[HIGH COURT OF AUSTRALIA.]

HANSEN . . . . . APPELLANT;

AND

ARCHDALL AND SMITH . . . . . RESPONDENTS.

ON APPEAL FROM THE SUPREME COURT OF QUEENSLAND.

H. C. OF A. 1930.

BRISBANE, *June* 12.

SYDNEY, *Aug.* 11.

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

Vagrancy—Fortune-telling—Imposing upon charitable institution or private individual —False or fraudulent representation—With a view to obtain money or some other benefit—Interpretation—Imposition not limited to cases of charity—Vagrant Act of 1851 (Q.) (15 *Vict. No.* 4), *sec.* 3.*

A person was convicted, under sec. 3 of the *Vagrant Act of* 1851, of endeavouring to impose upon a private individual by a false verbal representation that she had power and ability to foretell events which would thereafter happen in the life of that individual with a view to obtain money.

Held, by *Isaacs* C.J., *Gavan Duffy* and *Starke* JJ. (*Rich* J. dissenting), that fortune-telling, if dishonestly made, is an offence under sec. 3 of the *Vagrant Act of* 1851, and that the statute is not limited to cases of imposition by way of charity.

Per Isaacs C.J. and *Gavan Duffy* J. :—It is only when a person sets out to cheat either any charitable institution or any private individual by means of a false or fraudulent representation in order to obtain from the institution or individual, as the direct or proximate result of the representation, money or some other benefit or advantage, that the section is contravened. It does not extend to any case when the representation is honestly made, even though it

* The *Vagrant Act of* 1851 (Q.), by sec. 3, provides (*inter alia*) that "All persons going about as gatherers of alms under false pretence of loss by fire or by other casualty or as collectors under any false pretence and all persons imposing or endeavouring to impose upon any charitable institution or private individual by any false or fraudulent representation either verbally or in writing with a view to obtain money or some other benefit or advantage . . . shall be deemed a rogue and vagabond within the true intent and meaning of this Act."

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is false; nor does it extend to the case of a person by misrepresentation inducing an institution or individual to make a contract under which money is obtained: the statute contemplates the representation as the direct actuating cause of the offender obtaining the money.

Decision of the Supreme Court of Queensland (Full Court): *Smith* v. *Hansen*; *Ex parte Hansen*, (1930) S.R. (Q.) 124, affirmed.

APPEAL from the Supreme Court of Queensland.

The appellant, Margaret Hansen, was charged at the Court of Petty Sessions at Brisbane upon complaint that on 18th October 1929, at Brisbane, she "endeavoured to impose upon a private individual, namely, one Ruby Kingsley, by verbally falsely representing to the said Ruby Kingsley that she, the said Margaret Hansen, otherwise Madame Margaret, had power and ability to foretell future events which would thereafter happen in the life of the said Ruby Kingsley, with a view to obtain money from the said Ruby Kingsley." The evidence adduced before the Police Magistrate who heard the complaint showed that Ruby Kingsley, a paid agent in the casual employment of the Police Department, visited the appellant at her residence. The agent said: "I wish to see Madame Margaret." The appellant replied: "I am Madame Margaret." The agent said: "I have just come up from the South and I want your advice about selling my residential there and buying a business in Queensland." The appellant shuffled cards and passed them to the agent to shuffle. The appellant then said: "You are to sell your business in the South and return to Brisbane; you are to have a conversation with two fair ladies and a man between colours; you are to receive a letter advising the death of a relative, and through the death of this relative you will receive a legacy." The appellant, while "reading the palm" of the agent and looking at a crystal, mentioned other things which were to happen. The appellant was convicted of an offence under sec. 3 of the *Vagrant Act of* 1851 and ordered to pay a fine of £10.

She subsequently obtained from the Supreme Court an order nisi to quash the conviction on the following grounds: (1) That the evidence did not support the complaint; (2) that the evidence did not establish an offence; (3) that at all relevant times the Ruby Kingsley referred to in the complaint was not a private individual;

(4) that there was no evidence of an imposition or attempted imposition on charity or benevolence; (5) that sec. 3 of the *Vagrant Act of* 1851, so far as it relates to fortune-telling, has been repealed by necessary implication by sec. 432 of the *Criminal Code*; (6) that the said conviction was contrary to law; (7) that the said conviction was wrong in law.

