[HIGH COURT OF AUSTRALIA.]

CODY . . . . . APPELLANT;
INFORMANT,

AND

J. H. NELSON PROPRIETARY LIMITED . . RESPONDENT.
DEFENDANT,

H. C. OF A. 1947.

MELBOURNE, *May* 13, 14; *June* 9.

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

National Security—Price control—Offence—"Black marketing"—Statute—Construction—"Ejusdem generis"—Regulation—Validity—Keeping proper books and accounts—Supply of goods—Supply of services—Wholesale butcher—Agency transactions—Purchases of meat for and on behalf of retailers—Nature of books and accounts—Black Marketing Act 1942 (*No.* 49 *of* 1942), *ss.* 3, 4, 17 (*a*)—*Black Marketing Regulations* (*S.R.* 1943, *No.* 274—1945 *No.* 114), reg. 3—*National Security* (*Prices*) *Regulations* (S.R. 1940, *No.* 176—1946, *No.* 19), *reg.* 49.

Regulation 3 of the *Black Marketing Regulations* is a valid exercise of the power to make regulations conferred by s. 17 (*a*) of the *Black Marketing Act* 1942.

R. v. Regos, ante, p. 613, followed.

The defendant company, which carried on the business of a wholesale butcher, was charged on eight informations in a Court of Petty Sessions with offences under the *Black Marketing Act* 1942. Seven of the informations related to sales of meat to retailers at prices in excess of those allowed by law; the eighth information alleged that the defendant had failed to keep proper books and accounts as required by reg. 49 of the *National Security* (*Prices*) *Regulations* and was therefore guilty of black marketing by reason of reg. 3 of the *Black Marketing Regulations*. The magistrate found that the transactions charged in the first seven informations were not sales of meat but that the meat had been delivered to the retailers under an arrangement by which the defendant acted as their agent in purchasing stock at the yards and charged them the amount paid plus costs of killing and delivery. As to the eighth information, he was of opinion that the defendant had to keep books only in connection with its

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own business as a wholesaler, and not if it was acting, as he found, as agent, and in view of this finding the information failed. On appeal from the dismissal of the eighth information,

Held that the fact that the defendant had acted as agent in some transactions did not absolve it from the duty imposed by reg. 49 to keep books which were proper for its business and, as the magistrate did not appear to have directed himself to this question, the information should be remitted for rehearing.

APPEAL from a Court of Petty Sessions of Victoria.

Eight informations laid by Herbert Bede Cody charged J. H. Nelson Pty. Ltd., in a court of petty sessions, constituted by a police magistrate, at Footscray, with "black-marketing" offences. The informations were heard together, the informant presenting all his evidence as one case, and no evidence being adduced by the defendant. The defendant carried on the business of a wholesale butcher. Seven of the informations alleged sales of meat by the defendant to retailers at prices in excess of those fixed by law. The eighth information charged that the defendant "did an act which constituted black marketing as defined in the *Black Marketing Act* 1942 and the *Black Marketing Regulations*, to wit, failed to keep proper books and accounts as required by reg. 49 of the *National Security* (*Prices*) *Regulations*." In relation to the books kept by the defendant, the informant sought to establish, by a comparison of various entries, that the transactions the subject of the first seven informations were falsely recorded in the books in that deliveries of meat to retailers were entered in one book in such a manner as to describe sales at lawful prices whereas another book contained entries which, it might be inferred, showed additional charges in respect of the same meat. In attempting to support the allegations in the first seven informations the informant adduced evidence on which the magistrate found that the transactions relied on as sales were not in fact sales but were the result of an arrangement between the defendant and the retailers whereby the defendant acted as their agent in purchasing stock at the yards and charged them the amount paid plus the cost of killing and the cost of delivery. As to the eighth information the magistrate was of opinion that it also failed in view of his finding that the defendant had acted as agent for the retailers and was not selling or supplying its own goods in the course of its business as a wholesaler; the defendant only had to keep books in connection with its own business as a wholesaler, and not if it was acting, as he had held, as agent. Accordingly, he dismissed all the informations.

From the decision dismissing the eighth information the informant appealed, by way of order to review, to the High Court on the grounds:—

1. That the evidence showed that the defendant was supplying or carrying on a service within the meaning of reg. 49 of the *National Security* (*Prices*) *Regulations* and that it did not keep the books and accounts as required by that regulation.

2. That the magistrate was wrong in holding that the defendant was bound under reg. 49 to keep books only in connection with its own business as a wholesaler.

To justify the dismissal of the information the respondent relied (*inter alia*) on the contention that reg. 3 of the *Black Marketing Regulations*, upon which the charge in this information depended, was invalid; the appellant contended that it was valid. As the argument on this question was substantially the same as that in *R.* v. *Regos* (1) the argument as reported hereunder is confined to the other questions which arose in the present case.

P. D. Phillips K.C. (with him *Gillard*), for the appellant. The magistrate appears to have assumed—without having directed his mind to the relevant considerations—that on the failure of the first seven informations, the charge with regard to the books must necessarily fail. His view was that the agency transactions (as he found them to be) were outside the course of the defendant's business of a wholesale butcher and, therefore, need not appear in the defendant's books. It cannot be suggested, however, that these agency transactions were not business transactions or that the defendant did not engage in them while carrying on the business of a wholesale butcher. Books properly kept by the defendant as a wholesale butcher would show both its ordinary wholesale business and also these exceptional transactions. This obligation was imposed by reg. 49 (1) of the *Prices Regulations*, by reason of par. (*a*) thereof; that is to say, the defendant, regarded as a dealer in commodities, was obliged to record in its books the two classes of transaction in which it engaged. Alternatively, the defendant was within par. (*b*) of reg. 49 (1), in relation to the agency transactions, as a supplier of services and was, therefore, required to keep a proper record of those transactions. The books kept by the defendant were not, in either view, properly kept. The agency transactions were apparently regarded as matters requiring to be entered in the ordinary books of the business, but, if one looks in one book, one finds entries which would be appropriate only if the transactions were ordinary wholesale sales at lawful prices; if one looks in another book, one finds entries as to which the only reasonable inference is that they relate to the same transactions and debit the retailers with further sums of

(1) *Ante*, p. 613

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money. Whatever the nature of these transactions, it is not possible to find in any one book (as it would be if the books were properly kept) a complete account of any of the transactions. Accordingly, (unless reg. 3 of the *Black Marketing Regulations* is invalid), the defendant should have been convicted on the charge relating to the books.

