[HIGH COURT OF AUSTRALIA.]

HOLLAND AND ANOTHER . . . . . APPELLANTS;
DEFENDANTS,

AND

JONES . . . . . RESPONDENT.
INFORMANT,

ON APPEAL FROM A COURT OF PETTY SESSIONS OF VICTORIA.

H. C. OF A. 1917.

MELBOURNE, *May* 18; *June* 13.

Barton A.C.J., Isaacs and Gavan Duffy JJ.

War Precautions—Prosecution—Consent of Minister for Defence—Proof—Judicial notice—"Official document"—"Official signature"—Abetting in making statements prejudicial to recruiting—Evidence—War Precautions Act 1914-1916 (*No.* 10 *of* 1914—*No.* 3 *of* 1916), *sec.* 6—*War Precautions Regulations* 1915 (*Statutory Rules* 1915, *No.* 130), *regs.* 28 (*b*), 49—*Evidence Act* 1905 (*No.* 4 *of* 1905), *sec.* 4.

Apart from Statute, wherever a fact is so generally known that every ordinary person may be reasonably presumed to be aware of it, a Court judicially notices it, either *simpliciter* if it is at once satisfied of the fact without more, or after such information or investigation as it considers reliable and necessary in order to eliminate any reasonable doubt. A Court will, therefore, judicially notice who are the Ministers of the Crown and a signature purporting to be that of a Minister of the Crown and to verify an official document.

On a summary prosecution instituted by an officer of the Defence Department for an offence against the *War Precautions Act* 1914-1916, which by sec. 6 (3A) is required to be authorized in writing by the Attorney-General or the Minister for Defence, in order to prove the authority counsel for the informant tendered in evidence the original information in the margin of which were written the words "I consent to this prosecution" and a signature of the name of the person who in fact was the Minister for Defence.

Held, that the document taken as a whole was an "official document" and that the signature was an "official signature," within the meaning of sec. 4 of the *Evidence Act* 1905, of which the Court was bound to take judicial

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notice, and, therefore, that the authority of the Minister was sufficiently proved.

Leaflets containing statements likely to prejudice the recruiting of His Majesty's Forces were printed by A, and a large number of them were distributed to the public.

Held, that B, who assisted A to print the pamphlets and knew of their distribution and was generally closely connected with A, was properly convicted of the offence of abetting in making such statements created by regs. 28 (*b*) and 49 of the *War Precautions Regulations* 1915 (Statutory Rules 1915, No. 130).

APPEAL from a Court of Petty Sessions of Victoria.

At the Court of Petty Sessions at Melbourne an information was heard whereby William Percival Jones, a police detective attached to the Intelligence Branch of the Commonwealth Defence Department, charged that Frederick A. Holland and Norman C. Anderson did, contrary to the *War Precautions Act* 1914-1916 and the Regulations thereunder, abet in making statements likely to prejudice the recruiting of His Majesty's Forces. In order to prove the consent of the Minister for Defence as required by sec. 6 (3A) of the *War Precautions Act* 1914-1916, counsel for the informant tendered in evidence the original information, upon which there appeared in the margin the written words "I consent to this prosecution," followed by the written signature "G. F. Pearce," which was in fact the name of the Minister for Defence. The statements complained of were made in certain leaflets, and the evidence showed that these leaflets were printed by Anderson and that a large number of them had been distributed to the public. Both the defendants were convicted, and from the conviction they appealed to the High Court by way of order to review, the grounds of appeal being substantially that there was not sufficient or proper evidence of the written consent to the prosecution, and that there was not sufficient or proper evidence that the defendant Holland abetted the making of statements likely to prejudice the recruiting of His Majesty's Forces.

Other material facts are stated in the judgment of *Isaacs* J. hereunder.

Magennis, for the appellants. There is no evidence of the consent in writing of the Minister for Defence. Assuming that judicial

notice is taken of the fact that a certain person is for the time being Minister for Defence, it is only of his "official signature" that the Courts are required to take judicial notice under sec. 4 of the *Evidence Act* 1905. The information is not an "official document" within the meaning of that section. In order that a signature should be official it must purport on the face of the document to be written in his official capacity by the person whose signature it is said to be. See *Williams* v. *Silver Peak Mines Ltd.* (1). The charge against Holland is, in substance, that he distributed the leaflets. But there is no evidence of their distribution by him except among the persons who prepared them, whereas it was necessary to show that he took part in the distribution to the public.

H. I. Cohen, for the respondent. The information is an "official document." If in a document to which the official consent of the Minister for Defence is required a signature of the name of the person who in fact is the Minister for Defence is appended to a consent, that document is an "official document" and the signature is an "official signature." There was sufficient evidence before the Magistrate of the consent of the Minister. He was entitled to say that he knew the signature to be that of the Minister. At common law the Magistrate was entitled to take judicial notice of this signature. [He referred to *Ex parte Major* (2); *Walker* v. *Jenkins* (3); *Phipson on Evidence*, 5th ed., pp. 13, 14.] In order to prove that Holland abetted in the making of the statements it was sufficient to show that he took part in printing the leaflets. He did an act which led ultimately to the making of the statements. The printing is part of making the statements.

