

[HIGH COURT OF AUSTRALIA.]

THE DAIRY FARMERS' CO-OPERATIVE }
MILK COMPANY LIMITED AND } PLAINTIFFS ;
ANOTHER }

AND

THE COMMONWEALTH AND OTHERS . . DEFENDANTS.

National Security—Defence—Price control—Milk—Declaration—Generality—Orders H. C. OF A.
—Specified characteristics of purchasers—Differentiations in the orders—Applica- 1946.
tion of orders to State Board—Validity—Revocation of orders after action instituted }
—National Security (Prices) Regulations (S.R. 1940 No. 176—1945 No. 113), SYDNEY,
regs. 22 (1), (3), 23 (1) (a), (1A) (a), (g), (h), 32—Prices Regulation Orders Nos. Nov. 14 ;
2041, 2071. Dec. 16.

Prices Regulations Orders made under the *National Security (Prices) Regula-*
tions in respect of the sale of milk distinguished between wholesale and retail
sales ; between sales in the Sydney metropolitan milk distributing district
and in the Newcastle district ; between sales to retailers who operated milk
rounds and those who did not and those who used milk in milk bars and, in
particular, special prices were prescribed for sales for use in public hospitals
and to the State Contracts Control Board (N.S.W.). The orders were revoked
after the commencement but before the hearing of an action brought to test
the validity of the orders and to which the State was not a party.

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

- Held,*
- (1) That the differentiations were in respect of matters proper to be taken into account in any scheme of control of prices as an element in economic organization and, therefore, came within the defence power.
 - (2) That milk having been declared under reg. 22 of the *National Security (Prices) Regulations* as “ declared goods,” the differentiations were authorized by reg. 23 (1) (a) and reg. 23 (1A) (h) of those regulations.
 - (3) That it was not necessary that before fixing prices in relation to any particular individual purchaser the Minister should, under reg. 22 (3), have made a declaration in respect of that particular purchaser.

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(4) That under the orders the vendors were bound in relation to their sales to all purchasers including the State Contracts Control Board and other State government agencies.

The Court will hesitate before making a declaration of right in the absence of an interested party.

DEMURRER.

In an action brought in the High Court by the Dairy Farmers' Co-operative Milk Co. Ltd. and the New South Wales Fresh Food and Ice Co. Ltd. against the Commonwealth of Australia, Douglas Berry Copland and Horace Eddy Bishop, the statement of claim was substantially as follows:—

1. The above-named plaintiff the Dairy Farmers' Co-operative Milk Co. Ltd. is a society duly incorporated under the *Co-operation Act* 1923-1945 (N.S.W.), having its registered office at 700 Harris Street, Ultimo, in the said State and is entitled to sue in its corporate name.

2. The above-named plaintiff the New South Wales Fresh Food & Ice Co. Ltd. is a company duly incorporated under the *Companies Act* 1936 (N.S.W.), having its registered office at No. 1 Harbour Street, Darling Harbour, in the said State and is entitled to sue in its corporate name.

3. The defendant Douglas Berry Copland was at all material times the Commonwealth Prices Commissioner appointed under the *National Security (Prices) Regulations* made under the *National Security Act* 1939-1943 and the above-named defendant Horace Eddy Bishop was at all material times the second Assistant Prices Commissioner appointed under the said Regulations.

4. Pursuant to the provisions of the *Milk Act* 1931-1942 (N.S.W.), all milk supplied for consumption or use within the Metropolitan Milk Distributing District as set out in the schedule of that Act and the Newcastle Milk Distributing District as set out in the schedule of that Act as amended by Proclamation of the Governor of the said State made pursuant to the Act becomes with an exception not here material the property of the Milk Board.

5. The plaintiffs purchase from the Milk Board the whole of the milk sold by it and in the course of their business resell that milk by wholesale and to the other persons and bodies described or mentioned in the schedules to the Prices Regulation Orders hereinafter set out under the heading "Sales by Wholesale and certain other Sales" and also has sold and does sell milk which has been and is applied to the various uses set out in the said part of the said Schedule.

