IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

M. No. 355/84

1498

BETWEEN C TINKLER

APPELLANT

A N D MATAMATA COUNTY COUNCIL

RESPONDENT

Hearing : 5th November 1984

Counsel : Mr. O'Brien for appellant
Mr. Sparks for respondent

Judgment : 6 December 1984

JUDGMENT OF BISSON J.

This is an appeal against conviction and sentence in respect of two charges laid against the appellant under sections 51(5) and 56 of the Noxious Plants Act 1978. Each charge related to a separate block of land, although adjoining, in the county of Matamata in which county ragwort and nodding thistles are declared to be noxious plants pursuant to the Noxious Plants Act 1978. The appellant was alleged to have failed to comply with a notice bearing date 15th day of November 1983 requiring him to eradicate ragwort and nodding thistles from his two properties within 21 days of the date of the notice. This notice, which was published in all newspapers circulating in the Matamata county on

17th November 1983, was in the following form :-

"Matamata County District Noxious Plants Authority Noxious Plants Notice

To all occupiers of land in the Matamata County Council

You are Hereby Required within twenty-one (21) days from the 17th day of November 1983 being the date of publication of this notice to eradicate from land occupied by you all Ragwort, Nodding Thistles and Plumeless Thistles.

Dated at Tirau this 15th day of November 1983.

This notice is given pursuant to Section 51(2) of the Noxious Plants Act 1978.

R.L. Iremonger
Noxious Plants Officer

Section 52 of the Noxious Plants Act 1978 gives you fourteen (14) days from the 17th day of November 1983 being the date of publication of this notice to lodge an appeal against the requirements of this notice. Any such appeal must be made in writing to the Matamata District Noxious Plants Authority, P.O. Box 13, Tirau, and must be accompanied by a fee of $10."

In due course, between 13th December 1983 and 21st January 1984, Mr. Iremonger, an Officer duly appointed under the Act, inspected various properties in the county including those of the appellant. He formed the view that the appellant had failed to comply with the notice and the charges to which I have referred were laid against him. Further informations were issued by the respondent against other occupiers and after hearing all cases separately the learned District Court Judge delivered one reserved decision.

In this decision he set out the following findings of facts which were undisputed and applied to all cases :-

> "1. The Matamata County Council is the Matamata County Noxious Plants Authority.
>
> 2. Mr Iremonger is a duly appointed Noxious Plants Inspector.
>
> 3. The notice to eradicate was served by Public Notice on 17 November 1983.
>
> 4. Ragwort, nodding thistle and plumeless thistles are all Class B noxious plants."

So far as this appellant was concerned he did not give or call evidence so the prosecution case stood unchallenged that he was an occupier of the land in question and that ragwort in flower throughout the rear portions of both properties and nodding thistles to a lesser degree had been found by Mr. Iremonger on the 20th January 1984. That this infestation would have existed when the notice expired was not disputed. Mr. Iremonger made a further inspection of these properties and said in evidence :-

> "I re-inspected the property on 16 May. I found all the badly infested areas had been sprayed with a helicopter I think. I didnt't actually see it, but the sharemilker told me that a helicopter had been through the area, as I understand had been the case the year before, but the problem has been with the lack of follow up work. At this stage I saw very good results on the younger plants. The regrowth ones I wouldn't like to comment whether it was a success or not. I don't know who actually carried out this work. I just know that a helicopter was employed. I understand that Mr Tinkler paid for this work on both properties. I know Mr Tinkler. He is in Court today.
>
> (Witness indicates Defendant)

> I have not had a discussion with Mr Tinkler this year regarding eradication of weeds - not over this case. On my first visit he was absent. The sharemilker was at home on the property. On my second visit, of course he is residing on another property in another county so I did not see him."

Mr. O'Brien for the appellant raised two points in support of the appeal against conviction, namely, that the published notice issued by the respondent was defective as it did not comply with section 51 of the Act and that the notice had not been served in accordance with section 53 of the Act.

Section 51(1) is as follows :-

> "(1) Any District Authority may serve or cause their Officers to serve on the occupier of any land a notice in writing requiring the occupier, to the satisfaction of an Officer, to control or eradicate such Class B noxious plants on the land as may be specified in the notice within such time as may be so specified."

Mr. O'Brien argued that the notice was defective in that it was not directed to "the occupier" but to "all occupiers" in general. However, section 51(2) provides :-

> "(2) A notice under subsection (1) of this section may be served on a particular occupier or, if to occupiers in general, by public notice."

Mr. O'Brien contended that section 51(2) does not authorise "in any notice 'occupiers in general' to be generally named." I see no merit in this argument. The

matter of notification to occupiers is in the hands of the respondent who may have occasion to deal with only one or two specific occupiers giving an individual notice to each or with all occupiers. It may well be more expedient for the respondent to give notice to "occupiers in general"by public notice as authorised by section 51(2).

