[HIGH COURT OF AUSTRALIA.]

THE KING

AGAINST

REGOS AND MORGAN.

H. C. OF A. 1947.

MELBOURNE, *May* 19; *June* 9.

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

National Security—Price control—Offence—"Black marketing"—Statute—Construction—"Ejusdem generis"—Regulation—Validity—Power to Governor-General to declare "any act or thing done or omitted to be done or any conduct in contravention of" National Security Regulations to be "black marketing"—Keeping proper books and accounts—Black Marketing Act 1942 (*No.* 49 *of* 1942), *ss.* 3, 4, 17 (*a*)—*Defence* (*Transitional Provisions*) *Act* 1946 (*No.* 77 *of* 1946)—*Black Marketing Regulations* (*S.R.* 1943, *No.* 274—1945, *No.* 114), *reg.* 3—*National Security* (*Prices*) *Regulations* (*S.R.* 1940, *No.* 176—1947, *No.* 36), *reg.* 49.

Section 3 of the *Black Marketing Act* 1942 provides that "black marketing" shall mean any of the contraventions of the *National Security Regulations* specified in pars. (*a*) to (*i*) of the section "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."

Held that the generality of these words was not to be limited by construing them *ejusdem generis* with the specific matters mentioned in pars. (*a*) to (*i*).

Held, therefore, that reg. 3 of the *Black Marketing Regulations* declaring it to be black marketing for any person to fail to comply with reg. 49 of the *National Security* (*Prices*) *Regulations* (relating to the keeping of proper books and accounts), was valid.

CASE STATED.

This was a case stated under s. 72 of the *Judiciary Act* 1903-1946 by *Dixon* J. for the consideration of the Full Court of the High Court, reserving two questions, only one of which is material to this report. The case, so far as it related to that question, was substantially as follows :—

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1. Jack Neal, James Regos and Arthur Edward Morgan were arraigned before me upon an indictment in the name of the Attorney-General of the Commonwealth which had been filed in this Court. The indictment contained eight counts. The three accused each pleaded not guilty to all the counts. A jury was empanelled, and the trial took place before me on twelve sitting days from 14th to 30th April 1947. A verdict was given on 30th April 1947. Regos and Morgan were found guilty on the eighth count and not guilty on each of the first seven counts. Neal was acquitted upon all eight counts.

2. The charges contained in the counts were all for "black marketing" contrary to the *Black Marketing Act* 1942. The seven counts upon which all the accused were acquitted charged offences consisting in selling meat at greater prices than the maximum prices fixed by Prices Orders under the *National Security* (*Prices*) *Regulations*. The eighth count, upon which Regos and Morgan were convicted, charged that the accused were and each of them was guilty of conduct which constituted black marketing as defined in the *Black Marketing Act* 1942 and the *Black Marketing Regulations* made thereunder in that they and each of them did omit to keep proper books and accounts as required by reg. 49 of the *National Security* (*Prices*) *Regulations*.

4. I postponed judgment upon the indictment in respect of Regos and Morgan until the questions reserved had been considered and decided, and I admitted each of them to bail.

5. The charge contained in the eighth count is based upon reg. 3 of the *Black Marketing Regulations* made as in pursuance of the last part of s. 3 and of s. 17 (*a*) of the *Black Marketing Act* 1942. Regulation 3, which is contained in Statutory Rules, 1945 No. 114, in effect declares that offences against reg. 49 of the *National Security* (*Prices*) *Regulations* constitute black marketing.

6. Upon evidence being tendered under the eighth count, counsel for the accused took the objection that reg. 3 of the *Black Marketing Regulations* was bad because beyond the power conferred upon the Governor-General in Council by the *Black Marketing Act*, so that the facts charged by the eighth count did not amount to the offence of black marketing.

