[HIGH COURT OF AUSTRALIA.]

BENDIXEN . . . . . APPELLANT;
COMPLAINANT,

AND

COLEMAN, SCOTT, CROFT, AND OTHERS . RESPONDENTS.
DEFENDANTS,

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SYDNEY, *Nov.* 25, 26; *Dec.* 20.

Latham C.J., Rich, Starke, McTiernan and Williams JJ.

National Security—Price control—Order fixing and declaring maximum price—Validity—Vagueness and uncertainty—Prices of liquor—"Bottle"—Sales of liquor by retail—"Cost" plus 25 per cent—Declaration of goods—Goods "in the possession or under the control of any person in Australia"—Application of declaration—National Security (Prices) Regulations (S.R. 1940 No. 176—1942 No. 513), regs. 22, 23 (1) (a)—Prices Declaration No. 96—Prices Regulation Order No. 896.

The meaning of the word "bottle" in relation to spirituous liquors, as it is used in Prices Regulation Order No. 896 made under the *National Security (Prices) Regulations*, is not so vague and uncertain as to make the Order invalid.

So *held* by *Latham* C.J., *Rich*, *McTiernan* and *Williams* JJ.; *Starke* J. holding that the Order would be bad for vagueness and uncertainty unless the word "bottle" had a trade meaning in the area to which the Order applies.

By clause 4 of Prices Regulation Order No. 896 the maximum price at which certain non-listed spirituous liquors were permitted to be sold by retail in the Rockhampton area was fixed and declared to be "the cost of such non-listed liquors or the ingredients thereof plus 25 per cent of that cost."

Held, by *Latham* C.J., *Rich*, *McTiernan* and *Williams* JJ. (*Starke* J. dissenting), that the meaning of the word "cost" in clause 4, read in relation to the subject matter to which it is applied, is not so vague and uncertain as to make the Order invalid.

Vardon v. *The Commonwealth*, (1943) 67 C.L.R. 434, distinguished.

Factors included in "cost," as used in clause 4, discussed.

Prices Declaration No. 96 made under the *National Security (Prices) Regulations* applies to goods in the possession or under the control of a person in Australia whenever they came into his possession or under his control.

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CASE STATED.

Upon separate complaints made by Edward Bendixen, an officer employed in the Queensland Prices Branch, Department of Trade and Customs, thirteen defendants were charged before a magistrate for breaches of reg. 29 (1) (*a*) of the *National Security* (*Prices*) *Regulations* made under the *National Security Act* 1939-1940.

The offences alleged were that within the Rockhampton area as defined in Prices Regulation Order No. 896 the defendants sold certain declared goods at prices being prices greater than the maximum prices fixed in relation to those goods under the Regulations.

The complaints related variously to sales of whisky, gin, rum, stout, cherry brandy and certain wines.

The magistrate dismissed the complaints and, under s. 226 of *The Justices Acts* 1886 *to* 1942 (Q.), in each proceeding stated a case for the opinion of the High Court.

Upon the matters coming on for hearing before the High Court they were, on the basis of similarity of questions involved, grouped into a number of groups.

The first group was subdivided into two sections, *a* and *b*. The principal question arising in this group of cases related to a provision of Prices Regulation Order No. 896 made on 30th December 1942 by the Commonwealth Prices Commissioner under powers conferred upon him by the *National Security* (*Prices*) *Regulations*. By this order the Commissioner in clause 2 fixed and declared the maximum prices at which spirituous liquors and aerated waters as specified in the schedule to the order might be sold by retail in the Rockhampton area to be those specified in the schedule. The Rockhampton area was defined in the order as being the area contained within the circumference of a circle having a radius of five miles and its centre at the Rockhampton Post Office. All the subject sales took place within the Rockhampton area as so defined. The schedule to the order consisted of a list of liquors and of prices. The charges in the cases forming this group related to sales of whisky, gin, rum, or sherry. In each such case the relevant provision in the order fixed a price for a bottle of the liquor. The argument in these cases was presented, in respect of section *a*, by reference to the case in which one Marion Scott was the defendant, and, in respect of section *b*, by reference to the case in which one Rosa Ethel Coleman was the defendant.

Bendixen v. *Scott.*

The charge against Marion Scott was that on 4th February 1943, she " did contravene a provision of the *National Security* (*Prices*)

Regulations made in pursuance of the *National Security Act* 1939-1940 in that contrary to regulation 29 (1) (*a*) of the said Regulations she did within the Rockhampton area as defined in Prices Regulation Order No. 896 sell certain goods to wit Australian Whisky being one 26 oz. bottle of Milnes Special Selected Whisky at a price namely three pounds (£3/-/-) per bottle being at a price greater than the maximum price fixed in relation to the said goods under the said Regulations for the sale of the said goods within the said area namely fifteen shillings (15/-) per bottle." The complaint contained averments :—1. that on 4th February 1943, at Melbourne Hotel, Rockhampton, Queensland, the said Marion Scott sold by retail certain declared goods namely, Australian Whisky being one 26 oz. bottle of Milnes Special Selected Whisky at the price of £3 per bottle to a member of the Allied Forces ; 2. that the said sale took place within the Rockhampton area as defined in Prices Regulation Order No. 896 ; 3. that the maximum price fixed under the *National Security* (*Prices*) *Regulations* at which the subject goods could have been sold by retail by Marion Scott within the said area was 15s. ; and 4. that Marion Scott was on 4th February 1943 and at all material times the licensee of the Melbourne Hotel aforesaid.

The charges in the other cases in this group were similar except with respect to the particular liquor alleged to have been sold.

In relation to whisky the schedule to Prices Regulation Order No. 896 provided as follows :—

"Whisky

	Imported Standard Lines
	s. d.
All Imported Brands—	
Bottle	24 0
Half bottle	12 9
Flasks	10 7
Half Flasks	6 0
Per Measured Nip	1 3
With soda, 3d. extra.	
Australian, Old Court and Corio Special and others costing same price—	
Bottle	15 0
Half Bottle	7 9
10 oz. Flasks	6 0
5 oz. Flasks	3 7
Miniatures	2 3
Draught Bottle	14 6
Per Measured Nips	11
With soda, 3d. extra."	

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The complainant relied upon the averments and also called oral evidence, *inter alia*, that in the retail liquor trade a "bottle" of whisky means a bottle containing 26 fluid ounces of whisky.

At the conclusion of the case for the complainant, counsel for the defendant asked that the complaint be dismissed on the following grounds :—1. that reg. 23 of the *National Security* (*Prices*) *Regulations* and/or Prices Regulation Order No. 896 are or is *ultra vires* the Commonwealth by reason of s. 99 of the Constitution ; 2. that by reason of s. 113 of the Constitution the Commonwealth cannot enact any law relating to the use, consumption, sale, or storage of fermented, distilled or other intoxicating liquids ; 3. that Prices Regulation Order No. 896 is bad in law in so far at any rate as it purports to fix a maximum price for the sale of Australian Whisky or Milnes Specially Selected Whisky on the grounds—(*a*) that neither Australian Whisky nor Milnes Specially Selected Whisky has been declared to be declared goods by the Minister within the meaning of reg. 22 of the *National Security* (*Prices*) *Regulations* ; (*b*) that the said order is uncertain in that "bottle" is not a measure of quantity ; (*c*) that Declaration No. 96 only applies to goods in the possession or under the control of any person in Australia at the making of the said declaration ; 4. that there is no evidence other than the averments set out in the complaint that the said bottle of whisky was in the possession or under the control of any person in Australia at the date of the Prices Declaration No. 96 and that the said averment that the said bottle of whisky was declared goods did not constitute evidence that the said bottle was in the possession or under the control of any person in Australia at the said date.

