

[HIGH COURT OF AUSTRALIA.]

ROWE . . . . . APPELLANT ;  
INFORMANT,  
  
AND  
  
DAVIDSON . . . . . RESPONDENT.  
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF  
VICTORIA.

*Police Offences—Lottery—Sale of tickets—Raffle to be drawn at a bazaar—Prior written authority to purchase ticket—Police Offences Act 1928 (Vict.) (No. 3749), secs. 86\*, 88 (3) (c)\*, 89 (f)\*, 92\*.*

H. C. OF A.  
1934.  
MELBOURNE,  
Oct. 22, 23.  
SYDNEY,  
Dec. 13.  
Starke, Dixon,  
Evatt and  
McTiernan JJ.

A police constable, upon payment of one shilling, received from the defendant a copy of a document which the constable had signed and by which he authorized a person for him and in his name to purchase at a forthcoming bazaar a ticket in a raffle. The raffle was to be conducted at the bazaar and had not been prohibited by the Attorney-General. The defendant was charged under sec. 89 (f) of the *Police Offences Act 1928* (Vict.) with having sold a ticket in a lottery. There was no evidence that any agency or other relationship existed between

\* The *Police Offences Act 1928* (Vict.) provides:—Sec. 86:—“In this Part unless inconsistent with the context or subject matter . . . ‘Lottery’ includes (except as hereinafter appears) any scheme whether real or pretended by which prizes whether of money or of any other property matter or thing are or are to be or are represented or understood as capable of being drawn or thrown or competed for or gained in any other way by lot dice or any other mode of chance or by reference to any event or contingency whatsoever depending upon chance whether such scheme is established or conducted or intended or proposed to be established or conducted and in any case whether wholly or partly in Victoria or elsewhere, but does not include or extend to any distribution of property or raffle such as is referred to in sub-section (3) of section eighty-eight of this Act. ‘Ticket’ includes any document or thing purporting to be or usually or commonly known as a ticket or giving or purporting to give or usually or commonly understood to give any right title chance share interest authority or permission in or in connection with a lottery or intended or proposed lottery or any game or bet or totalizator.”

Sec. 88 (3) “Neither the provisions of this or any other section of this Act nor the provisions of any other Act for the prevention of lotteries or unlawful



H. C. OF A.  
1934.  
{  
ROWE  
v.  
DAVIDSON.  
—

the promoters of the raffle and the defendant or the person authorized by the informant to purchase the ticket in the raffle, and there was uncontradicted evidence that the promoters did not recognize the document as giving any interest in the intended raffle. The informant accepted the document under the belief that its possession gave a chance to win the raffle, and at the hearing relied upon such belief as evidence under sec. 92 of the *Police Offences Act*.

*Held* that the document was not a ticket in a lottery, and sec. 89 (f) of the *Police Offences Act* had not been infringed.

*Held*, also, that sec. 92 (1) of the *Police Offences Act* supplies a rebuttable presumption of fact only.

Decision of the Supreme Court of Victoria (*Martin J.*): *Rowe v. Davidson*, (1934) V.L.R. 237, affirmed.

### APPEAL from the Supreme Court of Victoria.

Nicholas Daniel Rowe laid an information against Jean Davidson alleging that the defendant on 11th May 1934 at Melbourne sold a ticket in a lottery. The charge was laid under sec. 89 (f) of the *Police Offences Act* 1928 (Vict.).

The evidence showed that on 11th May 1934 Harry Vincent Casey went to premises situated at No. 137 Elizabeth Street, Melbourne, in company with the informant and another constable. On entering the premises, Casey saw the defendant at a table selling tickets, and also saw exhibited in the shop window a Morris Cowley saloon motor car and also a number of placards. On one of these placards were printed the words: "A motor car for one shilling." On another a photograph of a motor car was displayed together with the words: "In aid of the Mildura District Hospital." Casey said to the defendant: "I want a ticket in the raffle for the car," at

games shall apply . . . (c) to any raffle at any bazaar the proceeds whereof are intended to be appropriated exclusively to charitable purposes of which a notice having the name and address of any of the persons intending to hold such bazaar subscribed thereto has been given to the Attorney-General—if . . . such Attorney-General does not within one week after such notice prohibit such raffle by notice sent by post or in any other manner according to the address so subscribed by such person." Sec. 89: "Every person who . . . (f) sells or disposes of or offers for sale or disposal or buys or pays for or (unless the Court is satisfied that there was

