

[HIGH COURT OF AUSTRALIA.]

GRIEVE APPELLANT;
INFORMANT,

AND

LEWIS RESPONDENT.
DEFENDANT,

ON APPEAL FROM A COURT OF PETTY SESSIONS OF
VICTORIA.

War Precautions—Regulations—Proof of regulations—Regulations treated as being in evidence—Construction—Dissuading person from continuing to be engaged in despatch of shipping—Rules Publication Act 1903-1916 (No. 18 of 1903—No. 16 of 1916), sec. 6—War Precautions Act 1914-1916 (No. 10 of 1914—No. 3 of 1916), sec. 6—War Precautions Regulations 1915, reg. 40c (Statutory Rules 1917, Nos. 190 and 210)—Crimes Act 1914 (No. 12 of 1914), sec. 7. H. C. OF A. 1917.

MELBOURNE,

Sept. 18.

Barton,
Isaacs and
Gavan Duffy JJ.

On the hearing before a Police Magistrate of an information for an offence against a statutory regulation made under the authority of the *War Precautions Act*, a printed paper, purporting to be a copy of the statutory rule containing the regulation and to be printed by the Government Printer as required by sec. 6 of the *Rules Publication Act 1903-1916*, was produced and was dealt with by the parties as being part of the material before the Court, but was not formally put in or marked as an exhibit.

Held, that the regulation was properly in evidence.

Regulation 40c of the *War Precautions Regulations 1915* provides that "Any person who, by word, deed, or otherwise—(a) interferes with, impedes, prevents or hinders the discharge, loading, coaling or despatch of shipping, or the performance of any industrial operation connected therewith or incidental thereto, or (b) interferes with or impedes any person or body of persons engaged in, or dissuades, prevents or hinders any person or body of persons from becoming, or continuing to be, engaged in, the discharge, loading, coaling or despatch of shipping, or the performance of any such industrial operation, or

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the production, manufacture, or transport of munitions or warlike material or material for munitions, including foodstuffs, fuel, and base metals and minerals, shall be guilty of an offence."

Held, that the words "any such industrial operation" in clause (b) refer to the "industrial operation" mentioned in clause (a).

Therefore, where an information alleged that the defendant did contrary to the *War Precautions Regulations* 1915 attempt to dissuade a named person from continuing to be engaged in "the performance of an industrial operation connected with the shipping, to wit the carriage of goods to the Melbourne wharves for shipment there,"

Held, that the information disclosed an offence against clause (b) of regulation 40c.

APPEAL from a Court of Petty Sessions of Victoria.

At the Court of Petty Sessions at Melbourne before a Police Magistrate an information was heard whereby John Alexander Grieve charged that Arthur Lewis "did contrary to the *War Precautions Regulations* 1915 made under the *War Precautions Act* 1914-1916 attempt to dissuade a person named George Henry de Morton from continuing to be engaged in the performance of an industrial operation connected with the shipping, to wit the carriage of goods to the Melbourne wharves for shipment there." The Police Magistrate after hearing evidence dismissed the information, stating that he did so on the construction of reg. 40c of the *War Precautions Regulations* 1915.

From that decision the informant now appealed to the High Court by way of order to review on the grounds that the decision of the Magistrate was wrong in law and that upon the evidence the defendant ought to have been convicted.

The material facts and the nature of the arguments are stated in the judgment of *Barton J.* hereunder.

Cussen, for the appellant.

Shelton, for the respondent, referred to *R. v. Governor of Brixton Prison*; *Ex parte Servini* (1).

