Act* 1915 have all been complied with and Parliament has not expressed its disapproval, the validity of a by-law may be inquired into by a Court (*R.* v. *Pharmaceutical Society of Ireland* (2)).

[KNOX C.J. referred to *Institute of Patent Agents* v. *Lockwood* (3).]

The decision in that case should be confined to cases where words are used which are similar to those in the section there under consideration.

It was not intended by sec. 30 (2) to give by-laws any validity outside the Act, or to give validity to by-laws which are not in accordance with the Act, but to impose conditions which would allow of criticism and disapproval by Parliament. [Counsel referred to *Tait* v. *Pharmacy Board* (4); *Crick* v. *Harnett* (5); *Harnett* v. *Crick* (6).] A statute should not be so interpreted as to enable private property to be taken away without compensation unless the power is explicitly given (*Central Control Board* (*Liquor Traffic*) v. *Cannon Brewery Co.* (7); *Newcastle Breweries Ltd.* v. *The King* (8); *Attorney-General* v. *De Keyser's Hotel* (9); *John Robinson & Co.* v. *The King* (10)). The things which the by-law enables to be taken by

(1) (1925) 25 S.R. (N.S.W.) 553.
(2) (1899) 2 I.R. 132.
(3) (1894) A.C. 347.
(4) (1902) 2 S.R. (N.S.W.) 168.
(5) (1907) 7 S.R. (N.S.W.) 126, at p. 134.
(6) (1908) A.C. 470, at p. 475.
(7) (1919) A.C. 744, at p. 762.
(8) (1920) 1 K.B. 854, at p. 865.
(9) (1920) A.C. 508, at p. 529.
(10) (1921) 3 K.B. 183, at p. 197.

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the Board have no relation to the services given by the Board, and so cannot be regarded as payment for those services. The evidence does not show that considerations of public health make the by-law necessary.

Jordan (*McTiernan*, A.-G. for N.S.W., with him), for the respondent. So far as the by-law deals with things which are offal within the definition of that word in sec. 7, the by-law is undoubtedly within the power, and there is no reason why, if the rest of the by-law is bad, that part which is good should not stand. The case cannot be put so high as *Institute of Patent Agents* v. *Lockwood* (1). The question is, is by-law No. 24 within the power conferred by sec. 30 (1) (1) ? A statutory power to make by-laws for a purpose is only a particular instance of a statutory power of a statutory body to do a particular thing for a particular purpose. Whatever the thing to be done is, the test of whether it is validly done is the same—whether the power is to resume land or to make a by-law. In such cases the test of whether the thing has been done for the authorized purpose is whether it has been done with the real intention of serving the statutory purpose, and whether it is capable of serving that purpose. If this by-law fulfils both those requisites, it is valid (*Marquess of Clanricarde* v. *Congested Districts Board for Ireland* (2) ; *Hudson's Bay Co.* v. *Maclay* (3)). The ambit of the power to manage and control public abattoirs is a matter of evidence, and the evidence shows that it is necessary for the Board to have full control over offal in order to preserve sanitation and to prevent congestion. The presumption that private property will not be taken without compensation must yield to the nature of the power and its subject matter (*Slattery* v. *Naylor* (4) ; *Institute of Patent Agents* v. *Lockwood* (5)).

Brissenden K.C., in reply.

Cur. adv. vult.

(1) (1894) A.C. 347.
(2) (1914) 79 J.P. 481 ; 31 T.L.R. 120.
(3) (1920) 36 T.L.R. 469, at pp. 475-477.
(4) (1888) 13 App. Cas. 446, at p. 449.
(5) (1894) A.C., at p. 355.

The following written judgments were delivered :—

KNOX C.J. This appeal raises the question whether by-law No. 24, made by the respondent Board in exercise of the power conferred on it by the *Meat Industry Act* 1915, is valid.

I have had the advantage of reading the opinion which my brother *Isaacs* is about to deliver. I agree with him in thinking that the by-law in question is valid for the reasons which he has expressed, and have nothing to add.

The appeal should be dismissed.

ISAACS J. In my opinion the judgment of *Harvey* C.J. in Eq. was right, and should be affirmed.