The magistrate reserved his decision upon these grounds and evidence was called on behalf of the defendant without prejudice to her rights.

At the conclusion of the case for the defendant her counsel asked for a dismissal of the complaint upon the following grounds :—1. that there was no evidence to support a conviction ; 2. that the doctrine of reasonable doubt was applicable in favour of the defendant ; 3. that the witnesses called by the prosecution were accomplices and the defendant could not be convicted on the uncorroborated testimony of an accomplice or accomplices, and there was no testimony against the defendant which was corroborated in some material particular by other evidence implicating the defendant ; 4. that the defendant had been denied a full and fair opportunity of defending the charge inasmuch as the first intimation of an alleged breach of law was made to her when she received the summons

in this matter on 24th April 1943; 5. that the prosecution was an abuse of the process of the court for the reason mentioned in 4.

There was no evidence other than the averments that the subject bottle of whisky was in the possession or under the control of any person in Australia at the date of the Prices Declaration No. 96.

The questions of law stated for the opinion of the High Court were :—

1. Was the magistrate right in law in deciding—
   (1) that by reason of s. 113 of the Constitution the Commonwealth cannot enact any law relating to the use, consumption, sale, or storage of fermented, distilled or other intoxicating liquids;
   (2) that Australian Whisky or Milnes Specially Selected Whisky is not and by virtue of s. 113 of the Constitution cannot be declared "declared goods" under Declaration No. 96 made on 13th April 1942 in pursuance of the powers conferred by reg. 22 of the *National Security* (*Prices*) *Regulations*;
   (3) that Prices Regulation Order No. 896 made on 30th December 1942 is invalid and bad in law in so far as it purports to fix a maximum price for the sale by retail within the Rockhampton area of Australian Whisky or Milnes Specially Selected Whisky;
   (4) that the said Order No. 896 is invalid on the grounds of vagueness or uncertainty as a bottle is not a measure of quantity?
2. Whether the magistrate's decision in dismissing the complaint was correct in law on any of the other grounds taken by counsel for the defendant or open to the defendant upon the appeal.
3. Was the magistrate's decision in dismissing the complaint contrary to law?

Bendixen v. *Coleman.*

The only material difference between the cases in section *a* and the cases in section *b* of the group was that in the cases in section *b* evidence was not given that in the retail liquor trade a "bottle" of whisky means a bottle containing 26 fluid ounces of whisky. Otherwise, *mutatis mutandis*, the charge, averments, submissions, findings and questions of law were similar.

Cases in which it was objected that clause 4 of Prices Regulation Order No. 896 was vague and uncertain.

In another group of cases it was objected that clause 4 of Prices Regulation Order No. 896 was so vague and uncertain that it could

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not be said to fix and declare a price. Clause 4 provides as follows: —"I fix and declare the maximum price at which spirituous liquors not specified in the aforesaid price list (hereinafter referred to as 'non-listed liquors') may be sold by retail in the Rockhampton area to be the cost of such non-listed liquors or the ingredients thereof plus 25 per cent of that cost."

Bendixen v. *Croft.*

Another group was represented by the case in which Robert Albion Burney Croft was the defendant. The charge against Croft was that on 11th February 1943, he "did contravene a provision of the *National Security* (*Prices*) *Regulations* . . . in that contrary to reg. 29 (1) (*a*) of the said Regulations he did within the Rockhampton area as defined in Prices Regulation Order No. 896 sell certain declared goods to wit stout being New South Wales brew namely one 26 oz. bottle of Toohey's Oatmeal Stout at a price namely . . . 3s. 6d. per bottle being a price greater than the maximum price fixed in relation to the said goods under the said Regulations for the sale of the said goods within the said area namely . . . 2s. 3½d. per bottle." It was averred:—1. that on 11th February 1943, at Ascot Hotel, North Rockhampton, Queensland, Croft sold by retail certain declared goods namely stout being New South Wales brew namely one 26 oz. bottle of Toohey's Oatmeal Stout at the price of 3s. 6d. per bottle to a member of the Allied Forces; 2. that the sale took place within the Rockhampton area as defined in Prices Regulation Order No. 896; 3. that the maximum price fixed under the *National Security* (*Prices*) *Regulations* in relation to the subject goods at which the said goods could have been sold by retail by Croft within the area was 2s. 3½d.; and 4. that Croft was on 11th February 1943 and at all material times the licensee of the said Ascot Hotel.

The complainant relied upon the averments and in addition called oral evidence.

On 29th October 1941, by Declaration No. 70, the Minister of State for Trade and Customs, in pursuance of the powers conferred by reg. 22 of the *National Security* (*Prices*) *Regulations* declared the following goods to be declared goods for the purposes of the Regulations, namely, "Spirituous Liquors, viz., Ale, Stout and Other Beer. For purposes of this Declaration 'spirituous' means containing more than two per centum of proof spirit."

By Declaration No. 96, made on 13th April 1942, the Minister declared "the following goods to be declared goods for the purpose of the said Regulations, namely:—All goods in the possession or

under the control of any person in Australia " with certain exceptions not material to this report.

At the conclusion of the complainant's case, the defendant's counsel asked for a dismissal of the complaint on the following grounds :—1. that reg. 23 of the Prices Regulations and/or Prices Regulation Order No. 896 are or is *ultra vires* the Commonwealth by reason of s. 99 of the Constitution ; 2. that by reason of s. 113 of the Constitution the Commonwealth cannot enact any law relating to the use, consumption, sale or storage of fermented, distilled or other intoxicating liquids ; 3. that the bottle of Toohey's Oatmeal Stout referred to in the complaint and put in evidence not having been opened there was no factual basis for averment No. 1 in the complaint ; and 4. that there was therefore no evidence that the contents of the said bottle contained more than two per cent of proof spirit, so as to bring it within the purview of Prices Declaration No. 70.

It having been argued by counsel for the complainant that if the said bottle was not declared goods within the meaning of Prices Declaration No. 70, it was declared goods within the meaning of Prices Declaration No. 96 and that the complainant was entitled to rely upon Prices Declaration No. 96 alternatively to Prices Declaration No. 70, counsel for the defendant, without waiving his contentions as to Prices Declaration No. 70 then asked for a dismissal of the complaint upon alternative grounds which were similar to grounds (3) and (4) put at the case for the complainant in the case of Marion Scott (see p. 403 *supra*).

The magistrate reserved his decision upon the grounds taken and evidence was thereupon called on behalf of the defendant without prejudice to his rights.

At the conclusion of the case for the defendant his counsel asked that the complaint be dismissed upon grounds that were similar in every respect to those put at the conclusion of the case for the defendant in the case of Marion Scott (see p. 404 *supra*).