7. The objection together with other matters concerning the eighth count was argued before me in the absence of the jury, and upon the next day of sitting I gave my decision overruling the objection. With reference to this objection I gave the following reasons :—

"As to the question which was argued under the eighth count, the eighth count in the indictment charges that the three accused and each of them did an act which constituted black marketing, as defined

in the *Black Marketing Act* 1942 and the *Black Marketing Regulations*, in that they and each of them did omit to keep proper books and accounts as required by reg. 49 of the *National Security* (*Prices*) *Regulations*. It will be noticed that the substantive thing charged against them is an omission—the omission to keep proper books and accounts—although in the introductory statement of the offence it is called the doing of an act. The count is laid under s. 4 (1) of the *Black Marketing Act*, which makes any person guilty of black marketing who does any act or thing or who is guilty of any omission or conduct which constitutes black marketing within the meaning of s. 3. That part of s. 3 upon which the prosecution relies to turn the omission to keep proper books and accounts into black marketing provides that for the purposes of the Act ' black marketing ' includes any act or thing done, or omitted to be done, or any conduct, ' in contravention of the regulations,' which is declared by regulations made under the Act to be black marketing. The expression ' the Regulations,' which occurs in the foregoing phrase ' in contravention of the Regulations,' is defined, but the definition is affected by the *Defence* (*Transitional Provisions*) *Act* 1946. The expression now means any regulations in force by virtue of the *Defence* (*Transitional Provisions*) *Act* and includes any orders in force by virtue of that Act or made under any such regulations. The *Black Marketing Regulations* (Statutory Rules 1945 No. 114) contain the declaration upon which reliance is placed to make it black marketing to fail to keep proper books and accounts. That regulation says: ' It is hereby 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.' This *Black Marketing* regulation is made under s. 17 (*a*), which empowers the Governor-General in Council to make regulations declaring any act or thing done or omitted to be done, or any conduct in contravention of ' the Regulations,' to be black marketing. Sub-regulation (1) of reg. 49 of the *National Security* (*Prices*) *Regulations*, which is invoked by the *Black Marketing* regulation, requires that any person who carries on a business such as that of the accused Morgan shall for the purposes of the *Prices Regulations* keep proper books and accounts, and stock and costing records where applicable, and shall preserve the same, together with a category of supporting documents which are set out. On the part of the prosecution it is proposed to adduce evidence for the purpose of showing a practice of making in the books that were kept entries not conforming

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with the facts and in particular understating amounts received. In this way an attempt is to be made to show that the books and accounts kept were not proper books and accounts, with the consequence that there was an omission to keep proper books and accounts. In the second place, evidence is to be offered, and some has already come in, designed to prove that proper stock records were not kept, though stock records were applicable. Three objections have now been raised on behalf of the accused. First, it is said that the attempt by the *Black Marketing* regulation to transform a failure to comply with *Prices* reg. 49 into black marketing is ineffective. It is contended that the very generality of the material words of s. 3 and of s. 17 (*a*) of the *Black Marketing Act* shows that they must be restrictively interpreted. For example, it is hardly possible that an offence of black marketing could be obtained from the *National Security* (*Aliens Control*) *Regulations*, the *Capital Issues Regulations*, the *Economic Organisation Regulations*, the *Industrial Peace Regulations*, the *Shipping Co-ordination Regulations* or the *Prisoners of War Regulations*, to mention only a few, and yet these are all within the literal meaning of the words used. Accordingly, it is contended first that the material words of s. 3 and s. 17 (*a*) of the *Black Marketing Act* must be read *ejusdem generis* with the list of offences set out in pars. (*a*) to (*i*) of s. 3. It is then said that, if their meaning and application are so restrained, the words will not cover the keeping of books, accounts and records. To the first of these two propositions I am inclined to give a general assent. But I do not think that the second of them is a proper consequence of the first. I think that the subject with which the list of offences stated in pars. (*a*) to (*i*) deals may be shortly described as the supply or disposal of goods and services, the acquisition or receipt of the former and the receipt or use of the latter and the use of ration tickets and the like and their genuineness. But the list covers also much that is incidental to this subject. The purpose of the general words that follow seems to me to authorize the addition of things dealt with in the *National Security Regulations* which arise out of, are incidental to or consequential upon, the subjects of the specific offences listed or are conducive to their suppression. So interpreted, I think s. 3 and s. 17 (*a*) authorize the *Black Marketing* regulation which brings in *Prices* reg. 49."

