

## [HIGH COURT OF AUSTRALIA.]

DEPUTY COMMISSIONER OF TAXATION  
FOR THE STATE OF NEW SOUTH  
WALES . . . . . } PLAINTIFF ;

AND

ZEST MANUFACTURING COMPANY PRO- }  
PRIETARY LIMITED . . . . . } DEFENDANT.

H. C. OF A. *Sales Tax—Exemption—“Foods for livestock”—Fish—“Livestock”—Sales Tax*  
1949. *(Exemptions and Classifications) Act 1935-1947 (No. 60 of 1935—No. 65 of*  
1947), *First Schedule, Div. 1, par. 6 (4).*

SYDNEY,  
Nov. 24,  
Dec. 12.

Fish bred for sale or for stocking rivers &c., are not livestock within the meaning of that word as used in Div. 1 of the first schedule to the *Sales Tax (Exemptions and Classifications) Act 1935-1947*.

Latham C.J.,  
Rich, Dixon,  
McTiernan,  
Williams and  
Webb JJ.

So held by Rich, Dixon, McTiernan, Williams and Webb JJ. (Latham C.J. dissenting).

## CASE STATED.

An action was brought in the original jurisdiction of the High Court by the Deputy Commissioner of Taxation (N.S.W.) in which he claimed from the defendant, Zest Manufacturing Co. Pty. Ltd., the sum of £106 5s. 3d. alleged to be payable by the defendant to the plaintiff as and for sales tax under the *Sales Tax Assessment Act (No. 1) 1930-1942*.

Upon the action coming on to be tried Latham C.J., at the request of both parties and pursuant to s. 18 of the *Judiciary Act 1903-1948*, stated for the consideration of the Full Court of the High Court, a case which was substantially as follows :—

1. On 26th April 1949 the plaintiff caused to be issued out of this Honourable Court a writ of summons in this cause claiming the sum of £106 5s. 3d. which the plaintiff alleges is payable by the defendant to the plaintiff as and for sales tax under the provisions of the *Sales Tax Assessment Act (No. 1) 1930-1942* in the circumstances hereinafter mentioned.

2. On 4th May 1949 the defendant duly appeared to the writ.



3. Upon the action coming on to be tried the plaintiff and the defendant by their respective counsel made the following admission of facts and agreed that they are all the material facts, namely :—

(i) The defendant was registered as a manufacturer under the Act until 31st May 1945, when such registration was cancelled and the defendant was notified of such cancellation by memorandum dated 31st May 1945 from the Acting Deputy Commissioner of Taxation.

(ii) At all material times the defendant carried on and still carries on business at 270A Pyrmont Bridge Road, Forest Lodge, in the State of New South Wales.

(iii) So far as is material to these proceedings, that business consists in manufacturing and selling by wholesale certain goods, namely, scientifically prepared foods for fish such as trout, perch and carp, and for gold fish and other similar types of ornamental fish known in the trade as “exotics.”

(iv) During the period from 1st August 1945 to 31st October 1948, apart from relatively small sales to retailers, those foods were sold to and purchased and used by proprietors and controllers of hatcheries where the said types of fish were kept in captivity. Such proprietors and controllers bred and regulated the breeding of such fish in the course of carrying on their business as breeders and vendors of the fish.

(v) Since 31st October 1948 those foods have been purchased and used as previously and also used in governmental hatcheries maintained for the purposes of stocking streams and reservoirs with fish.

4. The plaintiff claims that the defendant is liable for sales tax in accordance with the provisions of the Act in respect of such goods as being goods manufactured and sold by the defendant, the periods in which the sales were made and the total sale values of the goods sold being :—

From 1st August 1945 to 14th November 1946	..	£254 18s. 8d.
From 15th November 1946 to 31st October 1948	..	£743 19s. 9d.

5. The amounts of sales tax which the plaintiff claims that the defendant is liable to pay in respect of the sale values as aforesaid are £31 17s. 4d. and £74 7s. 11d. respectively.

