14/99; [1999] FCA 322

FEDERAL COURT OF AUSTRALIA

GUILLOT and Ors v HENDER and Ors

Wilcox, Finn & Kenny JJ

17 February, 29 March 1999 — (1999) 86 FCR 294; (1999) 104 A Crim R 598

CRIMINAL LAW – IMPOSITION ON COMMONWEALTH AUTHORITY – FALSE STATEMENTS MADE TO AUTHORITY – ELEMENTS OF OFFENCE CREATED BY S29B *CRIMES ACT* 1914 (CTH) – WHETHER OFFENCE REQUIRES PROOF THAT BENEFIT ACQUIRED OR DETRIMENT FLOWED TO AUTHORITY – DEFENDANTS COMMITTED FOR TRIAL – WHETHER EVIDENCE BEFORE MAGISTRATE DISCLOSED AN OFFENCE KNOWN TO LAW: *CRIMES ACT* 1914, S29B.

Section 29B of the *Crimes Act* 1914 ('Act') provides:

"Any person who imposes or endeavours to impose upon the Commonwealth or any public authority under the Commonwealth by any untrue representation, made in any manner whatsoever, with a view to obtain money or any other benefit or advantage, shall be guilty of an offence.
Penalty: Imprisonment for 2 years."

G. and others who were masters of fishing vessels made incorrect statements to a Commonwealth Authority by allegedly understating the actual amount of fish they unloaded and consigned. When the false representations were made there was no valid quota scheme in operation and there was no lawful restriction upon the quantity of fish they could catch. On the committal hearing of charges against G. and others under s29B of the Act, G. submitted that the evidence disclosed no offence known to law. The magistrate rejected this submission and committed each defendant for trial. Upon appeal—

HELD: Appeal dismissed.
1. The elements of the offence in the present case are:
(a) that the defendant imposed on a public authority by a representation that was untrue to the knowledge of the defendant
(b) that the representation was made for the purpose of obtaining money or some other benefit or advantage.
***Bacon v Salamane* [1965] HCA 22; 112 CLR 85; [1965] ALR 843; 39 ALJR 27, applied.**

2. What is imposed on the public authority is the untrue representation which actually misleads or deceives the authority. The acquisition of a benefit by the defendants or the sustaining of a detriment by the public authority are not essential ingredients of the offence under s29B of the Act. In order to establish an imposition, the Crown is required to establish that the public authority was deceived or misled by the representations. It is not necessary for the Crown to establish that the authority acted in reliance on the representations; however, proof of reliance would be relevant in an evidentiary sense to show that the authority had in fact been misled.
***R v Wescombe* [1987] VicRp 83; [1987] VR 1012; (1987) 79 ALR 357; (1987) 25 A Crim R 337, considered.**

3. Notwithstanding that there was no valid quota scheme in operation when the false representations were made, the magistrate was not in error in rejecting the submission that the offences with which the defendants were charges were unknown to law.

THE COURT:

1. This is an appeal from a decision of a judge of the Court, dismissing four applications, under the *Administrative Decisions (Judicial Review) Act* 1977 (Cth), for review of the decision of the first respondent ("the Magistrate") that the appellants be committed for trial. In the case of the first, second and third appellants, respectively David John Guillot, John Cameron Stuckey and Stanley Wayne Murray, the Magistrate's decision was that they be committed for trial in respect of charges that, contrary to s29B of the *Crimes Act* 1914 (Cth), they imposed or endeavoured to impose upon a public authority under the Commonwealth, being the Australian Fisheries Management Authority ("AFMA"), by an untrue representation with a view to obtaining a benefit or advantage. In the case of the fourth appellant, John Theodore, the Magistrate's decision was that he be committed for trial in respect of charges that, contrary to s5 of the *Crimes Act* 1914,

he was knowingly concerned in the contraventions of s29B by the other appellants. The ground of review relied on by each appellant was that the evidence before the Magistrate disclosed no offence known to law. Each case concerned allegedly incorrect statements about catches of orange roughy.