The Full Court of Queensland discharged the rule nisi with costs: *Smith* v. *Hansen*; *Ex parte Hansen* (1).

From this decision the appellant now, by special leave, appealed to the High Court.

Lehane, for the appellant. The Queensland Act 15 Vict. No. 4 has been taken from the New South Wales *Vagrancy Act of* 1835 (6 Will. IV. No. 6) (*Callaghan's Statutes*, vol. II., at p. 1279). Sec. 3 of the Queensland Act is similar to sec. 36 (3) of the *Police Offences Statute* 1865 of Victoria. These Acts were all founded on the English *Vagrant Act* 1824 (5 Geo. IV. c. 83, sec. 4) (*Statutes at Large*, vol. LXIV., at p. 382). The New South Wales statute contains no reference to fortune-telling. The Legislature of New South Wales, in adapting the provisions of the Imperial statute to the prevailing conditions of the colony, deliberately omitted those provisions as unsuitable, and for the same reason altered the language of the Imperial statute with relation to "endeavouring to procure charitable contributions." The inference is that fortune-telling was not intended to be an offence under the New South Wales Act. It is therefore not an offence against the Queensland Act. The words of the section are limited to cases where charitable impositions are concerned. The word "charitable" governed both "institution" and "private individual"; otherwise there is no reason why both expressions should be coupled. In Victoria the correct interpretation has been placed on the section (*R.* v. *Armstrong*; *Ex parte M'Pherson* (2); *Walker* v. *Thompson* (3); *Prosser* v. *Fox* (4); *Roach* v. *Rogers* (5); *Fyffe* v. *Lumsden* (6)). The Queensland cases to the contrary have been wrongly decided (*Ex parte Gurney* (7);

(1) (1930) S.R. (Q.) 124.
(2) (1881) 7 V.L.R. (L.) 234.
(3) (1896) 22 V.L.R. 529; 18 A.L.T. 160.
(4) (1898) 24 V.L.R. 151; 20 A.L.T. 33.
(5) (1923) V.L.R. 184; 44 A.L.T. 138.
(6) (1923) V.L.R. 431; 45 A.L.T. 14.
(7) (1873) 3 S.C.R. (Q.) 170.

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Kachel v. *McKeon*; *Ex parte McKeon* (1); *Power* v. *Wood*; *Ex parte Wood* (2)). [Counsel also referred to *R.* v. *Colan* (3); *Mitchell* v. *Scales* (4); *McCulloch* v. *Eolkin*; *Ex parte Eolkin* (5).]

Macgroarty A.G. for Q. (with him *Walsh*), for the respondents. The inference to be drawn from the fact that fortune-telling is not expressly mentioned in the *Vagrant Act of* 1851 is, not that the Legislature intended that fortune-telling should not be an offence, but that the Legislature intended by the use of new language in the Act—namely, "imposing . . . upon any charitable institution or private individual"—to make both fortune-telling and endeavouring to procure charitable contributions punishable. So far as Queensland is concerned, it has been judicially held that the words of the section are not limited. The decisions in *Ex parte Gurney* (6), *Kachel* v. *McKeon* (1) and *Power* v. *Wood* (2) show that the words are to be given an extended meaning and not restricted to cases where charitable impositions are concerned. The simple and natural construction of the language is to regard the word "charitable" as qualifying "institution" only and not qualifying "private individual." There is no grammatical reason why "charitable" should qualify "private individual." If that were so, it would not be an offence to impose on a private individual who was not "charitable." Why should the Legislature protect only charitable individuals against imposition? Was the guilt of imposition to depend upon whether the person imposed on was a charitable person on the one hand or a non-charitable person on the other hand? The evil aimed at was "imposing or attempting to impose . . . by any false or fraudulent representation." It would be extraordinary if the commission of the offence depended upon whether the person approached turned out to be a charitable or non-charitable person, about which the person to be charged would know nothing until he had actually imposed on the individual. How was it to be proved by evidence that a person was charitable? Would it suffice that he had given to charity at some time or other, or would it be necessary to establish that he gave to charity