The magistrate found as facts, *inter alia*, (i) that on the date charged Croft sold by retail within the Rockhampton area as defined a 26 oz. bottle of Toohey's Oatmeal Stout at the price of 3s. 6d. ; (ii) that the bottle of Toohey's Oatmeal Stout put in evidence had not been opened ; and (iii) that there was no evidence other than the averments that the said bottle of Toohey's Oatmeal Stout was in the possession or under the control of any person in Australia at the date of Prices Declaration No. 96.

There was no finding of fact that the liquor contained in the said bottle contained more than two per cent of proof spirit.

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The questions of law stated for the opinion of the High Court in this case were :—

1. Was the magistrate right in law in deciding—

(1) that by reason of s. 113 of the Constitution the Commonwealth cannot enact any law relating to the use, consumption, sale or storage of fermented, distilled or other intoxicating liquids ;

(2) that stout or Toohey's Oatmeal Stout is not and by virtue of the provisions of s. 113 of the Constitution cannot be declared "declared goods" under Declaration No. 70 made on 29th October 1941 in pursuance of the powers conferred by reg. 22 of the Prices Regulations ;

(3) that Prices Regulation Order No. 896 made on 30th December 1942 under powers conferred by the Prices Regulations is invalid and bad in law in so far as it purports to fix a maximum price for the sale by retail within the Rockhampton Area of stout or Toohey's Oatmeal Stout ;

(4) that Prices Regulation Order No. 896 is invalid on the grounds of vagueness or uncertainty as "bottle" is not a measure of quantity ;

(5) that in order to establish that the said 26 oz. bottle of Toohey's Oatmeal Stout put in evidence was declared goods the complainant was obliged to rely on Prices Declaration No. 70 as tendered in evidence and that he was not entitled to rely in the alternative on Prices Declaration No. 96 ;

(6) that there was no evidence either oral or by averment that the said bottle of Toohey's Oatmeal Stout was spirituous liquor, viz., stout containing more than two per cent of proof spirit as defined in Prices Declaration No. 70 ;

(7) that there was evidence that the said bottle of Toohey's Oatmeal Stout had not been opened ?

2. Whether the magistrate's decision in dismissing the complaint was correct in law on any of the other grounds taken by counsel for the defendant or on any other ground open to the defendant upon the appeal.

3. Was the magistrate's decision in dismissing the complaint contrary to law ?

McGill K.C. (with him *Holmes*), for the appellant. The word "bottle" is used in Prices Regulation Order No. 896 plainly to indicate some standard-sized bottle, or a bottle of standard capacity. The fact that one price is fixed for a bottle of whisky, and, also,

one price is fixed for a half bottle, indicates that that is a price for something that does not vary in size or capacity. The meaning of "bottle" in this connection is known not only to those who are engaged in the trade but also, as is shown in the matters now before the Court, to the general public, particularly those who purchase this sort of commodity. The order as a whole shows that "bottle" and "half bottle" mean in the trade some recognized standard, but, independently of trade usage, it also shows that a price was thereby fixed for something definite and known, therefore there is no vagueness or uncertainty in fixing the price of a bottle of whisky by fixing it at so much per bottle. The magistrate was wrong in law as to the effect of s. 113 of the Constitution.

[*Maughan* K.C., for the respondents. Although it is my duty to my clients to find any ground to support their cases, I feel that I am precluded by the decision of this Court in *Amalgamated Society of Engineers* v. *Adelaide Steamship Co. Ltd.* (1) from supporting the view taken by the magistrate of s. 113 of the Constitution. I do not think I could ask this Court to take a view different from that taken by the Court in *Fox* v. *Robbins* (2), or as to the application of the *Engineers' Case* (3). Similarly, the decision in *Elliott* v. *The Commonwealth* (4) precludes me from arguing s. 99 of the Constitution, that is that regulations relating to a particular place are invalid. The Justices who constituted the majority in that case are members of the present Bench and it is not usual, when a case has been fully argued, to allow it to be re-argued by counsel.

LATHAM C.J. We are obliged to you Mr. *Maughan* for what you have indicated.]

McGill K.C. The Regulations and Prices Declaration No. 96 made thereunder are valid (*Victorian Chamber of Manufactures* v. *The Commonwealth* (5)). It was not necessary that in respect of the meaning of the words "bottle" and "half bottle" evidence of trade usage should be given in every case. It was given in some cases; therefore the magistrate would be justified in the other cases of availing himself of that evidence as judicial knowledge. As regards non-listed liquors the retail price should be the cost to the retailer, that is, the invoice price, of those liquors where there has been such a cost, otherwise the price has not been fixed. So construed the order is not uncertain or indefinite within the meaning

(1) (1920) 28 C.L.R. 129.
(2) (1909) 8 C.L.R. 115, particularly at pp. 124, 125.
(3) (1920) 28 C.L.R. 129.
(4) (1936) 54 C.L.R. 657.
(5) (1943) 67 C.L.R. 335.

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of the decision in *Vardon* v. *The Commonwealth* (1), but, on the contrary, is clear and unambiguous. The ascertaining of the relevant delivery charges is a mere matter of arithmetic and cannot affect the construction of the order. In Croft's case although the bottle was unopened the averment is prima facie proof that it contained stout as specified, and the averment that the stout named was declared goods, aided by the definition in Prices Declaration No. 70 of the word " spirituous," constitutes prima facie proof that that stout contained more than two per cent of proof spirit. The prima facie evidence is not displaced by the fact that the bottle was not opened. In any event the point is completely covered by Prices Declaration No. 96. The special cases should be remitted to the magistrate with the answers of the Court (*Francis* v. *Rowan* (2) ; *Millner* v. *Raith* (3)).

Maughan K.C. and *Bradford*, for the respondents.

Maughan K.C. Prices Regulation Order No. 896 is invalid *ab initio* in so far as it relates to " bottle," or " bottle " with an adjective, such as " half " or " draught," on the ground that it is uncertain and ambiguous. It is axiomatic that a regulation to be good must be certain and free from ambiguity (*Brunswick Corporation* v. *Stewart* (4) ; *Vardon* v. *The Commonwealth* (1)). " Bottle " is not defined in any dictionary of the English language as being a container of any particular size. Prices should be fixed, if at all, in relation to something that is a standard of measurement, something that is of a particular size. Prices Regulation Order No. 896 lacks that element of certainty which is essential in a penal statute. Evidence is not admissible to show that a particular word has a particular meaning in a statute or regulation (*Halsbury's Laws of England*, 2nd ed., vol. 31, p. 486, par. 610 ; *Camden* (*Marquis*) v. *Inland Revenue Commissioners* (5)). The Prices Regulation Order as to the meaning of " bottle " must be construed without the assistance of that evidence.

[STARKE J. referred to *Whitton* v. *Falkiner* (6).]

