HIGH COURT OF AUSTRALIA

Pankhurst

Vs.

Kiernan

(Barton, Isaacs, Higgins, Gavan Duffy, Powers and Rich JJ.)

29 November 1917

Barton J.

The applicant was on 9th October last convicted of having on the preceding 20th September at Yarraville in Victoria, contrary to the provisions of the *Unlawful Associations Act 1916*, encouraged the injury of property. The information was laid by the respondent, an officer of police, under sec. 4 of the Act mentioned, which is as follows: "Whoever advocates or encourages, or incites or instigates to the taking or endangering of human life, or the destruction or injury of property, shall be guilty of an offence. Penalty: Imprisonment for six months."

The case was heard by a Police Magistrate at the Melbourne Petty Sessions. The applicant was sentenced to imprisonment for four months, the sentence to be suspended if she entered into a bond not to offend against the Act or to attend or speak at any meeting of more than fifteen persons without first obtaining the consent of the Attorney-General or Solicitor-General of the Commonwealth or a Police Magistrate. She declined to enter into the bond, and is in gaol. The proceeding is by way of an order *nisi* to review the sentence, and the argument of this case was upon the return of the order.

The grounds are: (1) that sec. 4 of the Act is *ultra vires* of the Commonwealth Parliament; (2) that the said section is an infringement of sec. 80 of the *Constitution* and invalid; (3) that there was no evidence that the defendant encouraged the injury of property within the meaning of the section.

The second ground has been abandoned. Counsel for the applicant argued the third ground first, and then the first ground. I shall follow that order, and shall therefore assume in the first instance that the section is valid.

The prosecution was based upon a speech delivered by the applicant on 20th September at Yarraville, in a hall, and before about 2,000 people. This speech was reported in shorthand by Constable McLeod, who attended the meeting in company with the respondent. He said that the meeting was called for the purpose of assisting the dependants of men affected by the industrial upheaval; that, so far as he knew, no one as a result of the speech destroyed any property; and that the part of the speech he put in evidence was only a small part of what the speaker said. That which was put in evidence was the transcription of the shorthand notes and the notes themselves. The respondent also took shorthand notes, which were put in evidence. These were not transcribed, nor was there any cross-examination upon them except that it was elicited that his shorthand notes were not identical with those of the previous witness, because he missed more and was only able to write sentences here and there. That, with the speech, part of which I shall quote, was the whole of the

evidence for the prosecution, and no evidence was called for the defence of the applicant.

The case of *R. v. Most*[1] was cited, in which the Court for Crown Cases Reserved sustained a conviction under 24 & 25 Vict. c. 100, sec. 4, for a criminal libel by which the defendant (*inter alia*) endeavoured to encourage, &c., the commission of the crimes of assassination and murder. The case was cited only for the purpose of quoting some words in the judgment of *Huddleston* B., in which he gave to the word "encourage" in the section this meaning: "To intimate, to incite to anything, to give courage to, to inspirit, to embolden, to raise confidence, to make confident." The applicant's speech cannot be read without perceiving that it was an encouragement, within the meaning of the words quoted, of the injury of property. But those words are not a statutory, nor in any sense an exhaustive, definition. The word "encourage," indeed, is plain enough, and needs no definition. The applicant suggested, and tried to induce, the continuance of window-breaking. She showed her approbation of—nay, her exultation in—the doing of damage to the value of £5,000 by the smashing of windows on the previous night. If that was not encouragement, what was it? I extract part of her speech. After urging that the makers of excess profits could "easily stand a strike," and that the Government was careless so far as she and her hearers were concerned, she said these words:—"We had to adopt other methods; you saw the results of it last night. Panes of glass smashed,—anyway glass windows have got no feeling whatever. Now, friends, if we can hold out we feel we have got the Government in a cleft stick... The very fact that the people know that they" (the Government) "are going to get rid of me is stirring them" (the people) "up to more efforts... There was £5,000 worth of damage done, and five persons arrested. One person for every £1,000 worth of damage. Supposing he" (Mr. Hughes) "does send some of us to gaol, there will be others to take their places, and it will take a year or two to build gaols to hold us." Then after pointing out that if the military were called out the chances were they would shoot the other way, and that if Mr. Hughes got some of them to shoot the result would be a failure to obtain recruits, she said:—"You touch their pockets and you will immediately begin to get something. Therefore, friends, we say to keep on in that way... The time is coming when the workers are going to say:—We will no longer allow our wealth to be in the hands of a few private individuals. We will no longer allow production to be carried on for profits."

