

ORIGINAL (8)

IN THE HIGH COURT OF AUSTRALIA.

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*The King*

v.

*Gilbey & Anor*

*ex parte McPherson*

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REASONS FOR JUDGMENT.

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Delivered at

*Sydney*

on

*Tuesday, 24th August, 1945*

40358

A. H. PETTIFER, ACTING GOVT. PRINTER.

THE KING V. GILBEY

JUDGMENT

LATHAM C.J.

The appellant was charged with an offence in that contrary to the provisions of Regulation 51(c) of the National Security (Liquid Fuel) Regulations he did, without lawful excuse, have in his possession, otherwise than in accordance with the Regulations, five 10-gallon ration tickets. Regulation 51 (1) (c) provides that a person shall not "without lawful excuse, proof whereof shall lie upon him, have in his possession any counterfeit or forged ration tickets or licence or" (and these are the important words) "otherwise than in accordance with the Regulations any ration ticket or licence." The Regulations provide for the issue of ration tickets to holders of motor spirit consumers licences - Regulation 21 (1) - "The holder of such a licence is entitled to obtain ration tickets corresponding to the monthly quantities of motor spirit authorised by his licence."

Sub-regulation (2) of this Regulation then imposes upon the licensee the duty of endorsing in ink on the back of each ration ticket the number of the licence, and where the consumer's licence is issued in respect of a road vehicle, the registration number of the vehicle and his signature.

Regulation 27 deals with the disposition of motor spirit in return for ration tickets. It provides, that a person shall not dispose of any motor spirit to the holder of a motor spirit consumer's licence unless (a) the licence<sup>is</sup>/produced (b) motor spirit ration tickets have been delivered corresponding to the quantity disposed of, and (c) before delivering the motor spirit he verifies the particulars required by sub-regulation (2) of regulation 21 of these regulations to be endorsed on the back of each ration ticket by comparing each ticket with the licence, and in the case of motor spirit .... to be supplied into a road vehicle

It is authorised by the Regulations in the case of a consumer who has tickets which he has obtained in accordance with the terms of his licence. Such possession is authorised in the case of a retailer when he takes a ration ticket duly endorsed from a consumer in accordance with Regulation 27. The evidence accepted by the Magistrate showed that the defendant, the appellant, obtained ration tickets unendorsed from some source and forged endorsements thereon by placing on them the particulars required by Regulation 21 (2), such particulars being false and not authorised by the person whose name he placed on the back of the ticket. There was plainly evidence to support<sup>the</sup>/finding that the defendant forged the endorsements.

The argument for the defendant here is that he should have been charged with an offence under Regulation 27(1) (c), but that proof that he was guilty of such an offence by supplying petrol wrongly because in return for unendorsed tickets that does not show that he was guilty of an offence under Regulation 51 (1) (c). It is argued that the mere possession of the tickets was in accordance with the Regulations because they were obtained, it is said, in exchange for petrol (or at least, such a conclusion may be fairly drawn from the evidence) although some of the requirements of the law with respect to the transaction were not satisfied. The reply to this argument, in my opinion, is first that there is no finding (and no evidence upon which this Court should conclude) that the tickets were obtained in exchange for petrol, and, apart from that, and more important, that the possession does not become lawful under the Regulations in such a case unless the requirements of Regulations 21 and 27 are satisfied.

The question is, was the possession authorised by the Regulations? If the defendant took the tickets duly endorsed, then his possession was authorised. If he took the tickets not endorsed whether in exchange for petrol or not, then his possession was not authorised.

Further argument was raised based upon the refusal of the Magistrate to adjourn the case. In my opinion, there is no substance in this objection. The appeal should be dismissed with costs.

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JUDGMENT

RICH J.

I agree.

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JUDGMENT.

STARKE J.

I agree but I desire to confine myself to the particular facts of this case. The defendant had in his possession tickets upon which he himself forged endorsements. I cannot understand any explanation of those facts but that he obtained the tickets in some manner unauthorised by the Regulations.

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JUDGMENT

WILLIAMS J.

I agree. The evidence accepted by the Magistrate shows that the tickets were in the possession of the defendant. Those tickets were not endorsed until he endorsed them himself. As a retailer, he could only have obtained lawful possession of the tickets if they had been endorsed as required by Section 27 (1) (c). As they were not so endorsed, they were in his possession otherwise than in accordance with the Regulations, and the Magistrate, therefore, came to a right decision.