6. By an alleged Order made by the defendant Douglas Berry Copland on 11th April 1945 and published in the Commonwealth

Gazette No. 71, 12th April 1945, the said defendant purported to fix and declare the maximum prices at which milk might be sold for delivery in the Metropolitan Milk Distributing District or the Newcastle Milk Distributing District by Prices Regulation Order No. 2041 which is in the words and figures following, that is to say :—

“ National Security (Prices) Regulations

Prices Regulation Order No. 2041

Milk—Metropolitan and Newcastle Milk Distributing Districts—
New South Wales.

In pursuance of the powers conferred upon me by the National Security (Prices) Regulations, I, Douglas Berry Copland, Commonwealth Prices Commissioner, hereby make the following Order :—

Citation.

1. This Order may be cited as Prices Regulation Order No. 2041.

Application.

2. This Order shall operate as from 13th April 1945.

Definitions.

3. In this Order, unless the contrary intention appears, ‘ Metropolitan Milk Distributing District ’ means the Metropolitan Milk Distributing District, as specified in the Milk Act. ‘ New South Wales Milk Board ’ means the Milk Board constituted by the Milk Act.

‘ Newcastle Milk Distributing District ’ means the Newcastle Milk Distributing District as established under the Milk Act.

‘ Special Pasteurized Bottled ’ means bottled milk conforming to the requirements of by-laws 26 and 27 made under the Milk Act.

‘ The Milk Act ’ means the New South Wales Milk Act 1931-1942 of the State of New South Wales.

Maximum prices.

4. I fix and declare the maximum prices at which milk may be sold for delivery in the Metropolitan Milk Distributing District or the Newcastle Milk Distributing District to be those specified in the Schedule to this Order.

Variation of maximum prices by notice.

5. Notwithstanding the foregoing provisions of this Order, I declare the maximum price at which any milk specified in a notice in pursuance of this paragraph may be sold by any person to whom such notice is given to be such price as is fixed by the Commissioner by notice in writing to that person.

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The Schedule.
Maximum prices.
Sales by New South Wales Milk Board.
1s. 5.75d. per gallon.

Sales by Wholesale and Certain Other Sales.

	Sales in Metropolitan Milk Distributing District	Sales in Newcastle Milk Distributing District
	Per gallon s. d.	Per gallon s. d.
Sales to retailers who operate milk round		
Other than bottled	1 8½	1 6½
Bottled	2 0½	1 10½
Special pasteurized bottled	2 2½	—
Sales for use in buffets or hostels conducted exclusively for members of allied forces	2 0	1 10
Sales to retailers who do not operate milk round or to or for use in milk bars, cafes, restaurants or canteens	2 1¼	1 11¼
Sales for use in public hospitals (including but without limiting the generality thereof, those hospitals specified in the Schedules of the Public Hospitals Act of the State of New South Wales), or to State Contracts Control Board, or Australian or Allied Governments for the use of their armed forces, including military hospitals, but not canteens—		
Delivered to purchaser's premises	1 9¼	1 7¼
Delivered at depot	1 8½	1 6½

Sales by Retail.
Sales in Metropolitan Milk Distributing District.

Quantity.	Other than Bottled	Bottled	Special Pasteurized Bottled
	s. d.	s. d.	s. d.
½ pint	0 2	0 2½	0 2½
1 pint	0 4	0 4½	0 4½
1½ pints	0 6	0 6½	0 7
2 pints	0 7½	0 8½	0 9
2½ pints	0 9½	0 11	0 11½
3 pints	0 11½	1 1	1 1½
3½ pints	1 1½	1 3	1 4
4 pints	1 3	1 5	1 6
4½ pints	1 5	1 7½	1 8½
5 pints	1 7	1 9½	1 10½
5½ pints	1 8½	1 11½	2 1
6 pints	1 10½	2 1½	2 3
6½ pints	2 0½	2 4	2 5½
7 pints	2 2½	2 6	2 7½
7½ pints	2 4	2 8	2 10
8 pints	2 6	2 10	3 0
Any other quantity—the price calculated to the nearest downward half-penny, at the rate of	Per quart 0 7½	Per quart 0 8½	Per quart 0 9

Sales by Retail.
Sales in Newcastle Milk Distributing District.

