(*b*) the balance due upon such account be paid by the defendant to the plaintiff or by the plaintiff to the defendant as the case may be ;

(*c*) the defendant do execute in favour of the plaintiff a transfer of the land comprised in certificate of title, No. 6828.

The defendant will pay the costs of these proceedings.

MORRIS, HEDSTROM, LIMITED & ORS. *ats.* THE POLICE.

[Appellate Jurisdiction (Thomson, J.) January 5, 1946.]

Prices of Goods Ordinance, 1940[1]*—interpretation—sale by wholesale—application of s. 7 in calculating maximum price of quantity lesser than unit specified in Price Order—Appeal against sentence—Principles on which the Court will vary sentences on appeal.*

The appellants had been convicted on six charges of selling kerosene in various quantities at a price in excess of that fixed by Price Order No. 153 (1945 F.R.G. Supp. p. 54).[1] It was shown that in each case the appellants had sold kerosene to retailers at a price of 3s. 5½d. per gallon which was the lawful retail price under the Price Order, allowing for transport and handling charges in accordance with the Order. Appealing against conviction the appellants submitted that since the Price Order fixed the maximum wholesale price of kerosene " per drum of 44 gallons including the drum " the price so fixed was not applicable to sale of quantities less than 44 gallons.

HELD.—(1) The transactions were sales by wholesale and so subject to the wholesale price.

(2) S. 7 of the Prices of Goods Ordinance, 1940[1] is universal in its application and applies to every and any unit of quantity mentioned in a Price Order.

APPEAL by the defendant against conviction and sentence. The facts are fully set out in the judgment.

R. A. Crompton for the appellant.

E. M. Prichard for the respondent.

THOMSON, J.—The appellant Company were convicted in the Court of the First Class Magistrate at Suva on six charges of contravening s. 8 (1) of the Prices of Goods Ordinance, No. 47 of 1940. Originally there was a seventh charge but this disappeared in the course of the proceedings and can be disregarded. It is not necessary here to re-

[1] *Rep. Vide Price Control Ordinance,* 1946 *and subsidiary legislation.*

capitulate the details of all the individual charges, but in each case it was alleged on the face of the charge that there had been a sale by the appellant Company of a quantity of kerosene at a price of 3s. 5½d. per gallon which, it was alleged, was in excess of the price fixed by Price Order No. 153 made by the Competent Authority under s. 4 of the Ordinance.

After hearing evidence the learned Magistrate decided that the sales in respect of which the charges were laid were in each case sales by wholesale, that therefore the price fixed was the wholesale price, that the relevant wholesale price was the wholesale price fixed by Price Order No. 153, and that the price per gallon was accordingly one forty-fourth part of £7 os. 3d., together with certain freight and handling charges, amounting in all to 3s. 3/6d. per gallon. On these conclusions in each case the learned Magistrate convicted and imposed a fine of £25. It is against these convictions and, should it arise, sentences that the appellant Company is now appealing.

The grounds of appeal were originally set out, and quite properly so, in considerable detail, but having listened to counsel on both sides I do not think it is doing any injustices to say that the only questions I have to consider are :—

(1) Whether the sales were by wholesale (and so subject to the wholesale price) or retail ; and

(2) If they were by wholesale, what was the maximum price fixed for kerosene at the material times and places ?

As regards the first of these questions, if the learned Magistrate was wrong in holding that the sale were by wholesale, then of course the appeal must succeed, for the price charged was admittedly the fixed retail price. But was he wrong ? I am not unappreciative of the argument which has been addressed to me based on the provisions of the Licence Ordinance 1924 ;[1] but what I have to decide is not whether or not the sales were by wholesale for all purposes and universally but whether or not they were wholesale within the meaning and for the purposes of the Prices of Goods Ordinance, and if the answer to that question is to be found within that Ordinance then it would be wrong to go outside it. I appreciate, of course, that one and the same person might be both a retailer and a consumer, but in this case the learned Magistrate has held (and on the evidence it was open for him so to hold) that the persons to whom the goods were sold were retailers and that the appellant Company knew they were retailers. By s. 2 of the Ordinance, " wholesaler " is declared to mean " a trader who sells goods to a retailer ", and " wholesale price " is declared to mean " the price of goods sold by a wholesaler to a retailer ". In the light of these considerations it is, I think, impossible to say that for the purposes of the Ordinance the sales were not by wholesale or that the price applicable was not the wholesale price.

