Privy Council Appeal No. 20 *of* 1927.

The Metropolitan Meat Industry Board - - - - *Appellants*

v.

Edward Patrick Michael Sheedy and others - - - - *Respondents*

FROM

THE SUPREME COURT OF NEW SOUTH WALES.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL DELIVERED THE 5TH JULY, 1927.

Present at the Hearing:

THE LORD CHANCELLOR.
VISCOUNT HALDANE.
LORD BLANESBURGH.
LORD DARLING.

[*Delivered by* VISCOUNT HALDANE.]

The only question before their Lordships is whether a portion of a debt of £1,554 14*s.* 6*d.*, due to the appellant Board from a company in liquidation named J. Carpenter Hales & Co., Ltd., is a debt due to the Crown. If it is, the entire debt may have priority over the debts due to all other unsecured creditors of this company, but if it is not a debt due to the Crown no question of priority arises. There was another question as to whether the appellant Board as landlord is entitled in priority over other unsecured creditors to money due for rent, but this further question is not raised on this appeal. The first respondent is the liquidator of the company, and the other respondents have been appointed by order in the liquidation proceedings to represent all unsecured creditors of the company other than the appellant Board.

Their Lordships have arrived at the same conclusion as Mr. Justice Long Innes, from whose decision this appeal is brought, and who was the Judge of the Supreme Court of New South Wales in its Equitable Jurisdiction. They think that the debt cannot be recognised as a debt due to the Crown.

The whole of the amount due represented money owing to the appellant Board for telephone services and for sanitary and inspection fees. The real question is whether this amount is owing to the Crown, for as to the debt itself there is no doubt as to its validity. The appellant Board contends that if the debt is due to the Crown it is entitled to priority under the law of New South Wales relating to companies in liquidation. As the learned Judge who heard the case decided that the debt was not due to the Crown it was not necessary for him to go into this question, and he did not decide it.

The appellant Board was constituted under the Meat Industry Act of New South Wales, 1915. This Act provides for the maintenance and control of abattoirs and slaughter-houses, cattle sale yards, and meat markets in the County of Cumberland in which the City of Sydney is situated, and so extends to a part of the State around that city. The Act vests certain properties in the appellant Board, and provides for the regulation of the slaughter of cattle and for other ancillary purposes. Before 1915 the business of slaughtering animals for food in the State had been in the main carried on by private enterprise, subject to the control of a number of local authorities. The Act of 1915 altered, and in a large measure superseded, two statutes of 1902. One of them, No. 37, related to the area of the City of Sydney and three miles round it. The other, No. 36, related in the main to all parts of the State of New South Wales not being within the City of Sydney. Under these statutes the slaughtering of cattle, the supervision of abattoirs, the prevention of nuisances, and other cognate matters were provided for. The powers conferred by the two statutes were to be put into force in places outside Sydney by the Council of the Municipality where there was a municipality, and by the senior police officer of the district in other places. The statute No. 36 provided by Section 4 that the Council of the City of Sydney might appoint inspectors of slaughter-houses and of cattle intended for slaughter. Elsewhere within the State such inspectors were to be appointed by the municipalities or by the Government, as the case might be. Under both the Act relating to Sydney and that relating to the rest of the State the existing Board of Health constituted by the Public Health Act, 1902, was to have a power of supervision and inspection, and was to make regulations and to appoint its own inspectors.

So far as the City of Sydney and the County of Cumberland were concerned, the Meat Industry Act, 1915, almost completely superseded this system. A new Board, called the Metropolitan Meat Industry Board, was established and incorporated. On its recommendation inspectors and other officers were to be appointed by the Governor of the State for the administration of the Act. This Board was to have power to hold and sell or purchase land and to adapt buildings, and to manage and maintain abattoirs and sale yards, and to

deal, by purchase or sale, in cattle or meat. It was to regulate the slaughter and sale of cattle. By-laws were to be made by it and penalties were imposed for their breach. Many of the powers of the Municipal Council of Sydney relating to these matters were transferred to this new Board. Its powers were more extensive than those formerly exercised by the Board of Health.