Magennis, in reply, referred to *Halsbury's Laws of England*, vol. XIII., p. 497.

Cur. adv. vult.

June 13.

BARTON A.C.J. My brother *Isaacs* will read a judgment in which I concur. My brother *Gavan Duffy*, who is not present, does not deliver a judgment.

(1) 21 C.L.R., 40, at pp. 47, 52. (2) 8 S.R. (N.S.W.), 68.
(3) 1 V.R. (L.), 9.

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ISAACS J. read the following judgment:—Two points are raised in this appeal. On behalf of both appellants—Holland and Anderson—it is said the consent of the Minister for Defence to the prosecution was not proved. As to Holland the further contention is made that there is no evidence that he abetted in "making" the statements contained in the leaflets which were the subject of the prosecution.

The Police Magistrate arrived at his conclusion that the necessary consent was established by reading the document in which it was said to be contained, and by saying "I am satisfied that the signature 'G. F. Pearce' following upon the words 'I consent to this prosecution' appearing on the face of the information is the signature of G. F. Pearce whom I know to be the Minister for Defence and whose signature as such Minister I have seen on many informations which have come before me."

It was urged that the Magistrate's personal knowledge outside the evidence in the case was legally unavailable, and should not be regarded, and that without it there was no evidence to prove the consent; and, next, that as the signature "G. F. Pearce" was not accompanied by any form of words purporting to indicate that the signature was an official signature the *Evidence Act* (No. 4 of 1905), sec. 4, did not apply.

In my opinion the contention is not sustainable. It rests upon a misconception of what is meant by "judicial notice." Apart from the strict rules to which Courts ordinarily adhere when determining controversies between litigants, certain relaxations are recognized and acted on where justice is thereby better served. Dying declarations, declarations against interest, and declarations in the course of duty by persons since deceased, are familiar illustrations. But besides these and similar instances, there are matters of which the Court even apart from Statute may require no evidence at all. This they do by taking what is called "judicial notice" of them. Text-books on evidence make reference to this practice, and give precedents. *Taylor on Evidence*, 10th ed., vol. I., pp. 3-22, enumerates a multitude of instances both at common law and statutory. As to executive and judicial officers, it is there stated (p. 15): "The English doctrine on this subject is difficult of definition."

Nevertheless, the learned author adopts with express acknowledgment the view, and even much of the language, of *Greenleaf* on *Evidence*. At p. 19 of *Taylor* it is stated that "The Courts will, too, judicially recognize the political constitution or frame of their own Government; its essential political agents or public officers sharing in its regular administration; and its essential and regular political operations and actions. Accordingly, all tribunals notice . . . the heads of departments, and the principal officers of State, whether past or present; . . . and, in short" (here quoting from *Shadwell* V.C. in *Taylor* v. *Barclay* (1)), "all 'public matters which affect the government of the country.'" This has even been extended to the recognition by the Government of the independence of foreign peoples: *Foster* v. *Globe Venture Syndicate Ltd.* (2).

The only guiding principle—apart from Statute—as to judicial notice which emerges from the various recorded cases, appears to be that wherever a fact is so generally known that every ordinary person may be reasonably presumed to be aware of it, the Court "notices" it, either *simpliciter* if it is at once satisfied of the fact without more, or after such information or investigation as it considers reliable and necessary in order to eliminate any reasonable doubt.

The basic essential is that the fact is to be of a class that is so generally known as to give rise to the presumption that all persons are aware of it. This excludes from the operation of judicial notice what are not "general" but "particular" facts. As to "particular" facts, even the Judge's own personal knowledge is not to be imported into the case: *Hurpurshad* v. *Sheo Dyal* (3) and *Meethun Bebee* v. *Busheer Khan* (4). To import knowledge of a particular fact in issue would be to import evidence in the strict sense regarding a matter as to which the Court is supposed to have no knowledge whatever of its own.

But if the fact is of such "general" character as to give rise to the presumption mentioned, then a Judge is justified in "noticing" it. He must, however, be fully satisfied of the fact, and must be cautious to see that no reasonable doubt exists. To prevent doubt he may

(1) 2 Sim., 213, at p. 221.
(2) (1900) 1 Ch., 811.
(3) L.R. 3 Ind. App., 259, at p. 286.
(4) 11 Moo. Ind. App., 213, at p. 221.