Coppel K.C. (with him *Voumard*), for the respondent. The case presented by the informant at the hearing was that the transactions in question were sales of meat at unlawful prices and that the books were not proper books in respect of such sales. Regulation 49 of the *Prices Regulations* is ancillary to regs. 22 and 23 ; on its proper construction, it applies only to goods and services which have been " declared " pursuant to reg. 22. The informant put in evidence a *Gazette* containing a declaration showing meat to be declared goods, but did not prove any declaration of services. Accordingly, there is no evidence before the Court that the service on which the informant now seeks to rely was within reg. 49. Even if the Court can take judicial notice of the existence of a relevant declaration so as to overcome this objection so far as it goes to the adequacy of the evidence, the fact remains (and it is emphasized by the failure to prove such a declaration at the hearing) that the informant now seeks to make on appeal a different case from that which was presented at the hearing. This he should not be allowed to do, even if it is only for the purpose of asking that the case be sent back for rehearing (*The " Tasmania " (Owners)* v. *Smith* (1) ; *Connecticut Fire Insurance Co.* v. *Kavanagh* (2)). The alternative argument, that the books were not proper for the business of a wholesale butcher, does put the case as it was put at the hearing, but it is not covered by the grounds of the order to review, and the informant should not now be allowed to reopen this question. The magistrate decided this question against the informant on evidence on which it was at least open to him so to decide. The evidence was inconclusive ; the most it showed was that the books were not kept in such a skilful manner as to meet with the approval of an accountant. It does not follow that the books were " improper " for the purposes of reg. 49. Accordingly, even on the assumption that reg. 3 of the *Black Marketing Regulations* is valid, the informant has not shown any sound reason why his appeal should not be dismissed.

P. D. Phillips K.C., in reply.

Cur. adv. vult.

(1) (1890) 15 App. Cas. 223, at p. 225. (2) (1892) A.C. 473, at p. 479.

The following written judgments were delivered :—

LATHAM C.J. This is an appeal by way of order to review from an order of a magistrate dismissing an information under the *Black Marketing Act* 1942. The offence charged was that the defendant company between 1st July 1945 and 31st January 1946 did an act which constituted black marketing as defined in the *Black Marketing Act* 1942 and the *Black Marketing Regulations*, to wit, failed to keep proper books and accounts as required by reg. 49 of the *National Security* (*Prices*) *Regulations*. The legislation by virtue of which such an offence is created is set forth in the case of *R.* v. *Regos* (1), which was heard at these sittings of the Court.

Seven other informations were laid against the defendant and they were heard together with the information in respect of which the magistrate made the order from which this appeal is brought. These other informations charged the defendant with selling meat to various persons at a price in excess of that fixed by the *National Security* (*Prices*) *Regulations* and orders made thereunder.

The defendant company carried on business as a wholesale butcher. The informant sought to prove that the company sold meat at prices in excess of those fixed by law. The witnesses called for the prosecution included retail butchers to whom it was alleged the unlawful sales were made. They, however, gave evidence that the manner of dealing between them and the defendant company had been changed, and that it had been arranged that the company should purchase meat as their agent and should charge to them the prices paid with additional charges for killing and delivery. This evidence was believed by the police magistrate and therefore the Crown cases on the seven informations failed. As to the eighth information, relating to failure to keep proper books, the magistrate said :—" Regarding the other charge of not keeping proper books, now that I have held the defendant company acted as agent for Foden, Johnston and Bowman " (who were retail butchers who gave evidence in the case) " and that he was not selling or supplying his own goods in the course of his business as a wholesaler, this charge must also fail. He only has to keep books in connection with his own business as a wholesaler, and not if he is acting, as I have held he was acting, as agent."

This decision was in my opinion wrong. If a person carries on business as an agent he must, in a case to which reg. 49 of the *Prices Regulations* applies, keep such books and accounts as are proper for his agency business. But it does not follow that the decision of the magistrate should be set aside. It may be that it was right upon

(1) *Ante*, p. 613.

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other grounds. But the appellant contends that the evidence showed that the defendant company was carrying on a business of supplying "an agency service," that it did not keep proper books for that business and that the defendant should accordingly be convicted.

Various questions were argued upon the appeal and, in particular, the question of the validity of the *Black Marketing* regulation which made a breach of reg. 49 of the *Prices Regulations* a black-marketing offence. This question has been dealt with fully in the case of *R.* v. *Regos* (1), and I do not here repeat the reasons which I have given in that case for my opinion that the challenged *Black Marketing* regulation is valid. It was also argued that in the Court of Petty Sessions the whole case was conducted as a case relating to the sale of goods and to the keeping of books &c. appropriate to that business and not as a case relating to the supply of any service or to the books proper to be kept for an agency business.

Regulation 49 provides:—"Every person who in the course of, or for the purposes of, or in connexion with, or as incidental to, any business carried on by him—

(*a*) produces, manufactures, sells or supplies any goods whatsoever; or

(*b*) supplies or carries on any service whatsoever, shall, for the purposes of these Regulations, keep proper books and accounts."

The case was fought before the magistrate under par. (*a*); that is, with reference to selling certain goods, namely meat, which it was proved had been "declared" as goods under reg. 22 of the *Prices Regulations*. There was no evidence that any service had been "declared." The respondent contended that the appellant should not now be allowed to make a new case upon appeal, namely that the books kept were not proper for an "agency service." The appellant would have difficulty in succeeding upon any such case not only because it would be a new case, but, further, because there was no evidence that any service had been "declared" under the *Prices Regulations*, and there is much to be said for the proposition that reg. 49 (1) (*b*) applies only where a declared service is supplied or carried on. But these difficulties in the way of the appellant disappear if there was evidence that the defendant company carried on a business in the course of which it sold or supplied goods (viz., meat) which had been declared.

The evidence in the case was principally directed to the particulars of the seven alleged sales in respect of which the charges of selling at prices in excess of lawful prices were laid. But evidence was also

(1) *Ante*, p. 613.

given that the defendant compnay had carried on business as a wholesale butcher " for some number of years." In particular, an accountant gave evidence that the books kept by the company showed that the company was carrying on " an ordinary trading business." One of the witnesses acceded to the statement that the new arrangement as to buying as an agent was an " arrangement which he " (the manager of the company) " had with some of his other customers." This arrangement apparently applied (according to this evidence) only in the case of " some " of the customers. It would appear, therefore, that as to others of its customers the company acted as before, i.e., sold meat to them as a wholesale butcher. There was evidence therefore that the defendant company was dealing in meat, which was declared goods. The dealings in meat were partly as a principal (buying and selling), and partly as a buying agent with the added functions of killing and delivering. There was evidence that the books kept were not proper books for any kind of business—and in particular for the business of dealing in meat as the defendant in fact dealt with meat. Thus there was prima-facie evidence of a breach of reg. 49 (1), par. (*a*), viz., the defendant company, in the course of a business which it carried on, sold and supplied declared goods and was therefore bound to keep proper books and accounts, and there was evidence that the books and accounts were not proper for that business. The statement of the magistrate's reasons for dismissing the charge of failing to keep proper books and accounts shows that he acted upon the erroneous view that proof that in certain cases the defendant was acting as agent made it unnecessary to consider whether, in the business as a whole which the defendant company carried on, it kept proper books. There was a case for the defendant to answer, and therefore the appeal should be allowed and the case should go back to the magistrate for rehearing.

