

Privy Council Appeal No. 63 of 1913.

William John Miles - - - - - *Appellant,*

v.

The Sydney Meat Preserving Company,
Limited, and others - - - - - *Respondents.*

FROM

THE HIGH COURT OF AUSTRALIA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 16TH DECEMBER 1913.

Present at the Hearing.

THE LORD CHANCELLOR.	LORD PARKER OF WADDINGTON.
LORD MOULTON.	LORD SUMNER.

[*Delivered by* LORD PARKER OF WADDINGTON.]

The Defendant Company was incorporated by private Act in the year 1871, with the object of carrying on the business of preparing and preserving meat and vegetables of all kinds in Australia and disposing of and exporting the products. The Act clearly contemplates that this business will be carried on for the purpose of making profits to be divided among the shareholders. The Company commenced business shortly after its incorporation, but its operations have been confined to the meat trade. It acquires its raw material, consisting principally of sheep, in New South Wales, but it markets its finished goods in Europe, so that its trade is, for the most part, an export trade, the selling prices in which are regulated by world-wide competition. It has necessarily to

enter into many contracts for future delivery at prices so regulated, and its chance of making a profit depends (1) on obtaining a regular supply of raw material in New South Wales, and (2) on the prices at which such raw material can be obtained.

The graziers in New South Wales send in their sheep to be sold in the market at Homebush, near Sydney, which is held about twice a week. The number of sheep for sale on a market day varies greatly. There is at times a great shortage, and prices are consequently forced up. At other times the market is glutted, and prices are unduly depreciated. The graziers must sell for what they can get, for otherwise their sheep must either be taken back to the country or held over for another market day, and either of these courses involves considerable expense. This state of things is bad for the graziers and likely to lead them to restrict the supply of sheep. Nor is it of any real advantage to the Company, for though in times of glut it can buy cheap, it is in times of shortage practically forced to buy at prices which destroy any chance of making a profit at all. If it does not buy because prices are too high its works will lie idle and its prospects of fulfilling contracts for future delivery in Europe will be endangered. It would suffer still more if the supply of sheep to the market were in any way restricted.

Finding that under these circumstances the chances of making regular profits in the meat trade were somewhat precarious, the Company, in the year 1878, came to an arrangement with the graziers, under which the latter were to provide and pay to the Company a subsidy, the amount of which was to be determined by a

percentage on the purchase prices of all sheep sold in the market. The object of the Company was to protect itself against loss and, if possible, earn a profit. The object of the graziers was to put the Company in a better position to bid on the market in times of shortage, and to give higher prices when it bought by private contract in times of glut. In this way they would not only command better prices for their sheep but would keep their largest customer from risk of insolvency.

This subsidy was paid to the Company from 1879 to December 1885. It was discontinued during the years 1886, 1887 and the first half of 1888. It was renewed in December 1888 and has been paid ever since. The net result of the Company's trading from June 1873 to December 1909 may be stated as follows:—The subsidy has amounted to 183,409*l.*, of which 115,684*l.* has been carried to profit and loss account and 67,725*l.* to reserve account. The profit and loss account for the whole period shows a net loss of 321*l.* In the period before the subsidy commenced there was a profit amounting to nearly 1,500*l.* In the period during which the subsidy was discontinued there were losses amounting to 18,200*l.* or thereabouts. In other years there has sometimes been a considerable profit in addition to the subsidy, and sometimes a heavy loss notwithstanding the subsidy. The Company has never paid a dividend even in the most prosperous years, it being feared that if they did so the continuance of the subsidy might be jeopardised. The reserve has been employed in extending the Company's business.

The majority of the Company's shareholders are and have always been graziers who derive

an indirect benefit from the Company's operations. There are, however, and apparently always have been, shareholders who are not graziers, and whose interest is that the Company should earn and pay dividends. The Appellant in the present proceedings is one of such last-mentioned shareholders, and his case against the Company and its directors is that the business of the Company is not being carried on with a view to earning dividends for distribution among its shareholders, but with a view to keeping up the price of sheep for the benefit of such members of the Company as are graziers. He asks for a declaration that the Company and its directors are not entitled so to carry on the Company's business and for an injunction on the footing of such declaration.

The first question which their Lordships have to determine is, therefore, a question of fact. Has the business of the Company been carried on, and is it being carried on, not with a view to earning dividends for the shareholders generally but in order to benefit indirectly such of its shareholders as are graziers? Are the interests of the shareholders, as such, being sacrificed for the indirect benefit of such of them as desire to keep up the price of stock?

The Plaintiff relies chiefly on certain circulars and letters sent out by the Company to graziers and stock agents, and certain advertisements published in the local papers. These circulars, letters, and advertisements state, either expressly or by implication, that the primary object of this Company is not to earn profit for division among the shareholders in dividends, but to relieve the fat stock market in times of glut; in other words, to keep up the price of stock.