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seek information in various ways, illustrations of which are found in *Taylor on Evidence*, vol. I., pp. 21-22. His own knowledge may for this purpose, and not as evidence in the real sense, be relied on, as the Magistrate did in the present case. And for this position authority is, if necessary, found in the judgment of *Wills* J. in *R.* v. *Field* (1). It is evident that no exhaustive list can be compiled of things that are open to judicial notice. Illustrations of this truism will occur to everyone. That communication is possible by wireless telegraphy is a recent and conspicuous example. Several instances ancient and modern are to be found in Professor *Thayer's* treatise on *Evidence* (1898), at pp. 305 and 306.

Applying these observations to the present case, it would be mere idle affectation for an Australian Court not to "know"—more particularly in war time—who is the Minister for Defence. He is one of the Ministers of State for the Commonwealth referred to by sec. 64 of the Constitution. His appointment and public duties are matters of universal Australian concern.

In *Mighell* v. *Sultan of Johore* (2) the Court accepted as genuine the signature of an official—not a Minister—but purporting to be on behalf of a Minister. That is an *à fortiori* case, and consequently, if the personality of the Minister is to be judicially noticed, it would seem that a signature purporting to be his and to verify an official document may also be judicially noticed, provided the Court is satisfied from the circumstances it is genuine. The act of consent in such a case as the present is an official act, the doctrine of *R.* v. *Verelst* (3) is sufficient to establish *primâ facie* that the person acting was the proper person to give the consent, and the judicial notice taken of a Minister's signature to an official document completes the chain. No doubt it is open to a party to disprove the genuineness of the signature if he can, and then the Court will not act upon it.

The consent in this case incorporates by necessary reference the whole of the charge that is intended to be made, and this read *in extenso* is plainly an official document, such as is contemplated by sec. 6, sub-sec. 3A, of the *War Precautions Act* 1914-1916. It comes from the possession of the proper official, supposing it to be genuine.

(1) 64 L.J.M.C., 158, at p. 160. (2) (1894) 1 Q.B., 149.
(3) 3 Camp., 432.

The prosecutor is a police detective attached to the Intelligence Branch of the Defence Department. His learned counsel, who was instructed by the Commonwealth Crown Solicitor, produced the consent as that of the Minister. There could, consequently, be no reasonable doubt whatever that the consent is an official document, and that the signature is appended as an official signature.

As to the Act, it is partly an extension and partly a modification of the common law. It extends, or may by force of an order of the Governor-General extend, the number of offices to which the doctrine applies. It also by sec. 4 (*c*) requires notice to be taken of the personality of the official on the mere production of the judicial or official document. But in using the term "official signature" or "official document" the Act does not mean that there must be independent proof of the "official" character of either—a course which would destroy the efficacy of the enactment; nor does it use any words showing that the signature or the document must contain any special words asserting its official character. If the instrument either from its nature or anything contained in it, whether in the body or connected with the signature, appears to be of an official character, and there is nothing to destroy the effect of that appearance, there is sufficient to bring it within sec. 4 (*c*), and that is enough to establish here that G. F. Pearce is holding the office of Minister for Defence.

Then, as the proper conclusion from the document itself is that the signature was appended as an official act, it is to be regarded as an official signature, and sec. 4 (*a*) applies. Whatever might have been the case as to the signature apart from the Act (see *Howell* v. *Wilkins* (1)), it is clear that the Act answers the objection.

The first point therefore fails.

Then as to Holland's second point. The publication was one which was, on the face of it, signed by Holland, and was from its own terms intended for distribution. Holland assisted to print it, was familiar with the fact of its almost complete distribution, and was generally so closely connected with Anderson that there is ample ground for the inference the Magistrate drew that Holland did abet in actually making the statements, even interpreting that

(1) 7 B. & C., 783.

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in the narrowest way as confined to the actual distribution of the pamphlets and assuming the actual distributor is unknown.

In my opinion this ground fails also, and the appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellants, *Loughrey & Douglas.*

Solicitor for the respondent, *Gordon H. Castle,* Crown Solicitor for the Commonwealth.

B. L.

[HIGH COURT OF AUSTRALIA.]

BLACKHAM AND ANOTHER . . . . APPELLANTS; DEFENDANTS,

AND

HAYTHORPE AND ANOTHER . . . RESPONDENTS. PLAINTIFFS,

ON APPEAL FROM THE SUPREME COURT OF SOUTH AUSTRALIA.

H. C. OF A. 1917.

ADELAIDE, *June* 1.

Isaacs, Powers and Rich JJ.

Principal and Agent—Purchase by agent from principal—Non-disclosure of material facts.

The defendants, who were land agents employed by the plaintiff to sell his land to the Crown, during the course of their employment acquired the knowledge that the Crown would in all probability give £5 per acre for the land. Before the agency was terminated one of the defendants purchased the land on his own account for about £2 10s. per acre without disclosing to the plaintiff the fact that there was such a probability and shortly afterwards sold it to the Crown for £5 per acre.