RICH J. This is an appeal by an informant from a decision of a magistrate dismissing an information. The information was one of a number heard together, all of which were dismissed. That, before us, charges the defendant with failing to keep proper books of account. The other informations which have not been made the subject of an appeal contain charges of selling meat at excessive prices contrary to the *National Security* (*Prices*) *Regulations*. All the informations were laid under the *Black Marketing Act*. The defendant succeeded in persuading the magistrate that on the evidence of the informant it appeared that it had not sold the meat to persons named in the information as having bought it at excessive prices. The transactions

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according to the finding of the magistrate were not sales by the defendant but formed part of an employment by the alleged buyers of the defendant as their agent to secure meat for them. This conception of the transactions was carried over by the magistrate into the information charging the defendant with a failure to keep proper books. It is not contested that, as the evidence stood at the close of the informant's case, the proof supported a conclusion that the books kept were improper. But the magistrate took the view that under reg. 49 of the *National Security* (*Prices*) *Regulations* under which the offence was constituted it was unnecessary for an agent to keep books in connection with agency transactions. In announcing his decision the magistrate expressed himself as if this charge related only to the accounting in connection with the same customers, who numbered only three, as were named in the other informations. I do not know why he supposed that the charge was so limited. It would hardly make sense if it were restricted to the accounts of three customers of an entire business. However, there was but a scintilla of evidence that other customers employed the defendant as agent. In my opinion the decision of the magistrate was wrong for the reason that as the evidence stood proper books of account of the business considered as a whole were not kept. The business appears prima facie to have been that of a wholesale meat vendor and I do not think that an inference that it had entirely lost that character was justified as the evidence was left. The point, however, on which the appeal was opened was a different one. It was that reg. 49 covered the supply of services as well as businesses involving the sale or supply of goods. No doubt this is so, but the appellant became involved in difficulties as to whether the point had been made before the magistrate. Having regard to these difficulties, I prefer to place my decision on the ground above stated, which I think is sufficiently covered by the order nisi to review. In this case, as in the case of *R.* v. *Regos* (1), the point was taken that reg. 3 of the *Black Marketing Regulations*, Statutory Rules 1943 No. 274 as amended by Statutory Rules 1945 No. 114, reg. 3, by which contraventions of reg. 49 of the *National Security* (*Prices*) *Regulations* are made black marketing is beyond the powers of the Governor-General in Council. The wide powers given by s. 17 (*a*) of the *Black Marketing Act* are expressed in language which, according to its ordinary meaning, is wide enough to cover the regulation attacked. But counsel proceeded to restrict its meaning by arguing from the context and the use of the *ejusdem-generis* rule. I think it is enough in this judgment for me to say that it is impossible to

(1) *Ante*, p. 613.

impose a sufficient restriction upon the regulation-making power to exclude from its ambit a regulation such as that made by reg. 3 of the *Black Marketing Regulations*.

The appeal should be allowed, the magistrate's order set aside and the information remitted to the magistrate for rehearing.

STARKE J. The respondent was charged on information in Petty Sessions before a police magistrate exercising Federal jurisdiction that it did an act which constituted black marketing within the meaning of the *Black Marketing Act* 1942 in that it failed to keep proper books of account as required by reg. 49 of the *National Security* (*Prices*) *Regulations* which had been declared by Statutory Rules 1945 No. 114, to be black marketing.

Seven other informations were laid against the respondent charging that the respondent had been guilty of black marketing in that it sold meat by wholesale to divers persons at a price in excess of that fixed by the *National Security* (*Prices*) *Regulations*. These seven informations were dismissed on a finding that the respondent had not sold meat wholesale but bought it as an agent for and on behalf of certain customers.

And these decisions have not been challenged.

The information for failing to keep proper books was also dismissed.

Regulation 49 provides that " every person who in the course of, or for the purposes of, or in connection with, or as incidental to, any business carried on by him—(*a*) produces, manufactures, sells or supplies any goods whatsoever; or (*b*) supplies or carries on any service whatsoever, shall, for the purposes of these Regulations, keep proper books and accounts." The regulation refers to any goods and services whatever but I take this to mean any declared goods and services whatever: See regs. 22 and 23. It was not really disputed that all goods and services with some exceptions, immaterial to this case, had been declared (See *Victorian Chamber of Manufactures* v. *The Commonwealth* (*Prices Regulations*) (1)), though it was said that the declarations had not been formally proved but as I think that the information should go back to the police magistrate the defect, if it be one, is not fatal. Pursuant to the provisions of the *Black Marketing Act* 1942 failure to keep proper books and accounts had been declared by Statutory Rules 1945 No. 114, to be black marketing.

The police magistrate in dismissing the information said: " Now that I have held the defendant company acted as agent . . . and that he was not selling or supplying his own goods in the course of

(1) (1943) 67 C.L.R. 335, at pp. 338, 339.

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his business as a wholesaler, this charge must also fail. He only has to keep books in connection with his own business as a wholesaler, and not if he is acting, as I have held he was acting, as agent." An appeal by means of an order to review is brought to this Court against this decision.

Shortly, the ground of the order to review is that the magistrate was wrong in holding that the defendant was bound under the regulations to keep books only in connection with its own business as a wholesaler, and that it was required by the regulations to keep books in connection with the services which it rendered as agent.

During the argument it was contended that the respondent was in any case bound to keep proper books of the business carried on by it as a wholesale butcher and had failed to do so. But this contention does not seem to have been brought to the attention of the police magistrate and it is not, I think, covered by the grounds stated in the order to review. The appellant should not, therefore, be allowed to advance it as a ground of this appeal.

