

[HIGH COURT OF AUSTRALIA.]

BISCHOF APPELLANT.
COMPLAINANT,

AND

TROTTER RESPONDENT.
DEFENDANT,

H. C. OF A. *National Security—Landlord and tenant—Negotiations for grant of lease—Requiring
1948. sum of money other than rent—Uncompleted transaction—National Security
(Landlord and Tenant) Regulations (S.R. 1945 No. 97—1947 No. 31), reg. 33 (1).*

BRISBANE,
July 22.

Latham C.J.,
Rich and
Dixon JJ.

Regulation 33 (1) of the *National Security (Landlord and Tenant) Regulations*, which provides, *inter alia*, that “a person shall not . . . require, give or receive, or offer, promise or agree to give or receive any sum of money (other than rent) in consideration of or in association with . . . the grant . . . of any lease,” applies not only to a transaction which is completed by the grant of a lease, but also to a proposed transaction or one not so completed.

CASE STATED.

Upon a complaint laid under reg. 33 (1) of the *National Security (Landlord and Tenant) Regulations* by Herbert Carl Bischof an officer of the Department of Works and Housing, Mardon John Trotter was charged that he did without the consent of the Controller and otherwise than in pursuance of a term of a transaction consented to by the Treasurer or his delegate in pursuance of the *National Security (Economic Organization) Regulations* require a sum of money other than rent in consideration of a grant of a lease of prescribed premises, to wit, a flat at Moray Street, New Farm, Brisbane. The defendant pleaded not guilty. In support of the complaint evidence was given by Brenda Williams, a married woman, who was endeavouring to obtain a flat for a friend. On 23rd February 1948 Mrs. Williams went to the defendant’s place

of business where she interviewed him in his office. She gave the following evidence of the conversation which took place: "I said, 'I rang up with regard to a flat either at Hasley Court or Clifton Court, New Farm, the caretaker of the flats has referred me to you.' The defendant said, 'The flat is coming vacant but there is a little matter of a premium of £68 to pay.' I said, 'Is that rent in advance or do I get anything back for it.' He said, 'No you will have to pay that to get possession of the flat. The flat isn't vacant to-day but I could arrange it for you on those terms.' I said, 'I don't think we could manage it and if you don't mind let the matter slide.' He said, 'It isn't me who is after the money it is the owner of the flat.' He said, 'If I hear of anything such as a straight out letting I will let you know.' I said, 'My phone number is M2248' and he said, 'If I hear of anything I will ring that number.'"

At the close of the complainant's case, the defendant's counsel stated that he did not intend to call evidence and after argument the magistrate dismissed the complaint on the grounds that—

- (i) a lease of a flat was not granted to Brenda Williams by the respondent on 23rd February, 1948;
- (ii) a grant of a lease of a flat to Brenda Williams was necessary to establish the offence charged in the said complaint.

In a case stated for the opinion of the High Court, there were set forth the following facts which were found by the magistrate to be established to his satisfaction by the evidence given before him:—

- (a) That the respondent at all relevant times was the agent for the letting of flats known as Clifton Court Flats and Hasely Court, New Farm;
- (b) That on 23rd February 1948 the respondent required one Brenda Williams to pay him a sum of money other than rent, namely, the sum of sixty-eight pounds (£68/-/-) in consideration of a lease to be granted of a flat at Hasley Court or Clifton Court, Moray Street, New Farm in the said State, being prescribed premises within the meaning of the regulations;
- (c) That the Controller did not consent to the requiring by the respondent of the payment of the sum of money from Brenda Williams;
- (d) That the respondent did not require the payment of the sum of money from Brenda Williams in pursuance of a term of a transaction which had been consented to by the Treasurer or his delegate in pursuance of the *National Security (Economic Organization) Regulations*;

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- (e) That no flat was vacant in Hasely Court or Clifton Court, Moray Street, New Farm, Brisbane, on 23rd February 1948 ;
- (f) That possession of a vacant flat in Hasely Court or Clifton Court, Moray Street, New Farm, Brisbane would have been made available to Brenda Williams by the respondent on payment of the sum of money to the respondent ;
- (g) That no payment of any sum of money or rent was in fact made by Brenda Williams to the respondent on 23rd February 1948 ;
- (h) That Brenda Williams declined to pay the sum of money and in consequence a lease of a vacant flat in Hasely Court or Clifton Court, Moray Street, New Farm, was not granted to Brenda Williams by the respondent on 23rd February 1948.

