

RICH J. I agree that the appeal should be dismissed.

STARKE J. I also agree that the appeal should be dismissed.

Appeal dismissed with costs.

Solicitor for the appellant, *W. P. Blackmore*, Broken Hill, by
A. G. Young & Blackmore.

Solicitors for the respondent, *A. J. McLachlan, Westgarth & Co.*

B.L.

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1925.

JUMNA
KHAN
v.

BANKERS
AND
TRADERS
INSURANCE
CO. LTD.

[HIGH COURT OF AUSTRALIA.]

MATHEWS AND ANOTHER APPELLANTS ;

AND

FOGGITT JONES LIMITED RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF
NEW SOUTH WALES.

Abattoirs—Meat inspection—Bringing “carcase or any portion of carcase” into certain area—Whether sausages portion of carcase—Newcastle District Abattoir and Sale-yards Act 1912 (N.S.W.) (No. 49), sec. 19.

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Sec. 19 of the *Newcastle District Abattoir and Sale-yards Act 1912 (N.S.W.)* provides that “the carcase or any portion of the carcase” of any animal slaughtered outside a certain area shall not be brought into that area except under certain conditions.

SYDNEY,
Mar. 30.
MELBOURNE,
May 27.

Held, by Knox C.J. and Gavan Duffy J. (*Isaacs J.* dissenting), that the fact that sausages, the composition of which was unknown except that they were manufactured from either pork or beef or both from animals slaughtered outside the area, had been brought into the area without compliance with the conditions stated in the section, did not constitute the offence of bringing into the area portion of a carcase or carcasses without compliance with those conditions.

KNOX C.J.,
ISAACS and
GAVAN DUFFY JJ.

Decision of the Supreme Court of New South Wales (*Campbell J.*): *Ex parte Foggitt Jones Ltd.*, (1925) 43 N.S.W.W.N. 8, affirmed.

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At the Court of Petty Sessions at Newcastle an information was heard whereby Henry Ernest John Mathews, an officer of the Newcastle District Abattoir Board, charged that Foggitt Jones Ltd. did on 15th October 1925 "cause to be brought into the district of the Newcastle District Abattoir Board . . . sausages and saveloys for human consumption within the said district without compliance in respect of the said portion of the said carcase or carcasses with the conditions set out in sec. 19 of the *Newcastle District Abattoir and Sale-yards Act* 1912, that is to say, that the said portion of the said carcase or carcasses was not accompanied by a certificate signed by an inspector of slaughtering duly appointed and approved by the Board of Health that at the time of slaughtering the said carcase or portion thereof was duly inspected and free from disease and without causing the said portion to be taken to the abattoir appointed under the said Act or to some place appointed by the said Board for inspection by the inspector of the said Board."

The evidence given as to the offence having been committed was that of the informant, who said that on 15th October 1925 he went to the defendant's business premises in Newcastle, where he saw the defendant's manager. The evidence then continued:—"I asked him" (the manager) "if he had received any consignment of small goods from Maitland that day. He said: 'Yes.' I asked him if it was accompanied by an inspector's certificate. I viewed the consignment. He took me to it and showed it to me. . . . I asked him if it was accompanied by an inspector's certificate that it was inspected during slaughter. I then asked him if these goods were manufactured from pork and beef carcasses slaughtered at their Maitland works; and he replied: 'Yes.' . . . Their Maitland works are outside the abattoir district and twenty miles from Newcastle. . . . I saw some of the consignment of saveloys and sausages that I saw sold at the counter."

The Magistrate convicted the defendant, and imposed a fine of 20s. with £2 2s. costs.

An order nisi for prohibition taken out by the defendant was made absolute by *Campbell J. : Ex parte Foggitt Jones Ltd.* (1).

From that decision the informant and the Newcastle District Abattoir Board now, by special leave, appealed to the High Court. Other facts are stated in the judgments hereunder.

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Brissenden K.C. (with him *Halse Rogers*), for the appellants. On the literal meaning of sec. 19 of the *Newcastle District Abattoir and Sale-yards Act* 1912 (N.S.W.) this case comes within it, and there is no reason for restricting its meaning. The *Meat Industry Act* 1915 (N.S.W.), an Act *in pari materia*, makes it clear that the intention of the Legislature was to take control of every portion of an animal slaughtered for human consumption. The fact that to give a literal meaning to the words of the section may lead to absurdities is not a reason for restricting the meaning (see *Jones v. Metropolitan Meat Industry Board* (1); *Smallbone v. Fawcett, Preston & Co.* (2)).

Feez K.C. (with him *Dare*), for the respondent. A sausage as such is not portion of a carcase. The statute was not enacted as one with respect to health or pure food. It was intended to apply to wholesale dealing with carcases and parts of carcases, and not to small goods. There is other legislation which amply protects the public against the sale of unwholesome food. [Counsel referred to *Corporation of Victoria City v. Bishop of Vancouver Island* (3).]