These extracts speak for themselves. I decline to give serious consideration to the view that there was not evidence on which the Police Magistrate could properly find that the utterances of the applicant amounted to the forbidden encouragement within the meaning of the section. They were much more than ample to sustain such a finding. If, then, the section is valid, the conviction must be sustained.

As to the validity of the section, Mr. *Flannery* for the applicant did not impugn the authority of the case of *Farey v. Burvett*[2]. In that case the question was as to the validity of a certain regulation made in pursuance of the *War Precautions Act* and an order, which order under the regulation fixed the maximum price of bread in certain proclaimed areas. The regulation was framed under a power contained in sec. 4 (1A) of that Act authorizing the Governor-General (in Council) to make such regulations as he thought desirable for the more effectual prosecution of the War or the more effectual defence of the Commonwealth or of the realm, prescribing and regulating (*b*) the conditions (including times, places, and prices) of the disposal or use of any property, goods, articles or things of any kind; and (*c*) the requisitioning of any goods, articles, or things of any kind. Regulations framed under this provision were held in *Farey v. Burvett* to be good. The provision authorizing the making of the regulations was within the legislative power conferred by sec. 51 (VI.) and (XXXIX.) of the *Constitution*, and the delegation of the regulative authority within that power to the Governor-General in Council was also good. In that case the decision was by a

majority of five judges. The view which appealed to four of them at least, including myself, was somewhat wider than that entertained by my brother *Higgins*, but he arrived at the same ultimate decision. Our view was that, while an Act or regulation might not be a measure of defence in time of peace, it might be such a measure in time of war. In such a war as the present, not merely armies but whole nations are engaged in a supreme struggle, which so far as this Empire is concerned is a struggle for the preservation of liberty. It was a defence of the autonomous existence of every part of the Empire, no matter where the fighting was actually carried on or whether in a particular instance the forces of the Empire or of any part of it were attackers or defenders. It would be impossible to say that in such a struggle every part of the Empire was not entitled, nay, called upon, to put forth the whole of the resources of its people in men, money, or property, for its self-preservation. If a measure were capable of contributing to the common defence, it was for the Court to affirm that capability, and to go no further. But whether it did so contribute was a question for the judgment of the Legislature. If that body came to such a couclusion by passing an Act, then the function of this Court in deciding whether it was constitutionally valid was to say whether the form of law had been given to something which was capable of assisting in defence. That was the division between the functions of the lawmaker and the lawgiver. In the particular case a measure for the conservation of the food supply, or one for the prevention of inordinate profits on its sale, or one for the better provisioning of the people, might or might not be necessary. The Court was to say whether in conceivable circumstances of war it might be so. But there its functions stopped. Whether it was in fact necessary or wise in the particular instance was for the Legislature to determine.

