[HIGH COURT OF AUSTRALIA.]

HORSEY . . . . . APPELLANT;
INFORMANT,

AND

CALDWELL . . . . . RESPONDENT.
DEFENDANT,

H. C. OF A. 1946.

SYDNEY, *Dec.* 10.

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

National Security—Black marketing—Offence—Declared goods—Meat—Sale at price greater than fixed maximum price—Maximum price—Fixation—"Proclaimed area"—"Part of Australia"—Provisions in regulation—Quaere, mutually exclusive alternatives—Order—Validity—Severability of clauses—Conviction—Penalty—Black Marketing Act 1942 (*No.* 49 *of* 1942), *ss.* 3, 4—*Crimes Act* 1914-1941 (*No.* 12 *of* 1914—*No.* 6 *of* 1941), *s.* 20—*National Security* (*Prices*) *Regulations* (*S.R.* 1940 *No.* 176—1946 *No.* 19), *regs.* 21, 22, 23 (1), (1A), 29, 45B (*ba*).

The methods of fixation prescribed by reg. 23 (1) of the *National Security* (*Prices*) *Regulations* may be exercised concurrently.

Ex parte Byrne; *Re King*, (1944) 45 S.R. (N.S.W.) 123; 62 W.N. 104, approved.

By reason of amendments to reg. 23 (1) and reg. 45B made by Statutory Rule 1946 No. 19 made subsequent to the decision in *Willmore* v. *The Commonwealth*, (1945) 70 C.L.R. 587, that decision no longer applies.

For the purposes of Prices Regulation Order No. 2166 the Commissioner, in the seventh schedule to the order, divided the State of New South Wales into nine areas, principally on the basis of including in the respective areas certain contiguous municipalities and shires. Area 1A included the City of Sydney and six shires and fifty-eight municipalities in the vicinity of Sydney. By par. 8 of the order the Commissioner purported to fix and declare the maximum prices at which meat might be sold in New South Wales to be the prices shown in the sixth schedule. The prices so fixed and declared were different in respect to different areas.

Held that the areas were "localities of sale" within the meaning of reg. 23 (1A), therefore par. 8, read in conjunction with the schedules, was valid.

Semble: The areas specified in the seventh schedule to Prices Regulation Order No. 2166 are "parts of Australia" within the meaning of reg. 23 (1) (*a*).

APPEAL from a Court of Quarter Sessions of New South Wales.

At a Court of Petty Sessions, Sydney, on the information of Leslie Rupert Horsey, an Investigation Officer in the New South Wales Prices Branch, Henry Ernest Caldwell was charged under s. 4 of the *Black Marketing Act* 1942 in that he did an act which constituted black marketing within the meaning of s. 3 of that Act in that contrary to reg. 29 of the *National Security* (*Prices*) *Regulations*, made in pursuance of the *National Security Act* 1939-1943, he did at Sydney, within the City of Sydney, sell by retail declared goods, to wit, meat being two pounds and three ounces of weight of gravy beef and four lamb kidneys at a price (3s 8d.) being a greater price than the maximum price (2s. 4d.) fixed in relation to those goods under the said regulations for the sale of those goods. Caldwell was convicted and was sentenced to be imprisoned with hard labour for three months. He appealed against his conviction and sentence to a Court of Quarter Sessions under s. 122 of the *Justices Act* 1902-1940 (N.S.W.).

The Chairman of Quarter Sessions held: (i) that there had been no valid fixing of meat prices in the City of Sydney; (ii) that Prices Regulation Order No. 2166, including the Sixth and Seventh Schedules thereto, was beyond the power of the Prices Commissioner; (iii) that that order was beyond the powers of the Prices Commissioner as conferred by the *National Security Act* 1939-1943, and the *National Security* (*Prices*) *Regulations* made thereunder; (iv) that that order was not authorized by the said Act or regulations; (v) that the word "part" as used in reg. 23 (1) (*a*) of those regulations means only a geographical part of Australia; (vi) that reg. 23 (1) (*a*) and reg. 23 (1) (*b*) of those regulations are exclusive of each other; and (vii) that the said order purported to fix the prices for which specified cuts of meat could be sold in certain areas as such, whereas the order purported to fix and did in fact fix the said prices for the State of New South Wales. He allowed the appeal and quashed the conviction.

