

53/84

SUPREME COURT OF VICTORIA

McLAUGHLIN v HALLIDAY

Tadgell J

15, 16 August 1984 — [1985] VicRp 4; [1985] VR 51; 55 LGRA 18

HEALTH – RUBBISH/REFUSE FALLING FROM TRAILER – WHETHER RUBBISH "WASTE MATTER" – WHETHER "OFFENSIVE MATTER": HEALTH ACT 1958, SS3, 40-43, 49, 54.

Section 3 of the *Health Act* 1958 provides (so far as relevant):

" 'Offensive matter' includes dust sludge mud soil ashes rags waste matter filth blood offal dung manure or any other material which is offensive or likely to become offensive."

Section 54 of the *Health Act* 1958 provides (so far as relevant):

"Every person who—

(a) ... ; or

(b) without authority from the council throws casts or discharges or causes or permits or suffers to be thrown cast or discharged any filthy or offensive matter whatever on any street road or footpath or into any drain gutter or water channel or so that the same may by any natural means be carried into any drain gutter or water channel— shall be liable to a penalty of \$500."

Whilst H. was driving to the rubbish tip, rubbish such as cardboard boxes, egg cartons and papers were seen to be falling from his open trailer onto the roadway. He was subsequently charged that he did suffer offensive matter to be cast upon a roadway contrary to s54(b) of the *Health Act* 1958. When the matter came on for hearing, the Magistrate took the view that it had not been proved beyond reasonable doubt that the material in question was, on the description given, "offensive matter" within the meaning of the Act, and he dismissed the information. On order nisi to review—

HELD: Order nisi discharged.

(1) The meaning to be given to the specific and general words in the definition of "Offensive matter" in s3 of the *Health Act* 1958 should be limited to matters or materials not congenial to human health.

(2) In view of the context in which the expression "offensive matter" appears in s54 of the Act, it should be given this limited and restricted meaning.

(3) Accordingly, it was open to the Magistrate to conclude that it had not been proved that the rubbish in question was offensive matter within the meaning of the Act.

TADGELL J: *[After setting out the facts and the relevant provisions of the Health Act 1958, His Honour continued]:* ... [3] The argument before me for the applicant was apparently essentially the one put to the Magistrate and rejected by him. It was, in effect, that the matter which fell from the trailer was rubbish; that it could be inferred, from what the defendant said, that he was taking it to the tip; that it was waste matter and that it was, therefore, by virtue of the definition in s3 of the Act, offensive matter in terms of s54(b).

It is a fair inference, I think, that what the defendant had in his trailer, or more particularly what the informant saw fall from it, was refuse or rubbish and that it was in a sense waste matter. The question, however, is [4] whether it was necessarily "offensive matter" within the meaning of s54(b) of the Act because it was waste matter in the sense that it was refuse or rubbish. Certainly, I should suppose, rubbish can be offensive matter and *vice versa*. Indeed, by s3, it is provided that in the Act "refuse" and "rubbish" respectively include offensive matter. That is to say, refuse or rubbish does not cease to qualify under the Act as such because it is also offensive matter. It is not at all clear, however, that all refuse or rubbish is to be treated for the purposes of the Act as offensive matter just because, being refuse or rubbish, it is waste matter. The non-exclusive definition in s3 of "offensive matter" indicates that it includes a number of designated organic and inorganic materials. Among these is waste matter. All, I think, tend to draw colour from the words that follow them, namely, "or any other material which is offensive or likely to become offensive":

cf. *Stewart v Lizars* [1965] VicRp 30; [1965] VR 210 at p211; (1965) 12 LGRA 76. Moreover, most of these specifically designated materials are immediately identifiable as being offensive in that they are essentially dirty or noxious or noisome or essentially injurious to human health, or inconvenient to human well-being, or as having a combination of these qualities.