The question for the consideration of the Full Court was :—

> Did the provisions of the *Black Marketing Act* authorize the making by the Governor-General in Council of reg. 3 of the *Black Marketing Regulations ?*

Dean K.C. (with him *Monahan* K.C., *J. G. Norris* and *J. E. Starke*), for the accused. The Act to be considered in this case is entitled " An Act to provide for the Prevention of Black Marketing," and the method it adopts is the imposition of very heavy penalties for breaches of laws already in existence. It may therefore be supposed that it is concerned to prevent " marketing " which is contrary to law, that it has relation to the sale and purchase of commodities (and of services, which, in effect, are treated as commodities), and that it does not intend to include in the description " black marketing " anything which, in the ordinary meaning of the word, would not be called " marketing." For what it actually covers one must look to the definition of " black marketing " in s. 3 of the Act. It deals with contraventions of " the Regulations," that is, regulations (as now in force) which were originally made under the *National Security Act* ; in pars. (*a*) to (*i*) it specifies a large number of such contraventions as constituting " black marketing " and concludes with the statement that the expression " 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." Corresponding words in s. 17 confer on the Governor-General the power to make the declaratory regulations. Apart from the concluding words of s. 3 and the corresponding words of s. 17 (which, presumably, have the same meaning), there is nothing in the Act to suggest that it is to operate on anything which could not be described as " marketing " : on the other hand, there are positive indications in the Act that it should be thus limited. Admittedly, if those words are given the full literal meaning of which they are capable, if they are not in any way limited by their context, they will extend to any breach of *National Security Regulations*, however remote it may be from marketing or trading. For positive indications to the contrary, the specific paragraphs of s. 3 are mainly relied upon, but there are also the provisions of s. 4 (6)-(8) relating to forfeiture of goods on conviction, the reference in s. 11 to " trading operations " and the provision in s. 12 for a notice of conviction to be displayed at the convicted person's place of business. It is, of course, not suggested that s. 12, for instance, has the effect that a person who has not a shop or other " place of business " cannot be convicted of the offence of black marketing ; it is, nevertheless, a pointed indication of the type of case which the Act contemplates. It suggests that the persons at whom the Act is aimed are those engaged in " trading," the activities those of " marketing." Paragraphs (*a*) to (*g*) of s. 3 cover a great variety of matters, all of which are directly related to marketing, and, in the main, to nothing but

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marketing. Perhaps pars. (*e*) and (*g*) are literally capable of a wider meaning, but they must be read in their context. Paragraphs (*h*) and (*i*), although they do not deal with the actual disposal of goods, have a direct and intimate relation to that subject; the rationing documents, and the like, with which they deal are immediately, and not merely incidentally, connected with the control of marketing. The submission is, first, that pars. (*a*) to (*i*) within themselves, afford a context which enables one to say that they constitute a category of matters all of which are directly connected with marketing. It is a reasonable assumption that the draftsman set out in the specific paragraphs of s. 3 all the marketing offences which were present to his mind and then added the concluding words as a " drag-net " to cover other similar things which had not been thought of. That is a well-known method of drafting, and, whether the submission is regarded as simply asking that that method be accepted as having been used here, or is treated as invoking the *ejusdem-generis* rule of construction or the maxim *noscitur a sociis*, the submission is that the concluding words of s. 3 must be limited by relation to their context. If it is a question of the *ejusdem-generis* rule, the *genus* is constituted by pars. (*a*) to (*i*) of s. 3. *Dixon* J. accepted the argument for the accused to the extent that he was of opinion that the general words of s. 3 should be limited by relation to a category, but the category he adopted may be briefly described as marketing and matters incidental thereto, and he was of opinion that the keeping of books as required by reg. 49 of the *Prices Regulations* was within the category as an incidental. It is not disputed that the keeping of books has a relation to marketing. It is, however, only an indirect and incidental relation, whereas the matters in pars. (*a*) to (*i*) of s. 3 have a direct relation; incidentals are not within the same category. So far as the authorities on the *ejusdem-generis* rule go, it does not appear that incidentals have ever been regarded as within the *genus*.

[STARKE J. referred to *Attorney-General* v. *Brown* (1); *Craies* on *Statute Law*, 3rd ed. (1923), p. 162; *Cooney* v. *Covell* (2).]