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

The *National Security* (*Prices*) *Regulations* provide, so far as material, by reg. 21: "(1) The Commissioner may, from time to time, by notice in the *Gazette*, declare that any area specified by him shall, for the purposes of these Regulations, be a proclaimed area or part of a proclaimed area, and thereupon the area shall, so long as the declaration remains in force, be deemed to be a proclaimed area or part thereof, as the case may be"; by reg. 22: "(1) The Minister may, by notice in the *Gazette*, declare any goods to be

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declared goods for the purposes of these Regulations"; and by reg. 23: "(1) The Commissioner may, with respect to any declared goods, from time to time, in his absolute discretion, by order published in the *Gazette*—(*a*) fix and declare the maximum price at which any such goods may be sold generally or in any part of Australia or in any proclaimed area; or (*b*) declare that the maximum price at which any such goods may be sold—(i) by any person, shall be such price as is fixed by the Commissioner by notice in writing to that person . . . (1A). In particular, but without limiting the generality of the last preceding sub-regulation, the Commissioner, in the exercise of his powers under that sub-regulation, may fix and declare—(*a*) different maximum prices . . . in respect of different . . . localities of trade, commerce, sale or supply."

A declaration was made under reg. 22 in the case of meat by Declaration No. 110 of 26th February 1943.

Prices Regulation Order No. 2166, made 30th July 1945, states, so far as material, by par. 4 (2) (*a*): "For the purpose of this Order —the area specified in the Seventh Schedule to this Order shall comprise the areas specified in relation thereto in the Second, Third, Fourth and Sixth Schedules to this Order" by par. 8: "I fix and declare the maximum price at which meat of the classes . . . specified in the Sixth Schedule to this Order may be sold by retail in New South Wales to be the prices specified therein"; by par. 12: "Notwithstanding the foregoing provisions of this Order, I declare the maximum price at which meat of any class 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 such person." In the Sixth Schedule the prices set out opposite meat of the descriptions mentioned in the charge were the prices alleged in the charge to be the maximum prices. By the Seventh Schedule New South Wales was divided into nine areas, designated numerically, Area No. 7 to include all that area of New South Wales not elsewhere specified in the Schedule and different prices of meat were fixed for the respective areas. Area 1, as defined in the Seventh Schedule, was divided into Areas 1A, 1B and 1C. Area 1A included the City of Sydney and six shires and fifty-eight municipalities in the vicinity of Sydney. There was no evidence that Area 1A as described in the Seventh Schedule was proclaimed under reg. 21.

Mason K.C. (with him *Badham* K.C. and *Benjafield*), for the appellant. Area 1A as shown in the seventh schedule to Prices

Regulation Order No. 2166 comprises the City of Sydney and sixty-four neighbouring municipalities and shires. It is a defined area and is not inconsiderable in size. It is not the whole of Australia but is situate therein, therefore it is a part of Australia. It is not necessary that the area should be a geographical part of Australia, e.g. a State. Paragraph 12 of the order does not fix any price. It purports to ask for power at some future date to give notice to a person advising him as to the then maximum price. The Commissioner has power from time to time to fix prices (*Ex parte Byrne*; *Re King* (1)).

[WILLIAMS J. referred to *Willmore* v. *The Commonwealth* (2).]

Regulation 45B, as amended by Statutory Rules 1945 No. 113 and 1946 No. 19, does not contain any reference to the point whether the person's name should or should not be published in the *Gazette*, therefore it is still open whether the name must be inserted in the *Gazette* or whether the notice can be given by letter. The regulation contemplates the fixing of the price by a notice. Nothing has been done under par. 12 of the order, and nothing may ever be done under that paragraph. Although it purports so to be, it is not the exercise of any power at all, it is useless and nugatory and does no harm.

Spender K.C. (with him *Byers*), for the respondent. The word " part " and the word " area " have different connotations depending upon the subject matter with which they deal and the context in which the words are used. The meaning of the word " part " was discussed in *Chatterton* v. *Cave* (3) and *London and India Docks Co.* v. *Great Eastern Railway and Midland Railway* (4). The word " part" as used in reg. 23 (1A) does not mean " portion," nor does it mean " substantial portion " because any substantial portion is covered by the machinery in reg. 23 (1) where it could be a proclaimed area, and the meaning to be given to " part of Australia " is a constituent part recognized by the Constitution, namely a State or Territory of the Commonwealth. Obviously, it was never intended that a State as a whole should be a proclaimed area. " Proclaimed area " deals with an original area, not one generally recognized as part of Australia. " Part " does not mean any specific part or defined part. Even if that were so, there seems to be no meaning to any proclaimed area because a proclaimed area can be either a very substantial part of the Commonwealth or a very limited part of the Commonwealth. The Court will seek to give full force and effect to all the words used

(1) (1944) 45 S.R. (N.S.W.) 123, at p. 125; 62 W.N. 104.
(2) (1945) 70 C.L.R. 587.
(3) (1878) 3 App. Cas. 483, at pp. 491, 497, 501.
(4) (1902) 71 L.J. K.B. 369, at p. 376.

