

1941.

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 PARLIAMENT OF NEW SOUTH WALES.
 

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# REPORT

OF THE

# ROYAL COMMISSION

(The Honourable Mr. Justice Maxwell, Royal Commissioner)

APPOINTED TO INQUIRE INTO AND REPORT UPON

the question whether The Honourable Vernon Haddon Treatt, Minister of Justice for the state of New South Wales, was guilty of any improper conduct in recommending the reduction of a fine imposed upon the Abbco Bread Company Proprietary Limited.

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 1941.



**ROYAL COMMISSION APPOINTED TO INQUIRE INTO AND  
REPORT UPON THE QUESTION WHETHER THE  
HONOURABLE VERNON HADDON TREATT, MINISTER  
OF JUSTICE FOR THE STATE OF NEW SOUTH WALES,  
WAS GUILTY OF ANY IMPROPER CONDUCT IN  
RECOMMENDING THE REDUCTION OF A FINE IMPOSED  
UPON THE ABBCO BREAD COMPANY PROPRIETARY  
LIMITED.**

**REPORT.**

TO HIS EXCELLENCY, THE RIGHT HONOURABLE JOHN DE VERE, BARON WAKEHURST, Knight Commander of the Most Distinguished Order of Saint Michael and Saint George, Captain in the Reserve of the Territorial Army, Governor of the State of New South Wales and its Dependencies, in the Commonwealth of Australia.

MAY IT PLEASE YOUR EXCELLENCY:

By commission under the hand of the Honourable Sir Frederick Jordan, Knight Commander of the Most Distinguished Order of Saint Michael and Saint George, by deputation from Your Excellency, I was appointed to inquire into and report upon the question whether the Honourable Vernon Haddon Treatt, Minister of Justice for the said State, was guilty of any improper conduct in recommending to Your Excellency that the fine of one thousand four hundred and thirty-eight pounds fifteen shillings (£1,438 15s. 0d.), imposed on or about the twentieth day of June, 1940, by the Court of Petty Sessions held at Glebe in the said State, upon the Abbeo Bread Company Proprietary Limited, be reduced to five hundred pounds (£500), and I was further required within the space of two calendar months from the date of my commission to certify in the office of the Premier at Sydney in the said State, what I should find touching the premises.

The first sitting of the Commission was held on Thursday, 13th March instant, when Mr. J. W. Shand (instructed by Mr. G. Moore Williams, of the Crown Solicitor's Office) appeared to assist the Commission. Mr. J. Cassidy, King's Counsel (instructed by Tress, Cocks & Maddox), appeared for the Honourable Vernon Haddon Treatt; and Mr. W. Dovey, King's Counsel, with Mr. Alan Taylor, of counsel (instructed by R. D. Meagher, Sproule & Co.), appeared for the Abbeo Bread Company Proprietary Limited.

Thereafter, sittings were held and evidence taken on Monday, 17th March, Tuesday 18th, Wednesday 19th, and Thursday 20th, upon which latter date addresses by counsel were heard.

I proceed now to deal with the several matters.

**HISTORY.**

What I call the history of this matter is divided into two periods (1) from the commencement up to the 6th August, 1940, this being the date on which the Minister's first decision was communicated; and (2) from the 6th August onwards.

(1) On the 13th June, 1940, an information was laid against Abbeo Bread Company Proprietary Limited, alleging that on entry and search of the defendant Company's bakehouse, at 681 Balmain-road, Leichhardt, and upon weighing certain of the bread therein (namely, 3,282 loaves), a deficiency was found in the due weight of such bread on the average of the whole weight of all the loaves of bread

of the same denomination and size; the deficiency alleged being 5,755 ounces. The charge was laid under Section 13 (1) of the Bread Act, No. 35 of 1901. So far as is material to this inquiry, that section is in these terms:—

“Any Justice of the Peace may whenever he sees fit and any Inspector of Weights and Measures duly appointed under the Weights and Measures Act, 1915, when directed by any such Justice may at reasonable times in the daytime enter into any bakehouse belonging to any baker or seller of bread to search for view weigh and try all such bread as may be then and there found and has been baked within 24 hours next preceding the time of being so searched for and tried.”

“Section 13 (4): If on the weighing of such bread any deficiency is found in its due weight on the average of the whole weight of all the loaves of bread of the same denomination or size which are then and there found and which have been baked within such period of 24 hours and which deficiency appears upon the view of any such Justice or is proved before any such Justice upon the oath of the party weighing the same then the person so offending shall be liable to a penalty of five shillings for every ounce of bread which is so found deficient unless it is proved on behalf of the parties against whom such information is made upon the oath of any respectable housekeeper that such deficiency wholly arose from some unavoidable accident in baking or otherwise or was occasioned by or through some contrivance or confederacy to injure the party accused.”