and is no consideration for so doing) delivers or gives or knowingly receives or accepts any ticket in any lottery . . . shall be guilty of an offence." Sec. 92 (1): "In any proceedings whatever under this Part where the informant wishes in support of the charge to rely on the fact that any document or thing is a lottery ticket in a particular lottery, it shall be permissible and sufficient in proof of such fact to prove that such document or thing was bought or accepted under the belief that its possession or production conferred permission or authority on the purchaser holder of or person producing the same to throw or compete or have an interest in such lottery."



the same time handing her a two-shilling piece. The defendant then wrote Casey's address on a ticket in a book and Casey signed his name on the ticket. The defendant then handed Casey a carbon duplicate of the ticket and a shilling change. The terms of the ticket, which are fully set out in the judgments hereunder, authorized the secretary of the Mildura Citizens' Charity Trust to pay the sum of one shilling into a trust account in the name of the trust, and on 31st May 1934 to withdraw that sum and purchase on behalf of the signatory at the Mildura District Hospital Bazaar a ticket in the raffle of a Morris Cowley saloon motor car. Casey gave evidence that when he received the ticket he did so in the belief that the ticket gave him a chance to win the motor car which was to be raffled at Mildura in aid of the Mildura hospital.

Notice of the bazaar and of the proposed raffle were given to the Attorney-General for Victoria. In reply the Attorney-General caused the following letter to be sent by the Secretary of the Law Department to the Manager and Secretary of the Mildura District Hospital:—"I am directed by the Attorney-General to acknowledge the receipt of your letter of the 17th instant applying for permission to conduct raffles at a bazaar from the 31st May to 4th June 1934 in aid of Mildura District Hospital. In forwarding for your information and guidance in the matter the accompanying copy of sec. 88 of the *Police Offences Act* 1928, together with a memorandum expressing the views of this department on the law relating to lotteries, the Attorney-General desires me to say that, unless your proposed raffle is conducted in strict accordance with the conditions laid down in the memorandum, it is hereby prohibited."

The secretary for the Mildura District Hospital gave evidence that there was no connection between the Mildura Hospital Committee and the Mildura Citizens' Charity Trust; that the Mildura Hospital Committee was running a bazaar in the Mildura Town Hall commencing on 31st May 1934; the raffle for the motor car was to be held at this bazaar; no tickets for the raffle of the motor car had yet been printed; the numbers on the form of authority would not correspond to the numbers on the raffle tickets; the tickets in the raffle would be sold during the bazaar; the Mildura Citizens' Charity Trust would not receive any commission for what they had done

H. C. OF A.  
1934.  
ROWE  
v.  
DAVIDSON.



H. C. OF A. and all the money the Mildura Citizens' Charity Trust received  
1934. from the sale of these authorities would be paid to the Mildura  
ROWE Hospital Committee; that he sent a notice to the Attorney-General  
v. on 17th January 1934 of their intention to hold a raffle at the  
DAVIDSON. bazaar.

The police magistrate took the view that the authority above set out was not a ticket in a lottery within the meaning of sec. 89 (f) of the *Police Offences Act* 1928 (Vict.) and dismissed the information.

The informant obtained an order nisi to review this decision. The order nisi was heard by *Martin J.*, who discharged it: *Rowe v. Davidson* (1).

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

*Latham K.C.* (with him *Stafford*), for the appellant. The information is laid under sec. 89 (f) of the *Police Offences Act* 1928 (Vict.). Sec. 86 includes definitions of "lottery" and "ticket." Sec. 88 (3) (c) provides an exception to the provisions prohibiting raffles at bazaars. Sec. 92 makes the belief of the purchaser of a ticket evidence. In *Murphy v. Murray* (2) it was held that the ticket was part of the scheme constituting a lottery, and that the raffle did not take place at the bazaar. The invitation to subscribe, the subscription, the machinery for drawing lots, all form part of the whole transaction, and in order to come within the exception in sec. 88 (3) (c) the whole transaction must be carried out "at" a "bazaar." The exception is intended to apply only to raffles which are entirely conducted "at any bazaar," which words necessarily limit the size or extent of the raffle. The purchase of the authority to obtain a ticket in the raffle constitutes a sale of a ticket in a lottery. The facts show that there was the sale of a ticket in a lottery and the interposition of other steps in the lottery did not prevent it being a ticket in a lottery. Though the mere agreement between two private persons that one should procure a ticket in a lottery at a bazaar would not bring it within the object of the Act unless it were proved that it was part of a "scheme," the present authority is clearly part of a scheme.