[Counsel referred to *Craies* on *Statute Law*, 4th ed. (1936), p. 166; *In re Stockport Ragged, Industrial and Reformatory Schools* (3).] It is submitted, therefore, that the category of acts which constitute black marketing within s. 3 of the Act is not wide enough to cover a contravention of reg. 49 of the *Prices Regulations*, and, accordingly, that the power conferred by s. 17 of the Act to make declaratory regulations for the purposes of s. 3 does not authorize reg. 3 of the *Black Marketing Regulations*, which is invalid.

(1) (1920) 1 K.B. 773.
(2) (1901) 21 N.Z.L.R. 106.
(3) (1898) 2 Ch. 687, at pp. 691, 696.

Dovey K.C. and *P. D. Phillips* K.C. (with them *A. M. Fraser* and *O. J. Gillard*) for the Crown.

Dovey K.C. presented argument on aspects of the case with which this report is not concerned.

P. D. Phillips K.C. No valid reason has been advanced for the imposition of any implied limitation on the words of s. 3. The structure of the section is not such as to invite the application of the *ejusdem-generis* rule. It is important to observe that the lettered paragraphs of s. 3 are not a catalogue of offences created by the Act. If they were, the comment could be made that it was unnecessary to specify those particular offences if the ensuing general words were designed to cover those offences and also others of a different character; the specification would be surplusage unless the added general words were read down by relation to a *genus* to be found in the paragraphs. In s. 3 as it stands, however, Parliament says in effect: "We specify offences which we now know need to be discouraged by the imposition of severe penalties; we do so to make it clear that we intend them to be covered; but it may well be that, for reasons which we cannot now foresee, other contraventions of *National Security Regulations* will in the future assume a similar gravity; we will therefore give the Executive a selective and discretionary power to put any such offences on the same footing as those we have specified." This means that there was a logical reason for the particular specification by Parliament (and, therefore, it was not surplusage) and there was a logical reason for giving the Executive a wider area of choice. There is no reason to think that Parliament could not have intended to arm the Executive with such wide powers; the known circumstances point the other way. It seems more extraordinary to suppose that Parliament intended to present the Executive with such a difficult task as that of ascertaining its powers by reference to the *ejusdem-generis* rule. The intention was to strengthen the hand of the Executive in war-time. No doubt, as a mere matter of words, it is odd to describe as "black marketing" something which has none of the characteristics of marketing, but the colloquial uses of the expression are just as odd; moreover, this is not to the point if, as is submitted, the intention is clear. Further, the words "any other act or thing . . . or any conduct" are certainly not the characteristic words to which the *ejusdem-generis* rule has normally been applied. They do not suggest an intention to restrict the power of the Executive. On the contrary, they tend against the selection

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of a *genus*. Regard must also be had to s. 17 (*a*) of the Act, which empowers regulations declaring " any act or thing . . . or any conduct," &c., to be black marketing. There is nothing in this section to warrant a reading down. If s. 3 (and, therefore, s. 17) must be limited, the narrowest reading which is practicable is that suggested by *Dixon* J. The argument for the accused professes to find in pars. (*a*) to (*i*) of s. 3 the category of " marketing " ; but this argument proceeds in stages. First, it is said that pars. (*a*) to (*g*) deal only with marketing, but even here it was found necessary to suggest that some of the expressions in those paragraphs must be read down. Then the difficulty is encountered that pars. (*h*) and (*i*), unlike the preceding paragraphs, do not describe actual dealings in commodities but describe ancillary matters. The argument attempts to overcome this difficulty by saying that rationing documents are intimately related to the control of marketing, whereas the keeping of books is more remote, is " incidental " ; but it does not explain how the different degrees of intimacy are assessed. It suggests that *Dixon* J. misapplied the *ejusdem-generis* rule by including incidentals within the *genus*. It does not appear, however, that his Honour intended to demonstrate any new application of the rule. It seems clear from what his Honour said on this point that all he was concerned to demonstrate was that the narrowest possible *genus* or category (if any) constituted by pars. (*a*) to (*i*) was one which itself included incidentals ; that the category, at its narrowest, was what might be described as " marketing plus incidentals," and it therefore was not so narrow as to exclude the keeping of books. It is submitted that the contention for the accused, to the extent, at least, to which it purports to controvert this statement, is untenable and that the regulation in question is within power.