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and if in fact " any part of Australia " means " any substantial part of Australia " then there is no value in the words " or in any proclaimed area." The words " any part of Australia " do not mean " any portion of Australia no matter how small," nor, having regard to the words " any proclaimed area " in reg. 21, do they mean " any substantial part of Australia." That being so the natural meaning to be given to the subject matter is " a constituent part of Australia, namely a State or Territory of the Commonwealth." Unless the Commissioner proclaimed an area under reg. 21 a declaration could not be made by the Minister in respect to a State or Territory of the Commonwealth or in respect to any person, body or association. Under reg. 23 (1A) the Commissioner is permitted to fix only one price for declared goods, either generally or in any part of Australia—whatever that may mean—or in any proclaimed area. That is not what he has purported to do in this order. He has purported to fix different prices for the same class of goods, declared in different areas of New South Wales. Consideration of the order shows that the Commissioner has sought to divide New South Wales not into localities of trade, but into areas and as such he fixed the price in relation to them. In so doing he was not acting under reg. 23 (1A). It could not be contested, having regard to *Fraser Henleins Pty. Ltd.* v. *Cody* (1) and the plain meaning of the word, that if a locality of trade were clearly referred to, and there were fixed a price here and there, that that would be a perfectly good exercise of the power. But that is not what the Commissioner has sought to do in this order. On the face of the order, the Commissioner was not dealing with localities of trade. The Commissioner must fix and declare the maximum price at which any specified goods may be sold generally. That means not that he can fix different prices generally, but one price generally throughout Australia. There is no room for the fixation of differential rates under reg. 23 (1A) in the same order. The areas taken are simply geographical and have no relation to localities of trade. If the Court is unable to accept this interpretation then there would be a question for the appellate judge to determine, namely as to whether the areas shown are localities of trade. Paragraphs 8 and 12 of the order must be read together. Although par. 12 is invalid under *Willmore* v. *The Commonwealth* (2) that paragraph is not excluded completely as being beyond power; it is retained for purposes of construction (*Fraser Henleins Pty. Ltd.* v. *Cody* (3)). On the proper construction of par. 12 the Commissioner does not thereby reserve to himself a power exercisable in the future.

(1) (1945) 70 C.L.R. 100.
(2) (1945) 70 C.L.R. 587.
(3) (1945) 70 C.L.R., at pp. 117, 118, 137.

When read together the interpretation is that the Commissioner declares in respect of goods that the price shall be so much per unit which he has already fixed, or such sum as he may fix in writing. That is not permissible. Assuming par. 12 to be valid, it purports to be an exercise of the power given by reg. 23 (1) (*b*). The two powers given by sub-reg. (1) (*a*) and sub-reg. (1) (*b*) of reg. 23 cannot be exercised simultaneously, that is, in the same order. This is shown by the use of the disjunctive word " or ". In purporting to do so in this case the Commissioner exceeded the powers given by reg. 23. If he fixed prices in respect of meat generally, but subdivided them into very many sections, he could not by the same order fix a price for an individual, or even declare that, without fixing a price for an individual, he may thereafter fix the price for an individual. The declaration was not, in the circumstances, a declaration within the meaning of reg. 23.

Mason K.C., in reply. The words " part of Australia " should be given their ordinary and popular meaning. They should not be read as meaning " Territory " or " State." The regulations were intended to be price-fixing regulations to cover the whole of Australia and parts of Australia. If it had been intended to refer to a " Territory " or a " State " it would have been a simple matter to have so provided by express words. The word " part " as used means any part of Australia. In this case, so far as the information before the Court is concerned, if any prices have been fixed by notice it does not follow that it has not been by notice in the *Gazette*, therefore *Willmore* v. *The Commonwealth* (1) has nothing to do with this case, but *Fraser Henleins Pty. Ltd.* v. *Cody* (2) has a bearing on it because clause 8 there under consideration was similar to par. 12 now under consideration. Paragraphs 8 and 12 of this order deal with entirely different matters. Under par. 8 the Commissioner fixed the maximum price and under par. 12 he reserved the right to fix by notice to a particular person a particular price. The probability is that par. 12 is bad, but the Commissioner has not attempted to fix any price thereby and has not attempted to read par. 8 and par. 12 together and thus assert that he has fixed a price. The only fixation was made under par. 8.