6. The defendant has refused and still refuses to pay those amounts of sales tax and alleges that it is not liable for sales tax in respect of those sales on the ground that the goods are “foods for livestock” and are accordingly exempt from sales tax under sub-item (4) of item 6 in the first schedule to the *Sales Tax (Exemptions and Classifications) Act 1935* as amended and in force during the periods mentioned in par. 4 hereof.

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7. The plaintiff does not charge the defendant with intention to avoid or make default in payment of the tax and the defendant has refused and still refuses to pay the tax on the ground above stated.

The following question was stated for the opinion of the Full Court of the High Court :

Are the said goods “foods for livestock” and therefore exempt goods for purposes of the sales tax ?

The parties agreed that if the question was answered in the affirmative judgment was to be entered for the defendant and that if the question was answered in the negative judgment was to be entered for the plaintiff for the sum of £106 5s. 3d.

The relevant statutory provisions are sufficiently set forth in the judgments hereunder.

*Hannan*, for the plaintiff. The fish referred to in par. 3 (iii) of the case stated are not “livestock” within the ordinary or natural or generally accepted meaning of that term, nor are they livestock within the meaning or for the purposes of the *Sales Tax (Exemptions and Classifications) Act 1935-1947*. The word “livestock” is used in the Act as meaning horses, cattle, sheep or pigs. “Livestock” according to *Webster's International Dictionary* means domestic animals used or raised on a farm, especially those kept for profit, and, according to the *Shorter Oxford English Dictionary* means domestic animals generally—any animals kept or dealt in for use or profit. A classification of domestic or tame animals and wild animals appears in *Halsbury's Laws of England*, 2nd ed., vol. 1, par. 911 where it is stated that all fishes are wild animals. “Livestock” has a limited meaning. It does not go so far as to include animals which even in captivity still retain their wild characteristics. In default of a statutory definition to that effect “livestock” does not include fish (*Inland Revenue Commissioners v. Glasgow Ornithological Association* (1)). The divisions in the first schedule to the Act mark out categories which are appropriately classified and collected under various headings. The meaning to be given to an expression in the various divisions must be governed by the context in which it appears. The heading in Div. 1 of the first schedule, in which this item appears, is headed “Agricultural Machinery, Implements, Equipment and Materials.” This fact has an important bearing upon the construction of the word “livestock.” It shows that there is a clear delineation of the field into which the Act enters as regards livestock, and that it is something



connected with agriculture, cultivation of the soil, and other similar industries including farming. The words "foods for livestock" were limited or intended to be limited to foods used for livestock in some agricultural pursuit. This view is supported by item 11 (2) in Div. 1 which deals with foods for poultry. "Fishing" is provided for in Div. 111 of the schedule.

*White*, for the defendant. The *Concise Oxford Dictionary* defines "livestock" as meaning animals of any kind kept or dealt with for use or profit, and, applying the ordinary rules of construction, that word as used in the Act is capable of the ordinary grammatical meaning assigned to it in the dictionary. "Foods for livestock" means either foods actually used for the purpose of feeding livestock or suitable for such use, or capable of being so used, or manufactured, or sold for the purpose of being so used. It is immaterial if any of these foods are not used for this purpose. The important thing is the nature of the goods and the purpose for which they were manufactured. Regard may be had to subsequent events for the purpose of determining the essential nature of the goods at the relevant time (*Trustees Executors and Agency Co. Ltd. v. Commissioner of Taxes (Vict.)* (1); *Bullfa and Merthyr Dare Steam Collieries* (1891) v. *Pontypridd Waterworks Co.* (2)). This applies particularly to par. 3 (v) of the case stated. Fish are animals: *Murray's Oxford Dictionary*. In *Peterborough Royal Foxhound Show Society v. Inland Revenue Commissioners* (3) the judgment was given by reference to the definition in the *Oxford Dictionary* that "livestock" includes animals of any description kept or dealt in. *Inland Revenue Commissioners v. Glasgow Ornithological Association* (4) proceeded on the basis that there was a special definition in the *Finance Act 1923 (Imp.)* of livestock as animals of any kind. The dictionaries authorize the use of the word "animals" to include fish or reptiles. The word "stock" has a large variety of meanings many of which are applicable to fish of the type under consideration.