Any word in the English language with a common meaning must be given that meaning and a limited meaning given to that word by certain persons must be disregarded. It is very important that the meaning of words should be known and understood by the general public as well as by those persons who are engaged in a

(1) (1943) 67 C.L.R. 434.
(2) (1941) 64 C.L.R. 196, at p. 201.
(3) (1942) 66 C.L.R. 1.
(4) (1941) 65 C.L.R. 88, at pp. 94, 99.
(5) (1914) 1 K.B. 641, at p. 647.
(6) (1915) 20 C.L.R. 118, at p. 127.

particular trade (*J. H. Rayner & Co. Ltd.* v. *Hambros Bank Ltd.* (1)). Evidence as to the meaning of the word " bottle " is inadmissible and in the absence of evidence as to that meaning the order is too uncertain to be enforced. The court is not permitted to guess the meaning. Breaches of the Regulations are penal offences, therefore the Regulations and declarations and orders thereunder must be strictly construed. Clause 4 of Prices Regulation Order No. 896, purporting to fix the price of goods on a " cost-plus " basis, is *ultra vires* (*Vardon* v. *The Commonwealth* (2)). At what point is the " cost " to be determined ? What factors are to be included or disregarded in determining the cost of a particular article or commodity ? The words used are too vague and uncertain, therefore, having regard to the penal nature of any breach, the order should be declared invalid. The appellant is not entitled to rely upon Prices Declaration No. 96. It has not been proved that the stout put in evidence was spirituous liquor containing more than two per cent of proof spirit as specified in Prices Declaration No. 70. The averments are neither sufficient nor satisfactory. The validity of Prices Declaration No. 96 is not disputed. The only question is as to whether it applies to goods that were in existence when the declaration was made and to goods that came into existence afterwards. The expression of opinion in *Victorian Chamber of Manufactures* v. *The Commonwealth* (*Prices Regulations*) (3) is *obiter*. The words used in Prices Declaration No. 96 are equally capable of meaning " all goods in existence at the present time " or " all goods including goods to come into existence in the future." In that state of uncertainty, and again having regard to the penal nature of a breach, the Court will give those words the less extensive meaning.

Bradford. If Mr. *Maughan's* argument is not accepted, then it will be necessary for the Court to determine what Prices Declaration No. 96 covers. That declaration does not apply to the Australian whisky or any of the other liquors which are involved in the charges made in the cases now under consideration. The words " in the possession or under the control of any person in Australia " in that declaration are adjectival words. They are words of qualification, or, at any rate, of description. As appearing in the first part of the declaration they should be so construed that what the Minister declared were goods described as being in the possession or under the control of a person in Australia at a particular time. The declara-

(1) (1942) 59 T.L.R. 21.
(2) (1943) 67 C.L.R. 434.
(3) (1943) 67 C.L.R., at pp. 340, 341.

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tion, although wide, is not a general declaration. It is a specific declaration in the sense that it applies to a very large number of goods so long as they come within the qualification first stated. Prices Regulation Order No. 896 is not limited to the goods therein mentioned which are in the possession and control of persons in Australia, but deals with liquors generally. That order applies not only at one particular point of time but to all spirituous liquors arriving within the Rockhampton area thereafter. Therefore, it is not limited to goods in the possession or control of persons in the Rockhampton area because it purports to fix a price for those liquors which come into the area after the order was made. The interpretation placed by the Prices Commissioner on Prices Declaration No. 96 ignores the words " in that possession or under the control of."

Holmes, in reply. There was evidence before the magistrate as to the trade meaning given to the term " bottle " as used in Prices Regulation Order No. 896. That evidence establishes a custom or a meaning in the ordinary sense. The term is used in the order in connection with a particular trade in which it has a known meaning. Evidence as to the meaning of the term is admissible (*Ex parte Mackaness and Avery Pty. Ltd.*; *Re Royce* (1)). Neither the sellers nor the purchasers had any difficulty in the matter; they knew the meaning of the terms used in the order. *Vardon* v. *The Commonwealth* (2) deals with the cost of goods which were in the course of manufacture from time to time, and, therefore, is distinguishable from this case. Prices Declaration No. 96 deals with all goods whether in existence at the date of the order or to come into existence thereafter.

LATHAM C.J. We do not desire to hear you on that point.

Cur. adv. vult.

Dec. 20.

The following written judgments were delivered :—

LATHAM C.J. The appellant Bendixen prosecuted in separate proceedings thirteen defendants for infringement of the *National Security* (*Prices*) *Regulations* (Statutory Rules 1940 No. 176 as amended) made under the *National Security Act* 1939-1940. The offences alleged were that the defendants did, within the Rockhampton area as defined in the Prices Regulation Order No. 896, sell certain declared goods at prices being prices greater than the maximum prices fixed in relation to the goods under the Regulations.

(1) (1943) 43 S.R. (N.S.W.) 239, at p. 244; 60 W.N. 153, at p. 157.

(2) (1943) 67 C.L.R. 434.

The charges related variously to sales of whisky, gin, rum, stout, cherry brandy and certain wines. The magistrate dismissed the information and in each proceeding stated a case under *The Justices Acts* 1886 *to* 1942 (Q.), s. 226. The questions of law arising in the cases upon which the determination of this Court is sought were reduced upon the hearing of the appeals to four, the contentions of the defendants in relation to certain other matters referred to in the questions not being pressed.

1. The first question relates to a provision of Prices Regulation Order No. 896. By this order the Prices Commissioner in clause 2 fixed and declared the maximum prices at which spirituous liquors and aerated waters as specified in the schedule to the order might be sold by retail in the Rockhampton area to be those specified in the schedule. The sales in question took place in the Rockhampton area as defined in the order. The schedule consisted of a list of liquors and of prices. One group of charges related to whisky, gin, rum and sherry. In each of these cases the relevant provision in the order fixed a price for a bottle of the liquor. The argument in these cases was presented by reference to the case in which one Marion Scott was the defendant. The charge against Scott was that she "did contravene a provision of the *National Security* (*Prices*) *Regulations* made in pursuance of the *National Security Act* 1939-1940 in that contrary to reg. 29 (1) (*a*) of the said Regulations she did within the Rockhampton area as defined in Prices Regulation Order No. 896 sell certain declared goods to wit Australian Whisky being one 26 oz. bottle of Milnes Special Selected Whisky at a price namely three pounds (£3/-/-) per bottle being a price greater than the maximum price fixed in relation to the said goods under the said Regulations for the sale of the said goods within the said area namely fifteen shillings (15/-) per bottle." The charges in the other cases in this group were the same except with respect to the particular liquor alleged to have been sold. In relation to whisky, the provisions of the schedule to the order were as follows :—

"Whisky.

Imported Standard Lines.

	s.	d.
All Imported Brands—		
Bottle	24	0
Half Bottle	12	9
Flasks	10	7
Half Flasks	6	0
Per Measured Nip	1	3
With soda, 3d. extra.		

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Australian, Old Court and Corio Special and others costing same price.

Bottle	15	0
Half Bottle	7	9
10 oz. Flasks	6	0
5 oz. Flasks	3	7
Miniatures	2	3
Draught Bottle	14	6
Per Measured Nips	0	11

With Soda, 3d. extra."

The question stated in relation to these cases is whether the order is invalid on the grounds of vagueness or uncertainty as " bottle " is not a measure of quantity. The magistrate held that the order was invalid upon these grounds. The respondents contended that the decision of the magistrate was right because bottles, as is well known, vary indefinitely in size, and the description of whisky (or of any liquor) by reference to a bottle could not be regarded as a reference to any definite quantity. It was contended that therefore the order was uncertain in its meaning and that it was void for that reason.