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							Other than Bottled	Bottled
							s. d.	s. d.
½ pint	0 2	0 2
1 pint	0 3½	0 4
1½ pints	0 5½	0 6
2 pints	0 7	0 8
2½ pints .. .. .	..	..	..	..	..	..	0 9	0 10
3 pints .. .. .	..	..	..	..	..	..	0 10½	1 0
3½ pints .. .. .	..	..	..	..	..	..	1 0½	1 2
4 pints .. .. .	..	..	..	..	..	..	1 2	1 4
4½ pints .. .. .	..	..	..	..	..	..	1 4	1 6
5 pints .. .. .	..	..	..	..	..	..	1 5½	1 8
5½ pints .. .. .	..	..	..	..	..	..	1 7½	1 10
6 pints .. .. .	..	..	..	..	..	..	1 9	2 0
6½ pints .. .. .	..	..	..	..	..	..	1 11	2 2
7 pints .. .. .	..	..	..	..	..	..	2 0½	2 4
7½ pints .. .. .	..	..	..	..	..	..	2 2½	2 6
8 pints .. .. .	..	..	..	..	..	..	2 4	2 8
Any other quantity—the price, calculated to the nearest downward halfpenny, at the rate of							Per quart 0 7	Per quart 0 8

Note.—Except where the contrary intention appears, the prices specified in this Schedule include any delivery which is made.

Dated this eleventh day of April, 1945.

D. B. COPLAND
Commonwealth Prices Commissioner.”

7. By an alleged order made by the Second Assistant Prices Commissioner on 20th April 1945 and published in the Commonwealth Gazette, No. 82 on 23rd April 1945, the lastly hereinbefore mentioned Prices Regulation Order was amended by an Order in the words and figures following, that is to say :—

“ NATIONAL SECURITY (PRICES) REGULATIONS.

Prices Regulation Order No. 2071.

Milk—Metropolitan and Newcastle Milk Distributing Districts, New South Wales.

In pursuance of the powers delegated to me by the Commonwealth Prices Commissioner pursuant to regulation 46 of the National Security (Prices) Regulations, I, Horace Eddy Bishop, Second Assistant Prices Commissioner, Prices Branch, Canberra, hereby make the following Order :—

- 1. This Order may be cited as Prices Regulation Order No. 2071.
- 2. Prices Regulation Order No. 2041 is hereby amended by omitting from the Schedule all that part appearing under the sub-heading ‘ Sales by wholesale and Certain Other Sales ’ and inserting in its stead the Schedule to this Order.

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The Schedule.
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Sales by Wholesale and Certain other sales.

	Sales in Metropolitan Milk Distributing District	Sales in Newcastle Milk Distributing District
	Per gallon s. d.	Per gallon s. d.
Sales to retailers who operate milk round—		
Other than bottled	1 8½	1 6½
Bottled	2 0½	1 10½
Special pasteurized bottled	2 2½	—
Sales for use in buffets or hostels conducted exclusively for members of Allied Forces—		
Other than bottled	2 0	1 10
Bottled	2 4	2 2
Special pasteurized bottled	2 6	—
Sales to retailers who do not operate milk round or to or for use in milk bars, cafes, restaurants or canteens		
Other than bottled	2 1¼	1 11¼
Bottled	2 5¼	2 3¼
Special pasteurized bottled	2 7¼	—
Sales for use in public hospitals (including, but without limiting the generality thereof, those hospitals specified in the Schedules of the Public Hospitals Act of the State of New South Wales), or to State Contracts Control Board, or Australian or Allied Governments for the use of their armed forces, including Military Hospitals, but not canteens—		
Delivered to purchaser's premises—		
Other than bottled	1 9½	1 7½
Bottled	2 1¼	1 11¼
Special pasteurized bottled	2 3½	—
Delivered at depot—		
Other than bottled	1 8½	1 6½
Bottled	2 0½	1 10½
Special pasteurized bottled	2 2½	—

Dated this twentieth day of April, 1945.