The by-law (No. 24) which is attacked undoubtedly at first sight appears open to some of the formidable objections relied on by Dr. *Brissenden*. When, however, the provisions of the Act are considered for this purpose in connection with the principles that appropriately guide a Court in a matter of this nature, it seems to me impossible to regard the by-law as unlawful in any respect. The by-law was made under the Act No. 69 of 1915. That Act applies to what is called the Metropolitan Abattoir Area, comprising the County of Cumberland, and therefore extending to a vast population. By sec. 8 Parliament created a Metropolitan Meat Industry Board of three members to be appointed by the Governor in Council. By sec. 11 there was vested in the Board, for the purposes of the Act, certain "*land and buildings*" mentioned in Schedule One. One of those buildings is the abattoir at Homebush Point. That abattoir was completed about January or February 1916, at a cost of about £1,500,000. The Act, though passed on 31st December 1915, came into force on 1st March 1916. The Legislature, therefore, it was that vested in and handed over to the Board the identical abattoir now existing. If it were necessary to consider the reasonableness of the by-law, this would be a material element, because reasonableness must have relation to all the attendant circumstances, and, in the case supposed, the size, position, structure, capacity and conveniences of the place would have to come into the account. In the view of the law I take, this is not necessary. Sec. 11, as stated, vests the abattoir in the Board "for the purposes of this

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Act." In view of what I shall say later, it is necessary to observe that the phrase quoted is not a specific limitation on any power expressed in the Act, but it indicates the character in which the Board becomes the legal owner of the abattoir, namely, an official character, that is, to enable it to discharge the public functions which the Act directly creates or permits the Board to assume and not for any purpose incompatible with those functions. The Act also empowers the Board to acquire or construct further works, but until Parliament provides the necessary funds this power cannot constitutionally be effectively exercised. Sec. 13 of the Act enacts: "It shall be the duty of the Board to manage and maintain all public abattoirs; to manage and maintain all public sale-yards and meat-markets; 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." This is the central provision in the Act. But it marks out the absolute functions of the Board in broad outlines only.

It is obviously necessary in order that the Board may perform those functions with efficiency that whatever regulations it makes shall have more than mere directory force. Sec. 30 therefore confers on the Board the power of making various by-laws. This power includes, by sub-sec. 1, par. 1, "providing for the management and control of all public abattoirs . . . and for regulating and controlling the use of the same, and for regulating the conduct of all persons using the same or resorting thereto, or slaughtering . . . therein." I attach no importance for present purposes to sec. 14 (1), which was also relied on. That section, by its governing words, relates to discretionary matters, that is, matters which the Board may if it thinks fit embark upon or refrain from touching at all. Once an abattoir is established, however, the mandatory provisions of sec. 13 and the legislative powers of sec. 30 come into play; and these are what we are now concerned with. It is the duty of the Board, as can be seen by the general terms of the Act and the prior history of the legislation replaced by the Act, to manage and maintain the Homebush Abattoir in the interest of the public health. Parliament has not attempted to lay down in detail the rules and regulations proper for adjusting the private interests of those engaged in

supplying the public with the general interests of the community. These it has left to the Board with certain reservations, to which I shall refer. But the main thing in this connection is to approach the consideration of the by-law now challenged with a proper understanding of what the Legislature expects of the Board when framing its by-laws. I apprehend this public body is expected to insist on slaughtering and its consequential operations being conducted with all precautions which the Board considers necessary to guard against danger to health arising in any way from those operations; but, subject to that and subject also to any other power conferred by the Act, the natural expectation is that proprietary and trade interests of individuals will not be interfered with. But it is the Board's opinion of the proper method of adjusting public and private interests that, with certain limitations, is to govern. Sec. 30, sub-sec. 2, sets out the limitations in these words: "Such by-laws shall be submitted to the Governor for his approval, and if by him approved, shall be published in the *Gazette*, and thereupon but not sooner nor otherwise, shall, subject to this Act, have the force of law." Then provision is made for the gazetted by-laws being laid before both Houses of Parliament, and that on a resolution of either House within the stated time disallowing any by-law, it shall thereupon cease to have effect. The words "subject to this Act" mean, in my opinion, if not inconsistent with or repugnant to any provision of the Act. Their force is that, while otherwise full freedom is given to the Board, conditionally on the Governor's approval, to make any by-law it pleases to regulate the management and control of the abattoir, nothing must be provided that is contrary to any enactment of Parliament itself, including that as to disallowance. The conditions of validity of a by-law therefore are: (1) the by-law must be confined to the subject matters stated in sec. 30; (2) the Governor must approve; (3) the by-law must be gazetted; (4) Parliament must not have disallowed it. Provided those conditions exist—conditions amounting practically, though not strictly, to parliamentary legislation, because both Crown and Parliament acquiesce—is there not really an end of the matter? Can a Court proceed to investigate the reasonableness of the by-law or the purpose of the Board in making it? If what is done were