(1) (1934) V.L.R. 237.

(2) (1931) V.L.R. 89.



[DIXON J. referred to *Ex parte McMahon* (1) ; *Russell v. Naylor* (2).]

H. C. OF A.  
1934.  
}  
ROWE  
v.  
DAVIDSON.  
—

The evidence that all the money received by the trust would be paid to the charity shows that this transaction constituted a scheme. A lottery or raffle extends to the gathering in of money, and the selling of authorities amounted to a lottery. Moreover, sec. 92 has a conclusive effect. The whole arrangement amounted to a scheme by which a prize might be gained by means of chance, and that constitutes a lottery.

[DIXON J. referred to *Wendt v. Thompson* (3).]

The section is wide enough to cover a scheme in two parts. Even if part of the scheme were completely separate, the Court could say, looking at both parts, they together constitute a scheme within the Act. In this case, if both parts were separate and the trust could dispose of the money as it liked, it would still be a scheme to obtain tickets in a lottery. [He referred to the definition of “ raffle ” in the *Oxford English Dictionary* and the *Concise Oxford Dictionary*, and to the definition of “ ticket ” in sec. 86 of the *Police Offences Act*.] The evidence in this case shows that the document in question does in fact give an authority in connection with a lottery. The evidentiary provisions in sec. 92 carry the matter much further than it went before (*Hewitt v. Taylor* (4) ; *Barracrough v. Greenhough* (5) ).

O'Bryan, for the respondent. Sec. 88 (3) (c) of the *Police Offences Act* deals with a raffle at a bazaar the proceeds of which go to charity, and the section provides that if notice is given and there is no prohibition it is a perfectly legal thing. This provision excludes a “ lottery ” as defined in sec. 88. This is important in considering the definition of “ ticket ” in sec. 86, because tickets refer only to tickets in a lottery. The raffle of this car was a raffle at a bazaar. The facts show that a body of persons intends to hold a raffle at a bazaar, and then, so far as it appears, an entirely independent body

(1) (1933) 50 W.N. (N.S.W.) 20. (3) (1933) 33 S.R. (N.S.W.) 311 ;  
(2) (1932) 32 S.R. (N.S.W.) 168 ; 49 W.N. (N.S.W.) 63.  
49 W.N. (N.S.W.) 120. (4) (1896) 1 Q.B. 287.  
(5) (1867) L.R. 2 Q.B. 612.



H. C. OF A.  
1934.  
}  
ROWE  
v.  
DAVIDSON.  
—

of persons decides to assist in collecting money. There is no evidence of any connection between the two schemes. The scheme of raffling a car at a bazaar is not a lottery in the present circumstances, and the only additional fact is that some independent body of persons has collected money from the public on an undertaking to invest the money on the purchase of tickets in the raffle. The definition of lottery in sec. 86 is one which primarily looks to schemes for the distribution of prizes by lot. If the scheme for the collection of money is not part of one whole scheme, it cannot be regarded as a scheme for the distribution of prizes. It is merely a scheme for the distribution of authorities. The scheme for disposing of authorities is a separate and distinct scheme. The scheme adopted was simply one whereby authorities to receive tickets are supplied to persons who pay a shilling. *Murphy v. Murray* (1) was not correctly decided. A raffle does not cease to be a raffle at a bazaar merely because tickets are sold elsewhere than at the bazaar. That is particularly so if the tickets are being sold at the bazaar as well. There was to be no sale of tickets until the bazaar was held. In the present case there never was a sale of anything at all. In order to prove his case the informant must prove a sale, and there is no finding or evidence that there was anything in the nature of a sale. *Martin v. O'Sullivan* (2) shows that it is usual to accept the answering affidavit where there is a difference between it and the affidavit in support. Even assuming that there was something in the nature of a sale, there was not a sale of a ticket "in or in connection with a lottery." Sec. 92 does not make the policeman's belief incontrovertible evidence of the fact. His belief does not establish that to be a lottery which in fact is not a lottery. It is essential first to establish the fact that there is a lottery apart from the policeman's belief. His belief does no more than create a *prima facie* case.