2. In accordance with the usual practice, the Magistrate took no part in the proceeding for review of his decision. However, the informant, Stephan Nicholas Obers, appeared by counsel to support the Magistrate's decision. Counsel for Mr Obers also appeared before us to support the primary judge's decision to reject the application for review.

THE FACTS

3. For the purpose only of the review applications the parties agreed certain facts, which may be conveniently summarised in the following way. (The facts as summarised are in substantially the same terms as they were agreed to be stated.)

> (1) Each of the first, second and third appellants was the master of a fishing vessel. The fourth appellant was an employee of one John Charles Guillot (not to be confused with the first appellant, David John Guillot). John Charles Guillot held licences under s9(2) of the *Fisheries Act* 1952 ("the 1952 Act") in respect of the first, second and third appellants' fishing vessels. Subject to certain terms and conditions, the licences authorised the use of the vessels for the taking of fish in what is called the South East Fishery ("the SEF"). The SEF covers the area of the Australian Fishing Zone ("the AFZ") extending southward from Barranjoey Point (north of Sydney) around the New South Wales, Victorian and Tasmanian coastlines to Cape Jarvis in South Australia.
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> (2) From 1 January 1992 the SEF was to be managed in accordance with the South East Fishery (Individual Transferable Quota) Management Plan 1991 ("the 1991 Plan"), which was promulgated under and in accordance with s7B of the 1952 Act. Under the 1991 Plan the SEF was to be managed by a system of Individual Transferable Quotas ("ITQ"). The 1991 Plan allocated ITQs to eligible operators, according to the formula set out in it, for sixteen of the major commercial species of fish in the SEF. A Total Allowable Catch ("TAC") was set each year for each relevant species. The total number of quota units in the SEF for a species was divided into the TAC to give the kilogram value of a quota unit. The number of units held by a person dictated the total tonnage that that person was permitted to take in the fishing year. Under the 1991 Plan, a person could apply to have quota units assigned to a boat. Further quota units could be leased and the boat was permitted to take fish equivalent to the kilogram value of the assigned or leased quota units in a season. A licence-holder's entitlement to further catches of orange roughy at any given point in a quota year was determined by the initial quota allocation, plus or minus any leases, less any recorded orange roughy catches for the year.
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> (3) Between February and August 1992, each of the first, second and third appellants knowingly made false statements to AFMA in respect of a quota of orange roughy pertaining to his fishing vessel in that he made "an untrue representation as to the actual amount of orange roughy unloaded and consigned from [his] vessel ... with a view to obtain a benefit, namely to enable [him] to fish further for an amount of orange roughy equivalent to the undeclared amount". The false statements were made on forms known as SEF 2 forms, being forms prescribed under the 1991 Plan. The accurate weight of orange roughy and other quota fish unloaded from each vessel was supposed to be recorded on the SEF 2 forms which the master of the vessel then signed and dated, certifying that the information was a complete and accurate record. Misreporting and non-reporting of orange roughy caught in the SEF could have a significant impact on the setting of the TAC as catch information was one of two sources of information used to determine stock size and harvest strategy.
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> (4) On various occasions between February and July 1992, the fourth appellant was knowingly concerned in the making, by the first, second or third appellant, of false statements to AFMA as to the actual amount of orange roughy unloaded and consigned from each of the relevant vessels.
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> (5) Each appellant was paid a percentage of the value of the catch. The amount of the undeclared orange roughy was considerable.
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> (6) The 1952 Act (save for Part IVA) was repealed with effect from 3 February 1992 by virtue of the *Fisheries Legislation (Consequential Provisions) Act* 1991 ("the Consequential Provisions Act") and replaced by the *Fisheries Management Act* 1991. By virtue of s6(1) of the Consequential Provisions Act, any licence issued under s9 of the 1952 Act in force on 3 February 1992 continued in force until its expiry, surrender or cancellation as if the 1952 Act had not been repealed. The licences held by John Charles Guillot commenced on 30 January 1992 and continued in force until 31 December of that year.