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clearly *ex facie* outside the legal limits of " management and control " of the abattoir, and outside " regulating and controlling its use," and outside " regulating the conduct " of persons using it, then I should agree the by-law was, at all events *pro tanto*, unauthorized. All these questions are of great importance to public bodies, and I shall deal with them separately.

1. *Prima facie authority.*—The by-law is prima facie lawful if, when read and construed as it stands in the code of regulations, it falls within the words of the power to make by-laws. The Board, being the legal owner of the abattoir and being directed to manage and maintain it, would of course, in the absence of express or implied limitation, have the power of its " management and control " and of regulating and controlling its use, and to that extent of laying down the conditions upon which persons desiring to slaughter animals there should be permitted to do so. Any doubt as to the power to charge fees for that permission is set at rest by sec. 15. When by-law No. 24 is read, there is nothing in it which as owner of the abattoir the Board could not stipulate as part of its " management and control " —very comprehensive words—and as " regulating and controlling the use " of it, and as regulating the conduct of persons who voluntarily come there to slaughter cattle. It may be the terms are severe ; at first sight they might seem harsh ; some persons might even think them unduly stringent, having regard to facilities for removing and dealing with offal. But that is nothing to the point. As a bare matter of law, and strict construction, they are within the literal terms of the power contained in the first paragraph of sec. 30 (1). The provision for fixing the Board's monthly " current market rate " does not detract from this, because on the face of the by-law that is so much to the good of the person concerned. If the Board can, within the literal terms of the power, refuse to allow the meat and fat and stomachs " taken " by the Board to be removed at all, the fact of allowing a stated price is not a vitiating factor. Prima facie therefore the by-law is not invalid.

2. *Unreasonableness.*—The first reason pressed by Dr. *Brissenden* for regarding the by-law as invalid, even supposing the legal frontiers of the power were not *ex facie* passed, was unreasonableness. It was, so it was urged, so unreasonable to insist on taking private

property by compulsion and at a price arbitrarily fixed by the Board, that such a power could not properly be held to be within the power relied on. The unreasonableness of a by-law as a ground of invalidity is well known with respect to common law corporations and some statutory corporations. But with respect to the latter the terms of the Act have to be regarded in each case. When these are borne in mind the test is settled. As Lord *Sumner* said in *R.* v. *Broad* (1), "the rule is well established that if by-laws 'involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men, the Court might well say—"Parliament never intended to give authority to make such rules"': per Lord *Russell of Killowen* C.J. in *Kruse* v. *Johnson* (2)." But it would be a serious step for a Court to reach such a conclusion by such a test when Parliament itself by its silence negatives it and the Governor in Council affirmatively repels it. As I have stated, at first sight this appears a formidable objection. But I have already mentioned one answer, a literal answer, to it. There is also a very substantial and practical answer, which I stated during the argument, and will repeat. A butcher is undoubtedly the owner of the beast he designs to slaughter for food. But, if for the purposes of his business he comes to the Board's abattoir to slaughter the beast for food, there is nothing which shocks the conscience in the Board's insisting on two conditions. First, that whatever meat then fit for human consumption he cannot satisfy the Board is needed for butchers' retail requirements, and whatever fat has not been already sold, and such stomachs as are not intended for the production of tripe, must be left behind. Climatic conditions and the possibility of the butcher waiting an indefinite period to pass on those articles—perhaps in some flavoured and unexaminable form—may well in the opinion of the Board make it undesirable to allow them to leave the abattoir. Evidently, from the history of the legislation, some better public control of such matters than previously existed was thought necessary. The Board, however, while not leaving the public at the mercy of the butcher in this respect, may well utilize the products to general advantage and without general danger. The provision for payment,

(1) (1915) A.C. 1110, at p. 1122.