BARTON J. In this case the informant, John Alexander Grieve, now the appellant, charged that Arthur Lewis, now the respondent,

“did contrary to the *War Precautions Regulations* 1915 made under the *War Precautions Act* 1914-1916 attempt to dissuade a person named George Henry de Morton from continuing to be engaged in the performance of an industrial operation connected with the shipping, to wit the carriage of goods to the Melbourne wharves for shipment there.” Under sec. 6 of the *War Precautions Act* 1914-1916 “(1) any person who contravenes, or fails to comply with, any provision of any regulation or order made in pursuance of this Act shall be guilty of an offence against this Act”; and “(2) an offence against this Act may be prosecuted either summarily or upon indictment, or if the regulations so provide by court-martial, but an offender shall not be liable to be punished more than once in respect of the same offence.” The information when laid had upon it these words: “I consent to this prosecution. R. B. Williams, Commandant, 3rd Military District. 3/9/1917.”—being the necessary consent. By sec. 7 of the *Crimes Act* 1914 it is provided that “any person who attempts to commit any offence against this Act or any other Act, whether passed before or after the commencement of this Act, shall be guilty of an offence and shall be punishable as if the attempted offence had been committed.

The evidence, freed of repetitions, reads thus:—George Henry de Morton said:—“I am a lorry driver employed by Alexander Hanlon & Co., carriers, of Queen’s Bridge Street, South Melbourne. I am a member of the Carters and Drivers Union. I know the defendant. He is organizer of the Carters and Drivers Union. On 24th August” (which is a week after the regulation in question was issued) “I left the warehouse of Yencken & Co., Little Collins Street, Melbourne, with a load of wall-paper, and I proceeded to the South Wharf, Melbourne. The wall-paper was being taken there by me for shipment there upon the steamships *Wyrallah* and *Laranah*. When I was near the wharf the defendant spoke to me. He said: ‘You are not going to deliver that stuff, are you?’ I said: ‘Yes.’ He said: ‘You know the rule of the Union, don’t you? All unions are bound to help one another.’ I said: ‘Oh, if that is so, I will not deliver it.’ I then turned round and took the load back to Yencken’s. Subsequently I did deliver it.” In cross-examination he said:—“Unions help one another. He did not

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H. C. OF A. have to argue very much with me. I cart goods all over the city,
1917. not only to the wharves. I cart them wherever my load is for.
GRIEVE When I was spoken to I was alongside the wharf." To the Bench
v. he said: "I was about the distance from here to Russell Street
LEWIS. from the ships when he spoke to me." In re-examination he said:
Barton J. "When he spoke to me I was right alongside the wharf." That
closed the case for the prosecution, and I suppose it can scarcely
be disputed that if de Morton's evidence is believed it amounted to
proof of dissuading de Morton from the work in which he was then
occupied.

The War Precautions regulation in question is reg. 40c, which consists of two sub-clauses, (a) and (b). It was made on 15th August 1917, and is as follows: "Any person who, by word, deed, or otherwise—(a) interferes with, impedes, prevents or hinders the discharge, loading, coaling or despatch of shipping, or the performance of any industrial operation connected therewith or incidental thereto, or (b) interferes with or impedes any person or body of persons engaged in, or dissuades, prevents or hinders any person or body of persons from becoming, or continuing to be, engaged in, the discharge, loading, coaling or despatch of shipping, or the performance of any such industrial operation, shall be guilty of an offence."

On 22nd August, two days before the alleged offence, clause (b) was amended by the addition of these words: "or the production, manufacture, or transport of munitions or warlike material or material for munitions, including foodstuffs, fuel, and base metals and minerals."

The Police Magistrate dismissed the information upon his opinion of the construction of the regulation. The question is whether he was right or whether the appeal ought to be allowed and the case further dealt with.

The first of the objections taken is that the consent given is only a consent to the prosecution indicated in the information and that the information is not within the regulation. I am of opinion that it is within the regulation. No doubt the information contains the words "an industrial operation connected with the shipping." But they are followed by the words "to wit the carriage of goods

to the Melbourne wharves for shipment there." I think it is clear that the information does indicate that what the defendant was being prosecuted for was attempting to dissuade a person from a continuance of his engagement in performing an industrial operation, and that that operation was really to carry goods to the Melbourne wharves for shipment there. I shall not refer to sec. 85 (4) of the *Justices Act* 1915, under which an amendment might be made, because I think no amendment was or is necessary, the nature of the prosecution being sufficiently indicated in the information.

