Judgement of the Lords of the Judicial Committee of the Privy Council on the appeal of the Commissioners for Railways v. *Hyland and others from the Supreme Court of New South Wales; delivered* 17*th June* 1887.

Present:

LORD HOBHOUSE.
SIR BARNES PEACOCK.
SIR RICHARD BAGGALLAY.
SIR RICHARD COUCH.

THE question in this appeal is rather a small one, whether we regard the extent of the argument which is presentable upon it, or the effect of the decision. As their Lordships understand, the Government have it in their power to alter these regulations at any moment, and if they are dissatisfied with the legal effect of their former regulations they may set the matter right according to their own judgment.

We are asked to reverse the decision of the Supreme Court, which assigns the more extended meaning to the two words "colonial wine;" and it is contended that the words "colonial wine" mean only wine grown in New South Wales. The controversy turns on very narrow considerations, and this Committee would be very reluctant to reverse a decision of the Supreme Court on such a point unless they saw their way very clearly to a contrary conclusion. So far from that, they think that if the matter came before them *de novo* they would agree with the Supreme Court. No doubt it would be very important if it could be shown from an examination of the statutes or public documents running through a series of years that what may

A 51563. 100.—6/87. Wt. 328. E. & S.

be called a popular meaning or a meaning generally accepted by men of business had prevailed of the term "colonial wine;" but so far from that, nothing more is shown than this, that if the term "colonial wine" had been used to express wine grown in New South Wales alone, there would have been no impropriety in the expression. That, their Lordships think, is the very highest point which the argument of Sir Horace Davey attained. Therefore the examination of the statutes leaves the matter very much where it stands on the regulations themselves. But their Lordships are led to think that the larger meaning must be attached to the words by three considerations. The first is that the expression "colonial" in the general conditions has, as they think, the larger meaning. It is not quite without difficulty there, but the word "foreign," where it is used of gold or silver coin, clearly means everything that is not gold or silver coin of the realm, and therefore does not include colonial gold or silver coin. Using "foreign" in the same sense where it occurs in the second passage—the passage "English, colonial, or foreign"—then the word "colonial" must be taken to embrace all the colonies, otherwise the distribution of stamps into "English, colonial, or foreign" would not be an exhaustive distribution, which it is evidently intended to be. That is one reason. Then they think that there is substance in the argument that if the Government intend to impose a charge they should impose it in clear language, and if the language is found to be ambiguous, it must be construed in favour of those on whom the charge is sought to be imposed. Their third reason is that they find that for some years—it does not appear how long—the wine of South Australia was conveyed at the lower rate of charge which the regulations impose on colonial wine, and they look upon that

practice as a sort of contemporaneous exposition of the ambiguous document, which is of value in construing it now

The result is that they agree with the Supreme Court, and they will humbly advise Her Majesty to affirm the decision and dismiss the appeal The Appellants must pay the costs.