Brissenden K.C., in reply, referred to *Abel v. Lee* (4).

Cur. adv. vult.

The following written judgments were delivered:—

May 27.

KNOX C.J. AND GAVAN DUFFY J. The respondent was prosecuted and convicted under sec. 19 of the *Newcastle District Abattoir and Sale-yards Act* 1912. The relevant portion of the section is as follows:—“(1) The carcase or any portion of the carcase of any animal slaughtered outside the district shall not be brought into the district for human consumption within the district, except under the following conditions: (a) The carcase or portion of the carcase

(1) (1925) 37 C.L.R. 252.

(2) (1922) 2 K.B. 638.

(3) (1921) 2 A.C. 384, at p. 388.

(4) (1871) L.R. 6 C.P. 365.

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shall be accompanied by a certificate, signed by an inspector of slaughtering duly appointed and approved by the Board of Health, that at the time of slaughtering, the said carcase or portion thereof was duly inspected and was free from disease."

The respondent slaughtered animals at Maitland, outside the Newcastle District, under the supervision of a government inspector, and the informant admitted that all the meat so slaughtered was free from disease and perfectly fit for human consumption. Part of the business carried on by the respondent at Maitland was the manufacturing of sausages and saveloys from pork and beef carcasses there slaughtered; but the evidence does not disclose in what proportion the pork and beef were mixed in the sausages and saveloys, nor are we told what wrappers were used, nor what other materials, if any, were mixed with the pork and beef. The respondent has a shop in the Newcastle District, and to that shop it sent meat slaughtered at Maitland and portion of the sausages manufactured there. With respect to the meat, it obtained the certificate prescribed by the sub-section, but no certificate accompanied the sausages. The information before the Court of Petty Sessions at Newcastle treated the sausages as "portion of a carcase or carcasses" within the meaning of sec. 19 (1); and the Magistrate held that they were in fact such a portion, and convicted the respondent. The respondent appealed, and *Campbell J.*, sitting in Chambers, held that the Magistrate was wrong and made absolute an order nisi for prohibition. The learned Judge thought that it was impossible to say that a sausage, the composition of which was unknown except that it contained either pork or beef or both, was as an integer a portion of a carcase. We are of the same opinion. The question as to whether the wrapper of a sausage or any part of its meaty contents is a portion of a carcase within the meaning of the sub-section did not arise for decision and was not decided. Whether it can be so may be left for decision when the occasion arises.

ISAACS J. This case, as instituted and conducted throughout, is a test case involving serious consequences, affecting not merely the health but even the lives of a very large portion of the population of the State of New South Wales. Indeed, it concerns the relevant

law for the whole State except the metropolis (see *Local Government Act* 1919 (N.S.W.), secs. 460, 464). H. C. OF A.
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I am not able to dispose of it on any technical distinction between a sausage and the component parts of a sausage. Nor do I agree that the question of the nature of the contents did not arise. One of the steps—and a necessary step—in the contending arguments on both sides was to consider whether the mere envelopment of comminuted meat in an intestine so changed the essential character of the meat that it ceased to be a portion of the carcase that furnished it. To my mind that is an inescapable question. What is called a sausage consists of comminuted meat which, for convenience, is enclosed in a portion of an animal's intestine. If there were a penalty for bringing in an intestine or any portion of an intestine, I should be unable to exonerate a defendant who brought it in as the external envelope of a sausage. If the internal portion of the sausage is itself before envelopment portion of a carcase, I utterly fail to see how the mere fact that it is covered with an intestine makes it cease to be what it was immediately before it was covered. Its identity remains, just as much as the identity of a man remains whether he is called a soldier in uniform, a barrister in robes or a cricketer in flannels. The sausages, in the present case, were admitted by the respondent's manager to have been manufactured from pork and beef carcasses slaughtered at their Maitland works. So that there is no question and never was any question as to the nature of the contents of the sausages. *Campbell J.*, from whom this appeal immediately comes, did not question that fact. He said (1): "Here it may be conceded that part of the material in the sausages and saveloys was originally part of a carcase of an animal to which the Act primarily applies." Then the learned Judge held that, once the meat is passed into an intestine so as to be called a sausage, it becomes something else. I am quite unable to accept this magical chrysalis-and-butterfly analogy. It goes without saying that no one in his senses could contend that the sausage *in its sausage form* ever was or could be a portion of a carcase. That would be ridiculous: sausages are essentially a manufactured article. The only contention in reason could be whether the internal *material*

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(1) (1925) 43 N.S.W.W.N., at p. 9.