Now, I take it that the principle laid down in *Farey v. Burvett*[3] is not confined to questions of food supply. It extends to all the resources of a people, and all those resources may upon need in time of war be placed by Parliament at the disposal of the Government for purposes of defence if they are capable of subserving those purposes. More, it is competent to Parliament to pass such legislation as may prevent any hampering or dislocation of the work of effectively prosecuting the War, that is, the defence of the country. It is not difficult to see that internal disorder may have such results, and that the destruction of property may diminish the resources of the people applicable to their defence. The wilful taking or endangering of human life is of course in the same category. Now, the Act is not aimed at the punishment of these inroads upon life or property, but it deals with the advocacy or encouragement of, and incitements or instigations to, these acts. Such acts, committed in concert, are of course acts of public disorder, and equally of course any incitement to them is an endeavour to provoke such disorder. The preamble asserts that an association known as the Industrial Workers of the World and members thereof have been concerned in advocating and inciting to the commission of divers crimes and offences, and that it is expedient for the effective prosecution of the present war that laws shall be enacted for the suppression of such practices. It is to continue in force for the duration of the present war and a period of six months thereafter, but no longer (sec. 2). The Industrial Workers of the World, and also any association which, by its constitution or propaganda, advocates or encourages, or incites or instigates to, the taking or endangering of human life, or the destruction or injury of property, are declared to be unlawful associations (sec. 3). Sec. 4 has already been set out. Other sections deal with (5) the promotion of actions calculated to interfere with the production, manufacture or transport of troops, munitions of war or foodstuffs; (6) the addition of deportation to the punishment of an offence under sec. 4 or sec. 5; (7) the printing or publishing of any writing encouraging, &c., the taking or endangering of human life or the destruction or injury of property; and (8) the making of regulations not inconsistent with the Act for giving it better effect. In my judgment the associations declared unlawful and the things made punishable by this Act are such as may easily tend in greater or less degree to the hampering or

dislocation of the proper conduct of the defence of Australia to the extent that such defence is in the hands of Parliament or Government. It is for us to say whether they are capable of so tending. If we so determine, then we cannot inquire into the necessity, or the propriety, or the wisdom of the action which the Legislature has taken in affirmance of the fact of such tendency or in provision of means for its suppression. We cannot trespass on that field.

A comparison of secs. 3 (b) and 4 shows that the object of the Legislature was in the first of those cases to suppress any association the constitution or propaganda of which encouraged, &c., injuries to life or property, and in the second case to punish those guilty of similar encouragement or incitement. Sec. 4 is obviously within the general scope of the enacting provisions as well as within the preamble. The incitement in sec. 3 (b) is by the constitution or propaganda. These will probably not refer to particular persons or particular pieces of property, but rather to some general object of the association inimical to life or property generally, or the lives or property of a class of persons. That may or may not be. But that paragraph throws a light upon the closely similar words of sec. 4. If in 3 (*b*) the words refer, as they probably do, to a general course of conduct, then it is the advocacy of the destruction of property (to take that instance) that is aimed at, and it is immaterial whether the particular class or piece of property to be attacked is selected by the advocate or by the person incited. In this regard sec. 7 (g) of the amending Act No. 14 of 1917 is of some assistance as showing the intention with which Parliament enacted the two provisions in question in the original Act.

I have cited sec. 4 (1A), pars. (b) and (c), of the *War Precautions Act*. These being valid provisions in aid of defence, it does seem that the provisions of the *Unlawful Associations Act* are calculated to aid, be it much or little, the provisions in the *War Precautions Act*, and so to aid the purpose of defence.

I have no doubt that the provision attacked is valid, and I am of opinion that the appeal must be dismissed and the rule *nisi* discharged with costs.

Isaacs J.

Mr. *Flannery* presented his case as strongly and logically as the materials he had to work upon would permit. But his position was hopeless. As to the validity of sec. 4, I cannot entertain the least doubt. In *Farey v. Burvett*[4] I stated my view of the defence power of the Commonwealth, and the function of this Court when appealed to in order to restrain the action of the legislature with regard to it. I reaffirm what I there said, fortified by two confirmations—one legal and the other practical. The legal confirmation is the case of *The Zamora*[5], and the practical confirmation is the *Federal Food Control Act* in America, where State rights are even more extensive than in Australia.

