ORIGINAL

IN THE HIGH COURT OF AUSTRALIA. 10

French & others

v.

McBeath & others

REASONS FOR JUDGMENT.

Delivered at Melbourne

on Friday 26th October 1945.

40358 A. H. PETTIFER, ACTING GOVT. PRINT.

ORIGINAL

FRENCH & ORS.

v.

McCARTHY & ORS.

JUDGMENT. WILLIAMS J.

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JUDGMENT. WILLIAMS J.

The plaintiffs are a number of persons who carry on the business of milk bar and refreshment room proprietors and similar businesses in the Sydney metropolitan area, and in the course of their business sell aerated waters, a variety of drinks of which milk is an ingredient, and various forms of fruit drinks, and they have brought this action against the Acting Prices Commissioner (and by amendment against the Prices Commissioner) and the Commonwealth of Australia, claiming: - 1. A declaration that Prices Regulation Order No. 1812 is invalid on the ground that it is not authorised by the National Security (Prices) Regulations. 2. A declaration that if the whole of the said Order is not invalid clause 7 thereof is invalid. 3. A declaration that if the Regulations authorise the making of the said Order they are invalid. 4. An injunction restraining the Defendants and each of them their servants and agents from enforcing the Order or otherwise interfering with the Plaintiffs in the conduct of their businesses. 5. Damages. The order, which was made by the Acting Prices Commissioner and gazetted on 13th November 1944, is intituled "Soft Drinks and Aerated Waters Sydney", and is set out in full in the Statement of claim.

Mr. Barwick for the plaintiffs attacked the validity of the order on a number of grounds, but before proceeding to formulate these grounds it will be convenient to deal in the first instance with the preliminary objections raised by Mr. Sugerman for the defendants that this Court has no jurisdiction to entertain the action. Mr. Barwick, having been granted leave to amend the statement of claim to include a claim for an injunction to restrain the Commissioner exercising his powers under paragraph 7 of the order, submitted that the Court had jurisdiction under three heads: (1) that the Commonwealth is a party to the action so that there is jurisdiction under the Constitution, sec. 75(iii).

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As the Chief Justice has pointed out in Carter v. Egg & Egg Pulp Marketing Board (Vic.), 66 C.L.R., 557, at p. 579, the Court has jurisdiction under this head whenever the Commonwealth sues or is being sued. I presume that His Honour meant whenever the Commonwealth is a proper party to the action. Mr. Sugerman did not apply to have the Commonwealth struck out as a party, but it was agreed that it would be convenient to leave the question of jurisdiction until the addresses, so that I shall deal with this head on the basis that the Court only has jurisdiction because the Commonwealth is a defendant if it is a proper defendant. (2) That an injunction is being sought against the Prices Commissioner, who is an officer of the Commonwealth, so that there is jurisdiction under the Constitution, sec. 75(v). (3) That the statement of claim raises the constitutional validity of the Prices Regulations, so that there is jurisdiction under the Constitution, sec. 76(1) and the Judiciary Act, sec. 30(a). If the Court has jurisdiction under the first head it will be unnecessary to discuss whether it also has jurisdiction under the other heads.

Under the first head two questions arise - (1) whether the Commonwealth is a proper party to the action; and (2) whether the action is "a matter" within the meaning of sec. 75 of the Constitution. As to the first of these questions: In London Passenger Transport Board v. Moscrop, 1942 A.C., 332, at p. 345, which was an action for a declaratory order, Viscount Maugham pointed out that, although absent parties are not strictly bound by a declaration, the courts have always recognised that persons interested are or may be indirectly prejudiced by a declaration made in their absence, so that all persons interested should be made parties before a declaration, which by its terms affects their rights, is made. The present order was made by an officer appointed by the Commonwealth under an authority conferred upon him by delegated legislation, and the order is intended to affect the sellers and purchasers of soft drinks and aerated waters in the Sydney metropooitan area, and therefore to affect a large number of persons. In the Victorian Chamber of Manufactures &

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ors. v. The Commonwealth & ors., 67 C.L.R., 335, the Prices Regulations were upheld as a valid exercise of the defence power on the ground that the control of prices and rates to be charged for goods and services is necessary in war time to prevent inflation, so that the Commonwealth has a real and substantial interest in upholding the validity of orders made by the Prices Commissioner. It would therefore be prejudiced by a declaration made in its absence that the order was void. The parties are similar to those in Vardon v. The Commonwealth, 67 C.L.R., 434, and King Gee Clothing Pty. Ltd. v. The Commonwealth (not yet reported) and in my opinion the Commonwealth is a proper party to the action.