Dean K.C., in reply.

Cur. adv. vult.

June 9.

Written judgments were delivered which, so far as they related to the subject of this report, were as follows :—

LATHAM C.J. [After stating that the case was stated pursuant to s. 72 of the *Judiciary Act* 1903-1946 upon the application of persons who were accused of offences against the *Black Marketing Act* and that the proceeding in which the case was stated was a prosecution in the High Court upon an indictment which contained eight counts, the judgment proceeded :—]

There were three accused persons, Neal, Regos and Morgan. They pleaded not guilty. Neal was acquitted on all counts. Regos and

Morgan were found guilty on the eighth count and not guilty on the other counts. The eighth count was a count for omitting to keep proper books and accounts as required by reg. 49 of the *National Security* (*Prices*) *Regulations*. It was objected that an omission to comply with reg. 49 had not validly been made an offence under the *Black Marketing Act*.

The *Black Marketing Act*, s. 3, provides that for the purposes of the Act " black marketing " means certain acts or omissions specified in pars. (*a*) to (*i*). These paragraphs relate to selling &c. goods at a greater price than the maximum price fixed under regulations made under the *National Security Act*, and various other contraventions of those regulations. Some of the paragraphs relate to commercial dealing in goods, but they relate to many other acts or omissions; for example par. (*b*) relates to services; par. (*c*) includes services as well as goods; par. (*d*) relates not only to selling &c. goods, but also to taking into possession or parting with the possession of goods; par. (*e*) is concerned with the delivery of goods; par. (*f*) relates to the production, manufacture or treatment of goods; par. (*g*) includes moving goods vested in the Commonwealth under the regulations; par. (*h*) relates to dealing with any licence, ration ticket, ration document or ration coupon; and par. (*i*) relates to making or uttering counterfeit or forged licences &c.

Section 3 provides that, for the purposes of the Act, " black marketing " means any of the acts or omissions specified in pars. (*a*) to (*i*) (all of which involve contravention of the regulations) " 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 includes any orders made under any such regulations."

The *Defence* (*Transitional Provisions*) *Act* 1946 amended the concluding words so that they now are as follows:—" ' the Regulations ' means any regulations in force by virtue of the *Defence* (*Transitional Provisions*) *Act* 1946 and includes any orders in force by virtue of that Act or made under any such regulations." The *National Security* (*Prices*) *Regulations* were continued in force until 31st December 1947 by the *Defence* (*Transitional Provisions*) *Act*, s. 6.

Thus s. 3 adds to the specific offences mentioned in pars. (*a*) to (*i*) other acts or things done or omitted to be done and any other conduct

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in contravention of the regulations if declared by regulations made under the Act to be black marketing.

Section 17 of the Act provides that " the Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for giving effect to this Act, and, in particular, for " (*inter alia*) " (*a*) declaring any act or thing done or omitted to be done, or any conduct, in contravention of the Regulations to be black marketing."

By the *Black Marketing Regulations*, Statutory Rules 1943 No. 274, as amended by Statutory Rules 1945 No. 114, reg. 3, it was provided : " 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 of the *National Security* (*Prices*) *Regulations* requires that " 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 accused were charged with an offence against this provision as an offence under the *Black Marketing Act* by virtue of the declaration contained in the *Black Marketing Regulations*.

The first question in the first case stated is :—" Did the provisions of the *Black Marketing Act* . . . authorize the making by the Governor-General in Council of reg. 3 of the *Black Marketing Regulations* ? "

It was contended for the accused that reg. 3 of the *Black Marketing Regulations* was invalid because it was not authorized by the *Black Marketing Act*, s. 3. This argument was based upon the contention that the *ejusdem-generis* rule should be applied to the following words in s. 3 :—" 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." It was argued that these words should be restricted so as to be limited to acts or things of the same nature or kind as those specified in pars. (*a*) to (*i*) of s. 3.