Having come to that conclusion, it becomes necessary to consider what was the fixed maximum wholesale price of kerosene at Navua at the material times. The learned Magistrate held, in effect, that that price was to be arrived at by taking the price of £7 os. 3d. for a 44-gallon drum mentioned in Price Order No. 153, adding to that price

[1] *Now Cap.* 154.

transport and handling charges, and then, by virtue of s. 7 of the Ordinance, working out the price of the actual quantity involved by a simple calculation in proportion. The actual price arrived at by this series of operations was 3s. 3/6d., and I gather that, as a figure, nobody is quarrelling with this. Counsel for the appellant, on the other hand, argued very ably and persuasively that this basis of calculation was wrong, that the wholesale price fixed by Price Order No. 153 only applied to sales in unit quantities of 44 gallons in the drum, that so far as quantities of less than 44 gallons were concerned there was no fixed wholesale price, and that by reason of that consideration, and also for the reasons which he advanced, and which I have rejected, for saying that the sales in question were not wholesale ones, the appellants were entitled to charge the fixed retail price, which was 3s. 5½d. per gallon.

Now if the question fell to be decided on the wording of Price Order No. 153 alone, there would clearly be doubt as to which of the two interpretations was the correct one, and in that case, as counsel has argued, the matter being a penal one, the appellant Company would be entitled to the benefit of the more lenient interpretation. But it is not to be decided on the Price Order alone and, to my mind, the wording of s. 7[1] of the Ordinance puts the matter beyond the possibility of doubt. By that section :—

> " any number or quantity in excess of or less than that specified " under this Ordinance with respect to any goods shall be sold or " offered for sale at the proportionately increased or diminished " price, as the case may be ".

Either that section, which is universal in its application, means what it says or (and I cannot accept this) it is devoid of meaning ; and if it does mean what it says it applies to every and any unit quantity mentioned in every Price Order—to a drum of kerosene equally with a tin of biscuits, a case of fish, a bag of flour, or any of the other units which are from time mentioned in such instruments. I do not see any lack of certainty there and I do not see anything unreasonable. The seller is, in effect, by reason of s. 10, at liberty to refuse to sell goods to any retailer except in the normal quantity usually sold to him. And if his previous course of business in a free market has been such as to render this protection nugatory, he has only himself to blame.

I do not see either any great difficulty in dealing with the words " including the drum ", around which there has been so much discussion, nor do I see any reason to use them as a lever to force an unnatural construction on the rest of the relevant portions of the Ordinance and Price Order. By s. 5 of the Ordinance, the fixed price is to be deemed to include the cost of the package in which any particular goods are sold, and it seems to me clear that the intention of the Competent Authority here was to provide that where the quantity sold was a whole drum (or drums), the package, in respect of which no extra charge was to be made, should be the drum itself. Whether, in so providing, he was acting *intra vires* the powers given to him, is a different question and one with which I am not concerned here as it has no bearing on this particular case, but as to his having so provided there would appear to be no room for doubt.

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[1] *Vide now Price Control Ordinance*, 1946, s. 6.

It follows then that the appeal, in so far as it is against the convictions, must fail, and is accordingly dismissed.

As regards the appeal against the severity of the sentences imposed and the submission made at the hearing by the Crown that, far from being too severe, the sentences were too lenient and should be increased, I can only say, as I have said in the past and will say again in the future until I am shown cause to believe I am wrong, that I am not concerned with what sentence I should have imposed had I been in the learned Magistrate's place. My own view, quite frankly, is that the appellant Company were fortunate in appearing before a merciful Magistrate ; but, of course, if a Magistrate is going to err at all it is better he should err in the direction of undue leniency rather than in the contrary direction. However, if the Magistrate has erred in the direction of leniency—and I do not say for a moment that he has—I see no reason to deprive the appellant Company of the benefit they have obtained thereby. There is nothing on the record to show that any wrong principle has been applied to the assessment of the sentences, and nothing, on the face of it, to show that they are in any way inappropriate, and until something of the sort is shown this Court cannot interfere.

The appeal as a whole is dismissed.

CRONIN & OR. *v.* VISHNU DEO.

[Civil Jurisdiction (Seton, C.J.) February 27, 1946.]

Land (Transfer and Registration) Ordinance—adverse possession—when time starts to run against a registered proprietor.

Defendant became registered proprietor of the land comprised in certificate of title No. 4372 by virtue of registration of a transfer on 19th October, 1943. Previously and up to 1943 the plaintiffs (registered proprietors of an adjoining piece of land) had been in continuous and undisturbed possession of 13.3 perches being part of the land comprised in certificate of title No. 4372 for a period exceeding that laid down by the Statutes of Limitation. In 1943 the then registered proprietors of the land comprised in certificate of title No. 4372 had ejected the plaintiffs from the 13.3 perches. Defendant had purchased the land in certificate of title No. 4372 with notice of the plaintiff's claim to 13.3 perches on the ground of adverse possession. In 1944 the plaintiffs applied for a vesting order in respect of the 13.3 perches but were met by a caveat entered by the defendant. Accordingly the present action was brought claiming a declaration that the plaintiffs have acquired a title to the 13.3 perches by adverse possession.

HELD.—(1) The meaning of " adverse possession " in s. 14 of the Land (Transfer and Registrations) Ordinance is adverse possession subsequent to the date of the last registered transfer.