The present case is, if possible, more clearly than *Farey's Case* within the ambit of Commonwealth power, because the destruction of or injury to property—including bread—involves its utter waste to the community, and consequently is much more serious than a rise in price, which still assumes the possibility of obtaining and using the commodity.

The American Act referred to *inter alia* goes so far as to forbid under penalties knowingly to commit waste, or wilfully to permit preventable deterioration of any necessaries in or in connection with their production, manufacture or distribution, as well as any agreement to exact excessive prices. "Necessaries" are defined, but the selection, being a matter of legislative discretion, could, of course, have been extended.

The main argument against the validity of sec. 4 was that it was too wide. It was said that some property might be unsuitable for war purposes, and yet such property is covered by the section. The answer is twofold. First, no one can ever say that anything is useless for war purposes, even in the narrowest sense; but next, and chiefly, all property in Australia is part of our national resources, or, in the language of Lord *Stowell*, part of the "common stock" to which the Australian people—one people in war, and for that purpose knowing no State divisions—have a right to regard collectively as its means of support in every way for the purposes of this war, both in the lines and behind them.

Reading the section as part of the Act, and therefore interpreting the section by the general intent of the whole instrument, by what precedes and what follows it—which is a sound canon of construction—it is quite distinct from the ordinary criminal law of the State. The Act is directed primarily against unlawful associations. But it is directed against unlawful associations because of aims and objects inimical to the national capacity for defence. This is shown very clearly by sec. 3 (b) of the principal Act and secs. 2 and 5 (7G) of the amending Act (No. 14 of 1917). That means that what the Act really strikes at as dangerous to the general welfare is the system, or method, or principle, or doctrine, or propaganda, or whatever it may be called, by which human life and property are to be injured or destroyed, not as an isolated instance disconnected with every other criminal act, but as a systematic course of conduct, for the attainment it may be of desired political or economic or social ends. Nothing can illustrate this better than the language of the appellant herself. That language has been quoted by my learned brother *Barton*.

The section no doubt includes incitement to destroy or injure in particular instances: it would reach to an incitement to kill one man or break one window; but that would be because the incitement there is part of a general plan or system. It would be as distinct from an ordinary isolated crime dependent on its own origin and confined to its own circumstances, as the instances of German atrocities forming part of their national system of "frightfulness" are distinct from the ordinary local incidents of war. The wholesale smashing of windows was seen by the appellant to be—and, indeed, it is on the surface—a thing which must surely lead to public insecurity and to the eventual hampering of all transactions in even the necessaries of life, and consequently, if *Farey v. Burvett*[6] is good law, this is a much more obvious case for Federal interference.

Reading the section in the way indicated, it is clearly designed for the preservation of Australian life and property generally, and, as these are obviously essentials for national defence, the objection must fail.

If any question were possible as to any particular suggested property being necessary or not, I think the principles laid down in the *Bread Case*[7], and still more authoritatively affirmed by Lord *Parker* for the Privy Council in the case of *The Zamora*[8], would furnish a complete answer.

The section being valid, the only other question is as to whether the appellant's language fell within the terms of the provision. I think that it clearly did, and that this appeal ought to be dismissed.

Higgins J.

I concur in the view that there was evidence on which the Police Magistrate could fairly find that the appellant, by her speech, encouraged people to injure property by breaking windows, &c., in Melbourne. For the purposes of the law, it does not matter that the appellant hoped to force attention to the needs of the poor.

But the conviction is under a recent Federal Act, the *Unlawful Associations Act 1916*; and the point has been taken that the section—sec. 4—is invalid, as being beyond the powers of the Federal Parliament.