The hearing took place on the 20th June, 1940, before F. Grugeon, Esq., Stipendiary Magistrate. The Magistrate convicted, adding: “I do not accept that explanation. I propose to fix the penalty fixed by the Act. I feel it is a fixed penalty.” The Magistrate’s statement that he did not accept that explanation would appear to relate to the claim on behalf of the defendant Company, that the proved deficiency was due to “unavoidable accident,” a statutory defence (under Subsection 4 of Section 13). It is clear also that the Magistrate regarded himself as bound to impose the penalty of five shillings an ounce, as provided for in Subsection 4, he regarding it as a fixed penalty; there is nothing further in the depositions to indicate that the Magistrate would or would not have imposed a lesser penalty if he were free so to do.

On the 24th June a letter addressed by Dibbs, Crowther & Osborne, Solicitors for the Abbeo Company, to the Minister, was received by the Under-Secretary on the 26th June. This letter—settled by Mr. Ashburner, of counsel, who appeared for the Company on the hearing—sought a remission of the penalty upon the considerations set forth in the letter, largely based upon the evidence in the case. This letter was acknowledged by the Under-Secretary on the 27th June.

On the 28th June a notice of appeal to the Quarter Sessions against the conviction was lodged, in consequence of which the Under-Secretary on the 1st July minuted on the solicitors’ letter that the writers (of the letter) “be informed that as an appeal has now been lodged at Sydney Quarter Sessions against the conviction in question, no action will be taken on their application for remission of the penalty imposed until the appeal has been determined by the Court.”

On the 2nd July a letter in these terms was sent from the Under-Secretary to the Company’s solicitors. This, Mr. Nott, the Under-Secretary, stated in evidence was in accordance with the general procedure. (Q. 67, page 4 of the transcript.)

On the 12th July the appeal to the Quarter Sessions was withdrawn in Court and the conviction confirmed. These facts are duly noted on the papers.

On the 16th July, below the Under-Secretary’s minute of 1st July, 1940 (above), appears a note “referred to the Superintendent, Weights and Measures, for favour of information as to the facts of this case and his views on the attached application (for remission).” This, the Under-Secretary stated in evidence, followed the usual practice, reference being made in all such cases to the prosecuting department (Qq. 73/74).

Meantime, a letter was received from a Mr. Boss addressed to the Minister and dated 24th June, 1940. It was brought to the notice of the Minister, who informed the Under-Secretary that he would not see Mr. Boss (as requested by the writer) as he would receive nothing "in confidence" (Mr. Nott's evidence, Q. 57).

The Under-Secretary had, meantime, been interviewed by Mr. Osborne, solicitor, of Dibbs, Crowther & Osborne, when the Under-Secretary informed him that while the appeal was pending the Minister would not consider the application for remission; something was said about withdrawing the appeal, the Under-Secretary informing Mr. Osborne that it was entirely a matter for the appellant. The Under-Secretary did not advise Mr. Osborne to withdraw the appeal. (See Under-Secretary's minute, 17th October, 1940, and evidence, Qq. 80/81.)

On 13th July, 1940, Mr. H. J. Bate, M.L.A., wrote to the Minister enclosing a letter of the 27th June from Mr. W. G. McLeod, a director of Abcco Company, to Mr. Bate. Mr. Bate's letter was acknowledged by the Minister on the 16th July and was noted to the Under-Secretary in the ordinary course as appears by the file, on the 16th July.

On the 17th July the Superintendent of Weights and Measures forwarded his report to the Under-Secretary, who thereupon "referred to Mr. Grugeon (the Magistrate who tried the case) for favour of report"—see notation in file by Under-Secretary; this was in accordance with the general practice.

On the 22nd July the Magistrate made his report. Thereupon, the Under-Secretary made his submission to the Minister in accordance with the minute of the 26th July—in which he made a precis of all information, reports, letters and personal representations; the minute concludes "on the whole I cannot see any good ground for suggesting a reduction of the penalty."

The Under-Secretary's evidence was to the effect that, apart from the letters addressed to the Minister (above), the first connection of the Minister with the matter would be when he, the Under-Secretary, presented the minute of the 26th July and discussed it with the Minister. Mr. Nott fixes the date of the discussion "on or prior to 2nd August" (Q. 180), "but after 26th July," this being the date of the Under-Secretary's minute. Appended to that minute appears an abbreviated note in the Minister's handwriting, "No recommendation, 2nd August, 1940."

On the 6th August, Mr. Bate, M.L.A., Messrs. Dibbs, Crowther & Osborne, solicitors, the Clerk of Petty Sessions, Glebe, and the Superintendent, Weights and Measures, were all informed by letter from the Under-Secretary that the Minister "was unable to see his way to recommend the remission of any portion of the penalty."

This ends what I have called the first period in the history of the matter.

(2) The second period commences with the circumstance that following the communication by the Under-Secretary of the Minister's decision not to recommend the remission of any portion of the penalty, and on a date "about a fortnight before the 30th August" Mr. Crowther, of Dibbs, Crowther & Osborne, informed the Under-Secretary, by telephone, that further representations would be made asking that this matter be reconsidered.