> (7) On 19 February 1993, a Full Court of this Court held that paragraph 11 of the 1991 Plan was invalid. That paragraph dealt with the mechanism whereby ITQs were allocated to individual licence-holders: see *Minister for Primary Industries and Energy v Austral Fisheries Pty Ltd* [1993] FCA 45; (1993) 40 FCR 381; (1993) 112 ALR 211; (1993) 30 ALD 783. That decision also had the effect of rendering the requirement, in sub-regulation 18 of the regulations to the 1952 Act, to report and record catches of orange roughy inoperative, as the requirement had only applied to boats which had been assigned units of quota under paragraph 11 of the 1991 Plan. On 23 December 1994, in *Coleman v Gray* (1994) 55 FCR 412; (1994) 133 ALR 328; 79 A Crim R 1, a Full Court of this Court held that the 1991 Plan was, in substantial respects, invalid. So too were relevant Fisheries Notices and the conditions on licences which restricted fishing by reference to units assigned under the 1991 Plan.

4. The appellants' case, at first instance and on appeal, depended on the fact that, at the time the first, second and third appellants made the false representations, there was no valid quota scheme in operation and there was no lawful restriction upon the quantity of orange roughy which they could catch.

5. By the time the appellants filed their applications for review in this Court in November 1997, the criminal proceedings concerning them were well advanced. They were charged with the relevant offences in March and October 1995. A hand-up brief was later served on them. Committal proceedings began in July 1997 and concluded in August 1997. On 8 August 1997, they were committed to stand trial in the County Court at Melbourne and, on 17 December 1997, they were arraigned before that Court. The first, second and third appellants pleaded not guilty to counts of imposing and, in the alternative, endeavouring to impose. The fourth appellant pleaded not guilty to counts of being knowingly concerned in the impositions and, in the alternative, of being knowingly concerned in the endeavours to impose.

6. At the hearing at first instance, the second respondent relied on the principle against fragmentation of criminal proceedings in seeking, unsuccessfully as it turned out, to have the proceedings stayed or dismissed. There was no cross-appeal against his Honour's dismissal of the relevant Notice of Motion.

SECTION 29B OF THE *CRIMES ACT* 1914 (CTH)

7. The appellants' argument was that, since there had been no valid restriction imposed by the 1991 Plan upon the quantity of fish they could take from the SEF, they (1) had obtained no benefit from their untrue representations; (2) had not caused AFMA any detriment; and (3) had neither deceived nor got the better of AFMA. The appellants submitted that, in the circumstances, they had not committed any offence under s29B of the *Crimes Act* 1914.

8. Section 29B is part of a group of sections (s29A, s29B, s29C and s29D) creating offences of dishonesty in connection with dealings with the Commonwealth or a Commonwealth public authority. Section 29B provides:

> Any person who imposes or endeavours to impose upon the Commonwealth or any public authority under the Commonwealth by any untrue representation, made in any manner whatsoever, with a view to obtain money or any other benefit or advantage, shall be guilty of an offence. Penalty: Imprisonment for 2 years.

9. Two offences are created by s29B, first, imposition and, secondly, endeavouring to impose. The offence of endeavouring to impose is comparable with an attempt to commit an offence: see *Will v Borcherdt (No 2)* [1991] 2 Qd R 230 at 237-8 per Dowsett J with whom Kelly SPJ and Connolly J agreed. Imposition and, in the alternative, endeavouring to impose have been pleaded against each of the first, second and third appellants, and the pleading against the fourth appellant reflects that fact.

10. The counts to which the fourth appellant has pleaded not guilty are framed in terms of s5 and s29B of the *Crimes Act* 1914. Section 5 relies upon derivative accessorial responsibility and renders a person knowingly concerned in an offence (here, under s29B) a principal to that **[6]** offence. The principles discussed below apply to the fourth appellant, as to both the offence of imposition and the offence of endeavouring to impose.