The context in which the expression "waste matter" is found, therefore, gives a clue to its scope. Judging by the context, I should be inclined to read "waste matter" not as meaning everything discarded or as including all or any refuse or rubbish. Rather, I should think that it ought to be read as meaning waste matter with one or more of the [5] qualities or characteristics to which I have referred. This, of course, can be no more than a preliminary view because I am ultimately concerned not with a mere definition clause, outside the context of the substantive provisions, but particularly with the expression "offensive matter" in s54(b). It was submitted for the applicant that abandoned cardboard and paper rubbish can be offensive as much to the eye and to one's general aesthetic sensibilities as to other human senses; and that, as waste matter, it may well be and ought to be regarded as offensive matter in terms of s54(b). Counsel for the applicant also relied on the general purposes to which Part IV of the Act (in which s54(b) appears) is evidently devoted including, it was said, the control of rubbish generally with a view to preventing the untidiness and inconvenience it can generate. The resolution of the point exposed is not straight-forward but it comes down, in the end, to deciding whether one gives a wide or a limited meaning to the word "offensive" and thus to "offensive matter".

The expressions "offensive" and "inoffensive" are used quite extensively in Parts III and IV of the Act and they are used adjectivally and substantively: see sections 40, 41, 42, 43, 49 and 54. There is in the Act no exclusive definition of "offensive" but s3 again indicates that it includes "noxious". Subject to that, it would appear that the words "offensive" and "inoffensive" are to bear meanings as wide as their context will admit. "Offensive" can, of course, mean giving or of a nature to give offence, displeasing, annoying or insulting. It sometimes has that [6] meaning when applied to offensive behaviour. The context of the expression "offensive matter" in s54(b) and its legislative history suggest, however, the more limited meaning of noxious, hurtful, injurious, nauseous, repulsive, or (perhaps) inconvenient. It is not wise to attempt an exhaustive definition when the legislature has not done so.

A perusal of Parts III and IV of the Act indicates, I think, a distinction between mere refuse and rubbish on the one hand and offensive matter on the other. Sections 40 to 43 inclusive in particular frequently use in relation to a physical state or condition the expression, "dangerous to health or offensive." Whatever the limits of the word "offensive" in Parts III and IV of the Act, one does derive from its context, wherever it is used in those Parts, a flavour connected with human health or an indication of a state of affairs not congenial to human health. This is particularly so, I think, in the context of s54. It is a provision with a long history extending back to s36 of the *Public Health Act* 1889 (Act 1044) and has always dealt in part with the removal of receptacles for night-soil, as the present paragraph (a) does. What is now s54(b) seems to have derived in Victoria from s5 (viii) of the *Police Offences Statute* 1865, which created the offence of "allowing any night-soil or other offensive matter to be spilt or otherwise cast into or upon any road, street, footway or public place". It was held by Barry J in this court in *Roberts v Edwards* 5 AJR 70 as long ago as 1874 that "offensive matter" in that provision, the forerunner of the present s54, was to be read *ejusdem generis* with night-soil. There was then, however, no statutory definition of [7] "offensive matter". The present definition appears to have been first enacted by the *Health Act* 1919, by which time the provision that used to be s5(viii) of the *Police Offences Statute* 1865 had long since been transferred into the *Health Act*.

An examination of the history of cognate legislation in this State relating to the prohibition against casting rubbish and offensive matter into a street, road or public place show, I think, that a distinction traditionally existed between rubbish (in the form of what I might call litter) and offensive matter. Offences relating to litter originated in s5(i) of the *Police Offences Statute* 1865, in which there was an obvious distinction between rubbish and "offensive matter" as referred to in s5(viii) of that Act. An offence relating to casting litter remained in the succeeding *Police Offences Acts* until the 1958 Act (see s5(1)(a)) following which it was transferred into the *Litter Act* 1964, where it remains. When the offence relating to casting offensive matter was transferred out of the Police Offences legislation into the Health legislation in 1889 there was no intention, in my opinion, to widen the meaning of "offensive matter" to encompass all rubbish. I consider that

this has remained so since 1919, notwithstanding the enactment in the *Health Act* of that year of the non-exclusive definition of "offensive matter" which subsists in the present *Health Act*. I do not say that paper and cardboard rubbish can never be offensive matter within the meaning of the *Health Act*. I do conclude, however, that material described, as in the present case, simply as cardboard boxes, egg cartons [8] and papers need not be characterised as offensive matter. According to the affidavit sworn on behalf of the applicant the Stipendiary Magistrate is said to have stated in the course of argument: "To be offensive it must include blood, dust, ashes, mud and filth. There are none of these items present". If that correctly represents what he said, I do not think it is right. Nevertheless, the Stipendiary Magistrate was well entitled on the evidence to conclude that the applicant had not proved beyond reasonable doubt that the material in question was, on the description given, offensive matter within the meaning of the Act. The order nisi will be discharged.

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