But there is evidence that the wholesale butchery carried on by the respondent and the agency transactions were all part and parcel of the same business carried on by the respondent and that the books of account kept by the respondent were not proper books of account for a business of that character. The view of the police magistrate that the respondent was only bound to keep books in connection with its business as a wholesale butcher and not as an agent for customers cannot in terms be supported for there is evidence that the business carried on by the respondent consisted of its wholesale and agency dealings and that the books were not proper in that business. Owing to the course the case took before the magistrate the respondent has not had an opportunity of meeting that case or the further contention made for the first time on this appeal. So the case should go back to the police magistrate for reconsideration if nothing else appears.

But the respondent contends that Statutory Rules 1945 No. 114 is *ultra vires* the *Black Marketing Act* 1942. The regulation provides:— "It is hereby declared to be black marketing for any person, in contravention of regulation 49 of the *National Security (Prices) Regulations*, to omit to do any act which the person is required by that regulation to do or to fail to comply with any direction given under that regulation." Regulation 49 requires, as already set forth, the keeping of proper books and accounts. And Statutory Rules 1945 No. 114 purports to have been made under the *Black Marketing Act* 1942. That Act defines black marketing in s. 3, pars. (*a*) to (*i*) inclusive, "and includes any other act or thing done, or

omitted to be done, or any conduct, in contravention of the Regulations, which is declared, by regulations made under this Act, to be black marketing ; and ' the Regulations ' means any regulations made (whether before or after the commencement of this Act) under the *National Security Act* 1939 or under that Act as subsequently amended." And the Governor-General is authorized (s. 17) to make regulations (*inter alia*) for declaring any act or thing done or omitted to be done in contravention of the Regulations to be black marketing.

The contention is that acts or omissions which the Governor-General may declare to be black marketing should be construed according to the rule or canon of construction called " *ejusdem generis* " or " *noscitur a sociis.*" It is not a rule of law. But where there are general words following particular or specific words the general words should be confined to things of the same kind as those specified. This " rule of construction is subordinate to the real intention of the parties, and does not control it ; that is to say, that the canon of construction is but the instrument for getting at the meaning of the parties, and that the parties, if they use language intimating such intention, may exclude the operation of this or, I suppose, any other canon of construction " (*Thorman* v. *Dowgate Steamship Co. Ltd.* (1)). And *Hamilton* J. in that case also said that he saw " no reason why either the nature of the instrument or the language used might not cause the general words to be referred to the specific words either collectively or in groups or individually according to the intention of the parties " (2).

In the present case there are nine groups of acts or omissions called black marketing but they relate to four main heads :—

(1) the production and disposal of goods ;
(2) the supply of services ;
(3) the using or dealing with rationing documents ; and
(4) making or uttering counterfeit or forged rationing documents or doing any other act or thing in relation to rationing documents issued under the Regulations or any counterfeit or forged rationing document.

But I cannot agree that the provisions of Statutory Rules 1945 No. 114 relate to the same kind of thing as those specified in s. 3 of the *Black Marketing Act.* The only *genus*, group or class of thing to which any act or thing done or omitted to be done or any conduct in contravention of the Regulations can be said to belong are acts or omissions relating to genuine or counterfeit rationing documents. And it can only belong to that class because the class, it is suggested, deals with matters incidental to the other groups and keeping proper

(1) (1910) 1 K.B. 410, at p. 419. (2) (1910) 1 K.B., at p. 422.

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books and accounts is but another incidental. But keeping proper books and accounts has nothing in common with " any other act or thing done, or omitted to be done, or any conduct " in relation to genuine or counterfeit rationing documents or any other acts or omissions mentioned in s. 3 of the *Black Marketing Act* 1942. Such books may contain a record of those acts or omissions and be incidental to or consequential upon those acts or omissions. But they are not acts of the same kind or nature. Such an extended application of the " *ejusdem-generis* " doctrine is not only inapt but erroneous: Cf. *National Association of Local Government Officers* v. *Bolton Corporation* (1).

Moreover, the *Black Marketing Act* 1942 itself indicates that a wider meaning is intended. It gives a discretionary authority in s. 17 to the Governor-General to make regulations declaring any act or thing done or omitted to be done or any conduct in contravention of the Regulations (that is, regulations made under the *National Security Act* and its amendments (See Act, s. 3)) to be black marketing and in s. 3 prescribes that " any other act or thing done, or omitted to be done, or any conduct, in contravention of the Regulations," so declared, shall be included in the expression black marketing. The authority is expressed in the most general terms so that the Governor-General may select the further acts or omissions that should be treated as black marketing. " It is, however, incumbent on those who contend for the limited construction to show that a rational interpretation of the " (document) " requires a departure from that which ordinarily and prima facie is the sense and meaning of the words." " Nothing," said Lord *Esher*, citing the preceding passage from *Knight Bruce* V.C. in *Parker* v. *Marchant* (2), " can well be plainer than that to show that prima facie general words are to be taken in their larger sense, unless you can find that in the particular case the true construction of the instrument requires you to conclude that they are intended to be used in a sense limited to things ejusdem generis with those which have been specifically mentioned before " (*Anderson* v. *Anderson* (3)). But this raises the further question whether the provision under which Statutory Rules 1945 No. 114 was made and whether the statutory rule itself is within the constitutional power of the Commonwealth.

The authority of the Parliament to make laws committing to the Governor-General general powers of making regulations in the widest terms, including discretionary powers, is supported by the decisions

(1) (1943) A.C. 166, at pp. 176, 177, 185, 186.

(2) (1842) 1 Y. & C.C.C. 290 [62 E.R. 893].

(3) (1895) 1 Q.B. 749, at p. 753.

of this Court (*Roche* v. *Kronheimer* (1); *Victorian Stevedoring and General Contracting Co. Pty. Ltd.* v. *Dignan* (2); *Wishart* v. *Fraser* (3); *Reid* v. *Sinderberry* (4)). Accordingly, the *Black Marketing Act* 1942 is within constitutional power.

The question remains whether Statutory Rules 1945 No. 114 is *ultra vires* that Act.

The keeping of proper books of account is essential for the carrying on of any business and plainly desirable as a method of checking prices and policing any system of price control or rationing of goods or services. Consequently, it is, I think, within the wide powers conferred upon the Governor-General by the Act.

But I desire to add, that I cannot think, that the powers conferred upon the Governor-General enable him arbitrarily and capriciously to declare all or any contravention of the provisions or clauses in the *National Security Regulations* preserved by the *Defence* (*Transitional Provisions*) *Act* 1946 to be black marketing. A number of these provisions or clauses are mere machinery or auxiliary clauses in the regulations in which they are found and in that setting within the defence power. Taken out of that setting, isolated and declared to be black marketing, they may well be beyond the defence power. I should doubt, for instance, whether the Governor-General could declare to be black marketing a breach of reg. 20 of the *Enemy Property Regulations* requiring persons to furnish information &c. or a breach of reg. 11 (3A) of the *General Regulations* prohibiting the use of any appliance in such a way as to cause interference with wireless telegraphy.