*Hannan*, in reply. *Peterborough Royal Foxhound Show Society v. Inland Revenue Commissioners* (5) is not of any assistance to the Court. That case was referred to in *Inland Revenue Commissioners v. Glasgow Ornithological Association* (4). The words preceding certain items in the various divisions in the first schedule to the Act should be taken into account for the purpose of interpretation.

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(1) (1941) 65 C.L.R. 33.

(2) (1903) A.C. 426.

(3) (1936) 2 K.B. 497.

(4) (1938) 21 Tax Cas. 445.

(5) (1936) 2 K.B. 497.



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The item "foods for livestock" should not be construed independently of its context. It is significant that it is used in conjunction with various farming operations, as well as agriculture, farming and the like, and the operations connected with the cultivation of the soil. "Foods for livestock" must be limited to something associated with matters coming within the definition of "agriculture." The purpose in the classification was that related items or sub-items were brought together.

*Cur. adv. vult.*

Dec. 12.

The following written judgments were delivered:—

LATHAM C.J. The question which arises upon this case stated is whether certain foods for fish are exempt from sales tax under a provision in the First Schedule to the *Sales Tax (Exemptions and Classifications) Act 1935-1947*. The relevant exemption appears in Division I—"Agricultural Machinery, Implements, Equipment and Materials." Section 3 (2) of the Act, however, provides that the heading to any division in a schedule shall not be read as affecting the interpretation of that schedule or of any item in the schedule. Accordingly the fact that the word "agricultural" appears in the heading of the division is, it is expressly provided, not to affect the interpretation of any of the items in the schedule. The item under which the question arises appears in par. 6 of Div. I. The heading of this paragraph is—"Goods (and parts therefor) for use in the maintenance of livestock, viz. . . . (4) Foods for livestock."

The foods in question are manufactured for sale to and use by persons who breed fish commercially for sale or Government Departments which breed fish for stocking rivers &c. In the *Oxford English Dictionary* "livestock" is defined as follows:—"Domestic animals generally; animals of any kind kept or dealt in for use or profit." Fish come within the latter words. Fish are animals. They are not vegetables or minerals or creatures of indeterminate classification. Fish are bred for commercial disposition in the same manner as cattle, horses, sheep, pigs, domestic poultry and various other birds, such as pigeons, budgerigars &c. Fish farms are not as common in Australia as poultry farms, but there is no difference between them in their commercial characteristics—they all produce animals for sale. The fact that such breeding of fish is not conducted on the same large scale as in the case of other animals cannot alter the meaning or the application of the word "livestock."



The exemption, however, appears in a list which refers to many other goods which are used in connection with other animals and not in connection with fish ; e.g. dips and washes for cattle or sheep, rugs for horses, cattle, sheep and pigs, and other articles with similarly limited use. It is said that therefore Parliament was not thinking of fish as livestock when the provision was made for the exemption in question. I would agree that it is highly probable that no-one in Parliament thought of fish as being livestock when the Act was passed. But that fact, if it be a fact, is completely irrelevant in construing the statute. The question is not what the Court thinks Parliament thought it was doing when it passed a bill. The mind of Parliament is to be ascertained by construing the words which Parliament has placed in the statute. The question is simply what the words contained in the Act mean. The Court should interpret the words of a statute as it finds them, paying attention to any context which shows that they were used in a particular sense or subject to a particular limitation. Here there is no context modifying the words in question. There are merely other separate provisions each dealing with a distinct subject matter. The words "foods for livestock" stand independently in the list in the schedule. The fact that in the same parts of the schedule there are other words relating only to four-footed livestock does not in my opinion affect the meaning of these separate words. I am therefore of opinion that the foods for fish which are bred and kept for commercial disposition are exempt. The question in the case is—"Are the said goods 'foods for livestock' and therefore exempt goods for purposes of the sales tax?" In my opinion this question should be answered in the affirmative and in accordance with the agreement of the parties judgment should be entered for the defendant with the costs of the action, including the costs of the case.