(2) (1898) 2 Q.B. 91, at p. 99.

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if fairly carried out—and there is nothing to show it is not fairly carried out—is an indication to me of a genuine desire to press on private interests no more severely than the public safety, in the opinion of the Board, demands. The case, consequently, is very far removed from any such extreme instance as might conceivably warrant a Court in intervening notwithstanding the combined opinion of the Board, the Crown and the two Houses of Parliament.

3. *Purpose.*—Apart from inherent unreasonableness, said learned counsel, the facts showed an illegitimate purpose. Sec. 14, sub-sec. 8, enables the Board to "make such arrangements as it thinks fit with regard to the purchase, collection, and disposal of offal or other matter, and apply any manufacturing process thereto, and convert it into a merchantable article and sell the same." It was earnestly suggested that the real purpose behind the provision for taking and paying for offal was to pursue the power set out in sec. 14 (8) more cheaply than if done directly by voluntary bargaining. Both sides thought that the purpose of the Board was a fit subject for our consideration. Dr. *Brissenden* urged the ulterior purpose referred to as destructive of the by-law. Mr. *Jordan*, while denying the purpose so attributed to the Board and maintaining the propriety of its actual purpose, contended that such propriety was in itself the really decisive test of validity. He relied on *Marquess of Clanricarde* v. *Congested Districts Board for Ireland* (1) as establishing that test. I am unable to think that we have any right to consider the Board's purpose in this case. There are forms of legislative authority, such as in *Clanricarde's Case* and in *Municipal Council of Sydney* v. *Campbell* (2), where a given "purpose" is made an express condition of exercising the power. If that "purpose" is not pursued, the power is not exerciseable, and therefore the facts are examinable in order to ascertain what purpose was in view. But no such condition is inserted in the Act now under consideration. The power is to make by-laws of the stated character, namely, providing for the management and control of the public abattoir, &c. The particular statutory purpose the Board had in mind in making that provision is immaterial; the specific use to which it intended to put the by-law after it was made is not a relevant

(1) (1914) 31 T.L.R. 120; 79 J.P. 481. (2) (1925) A.C. 338.

consideration. This, which is a point sometimes overlooked, was very fully dealt with recently (in 1918) by Lord *Sumner* in *Narma* v. *Bombay Municipal Commissioner* (1). There a Municipal Commissioner had power under an Act to prescribe the regular line of a street. In form he purported to do so, and in fact actually did so. His object in doing so was to acquire land under the Municipal Act instead of having to acquire it under the *Land Acquisition Act*. It was held that the ulterior purpose was immaterial. Lord *Sumner* said (2) :—" Even if it were proved, as it is not, that the creation and preservation of a regular line on the north side of the road was no part of the Commissioner's object, though it certainly was an incidental result of his scheme, their Lordships can find nothing in the Act which either entitles the appellants to investigate his motives or has the effect of invalidating his action on account of the purpose, with which in fact he prescribed the regular line of the street." Then Lord *Sumner* pointed the distinction between the two classes of cases in these words :—" Cases in which it has been held that powers conferred only for a statutory purpose cannot be validly exercised for a different purpose are not in point. Such an exercise of the powers is outside the Act which confers them. Here the exercise of the powers was within the Act, for it was in strict conformity with the terms of the Act." That the Board's powers must be exercised in good faith, that is, honestly, is inherent in the matter. That has nothing to do with fraud, in the extended equity sense of a fraud on a power where there is no moral turpitude (see *Vatcher* v. *Paull* (3)). The two conceptions, however, intermingled so much during the argument that I think it very desirable to distinguish between them.

4. *Good faith.*—The good faith, which is the antithesis of fraud in this connection, is that which is required in the common law sense in relation to the legal exercise of statutory powers, and is not dependent on any doctrine of equity. It is wholly distinct from the notion of mistakenly pursuing a by-purpose. Such a pursuit may in this connection be honest or dishonest. The body pursuing it may genuinely avow it, thinking it permissible. There the action

(1) (1918) L.R. 45 Ind. App. 125. (2) L.R. 45 Ind. App., at p. 129.
(3) (1915) A.C. 372, at p. 378.