As to the second question: Order IV of the Rules of Court authorises the Court to make a declaratory judgment or order in an action properly brought, whether any consequential relief is or could be claimed or not. In Toowoomba Foundry Pty. Ltd. v. The Commonwealth, 1945 A.L.R., 282, at p. 289, the Chief Justice, after referring to a number of cases, said that it is now too late to contend that a person who is, or in the immediate future, probably will be affected in his person or property by Commonwealth legislation alleged to be unconstitutional has not a cause of action in this Court for a declaration that the legislation is invalid. And in recent cases actions have been entertained where declarations other than those relating to the unconstitutionality of Commonwealth legislation have been sought or made. For instance, in Wertheim v. The Commonwealth, 69 C.L.R., 601, the only declaration sought was a declaration that the Fly and Insect Sprays Order was beyond the powers conferred upon the Minister by reg. 59 of the National Security (General) Regulations, and in Shrimpton v. The Commonwealth, 69 C.L.R., 613, the declaration made related to certain action taken by the Treasurer of the Commonwealth. The Commonwealth is usually added as a party and in some instances the Attorney-General of the Commonwealth as well, whereas in England the Attorney-General is made a party: Dyson v. Attorney-General, 1911 1 K.B. /

1 K.B., 410: 1912 1 Ch., 158: Burghes v. Attorney-General, 1912 1 Ch., 173. Mr. Sugerman relied on the statement in In re Judiciary and Navigation Acts, 29 C.L.R., 257, at pp. 265-6, that to be a matter there must be some immediate right, duty or liability to be established by the determination of the Court, and submitted that in the present action only abstract questions of law were involved. I am prepared to assume in his favour that no injunctions could be granted in the action. There is no evidence that the Commissioner proposes to exercise his powers under paragraph 7 of the order. There is still less evidence that he intends to give a notice under that paragraph to any of the plaintiffs. Further, no injunction could be granted to restrain the Commissioner enforcing paragraph 8 of the order. He has no power to enter upon premises and affix price lists. If paragraph 8 is valid and is disobeyed traders render themselves liable to a prosecution, but no injunction could be granted to restrain an anticipated prosecution. The action is therefore one in which no substantive relief could be granted. But it does raise the immediate question whether the plaintiffs are under a legal obligation to comply with the order. Traders who disobey valid orders made by the Commissioner render themselves liable to serious punishment under the National Security Act,and to even more serious punishment under the Black Marketing Act, so that there is nothing abstract about the question.

Apart from the words "in an action properly brought", which appear to refer to the limitations upon the original jurisdiction of the Court, Order IV is in substantially the same terms as Order 25, Rule 5, of the English Rules. In the United States of America the Supreme Court had no jurisdiction to make declaratory orders until 1934, when the Federal Declaratory Judgments Act gave the Supreme Court power to make such orders in cases of actual controversy. The Act is set out in a foot-note in 300 U.S.R., at p. 236, and several cases of declaratory orders in the United States of America are collected in Alabama v. McAdory 89 Law. Ed. Adv. Op.,at p. 1276. The practice under this Act and under the English order appears to be much the same, although

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it is more limited in its terms than the English order or our Order IV. The plaintiffs are, to apply Lord Wright's words in Moscop's Case (supra), at p. 351, claiming relief and advantage for themselves. The present proceedings would constitute a cause of action under the English order, and I can see no reason why they should not equally constitute a cause of action under Order IV. The position is neatly stated by Peterson J. in Smeeton v. Attorney-General, 1920 1 Ch., 85, at p. 96 - "The only way of testing the legality of the Commissioner's requirements was by an action for a declaration or by defending proceedings for the enforcement of the penalty". In Whitney v. The Vegetable Seeds Committee & anor. I expressed my views upon what constitutes a matter under sec. 75 of the Constitution at greater length than here, and that judgment can be referred to if necessary.

For these reasons I am of opinion that the Court has jurisdiction under the first head, so that it is unnecessary to discuss the other heads.

I shall therefore proceed to the merits, and commence by briefly summarising the evidence. As the case may go further, I thought it advisable to admit the whole of the evidence tendered by the plaintiffs subject to objection.