On 30th August, 1940, the Under-Secretary noted "So far, no further representations have been received. Write a suitable letter to the firm of solicitors asking if it is intended to make any further representations, it be done without delay." A letter accordingly was sent on 30th August, 1940, in reply to which Messrs. Dibbs, Crowther & Osborne, by letter dated 2nd September, asked for further time and stated that they proposed to use in furtherance of their applica-

reports which they hoped to get from the Army authorities. In consequence, the Under-Secretary minuted "Will the Minister please state whether he desires action to enforce the conviction further stayed and if so for what period."

Up to this stage Dibbs, Crowther & Osborne alone acted as solicitors for the Abbeo Company. On the 27th August, R. D. Meagher, Sproule & Co. received instructions from Mr. McLeod, director of the Company, to act for the Company; for some period it would appear that Mr. Kinley of that firm acted as well as, though not in conjunction with, Mr. Crowther of Dibbs, Crowther & Osborne. The intervention of Messrs. Meagher, Sproule & Co. arose in this way. Mr. Crowther and Mr. Osborne, with Mr. McLeod, interviewed the Minister for Works and Local Government, Mr. Martin, M.L.A., as to "what representations and in what manner we should make them to the Minister." It was suggested that Mr. McKell, M.L.A., should be approached. (See Mr. Crowther's evidence, Q. 865.) Efforts were made to see Mr. McKell at his chambers, without success; but a message purporting to be from Mr. McKell was received by Mr. Crowther on the 1st October for him to see Mr. Sproule. Meantime, it would appear that Mr. Kinley had received instructions to act on the 27th August. There is nothing to suggest that the intervention of the new firm of Solicitors was at all irregular. All the papers were handed over by Mr. Crowther to Mr. Kinley—on what date it is not possible on the evidence to say. (See Q. 876.) It is clear, however, that the first step taken by Messrs. Meagher, Sproule & Co. was on the 3rd September when Mr. Sproule called with his partner, Mr. Kinley, on the Under Secretary; after the introduction of his partner, Mr. Sproule left. Mr. Kinley continued the interview and informed Mr. Nott that he was now acting for Abbeo and asked could action be stayed pending further representations. (See file and Qq. 194/195.) The next day—4th September—the Under Secretary saw the Minister who, in his own handwriting, minuted the papers as follows:—"Seen by the Minister who desires that action continue to be stayed, and papers re-submitted to him on 12th instant unless further representations received in the meantime. 4 Sept., 1940."

On the day following Mr. Bate, M.L.A., telephoned the Minister seeking an interview for himself and the Company's director, Mr. McLeod, and in the afternoon of the same day the interview was had. That which transpired at the interview was the subject of a minute by the Minister of the same date in these terms:—

"Pursuant to a telephone request by Mr. Bate, M.L.A., I received himself and a Mr. McLeod, director of the Abbeo Company, this afternoon.

Mr. Bate informed me that Mr. McLeod was a Bega boy, a country man and a man who would not dream of doing anything fraudulent.

He said that he had read the contract dealing with the supply of bread and that it was of such a character that wrongful intent did not come into the matter.

Mr. McLeod himself claimed that he intended to do nothing wrong. I asked him why doughs had been systematically scaled off at 2 lbs. 3 ozs. instead of 2 lbs. 4 ozs., and also why his Company had failed to appeal against the verdict. I requested him to deal with both these matters when making further representations which he informed were on the way. The Military authorities, he said, had been approached. I stated that on receipt of his further and full representations the matter would again be carefully considered. 5/9/40."

This minute accords substantially with the evidence of Mr. Bate (Q. 793 *et seq*), of the Minister (Q. 993 *et seq*) and Mr. McLeod (Q. 151 *et seq*). There is no room for doubt that the minute faithfully and correctly records the interview.

No further representations having been made by the 12th October (the date fixed by the Minister for resubmission), the Under Secretary minuted "As no further representations have yet been received from either Dibbs, Crowther & Osborne or Meagher, Sproule & Co., the Minister directs that a letter be written to both firms of Solicitors stating that if they desire to submit any further representations they should do so without any further delay. 16/9/40." Two letters were sent accordingly by the Under Secretary on the 17th September.

The next that follows is that Mr. Crowther saw the Under Secretary and informed him of his intention to make further representations at the earliest moment and that he would try to see the Minister personally. (Minute 23rd Sept., 1940. See also Mr. Nott's evidence Q. 207 *et seq* at page 7.)

The Under Secretary noted under the above "Resubmit on 27/9," meaning that he marked it on the 25th "to bring the papers to me on the 27th again" (Q. 213).

By letter dated 24th September, in reply to the Under Secretary's letter of the 17th September, Mr. Sproule informed the Under Secretary that they had received instructions to make further representations and expected to present the matter within a week.

In the file—and attached to this letter—is the Under Secretary's memorandum "Submitted for Minister's information. No further communication has so far been received from Dibbs, Crowther & Osborne. 27/9/40," and the Minister notes thereon "Bring up at end of week. 27/9/40." (See Mr. Nott's evidence Q. 217.) Accordingly the Under Secretary submitted the matter to the Minister—see the Under Secretary's notation in the file "Resubmitted. No representations have been received in this matter."; the Minister's minute follows: "The delay in making representations is unreasonable, conviction should be enforced. 4 Oct., 1940." The file shows and the fact is that letters were sent to the two Solicitors and to Mr. Bate (informing them of the Minister's decision to enforce the conviction) and to the Clerk of Petty Sessions, Glebe, in effect leaving the enforcing of the conviction in his hands.

