

41/72

SUPREME COURT OF VICTORIA

JORDON v DOCKEARY

McInerney J

7 December 1972

MARKETING OF PRIMARY PRODUCTS – DEFENDANT FOUND IN POSSESSION OF A LARGE QUANTITY OF EGGS – DEFENDANT ASKED TO PRODUCE DELIVERY DOCKETS – DEFENDANT REFUSED – DEFENDANT CHARGED WITH REFUSING TO PRODUCE RECORDS TO THE INSPECTOR RELATING TO THE EGGS – MEANING OF THE WORD "RECORDS" – CHARGE DISMISSED BY MAGISTRATE ON THE GROUND THAT A DELIVERY DOCKET WAS NOT A RECORD – WHETHER MAGISTRATE IN ERROR: *MARKETING OF PRIMARY PRODUCTS ACT 1958, s43.*

HELD: Order nisi absolute. Dismissal set aside. Defendant convicted and fined \$20.

1. A record may take various forms but a docket which sets down or preserves in writing an account of some fact such as the quantity of eggs delivered on a certain date, comes within the meaning of the phrase "record" as used in s43 of the *Marketing of Primary Products Act 1958*. The general idea underlying the word, "record", is that it is a function of the document or thing which is alleged to constitute the record to preserve the memory of or to set down in writing for future reference an account of some facts or event. It preserves knowledge or information relating to some fact or event. It may preserve it in writing or in some other durable form.

2. In those circumstances, taking the common meaning of the word "record", the magistrate was in error in saying that the delivery docket was not a record within the meaning of s43. It followed that since no other matter of justification or excuse for the refusal to produce that docket was advanced in the evidence produced before the magistrate, the magistrate should have recorded a conviction.

McINERNEY J: This is the return of an order nisi granted by Master Collie on the 9 February 1972, to review a decision at the Magistrates' Court at Sunshine, constituted by His Worship, Mr L Griffin, Stipendiary Magistrate, on the 8 December 1971, dismissing an Information dated the 3 November 1971, laid under the provisions of the *Marketing of Primary Products Act 1958, s43*.

The information charged that the defendant did on 7 September 1971 at Sunshine in Victoria, refuse to produce for inspection to one Raven, a person duly authorised by the Egg and Egg Pulp Marketing Board in that behalf, and acting in the execution of the *Marketing of Primary Products Act 1958*, records relating to eggs contrary to the provisions of s43 of the said Act.

The defendant, Dockeary, appeared in person and pleaded not guilty. The evidence adduced showed that on 7 September 1971, Frank Clive Raven, an Inspector of the Egg and Egg Pulp Marketing Board, interviewed Dockeary at the egg depot at 479 Ballarat road, Sunshine, introduced himself as an Egg Board Inspector and showed the defendant his authority, at which the defendant glanced. The witness, Raven, said that he saw a large quantity of eggs in cases in the depot, which he subsequently counted, as totalling 52 cases each of 30 dozen eggs and 260 cases each of 15 dozen eggs.

He said to the defendant, "Is this your egg depot?" The defendant said, "Yes." Raven said, "Are these your eggs?" The defendant said, "No. I act as an agent for Yoannidis of Mount Gambier." Raven said, "When did you receive those eggs?" Dockeary said, "Last night." Raven said, "Have you got any document such as a delivery docket?" Dockeary said, "Yes." Raven said, "I would like to inspect it and get the details." Dockeary said, "No, I won't show you that." Raven then produced a copy of the *Marketing of Primary Products Act* and showed the defendant s43 which, according to him, the defendant read. (The affidavit of Raven refers to it as Regulation 43, but that is plainly a mistake).

According to Raven's affidavit, he then said, "As you have a delivery docket, I suggest you produce it for my inspection," to which Dockeary replied, "Tell the Board to put their questions

in writing and I will show it to my solicitor," to which Raven replied, "I am a person authorised by the Board to inspect any documents relating to eggs. You say you have the delivery docket, but you refuse to produce it. The matter will be reported."

Before me today, the defendant Mr Dockeary indicated that the substance of what he said to Raven was that he invited the Board to put questions in writing as to why they wanted these dockets produced and he would then place that letter before his solicitor and if advised by his solicitor, produce the records. The informant Raven further gave evidence that when asked what documents he had asked Mr Dockeary to produce concerning the eggs on the premises, he said, "I asked him if he had any records such as a delivery docket." He was then asked, "Did he produce that docket for your inspection?" to which Raven replied, "No, he did not. He refused." He was asked, "Did he give you any reasons for not producing that docket?" to which the answer was, "No." "Did he produce any records?" Answer, "No."