And many other instances might be given.

If a regulation is not made bona fide or if it be arbitrary and capricious, the regulation may well be beyond the defence power (*Arthur Yates & Co. Pty. Ltd.* v. *Vegetable Seeds Committee* (5)).

And it is important that this Court should not wholly disregard the liberty of the subject under cover of the defence power and subject him to the very grave penalties imposed by the *Black Marketing Act* without careful and detailed consideration of each declaration under the Act.

This appeal should be allowed, for the reasons above stated, the order of the police magistrate set aside and the information remitted to the Court of Petty Sessions for rehearing.

(1) (1921) 29 C.L.R. 329.
(2) (1931) 46 C.L.R. 73.
(3) (1941) 64 C.L.R. 470.
(4) (1944) 68 C.L.R. 504.
(5) (1945) 72 C.L.R. 37.

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DIXON J. This is an appeal under s. 39 (2) (*b*) of the *Judiciary Act* 1903-1946 from a decision of a Court of Petty Sessions exercising federal jurisdiction. It is a full appeal on law and fact like appeals from other courts falling under our appellate jurisdiction and is subject to the same limitations of power, for instance as to the reception of fresh evidence. By reason of Section IV. of the Appeal Rules the appeal is brought, not by notice of appeal, but by order nisi, in the manner of an order nisi to review.

It has been repeatedly pointed out that the use of State procedure to institute the appeal does not alter the nature of the appeal or transfer to us the powers of the State Court: See *Wishart* v. *Fraser* (1), and the cases there collected: *Harrison* v. *Goodland* (2); *Grosglik* v. *Grant* [*No.* 2] (3). But, as so often happens, there was at the hearing some confusion about the application of State law to the proceeding, and we were asked to receive further evidence, which we cannot do. It was sought to put in a *Gazette* to prove formally what has been brought to our attention in other cases several times, namely that under reg. 22 (2) of the *National Security* (*Prices*) *Regulations* the Minister made a general declaration that all services, with certain immaterial exceptions, should be "declared services." I do not know whether a stage is ever reached when a court should take judicial notice of a public fact of this kind, so often proved before it. But the omission to establish it before the magistrate is not, in the view I take of the case, decisive of the appeal.

The appeal is from a decision of a magistrate dismissing an information under s. 4 of the *Black Marketing Act* 1942-1946 based on reg. 49 (1) of the *Prices Regulations*. An omission in contravention of reg. 49 to do any act which that regulation requires is declared to be black marketing by Statutory Rules 1945 No. 114. Regulation 49 requires that in two descriptions of business the person carrying on the business shall keep proper books and accounts. The first description of business is the production, manufacture, sale or supply of goods. The second is the supply or carrying on of any service. The defendant respondent is a company which carried on business as wholesale butchers. The information in question charged that the company did an act constituting black marketing by failing to keep proper books and accounts.

Seven other informations against the company for black marketing were heard at the same time as that with which we are concerned. They, however, charged sales of meat by wholesale at prices greater than the fixed maximum prices. Each of the seven informations

(1) (1941) 64 C.L.R. 470, at p. 480.
(2) (1944) 69 C.L.R. 509, at pp. 521, 522.
(3) (1947) 74 C.L.R. 355.

named a retail butcher as the buyer, three retail butchers in all. These men, customers of the company, were called for the informant, but they gave evidence that the transactions, though recorded as sales in the invoices and books of the company, were in fact of another character. According to them, after a certain date the company ceased to supply them by way of sale with their requirements of meat but by arrangement bought beasts on the hoof on their behalf and had them slaughtered, delivering the carcases or meat to them and receiving by way of reimbursement and of recompense the amounts shown in the invoices or statements rendered by the company together with certain further amounts shown on separate slips. The magistrate adopted the version of their transactions with the company which these witnesses gave, and at the conclusion of the informant's case dismissed all the informations. As to the seven charging sales, he considered that there were no sales established. The appellant has not appealed from the dismissal of these informations. Upon the charge of failing to keep proper books and accounts evidence was given showing the impropriety of the books kept, but the magistrate dismissed that information because, in the language of the magistrate, the company only had to keep books in connection with its own business as a wholesaler, and not if it was acting as agent, as the magistrate held it was acting.

Whatever this may precisely mean, it is pretty clearly based on the hypothesis that the charge of failing to keep proper books and accounts could not be supported unless the relevant business of the company fell within the first of the two descriptions to which reg. 49 (1) is expressed to apply. If the company acted as agents for the three retail butchers and bought beasts for them and caused the animals to be slaughtered on their behalf it is not hard to understand the magistrate's thinking that, so far as concerned those three customers at all events, the company could not be said to have produced, manufactured, sold or supplied any goods, within the meaning of the earlier limb of reg. 49 (1). But what of the other limb ? Why in these three cases should the company not be regarded as supplying or carrying on a service in the course of its business ? To this question the magistrate does not seem to have addressed himself. But the informant appellant takes the point as his first ground of appeal. It is here that the fact becomes relevant that all services are declared services, and the want of formal evidence of the Minister's declaration is laid hold of by the defendant respondent as a defect of proof enuring to its advantage. However that may be the respondent also takes the objection that the first ground of appeal is not open to the informant appellant because the magistrate's

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attention was not directed on the part of the informant to the bearing upon the case of so much of reg. 49 (1) as refers to services, and, independently of the supposed defect of proof being or not being fatal to the first ground of appeal, reliance is placed by the defendant respondent upon the non-production of the *Gazette* as a further indication that the point taken by that ground was not made at the hearing of the information.

In this view of the proceedings I am disposed to agree, and if the appeal depended upon the first ground only we would, in my opinion, be justified in refusing to entertain it. But there is a second ground of appeal. It is not very clearly expressed, but it takes the concluding statement of the magistrate and denies its correctness. The ground says that the magistrate was wrong in holding that the defendant was bound under the regulations to keep books only in connection with its own business as a wholesaler.