RICH J. The question for determination is the meaning of "livestock" in item 6 (4) of the *Sales Tax (Exemptions and Classifications) Act 1935-1947*. The context in which the word is set lifts the question out of the quagmire of dictionary meanings. "One of the main objects of every dictionary of the English language is to give an adequate and comprehensive definition of every word contained in it, which involves setting forth all the different meanings which can properly be given to the particular word. The Court, on the other hand, in determining what is the true meaning of a particular word used in an instrument which it has to construe, has to ascertain in what sense the parties to that instrument have

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used the word : all the help the Court can derive from dictionaries in such a case is, in case of doubt, to ascertain that the meaning which it comes to the conclusion ought to be attributed to the word is one which may properly be given to it " (*Mills v. Cannon Brewing Co. Ltd.* (1) ).

The instrument in question, as is the case in some wills, furnishes its own dictionary. The whole structure of item 6 indicates that the livestock for which provision is there made consists of horses, cattle, sheep and pigs, and in Australia the words stock-yard and stock-whip refer to cattle. In ordinary parlance livestock would not include poultry, bees or fish. Moreover specific provision is made for poultry, bees and fish in items 11, 12 and 20A.

The decision in the case referred to by Mr. White—*Peterborough Royal Foxhound Show Society v. Inland Revenue Commissioners* (2) does not, in my opinion, affect this case. There the learned judge was construing s. 11 (2) of the *Finance Act*, 1923, 13 and 14 Geo. 5 c. 14, which defines "industry" as including agriculture, and "agriculture" is defined as including livestock breeding, and "livestock" is defined as animals of any description. And the learned judge considered that this definition was wide enough to include foxhound breeding. But in the instant case there is no definition of livestock and one does not construe one statute by expressions and definitions in another statute.

I would answer the question submitted in the negative.

DIXON J. The question for decision is whether the defendant is liable for sales tax upon certain goods which the defendant manufactures and sells. The goods consist of scientifically prepared foods for fish such as trout, perch and carp and for gold fish and other similar types of ornamental fish known as exotics. The sales with which we are concerned are sales of such food to the proprietors and controllers of hatcheries where fish of these kinds are kept in captivity. The purchasers breed and regulate the breeding of such fish in the course of carrying on business as breeders and vendors of the fish. The defendant denies that the sales are subject to sales tax on the ground that the goods are exempted by the *Sales Tax (Exemptions and Classifications) Act* 1935-1947. The exemption upon which reliance is placed is of "foods for livestock." It is said that the fish for which the food is bought are "livestock," at all events in the hands of the purchasers. The word "livestock," according to its dictionary meanings, describes domestic animals generally ; animals of any kind kept or dealt in for use or profit ;

(1) (1920) 2 Ch. 38, at pp. 44, 45.

(2) (1936) 2 K.B. 497.



the animals on a farm; and is also used as a collective term for horses cattle and sheep bred for use or profit: *Oxford English Dictionary* s.v. "livestock" and "stock," par. 54. It does not strike me as in accordance with ordinary English usage to apply the word to fish; though perhaps there is not much reason why the expression should not be extended to include fish, if the context and subject matter suggested it. In my opinion, however, the context is quite opposed to assigning to the word "livestock" a meaning wide enough to include fish. The exemption is the fourth of the items contained in clause 6 of Div. 1 of the First Schedule of the Act. Clause 6 is as follows:—