Further, the directors, in their reports to the

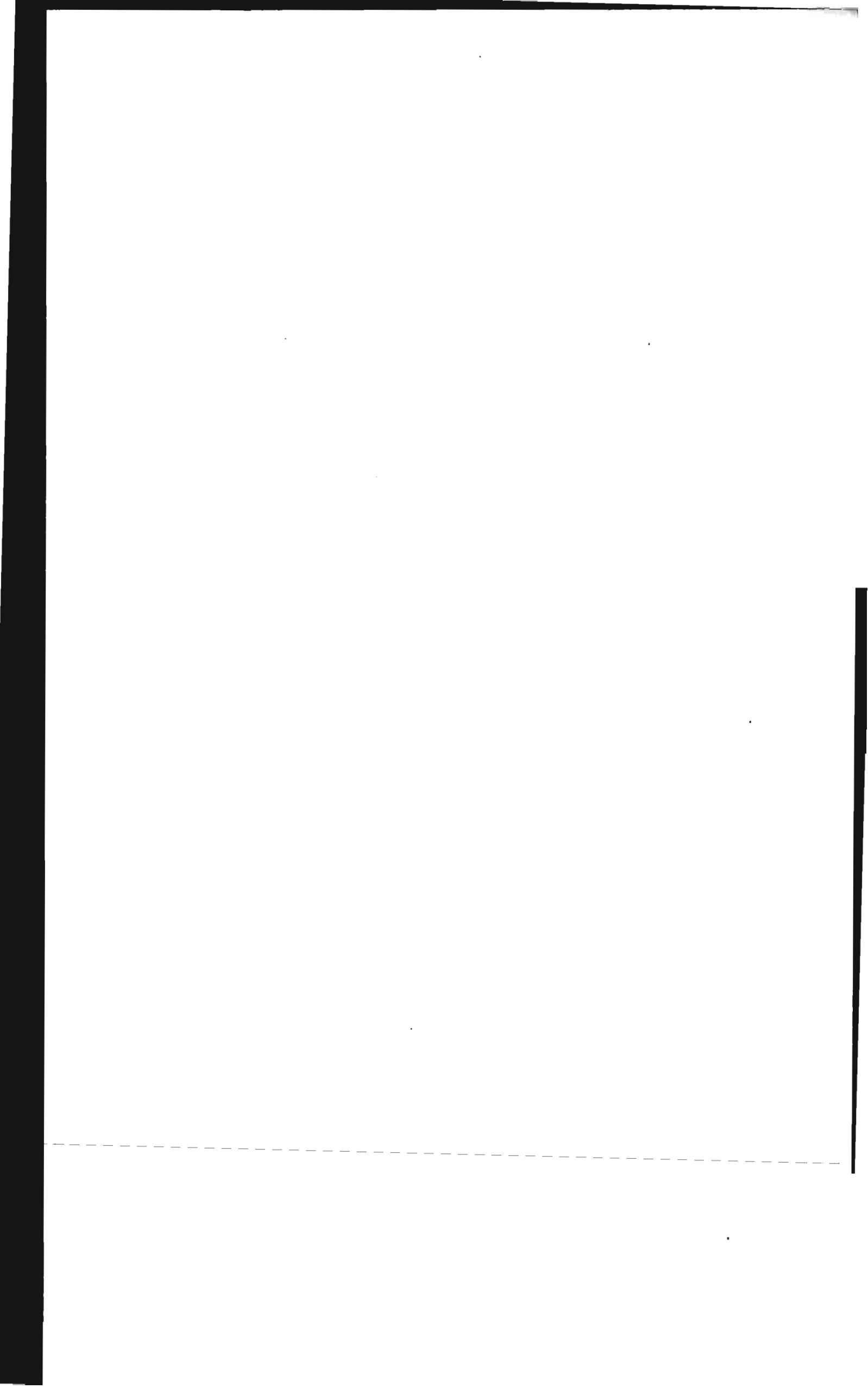
shareholders, frequently refer to the Company's operations as having contributed to the maintenance of the high values of stock or prevented a serious fall in prices.

On the other hand, the Defendants at the trial called Mr. Gee, their general manager, who was accepted by the trial Judge as a straightforward and reliable witness, and whose evidence was to the following effect. He has been manager of the Company for 39 years, and for the whole period has had sole charge of its purchases. He is clear that without the subsidy the Company could not carry on business at a profit at all. In times of shortage he has always bought as cheaply as he could having regard to the bids of his competitors. In times of glut he buys by private contract, arranging the prices so as to secure a reasonable profit to the Company without being unfair to the graziers. He considers that, taking the subsidy into account, this method of buying is far more profitable to the Company than if he abandoned the subsidy and bought on strictly competitive lines.

Their Lordships see no reason to doubt the truth of Mr Gee's evidence, which was accepted by the trial Judge, and if his evidence be accepted the Plaintiffs' case breaks down on the facts. There has been no sacrifice of the interests of the shareholders as such to the interests of such of them as are graziers. The business of the Company has throughout been carried on in the interests of the shareholders generally, and with a view to making profits which, when the Company thinks it prudent to do so, may be divided among them, and not in the interests only of the graziers or with a view only to keep up the price of stock. The statements to which reference has been made in the Company's circulars, letters, and advertisements

and in the directors' reports can be explained by the importance attached to retaining the subsidy and the consequent desire of the directors to emphasise the advantages which the graziers gained by its payment.

Under these circumstances it is unnecessary to consider or decide the questions of law raised and discussed in the Court below. It must not, however, be understood that their Lordships assent to the view that if the Plaintiff had established the case he set out to prove he would not have been entitled to relief. Without expressing an opinion on this or any other question of law, their Lordships are of opinion, and will humbly advise His Majesty, that the Appeal fails on the facts and should be dismissed with costs.



In the Privy Council.

WILLIAM JOHN MILES

v.

THE SYDNEY MEAT PRESERVING
COMPANY, LIMITED, AND OTHERS.

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WADDINGTON.

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