The second objection was that there was no proof of the regulation given in accordance with the *Rules Publication Act* 1903-1916, which prescribes in sec. 6 that "any printed paper, purporting to be a copy of statutory rules made by a rule-making authority, and to be printed by the Government Printer, shall in all Courts within the Commonwealth be evidence that such statutory rules have been duly made by the rule-making authority and are in force." That course being followed, the Rules are in evidence. But I very much doubt whether sec. 6 precludes any other means of furnishing the evidence. In this case a printed paper purporting to be a copy of a statutory rule, and to be printed by the Government Printer, was produced to the Court, and both sides dealt with it as being part of the material before the Court. It was not formally put in or marked as an exhibit. Nevertheless it was made evidence by the course of the case. I think it would be impossible to contend that by virtue of sec. 6 the regulation was not proved.

The third point was as to the construction of the regulation. Mr. *Shelton* in his very ingenious argument contended that in clause (b) the words "any such industrial operation" referred to the last preceding words, "the discharge, loading, coaling or despatch of shipping," and not to these words in clause (a): "any industrial operation connected therewith or incidental thereto." If they refer to the latter words, there can be very little doubt about the matter. If the evidence is believed, a man was dissuaded from continuing to be engaged in the performance of an industrial operation connected with or incidental to the loading of shipping, inasmuch as the carting of the goods to the wharf to be placed by the carter, or by the person to whom he delivered them, upon a ship is an industrial

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operation connected with or incidental to the loading of the ship. To Mr. *Shelton's* objection it was answered that if the words "any such industrial operation" meant the "discharge, loading, coaling or despatch of shipping," that would be tautology; that is to say, to be engaged in the discharge, &c., of shipping is the same thing as to be engaged in the industrial operation of the discharge, &c., of shipping. *Primâ facie* one looks for a meaning of the words which does not put the Legislature in the position of having unnecessarily said the same thing twice in two successive phrases. There is, perhaps, some plausibility in the contention, but I do not think it takes the whole matter into its view. What does "the performance of any such industrial operation" mean? You find the words "industrial operation" in the preceding clause and nowhere else in the regulation. If you wish, as one necessarily wishes, not to involve Parliament in tautology, there is a clear-cut phrase to which the word "such" refers. It was, indeed, argued that the word "such" meant "the like" or "similar." Of course it does mean that in common parlance, but in Acts of Parliament the word "such" generally refers to a preceding thing, and if there is a preceding thing called by the same name that is the thing to which the word "such" refers. In this case the preceding thing called by the same name is an industrial operation connected with or incidental to the discharge, &c., of shipping. It is perfectly clear, as was contended, that the two clauses may be regarded as two separate enactments, but it is also clear that they must be regarded together for the purpose of interpretation. I find then, in the preceding context, a phrase repeated in clause (b) preceded by the word "such," and I cannot help thinking the two refer to the same thing. If they do, then if the Magistrate when he comes to consider this evidence believes it, it becomes perfectly clear that de Morton was engaged in the performance of an industrial operation connected with and incidental to both the loading and the despatching of shipping, and that Lewis dissuaded him from continuing to be so engaged.

As to the amendment of the regulation of 22nd August, to which I have referred, I cannot think that the addition of those words alters the meaning of the preceding part of the regulation so far

as the present offence is concerned. The "production, manufacture, or transport of munitions, &c., is not the same as the "discharge, loading," &c., "of shipping." The word "transport" has been referred to as being an industrial operation connected with or incidental to the discharge, &c., of shipping. It may or may not be so. But the transport of munitions, &c., may be and is conducted for many purposes which have nothing to do with the discharge, &c., of shipping. It would be straining the language to say that the whole meaning of clause (b) as previously indicated has been altered.