"Goods (and parts therefor) for use in the maintenance of livestock, viz.:—(1) Bullnose punches (2) Dips and washes for cattle or sheep (3) Drenching guns and syringes (4) Foods for livestock (5) Lamb-marking cradles (6) Marking and branding oils (7) Preparations for use in the prevention, cure or eradication of diseases or pests in livestock (8) Rock salt and licks for livestock (9) Rugs for horses, cattle, sheep and pigs (10) Sheep and stock feeders for use in agricultural industry (11) Sheep jetting plant (12) Tar brands, fire brands, tattoo brands, ear pliers, ear tags and ear markers, for marking or branding livestock (13) Veterinary instruments, appliances and materials of a kind ordinarily used by veterinary surgeons."

This context is anything but aquatic or ichthyological. It suggests broad acres and rural pursuits. For poultry farming a separate exemption is given by the second item of clause 11 of Div. 1. Clause 11 covers—(1) poultry imported for breeding purposes, (2) foods for poultry, (3) poultry farmers' equipment and (4) preparations for diseases in poultry.

I see in clause 6 no indication of a policy of exempting foods for all living creatures which man may use or profit by, but rather of a policy of exempting foods used in raising what in Australia would ordinarily be called "stock."

In my opinion the defendant's claim to the exemption fails and the question in the case stated should be answered—No.

McTIERNAN J. In my opinion the question should be answered in favour of the plaintiff.

Fish kept and bred in hatcheries for the purposes of sale may fit some definitions of livestock in dictionaries; because a fish is an animal and some of the definitions possibly include animals of any kind kept by man for any purpose. The question in the present case, however, is whether the word "livestock" in item 6 (4) of the

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First Schedule of the *Sales Tax (Exemptions and Classifications) Act 1935-1947* is used in such a general sense. The sub-item is "Foods for livestock."

Section 3 (2) precludes the consideration of the title of Div. 1 of the First Schedule as an aid to the meaning of livestock: but it does not preclude consideration of the words describing each item and sub-item.

Item 5 is "Livestock imported solely for breeding purposes." There is nothing in the words of this item which restrains the generality of the term "livestock." Item 6 is "Goods (and parts therefor) for use in the maintenance of livestock." The goods are specified by thirteen sub-items. Taking item 6 (4) by itself, it may refer to food for any animals that can be classed as livestock. A number of sub-items refer to various goods used in the maintenance of "livestock." These goods could have no possible use in the maintenance of fish kept in ponds or hatcheries: it is clear that the animals meant by the word "livestock" in those sub-items do not include fish. In the remainder of the sub-items of 6 the word "livestock" is not mentioned. The goods to which those sub-items refer could not possibly be used in the maintenance of fish. Taking the whole of the context it is not, in my opinion, a fair interpretation of the word "livestock" in item 6 (4) to say it is wide enough to include fish.

If the word "livestock" in this sub-item includes fish it would by a parity of reasoning include poultry and bees which might also be classified for some purposes as animals. If it were intended to include "animals" of either of those classes, items 11 (1) and (2) or item 12, which refer specially to poultry and bees, would not be necessary. Item 11 (1) which is "Poultry imported solely for breeding purposes" and item 12 (1) which is "Bees imported solely for breeding purposes" would have been already covered by item 5 "Livestock imported solely for breeding purposes": and item 6 (4) "Foods for Livestock" would have covered item 11 (2) "Foods for poultry." The scheme of the schedule appears to be to extend the list of exempted items as it proceeds.

It is not necessary to attempt to give an exhaustive definition of the meaning of livestock in item 6 (4). It is clear, if the context is taken as a guide to the meaning of the word, and the First Schedule is read as a whole, that the word "Livestock" in item 6 (4) was intended to refer only to animals, one characteristic at least of which is that they are fed and maintained on the ground. This, of course, is not a characteristic of fish.