H. E. BISHOP,

Second Assistant Prices Commissioner."

8. The State Contracts Control Board which is referred to in the schedule of each of the orders set out in pars. 6 and 7 is an executive authority of the State of New South Wales whose functions are *inter alia* to make contracts on behalf of the State of New South Wales for the supply of goods to or for the purposes of the various Departments of the Government of that State. Each of the plaintiff companies has entered into contracts with the said State Contracts Control Board for the supply of milk to various institutions including amongst others hospitals, mental hospitals and schools conducted by the State of New South Wales for varying periods and the periods of many of such contracts of each of the plaintiffs are still unexpired.

The plaintiffs claimed, *inter alia* :—

- (i) A declaration that Prices Regulation Order No. 2041 and Prices Regulation Order No. 2071 so far as they respectively related to the sales referred to under the headings "Sales by Wholesale and Certain Other Sales" in the respective schedules thereto appearing were invalid and beyond the powers conferred upon the Commonwealth Prices Commissioner by the *National Security (Prices) Regulations* or alternatively were invalid and beyond any powers which could be conferred upon the Commonwealth Prices Commissioner under the *National Security Act* 1939-1943 or the Constitution of the Commonwealth.
- (ii) Alternatively a declaration that the said Prices Regulation Orders so far as they respectively relate to "Sales to State Contracts Control Boards" were beyond the powers conferred or beyond any powers which could be conferred upon the Commonwealth Prices Commissioner as aforesaid.

The defendants demurred to the whole of the statement of claim upon the grounds : (a) that it disclosed no cause of action ; (b) that it disclosed no ground for the relief sought ; and (c) that the *National Security (Prices) Regulations* made under the *National Security Act* 1939-1943 and the Prices Regulation Orders made thereunder and more particularly Prices Regulation Orders Numbers 2041 and 2071 were valid laws of the Commonwealth and the acts which the defendants were alleged to have done were authorized by those Regulations and Orders. The action was commenced on 18th December 1945 and the demurrer was filed on 26th April 1946. Prices Regulation Orders Numbers 2041 and 2071 respectively were revoked in September 1946.

Weston K.C. (with him *Holmes*), for the plaintiffs. The differentiations in Prices Regulation Orders Numbers 2041 and 2071 are not justified by the defence power ; there is no sufficient nexus between those differentiations and the defence power. Those differentiations or distinctions as between various classes of purveyors or users have no real connection with defence. They have, it is conceded, a relation to price-fixing in the abstract if the Commonwealth has power to give an unlimited power to fix prices. The *National Security (Prices) Regulations* do not empower the Prices Commissioner to differentiate in the way he has done in the Prices Regulation Orders now under consideration. Any differentiation based upon the personality of the consumer or the purchaser must be a differentiation which itself has a real, direct or sufficient relation to defence. In a Prices Regulation

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Order the basis of differentiation must of itself have a real connection with the competitors ; it is not sufficient that it has a real connection with the organizations of the trade or commercial activity to which it relates ; it must go further in itself. The State Contracts Control Board pays the declared prices whereas the plaintiffs maintain that the Orders are invalid and that the Board should pay the prices agreed upon under contracts between it and the plaintiffs.

[WILLIAMS J. If there is a dispute between the plaintiffs and the State of New South Wales, should not that State be represented before this Court ? See *London Passenger Transport Board v. Moscrop* (1).]