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adopted may be *ultra vires*, but not mala fide. On the other hand, there may be a pretended pursuit of a legitimate purpose that is mala fide. In the *Bombay Case* (1), Lord *Sumner* said of the Commissioner it was "quite clear that he acted in good faith, for the benefit, as he supposed, of the corporation which he represented, and, as he conceived, in the discharge of his duty." He said that for the Board, consisting of Lord *Loreburn*, Lord *Dunedin* and himself. Two of those learned Lords had only three years before definitely settled that question in *Clanricarde's Case*, as appears very clearly from the fuller report in the *Local Government Reports* (2). It appears (3) that counsel argued, that "while not acting bona fide," the respondent Board "were not acting dishonestly, but merely from a by-motive which rendered the proceedings *ultra vires*." Lord *Loreburn* said:—"I can understand that if there is no evidence on which a statutory body can act for the specific purpose authorized by the statute that they may properly be said to be acting *ultra vires*, but to say that these people acted honestly, and yet were not acting bona fide, I fail to understand." The report then significantly says: "After a long discussion it was decided that the appeal should be argued entirely on the ground of *ultra vires*." In the course of his judgment Lord *Loreburn* said (4):—"In form their proceedings were regular, but in substance, so the appellant contended, they were proceeding *ultra vires*. At first there was another contention, that they were not proceeding bona fide, and it was explained that this conveyed no sort of reflection upon their honesty or good faith, but merely that there was some by-motive. I think it would be better to select some happier expression. I do not understand an honest dishonesty." Lord *Dunedin* concurred with Lord *Loreburn*. Lord *Atkinson* spoke of evidence (5), "that the pretended belief is not a real and bona fide one." Lord *Parmoor* said as to bona fides (6): "I should prefer to limit this expression to a case in which dishonesty is directly charged, and to differentiate a case of *ultra vires*, but so long as the distinction between dishonesty and *ultra vires* based on other grounds is sufficiently maintained, the

(1) (1918) L.R. 45 Ind. App., at p. 128.
(2) (1914) 13 L.G.R. 415.
(3) (1914) 13 L.G.R., at p. 417.
(4) (1914) 13 L.G.R., at p. 418.
(5) (1914) 13 L.G.R., at p. 420.
(6) (1914) 13 L.G.R., at p. 421.

actual words used are of less moment." It is not contested here that in making the by-law the Board was acting in good faith for the corporation and for its benefit, and in order to facilitate functions which the Board was empowered to perform under the Act. If for the *Land Acquisition Act* in the *Bombay Case* (1) we substitute sec. 14 (8) of the *Meat Industry Act*, the judgment of Lord *Sumner* is a very direct authority on this branch of the case.

The appeal, in my opinion, should be dismissed.

HIGGINS J. This is a suit for a declaration that a by-law made by the Board, and numbered 24, is void as being beyond the Board's powers; and for an injunction restraining the Board from acting in pursuance of the by-law. The plaintiff is a carcase butcher in Sydney who has his beasts killed in the public abattoir at Homebush Point, which is managed and maintained by the Board—the "Metropolitan Meat Industry Board"—under the *Meat Industry Act* 1915. No objection is raised by the Board to the form of the proceeding.

By sec. 13 it is the duty of the Board to manage and maintain all public abattoirs—that is to say, the abattoir at Homebush Point or any other abattoirs purchased, &c., by the Board; to manage and maintain all public sale-yards and meat markets; 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 Abattoirs Area. By sec. 14 the Board has power to establish, maintain and conduct abattoirs, &c., in any part of that area; to establish, &c., works for canning, preserving, chilling or freezing meat; to take delivery of cattle and slaughter the same on behalf of the Board or of any person; to purchase cattle (including sheep, &c.); to sell cattle or meat; to export meat and sell the same and enter into contracts for exporting or selling; to deliver or contract to deliver to any person any meat; to make such arrangements as it thinks fit with regard to the purchase collection and disposal of offal or other matter, and apply any manufacturing process thereto, and convert it into a merchantable article and sell the same. By sec. 7 "meat" means the whole or any part of an animal such as is used for human consumption;

(1) (1918) L.R. 45 Ind. App. 125.