I have some doubt whether this ground covers the view I take of the case made on the charge of failing to keep proper books and accounts and of the magistrate's decision. That view I can express shortly without any discussion of the evidence. I think that the magistrate was wrong in dismissing the information without calling on the defendant, and was wrong in the reason he gave. He was wrong because there was evidence that the company had carried on a wholesale butcher's business and supplied a number of customers, there is a presumption of continuance and there was no satisfactory evidence that the company had ceased to be wholesale butchers. The business was a unit, and even if it included some agency transactions the duty under the earlier limb of reg. 49 (1) to keep proper books and accounts would make it necessary to include those transactions. Three customers had, according to the magistrate's findings, ceased to be buyers of meat from the company and employed the company as an agent to buy live stock for them and to cause the beasts to be slaughtered. But even if this were so with three customers, the business still would fall within the earlier limb of the regulation. It would not pass from the description contained in that part of the regulation until, looked at as a whole, substantially the business was no longer that of wholesale butchers selling or supplying meat to customers.

The few references contained in the evidence to the relations of the company with other customers would not entitle the magistrate to find that the whole business had changed its character. Besides the presumption of continuity, the documentation and the book-keeping and the general circumstances gave prima-facie proof of its still being a wholesale meat business. In these circumstances the

magistrate's reason was wrong because he concentrated on the agency character of the transactions with the three customers, held it unnecessary to enter transactions with them in the books and treated the charge as relating only to them. As I have said, I have some misgivings whether the second ground of the appeal provides room for this view of the case, particularly having regard to the way in which the appeal was opened. But the ground does attack the finding or reason of the magistrate, and after all it is upon that the case hinges. A strong prima-facie case was made against the propriety of the books, and I think that a sufficient prima-facie case was made of a duty to keep proper books, independently of any resort to the alternative that the business consisted of supplying services. The case should therefore not have been stopped.

So far I have discussed the matter on the hypothesis that Statutory Rules 1945 No. 114 is valid and effectively places an omission in contravention of *Prices* reg. 49 (1) among the things constituting the offence of black marketing. But the correctness of that hypothesis is contested. The respondent contends that Statutory Rule 1945 No. 114, which introduced reg. 3 of the *Black Marketing Regulations*, contained in the *Manual of National Security Legislation*, 6th ed., at p. 116, is invalid. By reg. 3 it is declared to be black marketing for any person, in contravention of reg. 49 of the *National Security* (*Prices*) *Regulations*, to omit to do any act which the person is required by that regulation to do or to fail to comply with any direction given under that regulation.

In adopting the regulation the Governor-General in Council purported to exercise the power which the latter part of s. 3 and s. 17 (*a*) of the *Black Marketing Act* 1942 confer. The argument for the respondent is that the power must be restrictively interpreted and that so restricted it does not extend to authorize a regulation which makes it black marketing to commit an offence against *Prices* reg. 49, or perhaps it would be more correct, in view of s. 46 (*b*) of the *Acts Interpretation Act*, to say which makes it black marketing to commit an offence against so much of *Prices* reg. 49 (1) as relates to keeping books and accounts. Section 17 provides that the Governor-General may make regulations which are required or permitted to be prescribed or which are necessary or convenient to be prescribed for giving effect to the Act and, in particular, for (*a*) declaring any act or thing done or omitted to be done or any conduct in contravention of the Regulations to be black marketing.

At the time that the challenged regulation was adopted the expression " the Regulations " was defined by s. 3 of the *Black Marketing Act* to mean any regulations made under the *National*

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Security Act 1939 or under that Act as subsequently amended, and to include any orders made under any such regulations. Now, the expression means any regulations in force by virtue of the *Defence (Transitional Provisions) Act* 1946 and includes any order in force by virtue of that Act or made under any such regulations: See Act No. 77 of 1946, s. 10 and Third Schedule.

So far the text suggests little reason for a restrictive reading of the power. Apart from general considerations arising from the number and variety of the *National Security Regulations* and the almost grotesque irrelevance of many of them to the subjects with which the *Black Marketing Act* otherwise deals, the foundation of the argument is to be found in the provisions which create and define the offence of black marketing. Section 4 (1) makes it an offence to do an act or thing or be guilty of an omission or conduct which constitutes black marketing within the meaning of s. 3. Section 3 begins: "For the purposes of this Act, 'black marketing' means—." Then follow nine paragraphs lettered (*a*) to (*i*) describing specific acts and omissions. After this enumeration s. 3 proceeds: "and includes any other act or thing done, or omitted to be done, or any conduct, in contravention of the Regulations, which is declared, by regulations made under this Act, to be black marketing." Upon this association of words and ideas the contention is based that no act or thing done or omitted or conduct can be declared to constitute black marketing unless it is of the same general kind as the acts, omissions and conduct described in the nine lettered paragraphs. The principle invoked is that explained by Sir *Benson Maxwell* as follows:— "It is in the interpretation of general words and phrases that the principle of strictly adapting the meaning to the particular subject matter with reference to which the words are used finds its most frequent application. However wide in the abstract, they are more or less elastic, and admit of restriction or expansion to suit the subject matter. While expressing truly enough all that the Legislature intended, they frequently express more, in their literal meaning and natural force; and it is necessary to give them the meaning which best suits the scope and object of the statute without extending to ground foreign to the intention. It is, therefore, a canon of interpretation that all words, if they be general and not express and precise, are to be restricted to the fitness of the matter. They are to be construed as particular if the intention be particular; that is, they must be understood as used with reference to the subject matter in the mind of the Legislature, and limited to it" (*Maxwell, Interpretation of Statutes*, 7th ed. (1929), p. 52).

The three canons of construction are relied upon: Lord *Bacon's verba generalia restringuntur ad habilitatem rei vel personae*, to which in the passage just quoted there is a reference; Lord *Hale's noscitur a sociis*, and that which allows the court to give to general expressions following an enumeration of more particular things or matters an application no larger than to things and matters *ejusdem generis*. But standing as a caution against a too ready use of these counsels there is yet another Latin canon, *generalia verba sunt generaliter intelligenda*, which is as much as to say words although general should be understood in their primary and natural signification unless there are sufficient indications of some other meaning. This last maxim or brocard is not to be understood in opposition to the three first mentioned. They relate to the context and subject matter in which indications of a narrower meaning may be seen.

The precept allowing of the restraint of a general expression to a class of things *ejusdem generis* with particular expressions preceding it may be regarded as a subordinate rule forming part of the larger principle stated by Sir *Benson Maxwell*. In *Larsen* v. *Sylvester & Co.* (1), Lord *Robertson* spoke of the soundness of what is called the *ejusdem-generis* rule of construction because, as he said, it seemed to him that both in law and also as a matter of literary criticism it is perfectly sound. But, according to *Asquith* L.J., " the tendency of the more modern authorities is to attenuate the application of the ejusdem generis rule " (*Allen* v. *Emmerson* (2)). If this be so, it is but the result of the greater freedom with which courts now use all rules and admonitions as to the interpretation of written instruments. In the modern search for a real intention covering each particular situation litigated, however much help and guidance may be obtained from the principles and rules of construction, their controlling force in determining the conclusion is likely to be confined to cases where the real meaning is undiscoverable or where the court of construction, sceptical of the foresight of the draftsman or of his appreciation of the situation presented, is better content to supply the meaning by a legal presumption than subjectively. It may be for some such reason that in *Thorman* v. *Dowgate Steamship Co. Ltd.* (3), Lord *Sumner* left unanswered the question " whether the presumption of law is that general words are general until they can be shown to be particular, or whether general words are *ejusdem generis* with the particular words until they can be shown to be general without any limitation " (4).