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of which a sausage is composed was, immediately before the sausage was complete, and still remains after completion, portion of a carcase. For all practical purposes, for all the dangers to human life sought to be guarded against, the meat covered or uncovered by an intestine is the same. There is no alteration mechanical or chemical. Whether the meat in that comminuted form is or not portion of the carcase is the one real question—apart from legal objections to the by-laws—which these proceedings present. In my opinion, and with deference, it is the duty of this Court in the public interest to answer that question one way or the other. On that basis I proceed to deal with this appeal for what my assistance may be worth, though in the circumstances my opinion can have no determinative effect.

The parties to this appeal are substantially the Newcastle District Abattoir Board as appellant and a limited company called Foggitt Jones Ltd. as respondent. The Board represents the whole of the residents within a district having as its centre the Newcastle Post Office with a radius of 14 miles from the Post Office. In 1912 the Parliament of New South Wales passed an Act called the *Newcastle District Abattoir and Sale-yards Act* 1912 which, with amendments immaterial to this case, is still in force. The then existing law was apparently considered insufficient to safeguard the public of that district from the known dangers, mostly insidious and, if realized, nearly always incurable, that arise from the consumption of diseased or unwholesome meat. The Act is, in effect, a provision for local self-protection by the people of the district constituted as a distinct entity for that purpose. It provides for a Board, the appellant, for a public abattoir, for the appointment of officers, for the raising of rates locally to pay for the expense of self-protection, and makes what seems to me ample provision, so far as relates to meat from animals slaughtered in the district, for securing the reasonable safety of the public from such scourges of humanity as cancer, tuberculosis and anthrax, as well as minor, but sufficiently serious, inflictions such as ptomaine poisoning. But obviously all this trouble and care and expense would be futile if the gates were left wide open for the entry from outside the district of meat that was not

similarly subjected to the local supervision of the Board. Consequently a section was inserted in the Act to meet this position, and I venture to think its terms are of the most comprehensive nature, and in their inherent extensive meaning cover such articles as are here in question. Before construing them independently, I have to refer to the weighty confirmation of the extensive general understanding of the critical words which is given by the chief public authorities of New South Wales practically acquainted with the subject matter, and the way in which the words are understood in this State in relation to that subject matter. I refer to the local Board who framed the by-laws, the Board of Health who supported them, the Executive Government of New South Wales who approved of them, and the two Houses of Parliament who, having the by-laws placed before them for consideration, tacitly sanctioned them. This formidable mass of official and parliamentary testimony as to the meaning of the words, pointing to their general acceptance in this connection and leading to public safety, is to my mind much more weighty than the conjectural refinements relied on by learned counsel for the respondent supported by no evidence whatever and leading to public danger. I am not able to accept the invitation to reject, as erroneous to the point of absurdity, the full meaning attributed to the words by the official sources referred to. Official interpretation does not, of course, bind the Court; but in a matter of this nature it is difficult for Judges, without the clearest and most convincing evidence, to override those charged with the responsibility of guarding the public health and declare them to be ignorant of the true meaning of the terms of the subject they are administering, and as to Parliament of its own language. In this case, however, as I regard the matter, ordinary judicial interpretation, especially with the aid of the special rule of construction to which I shall refer, shows that the official view of the words of the section is perfectly correct. Sec. 19 prohibits the bringing in for human consumption of "the carcase or any portion of the carcase" of any animal slaughtered outside the district, except on two conditions. The two conditions are these:—First, there must accompany the "carcase or portion of the carcase" that is brought in, a certificate of some Board of Health inspector of slaughtering, that at *the time*

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of slaughtering it was duly inspected and free from disease. Next, what is brought in must be taken to the local abattoir or some place appointed by the Board for *inspection* by the Board's inspector, and a fee must be paid. The reasons for the conditions are plain. The first relates to the time of slaughtering and refers to diseases then existing, and the persons whose opinion is trusted are persons representing the New South Wales Board of Health. The certificate required must cover *all* the meat brought in, and not possibly only some of it with an admixture of other meat which would contaminate it. The second condition provides against meat which, originally free from disease, has, by lapse of time or exposure to flies or other influences, since become putrid or otherwise unwholesome. The Board has certain powers of relaxation which Parliament thought sufficient consistently with safety. The absolute necessity of the two mentioned precautions, unless specially relaxed, evidently impressed itself on the mind of the Legislature, as it must on that of everyone else. And so stringently did Parliament frame its section that, besides using the broad and comprehensive terms I have stated, it threw the whole burden of proving compliance with these conditions on the person bringing in outside meat, and provided for a penalty in case of contravention and for the destruction of any carcase or portion of a carcase which on inspection appears at that moment to be diseased or unwholesome. No possible doubt can exist that, if a whole undivided carcase is brought in, it is within the section. If half a carcase, or a head or limb or any organ or any of the ordinary subdivisions usually purchased for human food, were brought in, I suppose no one would dispute that each of these subdivisions would answer the description "any portion" of the carcase. No matter what other precautions have been taken or are said to have been taken, the Act must be complied with, and no Court can venture to absolve anyone from obedience. The certificate is necessary as a guarantee as to the time of slaughtering. The inspection is necessary as to what has happened since. But it is said for the company that, if only the whole carcase is cut up into portions so small that it is converted into what is known as sausage-meat, and especially if a covering skin is put over it, there is then neither a carcase nor any portion of a carcase in