(1) (1914) S.R. (Q.) 233.
(2) (1918) S.R. (Q.) 113.
(3) (1878) 1 S.C.R. N.S. (N.S.W.) (L.) 1.
(4) (1907) 5 C.L.R. 405, at pp. 412-415.
(5) (1929) S.R. (Q.) 113, at p. 115.
(6) (1873) 3 S.C.R. (Q.) 170.

regularly, or frequently ? The section draws a distinction between a charitable institution and a private individual. Charitable institutions are expressly mentioned because they are particularly liable to imposition. But that does not seem to furnish any reason why the ordinary citizen should not also be protected against imposition. *R.* v. *Armstrong* (1) was not a case of fortune-telling, nor were any of the other Victorian cases cited. Some of the decisions proceeded on the ground that the person charged was not endeavouring to obtain something for nothing, which was what the statute contemplated. Here the appellant was endeavouring to obtain something for nothing. This was also the case in *Kachel* v. *McKeon* (2) and *Power* v. *Wood* (3), and to that extent there was no conflict between the Queensland and Victorian cases.

Lehane, in reply. There is no reason why the Court should follow interpretations which happen to be of long standing. [He referred to *R.* v. *Justices of Clifton* ; *Ex parte McGovern* (4) ; *McCulloch* v. *Eolkin* (5).]

Cur. adv. vult.

Aug. 11.

The following written judgments were delivered :—

ISAACS C.J. AND GAVAN DUFFY J. The appellant was convicted under sec. 3 of the *Vagrant Acts* 1851 *to* 1863 for fortune-telling. An appeal to the Supreme Court was dismissed. By special leave an appeal to this Court was permitted.

On the argument, two grounds only were relied on by the appellant. They were that an individual imposed on must be "charitable," and that fortune-telling is not an offence under the section.

The relevant words in sec. 3, which for convenience we segregate, are these: All persons (1) imposing or endeavouring to impose upon, (2) any charitable institution or private individual, (3) by any false or fraudulent representation, (4) with a view to obtain money or some other benefit or advantage, shall be deemed a rogue and vagabond (*sic*) within the true intent and meaning of this Act.

(1) (1881) 7 V.L.R. (L.) 234.
(2) (1914) S.R. (Q.) 233.
(3) (1918) S.R. (Q.) 113.
(4) (1903) S.R. (Q.) 177.
(5) (1929) S.R. (Q.), at p. 115.

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It will be advantageous to consider each branch separately. (1) In its present collocation the expressions "imposing upon" and "impose upon" mean cheating or wilfully deceiving. (2) The expressions "charitable institution" and "private individual" are independent and distinct, each complete in itself. (3) The third branch is confined to a "representation," which may be either false or fraudulent. (4) The fourth branch offers no present difficulty, since it was money that was asked for and obtained.

The enactment has been the subject of varying judicial decisions. In Queensland the foundation case is *Ex parte Gurney* (1), in which it was held by *Cockle* C.J. and *Lutwyche* J. that the case of a man who purchased and obtained goods for £1 6s., for which he gave a cheque, falsely assuring the seller there were sufficient funds in his bank account to meet it, was within the provision. That case was followed in *Kachel* v. *McKeon* (2), where a man employed to lodge £17 15s. with an application for land for another person, received the money and failed to keep his promise. The later case, as is seen, extended the meaning of "representation" to a promise for the future. The present decision followed *Kachel's Case*, which undoubtedly fully covers it. The central point of construction on which *Gurney's Case* turns is contained in the judgment of *Lutwyche* J., at p. 172, where the learned Judge, referring to the construction bringing the case within the section, said:—"It was argued that if that construction of the Act were adopted the magistrates would have too great power, and that they might decide in all such cases, and send a man to gaol as a rogue or vagabond who had obtained a large sum of money under false pretences, and deprived him of a trial by jury. It seems to me that the words of the Act are sufficiently large to allow the magistrates to act in that manner." If that view is correct, that the words of the Act—properly construed, of course—are sufficiently large to allow the magistrates to act in that manner, then *Gurney's Case* is sound law. On the other hand, a different view has been taken in Victoria on the same words. The fundamental case there is *R.* v. *Armstrong*; *Ex parte M'Pherson* (3). In that case *Stawell* C.J. and *Higinbotham*

