

IN THE HIGH COURT OF AUSTRALIA.

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*Perry*

v.

*Basley*

*by*

**REASONS FOR JUDGMENT.**

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No. 13 of 1941.

Judgment delivered at *Melbourne*  
on *Wednesday, 4<sup>th</sup> June 1941*

JUDGMENT.RICH A.C.J.

This is an appeal by way of Order Nisi to Review granted by Mr Justice Starke on 8th May 1941 from the decision of the Court of Petty Sessions, Perth, whereby the appellant was convicted and fined on a charge that she on the 2nd April 1941 at West Perth did without lawful excuse have in her possession a circular headed "Warning" but undated advocating unlawful doctrines contrary to Regulation 7 (a) National Security (Subversive Associations) Regulations Nos. 109 and 152 of 1940 National Security Act 1939 sec. 10 (1) and sentenced to pay a fine of £30 with £4/7/- costs.

The rule nisi was granted on two grounds :-

- (1) That the document or warning marked "A" referred to in the transcript of proceedings before the Stipendiary Magistrate did not advocate any unlawful doctrine or any doctrine or principle whatsoever prejudicial to the Commonwealth or the efficient prosecution of the war contrary to National Security Regulations 1940 No. 109 as amended by 1940 No. 152.
- (2) That there was no evidence or no sufficient evidence that the appellant had in her possession the said document marked "A".

The evidence in the case before the Magistrate was that the Police made a search at the appellant's premises and there found a motor car. In answer to a question whether the motor car was her property, she replied "It is". I will get you the keys." Apparently, <sup>as</sup> the keys could not be found, the car was forcibly opened. The car was searched in the presence of the accused and her husband and a book and two typewritten documents were found in it. The Police Constable showed the documents to the appellant and asked her "are these your property?" She replied "Yes". One of the documents was Exhibit A. The Police Constable also asked the husband in her presence if Exhibit A was his. He replied "No" and disclaimed any knowledge of it. The appellant also said that she had typed the documents herself. No evidence was given by or on behalf of the appellant. On this evidence the Magistrate convicted the appellant. The appeal before this Court was argued on the two grounds stated in the order nisi. On behalf of the appellant Mr Hill put up a valiant fight in a hopeless cause. In support of the first ground he contended there was no advocacy and no doctrine or principle advocated within the meaning of the regulation. A perusal of Exhibit A shows that it was intended to be communicated issued or transmitted by subtle and secret means for the purpose of

causing industrial unrest and stirring up strife. The document in question gives instruction (teaching) and directions in aid of these purposes and it advances arguments and opinions in favour of direct action. This constitutes advocating doctrines or principles within the meaning of the regulations. Mr Hill's argument in support of the second ground was that the appellant was not in possession of Exhibit A and he relied on Moore v. Burke, 26 C.L.R. 265; But the facts in that case are altogether different from those in the present case. The facts before the Magistrate are that the appellant was the owner of Exhibit A and had control of it. It was in the motor car belonging to her of which she said she had the keys. These facts warranted the finding by the Magistrate that the document was in the appellant's possession within the meaning of regulation 4(a). Without attempting any exhaustive or exclusive definition I am of opinion that the word "possession" in the context in which it is used is satisfied if a person is in effective control of the property or article in question so that he can get it into his hands whenever he wishes. Actual manual possession is not essential. In cases "when possession is doubtful it is attached by law to the title" Ramsay v. Margrett, 1894 2 Q.B. 18 at p.25; Butler v. Lewis, 1932 V.L.R. 62 at p.66. Here the defendant admitted that the document was her property.

For these reasons I am of opinion that the rule nisi should be discharged with costs including the costs of and incidental to the application for the rule nisi.

BERRY V BASLEY.

JUDGMENT.

STARKE J.

I agree. But I desire to mention two matters. There was some evidence before the Magistrate that a man named Simpson, who resided apparently with the appellant and her husband, had been appointed an Organiser of the Communist Party and had in his possession another document which contained, inter alia, the same statements as were contained in the document mentioned in the charge against the appellant. The Court pays no attention to these matters. They are not relevant to any offence with which the appellant was charged.

Then as regards possession. Nothing we have said departs in any way from *Moors v Burke* (26 C.L.R. 265). In this case there was, in my opinion, ample evidence to warrant the Magistrate's finding that the document mentioned in the charge was in the appellant's possession, that is, in her power and control. It is quite unnecessary to express any opinion upon the question ~~and~~ whether possession of the document should be presumed from her ownership of it; a person might have the right to possession of a document and still not have possession of it.

EILEEN VIOLET PERRY v. WILLIAM THOMAS BASLEY.

JUDGMENT.

WILLIAMS J.

I agree that the order nisi should be discharged.

The document or warning marked Exhibit A. contained plain evidence that it was intended to be circulated amongst the appellant's confederates and it is therefore a circular or pamphlet within the meaning of the regulation.

The first ground taken in the order nisi must fail.

The document advocates the unlawful doctrine because it recommends and urges these confederates to provoke industrial unrest amongst the masses by subtle means; and so advocates a doctrine or teaching which is unlawful because strikes and other results of such unrest are prejudicial to the defence of the Commonwealth and the efficient prosecution of the war.

As to the second ground there was ample evidence on which the Magistrate could find that the document was in the appellant's possession. It was admittedly her property and was just as much under her control as if it was in her physical possession because it was in a car which she claimed to be hers and to which she had access at will.