[STARKE J. referred to *Phipson on Evidence*, 5th ed. (1911), p. 344.]

In order to succeed the informant must prove that there was one complete scheme. The whole of the evidence could lead to only one conclusion, that this was not a lottery. All the facts that were sufficient to support the defendant's contention must be taken to

(1) (1931) V.L.R. 89.

(2) (1899) 24 V.L.R. 856 ; 20 A.L.T. 238.



have been found in his favour, and there is no reason for upsetting those findings.

H. C. OF A.  
1934.

ROWE  
v.  
DAVIDSON.

*Latham* K.C., in reply. There is power in the Attorney-General to prohibit the holding of the raffle *sub modo*, and a conditional prohibition is contemplated by the section. The conditions may be contained in the application or in the reply of the Attorney-General. The memorandum of the Attorney-General prohibits the raffle unless the conditions are all carried out and the onus is on the defendant to prove that the conditions have been complied with. *Murphy v. Murray* (1) shows that what is being done here is not a raffle at a bazaar. He also referred to *Mutual Loan Agency Ltd. v. Attorney-General for New South Wales* (2).

*Cur. adv. vult.*

The following written judgments were delivered :—

Dec. 13.

STARKE J. The respondent Davidson was charged on information that she did on 11th May 1934 at Melbourne sell a ticket in a lottery. The charge was laid under sec. 89 (f) of the *Police Offences Act* 1928 of Victoria, into which must be read the definition or interpretation of "lottery" and "ticket" contained in sec. 86. Further, a raffle at any bazaar is exempted from the provisions of the Act if the Attorney-General does not prohibit it (see sec. 88 (c)). But the decision of the Supreme Court in *Murphy v. Murray* (1) narrowly confined the limits of this exemption. It appears that the Mildura Hospital Committee promoted a bazaar in the Mildura Town Hall commencing on the 31st May 1934. It was proposed to raffle a motor car at this bazaar. Notice of the bazaar and proposed raffle was given to the Attorney-General, in acknowledging which, we were informed, he intimated that "unless your proposed raffle is conducted in strict accordance with the conditions laid down in the memorandum" forwarded with the intimation, "it is hereby prohibited." A body called the Mildura Citizens' Charity Trust was minded to assist the Mildura District Hospital Bazaar. It printed and distributed documents in the following form :

(1) (1931) V.L.R. 89.

(2) (1909) 9 C.L.R. 72.



H. C. of A.

1934.

—

ROWE

v.

DAVIDSON.

Starke J.

Authority No.....

MILDURA CITIZENS' CHARITY TRUST.

Secretary : J. M. Drummond,

Box 306 Mildura.

Date.....1934.

I, the undersigned, hereby authorize the Secretary of the Mildura Citizens' Charity Trust to pay the sum of one shilling (which said sum of one shilling the secretary hereby acknowledges to have received) into a trust account in the name of the said Mildura Citizens' Charity Trust On trust to retain same until the 31st day of May 1934, on which day he shall withdraw the said sum of one shilling from the trust account and purchase for me in my name, at the Mildura District Hospital Bazaar, one ticket in the raffle of a Morris Cowley saloon motor car, and I direct that the said ticket shall be held on my behalf by the secretary of the Mildura Citizens' Charity Trust, to be forwarded by him to me should I request him to do so. This authority is revocable at my option, and I am to be at liberty to demand a refund of the said sum of one shilling provided notice of such revocation reaches the secretary by registered letter before he has purchased the said ticket on my behalf.

Signed.....

Address .....