(1) (1873) 3 S.C.R. (Q.) 170.
(2) (1914) S.R. (Q.) 233.
(3) (1881) 7 V.L.R. (L.) 234.

J., both with doubt, held that the word "charitable" governed both "institution" and "private individual." That conclusion was arrived at because the Court thought that otherwise it was unaccountable that the Legislature should have coupled "charitable institution" and "private individual," the only conceivable reason for their conjunction being that the provision was pointed to gifts of charity. In *Walker* v. *Thompson* (1) *Hood* J. held that the enactment did not include a case where a man was charged with obtaining goods from a shop under "false pretences." Apparently that was the ordinary case of a purchase under false pretences. (See the judgment more fully reported in the *Australian Law Times* (2).) In *Prosser* v. *Fox* (3) *Hodges* J. held that the provision did not apply to the case of a man who, while acting as agent of another, made a misrepresentation by which his contractual remuneration was improperly increased. In 1923 two decisions were given. In *Roach* v. *Rogers* (4) the Full Court (*Schutt, Mann* and *McArthur* JJ.) held that a false representation whereby a contract was induced under which money was lodged as security did not fall within the enactment. In *Fyffe* v. *Lumsden* (5) *Weigall* A.-J. held that a misrepresentation inducing a person to accept a valueless cheque in part payment of a contract debt was not covered by the enactment. In the last two cases mentioned the scope of the provision is limited to impositions for charity, following *R.* v. *Armstrong* (6). In that fundamental case *Stawell* C.J. propounded substantially the dilemma stated by *Lutwyche* J., saying (7): "If the sub-section does not receive that interpretation, it will allow of justices dealing with all cases of false pretences, and in a much more summary mode than can be effected in the superior Courts with the intervention of a jury." *Hodges* J. in *Prosser* v. *Fox* did not expressly use the word "charity." He seems to have carefully avoided it, and he limited the provision to "procuring something in consequence of a representation for nothing" (8). That is wider than charity. Which of these three views

(1) (1896) 22 V.L.R. 529.
(2) (1896) 18 A.L.T. 160.
(3) (1898) 24 V.L.R. 151; 20 A.L.T. 33.
(4) (1923) V.L.R. 184; 44 A.L.T. 138.
(5) (1923) V.L.R. 431; 45 A.L.T. 14.
(6) (1881) 7 V.L.R. (L.) 234.
(7) (1881) 7 V.L.R. (L.), at p. 236.
(8) (1898) 24 V.L.R., at p. 154; 20 A.L.T., at p. 34.

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of the legislation is the correct one? As to "charity," there is one consideration which may be mentioned, even though not necessary. *Stawell* C.J. and *Higinbotham* J. understood the unqualified expression "charitable institution" when found in Australian legislation in the same sense as most Australian Judges did, including *Chubb* J. in *Kachel's Case* (1) and *Macrossan* S.P.J. in *McCulloch* v. *Eolkin* (2), namely, as indicating charity in the popular and ordinary sense. That is not now permissible, since the case of *Adamson* v. *Melbourne and Metropolitan Board of Works* (3). Interpreting "charitable institution" in the Elizabethan sense, as we must, it follows that the substratum of *R.* v. *Armstrong* (4), and the cases dependent upon it, disappears. But though that is a sufficient and conclusive reason for rejecting ordinary "charity" as the test, it is not necessary. And furthermore, it would still leave open the question whether *Gurney's Case* (5) or *Prosser* v. *Fox* (6) laid down the proper guide, or whether there was still another test more in conformity with the words under consideration. Reading the words of the enactment according to their natural sense, their effect is more nearly approached in *Prosser's Case* than in any other.

