

11-6-41

IN THE HIGH COURT OF AUSTRALIA.

JACOBS.

V.

GRAY

Original

REASONS FOR JUDGMENT.

Judgment delivered at Melbourne,

on Friday 28th March 1941

JACOBS V. GRAY

O R D E R.

Order discharging order nisi set aside. I n lieu thereof order that the order nisi to review be made absolute, the conviction of the appellant and order of Magistrate set aside and that the respondent pay to the appellant the costs of this appeal, of the two orders in the Supreme Court and of the proceedings before the Magistrate.

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Judgment.

Rich A.C.J.

Judgment.

Rich A.C.J.

This is an appeal by special leave from an order discharging an order nisi to review. The relevant facts of the case are that purporting to act under regulation 37 of the Egg and Egg Pulp Marketing Board Regulations 1937 made in pursuance of Sec. 43 of the Marketing of Primary Products Act 1935 (Victoria) the respondent gave a notice to the appellant dated the 2nd September 1940 requiring him to furnish to the respondent at the office of the Board a return in or to the effect of Form 5 of the Schedule to the Regulations "setting out the number of eggs produced by your fowls during the period from the 1st day of July 1938 to the 30th September 1939, the manner in which and the name and address of the person or persons to whom such eggs were disposed of." The appellant did not comply with this notice whereupon an information was laid against him. Upon the hearing of the information the Police Magistrate convicted and fined the appellant. The appellant then obtained an order nisi to review on the ground that the notice in question was not authorised by the regulation and that it was no offence for the appellant to omit to

comply with the notice. This order nisi was discharged by O'Bryan J. The Question for our determination is whether the notice in question comes within the terms of the regulation. The regulation so far as material reads :- "Any officer, servant, or employee of the Board
" duly authorized by the Board in that behalf may from time to time,
" and at any time by notice in writing order any producer, who owns or
" controls, or has at any time during the period of twelve months
" immediately prece~~ding~~^{than} such notice owned or controlled more/25 fowls,
" or upon whose premises there are, or have been at any time during such
" prece~~ding~~ period as aforesaid, more than 25 fowls, to furnish to him
" a return in or to the effect of Form 5 of the Schedule, setting out
" the number of eggs produced by such fowls during such period or
" periods as may be specified in such notice, the manner in which, and
" the names and addresses of the person or persons to whom such eggs
" were disposed of."

The obligation imposed by the regulation in question upon a producer is that imposed upon producers who at the date of the notice own or control or upon whose premises there are more than 25 fowls and those who at any time during a period of 12 months immediately preceding such notice have owned or controled¹ or upon whose premises there have been at any time during such period more than 25 fowls. The regulation in effect imposes an obligation upon two classes--those who have at the date of the notice or had at some time during the 12 months immediately preceding such notice more than 25 fowls. The regulation does not, in my opinion, speak of ~~two~~ two periods but only of one period or interval of time defined by two termini--The date of the notice and "at any time during the period of 12 months immediately preceding the notice ." Within that interval the officer giving the notice may require the return to be furnished. The scope, sphere of action or compass of the notice is confined within the period or interval to which I have referred. This limitation is created or implied by the use of the words "such fowls" which relate back to the

fowls which the producer notified had at the time of the notice or had at some time during a period of 12 months immediately preceeding the notice. The natural meaning of the phrase " your fowls" in the notice given includes fowls which the producer notified now owns or at the time of the production of the eggs inquired after did own. The regulation, however, limits the officer of the Board to inquiring after "such fowls" and at best for the respondent "such" ~~xxxx~~ means fowls at present owned and fowls which within 12 months immediately preceeding the notice have been owned. The notice, is, therefore, too extensive on this view and is bad. The form to reg. 37 does not affect the interpretation to be given to the regulation. The period or periods in the form refer to the time chosen by the officer which must be confined to the period or interval specified in the regulation. If the regulation were construed to mean any period or periods unlimited in time it would be uncertain, capricious and oppressive. If for example a producer had 26 fowls at some time in the year 1938 he would

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be required by reading of the regulation to furnish in 1941 a return of the eggs produced by such fowls between the 1st of January 1938 and 31st of December 1940. Upon the construction which I have given to the regulation the notice in question is obviously not authorized by it.

In my opinion the order discharging the order nisi should be set aside ⁱⁿ and ^{the} lieu thereof an order made that order nisi to review ~~XXXXXX~~ be made absolute, the conviction of the appellant set aside and that the respondent pay to the appellant the costs of this appeal and of the two orders in the Court below.

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JUDGMENT.

STARKE J.

An Egg and Egg Pulp Marketing Board was constituted and appointed under the Marketing and Primary Products Act 1935. By force of this Act, a product (Sec.4) declared a commodity under the Act is vested in and becomes the absolute property of the Board and the rights and interests of every person in the commodity are converted into a claim for payment in accordance with the Act (Sec.19). Eggs and egg pulp have been proclaimed products and commodities under the Act. In 1937 the Governor in Council made regulations pursuant to Sec.43 of the Act and upon the proper interpretation of Clause 37 of those regulations depends this appeal.