On the 8th October Mr. Kinley of Meagher, Sproule & Co. wrote a letter to the Minister setting out in detail a large number of matters alleged to be the facts and submissions, with five enclosures. In this connection, the Under Secretary's minute of the 8th October appears in the file with the letter and enclosures: "Re-submitted in connection with the Minister's minute of the 4th instant hereunder. The attached communication and enclosures was, this afternoon (about 4 p.m.), received from R. D. Meagher, Sproule & Co., per Mr. Kinley, Solicitor, of that firm. Mr. Kinley informed an officer of this department that he intended to seek a personal interview with the Minister on the question of reduction of this fine." This officer was Mr. Storey, who informed Mr. Kinley that he would speak to Mr. Nott regarding an appointment. Mr. Kinley arranged an appointment with the Minister through the latter's private secretary, and saw the Minister on the 11th. The facts as to the arranging of this appointment and of the details of the interview are here recorded from the evidence of Mr. Kinley, which I am satisfied is completely accurate. Mr. Kinley made detailed submissions along the lines of the letter and five enclosures handed by him to Mr. Storey on the 8th October. (See Mr. Kinley's evidence Q. 906 *et seq*). Following this interview, the Minister on 14th October, 1940, noted in his own handwriting on the Under-Secretary's minute of the 8th, the following memorandum: "I would like an examination made of all the evidence and representations in this case, with a view to an opinion as to whether it can fairly be said that a reasonable doubt exists on the question of intent to defraud. V.H.T., 14 October, 1940." Mr. Nott was present when the Minister wrote

this, he adding to the Under-Secretary: "Can you get somebody to look at this; some experienced officer to go right through it and get a report on it?" (Mr. Nott, Q. 254.) The Under-Secretary thereupon minuted: "I shall be glad if Mr. McMahon will kindly peruse this file and submit his views on the question mentioned in the Minister's minute. Mr. Treatt would like a fairly comprehensive report. 14.10.40." Mr. Nott in evidence stated that he selected Mr. McMahon (ex-Stipendiary Magistrate). (Q. 257.)

Mr. McMahon forwarded his report, dated 21st October, on which the Under-Secretary minuted: "Submitted with reference to the Minister's minute of the 14th instant hereunder. In compliance with that minute, I asked Mr. McMahon, retired Stipendiary Magistrate, to favour me with an analysis of the case, and his views on the question of fraud. Mr. McMahon has been good enough to submit a report, and that report is hereunder for the Minister's information."

Mr. McMahon's report (four typewritten pages) concludes: "Upon my analysis of the evidence and the deductions therefrom, I feel convinced that the wholesale production of loaves of inferior weight, was in this case designed with fraudulent intent. The further fact, as to the military view by Messrs. R. D. Meagher, Sproule & Co., in their letter of 18th October, does not in the circumstances of this case affect my opinion. This being the first offence, I consider a penalty of £500 would meet the case."

Between the 21st October—the date of the report—and the 28th October—the date of the Minister's decision—the Minister and the Under-Secretary discussed the matter on several occasions. "We jointly analysed the position as it existed then as compared with the time when Mr. Treatt adopted my original recommendation that there should be no recommendation." (Mr. Nott's evidence, Q. 299.)

Following these discussions, which are dealt with in detail in Mr. Nott's evidence, at pages 9-12 of the printed transcript, the Minister and the Under-Secretary both took the view that the fine should be reduced to the sum of £500.

In accordance therewith, the Minister decided to recommend to his Excellency the Governor the reduction accordingly, this being done solely by the Minister as distinct from the Executive Council, not pursuant to the Fines and Penalties Act, but under the Letters Patent—the course taken being in accordance with the usual practice under which the Governor acts on the advice of the Minister. The file shows the recommendation to his Excellency the Governor as dated 29th October and approval 30th October; a communication of the approval by letters from the Under-Secretary to both solicitors and to Mr. Bate, on the 31st October, and to the Superintendent, Weights and Measures, on the 1st November.

On the 23rd November, R. D. Meagher, Sproule & Co., at the request of Mr. McLeod, wrote a letter to Mr. Bate, M.L.A., who forwarded it to the Minister. This letter sought a reduction of the fine to a nominal penalty. The matter was submitted by the Under-Secretary, and the Minister minuted as follows: "Previous decision to stand. 5 Dec., 1940." On the 9th January, R. D. Meagher, Sproule & Co., wrote to the Crown Solicitor, setting out the financial position of the Company and seeking time to pay, and offering on behalf of the Company payment at £5 per week. This was forwarded by the Crown Solicitor, with an accompanying letter of the 29th January. On the 30th, the Under-Secretary submitted this for the Minister's information and directions, and on that date the Minister minuted in his own handwriting: "If £100 is paid within seven days the balance can be paid at the rate of £20 per month, first payment 1st March." (See file, 30th January, 1941.) The Crown Solicitor, being informed by the Under-Secretary of this decision, wrote the solicitors accordingly. By letter of the 13th February, 1941, the solicitors informed the Crown



Solicitor that the Company claimed to be unable to pay the £100 and desired to pay this sum in three monthly instalments, and enclosing a cheque for £35. At the instance of Mr. McLeod, Mr. Bate, M.L.A., wrote the Minister on the 27th February furthering this request, but in the meantime, namely, on the 19th February, the Minister had approved of the proposals in the solicitors' letter. (See Under-Secretary's minute, 24th February, 1941.)