Evidence was given to prove the general manner in which the business of selling soft drinks was carried on at the date of the order. It shows that in the case of drinks of which milk is an ingredient a customer ordered, for instance, a milk shake. This drink was prepared by putting the milk and other ingredients in a metal container capable of holding 30 ozs., and placing the container on an electrical stirring machine which caused the contents to become aerated and to rise and increase in volume, the rise varying according to the age and coldness of the milk. The drink when stirred usually had a volume of about 20 ozs. A glass, generally capable of holding 10 ozs., was then filled from the container, and the glass and container, the latter still containing the balance of the drink, handed to the customer. It was impracticable to mix a drink which would exactly fill any

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glass. The ingredients added to the milk varied in kind, quantity, and quality. The flavouring most favoured was vanilla, but many other varieties of flavouring, and also malt yeast and eggs (up to three) were also added. Some customers asked for more than one addition of one or more of these ingredients. Ice cream was an almost invariable addition. The ice cream was scooped out of a quart block by a mechanical device which varied in size from ~~60~~ 12 to ~~12~~ 60 scoops. The size of the scoops used in different milk bars varied from 30 to 60 scoops. Customers often asked for a six-penny ice cream,and sometimes two of these ice creams,to be added to the milk. There were many special drinks with milk as an ingredient containing expensive additions.

In the case of fruit drinks the juice employed might be expressed from fresh fruit or be cordials, and ingredients such as a 3d. or 6d. ice cream and yeast were often added.

Extra expense was incurred in some milk bars because tables and chairs were provided, and sometimes service as well. Extra expense was also incurred in serving soft drinks in the foyers of theatres, because casual labour had to be engaged, and a large number of drinks prepared, some of which might not be consumed and be wasted, in order to serve a large number of customers in a short space of time. The order prescribes glasses of certain fluid contents, but breakages and chippings of glasses are heavy, replacements are difficult to obtain, and traders must take the glasses that are offered, whatever their fluid content. Evidence was also given to show the prices charged for soft drinks prior to the date of the order, and the extra charges that were made where extra ingredients or extra large drinks were ordered, or drinks were served at tables or in foyers in theatres. This evidence was tendered, not in an attempt to appeal indirectly against the prices fixed by the Commissioner, but as part of the evidence in support of Mr. Barwick's second main ground of attack on the validity of the order, to which I shall shortly refer. There is other evidence to which I have not referred, but these short extracts will be sufficient, I think, to illustrate the ~~broad~~ general characteristics of the trade.

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Mr. Sugerman objected to the whole of the evidence on the ground that it was inadmissible in proceedings to determine the validity of the order, even if it was admissible in proceedings to enforce it. But in my opinion no distinction of this kind can arise from the nature of the proceedings, and its relevancy must in each case depend upon the nature of the issues.

The grounds upon which Mr. Barwick attacked the validity of the order may be summarised under two main heads. (1) That the order is ambiguous and uncertain for two reasons, (i) that it is couched in ambiguous language; and (ii) that paragraph seven is not authorised by Prices Regulation 23(1)(b)(i) and is therefore invalid, and this invalidity renders paragraphs 4, 5 and 6 uncertain. (2) That in relation to the facts that have been proved,(i) the order is not a price fixing order at all; and (ii) that it involves such an oppressive and gratuitous interference with the rights of those who are subject to it that it could find no justification in the minds of reasonable men.

As to ground (1), under reg. 23 the Commissioner may fix and declare a maximum price by specifying a sum of money or by specifying a formula, the application of which to the circumstances will determine a price. He must also specify the goods for which he has fixed and declared that price. In Fraser Henlein Pty. Ltd. v. Cody, 1945 A.L.R., 186, at p. 195, Dixon J. said: "It may be conceded, and indeed it appears to have been decided, that a bare power to 'fix' a price cannot be validly exercised without naming a money sum or prescribing a certain standard by the application of which it can be calculated or ascertained definitely. Otherwise the price is not 'fixed'." It is equally necessary that the goods for which the price has been fixed should also be described with equal definiteness. In some instances the difficulty may be to determine whether the ingredients in the formula have been described with sufficient definiteness, for instance what is meant by the cost of an ingredient; Vardon v the Commonwealth 67 C.L.R 434 in other instances the difficulty may be to determine whether the goods have been described with sufficient certainty: Fraser Henlein Pty. Ltd. v. Cody (supra) ; in other instances /