The State is not a necessary party : See *Carter v. Egg and Egg Pulp Marketing Board* (Vict.) (2). The State Contracts Control Board has knowledge of these proceedings. The Prices Regulations do not expressly bind the Crown either in right of the Commonwealth or in right of the State of New South Wales. Impliedly they do not bind the Crown. It follows that if the Crown is at liberty to buy from vendors irrespective of any Prices Regulation Order then vendors must be at liberty to sell to the Crown irrespective of any such Order. If the act be a sale to the Crown then the particular prohibition *ad hoc* the Crown is bad because it would prevent the Crown from buying milk. In the case of such a sale unless the Order applying thereto were bad the Crown, in its character of purchaser, would be participating in an offence. Prohibitions upon subjects in relation to particular matters do not apply to transactions between subjects and the Crown in respect of those particular matters. If the prohibition is general the Crown is prohibited from buying. If under the Regulations, and particularly reg. 23, there can be a differentiation in respect of persons, the person has to be declared by the Minister under reg. 22 (3) ; thus if there can be a differentiation in respect of the State Contracts Control Board there has to be a declaration by the Minister naming that Board. The Regulations do not purport to allow differentiation in respect of a purchaser irrespective of other elements in the transaction. A power differentiated with respect to a person, whether vendor or purchaser, can be utilized only when there is a declaration under reg. 22 (3). There has not been any such declaration. Regulation 23 (1) (a) does not apply to this case. Regulation 23 (1) (b) is inapplicable because there has not been a declaration under reg. 22 (3) in respect of a person. The person referred to in reg. 23 (1) (b) is that specified person who is the subject of a declaration. A comparison with reg. 45B shows that reg. 23 (1A) does not permit of discrimination in

(1) (1942) A.C. 332, at p. 344.

(2) (1942) 66 C.L.R. 557.

respect of other purchasers, other things being equal. The words "condition or conditions" in reg. 23 (1A) (d) mean conditions of the contract of sale, and the words "according to or upon any principle or condition specified by the Commissioner" in reg. 23 (1A) (g) mean principle or condition irrelevant to prices. "Other circumstance" in reg. 23 (1A) (h) must be restricted to circumstances relevant to defence. Regulation 45B deals with persons in such a way as to exclude a differentiation for sale by persons generally to a specific purchaser. Regulation 45B (a) was intended to mean the sale of goods to a particular person by any persons generally. Consideration of the history of this regulation shows that it was obviously thought that reg. 45B, which was introduced in 1945, was necessary or, at the very least, desirable. Whether or not it was necessary or desirable, if such a fixation as took place in this case was permitted by reg. 23, it was prohibited by reg. 45.

Mason K.C. (with him *Brennan*), for the defendants. It would appear that the defendants are no longer interested in these proceedings inasmuch as the Prices Regulation Orders under consideration were, subsequently to the initiation of these proceedings, rescinded. So far as the defendants are concerned, the questions involved are purely abstract questions. As to whether or not the matter should proceed either with or without the State Contracts Control Board as a party is entirely a question for the Court. The dispute seems to be between the plaintiffs and the State Contracts Control Board. There is no question of the Crown being bound. The Orders provide for a maximum price for milk sold to the State Contracts Control Board and the fixing of that maximum price is for the benefit of the Crown. The Board was dealt with as a purchaser and not as a seller, therefore the Board was not bound. Under his wide powers the Prices Commissioner is entitled to fix maximum prices in such a way as he thinks fit, subject, always, to it being a fixed price. Under those powers he is entitled to differentiate as between different classes of vendors or users. The powers conferred under reg. 23 (1A) are only by way of illustration and do not in any way detract from the generality of the powers conferred by reg. 23 (1) (a). The differentiations made in the Orders could be regarded as conditions imposed under reg. 23 (1A) (d) or as coming within the wide powers conferred by reg. 23 (1A) (h). Under reg. 23 (1) (a) the Commissioner has fixed and declared the maximum price at which milk may be sold in certain areas, and in doing so he was entitled under the Regulations to fix a maximum price having regard to the place where, or the

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nature of the business by which, the milk was to be sold. The provisions of reg. 45B do not in any way cut down the powers conferred by reg. 23 (1) (a) or reg. 23 (1A). There was nothing in the Prices Regulation Orders that was outside the ambit of the Regulations.