### FINDINGS AND CONCLUSIONS.

In approaching the findings to be made and conclusions to be drawn, it is proper to observe that these depend upon the official file and the evidence of all persons who took any part in the proceedings resulting in the Minister's ultimate recommendation.

The file is complete and regular. The evidence, particularly that of the Under-Secretary, establishes that the file is a faithful and accurate record of all happenings dealt with therein. So far as concerns the oral evidence, I am satisfied that as to all questions which fall for inquiry and decision it covers the whole ground. It is manifest that a consideration of both the file and the oral evidence together affords a complete picture of the Minister's part.

I propose to consider the questions which arise for determination under the headings following:—

- (1) What material was available to the Minister in the exercise of his functions?
- (2) On what material was it reasonable for a person in the position of the Minister to consider that the fine should be reduced?
- (3) Did the Minister in fact bona fide act upon the material available?
- (4) Is there anything in the general course of the proceedings or in relation to the Minister's conduct of the proceedings which suggests impropriety or irregularity?

(1) The material available to the Minister can be classified into (a) matters which upon proper consideration would militate against any reduction in the penalty imposed and (b) matters which would or might properly justify a reduction of the penalty.

- (a) The depositions disclose a deficiency on the average of the whole weight of loaves of bread of the same denomination of 5,755 ounces in 3,282 4-lb. loaves; the Magistrate's finding that he did not accept the explanation as to accident; the report of the Magistrate at the hearing dated 22nd July which indicated his disbelief of the witnesses called for the defence and which stated that he found that the doughs were being "scaled off" systematically at 2 lb. 3 oz. instead of 2 lb. 4 oz.; that he had no doubt that "a systematic fraud was being practised, arising out of the opportunity presented." The report concludes with a recommendation that the penalty be allowed to stand. The report of the Superintendent of Weights and Measures (the prosecuting Department), dated the 16th July, drew attention more particularly to the inference to be drawn from failure on the part of the defendant Company to appeal. The appeal having been lodged was withdrawn in Court before the Chairman of Quarter Sessions.

The permanent head of the Justice Department, the Under-Secretary, made a submission to the Minister in which he referred to the foregoing reports, the unreliable nature of the check by the military representative, and expressed his view that if the case was one of premeditated fraud, as the Magistrate considered it was, the penalty could not be said to be

excessive—concluding “On the whole I cannot see any good ground for suggesting a reduction of the penalty.” The Under-Secretary discussed his report and his view with the Minister; that view always was that the Company was guilty of “contemplated fraud.” The Minister himself was impressed with the Magistrate’s and the Under-Secretary’s views as to the systematic “scaling off” which in the Minister’s mind suggested at any rate the possibility of fraud, and also with the fact that an appeal was not proceeded with.

It was in these circumstances that on the 2nd August the Minister agreed with the Under-Secretary that no recommendation should be made. After that date Mr. McMahon (ex-Stipendiary Magistrate) reported on the 21st October that he was convinced from an analysis of the evidence and the deductions therefrom that the wholesale production of loaves of inferior weight was designed with fraudulent intent.

- (b) The Minister was entitled to—and I find as a fact did—have regard properly to the following considerations favouring a reduction of the penalty. Upon the depositions it is clear that the presiding Magistrate regarded the penalty of 5s. an ounce as a fixed penalty; this was the subject of conflicting views by Magistrates hearing cases of this sort, in different Courts. The issue of fraudulent intent was not tried—it was irrelevant—on the hearing of the charge. In Mr. Osborne’s letter of the 2nd September it was represented to the Minister that a report was to be obtained from the Ministry of Supply; that the contract with the Military authorities had been renewed and that the enforcement of the penalty would send the Company into liquidation. On the 5th September Mr. Bate, M.L.A., interviewed the Minister with Mr. McLeod. At this stage the Minister was clearly not satisfied as to the “systematic scaling off at 2 lbs. 3 ozs.,” or as to the Company’s failure to exercise its right to appeal. On the 8th October Messrs. Meagher, Sproule & Co. set out in their letter statements that the contract had been renewed after some examination by the Military authorities, various checks of bread received by them, not appearing in the depositions; a claim of an explanation for the short weight; a report from Adhesives Ltd. suggesting a relation between the flour used and the short weight in the bread content. On the 11th October Mr. Kinley of Meagher, Sproule & Co. interviewed the Minister and argued fully the several matters set forth in his (the Solicitor’s) letter of the 8th October, and stated his client’s “willingness to have the matter re-opened, if some method could be found to re-open it.” An explanation of the Company’s failure to proceed was offered by the Solicitor; the statement that it was due to the Under Secretary’s suggestion was clearly incorrect but—on the evidence—completely and satisfactorily explained. On the 21st October Mr. McMahon, although convinced of fraudulent intent, concluded his report “This being a first offence, I consider a penalty of £500 would meet the case.” Upon this the Under Secretary discussed the matter in detail with the Minister on more than one occasion and agreed with Mr. McMahon’s opinion that £500 was an appropriate penalty.