On 11th May 1934, a constable of police entered premises in Elizabeth Street Melbourne and saw the respondent seated at a table. He also saw exhibited in a window a Morris Cowley saloon motor car, and some placards on one of which were printed the words : " A motor car for one shilling." There was also exhibited a photograph of a motor car, and on it were the words : " In aid of the Mildura District Hospital." The constable tendered a two-shilling piece to the respondent, saying: " I want a ticket in the raffle." She handed him a shilling change, wrote his address on a page in a book before her, and the constable at her request signed his name on the page in a space provided. The respondent then handed to him a carbon duplicate of the page, which was in the form already set out.

It looks, on the face of these facts, as if the Mildura Hospital Committee and the Mildura Citizens' Charity Trust combined together in a scheme for the lottery or raffle of a motor car. And if



so, the document handed to the constable may well be a ticket within the interpretation given to that word in sec. 86. Again, sec. 92 provides that in any proceedings under the Act where the informant wishes in support of the charge to rely on the fact that any document or thing is a lottery ticket in a particular lottery, it shall be permissible and sufficient in proof of such fact to prove that such document or thing was bought or accepted under the belief that its possession or production conferred permission or authority on the purchaser holder of or person producing the same to throw or compete or have an interest in such lottery. It is not surprising that the constable who obtained from the respondent the document already set forth, on the payment of one shilling, deposed : “ When I received the ticket I did so in the belief that the ticket gave me a chance to win the Morris motor car which was to be raffled at Mildura in aid of the Mildura Hospital.” According to the Act, this is sufficient in proof, and the Court may act upon it. But it is not conclusive unless it stands alone (*Taylor on Evidence*, 11th ed. (1920), par. 1645, p. 1114). And it did not stand alone. The secretary of the Mildura District Hospital deposed as follows :—“ There is no connexion between the Mildura Hospital Committee and the Mildura Citizens’ Charity Trust, and I have never discussed the activities of the trust with Mr. Drummond the secretary of it. The Mildura Hospital Committee is running a bazaar in the Mildura Town Hall commencing on 31st day of May 1934. The raffle for the motor car is to be held at this bazaar. No tickets for the raffle of the motor car have been printed yet. The numbers on the form of authority would not correspond to the numbers on the raffle tickets. The tickets in the raffle will be sold during the bazaar. The Mildura Citizens’ Charity Trust would not receive any commission for what they have done, and all the money the Mildura Citizens’ Charity Trust received from the sale of these authorities would be paid to the Mildura Hospital Committee.” The witness in cross-examination said that he would not issue a raffle ticket to any person producing one of these forms of authority, but would require payment of one shilling for each ticket issued, and that the holder of one of these forms of authority would have to look to the Mildura Citizens’ Charity Trust for his ticket in the raffle. The evidence is not very

H. C. OF A.  
1934.  
}  
ROWE  
v.  
DAVIDSON.  
Starke J.



H. C. OF A.  
1934.

ROWE  
v.  
DAVIDSON.  
Starke J.

convincing, and leaves a good deal unexplained. But it was accepted by the magistrates, and in the Supreme Court. It is thus established that the Hospital Committee and the Mildura Citizens' Charity Trust did not combine in any scheme for the lottery or raffle of a motor car. The document issued by the Charity Trust is not, on its face, a ticket which gives or purports to give any right or chance in any lottery or raffle; it is but a mandate to purchase a ticket.

The appeal should be dismissed. But I doubt whether the evil of holding raffles of unlimited extent is, as *Martin J.* feared, again a possibility. The respondent has been fortunate in the findings of fact, and proper investigation of the true relations of bodies promoting and assisting lotteries may well lead to different conclusions of fact in other cases.

DIXON J. The importance of this case in the administration of the division of the *Police Offences Act* 1928 devoted to lotteries is not likely to be so great as appears to have been supposed when the informant sought and obtained special leave to appeal from the decision of *Martin J.* upholding the dismissal of the information (1). On examination, its proper determination turns out, I think, to depend not so much upon matters of law as upon special findings of fact which the magistrate must be taken to have made and upon evidence which he must be taken to have accepted. All reasonable intendments should be made to support his conclusion, and in view of the evidence we must regard the following state of facts as established. The committee of the Mildura District Hospital decided to hold a bazaar in the Mildura Town Hall, beginning on 31st May 1934, for the purpose of raising money for the hospital. They decided that at the bazaar they would hold a raffle of a Morris Cowley motor car, which, presumably, had been given for the purpose. The raffle was to be confined to the bazaar. All tickets for it were to be sold at the bazaar and it was to be drawn there. On a previous attempt to raise money for the hospital by the raffle of a motor car in connection with a bazaar, tickets had been widely sold before the bazaar, and, upon a prosecution, it had been decided by the Supreme Court that it was not within the exception of a