Section 3 provides an example of a list of specific acts or omissions followed by general words. All the specified acts or omissions are contraventions of the regulations and the general words add such other contraventions of the regulations as may be declared. It is

argued that the general words should be regarded as applying only to acts and omissions of the same nature or kind as previously specified acts, i.e., that they should not be construed as covering any contravention of the regulations which might be declared but as limited to some particular class or *genus* of such contraventions.

The *ejusdem-generis* rule is sometimes stated in very broad terms as, for example, by Lord *Campbell* in *R.* v. *Edmundson* (1)—" Where there are general words following particular and specific words, the general words must be confined to things of the same kind as those specified." But in more recent cases a very different view has been taken of the rule as, for example, in *Anderson* v. *Anderson* (2), where it was said in the Court of Appeal that " prima facie general words are to be taken in the 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 " (3). The *ejusdem-generis* rule is a rule of construction only; that is, it is designed to assist in ascertaining the intention of Parliament in the case of a statute and of the parties to a document in other cases (*Thorman* v. *Dowgate Steamship Co. Ltd.* (4)).

The rule is that general words may be restricted to the same *genus* as the specific words that precede them (*Thames & Mersey Marine Insurance Co. Ltd.* v. *Hamilton, Fraser & Co.* (5)). Before the rule can be applied it is obviously necessary to identify some *genus* which comprehends the specific cases for which provision is made. In *Tillmanns & Co.* v. *S.S. Knutsford Ltd.* (6), it was pointed out that " Unless you can find a category there is no room for the application of the *ejusdem-generis* doctrine "—per *Farwell* L.J. (7): see also per *Vaughan Williams* L.J. (8) and per *Kennedy* L.J. (9). In *Mudie & Co.* v. *Strick* (10), *Pickford* J. said: " You have to see whether you can constitute a *genus* of the particular words, and, if you can, then unless there is some indication to the contrary, you must construe the general words as having relation to that *genus*. If you cannot do this, then . . . you must read all the particular words separately, and take the general words separately also " (11). In *S.S. Magnhild* v. *McIntyre Bros. & Co.* (12), there is a full discussion of the rule by *McCardie* J. in which it is clearly shown that where it

(1) (1859) 28 L.J. M.C. 213, at p. 215.
(2) (1895) 1 Q.B. 749.
(3) (1895) 1 Q.B., at p. 753.
(4) (1910) 1 K.B. 410, at p. 419.
(5) (1887) 12 App. Cas. 484, at p. 490.
(6) (1908) 2 K.B. 385.
(7) (1908) 2 K.B., at p. 403.
(8) (1908) 2 K.B., at p. 395.
(9) (1908) 2 K.B., at p. 409.
(10) (1909) 100 L.T. 701.
(11) (1909) 100 L.T., at p. 703.
(12) (1920) 3 K.B. 321.

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is sought to apply the rule to a case where an enumeration of specific things is followed by general words it must appear that the specified things " possess some common and dominant feature " so that they can be described as constituting a *genus* distinguished by that feature.

Counsel for the accused were, it appeared to me, in considerable difficulty in endeavouring to specify the *genus* constituted by pars. (*a*) to (*i*) of s. 3 of the *Black Marketing Act*. Those paragraphs relate to acts and omissions of very different kinds, ranging from buying and selling of goods, supply of services, wrongful dealings in goods to which restrictions apply, to the production, manufacture and treatment of goods, the unlawful delivery of goods, the removal of goods acquired by the Commonwealth and misuse of ration tickets, of coupons, and forging such documents. All the acts and omissions mentioned possess the common characteristic of being contraventions of the *National Security Regulations*, but it is difficult to see what other " common and dominant feature " they possess. Counsel for the accused argued in the court below that all the acts and omissions mentioned could be subsumed under at least two categories ; first, certain acts and omissions which involve " marketing," and secondly, matters incidental to the effective enforcement of regulations relating to marketing. In the reasons which he gave for his decision overruling the objection to the validity of the regulation in question, *Dixon* J. said that, even if this argument were adopted, *Black Marketing* reg. 3, introducing a breach of reg. 49 of the *Prices Regulations* as a black marketing offence, was authorized by the general words of s. 3 of the *Black Marketing Act*, because such a provision requiring the keeping of proper books and accounts was a provision incidental to the effective enforcement of the *Prices Regulations*. I agree with this decision.