(2) I agree with the submissions by Mr. Shand that upon the matters shortly set forth in (1) (b) immediately above, it would be quite impossible to suggest that a person in the Minister’s position could not have properly decided to recommend the reduction of the fine. That, however, does not dispose of the matter. It is necessary next to consider (3) above—whether the Minister bona fide acted on the material available.

(3) In this connection assistance has to be sought and is demonstrably found in the official file and in the testimony of Mr. Nott and of the Minister himself. I proceed to inquire whether the Minister honestly and with due care had regard to the material available, or formed his judgment to recommend a reduction of the fine—careless or indifferent whether there were or were not good reasons therefor. He stated in evidence (Q. 969 at page 27) that the matters which influenced him more particularly in declining to recommend a reduction in the penalty were two, the Company's failure to appeal, and on his reading of the depositions the "scaling off" of the doughs at 2 lbs. 3 ozs. instead of 2lbs. 4 ozs. Further, his minute of the 5th September following the interview with Mr. Bate, M.L.A., and Mr. McLeod (Director) reveals that these two features of the case were at all times present to his mind and always carried weight. The genuineness of this minute is beyond suspicion. These two features resulted in his decision unfavourable to the Company on the 2nd August and in his view demanded explanation when further representations were made to him. Later in evidence the Minister swore (Q. 1041 at page 30) that a third element was present to his mind—related to the earlier two—the question of intent to defraud. His sworn testimony is borne out by his minute of the 14th October—in these terms: "I would like an examination made of all the evidence and reports made in this case with a view to an opinion whether it can be fairly said that a reasonable doubt exists on the question of intent to defraud." There is no reason to doubt the genuineness of this minute or the Minister's evidence in relation thereto. Indeed, the Under Secretary, Mr. Nott, stated in evidence (Q. 254, page 8) that he was present when the minute was written by the Minister who added to him "Can you get somebody to have a look at this, some experienced officer to go right through it and get a report on it." Mr. Nott's evidence on this as in all other matters is completely to be accepted. In addition, the Minister has sworn, and I accept his evidence, that certain other matters weighed with him—the letter of Mr. Kinley of 8th October (with his personal representations of the 11th October), to the effect that the Company's contract to supply bread was not cancelled after conviction (it had to the 30th July to run); that a fresh contract was given to the Company as from the 6th August; that a report made available by the Minister of the Army (a report made by Captain Rigney who was called by the defence on the hearing) (Q. 1021-1024, page 29); the Magistrate's view that the penalty was a fixed one, and that he was therefore not himself imposing a penalty to meet the offence (Qq. 1067-1072, page 31); the opinion of Mr. McMahon that, for a first offence a penalty of £500 would meet the case. The Minister examined this report as to fraudulent intent and formed the opinion that there was no issue of fraud raised in the prosecution and no evidence on which fraud could be found; but that, nevertheless, he was left with a suspicion that fraud existed (Q. 1056-1062, pages 30 and 31). As well, the Minister swore—and Mr. Nott corroborates him—that he discussed this report on two or three occasions with the Under Secretary who himself agreed that a fine of £500, as suggested by Mr. McMahon, was appropriate—adding that upon a consideration of the material he—the Under Secretary—sitting as a Magistrate would have imposed that penalty.

There is obvious force in Mr. Cassidy's statement that it is a difficult process to require a witness to explain in degrees of relative importance the matters which result in a final decision.

I find therefore that the Minister did bona fide act on the material available to him. I advert to this again in my general observations.

(4) "Is there anything in the general course of the proceedings or in relation to the Minister's conduct of the proceedings which suggests impropriety or irregularity?"

This is a matter of importance, not alone in itself, but by reason of the consequence, if such impropriety or irregularity exists, that one looks with suspicion on any conclusion that is reached or action which is taken however otherwise apparently reasonable. The first application that was made met with refusal, itself proper on the evidence. There is nothing to suggest that any improper influence was brought to bear or attempted resulting in such refusal. Thereafter, the Under-Secretary had personal interviews with Mr. Osborne, Mr. Sproule, Mr. Kinley and Mr. Crowther (on two occasions). These are correctly recorded in the file and the Minister informed as occasion required. The Minister himself saw personally Mr. Bate, M.L.A., and Mr. McLeod, together, and that interview is properly minuted; there is nothing in this interview the least suggestive of any attempt improperly to influence the Minister, and the interview—as already stated—was made the subject of a full minute immediately thereafter.

