[HIGH COURT OF AUSTRALIA.]

CATTS . . . . . APPELLANT;
DEFENDANT,

AND

MURDOCH . . . . . RESPONDENT.
INFORMANT,

ON APPEAL FROM A COURT OF PETTY SESSIONS OF NEW SOUTH WALES.

H. C. OF A. 1917.

SYDNEY, *Dec.* 17.

Barton, Isaacs, Gavan Duffy and Rich JJ.

War Precautions—Offence—Statements likely to prejudice relations with foreign power—Evidence—War Precautions Regulations 1915 (*Statutory Rules* 1915, *No.* 130), *reg.* 28 (*a*).

To constitute the offence of making statements likely to prejudice His Majesty's relations with a foreign power, which is created by reg. 28 (*a*) of the *War Precautions Regulations* 1915, it is sufficient that the statements are of such a kind that in themselves they are calculated to prejudice those relations.

APPLICATION for rule *nisi* for prohibition.

At the Central Police Court, Sydney, an information was heard whereby, under reg. 28 (*a*) of the *War Precautions Regulations* 1915, Gordon Murdoch charged that at Inverell, on 21st November 1917, James Howard Catts did by word of mouth make statements likely to prejudice His Majesty's relations with foreign powers. The statements were set out at length in the information and the power the relations with which it was alleged that His Majesty's relations were likely to be prejudiced was Japan. Evidence was given that the statements in question were made by the defendant in a speech at a meeting at which there were about 1,000 persons present, and that there were no Japanese present at the meeting. The defendant,

having been convicted, now applied to the High Court for a rule *nisi* for a prohibition under sec. 112 of the *Justices Act* 1902 to restrain proceedings on the conviction.

Sheridan, for the appellant. There was no evidence that the statements were likely to prejudice the relations of His Majesty with Japan. There was nothing on the face of the statement from which the Magistrate could find that such a likelihood existed, and expert evidence should have been given for the purpose. The circumstances under which the statements were made must be taken into consideration. There was very little probability that they would ever come to the knowledge of the Japanese authorities. The word "likely" is much narrower than the word "tending." [Counsel referred to *Taylor on Evidence*, 10th ed., par. 1418; *Ex parte Gordon* (1).]

[ISAACS J. referred to *Holland* v. *Jones* (2).]

The judgment of the COURT, which was delivered by BARTON J., was as follows :—

We are all of opinion that the rule *nisi* should be refused. Most of the matters which are necessary to be considered by a Magistrate in forming a judgment as to an utterance of this kind are matters of common knowledge, such as that in the present war Japan is in alliance with Great Britain and other countries, and that the relations of Japan and Great Britain, which have been ratified by successive treaties, have been and are of the most cordial character. Having that knowledge, the Magistrate, in the absence of other evidence beyond that of the speech itself, had to make up his mind whether the expressions used by the defendant were "likely" to prejudice those relations. By the word "likely" we consider that the Legislature meant to convey the same meaning as if they had said "calculated to." No one reading the utterances described in the information—the fact that they were made being admitted—can have the slightest doubt that they are calculated to prejudice the relations between Great Britain and Japan. It does not matter whether there was or was not a single Japanese

(1) 3 C.L.R., 724.

(2) 23 C.L.R., 149.

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at the meeting at which the utterances were made or whether there were 1,000 or only a few people present there, because the real question is whether the utterances were of a kind which in themselves were calculated to prejudice the relations under consideration. We entertain no doubt that this is a case in which the rule *nisi* asked for must be refused.

Application dismissed.

Solicitor for the appellant, *A. C. Roberts.*

B. L.

[HIGH COURT OF AUSTRALIA.]

FLINT . . . . . APPELLANT;
DEFENDANT,

AND

BANNIGAN . . . . . RESPONDENT.
INFORMANT,

ON APPEAL FROM THE SUPREME COURT OF SOUTH AUSTRALIA.

H. C. OF A. 1917.

SYDNEY, *Dec.* 17.

Barton, Isaacs, Gavan Duffy and Rich JJ.

Employer and Employee—Wages—Conflicting determinations of wages boards—Industry board and craft board—Different rates of wages fixed—Offence—Factories Act 1907 (*S.A.*) (*No.* 945), *secs.* 78, 93, 123.

By sec. 78 of the *Factories Act* 1907 (S.A.) it is provided that "The Governor shall appoint wages boards for the following processes, trades, businesses, occupations, or callings:— . . . (*i*) Of drivers of trollies, wagons, drays, and carriers' vehicles: . . . (*v*) For any other process, trade, business, occupation, or calling in respect whereof both Houses of Parliament pass a resolution