When all the several branches of the enactment are co-ordinated the legislative intention emerges that it is only when a person sets out to cheat either any charitable institution or any private individual by means of a false or fraudulent representation (that is a statement of fact, and not a promise) in order to obtain from the institution or individual *as the direct or proximate result of the representation* money or some other benefit or advantage, that the provision is contravened. It does not extend to any case where the representation is honestly made, even though it is false, because the first branch of the provision is not satisfied. Nor does it extend to the case of a person by misrepresentation inducing an institution or individual to make a contract with him under which he obtains money or other property. In such a case the property is not obtained by means of the misrepresentation immediately, but by

(1) (1914) S.R. (Q.) 233.
(2) (1929) S.R. (Q.) 113.
(3) (1929) A.C. 142.
(4) (1881) 7 V.L.R. (L.) 234.
(5) (1873) 3 S.C.R. (Q.) 170.
(6) (1898) 24 V.L.R. 151; 20 A.L.T. 33.

force of the contract. The misrepresentation is the cause of procuring the contract, and there its mission ends. The contract is the true source of the transfer of the property. And a contract may not always be a profitable one : that depends on circumstances. The statute contemplates the representation as the direct actuating cause of the offender obtaining the money or other benefit or advantage.

There is no warrant for limiting the enactment to cases of charity. No doubt in the majority of cases charity is the impulse, but a dishonest person might ask for money or other things for an assumed purpose that is not eleemosynary, as to provide a testimonial, or supplement a holiday excursion fund, or an industrial or political fund. What has been said has to be applied to the case of fortune-telling. In fortune-telling—apart from cases of amusement—the direct cause of the fortune-teller obtaining money from the person whose fortune he assumes to tell, is the representation that the statements made as to the past, present or future events of that person's life are true and reliable. That, if dishonestly made, falls within the statute. In the result, the decision of the Magistrate should be sustained, and the appeal from the Supreme Court dismissed.

RICH J. Sec. 4 of the *Witchcraft Act* 1736 (9 Geo. II. c. 5, sec. 4), which repealed 33 Hen. VIII. c. 8 and 1 Jac. I. c. 12, made liable to punishment persons who pretend any kind of witchcraft or conjuration, &c., or undertake to tell fortunes or from pretended skill in any crafty science to discover where goods stolen or lost may be found. Sec. 4 of 5 Geo. IV. c. 83, a statute which repealed all former provisions relating to idle and disorderly persons, rogues and vagabonds, incorrigible rogues and other vagrants in England, and made fresh provision for those belonging to those of these conditions, expressly included in the catalogue of those who should be deemed rogues and vagabonds "every person pretending or professing to tell fortunes, or using any subtle craft, means or device, by palmistry or otherwise, to deceive and impose on any of His Majesty's subjects." According to *R.* v. *Colan* (1) the *Witchcraft*

(1) (1878) 1 S.C.R. N.S. (N.S.W.) (L.) 1.

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Act 1736 was in force in New South Wales by virtue of 9 Geo. IV. c. 83. The substance of the provisions of the statute of 5 Geo. IV. c. 83 was transcribed and enacted in New South Wales by 6 Will. IV. No. 6, but two alterations were made in the catalogue of persons to be deemed rogues and vagabonds contained in sec. 4 of 5 Geo. IV. c. 83. In the first place persons professing or pretending to tell fortunes, &c., were omitted. In the second place the category of persons going about as gatherers or collectors of alms or endeavouring to procure charitable contributions of any nature or kind under any false or fraudulent pretence was improved upon. It was made to read as follows: "All persons going about as gatherers of alms under false pretence of loss by fire or by other casualty or as collectors under any false pretence and all persons imposing or endeavouring to impose upon any charitable institution or private individual by any false or fraudulent representation either verbally or in writing with a view to obtain money or some other benefit or advantage." These provisions were re-enacted in 15 Vict. No. 4, which now forms part of the law of Queensland, "*The Vagrant Acts of* 1851 *to* 1863." The offence described by the *Witchcraft Act* 1736 (9 Geo. II. c. 5, sec. 4) has been taken into the *Criminal Code* of Queensland, sec. 432. Notwithstanding the omission of fortune-telling from the *indicia* of roguery and vagabondage, the defendant in this case has been convicted as a person deemed to be a rogue and a vagabond because she professed to tell fortunes. She was charged that she "endeavoured to impose upon a private individual by verbally falsely representing to that person that she had power and ability to foretell future events which would happen in the life of that person with a view to obtain money." This charge is based upon the view that the words "all persons imposing or endeavouring to impose," &c., apply to every form of misrepresentation. It treats the language as if it occurred apart from any context and was to be interpreted by the simple process of giving full literal effect to every expression it contained. Thus the word "impose" is treated as equivalent to deceive or get the better of; the words "private individual" as equivalent to "natural person," and the words "false or fraudulent representation" as meaning no more and no less than an express or implied misstatement of fact made with