The only other personal interview was that in which the Minister saw Mr. Kinley. This is probably the most important incident in the whole proceedings so far as they concern the Minister, since it was on this occasion that the solicitor for the Company (Mr. Kinley), presented in detail the submissions relied upon by him for some reconsideration of the Minister's decision.

Mr. Treatt's evidence relative to that occasion I accept unreservedly, but, since he is the person concerned in this inquiry, I have examined carefully the testimony of Mr. Kinley as to this occasion. There is no reason to doubt and every reason to accept in full Mr. Kinley's evidence. Before obtaining the interview he committed to writing (with enclosures) the submissions he wished to advance. I should add that he appeared to me a witness capable of putting his client's case with full effect, whilst at the same time refraining from advancing anything to which exception could be taken. With respect to the other two solicitors, Mr. Crowther and Mr. Osborne, they also are solicitors of repute and, quite apart from the evidence of the Minister and of the Under-Secretary, it is proper to say that the evidence in the inquiry satisfies me that neither exercised nor attempted to exercise any improper influence on the Minister directly or through the Under-Secretary.

These are the conclusions which I reached upon the testimony of the persons giving the relevant evidence. There is in addition the circumstance that assistance was sought from Mr. Martin, M.L.A., Minister for Works and for Local Government, and from Mr. McKell, M.L.A. In other words, the matter was not kept in that close circle which one would expect if there was a desire or a thought of the need for secrecy. Common experience reveals that if anything dishonest or improper is contemplated, secrecy is regarded as essential, or at least desirable. The approach made, with whatever result, to three different Members of Parliament, indicates that at least the chance was taken of placing the matter in a number of hands. From start to finish I can discover nothing suggesting any irregularity in approach to, or in any action by, the Minister.

With one exception, upon the evidence—more especially of the Under-Secretary, whose reputation for ability and integrity is of the highest—every step of any consequence was taken in accordance with the usual procedure. The exception is the reference for inquiry to Mr. McMahon. Both the Minister and the Under-Secretary stated in the witness-box that within their knowledge this was the only occasion when such a step was taken of appointing a further person to examine and report. The fact is that the Minister requested, as the minute made at the time and in the presence of the Under-Secretary shows, the inquiry to be made. The Under-Secretary it was who selected Mr. McMahon, who frequently conducted inquiries under the Crimes Act. Such inquiries, under Section 475 of the Crimes Act, may be directed by the Governor (on the advice of his Minister), or by a Judge of the

Supreme Court (on his own motion), whenever, after conviction of a prisoner "any doubt or question arises as to his guilt or any mitigating circumstance in the case or any portion of the evidence therein." In the present instance, the Minister had a doubt—expressed to the Under-Secretary at the time—on the question of fraudulent intent. I can see no difference in principle between inquiries under Section 475, and the inquiry directed in this instance by the Minister.

The letter of Mr. Boss, addressed to the Minister and marked "confidential," offered information, without stating with particularity what that information was, adding that the writer would be pleased to give particulars "in strict confidence"; it offered an opinion as to the fine imposed. In a postscript Mr. Boss offered to call "any Friday afternoon." In due course this letter was received by the Under-Secretary. Upon Mr. Nott's mentioning the subject of the letter, the Minister stated that he did not wish to see Mr. Boss—giving as his reason that he received nothing in confidence. No other action was taken on the letter and no attempt was made to see Mr. Boss. The only criticism that might be offered is that a letter might have been sent to Mr. Boss intimating that nothing could be received "in strict confidence."

Mr. Boss was called as a witness and asked by Mr. Shand what information he had which he thought might be of assistance. The evidence was objected to by Mr. Taylor on behalf of the Abbeo Company. This Commission was not concerned strictly with the activities of the Bread Company; it was, of course, concerned with the Minister's conduct in relation to the Company's efforts to obtain a reduction of the fine. The relevant matter was whether the Minister's failure to pursue the subject of Mr. Boss's letter offering information evidenced misconduct or other failure of duty. If it did, it would become material to ascertain what information he might have had placed before him by Mr. Boss possibly affecting his determination. Mr. Shand fairly stated that he would not suggest that a failure to proceed further with Mr. Boss's letter, in the circumstances, would constitute misconduct. The evidence was beyond question irrelevant and was therefore rejected.

The only remaining matter affecting the Minister's conduct of the proceedings relates to the happening in Parliament when a question was first put to the Minister on the 26th February, 1941, as appears in the proof copy of *Hansard* of that date, at page 1557.

#### "ABBCO BREAD CO. PTY. LTD.

Mr. CARLTON: I ask the Minister of Justice whether it is a fact that some months ago an organisation known as the Abbeo Bread Company Proprietary, Limited, was fined a sum of over £1,000 for supplying short-weight bread to our forces in the military camps? Is it further a fact that the fine has not yet been paid? If these are facts, will the Minister inform the House what steps he proposes to take to enforce the decision of the Court in this matter?

