

[HIGH COURT OF AUSTRALIA.]

PEARCE . . . . . APPELLANT;  
DEFENDANT,

AND

JONES . . . . . RESPONDENT.  
INFORMANT,

SMITH . . . . . APPELLANT;  
DEFENDANT,

AND

JONES . . . . . RESPONDENT.  
INFORMANT,

ON APPEAL FROM A COURT OF PETTY SESSIONS  
OF VICTORIA.

H. C. OF A. *War Precautions—Regulations—Offence—Making statement prejudicial to recruiting*  
1917. *—Seconder of resolution at meeting—Putting of resolution to meeting by chairman—*  
*War Precautions Regulations 1915, reg. 28 (Statutory Rules 1915, No. 130—*  
MELBOURNE, *Statutory Rules 1916, No. 159).*

Sept. 24.

Barton,  
Isaacs and  
Gavan Duffy JJ.

Reg. 28 of the *War Precautions Regulations 1915* provides, so far as is material, that no person shall, by word of mouth, “(b) make statements likely to prejudice the recruiting of any of His Majesty’s Forces,” and that “if any person contravenes this regulation, he shall be guilty of an offence against” the *War Precautions Act*.

*Held*, that a person who, at a meeting, seconds a resolution which contains such a statement is, equally with the mover, guilty of the offence, but that a person who as chairman of a meeting merely puts such a resolution to the vote of the meeting is not guilty of the offence.



At a meeting of the Trades Hall Council a motion was proposed and seconded, and put to the meeting by the chairman, that in the opinion of the Council the Executive of the Political Labour Council should call upon all Labour Members of Parliament to refuse to assist in recruiting.

*Held*, that the motion was a statement likely to prejudice the recruiting of His Majesty's Forces within reg. 28 (b) of the *War Precautions Regulations* 1915.

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APPEALS from a Court of Petty Sessions of Victoria.

In the Court of Petty Sessions at Melbourne, before a Police Magistrate, two informations were heard whereby William Percival Jones charged that Alfred John Pearce, in the one case, and William Smith, in the other, did, contrary to the *War Precautions Regulations* 1915, "by word of mouth make statements likely to prejudice the recruiting of His Majesty's Forces." Evidence was given that at a meeting of the Trades Hall Council in Melbourne a resolution was moved which was as follows: "That in the opinion of this Council, the Political Labour Council Executive should call upon all Labour Members of Parliament to refuse to assist in recruiting"; that the resolution was seconded by the defendant Smith, and that it was put to the meeting by the defendant Pearce, who was the chairman of the meeting, and was carried. The Magistrate convicted both the defendants, and each of them appealed to the High Court by way of order to review on the grounds (*inter alia*), (1) that there was no evidence that either of the defendants by word of mouth made any statement; (2) that there was no evidence that either of the defendants made any statement likely to prejudice the recruiting of His Majesty's Forces within the meaning of reg. 28; (3) that the Magistrate was wrong in determining that either to second the resolution in question or to put it to the meeting was an offence within the meaning of reg. 28; and (4) that certain evidence was wrongly admitted.

The two appeals were heard together.

*Starke* (with him *Foster*), for the appellants. The resolution in its terms is not likely to prejudice recruiting within the meaning of reg. 28 (b). To come within the regulation there must be something in the statement which is likely to deter persons from enlisting, and



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it is not sufficient that there should be an invitation to others to oppose recruiting as a means of obtaining soldiers. A person who seconds a resolution does not necessarily adopt it as his own. The defendant Pearce did not, by putting the resolution, make the statement contained in it. He thereby expressed no opinion of his own. [Counsel was stopped on this point.]

