

## NOTES ON LEGISLATION AND LAW CASES.

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## QUEEN'S BENCH DIVISION.

(Nov. 6th, 1897.)

Before Mr. JUSTICE WRIGHT AND Mr. JUSTICE KENNEDY.

BAKER v. WILLIAMS.

*Dairies and Cowsheds Order, 1885. Cubic Space—Validity of Bye-Law.*

This was a special case stated by Magistrates for the Borough of Southport, raising the question as to the validity of a bye-law or regulation made by the Mayor and Corporation of Southport, providing that in cowsheds in the Borough there must be 800 cubic feet of free air-space for each animal. The appellant, a dairyman and cow-keeper, had been convicted for contravening the regulation, which purported to be made under the Contagious Diseases (Animals) Act, 1878, and the Dairies, Cowsheds, and Milk Shops Order of 1885, and was dated April 8th, 1890. It was contended—(1) that the regulation in question was one that could not be made by the Mayor, Aldermen, and Burgesses as the local authority under the Order of 1885; (2) that the word "ventilation" in the 13th section of such Order did not authorise any regulation with regard to the quantity of air space (3) that the provisions of section 34 of the Contagious Diseases (Animals) Act, 1878, did not, nor did section 9 of the Act of 1886, or any other provision of either Act authorise the making of any Order of the Privy Council regulating air space or free air space; and that, therefore, in so far, if at all, as the Dairies, Cowsheds, and Milk Shops Order of 1885 imposed any restrictions as to air space, or purported to authorise the making of any regulations by the local authority as to air space, such Order was invalid.

Mr. MOULTON, Q.C., for the appellants, contended that the power given to make regulations with regard to ventilation of cowsheds did not include that of making regulations as to the amount of air space. Ventilation and air space were entirely distinct things. Cattle in a cattle truck on a railway have plenty of ventilation, though they were packed as tight as they could stand. The Order in Council was ultra vires and the rules were nullities. He cited the "*Institute of Patent Agents v. Lockwood* (1894) (H. L.)."

Mr. MACMORRAN, Q.C., for the respondents, contended that the Order in Council included, and rightly included, provisions for air space as well as ventilation. Therefore, the Borough authority was entitled to make regulations in respect thereof. He cited "*Ex parte Kingston*" (18 L.R., 1r., 509); "*Ex parte Foreman*" (18 Q.B.D., 393); "*Reed v. Parvell*" (5 Q.B.D., 186).

The Court upheld the validity of the bye-law.

Mr. JUSTICE WRIGHT said that by section 34 of the Contagious Diseases (Animals) Act, 1878, the Privy Council were empowered to make Orders subject to the provisions of the Act for the lighting, ventilating, cleansing, and water supply of cowsheds and dairies, and for authorizing a local authority to make regulations for the purposes

aforesaid. By section 58 such an Order was to have the effect of an Act of Parliament. In 1885 the Privy Council made an Order under the Act. By section 7 of that Order it was provided that it should not be lawful for a cowkeeper to begin to occupy a dairy or cowshed unless he first made provision to the reasonable satisfaction of the local authority "for the lighting and the ventilation, including air space and the cleansing," &c., of the same. By section 8 it was provided that it should not be lawful for a cowkeeper to occupy any cowshed, whether old or new, "as long as the lighting and the ventilation, including air space and the cleansing," &c., were not such as were proper. By section 13 (b) a local authority had power granted to make rules for "regulating the lighting, ventilating, cleansing, drainage, and water supply of dairies and cowsheds." The question was, Did those words give the power to the local authority to make regulations for air space as well as ventilation? It was rather strange that air space should be included in section 7 and 8 and not in section 13. The Order under the Act was to have the effect of an Act of Parliament. What was the effect of that? The case cited about the Institute of Patent Agents showed that, in such a case, the order and statute should be read together. Following that principle, there was no inconsistency in interpreting section 13 of the Privy Council Order as giving power to the local authority to make regulations in respect of "ventilation and air space."