(1) (1908) A.C. 295, at p. 297.
(2) (1944) 1 K.B. 362, at p. 367.
(3) (1910) 1 K.B. 410.
(4) (1910) 1 K.B., at p. 420.

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In the interpretation of the last part of s. 3 of the *Black Marketing Act* I think that we should begin with the presumption or assumption that words, even when general, mean what they say. No canon of construction is enshrined in the observation made by Lord *Wright* in *James* v. *Commonwealth* (1), concerning the words " absolutely free " that " the use of the language involves the fallacy that a word completely general and undefined is most effective. A good draftsman would realize that the mere generality of the word must compel limitation in its interpretation." Doubtless the observation embodies a shrewd generalization, not untinged with cynicism, concerning the incredulity which broad and sweeping provisions arouse in the judicial mind, so apt to regard them as legislative hyperbole to be confined in application within moderate and practicable limits.

But, beginning with the prima-facie view that words should receive their ordinary meaning, I think that there are considerations arising upon the *Black Marketing Act* which justify some narrowing of the literal generality of the words in s. 3 " and includes any other act or thing done, or omitted to be done, or any conduct, in contravention of the Regulations, which " &c. In the first place, there is the title of the statute, " An Act to provide for the Prevention of Black Marketing." In the next place there is the absurd incongruity of calling by the word " black marketing " the greater number of the diverse acts and omissions made penal by the multifarious *National Security Regulations*. Again, there is the injustice of allowing such drastic punishments to be affixed to the greater part of that long and varied catalogue of offences. Then there is the argument from the particular instances contained in the nine specific paragraphs of s. 3.

For some distance, therefore, I am prepared to go with the respondent's argument for a restrictive interpretation of s. 3. But the restriction the respondent proposes is much too narrow. Even if the canon for an *ejusdem-generis* construction were applied in the most mechanical and rigid way it would not justify such a restriction. For the purposes of that canon you must first find in your particular instances which precede the general words some common attributes or characteristics which enable you to formulate a category or description. I shall not go through the nine paragraphs of s. 3 in detail. It is enough to point out that in the first paragraph you have dealings between buyer and seller of goods in contravention of price control; in the second the like dealings between the supplier and recipient of services; in the third unauthorized dealings in rationed goods or services; in the fourth the disposal or acquisition

(1) (1936) A.C. 578, at p. 627.

of the property in or possession or custody of goods where that is prohibited, restricted or made subject to conditions; in the fifth delivery of goods upon premises where it is prohibited; in the sixth production, manufacture or treatment of goods contrary to regulations restricting it or imposing conditions and in the seventh the disposal of property in or possession of goods belonging to the Commonwealth.

Now, in these seven cases there is some kind of dealing in or transaction or act affecting goods in contravention of wartime controls or prohibitions. In a way the materials for the formulation of a category are here to be found. But when you proceed to the last two paragraphs you find that the connection they have with what precedes consists in providing the means of suppressing descriptions of fraudulent or improper practice which facilitate or cover the kind of thing at which the first seven paragraphs or some of them are aimed. Now, clearly enough, you have here the creation of two additional offences or sets of offences as something which is ancillary or auxiliary to the suppression of the offences provided against in the preceding paragraphs. If you are going to make a category large enough to include all nine paragraphs and to do it in a way which takes into account the real sense of the provision, then, with the chief purpose of suppressing dealings with and with reference to goods in defiance of war-time controls and prohibitions, you must include the further purpose of suppressing improper practices calculated to facilitate and cover such dealings. But the truth is that it is wrong to use the rule for an *ejusdem-generis* construction as a piece of abstract or mechanical reasoning. It must be applied not *simpliciter* but *secundum quid*. It should be used as a guide in a process of interpretation which takes into account the whole instrument and the subject matter. In this way it is proper to consider what is the natural reason why the draftsman should add to his list of more specific offences a power enabling the Executive to constitute other acts and omissions black marketing, provided they contravene the regulations. Surely the most natural reason is in order that without recourse to Parliament the severer punishments of the *Black Marketing Act* might be affixed to such practices contravening the regulations as experience may show to be *in pari materia* with those against which the more specific provisions of s. 3 are directed and to such as tend against the detection and suppression of that kind of black marketing.

A consideration of all the provisions of s. 3 thus supplies strong reasons for thinking that it would defeat the real purpose of the power given by the latter part of s. 3 to the Executive, if an interpretation were adopted restricting its operation within any narrower limits

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than would comprise all such acts, omissions and conduct contravening the *National Security Regulations* as tend against the effectiveness of the control of the supply and disposal of goods and services, whether with respect to price or quantity, and including the acquisition of the one and the receipt or use of the other as well as the use of ration tickets and other matters that are incidental to or consequential upon these subjects or are conducive to the effectiveness of the control.

No further restriction than the foregoing gains any support from the remaining provisions of the *Black Marketing Act*. Section 4 (6) (*a*) gives no ground for an inference that there must be a dealing in goods in every black-marketing offence. The words "if any" are inconsistent with such an inference. Section 4 (7) and (10) and therefore s. 4 (6) (*b*) only relate to cases where the evidence discloses excessive profits and I take excessive to mean excessive, having regard to price control. A restriction to offences in selling goods or supplying services cannot be deduced from these provisions. Such an inference would in any case be incompatible with so much of s. 3 (*a*), (*b*), (*c*), (*d*), as includes the person occupying the position of the purchaser or recipient or a position analogous thereto and with s. 3 (*e*), (*h*) and (*i*). Section 11 is only permissive and founds no inference.