Mr. O'Brien also submitted that the notice was defective in that it did not state, as section 51(1) does, that the eradication is to be "to the satisfaction of an officer". This submission was rejected by the learned District Court Judge in the following way :-

> "The real test, in my view, is not slavish adherence to the words of the Act but rather whether or not the notice would in any way mislead the persons served with it. I do not consider that it does."

I agree that in general when a precise form of notice is not specified in the Act itself or by Regulations under the Act, that any variation from the wording of the section under which notice is required to be given would not necessarily invalidate the notice. What is required of the notice is that the Act is complied with in substance so that the person or persons to whom the notice is addressed are madeaware of what is required to be done. This is particularly necessary when the Act provides penal consequences for non-compliance with the notice.

The words "to the satisfaction of an Officer" are

not surplusage. They are significant. The word "eradicate" is defined in section 4 in relation to Class A noxious plants as meaning "to totally eradicate from New Zealand." There is no definition in section 4 of "eradicate" in relation to Class B noxious plants. The words in section 51(1) "to the satisfaction of an Officer" are therefore a statutory qualification to the meaning of "eradicate" and are an important qualification because under section 51(3) and (4) the Officer may, in stated circumstances, extend the time specified in the notice for compliance for such further period as he thinks fit and may cancel or amend the notice as he thinks appropriate. These are important new powers vested in an Officer which did not exist in respect of an Inspector under the Noxious Weeds Act 1950.

The 1978 Act seeks to introduce a more flexible approach to the problem of noxious weeds than that of the Noxious Weeds Act 1950 which required land to be cleared of noxious weeds and "clear" in relation to any plant meant "to do any act which destroys that plant". The reasons for this change can be gathered from the long title to the Act which reads :-

> "An Act to make better provision for the control of noxious plants, to co-ordinate actions aimed towards such control, and to foster a spirit of co-operation and assistance among persons adversely affected by the spread or growth of noxious plants in achieving such control."

By leaving out of its notice any reference to whose

satisfaction the noxious weeds were to be eradicated, the respondent was failing not only to comply with the wording of the new Act but also to observe the spirit of the new Act, namely, "to foster a spirit of co-operation".

This Court is not in a position to consider if the appellant in fact suffered prejudice or was substantially embarrassed but it may be significant that the appellant apparently did not communicate with Mr. Iremonger to whom the notice should have referred as the officer to whose satisfaction eradication was required. Had it done so, the appellant would then have known at once that the door was open for him to arrange an eradication programme which may have resulted in an extension of time and have averted the prosecution. In the absence of evidence from the appellant this Court must consider the sufficiency of the notice as a matter of principle. In my view the notice did not in a material respect sufficiently inform the appellant of the requirements of the Act. In fact, it called for the absolute eradication of the noxious weeds omitting the statutory qualification. In those circumstances the defect in the notice was sufficiently serious to invalidate the notice. That being the case, such a notice cannot serve as the foundation for a prosecution.

A further matter raised by Mr. O'Brien against the validity of the lease was that the identification of the land to which the notice applied was not sufficiently specific. He referred to section 53(3) of the Act which reads :-

> "(3) Where a notice relates to land, it shall be a sufficient description of the land if the notice refers to the land by name, by number of section or allotment, by boundaries, or otherwise, as allows no reasonable doubt as to the land to which the notice refers."

In my view, as the notice applied to all occupiers of land in the Matamata County no further description of the land in question was necessary to sufficiently inform occupiers of land in that county that the notice applied to them. I note that no exception was taken to a public notice requiring all lands within its area to be cleared of nodding thistle in Cobden Farm Ltd. v Awatere County (1965) N.Z.L.R. 705 C.A.

Finally, Mr. O'Brien submitted that the appellant had not been served in accordance with section 53 of the Act which in section 53(2) provides :-

> "(2) If the person is unknown or his whereabouts are not known or his last address is not known to the person giving the notice, the notice may be left with some person in actual occupation of any land to which the notice relates, or affixed on some conspicuous place on the land or on some road or street abutting the land, or may be served by public notice. It shall be sufficient if any such notice is addressed to 'the occupier' without specifying a name."

For the sake of completeness I should also deal with this submission.

Section 53 refers to notices generally but in this case section 51(2) specifically provides for a notice to control or eradicate Class B noxious plants, as these were,

to be served, when to occupiers in general by public notice. "Public Notice" is defined in section 4 of the Act as follows :-

> "'Public notice' means a notice published in a newspaper circulating generally in the district or districts of the District Authority or District Authorities or region of a Regional Committee to which the subject-matter of the notice relates; and 'published' and 'publically notified' have corresponding meanings. A public notice setting out the object, purport, or general effect of a document shall in any case be sufficient notice of that document:"

It was not contended that those provisions of section 4 had not been complied with. Accordingly the notice had been duly served in accordance with section 51(2) and section 4 of the Act.

The appeal against conviction is allowed and the sentence quashed in respect of each charge.

Solicitors :

Appellant : Bennetts Morrison & O'Brien, Te Awamutu

Respondent : Clancy Fisher & Co., Putaruru.