knowledge of its falsity. The words " with a view to obtain money or some other benefit or advantage " are, of course, of the widest description and must on any view cover almost any fulfilment of human desires. If this be the construction of the words, the indictable misdemeanour of false pretences becomes a superfluity or at least need be reserved only for the greater sort of cheats for whom two years' imprisonment with hard labour seems inadequate. Moreover, all the forms of fraud covered by the civil action of deceit appear to be transmuted by this interpretation into crimes. It may be possible to restrict the meaning contended for, to cases in which the impostor parts with nothing in exchange for the advantage or benefit he seeks or secures, but this involves some impairment of the principle of literal construction *in vacuo* upon which the Crown relies and leads to an unreal discrimination among the decepted. The office boy who gained the advantage of a holiday by the traditional fabrication of a dead grandmother would be within the penal clause while the confidence man who sells gilded bricks for money would not. 6 Will. IV. No. 6 was, of course, in force in Victoria before that State became a separate colony, and the substance of the provision with which we are concerned remains in force as part of the *Police Offences Act* 1915, now 1928. The argument for a wide and full interpretation of the words has been repeatedly addressed to the Supreme Court of Victoria, which has uniformly declined to give effect to it. Upon the last occasion upon which the Full Court of the Supreme Court of Victoria delivered judgment in a similar case, *Mann* J., speaking for himself, *Schutt* and *McArthur* JJ., said :—" But the argument which weighs most strongly upon the Court is this—there is a very common and very important class of statutory offences always classed in our criminal law as indictable misdemeanours, and grouped in the *Crimes Act* 1915 under the heading of ' False Pretences and Similar Offences,' and there is a further large and important class of indictable misdemeanours consisting of frauds by various classes of persons under various circumstances—all defined with great care and precision in the *Crimes Act* 1915. If the sub-section now under consideration is to be given its literal interpretation, we see no escape from the result that a large proportion, if not the whole, of

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the serious offences mentioned will pass out of the hands of juries and be dealt with under this clause by justices in Petty Sessions, if they so desire. And more than this, it would seem to be involved in a literal interpretation that a great many matters involving fraud, which have hitherto formed the subject of civil proceedings for damages only, would now be brought into the category of criminal offences punishable on summary conviction. The Legislature has at times conferred upon justices a summary jurisdiction in respect of some indictable offences, but always by clear enactment, and with carefully prescribed conditions and limitations. It is quite impossible to believe that the Legislature intended by a slight verbal transposition in an obscure sub-section of the vagrancy section of the *Police Offences Act* to bring about so revolutionary a change in the criminal law as above indicated" (*Roach* v. *Rogers* (1)). These considerations appear to me to have great force. It seems incredible that because the Legislature in the course of a long, verbose and multifarious description of roguery and vagabondage composed in 1835 out of statutory materials which reach back at least to 22 Hen. VIII. c. 12, employed very general expressions, it should at this late stage be held to have made a sweeping and fundamental alteration in the criminal law relating to deception. A lawyer who, whether in 1835 or 1851 was called upon for the first time to read and expound what is now sec. 3 of the *Vagrant Act of* 1851 as a coherent whole would, I think, naturally understand the general expressions relating to imposition as referring to the subject dealt with by the immediately preceding words. *Ex antecedentibus et consequentibus fit optima interpretatio.* I do not think it is a tenable grammatical construction which makes the word "charitable" qualify not only the word "institution" but also the words "private individual"; nor do I think the expression "charitable private individual" has any definite English meaning unless the word "charitable" is merely an eulogistic reference to the temperament of private individuals. But the words of the relevant part of the section are: "All persons going about as gatherers of alms under false pretence of loss by fire or by other casualty or as collectors under any false pretence and all persons imposing or endeavouring to impose upon any