There was, indeed, an argument that the charge of attempting to dissuade a person from continuing to be engaged in an industrial operation refers to the contract which that person had entered into, and not to the mere manner in which he was occupied at the time. It is quite possible to construe the regulation in that way, but I find the words "engaged in" earlier in clause (b) in the phrase "interferes with or impedes any person or body of persons engaged in." Reading that with the phrase "from becoming, or continuing to be, engaged in," as one must do, it seems to me that the words "engaged in" refer to the occupation in which the person was "engaged," not in the sense of a contract but in the sense of the operation. In the earlier phrase the words "engaged in" must clearly refer to the act of discharging, loading, &c., and, being used in that sense in the earlier part of the sub-clause, there is no reason alleged or feasible why they are not used in the same sense in the later phrase. Taking the whole regulation together it seems plain that the first part, clause (a), was enacted to prevent and discourage interference of one kind or another with the actual operations in which persons were engaged, in the sense of action of some kind upon the operation itself, and that clause (b) refers to interference or impediment thrown in the way of persons who are occupied in similar operations. The scope of the two sub-clauses is similar if not identical, but clause (a) is directed to the case where it is found not that any particular person has been dealt with, but that certain things have been dealt with (for instance, that cargo has been pushed into the water), while clause (b) is directed to interference with persons while engaged in certain work. The distinction between acts which are punishable on the one ground or on the other may not, in practice, be always

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very plain, but it is obvious that the intention of the regulation was to catch the real offence however committed. That, at any rate, is my view of the two clauses.

On the whole, the attempt to show either that the offence is not within the regulation, or that the case breaks down with reference to the information or the consent, is in my opinion unsuccessful, and it follows that the appeal must be allowed. The case should be remitted to the Court of Petty Sessions with an intimation of the opinion of this Court that the construction of the regulation is such as to cover the offence charged, and that the evidence, if believed, is sufficient for a conviction.

ISAACS J. I agree that the appeal should be allowed. With one qualification I agree with what my brother *Barton* has said. That qualification is that in clause (b) of reg. 40c the word “engaged” is not limited to the progress of the operations described. I think the regulation certainly includes a prohibition against dissuading any person from undertaking employment with that object.

The first two objections have already been dealt with, and I have nothing to add with regard to them. The main objection to the appeal is that the words “the performance of any such industrial operation” do not refer to “any industrial operation connected with or incidental to the discharge, loading, coaling or despatch of shipping,” but to the main operations themselves or some similar operations. No doubt the severity, and the necessary severity, of the penalties which are possible under the *War Precautions Act* makes a Court very careful to see whether a case falls within the regulation which is said to have been broken. But after most careful consideration of this regulation I cannot see any reasonable alternative meaning of the crucial words in clause (b) other than that insisted on by the Crown. That is the only possible reasonable meaning to be given to those words. For that reason I agree that the appeal should be allowed. I agree in the order which has been proposed.

GAVAN DUFFY J. read the following judgment:—It is objected that the information in this case does not set out any offence under reg. 40c (b). It states that the defendant attempted

to dissuade one George Henry de Morton from continuing to be engaged in the performance of an industrial operation, to wit—the carriage of goods to the Melbourne wharves for shipment there, and such an industrial operation is, in my opinion, an operation connected with or incidental to the loading or despatch of shipping within the meaning of reg. 40c (a). It seems clear to me that the words “performance of any such industrial operation” in clause (b) have relation to the words “the performance of any industrial operation connected therewith or incidental thereto” in clause (a). I therefore think that the information discloses an offence under clause (b). I also think that if the Magistrate believed the evidence for the prosecution he should have convicted the defendant of this offence. The appeal should be allowed, and the order made absolute.

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Appeal allowed. The parties consenting, the defendant convicted and fined £10, and ordered to pay £10 for costs in both Courts.

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

Solicitor for the respondent, *H. H. Hoare*.

B. L.