11. The questions raised on this appeal turn almost entirely upon the construction of s29B. However, it is interesting to note the context of the section. On the one hand, s29B is to be

contrasted with s29A and s29D. Section 29A, in subs (1), makes it an offence for any person, with intent to defraud, by false pretence, to obtain any chattel, money, valuable security or benefit from the Commonwealth or any Commonwealth public authority. In sub-section (2), s29A makes it an offence for any person, with intent to defraud, by false pretence, to cause money to be paid, or any chattel, valuable security or benefit to be given, by the Commonwealth or Commonwealth authority to a third person. The maximum penalty for an offence under s29A is five years' imprisonment. Section 29D makes it an indictable offence to defraud the Commonwealth or a Commonwealth public authority, and that offence attracts a maximum penalty of 1,000 penalty units, or ten years' imprisonment, or both. Section 29B can, on the other hand, be compared with s29C which makes it an offence to make any untrue statement in or in connection with or in support of any application to the Commonwealth, a Commonwealth officer, or Commonwealth authority, "for any grant, payment or allotment of money or allowance under a law of the Commonwealth". The offence described in s29C, like that described in s29B, also attracts a maximum penalty of two years' imprisonment. While these statutory penalties are not determinative of the question, the differences between them may serve as some indication that s29B (and s29C) create less serious offences than do s29A and s29D: cf *Ibbs v The Queen* (1987) 163 CLR 447 at 452.

12. Section 29A in terms requires that the representor obtain something in the nature of a benefit. It is of the nature of fraud, including the kind referred to in s29D, that the fraudster causes some loss or damage to the Commonwealth or Commonwealth public authority. There is nothing in the terms of s29B and s29C, or in the nature of the offences they create, to require similar elements to be read into them. Section 29C requires that the grant, allowance etc. for which application is made be a grant, allowance etc. "under a law of the Commonwealth". The benefit or advantage referred to s29B is not similarly qualified.

ELEMENTS OF AN OFFENCE UNDER S29B

(a) Untrue representation with a view to a benefit

13. The comparison with s29C and the contrast with s29A and s29D assists in determining the elements of an offence under s29B. They were stated by Owen J in *Bacon v Salamane* [1965] HCA 22; 112 CLR 85 at 92; [1965] ALR 843; 39 ALJR 27 to be as follows:

> The necessary elements of the offence in a case such as the present are
> (1) that the person charged imposed upon the Commonwealth or upon a public authority under the Commonwealth by an untrue representation, that is to say untrue to the knowledge of the person charged; and
>
> (2) that the representation was made with a view to obtain, that is to say with the object or for the purpose of obtaining, money or some other benefit or advantage.

14. It may be as well to make clear that what is imposed upon the Commonwealth or public authority under the Commonwealth is the untrue representation (which, as will be seen, in the case of an imposition, as distinct from an endeavour to impose, actually misleads or deceives the Commonwealth or relevant authority). The representation need not serve as a means by which some further burden or detriment is imposed upon the Commonwealth or a relevant authority. Windeyer J emphasised this point in his reasons for judgment, in which he was in substantial agreement with Owen J. As Windeyer J said (at 90):

> A person who makes an untrue representation, and *thereby* imposes upon the Commonwealth or any public authority under the Commonwealth, with a view to obtaining [a benefit] is therefore in my opinion guilty of the offence created by s29B of the Commonwealth *Crimes Act*. [Emphasis added.]

Owen J went on to say (at 92-3):

> If these facts are proved, the offence is committed and, except as a step towards showing that the Commonwealth or the public authority was imposed upon, it does not appear to me to be relevant to enquire whether the representor obtained anything as the result of his representation. Nor does it seem to me to be relevant to consider whether what he obtained, if he did obtain something, was beneficial to him. The question is, what was his purpose in making the false representation? Was it with the view to obtaining money or some other benefit or advantage?