In the first group of cases evidence was given that in the retail liquor trade a bottle of whisky meant a bottle containing twenty-six fluid ounces, but in a second group of cases (of which the case against Rosa Ethel Coleman was taken as typical) no such evidence was given. It was contended for the respondents that such evidence was not admissible because the regulations should not be regarded as regulations operating only within a particular trade and between persons engaged in that trade, in which latter case possibly a special or technical meaning might be assigned to a word by evidence. The regulations affected the relation of the public to retail sellers in the trade, so that even if the evidence established that in the trade a bottle of whisky meant a bottle containing twenty-six fluid ounces, it was contended that that fact would not be sufficient, in the case of other regulations, to attach the suggested trade meaning to the term " bottle " so as to rescue the provisions from the vice of uncertainty (*J. H. Rayner & Co. Ltd.* v. *Hambros Bank Ltd.* (1)). The evidence, however, goes further than this. In all the cases, including those in which no evidence as to trade meaning was given, there was evidence that a person asked for a bottle of whisky (or other liquor) and that a particular bottle containing twenty-six fluid ounces was supplied and accepted as satisfying the request. None of the parties had any difficulty in knowing what was meant by a bottle—until the case

(1) (1942) 59 T.L.R. 21.

came into court, when the objection based upon alleged uncertainty was raised.

The objection of uncertainty is directed against the validity of the order. If evidence of trade meaning were held to remove uncertainty in the cases in which such evidence was given, then presumably the conclusion in each of those cases would be that the order is valid. If, however, in other cases no such evidence was given, then, upon the basis that such evidence was necessary to remove uncertainty, in those cases the order would be held to be invalid. But the same order cannot be held by the same court to be certain and valid in one case and also to be uncertain and invalid in another case. These considerations suggest that the evidence of trade meaning is not relevant to the certainty, but that it may perhaps be relevant to the application, of the order.

If evidence of trade meaning was necessary in any case it was necessary in all cases. Repeated evidence in superior courts may establish a custom of which all courts will take judicial notice, but this rule does not apply to inferior courts. When the rule does operate, it dispenses with the necessity of evidence, because the court takes judicial notice of the relevant fact. Where, however, evidence is necessary, evidence in one case is not, apart from agreement or special order, evidence in any other case. But I do not see why evidence of trade meaning was necessary in any of these cases. The court takes judicial notice of the meaning of ordinary words, and evidence is not admissible to expound their meaning, though the court, in addition to using its own knowledge, may refer to standard authors and authoritative dictionaries in order to obtain assistance in interpretation (*Camden* (*Marquis*) v. *Inland Revenue Commissioners* (1)). "Bottle" is an ordinary English word. Reference to a dictionary (*Standard Dictionary*) shows that it means a vessel for holding, carrying and pouring liquids, having a neck and narrow mouth that can be stopped. There is no difficulty in ascertaining the meaning of the common word "bottle."

The court presumably may be allowed to take judicial notice of the fact that bottles vary indefinitely in size. The terms of the order, however, show that where the word "bottle" occurs in, for example, "bottle . . . 15s.," it is not used as referring to bottles of all sizes. The order draws distinctions between bottles, half bottles and flasks, and fixes different prices in each case. Accordingly a "half bottle" is not a "bottle" within the meaning of the order. The question is whether the fact that bottles vary in size makes the order void for uncertainty.

(1) (1914) 1 K.B. 641.

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If a charge is a charge of selling a bottle of whisky contrary to the order, the prosecution obviously must prove that a bottle of whisky was sold. There may be borderline cases where it is doubtful whether what was sold was whisky or whether what contained it was a bottle. There is doubtless some point at which an alcoholic liquor certainly becomes whisky, and some point at which it certainly ceases, by dilution or otherwise, to be whisky. One can see, without technical knowledge, that liquids might be compounded of such ingredients that it would be uncertain whether they were whisky or not. If the evidence for the prosecution left it uncertain whether a particular liquor was or was not whisky, the result would be, not that the order containing the law was uncertain, but that the prosecutor had failed to prove his case. Similar considerations apply to the word "bottle." The meaning of the word, as already stated, is clear enough, but there may be difficulties in applying it. There are vessels such as demi-johns and other vessels with necks or spouts as to which there might be doubt and room for argument whether they should be regarded as bottles. If the evidence for the prosecution left it in doubt whether or not a particular vessel was a bottle, the result would be that the prosecution would fail, not that the order referring to bottles was void for uncertainty.

Thus if a question arises whether a particular liquid is whisky, or whether a particular container is a bottle, there may be difficulty in determining either fact, but such difficulty would not make uncertain and void a law requiring, e.g., all whisky to be sold in bottles. Evidence that the defendants were in these cases asked for a bottle of whisky, that they sold what the customers accepted as bottles of whisky and what any court can recognize as being bottles of whisky, is sufficient to establish that bottles of whisky were sold, even if there be a borderland of doubt in other cases as to whether some containers are bottles or whether some fluids are whisky.

The fact that bottles vary in size does not, in my opinion, affect the certainty of a provision referring to bottles. Such a provision may appear in a Marine Store Dealers Act (e.g. the Victorian Act of 1928). It may appear in a customs tariff—where a duty could be fixed in respect of all bottles irrespective of value, size or quality, or varying with these or other characteristics. Similarly it may appear in a price-fixing order, whether prices are fixed in relation to the capacity of bottles or not. There is no provision in the *Prices Regulations* that prices fixed thereunder must vary directly with quantities. In the order now under consideration it happens that different prices are fixed for flasks of specified capacity, for half bottles and for bottles. The evidence shows that bottles of whisky

normally, at least, contain twenty-six fluid ounces, but if some bottles contained twenty-five ounces and some contained twenty-seven ounces, those facts would not make the order uncertain. The order would, in my opinion, validly apply to them simply because they were bottles in the ordinary sense of the word, not being half bottles or flasks for which special provision is made.

2. In another group of these appeals the question for determination relates to clause 4 of the order, which is in the following terms :— " I fix and declare the maximum price at which spirituous liquors not specified in the aforesaid price list (hereinafter referred to as ' non-listed liquors ') may be sold by retail in the Rockhampton area to be the cost of such non-listed liquors or the ingredients thereof plus 25 per cent of that cost." It is objected on behalf of the respondents that this provision is so vague and uncertain that it cannot be said to fix and declare a price. Reference is made to *Vardon* v. *The Commonwealth* (1). In that case the price of made-to-order " goods or services sold by you " was fixed by a notification from the Prices Commissioner at " the cost of those goods or services, plus 20% thereof." It was held that the word " cost " was so uncertain and ambiguous in meaning that the notification could not be regarded as declaring a price. The goods in question were suits of clothes and other garments the material for which was provided by the retailer who rendered certain services in measuring a customer, &c., and arranged for the making of the suit by another person who supplied other material required. It was held that in such a case it was impossible to say with any degree of certainty whether cost meant out-of-pocket payments for materials and for work done by the make-up tailor or all the expenses incurred in the process of supplying the goods including some proportion of overhead costs. I was of opinion that the term " cost " was " necessarily uncertain in meaning when applied to goods of the description to which the notice refers."