Weston K.C., in reply. Notwithstanding the rescission of the Prices Regulation Orders under consideration the plaintiffs are entitled in the circumstances to proceed, even if only in order to determine the matter of costs. That matter cannot be determined unless the issue also be determined.

Cur. adv. vult.

Dec. 16.

The following written judgments were delivered :—

LATHAM C.J., RICH, DIXON, McTIERNAN AND WILLIAMS JJ. This is a demurrer to a statement of claim whereby the plaintiffs claim a declaration that certain orders fixing the prices of milk are invalid because beyond the powers conferred upon the Commonwealth Prices Commissioner by the *National Security (Prices) Regulations* or, alternatively, as beyond any Commonwealth legislative powers. The plaintiffs also claim a declaration that the orders in question are invalid in so far as they relate to sales to the State Contracts Control Board, which is an agency of the Government of New South Wales. The Court was informed that the orders have been revoked since the action was instituted. The plaintiffs plead that they have contracts to supply milk to the State Contracts Control Board and it is stated at the Bar that if the Orders fixing the price for sales to that Board are held to be invalid the plaintiffs will claim the higher price provided for in their contracts with the Board.

The Orders in question distinguish between wholesale and retail sales, between sales in the metropolitan milk distributing district and in the Newcastle district, between sales to retailers who operate milk rounds and those who do not and those who use milk in milk bars and, in particular, special prices are prescribed for sales for use in public hospitals and to the State Contracts Control Board. It is contended that there is no relation between considerations of defence and the differentiations contained in the order relating to the specified characteristics of purchasers of milk. The Court has held in *Victorian Chamber of Manufacturers v. The Commonwealth* (1) that the Prices Regulations under which authority is given to fix prices of goods generally are valid. In particular, the determination of the prices of food in time of war is within the defence power: *Stenhouse v. Coleman* (2). If it were sought to use this power by determining

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

(2) (1944) 69 C.L.R. 457.

prices by reference to considerations which could not possibly have any relation to the organization and control of the community for defence purposes as, for example, according to religious distinctions, such an exercise of the power would be invalid. But the orders in question provide for different prices in relation to considerations of time and place and circumstance and character of purchaser, which are elements which may naturally be taken into account in any scheme of control of prices as an element in economic organization. Accordingly, the principal objection to the Order fails.

In the second place, it is contended that there was no power to fix prices in relation to particular individual purchasers unless, in addition to an exercise of the power of fixing prices in such a manner by the Prices Commissioner, the Minister had, under reg. 22 (3) of the Prices Regulations, made a declaration in respect of that particular purchaser. There is no substance in this objection. In the present case the Minister has declared milk as "declared goods" under reg. 22, and the Commissioner then has power under reg. 23 (1) (a) to declare the maximum price at which milk may be sold generally or in any part of Australia. This power is sufficient to warrant the Orders, but the power is further defined under reg. 23 (1A) (h), under which it is expressly provided that the Commissioner may determine maximum prices in relation to certain circumstances mentioned in par. (h) and, in particular, may fix prices so that "such prices shall vary in accordance with a standard or time or other circumstance . . . as are determined by the Commissioner." This power is sufficiently wide to authorize the differentiations which are to be found in the orders in question.

Finally, it is contended that the Prices Regulations and Orders made under the Regulations do not bind the Crown in right of the State of New South Wales and therefore do not bind the State Contracts Control Board. We do not see, however, how any question as to the Board being bound arises in the present proceedings. The Board is referred to in the Orders only as a purchaser and not as a vendor. Even if it were held that the Regulations and Orders did not bind the Crown in right of a State, this conclusion would, we think, leave unaffected the proposition that the plaintiff companies were bound in relation to their sales to all purchasers, including State Government agencies. Thus a decision that the Crown in right of a State was not bound by the Regulations or Orders would afford no ground for making either of the declarations sought by the plaintiffs in this action.