The material words of this clause are these:-

Any officer of the Board may by notice in writing order any producer who

1. owns or controls

2. or has at any time during the period of twelve months immediately preceding such notice owned or controlled more than twenty-five fowls or upon whose premises

3. there are

4. or have been at any time during such preceding period as aforesaid more than twenty-five fowls to furnish him a return in the form of the Schedule setting out the number of eggs produced by such fowls during such period as may be specified in such notice.

The words "such fowls" refer to fowls of the kind or class already mentioned and might be rendered by the words "the aforesaid fowls". The return must therefore be of eggs

produced by those fowls and none other. But so far the period in respect of which the return of eggs produced by those fowls has not been specified. That period is specified by the succeeding words of the regulation "during such period or periods as may be specified in such notice".

In the present case, the appellant was required to furnish a return "setting out the number of eggs produced by your fowls during the period from the 1st. July 1938 to the 30th. September 1939". The words "your fowls" in this notice may mean the fowls owned or controlled by the appellant at the date of this notice, but having regard to the purpose of the notice, the more probable construction is that it includes all the fowls of the class or kind mentioned in the regulation and indicated therein by the words "such fowls".

On either construction, the notice complies with the regulation. It requires a return of eggs produced by fowls within the description covered by the regulation and specifies the period in precise accordance with the terms of the regulation. The notice is not open to objection on the ground that it relates to a period before the passing of the Act or the regulation.

But this construction of the regulation was said to be so unreasonable that it must be wrong or the regulation bad. Any construction of the regulation will, I should think, lead to some practical difficulties. The golden rule of construction and the one most likely to avoid difficulties is to give English words and sentences in Acts and regulations their plain ordinary and natural signification and to leave their amendment if necessary to the proper authorities. The suggestion that the regulation itself might be ultra vires on the ground of unreasonableness is more fanciful than real, for the regulation was made by the Governor in Council and was not disallowed by Parliament as it might have been under the Act

Sec.43 Subsecs. 4 & 5.

given
In my opinion, the notice/to the appellant was a
good notice and the decision of the Supreme Court to that
effect should be affirmed and this appeal dismissed.

Judgment

Williams J.

The facts are stated in the judgment of Rich A.C.J. and show that the short point to be decided on this appeal is whether the notice of the 2nd September 1940 was authorised by regulation No 37(1) of the Egg and Pulp Marketing Board regulations made by the Governor in Council in August 1937 pursuant to the powers conferred by sec.43 of the Primary Products Act 1935. The material part of the regulation is set out in His Honour's judgment and I need not repeat it. In my opinion it divides persons liable to be served with a notice into two classes, (1) producers who own or control more than 25 fowls at the date of the service of the notice, or who have had at any time during a period of 12 months immediately preceding such date done so; and, (2) producers on whose premises there are on this date or on whose premises there have been at any time during this period more than 25 fowls.

The return is to set out the number of eggs produced by "such fowls". These words mean according to their ordinary grammatical construction in the case of class (1) the fowls which the producer owns or controls at the date of the service of the notice or has owned or controlled at any time within 12 months prior thereto; and in class (2) the fowls on the premises of the producer at this date or at any time within this period.

The return is to be in or to the effect of Form 5 in the Schedule and for such period or periods as may be specified in the

notice.

The point at issue is whether the notice must be limited to requiring a return in respect of a period or periods not more than 12 months prior to the service thereof, or whether it can be given for any period after the date of the commencement of the regulation, so that, for instance, a notice could be given to day requiring a return for the period of the last three months in 1937.

It is clear that no producer can be served^a with the notice after 12 months have expired since he owned or controlled or had on his premises more than 25 fowls and it seems to me that the reference to "such fowls" shows this period was meant to be the effective period for all the purposes of the regulation.

Mr Ham contended that the words "such fowls" read in the context of the whole regulation including the form meant all the fowls owned or controlled by the producer or on his premises during any period or periods specified in the notice however remote. The schedule is part of the regulations and the forms can be looked at to throw light on their construction: *Eldorado Ice Cream Co. Ltd v. Clark* 1928 1 K.B. 715; Halsbury 2nd ed. vol 31 p.466. But Form 5 does not appear to throw any light on the problem in the present case. It contains nothing to suggest the critical words "such fowls" should not receive their ordinary grammatical meaning.

It would be possible for such fowls to have been owned or controlled or to have been on the premises prior to the period of 12 months preceding the date of the service of the notice, and, during such period, they would have mixed with other fowls and the eggs have become intermingled. Unless the period that a return may be required is limited it would be impossible for any person to arrange his fowl yards so that he could comply with the notice unless he kept every ~~fowl~~ hen in a separate coop and a complete record of every egg she laid. The conclusion is that, if the regulation is to be given a ^{retrospect} natural construction, the only returns that can be required must relate to the eggs "such fowls" produce during the limited period.

The appeal should be allowed.