According to Raven's affidavit, the defendant Dockeary then made an unsworn statement in which he said, "The only thing asked for was a delivery docket concerning the eggs he had bought from Yoannidis of Mt Gambier but he refused to hand this over to the inspector as he was an agent for Yoannidis and did not have any authority to hand it over. During the course of his unsworn statement Dockeary handed up to the magistrate a green document which Raven did not see, was unable to exhibit to his affidavit. When this document was produced to the magistrate, the defendant said, "That is the type of thing I get. I posted back to Yoannidis at the end of the week with the money I get for the eggs."

Before me Mr Dockeary has produced two sets of documents, one a delivery docket from GN Yoannidis & Sons, number 3396, dated 4 December 1972, and the other a delivery docket, number 6742 from EC & ME Hillyer dated 5 December 1972, to which there is attached an invoice from EC & ME Hillyer covering the same goods dated 5 December 1972.

The magistrate dismissed the information after hearing legal suggestions upon the meaning of the word, "record" in s43. The magistrate, according to the affidavit of Mr Raven, stated his reasons for decision to be as follows: "Only a delivery docket was asked for and this is not a record."

The word "record" is not defined in the *Marketing and Primary Products Act 1958*. Section 42 requires that "any person who sells or offers to sell eggs by retail 'keep' true and correct records in the prescribed form setting out (a) the names of the persons from whom such eggs are produced or received, (b) the quantity of eggs received from each such person and (c) the price paid for such eggs," and it would appear that a form of return or record in terms of that section has been prescribed by the *Egg & Egg Pulp Marketing Board Regulations 1953*, which purport to have been made under the provisions of the *Marketing of Primary Products Egg & Egg Pulp Act 1951*. The form prescribed is Form 6 to those regulations.

Section 42(a) of the Act empowers the Governor-in-Council to make regulations for or in respect of the keeping of certain records. Save as to regulation 47 of the regulations to which I have referred, and regulation 36 of the 1953 Regulation, now Regulation 35, requiring certain records to be kept by producers, the regulation-making power under s42(c) does not appear to have been exercised.

It may be that the magistrate took the view that the "records" referred to in s43 are records of the kind referred to in s42(a) of the Act. Section 43 empowers any person authorised by the Board (a) to enter any premises ... Egg Pulp are believed to be produced and stored, sold or offered for sale and (b) to inspect and take samples of any eggs or egg pulp and see and inspect and take samples of and extracts of any records relating to any eggs or egg pulp. It was, presumably, in the exercise of the power conferred by paragraph (c)(i)(43) that Inspector Raven required the defendant to produce the delivery dockets relating to the consigning of eggs in the depot at the time of Raven's visit.

The prosecution was launched under s43(2) whereby "any person who fails to produce any such record" is guilty of an offence against the Act. The magistrate did not explicitly find that the defendant had failed or refused to produce any record. What he found was that the documents which had been asked for were not records within the meaning of s43.

On the evidence, it would seem that the only finding reasonably open to the magistrate was that the defendant had refused to produce a delivery docket and the question for my decision is whether the delivery docket can be regarded as a "record". Counsel for the informant and Mr Dockeary have both suggested to me meanings to be assigned to the word "record".

A record may take various forms but in my view a docket which sets down or preserves in writing an account of some fact such as the quantity of eggs delivered on a certain date, comes within the meaning of the phrase "record" as used in s43. The general idea underlying the word, "record", is that it is a function of the document or thing which is alleged to constitute the record to preserve the memory of or to set down in writing for future reference an account of some facts or event. It preserves knowledge or information relating to some fact or event. It may preserve it in writing or in some other durable form.

The definition of "Docket" which Mr Dockeary cited from the *Oxford English Dictionary* contains, he says, no reference to the word "record". Assuming that to be, it is not a relevant consideration in the present case in which I am concerned not with the word "docket", but with the word "record". It is apparent from Mr Dockeary's own discussion of the function of a docket, that a docket is a record of the quantity of eggs delivered on a certain day and that the docket is used for the purpose of checking the subsequent invoice whereby the consignee – in this instance the defendant – is debited with the price of the quantity of goods recorded in the docket. The evident function of the delivery docket is to enable both the consignor and the consignee to check the actual quantities delivered as against the quantity despatched or charged for on the other.

In those circumstances, I am of the view, taking the common meaning of the word "record", that the magistrate was in error in saying that the delivery docket was not a record within the meaning of s43. It follows that since no other matter of justification or excuse for the refusal to produce that docket was advanced in the evidence produced before the magistrate, the magistrate should have recorded a conviction.

The order dismissing the information was therefore wrong in law and must be set aside. The formal order will therefore be made absolute on each of the grounds set out in paragraphs 1, 2 and 3 of the order nisi. The order of the Magistrates' Court on the 8 December 1971, dismissing the information dated 3 November 1971, will be set aside. (After further discussion, His Honour convicted the defendant and imposed a fine of \$20).