Mr. TREATT: It is a fact that quite recently a company known as the Abbeo Bread Company Proprietary, Limited, was fined more than £1,000. The position is that it is a company, and, of course, there is no question of using the ordinary process of the law in the event of non-payment. The only thing that could happen then is to drive the company into liquidation. Steps have been taken by the department to ensure the payment of the fine by the company."

Early in the evidence I held that this Commission was not concerned with the statements of any of the members in the House. Although the Minister was, of course, answerable to Parliament for a decision to recommend the exercise of the prerogative of mercy, divergent views held by members and there expressed on a Censure motion were irrelevant to the question whether in fact the Minister was guilty of any improper conduct. In my opinion, the Minister's answer to the question put stood in a different situation and was relevant to this extent: read by a person unacquainted with the facts, who afterwards learned that the fine had been reduced to £500, the Minister's answer might be said apparently at least to lack frankness, since the

fact was that at the time steps had been taken by the Department to ensure the payment, not of the fine, but of the fine as substantially reduced. The importance of this matter to my mind is that, if this answer was evasive and likely to mislead the questioner, it could by relation back raise the suggestion that the Minister had something to hide and for that reason he omitted to include in his answer the material statement that the fine had been so substantially reduced. I have heard the Minister's explanation and I accept it. I am still of the opinion that one might have expected the answer to include this statement of the reduction, but this view may fail to take count of the atmosphere at the time referred to by the Minister in his evidence. Moreover, it is abundantly clear that the questioner was not misled by such an omission in the answer. In any event, the Minister had nothing to hide, nor was his answer framed with the object of concealing the fact of the reduction, which was so completely made a matter of record.

### GENERALLY.

This inquiry has revealed the position that applications for remissions or reductions of fines or for the release of prisoners average about twenty a day. They are so many and so much a part of the Department's regular work that a printed form is used in connection therewith. They are generally made in writing, although there are personal representations which are discouraged by the Ministerial head, including the present Minister, and also by the permanent head of the Department. These facts are to be found in the evidence of Mr. Nott, who has had a long experience in the Department, following his service as a Stipendiary Magistrate. He stated that 90 per cent. of the applications were introduced or fostered by a member of Parliament, generally by forwarding a letter, and that this practice has existed for very many years. The intervention of the local member is so far a usual course that "most of the members have a rubber stamp, 'Forwarded by.....for consideration and for favour of reply in due course.'" (Mr. Nott's evidence, Q. 629). The Under-Secretary further stated that he discussed from forty to fifty cases a week with the Minister. The decision in all these applications, including those covered by written submissions from the Under-Secretary, are, of course, those of the Minister of Justice. In some cases the determinations involve serious alterations in the decisions of legal tribunals. It is not surprising, therefore, that they occupy not merely a large but an important part in the onerous duties of the Minister of Justice.

Applications for reduction in respect of penalties under the Bread Act in past years have been numerous, and the practice, the Under-Secretary states, is invariably to reduce them.

I add that there is no evidence, nor anything even remotely to suggest that the Minister was guilty of any misconduct or irregularity either in the conclusion reached by him, and fully shared by the permanent head of his department, or in the manner of his dealing with the application.

The Under-Secretary, Mr. Nott, stated in evidence that in his office, in relation to applications generally, the Minister paid great attention, great industry and great care, and that he brought to his office a large experience in criminal law, partly resultant from his occupying for some years the post of Crown Prosecutor. He further stated, in relation to the subject application, that the Minister had expressed his desire to ensure that the correct thing was done, and that there was no attempt on the part of the Minister to coerce his (the Under Secretary's) judgment. He added that the decision to reduce the penalty to the sum of £500 was "a mutually honest attempt between both of us." The whole of the evidence supports that statement of the Under-Secretary, and I have no doubt that it is an accurate summary of the position.

**ADDENDUM.**

It is proper to add that the activities of the Abbeo Bread Company Proprietary Limited have not been dealt with in this inquiry save in so far as, upon the evidence before the Minister, they throw light on the deliberations of the Minister in relation to the application for remission or reduction of the penalty. In the result, care is taken neither to express, nor to appear to express, any opinion as to the subject of the prosecution or of cognate matters.

It is, perhaps, relevant to refer to the anachronism which is perpetuated in Section 13, Subsection 4, of the Bread Act, 1901, as to proof of "unavoidable accident" by way of defence to a charge of having light-weight bread in possession. To establish such a defence it must be proved "upon oath of any respectable housekeeper that such deficiency wholly arose from some unavoidable accident in baking or otherwise." This provision has not been altered for at least 100 years. It would appear to have been in force for a period much longer, and to be a relic of an age when bread making was the occupation of cottagers and not the industry that it is to-day.

I am indebted in particular to Mr. Shand, Counsel assisting the Commission, for the care taken by him to present all matters that might have a bearing on the subject of this Commission, as well as for his address at the conclusion of the evidence. I desire also to acknowledge the assistance received at all times from Mr. Woolston, Secretary to the Commission.

By Your Excellency's Command,

A. V. MAXWELL,  
Sole Commissioner.

Judge's Chambers, Supreme Court,  
Sydney, 25th March, 1941.