The judgment of the Court was delivered by :—

LATHAM, C.J. This is an appeal by special leave from an order of the Court of Quarter Sessions setting aside a conviction for an offence under the *Black Marketing Act* 1942, s. 4. The respondent,

(1) (1945) 70 C.L.R. 587. (2) (1945) 70 C.L.R., at pp. 116, 117.

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Henry Ernest Caldwell, was charged with an offence under s. 4 of the Act in that he did an act which constituted black marketing within the meaning of s. 3 of the Act in that contrary to reg. 29 of the *National Security* (*Prices*) *Regulations* made in pursuance of the *National Security Act* 1939-1943 he did sell by retail declared goods to wit meat being 2 lbs. and 3 ozs. of weight of gravy beef and four lamb kidneys at a price namely 3s. 8d. being a greater price than the maximum price, namely 2s. 4d., fixed in relation to the said goods under the said regulations for the sale of the said goods.

In order to succeed in the prosecution it was necessary for the prosecutor to show that the maximum price which I have mentioned had been fixed by an order made under the Prices Regulations. In order to do this he relied upon Prices Regulation Order No. 2166 which fixed the price or purported to fix the price of meat. Paragraph 8 of that order was in the following terms. It applies to sales by retail and the sales in question were sales by retail: "I fix and declare the maximum price at which meat of the classes . . . specified in the Sixth Schedule to the order may be sold by retail in New South Wales to be the prices specified therein."

There is then a proviso which is immaterial for the purposes of this case. In the Sixth Schedule the prices set out opposite meat of the descriptions mentioned in the charge I have read were the prices alleged in the charge to be the maximum prices.

It is objected, however, that the Prices Regulation Order is invalid for two reasons. In the first place it is said that when reference is made to the Sixth Schedule it is seen that prices are fixed varying according to the areas in which meat is sold. In the present case the relevant area is Area 1A. In order to understand what Area 1A is, it is necessary to refer to the Seventh Schedule. In the Seventh Schedule Nos. 1 to 7 are defined and Area 1 is divided into 1A, 1B and 1C. Area 1A includes the City of Sydney and six shires and fifty-eight municipalities which are in the vicinity of Sydney. It is contended that the fixing of prices in relation to this area is invalid. The basis of the argument is to be found in the provisions of reg. 23 of the Prices Regulations which provide—I read only the relevant part—"The Commissioner may with respect to any declared goods"—meat is declared goods—"from time to time, in his absolute discretion by order published in the *Gazette*—(*a*) fix and declare the maximum price at which any such goods may be sold generally or in any part of Australia or in any proclaimed area." A proclaimed area is an area proclaimed by the Commissioner under reg. 21. There is no evidence that Area 1A as described in the Seventh Schedule was proclaimed under reg. 21. Accordingly it is not necessary to pay

any attention to the provisions about proclaimed areas. The result is that the order fixing the price must be justified, if at all, either as fixing and declaring maximum prices at which goods may be sold generally or as fixing and declaring the price at which goods may be sold in any part of Australia.

This, as I have said, is an order which is limited to New South Wales and the part of reg. 23 which I have read draws a distinction between "generally" and "part of Australia." Prices are not fixed in the order "generally"—i.e. for the whole of Australia. The question then is whether the order complies with the provisions of the regulation by fixing prices in any "part of Australia." It is argued for the respondent to the appeal that the regulations draw a distinction between parts of Australia and proclaimed areas which are in Australia and that if the words "part of Australia" are interpreted as meaning any portion of the land which constitutes Australia, then no good reason can be assigned for drawing a distinction between parts of Australia and proclaimed areas. It is further argued that part of Australia must mean such a part of Australia as a State or Territory, that is, a part which in some manner is recognized as a part in relation to Australia rather than in relation, as I follow the argument, to some portion of Australia itself. Thus, for example, Sydney and municipalities surrounding Sydney (the argument would concede) might be a part of New South Wales but would not be a part of Australia within the meaning of the regulations, although New South Wales would be a part of Australia within the meaning of the regulation.