“raffle at a bazaar,” but an unlawful lottery (*Murphy v. Murray* (1)). In the case of the attempt to raise funds on 31st May 1934, the committee were or must be taken to have been unwilling to allow the conduct of the raffle to spread beyond the confines of the bazaar. But a body of citizens, apparently actuated by a desire to promote the welfare of the hospital acting, as it must be assumed, independently of the committee and without their authority or privity, determined to raise funds in advance by subscription in order that tickets in the lottery might be bought at the bazaar when it came to be held in the Mildura Town Hall on 31st May and the following days. To this end they formed a body called the “Mildura Citizens’ Charity Trust.” This “trust,” through its secretary, caused to be printed books of numbered tickets in the following form :—

Authority No.....

MILDURA CITIZENS’ CHARITY TRUST.

Secretary : J. M. Drummond

Box 306, Mildura.

Date.....1934.

I, the undersigned, hereby authorize the secretary of the Mildura Citizens’ Charity Trust to pay the sum of one shilling (which said sum of one shilling the secretary hereby acknowledges to have received) into a trust account in the name of the said Mildura Citizens’ Charity Trust On trust to retain same until the 31st day of May 1934, on which day he shall withdraw the said sum of one shilling from the trust account and purchase for me in my name, at the Mildura District Hospital Bazaar, one ticket in the raffle of a Morris Cowley saloon motor car, and I direct that the said ticket shall be held on my behalf by the secretary of the Mildura Citizens’ Charity Trust, to be forwarded by him to me should I request him to do so. This authority is revocable at my option, and I am to be at liberty to demand a refund of the said sum of one shilling provided notice of such revocation reaches the secretary by registered letter before he has purchased the said ticket on my behalf.

Signed.....

Address.....

The “trust” set up a stand in a busy part of Melbourne where it exhibited a Morris Cowley motor car and invited subscriptions

H. C. OF A.  
1934.  
}  
ROWE  
v.  
DAVIDSON.  
—  
Dixon J.

(1) (1931) V.L.R. 89.



H. C. OF A.  
1934.

ROWE  
v.  
DAVIDSON.  
Dixon J.

for tickets in the lottery. There it disposed of dockets in exchange for shillings. Each numbered docket consisted of foil and counter-foil separated by a carbon and expressed in identical terms. The subscriber's name was written on the upper one and appeared on the lower which was torn out and given to him.

The magistrate must be taken to have found that the docket was intended to have no other effect or purpose than that expressed on its face. If the raffle of the car fell within no exemption or exception, it would be a lottery within Division I. of Part IV. of the *Police Offences Act* 1928, and the collection of subscriptions for the purpose described by the docket would amount to an infringement upon sec. 89 (g), which makes it an offence to receive money for the purpose of the same being forwarded directly or indirectly to a person conducting a lottery. But sec. 88 (3) (c) provides that neither the provisions of sec. 88 nor of any other section in the Act shall apply to any raffle at any bazaar, the proceeds whereof are intended to be appropriated exclusively to charitable purposes, of which a notice having the name and address of any of the persons intending to hold such bazaar subscribed thereto has been given to the Attorney-General, if, within one week, the latter does not prohibit such raffle by notice sent to such address. The definition of "lottery" in sec. 86 excludes raffles such as are referred to in this provision. The required notice was in the present case sent to the Attorney-General, who did not prohibit the raffle. It follows, in my opinion, that, if the raffle, notwithstanding the plan put into execution by the "trust," continued to answer the description "raffle at a bazaar," no prosecution lies. It was said that this criterion was not decisive, for each of two reasons. First, it was suggested that the "trust" disposed of a chance of obtaining the winning ticket, which made its plan an additional lottery engrafted on the raffle. But this suggestion is met by the fact that when the tickets are bought at the bazaar they are all of equal value and all confer an equal chance of winning the motor car. To obtain one ticket rather than another is not to gain a "prize" within the definition of "lottery" in sec. 86. Secondly, it was contended that sec. 92 (1) supplied a conclusive presumption when proof was offered, as it was, that the document was accepted in the belief that its possession gave an interest in