Accordingly, all the objections of the plaintiffs to the validity of the Orders and of the Regulations fail. If, however, we had been of

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opinion that there was any substance in the objections it would have been necessary to consider whether any relief should be given to the plaintiffs in these proceedings. The parties who are, as far as the Court is informed, really interested in the question whether the Orders are valid or not are the plaintiffs and the State Contracts Control Board as a department of the Government of New South Wales, with which the plaintiffs have contracts.

The Commonwealth and a past and present Prices Commissioner (but not the State of New South Wales) are the defendants in the proceedings. The Orders have been revoked, they will have no application in the future to the business of the plaintiffs, and the defendants have no interest whatever (except as to the costs of these proceedings) in defending their validity. If we had been of opinion that there was any substance in the contentions submitted on behalf of the plaintiffs we would have hesitated before making any of the declarations sought in the absence of the State of New South Wales, which is the other party really interested in the issue raised in this litigation.

The demurrer is allowed with costs and the action is dismissed with costs.

STARKE J. Demurrer to a statement of claim claiming declarations that certain Prices Orders, so far as they relate to "Sales by Wholesale and Certain Other Sales," were beyond the powers conferred upon the Prices Commissioner by the *National Security (Prices) Regulations*, the *National Security Act 1939-1943* and the Constitution, or alternatively a declaration that the said Prices Orders, so far as they relate to "Sales to State Contracts Control Boards," were beyond any powers that could be conferred upon the Prices Commissioner.

It was stated at the Bar that these Orders have been revoked since action brought. Therefore there is no "live issue" in this litigation between the parties (cf. *Sun Life Assurance Co. of Canada v. Jervis* (1)).

The Court has, no doubt, jurisdiction to make binding declarations of right in actions properly brought whether consequential relief is or could be claimed or not. The jurisdiction, however, should be exercised with care. A decision upon this demurrer would be "in the air" so to speak, for no declaration of right should follow in the circumstances of the case. The plaintiffs should attack, if they attack at all, those relying upon the provisions of the Prices Orders as an answer to contractual rights claimed against them and not the

Commonwealth or the Prices Commissioner appointed under the Regulations. H. C. OF A.

Nevertheless the demurrer was argued. But there does not appear to be any substance in the argument. The validity of the Prices Regulations was not challenged. It was said, however, that the Prices Orders did not comply with or were not authorized by the Regulations.

They did not comply with the Regulations because the Minister had not made a declaration in respect of any person or body or association in accordance with reg. 22 (3). But the Minister, it was conceded, had declared certain goods generally, namely milk, pursuant to reg. 22 (1) and (3) to which the Prices Orders related. That declaration is sufficient to support Prices Orders in respect of milk.

They were not authorized by the Regulations because they exceeded any powers conferred upon the Prices Commissioner under reg. 23. But the powers granted to the Commissioner are amply sufficient to warrant the Orders (reg. 23 (1) (a), (1A) (a), (g) and (h)).

It was also contended that the Prices Orders were bad in so far as they regulated the prices at which persons might sell the declared goods to the State Contracts Control Board because reg. 32 prohibited the sale of declared goods to the Board except at the prices fixed by the Commissioner. The argument invokes, in a strange way, the exploded doctrine of the immunity of instrumentalities. Nothing in the Constitution supports the argument or precludes the enactment of reg. 32 and the sanction thereby imposed or the particular provision contained in the Prices Orders, which operate in this case in favour of the Contracts Board. But then it was argued that the State and its instrumentalities are also prohibited from selling declared goods except at the declared prices. The plaintiffs have no interest in this question, which involves a constitutional question, but depends primarily upon the interpretation of the words "any person" in the Prices Orders and "a person" in reg. 32. It will be time enough to consider the question when, if ever, it arises.

The appropriate order in the present case is, I think, that the action be dismissed.

*Demurrer allowed with costs. Action dismissed
with costs.*

Solicitors for the plaintiffs, *Aitken & Pluck.*

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

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