Now, this Parliament has no power to make laws with regard to property, or for the protection of property. Property is to be protected by the laws of the several States. But it is urged that the section is valid under the power (sec. 51 (VI.)) to make laws for "the peace, order, and good government of the Commonwealth with respect to ... the naval and military defence of the Commonwealth," and with respect to "matters incidental to the execution" of this power (pl. *xxxix.*). At first sight, the argument is startling to common sense. How can an Act providing for the protection of private windows from unruly citizens be treated as an Act "with respect to" the defence of the Commonwealth—defence from the foreign enemy and his adherents? The property in question is not even property of the Defence Department. No doubt every good thing that we get under our internal policy contributes to the strength of the nation against aggression. Civic peace contributes; but so do good sewerage, good education, a good tramway system. But Acts on these subjects are surely not Acts "with respect to ... the naval and military defence of the Commonwealth." The connection is too indirect and remote.

But the respondent relies on the decision of this Court in the case of *Farey v. Burvett*[9]. In that case it was held that the *War Precautions Act 1914-1916* was valid in so far as it provided (through governmental regulation) limits for the price of bread in certain populous localities. Defence is a matter of force—force to be used against the enemy; and if that force is likely to be diminished by scarcity of bread, by excessive prices of bread, or dissipated in the riots which so commonly accompany the want of bread, it may well be a defence measure to keep the price of bread low. As in the case of a besieged city it may well be necessary or expedient, for the purposes of defence, to provide for sufficient food for all the inhabitants, and at fixed prices. Moreover, the very sub-section of the *War Precautions Act* which gave the power to make regulations fixing prices (sec. 4 (1A)) specified "the more effectual defence of the Commonwealth" as an object to be aimed at by the regulations. In short, Parliament treated the fixing of prices as conducing to the defence of the Commonwealth; and, in my opinion, we are bound to accept the statement of Parliament that it does so conduce unless we can see that the statement is obviously untrue or absurd. Parliament in the *Bread Case*[10] legislated expressly "with respect to" defence. It is not for us, it is for Parliament, to say whether the measure is effectual or futile, wise or unwise; it is not for us to listen to evidence as to the necessity of the measure under the circumstances. It so happens that, before the passing of the Act now in question, the wharf labourers of Melbourne had refused to load ships with flour destined for Great Britain and our Allies until the price of bread here should be reduced. They were persuaded to abandon this attitude and to trust to Parliament; and Parliament may well have considered that in providing for the fixing of prices they were providing for "the more effectual defence of the Commonwealth" (as the section expressly says), by securing cheap bread and the supply of food for Great Britain and her Allies and the allied armies. But there is no such statement of a defence purpose in the Act now in question. There is no reference to defence at all. There is no indication of any intention to execute by this Act the power to make a law "with respect to defence." I do not go so far as to say that there must be a recital of an intention to exercise power under sec. 51 (VI.); but—on the principles applied in the case of ordinary powers of appointment—it must be clear on the face of the instruments that the donee of the power intended that the price of bread should be fixed for the purposes of defence, that the donee meant to use the power conferred by sec. 51 (VI.) of the *Constitution*. The intention to execute the power in question must appear on the face of the document (*Sugden on Powers*, 8th ed., p. 289; *Lake v. Currie*[11]; *Cuninghame v. Anstruther*[12]). This principle becomes all the more vital when the Commonwealth Parliament

purports to enact a law which, under ordinary circumstances, is within the competence of the State Parliaments only.