In the opinion of the Court it is not necessary to decide this question in this case because par. 8 of the order which I have read fixes the maximum prices in New South Wales, which, it is admitted, is "part of Australia." Regulation 23 (1A) provides as follows: "In particular, but without limiting the generality of the last preceding sub-regulation, the Commissioner, in the exercise of his powers under that sub-regulation, may fix and declare—(*a*) different maximum prices . . . in respect of different . . . localities of trade, commerce, sale or supply." I read only the relevant parts. Accordingly, the Commissioner may, in the exercise of the powers conferred by sub-reg. (1) (which include powers to fix prices in any part of Australia and New South Wales is *ex hypothesi* a part of Australia), fix maximum prices in respect of different localities of sale. What the Commissioner has done is to fix in respect of the areas mentioned in the Seventh Schedule different prices in relation to meat sold in those areas. They are therefore localities of sale and the Commissioner in selecting those areas and varying the

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prices in respect of them has exercised a power which is expressly given to him. Accordingly in our opinion par. 8 of the order read in conjunction with Schedules Six and Seven is valid.

Although it is not necessary to determine in this case whether the construction of the words "any part of Australia" contended for on behalf of the respondent to this appeal is right, we would not wish it to be thought that we had any real reason for doubting that the areas in the Seventh Schedule are parts of Australia; but it is not necessary to determine that question in the present case.

The second objection to the validity of the order is based upon the presence in the order of par. 12. Paragraph 12 is in the following terms. It is headed "Variation of Maximum Prices by Notice" and states: "Notwithstanding the foregoing provisions of this Order, I declare the maximum price at which meat of any class 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 such person." That paragraph of the order reproduces the words of reg. 23 (1) (*b*). It does not itself fix the price in any case. It only declares that, in pursuance of the regulation, prices may be fixed by notice in writing given to particular persons.

In the case of *Willmore* v. *The Commonwealth* (1), under the regulations as they then stood it was held by the Court that such a provision in a prices order was ineffectual to fix a price and that under the regulations as they then stood it was necessary to state in an order in the *Gazette* the name of the person in respect of whom it was proposed to fix prices. It was held that an order made under reg. 23 (2) (*b*) (1) must identify the person to whom notice is to be given and therefore that a paragraph of a prices order which was substantially in the same terms as par. 12 in the present case was void.

The regulations however have been changed since the decision in that case and by a regulation which was not referred to in argument before the Court, introduced by Statutory Rule 1946 No. 19, reg. 45B was amended. Regulation 45B (*ba*) reads as follows, the amendment, the terms of (*ba*), having been introduced by the Statutory Rule which I have last mentioned: "Any order declaration or notice authorized to be made or given under these Regulations may be made or given so as to apply according to its tenor to—(*ba*) in the case of an order, any person to whom a notice is given in pursuance of the order." That provision removes for the future, that is in relation to future orders, the objection which was held to be fatal in

(1) (1945) 70 C.L.R. 587.

the case of *Willmore* v. *The Commonwealth* (1). The statutory rule included this further provision relating to the past :—" Every order, or provision of an order, made, or purporting or appearing to have been made in pursuance of paragraph (*b*) of sub-regulation (1), or paragraph (*b*) of sub-regulation (2) of regulation 23 of these regulations before the commencement of this regulation, and every notice in writing given under any such order or provision, shall, by virtue of this regulation, but subject to any amendment or revocation made or purporting to have been made by any subsequent order or notice (whether before or after the commencement of this regulation), have, after the commencement of this regulation, the same force and effect as it would have had if regulation 45B of the *National Security* (*Prices*) *Regulations*, as amended by this regulation, had been in force at the time when the order or provision was so made, and had continued in force up to the commencement of this regulation."

Accordingly under reg. 45B (*ba*) the objection which was successful in *Willmore* v. *The Commonwealth* (1) is no longer open in the case of the present order. In any event even if par. 12 were held to be invalid it is severable from the other provisions of the order. I refer to the decision in the case of *Fraser Henleins Pty. Ltd.* v. *Cody* (2).