instances the difficulty may be to determine both the price and the goods: Bendixen v. Coleman, 68 C.L.R., 401. But if the prescription of the formula for ascertaining the price or the description of the goods is sufficiently definite, difficulty in ascertaining the facts, such as a cost sufficiently defined which can only be ascertained from a certain source: King Gee Clothing Pty. Ltd. v. The Commonwealth (supra): or whether some goods are substantially identical with other goods: Fraser Henlein v. Cody, ~~1945 A.L.R., 196~~ supra: does not invalidate the order. And I may add, as appears from Bendixen's Case, that a mere difficulty of construction does not make the order uncertain. Otherwise every order would be invalid where opinions differed as to its meaning. The order will be valid although a judge sitting alone may have doubts as to its construction if he is able, after consideration, to place a definite meaning upon it, or although in a Full Court the majority may place one and the minority another construction upon it. The order is only invalidated if, after applying the ordinary principles of construction, the Court is finally unable to ascertain from the language of the order the price which the Commissioner has intended to fix or the goods which he has intended should be subject to the price.

In the present case it is contended that there is uncertainty both with respect to prices and goods. Paragraphs 4 and 5 relate to the sale by retail of bottles of aerated waters in the Sydney metropolitan area other than for consumption on the seller's premises, and for consumption on his premises. The goods are clearly described in the paragraphs, and the prices are clearly fixed in sums of money for bottles containing defined numbers of fluid ounces, so that these paragraphs are, in respect of prices and goods, clear and definite. Paragraph 6 fixes prices for sales by the glass of aerated waters, fruit drinks and milk drinks in the Sydney metropolitan area. Sub-paragraph(a) provides that, when sold by the glass, with or without flavouring or other ingredients, not being ice cream, the price is that specified in the Second Schedule. This schedule classifies the drinks under aerated waters, pure fruit drinks, and milk drinks, and specifies glasses having a content of less or of more than a certain number of fluid ounces. Sub-paragraph(b) provides that, where ice cream is

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added, whether with or without flavouring or other ingredients, the price can be increased by 1d. for each serve of ice cream. It was contended that this paragraph was uncertain in several respects. "Milk drink" is defined to mean any drink of which milk is an ingredient, or a drink customarily known or referred to as a milk drink, but there is no definition of aerated waters or fruit drinks. But it is clear, I think, that the aerated waters referred to in this paragraph are the same aerated waters as those described in paragraphs 4 and 5, that is to say aerated waters contained in bottles or syphons. The definition of milk drinks was attacked for uncertainty, but it appears to me to be clear. The first limb is quite definite as a matter of ordinary language, while the second limb contains a sufficient definition of what is intended, and its application would depend upon whether there were in fact at the date of the order any drinks customarily known and referred to as milk drinks by buyers and sellers in the Sydney metropolitan area. Even if the second limb lacks clarity, the first limb is clear, and the second limb would be severable.

The meaning of "fruit drinks" presents more difficulty. Paragraph 6 refers to "fruit drinks", while the Second Schedule refers to "pure fruit drinks". It is the Second Schedule which prescribes the prices and describes the goods, so that the only fruit drinks for which prices are fixed are pure fruit drinks. These words in their ordinary signification appear to me to refer to drinks containing fresh fruit juice. Fruit drinks can be made from such juices or from cordials or from a mixture of both. Paragraph 6 of the order contemplates the addition of other ingredients to the main ingredient described in the Schedule and shows that, so long as the drinks contain fresh fruit juice, they are within the Second Schedule, although they contain flavouring or other ingredients, as, for instance, water, cordials, ice cream or yeast. If the drinks do not contain fresh fruit juice, but only cordial, they are not within

the scope of the order. The omission of drinks containing cordials, but not fresh fruit juices, from the order seems strange. The omission may be intentional or unintentional. Probably it is unintentional. But whether intentional or not, it does not render the operation of the order uncertain in relation to the drinks to which it applies. Paragraph 6 only allows an addition to the price where ice cream is added as an ingredient. It then allows an addition of 1d. for each serve, so that if the drink contains as an ingredient any ice cream, 1d. can be added for the first and every subsequent serve. The ordinary grammatical meaning of the word "serve" in the context is, I think, clear. It means the addition of an indefinite quantity of ice cream to the drink, but, in any event,the order relates to a particular trade.