the lottery constituted by the raffle. There are two answers to this contention. Sec. 92 (1) ought not to be read as supplying a conclusive, but only a rebuttable, presumption. In any case its application, like all other provisions of the Act, is excluded when what otherwise would be a lottery is found to be a raffle at a bazaar. The question upon which the matter depends, therefore, is, as I have said, whether the raffle is a raffle at a bazaar. In my opinion, this question is answered when the fact is accepted that the trust acted without the privity of the Hospital Committee which conducted the raffle, or of any of its servants or agents, and that the docket truly expresses the transaction intended to be entered into with the person who takes it and pays his shilling. The transaction amounts to no more than the solicitation and collection of money for the purpose of buying on behalf of the subscribers tickets in a raffle at a bazaar. It might well have been found that the raffle and the collection of money were not operations independently conducted, but were concerted plans, that no motor car would have been raffled unless the plans were put into combined or simultaneous execution, and that neither those who gave nor those who took the dockets actually regarded them as mere authorities having no more significance than they expressed. But no such findings were made and it is not for us to make them.

On the facts which the magistrate's decision must be taken as establishing, I think the prosecution rightly failed.

In my opinion the decision of *Martin J.* was right and the appeal should be dismissed with costs.

EVATT J. The respondent was charged with the offence specified in sec. 89 (f) of the *Police Offences Act* 1928 in that she sold a ticket in a lottery to one Constable Casey. The latter paid a shilling to the respondent, and signed and accepted a ticket authorizing the secretary of the Mildura Citizens' Charity Trust to pay the shilling into a trust account on trust to retain it until May 31st, 1934, then to withdraw it and purchase, for Casey and in his name at the Mildura District Hospital bazaar, a ticket in the proposed raffle of a motor car. No relationship was proved between the Charity Trust and those controlling the Hospital bazaar. Under these circumstances it

H. C. OF A.

1934.

ROWE

v.

DAVIDSON.

Dixon J.



H. C. OF A.  
 1934.  
 ROWE  
 v.  
 DAVIDSON.  
 Evatt J.

is clear that the true nature of the transaction was a scheme or device on the part of persons who joined together for the purpose, not of selling but of buying tickets in the raffle so soon as the bazaar came to be held. The police magistrate said at the conclusion of the evidence that the "ticket merely authorized an application for a ticket in a raffle which has not yet been held."

I agree with *Martin J.*'s view that "there is no justification for holding that the substance of the transaction differs from the form" (1) and that the transaction between Casey and the respondent was not a transaction of sale or purchase at all.

It was contended that, under sec. 92 (1) of the Act, the receipt given to Casey was itself to be regarded as a "lottery ticket in a particular lottery." The sub-section provides that, where the informant wishes to rely on the fact that a document is such a ticket, it shall be

"permissible and sufficient in proof of such fact to prove that such document . . . was bought or accepted under the belief that its possession or production conferred permission or authority on the . . . holder . . . to . . . have an interest in such lottery."

It is clear, and so much was practically conceded by *Mr. Latham*, that, while sec. 92 (1) gives an authority to prove a certain fact by an unusual method so that, when such proof is given, it shall be regarded as "sufficient" for the stated purpose, the appropriate tribunal is entitled to consider and act upon other evidence bearing on the point. The provision makes the proof not conclusive, but only "sufficient" evidence of the fact, so that here, where all the facts were placed before the Court, it was entitled to make its own findings upon all the points in issue.

In my opinion the judgment of *Martin J.* was right and the appeal should be dismissed with costs.

*McTIERNAN J.* In my opinion the appeal should be dismissed. I have read the judgment of my brother *Dixon* and agree with it.

*Appeal dismissed with costs.*

Solicitor for the appellant, *F. G. Menzies*, Crown Solicitor for Victoria.

Solicitor for the respondent, *Norman J. Favalaro*, Mildura.

H. D. W.