In the present case, if the appellant were prosecuted under the appropriate Victorian law, she would, it appears, be liable as an abettor or counsellor of the misdemeanour, to two years' imprisonment (*Crimes Act 1915*, secs. 197, 238, 319); whereas under this Federal Act, she is liable to imprisonment for six months only. The States, then, can legislate, and have legislated effectually, for the protection of properties within their several boundaries; but no Parliament except the Commonwealth Parliament can provide a systematic regulation of the price of bread within Australia as a whole. Any such regulation would have to be on a uniform basis for Australia—I do not say uniform in prices for all parts of Australia, but framed on some uniform, general scheme; and the Federal Parliament only is competent to secure such uniformity. The connection between the power to defend Australia and maintaining the fighting force of Australia in full strength by regulations as to bread is direct and obvious; the connection between the power to defend Australia and the protection of property in the several States from injury is indirect and remote. It may be (I do not decide it) that if Parliament had expressly said in this Act, as it said in the *War Precautions Act*, that the provision was for the "defence" of Australia we should be bound to accept the statement. But Parliament has not said so. The Act has the following recital:—"Whereas an association known as the Industrial Workers of the World and members thereof have been concerned in advocating and inciting to the commission of divers crimes and offences: And whereas it is expedient for the effective prosecution of the present war that laws shall be enacted for the suppression of such practices: Be it therefore enacted" &c. I may say in passing that it is not pretended that the appellant is a member of the Industrial Workers of the World. But the point is that Parliament has not purported to legislate under the defence power (sec. 51 (VI.)). It purports, indeed, to make the law "for the effective prosecution of the present war"; but that is not necessarily the same thing. For instance, one can conceive of a position in which all danger to Australia has vanished, and yet the War—the same war—is still being prosecuted for the purpose of obtaining Constantinople for the Greeks or the Russians, or Jerusalem for the Jews, or Dalmatia for Italy. For aught that appears, the draughtsman may have thought that the constitutional limitations were suspended during the War, and that any Act aimed at the effective prosecution of the War would, under all circumstances and for all purposes, be treated as valid. But the constitutional limitations are not suspended; we have to decide in accordance with the Constitution.

The limits of the war powers of the President and Congress of the United States were severely strained in the Civil War of 1861-1865. The war gave birth to a host of crimes which were not previously punishable by law. The list is given in *Whiting's War Powers*, p. 117—a book which reached its forty-third edition in 1871; but there is no trace of any Statute making it illegal to injure or to encourage injury of private property. The war proclamation of the President emancipating the slaves was based on his right as commander-in-chief to embarrass or weaken the enemy, to strengthen the military power of the Union armies. The slaves who were forced to fight for the South were now enabled to fight for the North. The President clearly acted as for the "common defence" in his proclamation. So far as I can find, there is no precedent in any defence legislation of Congress for any such legislation as we have here to consider. But Congress has legislated in the present war for the sale by the President at reasonable prices of wheat, flour, meal, beans and potatoes, and for fixing the prices of coal and coke. This appears in an Act which expressly recites that the measure is "essential to the national security and defence."

I felt when we were deciding *Farey v. Burvett*[13], and I still feel, that the greatest care is needed in watching the attempts to extend the limits of this defence power. I see no reason whatever to doubt

the propriety of the decision in that case; but that case does not involve the doctrine that any law that the Federal Parliament may make on any subject in time of war is valid. The Federal Parliament is not empowered by the Constitution to make any law that it likes for "the peace, order, and good government of Australia"; but it is empowered to make any law for the peace, order, and good government of Australia "with respect to ... the naval and military defence of the Commonwealth." I see that in my judgment in *Farey v. Burvett* I applied my mind to the net result of the three steps—Act, regulation, order. The net result was that the price of bread was fixed, and under the authority of Parliament legislating with respect to defence. Power was conferred on the Governor-General to make regulations "for the more effectual prosecution of the War, or the more effectual defence of the Commonwealth" as to (*inter alia*) "the conditions (including times, places and prices) of the disposal or use of any property goods articles or things of any kind." If it be said that the words just quoted involve a purpose which is legitimate—"the more effectual defence of the Commonwealth," and also a purpose which may possibly become illegitimate—"the more effectual prosecution of the War," my answer is that the latter purpose is not necessarily to be carried out illegitimately. The War as it at present exists may surely be treated as a war for the defence of Australia (as well as for the defence of the Empire and of the world), although the operations are carried out in distant parts. If a power be conferred which, according to its tenor, may be exercised either lawfully or unlawfully, the power is not invalid, but if it be exercised unlawfully the execution is invalid. For instance, a power is not bad for remoteness because some of the objects thereof are not within the limits allowed by the law against perpetuities; inasmuch as those objects may be selected to whom a valid appointment may be made (*Attenborough v. Attenborough*[14]; *Slark v. Dakyns*[15]; *Routledge v. Dorril*[16]; *In re Veale's Trusts*[17]). There is this distinction between the *Bread Case* and this case: that in the former we were dealing with a power executory, perhaps too wide in its tenor, but which was exercised lawfully (so far as appeared) by the donee of the power, the Governor-General; whereas in this case we are dealing with a power executed—executed by Parliament, for a purpose which is not, taken by itself, sufficient in law under all circumstances—"the effective prosecution of the War."