The words of an order should prima facie be construed according to their ordinary natural meaning at the date it came into force, and where it is of general application oral evidence is not admissible to assist the Court in determining that meaning, so that the Court must discover it as best it can with such aid as it can derive from the context, dictionaries and other writings, but where it is of local application or relates to a particular trade, evidence is admissible, subject to the qualifications stated in De Beeche v. South American Stores Ltd., 1935 A.C., 148, at p. 158, to prove the local or trade meaning: see the authorities cited in Vol. 19, A.L.J., at p. 132.

The present evidence proves that "serve" has a well understood meaning between buyers and sellers of ice cream and refers to a quantity of ice cream added by a mechanical scoop. The paragraph leaves the amount so added to the discretion of the seller so long as it amounts to a serve. The order defines "oz." to mean ounce or fluid ounce, as the case may be, and the glasses referred to in the Second Schedule are glasses having a capacity to hold a specified fluid content.

For these reasons there is, in my opinion, no uncertainty of expression in relation either to price or goods in paragraphs 4, 5 or 6, or in the First or Second Schedules of the order.

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But it was contended that paragraph 7 of the order is an invalid exercise of the powers conferred upon the Prices Commissioner by reg. 23(1)(b)(i) for two reasons - (1) That the powers conferred on the Prices Commissioner by reg. 23(1)(a) and 23(1)(b) are alternative and not cumulative powers, so that, having exercised the power under reg. 23(1)(a) to fix prices generally for the Sydney metropolitan area, he cannot fix particular prices for that area. I cannot agree with this contention. It is obvious that the quality of specified goods sold by traders may differ. If they differ in the case of each trader it may be necessary to fix a different price for each trader. But, while a general price may be sufficient in most cases, the goods of individual traders may be superior or inferior in quality to the general quality, or for other reasons it may be advisable to fix particular prices for particular traders, and therefore to have at the same time a general and particular price. (2) That, in order to exercise the power conferred by reg. 23(1)(b)(i), it is necessary to specify both the goods and the name of the person in the gazette. This was done in Vardon's case, but has not been done in paragraph 7. On this point Mr. Sugerman relied on the ruling of the Supreme Court of New South Wales on a corresponding provision in reg. 23(2)(b)(i) in relation to rates for services in Ex parte Byrne: Re King & anor., 45 S.R. (N.S.W.), 123, at p. 126, that the Commissioner can, by one and the same gazetted order, fix a general rate, and also make a declaration enabling him to fix special rates. He submitted that, as this was a unanimous decision of the Full Court, and it is usual for five justices of this Court to sit on an appeal from the Full Court of a State, I ought as a single justice to follow the decision. I cannot agree with this submission because, although I should pay the greatest respect to such an authority, I am not bound by it. It is, however, unnecessary to express any opinion on the point in order to dispose of this action, because, even assuming that paragraph 7 is invalid, it is in my opinion severable from the other paragraphs, and I am quite unable to agree with the contention that if it is invalid it renders the whole order uncertain. The Commissioner has not in fact exercised his powers under paragraph 7,

but the contention was, as I understood it, that if it was uncertain whether paragraph 7 was invalid, and the Prices Commissioner by notice in writing fixed a particular price for an individual trader, it would be uncertain whether he should sell at the general or the particular price. I should not think that a trader who sold his goods at a particular price fixed by a notice above the general price, which was invalid, would run the slightest risk of a prosecution, but such a consideration could not create a position in law where other severable provisions of the order, otherwise unobjectionable, would be certain if paragraph 7 was valid, but uncertain if it was invalid or there was uncertainty as to its validity.

The attack on the validity of the order on the ground of uncertainty therefore fails.

As to objection (2): there are some statements in the judgments of this Court to the effect that prices orders are of a legislative character. But Rich J. in Arnold v. Hunt, 67 C.L.R., 429, and Dixon J. in King Gee Clothing Pty. Ltd., have expressed the opinion that they are of an executive character, and in Vardon v. The Commonwealth (supra), Arnold v. Hunt (supra) and Fraser Henlein Pty. Ltd. v. Cody (supra), I have expressed the same opinion. The objection as formulated by Mr. Barwick is an objection to the validity of subordinate legislation. But if the order is executive the only questions are whether it is an exercise of the powers conferred upon the Commissioner by the regulations (Here the order, other than possibly paragraph 7, clearly falls within the four corners of the authority conferred upon the Commissioner), and, if it is, whether he has exercised those powers bona fide: Leversidge v. Anderson, 1942 A.C., 206: Point of Ayr Collieries Ltd v. Lloyd George, 1943 2 A.E.R., 546. An unreasonable exercise is not a sufficient objection to its validity: The Minister of Agriculture & Fisheries v. Price, 1941 2 K.B., 116: Horton v. Owen, 1943 1 K.B., 111.