(1) (1923) V.L.R., at p. 189; 44 A.L.T., at p. 140.

charitable institution or private individual by any false or fraudulent representation either verbally or in writing with a view to obtain money or some other benefit or advantage." It appears to me that the natural meaning of the reference to imposition upon a private individual in this collocation is *ejusdem generis* with the frauds to be practised by collecting alms, pretence of misfortune and imposition upon charitable institutions. This stamps the character of the frauds to which the Legislature was referring as those which impose upon kindness, good nature, benevolence or philanthropy. For these reasons the charge laid against the defendant appears to fall outside the section. Her offence, if any, is against sec. 432 of the *Criminal Code*.

The conviction should be quashed.

STARKE J. The appellant was charged before justices for that she endeavoured to impose upon a private individual, namely, Ruby Kingsley, by verbally representing that she had power and ability to foretell future events which would thereafter happen in the life of Ruby Kingsley, with a view to obtain money from the said Ruby Kingsley, contrary to the *Vagrant Act* 1851. The appellant was convicted, and her conviction was sustained by the Supreme Court of Queensland in Full Court. She has appealed to this Court, by special leave, against that conviction.

The question for consideration is the proper interpretation of the *Vagrant Act* 1851, sec. 3, which is in force in Queensland. The Act is entitled " An Act for the more effectual prevention of vagrancy and for the punishment of idle and disorderly persons rogues and vagabonds and incorrigible rogues," and the preamble is to the same effect. The notion that a vagrant is " one who leads a wandering vagabond life " is almost entirely lost in this Act: It enacts " that by doing certain things, or neglecting certain duties, a man shall be in the same predicament as rogues and vagabonds, and dealt with as such " (*Monck* v. *Hilton* (1)). Sec. 3 prescribes, *inter alia*, that all persons imposing or endeavouring to impose upon any charitable institution or private individual by any false or fraudulent representation either verbally or in writing, with a view to obtain

(1) (1877) 2 Ex. D. 268, at p. 277.

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money or some other benefit or advantage shall be deemed a rogue and a vagabond. It takes the place, apparently, of the provisions in the English *Vagrancy Act* 1824 (5 Geo. IV. c. 83), sec. 4, prescribing that every person pretending or professing to tell fortunes or using any subtle craft means or device by palmistry or otherwise to deceive and impose on any of His Majesty's subjects shall be deemed a rogue and a vagabond; but it covers a wider field of imposition. (Cf. *Monck* v. *Hilton* (1); *Stonehouse* v. *Masson* (2); *Police Offences Act* 1928 (Vict.), sec. 72 (3), sec. 82.) Both Acts deal with imposition; but the difficulty in the case of the Queensland Act lies in defining or characterizing the class of acts that fall within it. One view is that the words of the Act are wide enough to include the indictable offence of false pretences, and a large number of fraudulent practices that would not be reached by that elastic charge (*Ex parte Gurney* (3); *Kachel* v. *McKeon* (4); *Power* v *Wood* (5); *McCulloch* v. *Eolkin* (6)). Another view is that sec. 3 is limited to cases of imposition by false and fraudulent representation whereby benefits are sought or obtained from another by way of benevolence or charity (*R.* v. *Armstrong* (7); *Roach* v. *Rogers* (8); *Fyffe* v. *Lumsden* (9)). Neither view can, in my opinion, be supported: the former is too wide and the latter too narrow. The former view was rejected by *Hodges* J. in *Prosser* v. *Fox* (10). I am content to adopt his reasoning:—"If the section had the meaning which the prosecutor put upon it, it would then mean that every person who procures any contract of any kind by any fraudulent representation might be convicted. . . . It was not meant to be as wide as that in its effect, so as to cover fraudulent pretences and a vast multitude of cases which would not be reached under the charge of false pretences. I am led to that conclusion not only from that view but also from the very language of the sub-section. In the first place it is 'imposing or endeavouring to impose,' and although a person who procures a contract by fraud may, in a certain sense, be said to be 'imposing or endeavouring to impose,' I think