I venture to say that if the Federal Parliament pass a Bill for the protection of private property, it must, at the very least, show by express words or necessary intendment that it regards the law as necessary or expedient for the distinctive object of the defence of Australia, that it is applying its mind to the defence of Australia.

For these reasons—reasons which, I must admit, have not been fully discussed—I am of opinion that the conviction should be quashed on the first ground, but not on the third. The second ground is not pressed.

Gavan Duffy J.

In my opinion the validity of sec. 4 of the *Unlawful Associations Act 1916-1917* is established by the judgment of the majority of the members of this Court in *Farey v. Burvett*[18] declaring the validity of sec. 4 of the *War Precautions Act 1914-1916*. If the section is valid the veidence warranted a conviction, and the order *nisi* must be discharged.

Powers J.

I agree with my learned brothers that there was evidence before the Magistrate sufficient to enable him to properly find that the appellant did encourage the injury of property within the meaning of sec. 4 of the *Unlawful Associations Act 1916-1917*. The ground that the section in question is an

infringement of sec. 80 of the *Constitution* was abandoned by counsel for the appellant. The third ground of appeal was that sec. 4 of the *Unlawful Associations Act* is beyond the powers of the Constitution. I concurred in the judgment of this Court in *Farey v. Burvett*[19]. I agree with the judgment delivered by my brothers *Barton* and *Isaacs*, and the reasons given by them why sec. 4 of the Act in question is valid.

I agree that the appeal should be dismissed.

Rich J.

I agree that there was evidence that the defendant encouraged the injury of property within the meaning of sec. 4 of the *Unlawful Associations Act 1916-1917*.

With regard to the validity of the section I consider that this case is *à fortiori* to *Farey v. Burvett*[20], which is binding on me.

Appeal dismissed and order nisi discharged with costs.

Solicitors for the appellant, Loughrey & Douglas.

Solicitor for the respondent, Gordon H. Castle, Crown Solicitor for the Commonwealth.

[1] 7 Q.B.D., 244.

[2] [1916] HCA 36; 21 C.L.R., 433.

[3] [1916] HCA 36; 21 C.L.R., 433.

[4] 21 C.L.R., at p. 455.

[5] (1916) 2 A.C., at p. 106.

[6] [1916] HCA 36; 21 C.L.R., 433.

[7] [1916] HCA 36; 21 C.L.R., 433.

[8] (1916) 2 A.C., at pp. 106-107.

[9] [1916] HCA 36; 21 C.L.R., 433.

[10] [1916] HCA 36; 21 C.L.R., 433.

[11] 2 D. M. & G., 536, at pp. 547-548.

[12] L.R. 2 H.L., Sc., 223, at p. 223.

[13] [1916] HCA 36; 21 C.L.R., 433.

[14] 1 Kay & J., 296.

[15] L.R. 10 Ch., 35.

[16] [1794] EngR 2273; 2 Ves. Jun., 357, at p. 362.

[17] 4 Ch. D., 61; 5 Ch. D., 622.

[18] [1916] HCA 36; 21 C.L.R., 433.

[19] [1916] HCA 36; 21 C.L.R., 433.

[20] [1916] HCA 36; 21 C.L.R., 433.

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