Barwick CJ and Menzies J agreed in the judgments of both Windeyer J and Owen J.

(b) No requirement of benefit or detriment

15. The appellants' case was that the offence created by s29B had additional elements. These were (1) a consequential benefit flowing from the making of the representation to the person charged; (2) detriment to the Commonwealth or relevant authority flowing from reliance on the untrue representation; and (3) the person charged having deceived or got the better of the Commonwealth or relevant authority in some way. But the submission that, absent such a benefit, the appellants could not commit an offence under s29B is at odds with the approach taken by the majority in *Bacon v Salamane*. Further, the majority judgments also imply that it is unnecessary to show that the Commonwealth or Commonwealth authority suffered any detriment (over and above being misled or deceived). Any such detriment could only be relevant, in an evidentiary sense, to the question whether the Commonwealth or the authority was actually misled. (The relevance of this latter matter is discussed further below.) Only the observations of Taylor J at 88-89, afford the appellants any support, and his Honour was in dissent.

16. The appellants submitted that *Bacon v Salamane* was distinguishable. That case turned, their counsel said, on the question whether, in order to make out an offence under s29B, employment with the Commonwealth (acquired as a result of the misrepresentation) was something capable of being a benefit or advantage in view for the purpose of s29B. The case did not, so counsel submitted, turn on a relevant question, i.e., whether the acquisition of a benefit or advantage by the person charged was an essential ingredient of the offence. The suggested distinction is not, however, a valid basis for distinguishing *Bacon v Salamane*. Further, even if it were open to us to do so, we would not accept the appellants' alternative submission that *Bacon v Salamane* was wrongly decided. The majority judgments plainly reflect the terms of s29B. The decision, particularly the passage from Owen J's judgment set out above, has been relied upon in courts in Australia on numerous occasions, and without any expressions of doubt: see *Will v Borcherdt (No 2)* [1991] 2 Qd R 230; *R v Wescombe* [1987] VicRp 83; [1987] VR 1012; (1987) 79 ALR 357; (1987) 25 A Crim R 337; *R v Baxter* [1988] 1 Qd R 537; 84 ALR 537; (1987) 88 FLR 456; 27 A Crim R 18; *Jacobsen v Piepers* [1980] 2 Qd R 448; (1980) 51 FLR 247; (1980) 32 ALR 293; 48 ALT; *R v Lockett* (1980) 24 SASR 54; (1980) 41 FLR 164; (1980) 27 ALR 444; (1980) 2 A Crim R 374; and *Lamb v Toledo-Berkel Pty Ltd* [1969] VicRp 43; [1969] VR 343; (1968) 14 FLR 181.

17. If *Bacon v Salamane* applies to this appeal, as we think it does, it follows that the appellants fail on the first two limbs of their argument (that the acquisition of a benefit by them, or the sustaining of a detriment by AFMA are essential ingredients of the offence).

18. In support of their submission that, in order for an offence under s29B to be made out, some benefit must be shown to have accrued to them, the appellants relied on two decisions more recent than *Bacon v Salamane*, namely, *Jacobsen v Piepers* [1980] 2 Qd R 448; (1980) 51 FLR 247; (1980) 32 ALR 293; 48 ALT and *R v Wescombe* [1987] VicRp 83; [1987] VR 1012; (1987) 79 ALR 357; (1987) 25 A Crim R 337. Neither case assists the appellants.