But the substantial argument which has been raised on behalf of the respondent is this—let it be the case that par. 12 might be validly included in an order, yet it cannot be validly included in an order together with such a provision as par. 8. That is to say, the argument is that reg. 23 (1) provides that the Commissioner may by order published in the *Gazette* do either (*a*) or (*b*), but it is contended that he cannot do (*a*) and (*b*) at one and the same time. It is not contested that he might do (*a*) on one day and (*b*) on the next day or vice versa. The argument is that these alternatives are mutually exclusive and that powers mentioned in these pars. (*a*) and (*b*) of reg. 23 (1) cannot be exercised in the same order.

In the first place it should be observed that there is no foundation for a contention that there could be any objection to the order on the ground that different prices are fixed for the same goods in the case of the same persons. Such an argument is excluded by the words in par. 12 " notwithstanding the foregoing provisions of this Order." Those words show that if a price were fixed by a notice in writing pursuant to par. 12 that price would supersede any price that would otherwise have been effective under par. 8.

The argument is that the word " or " in reg. 23 presents two mutually exclusive alternatives. When the word " or " is used in relation to two or more alternatives, it is not necessarily the case

(1) (1945) 70 C.L.R. 587. (2) (1945) 70 C.L.R. 100.

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that the alternatives are mutually exclusive. The question as to whether they are mutually exclusive or not must be determined by applying the general rule that words should be construed to ascertain the intention of the provision in question to be collected from the whole of its terms. In the present case there is no difficulty whatever in understanding and applying the provisions of the regulations if the alternatives are regarded as not mutually exclusive.

Regulation 23 means that in relation to any goods either method or both methods of fixing prices may be utilised. The object of par. (*b*) of reg. 23 (1) is to make it possible, notwithstanding a general fixing of prices for particular goods, to apply individual prices to individual traders when it is thought by the Commissioner desirable to take that course. There is, in our opinion, nothing in the words of the regulation which prevents the application in the same prices order of the two methods of fixing prices, it being necessary of course if the second method is adopted to take the further step of giving a notice in writing to the persons sought to be affected. We agree with the view of reg. 23 on this point which was taken by the Supreme Court of New South Wales in the case of *Ex parte Byrne* ; *Re King* (1). We are therefore of opinion that the objections to the validity of the order fail. The appeal is therefore allowed with costs. The order of the Court of Quarter Sessions is set aside. The order of the magistrate and the conviction are restored.

Spender K.C. On the matter of the correct order to be made it is submitted that the case should be remitted to the Chairman of Quarter Sessions. The hearing before him on appeal is a hearing *de novo* (*Ex parte Malouf* ; *Re Gee* (2)) and it does not follow that his view as to penalty would be the same as that of the magistrate. No evidence was led by the defendant (*Williamson* v. *Ah On* (3)). The question of the conviction is not a matter for this Court.

Badham K.C. The appeal was against the conviction and the sentence. There cannot, however, be an appeal against the sentence because the sentence imposed was the minimum sentence permitted by s. 4 of the *Black Marketing Act* 1942.

LATHAM C.J. referred to *All Cars Ltd.* v. *McCann* (4).

Spender K.C., in reply. In principle there is no sentence at present. The provisions of s. 20 of the *Crimes Act* 1914-1941 should

(1) (1944) 45 S.R. (N.S.W.) 123 ; 62 W.N. 104.
(2) (1943) 43 S.R. (N.S.W.) 195.
(3) (1926) 39 C.L.R. 95.
(4) (1945) 19 A.L.J. 129.

be exercised in favour of the respondent. The matter of punishment is peculiarly one for the magistrate or the Chairman of Quarter Sessions who heard the evidence and saw the respondent.

LATHAM C.J. Without laying down any general rule as to the proper order to be made by this Court in cases where a conviction has been set aside by the Court of Quarter Sessions in New South Wales and there is an appeal to this Court which restores the conviction, we think that in this case as first, the minimum sentence required by law was imposed, and secondly, the question of the applicability of s. 20 of the *Crimes Act* 1914-1941 to offences under the *Black Marketing Act* does not now really arise because the magistrate was asked to apply the section and for reasons relating to the merits of the case refused to apply it, the order should be in the form which I have already stated.

Appeal allowed with costs. Order of the Court of Quarter Sessions set aside. Order of the magistrate and conviction restored.

Solicitor for the appellant, *G. A. Watson*, Acting Crown Solicitor for the Commonwealth.

Solicitors for the respondent, *McFadden & McFadden.*

J. B.