[HIGH COURT OF AUSTRALIA.]

CLYDE . . . . . APPELLANT;
INFORMANT,

AND

BOLOT . . . . . RESPONDENT.
DEFENDANT,

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

H. C. OF A. 1924.

SYDNEY, *July* 28.

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

Entertainments Tax—Entertainment—Instruction incidental and subordinate to amusement—Entertainments Tax Assessment Act 1916 (*No.* 36 *of* 1916), *secs.* 2, 7—*Entertainments Tax Regulations* 1917 (*Statutory Rules* 1917, *No.* 227—*Statutory Rules* 1918, *No.* 299), *regs.* 4, 21.

The fact that instruction is given does not of itself prevent what would otherwise be an "amusement" from coming within the definition of "entertainment" in sec. 2 of the *Entertainments Tax Assessment Act* 1916.

Held, therefore, that an assembly of persons for admission to which payment was made, at which there was dancing for the purpose of amusement and at which instruction was given which was merely incidental and subordinate to the amusement character of the proceedings, was an "entertainment."

APPEALS from a Police Court of New South Wales.

At the Central Police Court, Sydney, two informations were heard by which Athol Roy Clyde charged John Bolot for that in the one case he, on 8th August 1923, being the proprietor of an entertainment within the meaning of the *Entertainments Tax Assessment Act* 1916 and the Regulations thereunder, did not issue a stamped ticket to each person who paid an amount upon which entertainments tax was payable for admission to the said entertainment (reg. 21), and that in the other case he, on 31st July 1923, being the proprietor of such an entertainment, did not register the said entertainment in accordance with the *Entertainments Tax Regulations* 1917 (reg. 4). The nature of the entertainment alleged in each case was dancing; and evidence was given that on each occasion payment was made for admission to the

hall where the entertainment was said to have taken place, and that dancing was going on there. Evidence was also given by the defendant that he was a teacher of dancing; that on the occasions in question he had, by advertisement, invited those members of the public who wished to learn dancing to attend, and that he was giving instruction to those who attended. The Magistrate determined in each case that the evidence was insufficient to support the information in that what was shown to have been done did not amount to an entertainment within the meaning of the Act.

The informant appealed to the High Court in each case by way of case stated, the Magistrate asking the question whether his determination was erroneous in point of law.

Alroy Cohen (with him *Little*), for the appellant. Dancing for admission to which payment is made falls within the definition of " entertainment " in sec. 2 of the *Entertainments Tax Assessment Act* 1916 (*Federal Commissioner of Taxation* v. *Bendrodt* (1)). The fact that some instruction was given does not take the dancing out of the definition. [Counsel was stopped.]

Brissenden K.C. (with him *Bathgate*), for the respondent. It must be taken that the Magistrate has found everything that could be found in favour of the respondent, and among other things that this was a class for instruction in dancing. If the main purpose was instruction, the Magistrate was bound to come to the conclusion at which he arrived. This Court should not go behind the findings of the Magistrate and treat the appeal as a rehearing. [Counsel referred to *Bell* v. *Stewart* (2).] Upon the evidence this was a bona fide instructional class at which the ordinary amount of instruction was given, and the case is not within the Act.

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

We think that these appeals should be allowed. With reference to the point put by Dr. *Brissenden* as to how far this Court is limited in dealing with the matter, the position is shown by the case of *Bell* v. *Stewart* (3), where it was put very clearly in the judgment of the Chief Justice and my brothers *Gavan Duffy* and

(1) (1920) 28 C.L.R. 101. (2) (1920) 28 C.L.R. 419.
(3) (1920) 28 C.L.R., at p. 424.

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Starke, that in such a case as this the form in which the case comes up to this Court is a mere matter of procedure, but the Court has jurisdiction, and therefore a duty in a proper case, to form its own opinion on the facts. In these cases the facts appear to us to be so clear that, even treating the matter as one where the issue is whether the Magistrate was at liberty to arrive at a particular conclusion, we should hold that the facts are only consistent with one conclusion. They show, in our opinion, that on these occasions there was amusement—that the dancing was for the purpose of amusement—and that whatever instruction was given was merely incidental and subordinate to the amusement character of the proceedings.

We therefore think that the appeals should be allowed.

Appeals allowed with costs. Conviction in each case. Penalty of £4 in one case and £2 in the other, with £3 7s. costs in the Court below.

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

Solicitor for the respondent, *R. J. Dawes.*

B. L.

[HIGH COURT OF AUSTRALIA.]

THE ATTORNEY-GENERAL OF NEW SOUTH WALES . . . . . APPELLANT;
INFORMANT,

AND

PETERS . . . . . RESPONDENT.
DEFENDANT,

H. C. OF A. 1924.

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

SYDNEY, *July* 28-30; *Aug.* 4.

Contract—Rescission—False representations—Inducement—Contract made by Crown—Agents of Crown not relying on representations.

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

The right of the Crown to a rescission of a contract on the ground that it was induced by false representations must depend on the effect of the representations upon the minds of those who as agents of the Crown made the contract. If