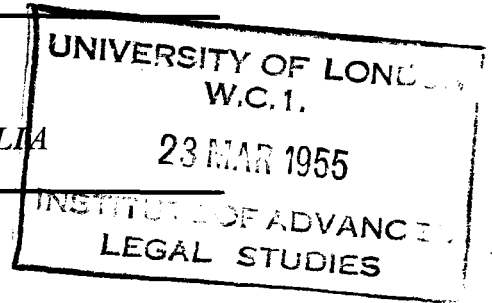


In the Privy Council.

38052

ON APPEAL
FROM THE HIGH COURT OF AUSTRALIA



Between

HUGHES AND VALE PTY. LIMITED - *Appellant*

and

THE STATE OF NEW SOUTH WALES, THE HONOUR-
10 ABLE WILLIAM FRANCIS SHEAHAN and the DIRECTOR
OF TRANSPORT AND HIGHWAYS - *Respondents*

and

THE COMMONWEALTH OF AUSTRALIA, THE STATE
OF VICTORIA and THE STATE OF QUEENSLAND - *Intervenors.*

CASE FOR THE APPELLANT.

A. INTRODUCTORY

1. This appeal is brought by special leave granted by Her Majesty by Order in Council dated 19th June 1953 against an order of the High Court of Australia dated 16th April 1953 (Justices Fullagar, Kitto and Taylor dissenting) dismissing a demurrer by the Plaintiff (Appellant) to the Defendants' (Respondents') State-
20 ment of Defence. p. 60 p. 59

2. The Appellant is a company incorporated according to the laws of the State of New South Wales and at all material times was and is carrying on business as a carrier of general merchandise between Sydney in the State of New South Wales and Brisbane in the State of Queensland. p. 1, l. 14 p. 2, l. 8

3. The question for decision is whether, having regard to section 92 of the Constitution, the State Transport (Co-ordination) Act, 1931-1952, applies to public motor vehicles which are operated, within the meaning of the Act, in the course of and for the purposes of inter-State trade.

This question involves a consideration of the licensing system created by the legislation and may also involve a consideration of the levy which may be imposed under the Act.

It was argued by the Appellant in the High Court of Australia that the levy was a duty of excise and therefore in breach of section 90 of the Constitution. This argument has been specifically abandoned by the Appellant and no question as to excise or section 90 arises upon this appeal. 10

4. The following are the material sections of the State Transport (Co-ordination) Act, 1931-1952:—

Sec. 3 (1)

“Motor vehicle” means any vehicle whatsoever propelled by mechanical means and includes a tractor or trailer and also includes aircraft, but does not include a vehicle used on a railway or tramway.

.....

“Operate” means carry or offer to carry passengers or goods for hire or for any consideration or in the course of any trade or business whatsoever. 20

.....

“Public motor vehicle” means a motor vehicle (as hereinbefore defined)—

- (i) used or let or intended to be used or let for the conveyance of passengers or of goods for hire or for any consideration or in the course of any trade or business whatsoever, or
- (ii) plying or travelling or standing in a public street for or in hire or in the course of any trade or business whatsoever. 30

.....

(2) This Act shall be read and construed so as not to exceed the legislative power of the State to the intent that where any enactment thereof would, but for this subsection, have been construed as being in excess of that power, it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power.

Sec. 4 (1) For the purposes of the improvement and co-ordination of the means of and facilities for locomotion and transport, the Governor may appoint a board of four commissioners which shall, subject to the control of the Minister, carry into effect the objects and purposes of this Act and have and discharge the duties, powers, and functions thereby conferred and imposed on the board. 40

.....

Sec. 10 (1) The board may advise the Minister on any matters relating to the transport of passengers and of goods and to traffic generally.

10 (2) The board shall, as soon as practicable after their appointment, furnish to the Minister a report setting out the steps which they consider should be taken to secure the co-ordination of the activities of the following services, namely, the Railway Commissioners, the transport trusts, Commissioner of Road Transport, the Management Board, and the Main Roads Board, and to provide for the administration and control of such services under one corporate body, together with a draft Bill for the legislation necessary to give effect to their report.