The question in the present case is whether the debt is one due to the Crown so that it falls within the prerogative right of the Crown to priority of payment as against the general creditors of the debtor. If it does so this can only be on the footing that the prerogative of the Sovereign extends to a body such as the appellant Board. It is thus necessary to consider somewhat closely the scope of the Act of 1915, for this Act keeps alive, by Section 4, the powers already vested in the Board of Health as at the date of the passing of the new Act, and also, instead of making expenses payable out of money to be provided by the Legislature, directs the levy of tolls and fees, to be levied by the new Board, and their payment into a fund out of which the expenses of carrying this Act into effect are to be met. In dealing with the question of liability to statutory poor law rate, the House of Lords, in *Jones* v. *Mersey Docks* (11 H.L.C. 443), laid down the principle of exemption in virtue of the prerogative in words which are important in this case because of the analogy they present to the principle involved here. Lord Cranworth, at p. 508, says that when the Crown is not named in a taxing statute imposing a rate it is not bound by it, and that it follows that lands or houses occupied by the Crown, or by servants of the Crown, for purposes of the Crown, are not liable to the rate. There has been confusion, he adds, between property occupied for public purposes and property occupied by servants of the Crown. This principle, he goes on, exempts from rates, not only royal palaces, but also the offices of the Secretaries of State, the Horse Guards, the Post Office, and many similar buildings. And on the same ground police courts, county courts, and even county buildings occupied as lodgings (for the Judges) have been held exempt. But these decisions have all gone on the ground that these might all be treated as buildings occupied by servants of the Crown, and for the Crown, extending in some respects the shield of the Crown to what might more fully be described as the public government of the country. In *Coomber* v. *The Justices of the County of Berks* (9 A.C. 61) the House of Lords reaffirmed the principle where the justices of the county had, under statutory powers, erected assize courts, with the usual rooms and offices, and a county police station, with the usual accommodation for constables living there and for prisoners, and the buildings formed one block and were used for the administration of justice and for police purposes, and also for holding county and committee meetings, and various other occasional purposes, from which, however, no rent or profit was derived, that no income tax was payable. The administration

of justice, including police powers, was treated as belonging to the Crown. The language used by Lord Cairns as Lord Chancellor in moving the judgment of the House in the earlier case of *Greig* v. *University of Edinburgh* (L.R. 1 H.L. Sc. 350) was cited with approval :—

> "The Crown not being named in the English or Scotch statutes on the subject of assessment, and not being bound by Statute when not expressly named, any property which is in the occupation of the Crown or of persons using it exclusively in and for the service of the Crown is not rateable to the relief of the poor."

In delivering his opinion in *Coomber* v. *The Justices of Berks*, Lord Blackburn indicated that if the question had not been covered by authority, there would, in his view, have been considerable force in the argument that as the County might be occupying property in order to fulfil a duty to the Crown which the County was required to fulfil at its own expense, it was not occupying it for the Government or in its service. But he thought that this question was in such instances settled by a stream of authorities which should not be disturbed. It will be observed that the ground of the decision was simply the principle that if the Sovereign is not named in the statute it does not apply to the Crown or to the servants of the Crown acting in its service. The opinion of Lord Watson makes this clear.

But as the exemption was thus attributed to the quality of the prerogative, it is clear that each case had to be scrutinised in order to ascertain whether it really came within the scope of the principle so laid down. In *Fox* v. *The Government of Newfoundland* (1898, A.C. 667) such a question was brought before the Judicial Committee. It was held that balances in the books of a bank to the credit of the various local boards administering education in the Colony were not debts to which the priority applied that had been given to debts due to the Crown or the Government as revenues of the Colony. The reason was that the various Boards of Education were not mere agents of the Government for the distribution of money entrusted to them, but were to have, within the limits of general educational purposes, uncontrolled discretionary power in expending it. The service, in other words, was not treated as being the service of the Sovereign exclusively within the meaning of the principle, but their own service. *Gilbert* v. *The Trinity House* (17 Q.B.D. 795) further illustrates this aspect of the question.

In the statute before their Lordships they think it not immaterial to observe that under the previous legislation of 1902 the local authorities entrusted with the powers which the Act of 1915 readjusts were certainly not constituted servants of the Crown under the then existing Acts. Their Lordships agree with the view taken by the learned Judge in the Court below that no more are the appellant Board constituted under the Act of 1915 servants of the Crown to such an extent as to bring them within the principle of the prerogative. They are a body with discretionary powers of their own. Even if a Minister of the Crown has power to interfere

with them, there is nothing in the statute which makes the acts of administration his as distinguished from theirs. That they were incorporated does not matter. It is also true that the Governor appoints their members and can veto certain of their actions. But these provisions, even when taken together, do not outweigh the fact that the Act of 1915 confers on the appellant Board wide powers which are given to it to be exercised at its own discretion and without consulting the direct representatives of the Crown. Such are the powers of acquiring land, constructing abattoirs and works, selling cattle and meat, either on its own behalf or on behalf of other persons, and leasing its property. Nor does the Board pay its receipts into the general revenue of the State, and the charges it levies go into its own fund. Under these circumstances their Lordships think that it ought not to be held that the appellant Board are acting mainly, if at all, as servants of the Crown acting in its service.

For these reasons their Lordships will humbly advise His Majesty that this appeal should be dismissed with costs.

In the Privy Council.

THE METROPOLITAN MEAT INDUSTRY BOARD

v.

EDWARD PATRICK MICHAEL SHEEDY AND OTHERS.

DELIVERED BY VISCOUNT HALDANE.

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