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and "offal" includes blood, refuse portions of meat, hides, skins, hair, hoofs, and horns, or other portions of any animal which are not ordinarily used for the food of man. By sec. 21 the carcases or meat of all animals destroyed after being condemned by an inspector as being diseased become the absolute property of the Board, and the Board must pay to the owner such reasonable compensation as the Board may determine. By sec. 28 meat seized which is not marked as prescribed becomes after forty-eight hours the property of the Board. It will be noticed, under secs. 21 and 28, that there are certain defined cases in which meat and animals become the property of the Board; and that under sec. 14 the Board may *purchase* them—not appropriate them without payment or with such payment as the Board may fix.

But by sec. 30 the Board has power to make by-laws; that is to say, (sub-sec. 1) (1) by-laws providing for the management and control of all public abattoirs, &c., and for regulating and controlling the use of the same, and for regulating the conduct of all persons using the same or resorting thereto, or slaughtering, buying, selling or dealing therein; and, generally, (11) for carrying into effect the purposes and provisions of the Act. Then (sub-sec. 2) "such by-laws shall be submitted to the Governor for his approval, and if by him approved, shall be published in the *Gazette*, and thereupon but not sooner nor otherwise, shall, subject to this Act, have the force of law. All such by-laws on being gazetted shall be laid before both Houses of Parliament within fourteen days after the next meeting of Parliament. If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such by-laws have been laid before such House disallowing any by-law, such by-law shall thereupon cease to have effect."

The first question is, is by-law No. 24 within the powers of the Board to make by-laws? and the second is, if not within the powers, is it made valid by sub-sec. 2 of sec. 30?

(1) The by-law impugned has been already set out. It begins by forbidding offal to be removed from the abattoir premises except as prescribed by this by-law. This provision seems to mean that the by-law must either stand as a whole or fall as a whole—seems to negative severability of the parts so that some may stand and some

may fall. Then, as to heads and feet and tail-tips of cattle, the Board is to take them all at its own price. As to tongues, tails and hearts, also livers, cheeks, palates, and scrag meat, sufficient for butchers' retail trade requirements, the Board "will permit" the owner to take them if desired. Each of these items is comprised within the meaning of "meat" (*supra*) as being a part of an animal such as is used for human consumption; it cannot be called "offal." As to kidney-fat, caul-fat (with some exceptions), rough fat and gut-fat, the Board is to take all, and pay for it at the current market rates to be fixed by the Board immediately before the end of each month as for the month next ensuing. As to stomachs intended for the production of tripes, they are to be cleaned and cooked in the Board's tripery by or for the owner, at a charge of 6d. per tripe; and all stomachs not so intended are to become the property of the Board "without payment for the same." The Board will take all "other offal" without payment. As for sheep, the Board "will permit" the owner to take tongues and kidneys, and any heads and frys required for trade purposes; but any surplus is to become the property of the Board without payment. The provision for the kidney-fat, caul-fat, gut-fat and rough fat of sheep is the same (substantially) as the provision as to fats in cattle; and the Board will take all "other offal" without payment.

It is unnecessary to set out in detail the similar provisions as to pigs and calves. As to casings, the Board "will permit" the owner to sell them to any person who has obtained permission from the Board to treat them on the abattoir premises; but will not permit them to be removed therefrom before treatment. As to meat condemned as unfit for human consumption, the Board will purchase it all at prices to be fixed by it. In considering the effect of by-law No. 24, it should be observed that under by-law No. 25 all hides and skins (although included under the term "offal") "shall be the property of the owner of the carcase." One would have thought that they were his property already: the owner of the whole is the owner of the parts.

Now, on considering these provisions, this is clear: that they involve the compulsory acquisition of property by the Board—in

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some cases, with compensation: in other cases, without compensation. Even where there is to be compensation the amount is to be fixed by the Board. I suppose, therefore, that the word "confiscation" would be appropriate; but I do not like to use a term which has such sinister associations in popular discussions. What is there in the power to make by-laws to justify such provisions? There is, as I have said, a general power to make by-laws for carrying into effect the purposes and provisions of the Act. The Board has power to conduct abattoirs, to purchase animals or meat, to slaughter animals either on its own behalf or on behalf of any other person; and to make arrangements with regard to the purchase, collection and disposal of offal or other matter, and apply any manufacturing process thereto, and convert it into a merchantable article and sell the same (sec. 14). It has a duty to do all such things as may be expedient to prevent diseased or unwholesome meat from passing into consumption in the Metropolitan Area; but these things must be not only expedient, but "in accordance with the Act." I can find nothing in the Act that expressly or by necessary implication enables the Board to override the British principle—British prejudice, some might call it—in favour of the sanctity of private property; and it is our duty as a Court of law to enforce this principle unless the Act clearly negatives it.