In the present case the term " cost " must be read in relation to the subject matter to which it is applied. The terms of clause 4 show that the order is dealing with sales of liquor by retail. It provides that the price is to be the cost of the liquor plus twenty-five per cent of that cost. Is there any difficulty in ascertaining the cost of liquor to a retailer ? In my opinion there is no difficulty. The only thing that has to be ascertained is what he has paid, or is liable to pay, for the liquor to the person from whom he buys it. When he becomes the owner of the liquor he may transport it to a hotel in one place or to a hotel in another place. But the expenses of transport are not, in my opinion, part of the cost of the liquor—

(1) (1943) 67 C.L.R. 434.

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they are costs incurred after he has acquired the liquor and for the purpose of carrying on a business. The costs of carrying on the business, of handling the liquor, selling it, and providing premises in which to sell it, are not part of the cost of the liquor to the retailer. Accordingly, in my opinion, there is no ambiguity in the word "cost" where it is used in this order. It simply means what the retailer pays for the liquor to the person from whom he buys it. He may buy it delivered into his premises or at some other place. In either case what he pays for the liquor as the price of the liquor, whatever elements that price contains, is the cost of the liquor within the meaning of the order. Where the retailer buys a bottle, sells a bottle or buys half a bottle and sells a half bottle, there is no difficulty in applying the provision in question. Where he sells a separate drink taken or made up from what he has bought, the provision relating to bottles and half bottles does not apply, but the court is not required to consider in these cases the provisions relating to measured nips and drinks consisting of several ingredients. In all the cases before the court the charges relate to the selling of a bottle of liquor. The provisions of the order relating to such sales have not been shown to be uncertain in any respect. If there are difficulties (which appear to me to be only difficulties of proof) in applying other provisions of the order in relation to drinks separately sold, those difficulties are irrelevant to the question of the validity of the provisions in question. But, I venture to suggest, it would be desirable to define "cost" in all prices orders, as is already done in some cases.

3. In the case in which R. A. B. Croft is defendant a further question arises. The charge against Croft was that he, in breach of reg. 29 (1) (*a*) of the *Prices Regulations*, sold certain declared goods, to wit stout, being New South Wales brew, namely one 26 oz. bottle of Toohey's Oatmeal Stout, at a price greater than the maximum price fixed. It was found as a fact that Croft did sell a bottle of Toohey's Oatmeal Stout, but there was no finding "that the liquor contained in the bottle contained more than two per cent of proof spirit." Prices Declaration No. 70 of 29th October 1941 declared the following goods to be declared goods for the purposes of the *Prices Regulations*: "Spirituous Liquors, viz., Ale, Stout and Other Beer. For purposes of this Declaration 'spirituous' means containing more than two per centum of proof spirit." The information did not allege, and there was no evidence, that the stout contained more than two per cent of proof spirit. It was contended that when the charge was a charge of selling stout contrary to the Regulations, it should be charged and proved that the liquor contained more than two per cent of proof spirit.

If the charge had been a charge of selling spirituous liquor contrary to the Regulations, it would have been necessary to allege and prove that what was sold was spirituous liquor: and if there were no declaration of spirituous liquors as declared goods otherwise than under Declaration No. 70 it would have been necessary to show that that declaration was still in operation and that the liquor sold contained more than two per cent of proof spirit. But by Declaration No. 96 made on 13th April 1942, subject to exceptions not material in this case, the Minister declared "the following goods to be declared goods for the purpose of the said" (Prices) "Regulations, namely:—All goods in the possession or under the control of any person in Australia." By virtue of this declaration stout became declared goods irrespective of its proof spirit content. Declaration No. 96 is almost universal in scope and it dispenses with any necessity for the prosecution to rely upon any earlier and more limited declaration in any case, such as the present, to which it applies. I am of opinion that the question in this case also should be answered favourably to the appellant.

4. A further question, arising in all the cases, is whether, as Declaration No. 96 applies only to goods in Australia, the Order No. 896 should also be expressly so limited in order to be valid. In my opinion, even if the order were in the most general terms, it should be interpreted as applying only to sales of goods which are in Australia (*Acts Interpretation Act* 1901-1941, ss. 21 (*b*) and 46 (*a*)). But the order is limited in its terms—it applies only to retail sales in the Rockhampton area of Queensland and therefore only to sales in Australia of goods in Australia.

RICH J. I agree with the conclusions arrived at by the Chief Justice and my brothers *McTiernan* and *Williams* in their answers to the questions submitted in the cases stated.

The main contention on the part of the defendants was that "cost" in clause 4 of the order under review was too uncertain to allow of a price being fixed and declared. And reliance was placed on *Vardon* v. *The Commonwealth* (1). But "cost" in that case was used with reference to the manufacture of clothes and other articles for which materials had to be supplied and services rendered which made a complicated account necessary before a definite conclusion could be reached. In the present case "cost" is used in relation to the sale of liquor by publicans. And in this connection it means the cost of the liquor to the retailer as received by him at the place where he sells it—including price, insurance and all freights. As to

(1) (1943) 67 C.L.R. 434.

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the word "bottle," that is a word in the vernacular which needs no proof: Cf. *Taylor* on *Evidence*, 11th ed. (1920), p. 16, par. 16, note *h*, where cases are cited in which judges held that they were bound to notice that *beans* were a species of *pulse* and that *barley* was *corn*. Moreover buyer and seller were well acquainted with trade usage and in the cases where no evidence was led as to the fluid content of a bottle of whisky both parties recognized what was demanded and what was sold. This is a case where technicalities should not run riot and where common sense—which is not common—should prevail.

STARKE J. Cases stated by the stipendiary magistrate at Rockhampton in connection with various charges of contravention of the *National Security* (*Prices*) *Regulations* made pursuant to the *National Security Act* 1939-1940. Several questions of law were stated for the opinion of this Court.

In a series of cases the question is whether an order which fixes the maximum price of liquor at a certain price for a bottle is bad by reason of its vagueness and uncertainty. A bottle in its ordinary English meaning is simply a container for liquids of no particular shape or size and it is not any measure of quantity. But we are told that common knowledge tells us what is a bottle of whisky and apparently of any other spirituous liquor. But I am afraid that but few are so well versed in the vernacular of the trade. The truth is that the order speaks the language of the trade. And if the magistrate were satisfied on the evidence that a bottle was of a known shape or size or some measure of quantity then there is nothing vague or uncertain about the order. "The language of a Tariff Act," said *Isaacs* J. in *Whitton* v. *Falkiner* (1), "like that of every other Act, is to be taken in its ordinary signification, unless some secondary meaning is proved. The only appropriate secondary meaning in a Customs Act is that of commerce. If a commercial designation of an article is established, that should prevail from the nature of the operations which such an enactment is mainly intended to control. And the commercial designation that is to govern must be one which exists at the time the legislature spoke, and must be, as the Act is, general and definite, and not local or limited to particular traders."