(1) (1877) 2 Ex. D. 268.
(2) (1921) 2 K.B. 818.
(3) (1873) 3 S.C.R. (Q.) 170.
(4) (1914) S.R. (Q.) 233.
(5) (1918) S.R. (Q.) 113.
(6) (1929) S.R. (Q.) 113.
(7) (1881) 7 V.L.R. (L.) 234.
(8) (1923) V.L.R. 184; 44 A.L.T. 138.
(9) (1923) V.L.R. 431; 45 A.L.T. 14.
(10) (1898) 24 V.L.R., at p. 153; 20 A.L.T., at p. 34.

that when you look at the words immediately following you find the kind of imposition with which the Legislature were dealing. The section refers to an imposition by one person imposing on another to get something by dishonest representations, but getting that something as a rule in return for nothing. Not, by a dishonest representation, procuring a larger amount for an article he has to sell than he otherwise could procure, but procuring something in consequence of a representation for nothing. Although the word 'person' is not confined to a charitable person, it is to be an imposition upon a person. This appears more plainly when the other words are looked at—'with a view to obtain money or any other benefit or advantage.' There is no doubt that if a person obtains a contract by which another individual promises to pay more than the article offered is worth, he does obtain an 'advantage,' but I do not think that that is the 'advantage' referred to in that section. I think the 'advantage' is an 'advantage' in respect of which nothing is given; I think the 'benefit' is a 'benefit' in return for which nothing is given. I do not say that in every case the giving of something would destroy the effect of the imposition, but that that is the class of case aimed at."

The view that the section is limited to the case of persons obtaining benefits by way of benevolence or charity by imposition, is, I think, too narrow, because it would exclude a considerable number of cases in which neither benevolence nor charity was sought or obtained, such, for instance, as impositions upon individuals by professing to tell fortunes, or by using any other subtle craft, or by card and other tricks, or by passing off valueless cheques, and so forth. In such cases, the question whether an imposition was practised or attempted must depend largely upon the circumstances, and that would be a question of fact for the tribunal dealing with the case (cf. *Monck* v. *Hilton* (1)).

In the present case we are dealing with a person professing to relate the past and to foretell future events, by means of cards, palmistry, and crystal-gazing, and taking money for so doing. The Magistrate was quite justified, on the evidence, in finding that she was an impostor, and convicting her of the offence charged

(1) (1877) 2 Ex. D., at p. 279.

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against her. Indeed, it is not unimportant to observe that the *Criminal Code* of Queensland, sec. 432, makes it an indictable offence for any person to pretend to exercise or use any kind of witchcraft, sorcery, enchantment, or conjuration, or to undertake to tell fortunes, or to pretend, from his skill or knowledge in any occult science, to discover where or in what manner anything supposed to be stolen or lost, may be found. That section " treats the telling of fortunes in itself as a fantastical imagination " (*Stonehouse* v. *Masson* (1)); but the offences created by the *Vagrant Act* are not repealed by nor merged in it (cf. *Gurney's Case* (2)).

The appeal should, in my opinion, be dismissed.

Appeal dismissed with costs.

Solicitors for the appellant, *McLaughlin, Kennedy & Co.*

Solicitor for the respondents, *H. J. H. Henchman,* Crown Solicitor for Queensland.

B. J. J.

(1) (1921) 2 K.B., at p. 825.

(2) (1873) 3 S.C.R. (Q.) 170.