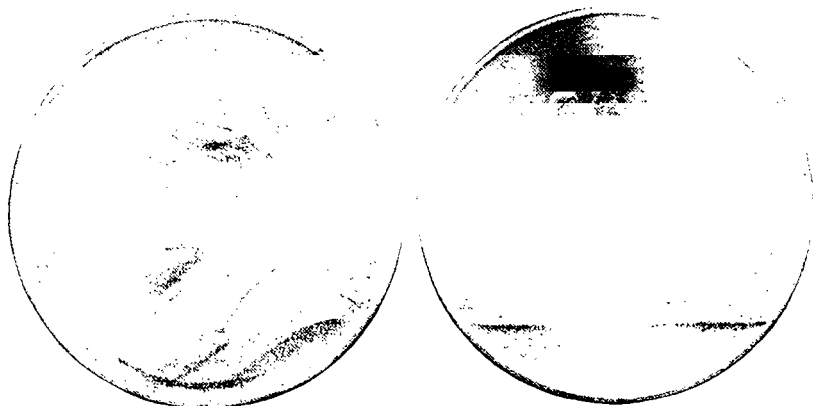
Mr. JUSTICE KENNEDY concurred. This was a case of a conviction for breach of the regulations as to cowsheds. The regulation was said to be *ultra vires*. It seemed to the learned Judge that there was nothing wrong in a Privy Council Order under the Act dealing with air space. In fact, they had provided for air space as well as ventilation for all dairies and cowsheds, both old and new, though it was difficult to see why in sections 7 and 8 ventilation and air space were included and not in section 13. The decision of the magistrates was right.

## GENERAL NOTES.

**THE WEBER-PARKES PRIZE AND MEDALS.**—In December 1894 Dr. Hermann Weber offered to the Royal College of Physicians of London, a sum of £2,500, afterwards increased to £3,000, to found a prize in memory of the late Dr. Edmund Alexander Parkes, and for the promotion of the study of the etiology, the prevention, the pathology, the cure, or the treatment of tuberculosis. The gift was gratefully accepted by the College, and regulations were drawn up and issued in January 1895, providing that the prize, amounting to £150, should be awarded triennially, that a bronze medal should be given to the recipient of the prize, and a similar medal, to be distinguished as the second medal, to the essayist who came next in order of merit.

The dies for the medal, which, as will be seen from the accompanying illustration, is a work of very great artistic merit, were prepared under the direction of the founder of the prize, who is well known as an amateur of this beautiful form of art, by Mr. Frank Bowcher, of Camden Town. The obverse presents an admirable portrait of the founder Dr. Hermann Weber,

in profile, whilst the reverse of the medal represents Asklepios seated, with Demeter, Apollo, and Herakles standing before him. The idea is that the physician (Asklepios) avails himself of the powers of Nature in preventing and



curing pulmonary tuberculosis. He requires for these purposes food supplied by Demeter; light and warmth by Apollo, the Sun and promoter of growth, the destroyer of injurious microbes; and, further, purity of air and muscular force represented by Herakles. The inscription on the reverse reads, "The Prevention and Cure of Tuberculosis." The figures are taken from Greek sculptures and coins of the best period of Greek art. The name of the recipient is engraved on the edge of the medal.

The first award was made on St. Luke's Day, October 18th, 1897; the subject previously announced as that upon which the essays were to be written was "The Means, Prophylactic or Curative, deemed by the Author to have Value in the Control of Tuberculosis, especial regard being had to their application to Human Tuberculosis." The writer of the best essay was Dr. Arthur Ransome, of Bournemouth, who received the prize and medal, while the second medal was awarded to Dr. Peter Paterson of Glasgow. The President in making the award said that the number of essays sent in had been considerable, and that some of them were of great value.

NOTE.—The Institute is indebted to the Editor of the "British Medical Journal" for the loan of the blocks from which the illustrations are printed.