Mr. Barwick contended that, in order to exercise his power to fix a price, the Commissioner must ascertain the goods that a trader is selling and then fix a price for those goods or, as he put

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it, determine a proper price for the commodities that were in actual circulation at the date of the order. He referred to regulations 34, 35 and 36 as contemplating that all these commodities would continue to be sold. In particular, he relied on reg. 34(1), which requires a person who has in his custody or under his control any declared goods for sale in respect of which a maximum price has been fixed, to sell on demand the quantity demanded, and on reg. 36(1)(c) and (d), which provides that a person shall not, without the written consent of the Commissioner, alter the formula or recipe ordinarily used by him at the commencement of the repealed regulations in the manufacture or production of any declared goods, or manufacture declared goods inferior in quality to the quality manufactured by him immediately prior to the date of fixation. But the regulations do not compel any person to manufacture any declared goods - they only apply if he has declared goods in his possession or under his control, or if he manufactures declared goods. A person who sells soft drinks is not compelled to manufacture any particular milk shakes or fruit drinks. He is only compelled to serve a customer with such drinks as he has for sale or, in other words, chooses to manufacture. The fact that a seller has, at the request of his customers, previously to the date of the order, added several ingredients or one or more ingredients several times to milk or fruit drinks, would not compel him, after the date of the order, to continue to do so. The order does not provide for the addition of more than one ingredient to the principal ingredient, except in the case of ice cream. Such drinks were being sold in 1944. Provided the seller added one ingredient to the principal ingredient, and that ingredient was of the same quality as before the order, he would comply with the regulations. There is nothing in the order that prevents a trader in soft drinks selling milk or pure fruit drinks and adding any number of ingredients. The Commissioner may have taken the view that, since the order fixes prices for the sale of these drinks by the glass, the glass would only hold a certain quantity of liquid, so that the price fixed was a fair price for

a glass-full of the principal ingredient, and any additions other than ice cream. On the evidence there appears to be substance in the view that the Commissioner ought to have allowed an extra charge for the addition of more than one ingredient to the main ingredient and, in certain circumstances, for extra expenses. But the evidence at most proves that the Commissioner may in some respects have acted unreasonably. There is no evidence that he has been swayed by irrelevant or improper motives, or that he has acted otherwise than honestly and bona fide. The evidence is that it was the introduction of the container that first made milk drinks popular, because customers thought that they were getting a bargain when the drink was poured into a glass and there was still the contents of another glass left for them in the container. But drinks prepared in a container are not in my opinion subject to the order. It is the drink in the container which the customer buys, and the true character of the contract is not altered because he is also supplied with a glass. Alternatively, even if the quantity poured into the glass is subject to the order, and the customer also takes delivery of what is left in the container, he can be charged an additional price for what is left in the container. It would also appear from the evidence that some of the prices for fruit drinks, as, for instance, where a glass-full of juice is supplied, are unreasonably low, but the Court, as I have said, cannot act directly or indirectly as a Court of Appeal against the prices that have been fixed. Some evidence was given about ice cream sodas, but it is unnecessary to refer to this evidence, because these drinks do not contain milk, and, although they contain soda taken from a fountain, they are not on this account included in the order, because the aerated waters referred to in the order are waters contained in bottles and syphons.

Paragraph 7 was, I presume, inserted in the order to enable the Commissioner to fix special prices where the general prices were unsuitable. But I cannot refrain from suggesting that if the Commissioner wishes to exercise this power he would be on safer ground if he followed Vardon's Case and gazetted the name of the person before giving him a notice.

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Finally, I think that I should add that, even if I am wrong in holding that the order is executive, and it should be regarded as subordinate legislation, it would not (with the possible exception of paragraph 7) exceed the powers conferred upon the Commissioner by the regulations, and its terms would not be such an oppressive and gratuitous interference with the rights of those who are subject to it as could find no justification in the minds of reasonable men, so as to be unreasonable within the meaning of the cases, many of which are cited in The Mayor etc. of Brunswick v. Stewart, 65 C.L.R., 88; The Mayor etc. of Footscray v. Maize Products Pty. Ltd., 67 C.L.R., 301.

For these reasons I am of the opinion that the action fails and should be dismissed, and I therefore give judgment for the defendants with costs.