But, without calling in aid this principle, it will be admitted that the Board must show affirmatively the power claimed, and there is nothing in the words of the Act that shows clearly an intention to confer this power.

The learned Judge of first instance has dismissed the suit, finding that the Board has the power to make the by-law under the words in sec. 30 (1) (l). By-laws may be made "for regulating and controlling the use" of the abattoirs. There is no other power to take offal without paying for it; but this power, according to the decision, authorizes the Board to determine whether an owner of cattle should be allowed to remove any portion of the offal. There is, of course, more than offal affected by this by-law. According to the decision, if every owner were entitled to remove the gut-fat, he must be entitled to remove all other parts of the animals, including the blood and the intestines and their contents; and that would be

impossible or absurd—the abattoirs it is said, could not be used if the owners had that right. "The slaughter chambers are arranged in units so as to permit of several butchers operating at once. The blood of all animals being slaughtered in one unit at the same time, possibly the property of as many as twelve owners, is carried away in one drain uniting with the drainage from all the other slaughtering units" (1). There is no doubt that there are grave practical difficulties in working the abattoirs if all the offal of each animal has to be restored to the owner of the animal; but these are difficulties which are due mainly to the construction and organization of these Homebush abattoirs. The judgment, rightly as I think, points out that the principal object of the Act is what his Honor calls the "hygienic dressing of meat"; but this object has to be carried out "in accordance with the Act." It may well be that if the by-law be declared invalid there will be structural alterations required, and considerable expense incurred; it may well be that the Legislature may think fit to increase the powers of the Board; but my opinion is, that under the existing Act the Board has not, apart from sec. 30 (2), any power to make a by-law to the effect of by-law No. 24.

(2) But it is suggested that though the Act may not confer the power to make the by-law, the effect of sec. 30 (2) is to give to this by-law the force of law, inasmuch as neither House of the Legislature has disallowed it. I have set sub-sec. 2 out above. As a matter of interpretation, if we are not fettered by cases decided, it seems to me very clear that the only by-laws which are to have the force of law are by-laws made under the powers conferred by sec. 30 (1)—"such by-laws." Having been made under sec. 30 (1), they are first to be approved by the Governor in Council, then published in the *Gazette*, and on such publication they shall have the force of law, "subject to this Act." I may assume, in favour of the Board, that these words "subject to this Act" refer merely to the provision which follows for laying the by-law before the legislative Houses and to the power of either House disallowing the by-law. In the event of disallowance, the by-law does not become void *ab initio*; it merely "ceases to have effect." But the whole operation of

(1) (1925) 25 S.R. (N.S.W.), at p. 558.

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sub-sec. 2 is obviously confined to " such " by-laws,—by-laws such as provided in sec. 30, sub-sec. 1. The much discussed case of *Institute of Patent Agents* v. *Lockwood* (1) is not applicable at all. That case turned on the peculiar words of two successive Acts of Parliament, and in particular on the words " and the provisions of sec. 101 of the principal Act shall apply to all rules so made *as if they were made in pursuance of that section.*" These words are not used here. That case needs the closest attention before it be applied, and I think that the explanation of the case which my brother *Starke* suggested during the argument is very probably right. But my opinion is that this by-law No. 24 is not made valid by sec. 30 (2).

I think that the appeal should be allowed, the judgment set aside, the declaration made, and an injunction ordered.

RICH J. I concur in the reasons of my brother *Isaacs*, and agree that the appeal should be dismissed.

STARKE J. I agree with my brother *Higgins*, and concur in the opinion which he has delivered.

Appeal dismissed with costs.

Solicitors for the appellant, *Sly & Russell.*

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

B. L.

(1) (1894) A.C. 347.