

ground of poverty. It is inconceivable to me that the Legislature could have intended that poverty alone should trammel an appeal to this Court, yet not to the Divisional Court, from the same judgment. Motion dismissed with costs to plaintiff in any event.

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REGINA v HUTTON.

[BOYD, C., FERGUSON AND MEREDITH, JJ., 3RD NOVEMBER, 1896.]

Cheese factory frauds—Skim milk—Effect of amendments (55 V. c. 53) to 51 V. c. 32.

Aylesworth, Q.C., for defendant, renewed argument of motion to make absolute a rule nisi to quash a summary conviction of defendant for supplying skimmed milk to a cheese factory. W. H. Blake, for the prosecutor, contra. By section 1 of 51 Vict. c. 32 (Ont.), an Act to provide against frauds in the supplying of milk to cheese or butter manufactories, it is provided that no person shall knowingly and wilfully sell, supply, bring or send to a cheese or butter manufactory to be manufactured, diluted or adulterated, or skimmed milk without distinctly notifying the owner in writing. By section 2 no person shall knowingly and wilfully keep back "strippings" without distinctly notifying, etc. By section 3, knowingly and wilfully selling or sending sour or tainted milk without notification, is prohibited. By section 7, for the purpose of establishing the guilt of any person under the first three sections, it shall be suffi-

cient prima facie evidence to show that such person by himself, his servant or agent, sold, supplied, sent, or brought, to be manufactured, to any cheese or butter manufactory, milk substantially below the standard of that actually drawn from the same cow or cows within the then previous week. By section 1 of 55 Vict. c. 53, the former Act is amended by striking out the words "knowingly and wilfully" from sections 1, 2 and 3; and it is provided that sections 1, 2 and 3 shall not apply where the person charged with the offence proves to the satisfaction of the justice or justices of the peace that "the dilution or adulteration of the milk, or the keeping back of the strippings" was without his knowledge or privity, and contrary to his wish and intention; and that he was not aware of the "dilution, adulteration, or keeping back, as aforesaid, at the time or before so selling, etc., the milk." In this case the offence was the sending of skimmed milk to the factory, and defendant alleged that it was done by his servant without his knowledge. The Court held, however, that the fact of the omission from the amending Act or any reference to "skimmed milk," while it may have been by mistake of the draftsman, must be construed as showing that a man who sends skimmed milk to a factory, even though the skimming has been done without his knowledge or privity, is liable to the penalty provided by the Act. Rule nisi discharged without costs.