*J. R. Macfarlan* (*Mann* with him), for the respondent. Any resolution or statement which formally invites a body of persons to set forth their opinion that others should be called upon to refrain from assisting, or to cease to assist, recruiting, is likely to prejudice recruiting within the regulation. A person who seconds a resolution expresses his own opinion as much as does the mover. The making of the statement in the resolution was an illegal act, and Pearce by putting the resolution to the meeting invited them to say one way or the other whether they approved of the statement. Without his action the statement as coming from the meeting could not have been made. He aided and abetted in the making of the statement, and was therefore guilty of the offence of making it.

*Foster*, in reply.

BARTON J. The defendants were charged under reg. 28 (b) of the *War Precautions Regulations*, which, so far as is material, provides that any person who by word of mouth makes statements likely to prejudice the recruiting of any of His Majesty's Forces is guilty of an offence. They have obtained orders *nisi* to review the decision of the Police Magistrate, who convicted and fined both of them. It is said that there is no evidence that either of them did by word of mouth or otherwise make any such statements. Taking the case of Pearce, who was the chairman, he put to the meeting a resolution to the effect that in the opinion of the Trades Hall Council the Political Labour Council Executive should call upon all Labour Members of Parliament to refuse to assist in recruiting. Whatever that resolution did affirm, I do not think that it can be said that the chairman affirmed it. By putting the resolution I do not think he, by word of mouth or in any other way, made the statement contained



in the resolution. He invited the meeting, as he was bound to do, to give their affirmance or negation of that view. It was no concern of his, as chairman, whether they affirmed or denied it, and he does not appear to have voted. They happened to affirm it, and it is alleged now that because the affirmance was illegal he in putting the resolution to the meeting did an illegal act. Even if the affirmance of the resolution was an illegal act, I do not think that the chairman was in the relevant sense a party to making it. I do not think I need labour this point. Beyond what I have stated, no evidence was given, and there was no suggestion, that Pearce gave his assent to or furthered in any way the resolution so as to be considered as having adopted it. If he was a party to it in any sense, he was not so in that sense.

The case of Smith is different. He seconded the resolution. In my judgment, and I think I have the concurrence of my brothers, a proposition affirmed in a resolution is equally affirmed by the person who moves the resolution and the person who seconds it. Whether a statement is absolutely repeated in words or whether agreement with it is merely expressed by word of mouth is in common sense and, I think, in law, absolutely the same thing. To have affirmed, by seconding, a resolution that the Political Labour Council should call upon all Labour Members of Parliament to refuse to assist in recruiting, is to become a party to it in the sense of expressing verbally his approval of it. He makes the statement his own. The question then is whether that is a statement likely to prejudice recruiting. I think it is, and on the ground that, this being a meeting of delegates of the Labour Party, before whom presumably the question came within some rule which made it in order, the expression of the opinion that the Political Labour Council should call upon all Labour Members of Parliament to refuse to assist in recruiting was intended to influence someone. It was intended to influence the Political Labour Council, and through them Members of Parliament. If they or some of them were not assisting or were not disposed to assist in recruiting, the resolution would be entirely in the air. We cannot consider the resolution as being anything else than a statement whose meaning was that if there were persons who were assisting or were disposed to assist recruiting they must abandon

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that attitude, and must refuse to assist or to further assist recruiting. That being the purport of the resolution, it seems to be unarguable that the statement was not likely to prejudice recruiting. That is the short ground upon which I decide. I think, therefore, that Pearce is not shown to have made this statement, and that Smith has been shown to have done so.

The remaining question is as to the reception of evidence. From what has been brought before us I do not think that the Police Magistrate relied upon the evidence objected to in coming to his conclusion, and, therefore, that evidence does not affect the cases as they come before us, so as to invalidate a conviction founded on the evidence, which evidence was sufficient.

I am of opinion that the appeal of Pearce succeeds, and that of Smith fails.

ISAACS J. I agree.

GAVAN DUFFY J. I agree.

*Smith's appeal dismissed with costs.*

*Pearce's appeal allowed. Order appealed from discharged with costs, £4 4s. Respondent to pay costs of appeal.*

Solicitors for the appellants, *Loughrey & Douglas.*

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

B. L.