The authorities to which I have referred show that the *ejusdem-generis* rule can be applied only where there is a *genus* to which all the acts or things specifically mentioned can be assigned. It is not sufficient to show that there are two or more such *genera*—and that is all that can be shown in the present case. In my opinion no single relevant *genus* has been or can be defined in the present case, and for this reason the argument on behalf of the accused fails.

But, further, in my opinion the terms of the *Black Marketing Act* show that it was the intention of the legislature to give to the Executive Government the fullest power of extending by regulations (which Parliament could disallow if it thought proper) the category of black-marketing offences within the limits, but only within the limits, of offences created by *National Security Regulations*. This intention appears in the first place from the very wide generality

of the words which follow pars. (*a*) to (*i*). The words are not only " any other act or thing done, or omitted to be done," but also " any conduct, in contravention of the Regulations." These words appear to me to be specially devised for the purpose of making a wide possible addition to the heterogeneous, and not homogeneous, list contained in pars. (*a*) to (*i*) of s. 3 of the Act.

There is another provision in the Act which, in my opinion, strongly supports the conclusion which I have stated. Section 17 not only provides in the ordinary form that the Governor-General may make regulations not inconsistent with the Act for giving effect to the Act, but also that the Governor-General may make regulations " *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." By this section a particular power is given to declare any contravention of the regulations to be black marketing. The words conferring this power do not follow any list of specific matters and there is no room for the application of any *ejusdem-generis* rule to them. There is no reason for depriving these words of their full natural effect. Thus the Governor-General may under s. 17 declare any contravention of the regulations to be black marketing, and thereupon such a contravention becomes an offence against the Act under s. 3.

Finally, the general words of s. 3 are not words which merely add some vague undetermined class of acts to the acts which have been specifically defined in the early part of the section. The acts which may become black marketing by reason of the general words are only such contraventions of the regulations as are declared by regulations to be black marketing. Thus Parliament has expressly left it to the discretion of the Executive to determine whether any other contraventions of the regulations than those specified in s. 3 should be dealt with under the *Black Marketing Act* so as to become subject to the special penalties prescribed in s. 4 and other sections of the Act. It was evidently the view of Parliament when the Act was passed in October 1942 that an occasion might arise when prompt action would be required to deal with some particular contravention of the *National Security Regulations* which might be dangerous to the national safety. Parliament trusted the Executive Government to act reasonably in the exercise of the extensive powers conferred upon it by the Act. It was suggested in argument that it would be unreasonable for Parliament to confer a power upon the Executive Government so wide that it could be exercised in cases to which it would be unreasonable to apply it. But, when legislation is within power, it is entirely for the legislative body to determine

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whether a particular provision is reasonable or not, and it is not for any court to say that, because the Executive might exercise the power conferred by the Act in an unreasonable manner, the court should find some means of limiting the power by construction. This Court has no general power of supervising legislation on the ground that it disagrees with the opinion of the legislature that a particular provision is reasonable. It may be observed that Parliament took the precaution of enacting that declarations of offences under *National Security Regulations* as black-marketing offences should be made by regulations, not by proclamations. Thus the declarations could be disallowed by Parliament if it disagreed with them (*Acts Interpretation Act* 1901-1941, s. 48). A further safeguard against unreasonable action is to be found in the provisions of s. 4 (4) requiring not only the consent of the Attorney-General to any prosecution under the Act, but also the report and advice of a committee of responsible officers.

[On this branch of the case the judgment concluded with the expression of his Honour's opinion that the question reserved should be answered: Yes.]