The present prices order, it should be observed, is local and relates to traders in the Rockhampton area. And so it is the trade meaning of the word bottle in that area that should be ascertained. And it seems probable that the order refers to some trade meaning, for it

(1) (1915) 20 C.L.R., at p. 127.

speaks of bottle, draught bottle, half bottle, 10 oz. flask, 5 oz. flask, miniatures, &c. But the stipendiary magistrate has not, as I understand the case, devoted his attention to this aspect of the case or made any finding upon the subject. And, if there be no trade meaning in the relevant sense, then the order would, I should think, be bad for vagueness and uncertainty. In a number of cases there was no evidence of any trade meaning, but, if the magistrate were once fully satisfied of the meaning of the word bottle in the liquor trade, then he might act upon that meaning without repetition of the evidence in every case: Cf. *Phipson* on *Evidence*, 7th ed. (1930), p. 103.

In another series of cases the question is whether an order which fixes the maximum price at which unlisted spirituous liquors might be sold by retail in the Rockhampton area at the cost of such non-listed liquors or the ingredients thereof plus twenty-five per cent of that cost is valid. The word cost, as I said in *Vardon's Case* (1), is an equivocal word. But here it is used in connection with the sale by retail of spirituous liquors in the Rockhampton area. It was conceded during the argument that cost must include not only the invoice price (which I may observe is not necessarily constant) but also the cost of transporting the liquor if not included in the invoice price. But, if so, why not all expenditure to which the retailer is put in making the liquor available for sale, e.g., interest on money borrowed to acquire the liquor or a special charge for a booth or stand on a race or other day and so forth? However, I pass this by, for the order fixes the price at "the cost of such non-listed liquors or the ingredients thereof." Once bulk is broken the ascertainment of the cost of mixed liquors ("measured nips, with soda" is an expression used in the order) is unregulated. It is said to be quite easy and anyhow that it is for the seller of "mixed drinks" to ascertain the cost, or assume the risk in case he does not know the cost, of the quantity of each liquor or soft drink supplied and of a dash of any liquor or other ingredient. Such a statement indicates a want of practical knowledge and the true bureaucratic spirit. Such an order requires, I think, the impossible, and is to my mind so uncertain in its requirement and unreasonable, arbitrary and capricious that it is beyond power. Trade regulations ought not to require measurements and mathematical calculations to avoid contravention, but clear, definite and practical directions. Even in war-time the subject is entitled to that protection and on this Court, of all courts in Australia, rests the duty of requiring such directions.

(1) (1943) 67 C.L.R., at p. 448.

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Another question in all cases is whether the prices declaration of all goods in the possession or under the control of any person in Australia is confined to goods coming into the possession of such person after the date of the declaration, and also whether the prices order follows the declaration. The argument is untenable: the declaration relates to any goods in the possession of any person in Australia, whenever such goods came into his possession, and the prices order follows the declaration for it relates to goods in the possession of any person in the Rockhampton area which is in Australia.

Another question is whether complaints relating to spirituous liquors, viz., ale, stout and other beer, were not governed by Prices Declaration No. 70, which provided that "spirituous" for the purpose of the declaration means containing more than two per cent of proof spirit. The answer is in the negative, for Prices Declaration No. 96, which is later in date, contains no such limitation.

A final question is whether the Commonwealth is by reason of s. 113 of the Constitution prevented from enacting any law relating to the use, consumption, sale or storage of fermented, distilled or other intoxicating liquids. Counsel for the respondent intimated that he could not support the proposition, which is, I also think, untenable.

McTIERNAN J. In accordance with the provisions of *The Justices Acts* 1886 *to* 1942 of Queensland all these cases began with a complaint. In each case it alleged an offence against s. 10 of the *National Security Act* 1939-1940, which provides that any person who contravenes any regulation made in pursuance of the Act shall be guilty of an offence against the Act. The substance of each complaint was that the defendant contravened reg. 29 (1) (*a*) of the *National Security* (*Prices*) *Regulations*, which prohibits any person from selling any declared goods at a greater price than the maximum price fixed in relation thereto under these Regulations for the sale of those goods. The goods the subject of each complaint were spirituous liquors. By Prices Regulation Order No. 896, dated 30th December 1942, the Commonwealth Prices Commissioner fixed in pursuance of his powers under reg. 23 of the foregoing Regulations maximum retail prices for spirituous liquors and aerated waters in the Rockhampton area.

The Minister of State for Trade and Customs in pursuance of his powers under reg. 22 of these Regulations had made a declaration dated 29th October 1941 in respect of spirituous liquors containing

more than two per cent of proof spirit, at the same time defining spirituous liquors to be ale, stout and other beer: and made a further declaration dated 13th April 1942 in respect of "all goods in the possession or under the control of any person in Australia" with certain exceptions which are not now material.

By the above-mentioned Prices Regulation Order the Commissioner said that he fixed and declared the maximum prices at which spirituous liquors and aerated waters as specified in the schedule to the order may be sold by retail in the Rockhampton area to be those specified in the schedule to the order.

The Prices Regulation Order was attacked before us on the ground that the spirituous liquors in relation to which it purports to fix maximum prices had not been the subject of a declaration by the Minister pursuant to reg. 22. If this ground is established it is clear that it would be shown that the Prices Regulation Order has no legal foundation.

The validity of either of the Minister's declarations is not called in question. The declaration dated 13th April 1942 was upheld in this Court in *Victorian Chamber of Manufactures* v. *The Commonwealth* (*Prices Regulations*) (1). No attack is made on the earlier declaration.

The declaration made on 29th October 1941 is obviously less extensive than the subsequent declaration. If it extends to the goods covered by the Prices Regulation Order, the earlier declaration is not needed to support the Prices Regulation Order and need not be referred to again.

The contention is that the goods to which the Prices Regulation Order is expressed to apply do not come within the description of the goods to which the later declaration is expressed to apply. The declaration has an ambulatory operation. It applies to all goods not within the excepted classes, which from 13th April 1942 until the declaration ceases to operate, fulfil the description "being goods in the possession or under the control of any person in Australia." In my opinion all the goods in relation to which the Commissioner purported to fix a maximum price by the Prices Regulation Order are within that description and are subject to the Minister's declaration of 13th April 1942.

The Prices Regulation Order was also attacked on the ground that it was uncertain. It was said in *Kruse* v. *Johnson* (2) that: "From the many decisions on the subject it would seem clear that a by-law to be valid must, among other conditions, . . . be

(1) (1943) 67 C.L.R. 335.

(2) (1898) 2 Q.B. 91, at p. 108.

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certain: that is, it must contain adequate information as to the duties of those who are to obey." This principle is particularly applicable to the exercise of the power conferred on the Commissioner by reg. 23, which is in terms a power to fix and declare by order published in the *Gazette* a maximum price at which goods may be sold. An order which was not certain would not fulfil the purpose for which this power is conferred on the Commissioner and would be *ultra vires*.