WILLIAMS J. Mr. White submitted an attractive argument in favour of providing cheap food free of sales tax for trout, perch and carp, and for goldfish and other types of ornamental fish living in captivity in hatcheries. The food in question is scientifically prepared and sold to proprietors and controllers of hatcheries where such fish are bred and kept in captivity pending their liberation to stock streams or reservoirs or their sale for ornamental purposes. The success of the argument depends upon whether such foods are foods for livestock within the meaning of the item described as foods for livestock in par. 6 (4) of Div. 1 of the First Schedule to the *Sales Tax (Exemptions and Classifications) Act 1935-1947*. Mr. White relied on the meaning of livestock in the *Oxford Dictionary*, which defines livestock to include animals of any kind kept or dealt with for use or profit. The fish in question are animals, they are alive and they are dealt with for use or profit. If there was no controlling context, this definition might, I think, be wide enough to include such fish. Section 3 (2) of the Act provides that the heading to any schedule to the Act or to any division in any schedule to the Act shall not be read as affecting the interpretation of that schedule or of any item in that schedule. We must not therefore pay any regard to the heading of Div. 1 "Agricultural Machinery, Implements, Equipment and Materials." But we must pay regard to the contents of the paragraph in which the item occurs. Paragraph 6 is headed "Goods (and parts therefor) for use in the maintenance of livestock." This heading is innocuous. But the paragraph refers specifically to horses, cattle, sheep and pigs. It includes amongst the items:—(7) Preparations for use in the prevention, cure or eradication of diseases or pests in livestock; (8) Rock salt and licks for livestock; (12) Tar brands, fire brands, tattoo brands, ear pliers, ear tags and ear markers, for marking or branding livestock. It was not suggested that the goods described in the paragraph, particularly those described in items (7), (8) and (12), would be used in the maintenance of the relevant fish. Then there is item (13), perhaps an unlucky one for the fish, which includes in goods for use in the maintenance of livestock veterinary instruments, appliances and materials of a kind ordinarily used by veterinary surgeons. Veterinary surgeons would not, I should think, ordinarily include fish amongst their patients. The context of the paragraph brands, I think, the livestock intended to benefit. Fish have a natural aversion to being caught. In the present case it is desired to catch the fish in the network of exemptions, but in my opinion the attempt fails. The paragraph as a whole and its component

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parts is appropriate only to animals which inhabit the land and quite inappropriate to animals which inhabit the water.

The question asked in the case stated should be answered in the negative and there should be judgment for the plaintiff for £106 5s. 3d. with costs.

WEBB J. Section 3 (2) of the *Sales Tax (Exemptions and Classifications) Act* provides that the heading of any schedule to that Act or to any Division in any Schedule shall not be read as affecting the interpretation of that Schedule or of any item in it. However, the Court is left at liberty to look at the title of the Act. The long title describes the Act as "An Act relating to exemptions from, and classifications of goods for the purposes of Sales Tax." Accordingly exemptions are made and classified by the Act. This claim for exemption is based on sub-item (4) of item 6 of Div. 1 of the First Schedule, "Food for livestock." This Division, however, does not mention fish, but it mentions cattle, sheep, lambs, pigs, poultry and bees. It refers to certain articles but not to any associated with fish. It refers also to certain pests, including some affecting fruit growing and cattle and sheep raising, but not to any affecting fish. Actually there is nothing in the classification from which it can be inferred that it is intended to apply to fish. I think it is reasonable to assume then from the language of this Division and the long title to the Act that Parliament did not have fish in contemplation when enacting Div. 1 of the First Schedule and that there is no warrant for the application of any dictionary meaning of "livestock" that includes fish.

I would answer the questions in the special case in the negative and enter judgment for the plaintiff for £106 5s. 3d.

*Question in case answered—No. Judgment for plaintiff for £106 5s. 3d. with costs including costs of case.*

Solicitor for the plaintiff, *K. C. Waugh*, Crown Solicitor for the Commonwealth.

Solicitors for the defendant, *Hunt & Hunt*.

J. B.