RICH J. Prosecutions upon indictments gave rise to this case, which was stated pursuant to s. 72 of the *Judiciary Act* 1903-1946 at the instance of Regos and Morgan, who were accused of offences against the *Black Marketing Act* and found guilty on a count in the indictment for omitting to keep proper books and accounts as required by reg. 49 of the *National Security* (*Prices*) *Regulations*. On behalf of the accused it was submitted to the learned judge at the trial that the eighth count, which is the material count in the indictment, did not disclose an offence under the *Black Marketing Act*. The ground of this submission was that this Act did not specifically make the omission to keep books and accounts an offence, and that the general words authorizing the Governor-General to add to the category of black-marketing offences should be restrained by construction and, properly restrained, did not extend to keeping or failing to keep proper books and accounts. The concluding portion of s. 3 of this Act, which follows a list of specific offences, provided that black marketing shall include "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." Section 17 (*a*) of the *Black Marketing Act* empowered the Governor-General to make regulations not inconsistent with the Act declaring any act or thing done, or omitted to be done, or any conduct, in contravention of the Regulations to be black marketing. The

contention is that the words " any other act or thing done, or omitted to be done, or any conduct, in contravention of the Regulations " should not be literally interpreted but should be construed as related only to things of the same kind as are enumerated in the list of specific offences. In other words, it was argued that the general words should be construed as applying *ejusdem generis* with the particular instances which precede them. If so construed the accused say that the power would not cover the omission to keep books and accounts. Proceeding on the contrary assumption the Governor-General by reg. 3 of the *Black Marketing Regulations* declared it to be black marketing to do or omit to do any act in contravention of reg. 49 of the *National Security* (*Prices*) *Regulations*. The eighth count of the indictment was laid under these provisions. The learned judge, although disposed to think that a restrictive construction of the relevant words in s. 3 might be adopted, decided that a restriction could not be placed upon them narrow enough to exclude what was done by reg. 3 of the *Black Marketing Regulations*. His Honour accordingly allowed the count to stand and in the event both accused were convicted. The argument for a narrow interpretation of the power begins by calling attention to the extravagance of the supposition that it was intended that any contravention of any regulation contained in the two stout volumes the sight of which has become so familiar to the Court might be converted into black marketing and so became punishable under the drastic penal clauses of that statute. From this beginning the argument proceeds to an examination of the specific offences defined by pars. (*a*) to (*i*) of s. 3. The ingenuity of counsel was employed in extracting from the elements of these offences some logical category which by a judicious use of the *ejusdem-generis* rule would exclude an offence of improper bookkeeping and accounting. Having listened carefully to the argument I am clearly of opinion that it cannot be done. The rule invoked is nothing but a guide of construction, and nothing could be clearer than that the intention of the legislature was to enable the Executive to amplify the list of black-marketing offences as experience and judgment might dictate. No doubt it is true that no one contemplated the use of the power to cover the whole field of National Security by regulation, but it is apparent that the draftsman felt unsure about the sufficiency of his list and trusted to the wisdom and discretion of the Executive to add to it when necessary. A reason for feeling unsure on such a subject is to be found in the extraordinary ingenuity and resource of those who seek to defeat or evade a control relating to rationing of goods or the repression of a rise in price in goods or services. Primarily one might conjecture that the power was directed

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to everything that helped in the suppression or detection of offences against the regulation of the distribution and price of goods and services. I doubt very much whether there are any materials in this legislation for restricting the meaning of s. 3 by construction: but however that may be I am quite clear that a restriction cannot be placed upon the provisions so narrow that it puts it beyond the power of the Executive to establish contravention of reg. 49 (1) of the *National Security* (*Prices*) *Regulations* as black-marketing offences. The commonest experience shows that failing to keep books, "cooking" books or destroying books is found by an offender against trading laws to be necessary to the concealment of his offences and is a usual precaution taken by those who have traded unlawfully whether the law is that of black marketing or of war-time controlling.

[His Honour therefore answered the question reserved in the affirmative.]

STARKE J. [After describing the case as a Crown case reserved pursuant to the *Judiciary Act* 1903-1946 and setting out the question reserved, the judgment on this branch of the case concluded as follows:—]

That question should be answered in the affirmative for the reasons which I have stated at large in the case of *Cody* v. *J. H. Nelson Pty. Ltd.* (1) and need not repeat.

McTIERNAN J. [His Honour expressed agreement with the reasons for judgment prepared by the Chief Justice and with the answer which the Chief Justice proposed to the question reserved.]

Question answered: Yes. Case remitted to Dixon J.

Solicitors for the accused: *Stewart & Dimelow.*

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

E. F. H.

(1) Post, p. 629.