existence. That is to say, a carcase or part of a carcase may be cancerous or tuberculous or reeking with pleuro-pneumonia, or it may be putrid, so that it would be instantly rejected if any attempt were made to bring it into the district, but, nevertheless, if only it is cut up very fine and passed through a sausage machine—and especially mixed with aromatic flavouring which may easily conceal offensiveness—and covered with the usual skin envelope, then, so far as the Act is concerned, it may be brought into the district for human consumption free of challenge and offered to unsuspecting purchasers as a perfectly lawful article of commerce.

The Board's contention is rested on a very clear and intelligible basis. It is that the words of the Act "the carcase or any portion of the carcase," literally read, cover every scrap of the carcase, and there is, not only no reason to abridge that meaning, but there is every reason to preserve it to the full. "Any portion" is certainly an expression which applies primarily and naturally to a portion of any size whatever. The company's contention, in order to succeed, must call in aid something in the context or in the nature of the subject matter to alter the literal meaning of the words "any portion of the carcase." As to context, there is nothing whatever to aid the company's argument. A good deal of reliance was placed on the hardship and inconvenience of having to submit sausages to inspection, and especially at the abattoir, in view of their chance of deterioration and other interferences with the company's business. But these are miserable trifles compared with the risk to which the public are exposed when such articles of food are sent into the open market for human consumption. Even if, as in the present case, there is general inspection at Maitland of the company's slaughtering operations, there was no guarantee that the sausages in question were free from later deterioration or contamination, On their entry into the Newcastle District they may, for all that the evidence shows, have, from causes subsequent to Maitland inspection, become extremely objectionable. But, indeed, all that is nothing to the point except in mitigation of penalty. This case is to test the right to send in such food *whatever its condition may be*.

The object the Act has in view is the prevention, so to speak, at one known source of some well-known diseases more or less horrible.

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 1926. and the people of the Newcastle District, with the authority of
 ~~~~~ Parliament, are endeavouring at their own cost to avert the peril.  
 MATHEWS v. The question then, broadly, is this: Are we to read down the  
 FOGGITT primarily comprehensive words of sec. 19 so as to prohibit the  
 JONES LTD. introduction into the Newcastle District of even wholesome solid  
 ~~~~~ meat unless it is proved to be so in the way prescribed, and yet to  
 Isaacs J. permit the unchallenged introduction of the most deadly meat
 if only it be reduced, by the mere process of comminution, to the
 form of sausages?

There is authoritative direction on the question of statutory construction which, in my opinion, is wholly adverse to such an interpretation as the respondent desires. There is one in particular which, for its humanity and its harmonious agreement with present-day thought, I should be glad to see transcribed in substance in every Acts Interpretation Act. Such transcription would, I think, do much to discourage arguments better suited to an earlier age and tending to cut down the efforts of modern legislatures to cope with present-day evils. It is a passage which I have more than once quoted; and I venture to repeat it. In *Butler (or Black) v. Fife Coal Co.* (1) Lord Shaw says:—"The commanding principle in the construction of a statute passed to remedy the evils and to protect against the dangers which confront or threaten persons or classes of His Majesty's subjects is that, consistently with the actual language employed, the Act shall be interpreted in the sense favourable to making the remedy effective and the protection secure. This principle is sound and undeniable." Lord Shaw, apart from his own authority, could have pointed to prior judicial pronouncements, as, for instance, that of Lord Loreburn in *Bist v. London and South-Western Railway Co.* (2), justifying his statement of what he calls a "commanding principle." I entirely accept that statement, and apply it here as I have done in other cases. So applying it, I can see no way of "making the remedy effective and the protection secure" except by leaving to the words of the section their full primary meaning. Accordingly, reading the words without any confirmation of my view beyond what is afforded by

(1) (1912) A.C. 149, at pp. 178-179.

(2) (1907) A.C. 209, at p. 211.

the guiding principle quoted, I hold that the words "any portion of the carcase" include the flesh of the carcase or portion thereof the instant after it has been macerated or comminuted just as much as the instant before; and I think the contrary argument, which treats the result of comminution as if it were some instance of magical transformation, is entirely misplaced. There remains, however, the powerful confirmation of my view to which I have alluded. The Magistrate also so held and convicted the company; and in my opinion that conviction was right, and should be restored.

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Appeal dismissed with costs.

Solicitors for the appellants, *Harris, Wheeler & Williams*,
Newcastle, by *Laurence & Laurence*.

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

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