The question arising on the case for the determination of the High Court was whether the magistrate was right in law in dismissing the complaint.

Fahey (with him *Moynahan*), for the appellant. Under reg. 33 of the *National Security (Landlord and Tenant) Regulations* the offence is complete when an offer is made to take any payment in association with the grant of a lease. To establish an offence all it is necessary for the complainant to prove is that the defendant said, "If you pay me sixty-eight pounds in addition to the rent I will get the flat for you." It is not an element of the offence that the flat should have been obtained. The word "offer" shows that the regulation applies to something done during negotiations and before a lease is granted.

Casey, for the respondent. The regulation does not apply to a proposed grant of a lease but only to an actual grant. The matter never got beyond the stage of negotiation. A payment was only suggested. That does not amount to requiring a payment. There was no obligation on anyone to pay. The language used in the regulation is obscure and the benefit of any obscurity should be given to the defendant (*Binns v. Wardale* (1)).

Fahey, in reply. The word "require" means asks for, demands or requests (*Metropolitan Water Board v. Johnson & Co.* (2)).

(1) (1946) K.B. 451, at p. 456.

(2) (1913) 3 K.B. 900, at pp. 924, 925.

The judgment of the COURT was delivered by LATHAM C.J. :—

The evidence in this case shows that the defendant said to Brenda Williams, who was in search of a flat for a friend who was her employer, that a flat was becoming vacant at Hasely Court or Clifton Court, but that there was a little matter of a premium of £68 to pay. Mrs. Williams asked, "Is that rent in advance or do I get anything back for it." Respondent said, "No. You will have to pay that to get possession of the flat. The flat isn't vacant to-day but I can arrange it for you on those terms." Mrs. Williams said, "I don't think we could manage it and if you don't mind let the matter slide."

Upon the evidence the stipendiary magistrate found :

- (a) that the respondent at all relevant times was the agent for the letting of flats known as Clifton Court Flats and Hasely Court, New Farm.
- (b) that on 23rd February 1948 the respondent required one Brenda Williams to pay to him a sum of money other than rent, namely £68, in consideration of a lease to be granted of a flat at Hasely Court or Clifton Court, Moray Street, New Farm, being prescribed premises within the meaning of the *Landlord and Tenant Regulations*.

Regulation 33 of those regulations provides a person shall not, whether as principal or agent or in any other capacity, require, give or receive, or offer, promise or agree to give or receive any bonus, premium or sum of money (other than rent), or require the purchase or exchange of any goods or goodwill in consideration of, or in association with the grant, acceptance, assignment or transfer of any lease.

The stipendiary magistrate took the view which has been supported by the respondent that the evidence showed that £68 was required to be paid in consideration of a proposed or suggested grant of a lease and not in relation to the actual grant of a lease.

One of the provisions in this regulation is that it shall be an offence to offer a sum of money in consideration of a lease. In the case of the word "offer," it is plain that the regulation contemplates not only the preliminary stages of a transaction which is completed as a transaction with the result that a lease is granted or assigned or transferred, but also an offer being made in a case where a transaction is not completed and there is no grant or assignment or transfer of a lease.

Similarly, the word "require" should be interpreted as meaning demand as a condition in a transaction which is proposed as a serious transaction. (I say that for the purpose of excluding the

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case I put in the course of argument of a person who had really nothing to do with the premises).

If the payment of money other than rent is contemplated as a condition of the grant of a lease, in the sense that it is said or proposed that if such money is paid a lease will be granted, and not otherwise, then, in our opinion, the requirements of the section are satisfied, and an offence has been committed.

We therefore think that the decision of the magistrate is wrong and should be set aside, and that the case should be remitted to him for the purpose of fixing a penalty.

The appeal is allowed with costs, the decision of the magistrate set aside, and the case is remitted to the magistrate to fix the penalty.

Appeal allowed with costs. Decision of magistrate set aside. Case remitted to magistrate to fix penalty.

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

Solicitors for the respondent, *McGuire & Rea*.

B. J. J.