19. So far as presently relevant, the Full Court of the Supreme Court of Queensland held in *Jacobson v Piepers*, first, that there is a necessary *mens rea* in the offence of imposition. That is, s29B requires an untrue representation, knowingly made, with a view to obtaining a benefit or advantage. In that case, the person charged had used an adopted name in the course of applying for a bankcard. As the name had not been adopted for the purpose of the application, the Court held that the *mens rea* requirement was not met: see [1980] 2 Qd R 448 at 450-1 per Douglas J and 457-8 per Connolly J. Secondly, the Court held that, if a representor made an untrue representation, knowingly, with a view to obtaining a benefit or advantage, an offence under s29B might be committed, even though the representation was not made directly to the Commonwealth or a Commonwealth authority but to a third party with a view to it being passed on to the Commonwealth or a Commonwealth authority: see [1980] 2 Qd R 448 at 451-2 per Douglas J and 459 per Connolly J. We do not think that WB Campbell J, at 456, intended to say that the offence of imposition would not be made out *unless* a benefit was acquired by the representor or a loss suffered by the Commonwealth or Commonwealth authority. His Honour was merely observing that, in the case at hand, the person charged had in fact acquired a benefit and the authority had actually suffered a loss. Both those matters had a bearing on whether, in an evidentiary sense, it had been established, beyond reasonable doubt, that the person charged had committed the offence against the authority.

20. *R v Wescombe* is a decision of the Full Court of the Supreme Court of Victoria. It is plainly authority against the present appellants. Wescombe had used a taxi voucher in the name of Jones, drawn on the Australian Broadcasting Corporation. Wescombe said, in his defence, that he had originally filled in the voucher in the name of Jones for the use of a Mr Jones. As Mr Jones had not needed it and as he, Wescombe, was entitled to take a taxi at the Corporation's expense when he was carrying heavy equipment, he had used the voucher for the purpose of taking such equipment home in a taxi. Counsel submitted on Wescombe's behalf that "impose upon" in s29B means "cheated or defrauded" and that Wescombe had plainly done neither. Murray and McGarvie JJ rejected the submission. In considering *Bacon v Salamane*, Murray J said, at 1016:

> It will be seen that the judgments of the High Court did not turn upon the question of whether the respondent cheated or defrauded the Commonwealth in the sense that he was not able to perform the work or that the Commonwealth suffered in some other way by reason of his employment. The High Court considered that the offence was established if it was proved that he made a false representation for the purpose of obtaining a benefit or advantage. ...

It follows in my opinion that it is not necessary for the Crown to negative the claim by [Wescombe] that he did not obtain a benefit or advantage to which he was not entitled by reason of the fact that if he had not used the voucher in the name of Jones he could have issued a voucher in his own name and would have been entitled to do so.

21. There was no material difference between Murray J and McGarvie J. McGarvie J held, at 1016-7, that it was unnecessary to establish that the person charged had cheated or defrauded, or endeavoured to cheat or defraud the Commonwealth or Commonwealth authority and that it did not matter that there was no detriment (save for the deceiving or misleading). What his Honour said, at 1016-1017, was as follows:

> For the applicant reliance is placed on what was said as to the meaning of "impose upon" in *Hansen v Archdall* [1930] HCA 16; (1930) 44 CLR 265; [1930] ALR 258 and in *Lamb v Toledo-Berkel Pty Ltd* [1969] VicRp 43; [1969] VR 343; (1968) 14 FLR 181. The meaning given to the words in those cases was not cheat or *defraud*. In the first case the meaning given was "cheat or *wilfully deceive*" (at p270, per Isaacs CJ and Gavan Duffy J) or "*deceive* or get the better of" (at p274, per Rich J). In the latter case Starke J (at pp 345-6) treated the words as meaning "cheat or *wilfully deceive*". (My emphasis in each instance.) While cheating and defrauding import the causing of a detriment, wilfully deceiving does not ordinarily involve the imposition of a detriment. The words used in the cases above indicate that a person imposes upon the Commonwealth or authority either by cheating it or by wilfully deceiving it. Cheating involves both wilfully deceiving and causing a detriment to the Commonwealth authority. If the applicant did what he said he did, that clearly amounted to wilfully deceiving the Commonwealth authority in the sense of wilfully misleading it. ... While intention to mislead is sufficient, often a person with that intention will also intend by misleading the Commonwealth or authority to cause it detriment — in other words will intend to cheat and defraud it.