It is contended that the Prices Regulation Order now in question is uncertain and vague in so far as it uses the words "bottle," "half bottle" and others of like import as the measure of the quantity of liquor for which prices are fixed. In my opinion this contention is untenable. The question is whether adequate information is conveyed by the Prices Regulation Order to the retailer and customer as to the price at which whisky and liquors of the various kinds described in the Prices Regulation Order may be sold. It seems to me that no more adequate information could be given than that given by specifying the price per "bottle" or "half bottle" and so on according to the designations mentioned in the Prices Regulation Order. Having regard to the terms of the Prices Regulation Order, it would, I think, be expatiating on the obvious to explain why it is not uncertain.

The contention was also made that the fourth paragraph of the Prices Regulation Order is uncertain because it does not state what is meant by cost. Reliance is placed on *Vardon's Case* (1) to support this contention. The meaning of the word "cost" may vary with the subject matter to which it relates. The question is what does the word mean in this context. In my opinion it means the sum (including of course the price) which it costs the hotelkeeper to get the liquors described in the Prices Regulation Order, including such liquors as he may use as the ingredients of a drink, into his hotel. That sum is a definite and an ascertainable amount. The case is therefore different from *Vardon's Case* (2). This part of the Prices Regulation Order is free from the vice which destroyed the order in that case.

In these appeals no objection founded on the Constitution was made in this Court to the Prices Regulation Order.

In my opinion the questions in the cases stated by the magistrate should be answered favourably to the prosecutor and all the matters should be remitted to the magistrate. The appeals should be allowed.

(1) (1943) 67 C.L.R. 434.

(2) (1943) 67 C.L.R. 434.

WILLIAMS J. A number of persons at Rockhampton in Queensland were prosecuted before a stipendiary magistrate for breaches of Prices Regulation Order No. 896 relating to the sale of spirituous liquors and aerated waters at retail prices in the Rockhampton area. The order was made by the Prices Commissioner pursuant to the powers conferred upon him by the *National Security* (*Prices*) *Regulations*.

The magistrate upheld certain points of law and dismissed the complaints, but stated cases under s. 226 of *The Justices Acts* 1886 *to* 1942 (Q.) asking in effect whether his conclusions on these points of law were correct.

I shall deal shortly with the points raised so far as it is necessary to do so in order to dispose of the appeals.

(1) The magistrate's conclusions that Prices Regulation Order No. 896 contravenes ss. 99 and 113 of the Constitution are inconsistent with decisions of this Court and are wrong. Mr. *Maughan* was right in not seeking to uphold these conclusions.

(2) I agree with the opinion of the Chief Justice in the *Prices Regulations Case*, *Victorian Chamber of Manufactures* v. *The Commonwealth* (1) that Prices Declaration No. 96 is intended to cover and does cover all goods to which it refers, whether they were in existence at the date the declaration was made or they subsequently came into existence whilst it remains in operation.

(3) The objection that there is no evidence that Toohey's Oatmeal Stout is declared goods within Prices Declaration No. 70 is immaterial because, assuming the objection to be good, the stout is declared goods within Prices Declaration No. 96, and this declaration, as well as Prices Declaration No. 70, was relied upon by the prosecution. Mr. *Maughan* was again right in not pressing this objection.

(4) I am of opinion that Prices Regulation Order No. 896, so far as it is material to pronounce upon its validity for the purpose of disposing of any of the prosecutions, is valid. It is unfortunate that " landed cost " was not specified, as this cost is defined in the *National Security* (*Prices*) *Regulations*, but it is clear, to my mind, that " cost " in the order means landed cost, that is, the cost to the publican, or in other words the wholesale price of the liquor plus the additional out-of-pocket expenses, if any, incurred in causing it to be transported to the licensed premises. It is contended that the meaning of " a bottle of whisky " in the schedule is uncertain as the fluid contents are not specified, but the determination of such an expression in a statute or a regulation or an order is a question of fact upon which a court is entitled to use its knowledge of the

(1) (1943) 67 C.L.R. 335.

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meaning of ordinary English words. A bottle of whisky is not a technical expression or an expression that has any particular commercial signification. It is an ordinary English expression. The question is what did the expression mean at the date of the order in the vernacular of those who bought and sold whisky (*Federal Commissioner of Taxation* v. *Broken Hill South Ltd.* (1)). In one group of cases evidence was given that it meant a bottle of twenty-six fluid ounces. This evidence was admissible to assist the magistrate in determining this meaning by showing what the expression meant to the purchasers and sellers concerned in those cases. In the other group of cases the evidence shows that the purchasers when they ordered a bottle of whisky knew what they expected to buy, and that the sellers when they accepted the order also knew what they were expected to deliver. There is no uncertainty, in my opinion, in the meaning of a bottle of whisky as an ordinary English expression, so that the order is not uncertain when it refers to the price of such a bottle. The magistrate was entitled to use his knowledge of the meaning of the expression in common parlance and to act on this knowledge.

(5) The only remaining material objection is that par. 4 of the Prices Regulation Order is uncertain. As I have said, the meaning of " cost " in the Prices Regulation Order is not uncertain and I can see no real difficulty, where several ingredients are used, in ascertaining the cost of such ingredients as a proportion of some larger fluid quantity, as, for instance, the proportions of cost which the different liquors required to make a cocktail bear to the whole cost of the bottles or other containers from which those portions are taken.

For these reasons I am of opinion that all the questions asked by the magistrate should, as far as material, be answered in favour of the appellant and that all the cases should be remitted to the magistrate.

Bendixen v. *Scott.—Appeal allowed with costs. Order of stipendiary magistrate set aside. Questions in case answered as follows* :—1. (1) *No*, (2) *No*, (3) *No*, (4) *No* ; 2. *No* ; 3. *Yes. Case remitted to stipendiary magistrate to be dealt with according to law. It has been agreed between the parties that the decision upon this appeal shall govern the appeals in which Mahoney, Hall, Boland, Spiers, and Berry are the respondents. Orders are made in those appeals in terms corresponding with*

(1) (1941) 65 C.L.R. 150, at p. 160.

those in Scott's case and orders may be drawn up by the District Registrar, Brisbane, upon application to him.

Bendixen v. *Coleman.—Appeal allowed with costs. Order of stipendiary magistrate set aside. Questions in case answered as follows*:—1. (1) *No*, (2) *No*, (3) *No*, (4) *No*; 2. *No*; 3. *Yes. Case remitted to stipendiary magistrate to be dealt with according to law. It has been agreed between the parties that the decision upon this appeal shall govern the appeals in which Fitzgerald, Pattingale, Cheetham, Sheedy, and Tattam are the respondents. Orders are made in those appeals in terms corresponding with those in Coleman's case and orders may be drawn up by the District Registrar, Brisbane, upon application to him.*

Bendixen v. *Croft.—Appeal allowed with costs. Order of stipendiary magistrate set aside. Questions in case answered as follows*:—1. (1) *No*, (2) *No*, (3) *No*, (4) *No*, (5) *No*, (6) *No such evidence was necessary to establish the charge*, (7) *This question was not argued and is not answered*; 2. *No*; 3. *Yes. Case remitted to stipendiary magistrate to be dealt with according to law.*

Solicitor for the appellant, *H. F. E. Whitlam*, Crown Solicitor for the Commonwealth.

Solicitors for the respondents, *Rees R. and Sydney Jones*, Rockhampton, by *Cannan & Peterson*, Brisbane.

J. B.