Now *Prices* reg. 49 requires that the trader shall for the purposes of the *Prices Regulations* keep proper books and accounts together with a number of supporting documents and shall preserve them until their destruction is authorized by the Prices Commissioner. Such a provision is plainly auxiliary to the enforcement of price control and tends to make successful evasion more difficult and therefore less likely. It appears to me exactly the kind of provision which falls within the ambit of the last part of s. 3, notwithstanding that the words may be restrictively construed to the extent I have indicated. In my opinion Statutory Rules 1945 No. 114 is within the power the statute purports to confer. There has been a suggestion, however, that a question of constitutional validity may exist. I do not think that there can be much doubt about the constitutional validity of reg. 49 (1), or about that of s. 17 (*a*) and the last part of s. 3 of the *Black Marketing Act*. I say this on the footing that the continuance of price control into the period we have now reached is not in question and that the continued operation of the *Black Marketing Act* is not disputed, no doubt having been cast on either of these matters.

I feel no difficulty about reg. 49 (1) because it appears to me to be fairly incidental to price control, which as an entire subject fell

within the defence power at the time during the war when it was adopted. It is true that reg. 49 (1) speaks of goods and services without reference to the difference between goods and services generally and declared goods and declared services. Perhaps it goes too far if it covers goods and services not declared, but, if so, s. 46 (*b*) of the *Acts Interpretation Act* saves it from invalidity in relation to declared goods and services.

The validity of the last part of s. 3 and of s. 17 (*a*) of the *Black Marketing Act* 1942 must be considered too as at the time the Act was passed. When the statute is examined it will be found that it deals with the penal and other consequences to be attached to offences against *National Security Regulations*. We are only concerned with the *Prices Regulations*, and nothing outside those regulations and the *Rationing Regulations* seems to be touched by ss. 3 and 4, except possibly by s. 3 (*e*) and (*f*), which are plainly severable if they could be questioned. I am unable to see why such an enactment should fall outside the defence power. If any of the *National Security Regulations* with which it deals were invalid, then to that extent the relative provision of the statute would fail in intended operation. But it would not be invalid. The subject matter of the particular provision would be withdrawn, that is all. The severity of the measure cannot take it outside power. The penal consequences prescribed cannot be said to have no reasonable relation to the purpose of price control and rationing, and however wide a construction may otherwise be given to s. 17 (*a*) and the last part of s. 3, any argument on this ground against their validity would be effectively answered by s. 15A of the *Acts Interpretation Act*. It remains to refer to the fact that s. 18 of the *Black Marketing Act* 1942 provides that the Act shall continue in force until a date to be fixed by proclamation and no longer, but in any event not longer than six months after His Majesty ceases to be engaged in war. A like provision, viz., s. 19 of the *National Security Act* 1939-1943, was considered by this Court in *Dawson* v. *The Commonwealth* (1), and in *Miller* v. *The Commonwealth* (2). In those cases I thought that the amendment of s. 19 by the *National Security Act* 1946 made the meaning of the expression " engaged in war " immaterial, though I did not think that by 2nd September 1945 it could be said that His Majesty had ceased to be engaged in war. The expiration of the *Black Marketing Act* would, or at all events might, affect pending proceedings, but no point has been taken of this nature, doubtless because the meaning which in those cases a majority of the judges forming the Court gave to s. 19 appears to make the point untenable.

(1) (1946) 73 C.L.R. 157. (2) (1946) 73 C.L.R. 187.

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In my opinion the appeal should be allowed, the order dismissing the information should be set aside and the information should be remitted to the Court of Petty Sessions for rehearing.

McTIERNAN J. I am of opinion that this appeal should be allowed. The information to which it relates contained a general allegation of a breach of reg. 49 of the *Prices Regulations*. There were no particulars furnished of the breach alleged. The regulation imposes an obligation both in respect of goods and services. The information now in question was heard with seven other informations alleging that the offence of black marketing was committed by selling meat by wholesale at prices in excess of the prices fixed under the regulations. These informations and the present information were dismissed. The magistrate held that in the case of each of the traders to whom it was charged that the defendant sold meat at a price in excess of the fixed price the transaction was that the defendant purchased stock as the trader's agent and charged him the amount which it paid and the cost of killing and delivery: and that none of the alleged incriminating transactions was a sale of goods.

The magistrate's decision on the information alleging a breach of reg. 49 was in these terms:—"Regarding the other charge of not keeping proper books, now that I have held the defendant company acted as agent for Foden, Johnston, and Bowman and that he was not selling or supplying his own goods in the course of his business as a wholesaler, this charge must also fail. He only has to keep books in connection with his own business as a wholesaler, and not if he is acting, as I have held he was acting, as agent." The finding that the defendant was not selling or supplying his own goods in the course of his business as a wholesaler, if correct, might be an answer to a charge under reg. 49 (1) (*a*), but not necessarily under reg. 49 (1) (*b*).

The informant, by his grounds of appeal, seeks to have the defendant convicted under reg. 49 (1) (*b*). He relies upon a view of the facts which is consistent with that taken by the magistrate but disputes the correctness of the magistrate's view that the defendant was not bound by reg. 49 to keep books in respect of the services which he supplied as an agent. In order to establish this ground of appeal it would be necessary for the informant to show that these were services within the meaning of reg. 49 (1) (*b*) and that they were "declared services." There was no proof before the magistrate of what were "declared services": such evidence will not be received by this Court in such a proceeding as the present: it being strictly an appeal. It was urged on behalf of the defendant that the informant had not hitherto alleged that the offence charged consisted of a

contravention of reg. 49 (1) (*b*) and that the Court should not at this stage entertain the case made in the grounds of appeal. But this is hardly a new case : it is within the terms of the information ; and no particulars were sought or given of the breach of reg. 49 which the informant would seek to prove. In any case, I think that as the evidence stands, the objection can have no weight. Although the point was not clearly made in this Court on behalf of the informant, there is evidence that besides entering into transactions of the nature found by the magistrate, the defendant carried on the business of supplying or selling by wholesale. The Chief Justice refers to this evidence in detail. If there was any defect in the proof of a breach of reg. 49 (1) (*b*), there was, at any rate a case to answer under reg. 49 (1) (*a*). That case was not disposed of by the finding that the transactions relied upon to support the other informations were not sales, but transactions carried out by the defendant as an agent. Upon the evidence that the defendant's business included selling or supplying by wholesale, and the evidence of the state of its books, there is a case for it to answer whether the books satisfied the requirements of reg. 49.

The submission that the regulation declaring a contravention of reg. 49 to be the offence of black marketing is invalid is dealt with in the case of *R.* v. *Regos* (1). The regulation is valid.

The magistrate's order dismissing the information the subject of this appeal should be set aside and the information remitted to the Court of Petty Sessions for rehearing.

Appeal allowed with costs. Order of Court of Petty Sessions set aside. Information remitted to Court of Petty Sessions for rehearing.

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

Solicitors for the respondent : *W. H. Jones & Kennedy.*

E. F. H.

(1) *Ante,* p. 613.