22. *Wescombe* is authority for the proposition that, in order to make out the offence of imposition or endeavouring to impose, the Crown must prove, to the requisite standard, that the person charged had an intention to mislead (or deceive). That case is also authority for the proposition that the offences can be made out even though the person charged obtained no benefit, and the Commonwealth or Commonwealth authority suffered no detriment. In *Wescombe,* the only support for the appellants is to be found in the judgment of Nicholson J, and his Honour was in dissent.

23. The appellants submitted that the Court should accept the expression "deceive or get the better of" as a synonym for "impose upon". The expression was used by Rich J in *Hansen v Archdall & Smith* [1930] HCA 16; (1930) 44 CLR 265 at 274; [1930] ALR 258 in discussing s3 of the *Vagrant Act* 1851 (Qld). Whilst perhaps a helpful gloss in that context, it does not greatly assist in the resolution of this case. There may be cases under s29B where it can be said that the person charged "got the better of" the Commonwealth, in the sense that the person charged derived a benefit and the Commonwealth suffered some detriment, as a result of the false representation. That is not, however, an essential element of the offence, as *Bacon v Salamane* and subsequent cases, such as *Wescombe,* make clear.

(c) An imposition, as distinct from an endeavour to impose, requires deception, but not reliance

24. The intention of the person charged is, of course, to be distinguished from the effect, if

any, of the false representation on the Commonwealth or relevant Commonwealth authority. In order to establish an imposition, as distinct from an endeavour to impose, the Crown is required to establish that the Commonwealth or Commonwealth authority was deceived or misled by the representation, although we do not think it necessary for the Crown to establish that the Commonwealth or Commonwealth authority acted in reliance on the representation: cf *Will v Borcherdt (No 2)* [1991] 2 Qd R 230 at 238 and contrast *R v Baxter* [1988] 1 Qd R 537 at 540-543; 84 ALR 537; (1987) 88 FLR 456; 27 A Crim R 18. Proof of reliance would, plainly enough, be relevant, in an evidentiary sense, to show that the Commonwealth or Commonwealth authority had in fact been misled.

25. We accept that it would, as the second respondent submitted, be open to a jury to convict the first, second and third appellants of endeavouring to impose in circumstances where the jury were not satisfied beyond reasonable doubt that the appellants had successfully misled AFMA, providing the jury were satisfied beyond reasonable doubt that the appellants had made a false representation to AFMA, knowing it to be false, and with a view to obtaining a benefit. It might, for example, be shown that the appellants had been under investigation by AFMA at the time of the alleged offence.

26. As it turns out, there is no need to consider whether the appellants in fact received a benefit by reason of the false representations made by the first, second and third appellants. It may be conceded that, if the appellants had known that the 1991 Plan and relevant Fisheries Notices and licence conditions were invalid, they may not have made false declarations as to the amount of their catch. Had they known the real position, they may have had no motive to commit an offence under s29B. It does not follow that the offences, if committed, were illusory offences. At first instance, counsel for the appellants conceded that "there was a significant misrepresented understatement leading to a significant economic benefit to" them. In contrast to honest operatives who correctly stated their catch, the appellants were not constrained by AFMA to limit the amount of their catch to the quotas fixed, albeit invalidly, by the authority. They did not suffer the detriment to which honest operators were subject, being no less a detriment because imposed unlawfully. In those circumstances, it might well be said that the benefit in view was, in a practical sense, a benefit in fact acquired.

27. For these reasons, we reject the central proposition on which these appeals turned, namely, that because the 1991 Plan and associated instruments were invalid from the time they were made or issued, the offences, to which the appellants have pleaded not guilty, are offences unknown to the law. We would dismiss the appeal.

APPEARANCES: For the appellants Guillot & Ors: Mr P Hayes QC with Mr O Holdenson QC, counsel. McMahon Fearnley, solicitors. For the second respondent Obers: Ms L Lieder QC, counsel. Commonwealth DPP.