Sec. 12 (1) Any person who after a date appointed by the Governor and notified by proclamation published in the Gazette operates a public motor vehicle shall, unless such vehicle is licensed under this Act by the board and unless he is the holder of such license, be guilty of an offence against this Act: Provided that this subsection shall not apply to a public motor vehicle that is being operated under and in accordance with an exemption from the requirement of being licensed granted under section nineteen or a permit granted under section twenty-two of this Act.

20 (2) Any person who operates or uses or causes or permits to be operated or used a motor vehicle for the carriage or delivery of his goods (other than goods that are not intended for sale whether immediately or ultimately) or of goods sold by him shall be deemed to be thereby operating a public motor vehicle within the meaning of this Act and such vehicle shall be deemed to be a public motor vehicle.

.....

Sec. 14 (1) Every person desiring to operate a public motor vehicle of which he is the owner shall in addition to any license or registration which by law he is required to hold or effect, apply to the board or to the prescribed person or authority for a license for such vehicle under this Act.

30 (2) The application for a license shall be made in the prescribed form and manner and shall contain the following particulars:—

- (a) the route or routes upon which it is intended that the vehicle sought to be licensed shall operate;
- (b) a description of the vehicle in respect of which the application is made;
- 40 (c) the number of passengers or maximum weight of goods proposed to be carried on such vehicle;
- (d) particulars of the registration of such vehicle under the Motor Traffic Act, 1909-1930, and the Transport Act, 1930, or in the case of an aircraft, particulars of the certificate of registration and the certificate of airworthiness issued under the Air Navigation Regulations;
- (e) particulars of any license issued in respect of such vehicle under the Local Government Act, 1919, or the ordinances thereunder;
- (f) such other particulars as are prescribed.

(3) The application shall be accompanied by the prescribed fee.

(4) The prescribed fee shall be payable in respect of every renewal of any such license :

Provided that nothing in this Act shall require the insertion in the licence of a public motor vehicle used for private hire or tourist service work of any condition as to the route or routes upon which it is intended that the vehicle sought to be licensed shall operate.

Sec. 15 (1) A license for a public motor vehicle other than an aircraft may authorise the vehicle for which it is granted to operate only upon the routes or roads specified in the license or only within any area or district therein specified or referred to or may authorise the vehicle for which it is granted to operate on any route or road or within any area or district other than the route, road, area, or district, if any, specified or referred to in the license. 10

(2) A license for an aircraft may authorise the vehicle for which it is granted to operate on or in a route or district therein specified or referred to or on or in any route or district other than the route or district, if any, specified or referred to in the license.

(3) Any authority as mentioned in subsection one or subsection two of this section contained in or attached to a license shall be a condition of the license, and any person who commits a breach of such condition shall be guilty of an offence against this Act. 20

.....

Sec. 17 (1) Every license under this Act shall be subject to the performance and observance by the licensee of the provisions of this Act and the regulations that may relate to the license or to the public motor vehicle in respect of which it is issued, and of the provisions contained in or attaching to the license, and all such provisions shall be conditions of the license.

(2) The regulations may prescribe, or the board may determine in respect of any particular license, or of any class of licenses relating to any area, route, road, or district, or of any other class of licenses whatsoever, or generally what terms and conditions shall be applicable to or with respect to a license, including (but without in any way limiting the generality of the foregoing)— 30

(a) the fares, freights, or charges, or the maximum or minimum fares, freights, or charges to be made in respect of any services to be provided by means of the public motor vehicle referred to in the license;

(b) the use of such public motor vehicle as to whether passengers only or goods only or goods of a specified class or description only shall be thereby conveyed, and as to the circumstances in which such conveyance may be made or may not be made (including the limiting of the number of passengers or the quantity, weight, or bulk of the goods that may be carried on the vehicle). 40

(3) In dealing with an application for a license the board shall consider all such matters as they may think necessary or desirable, and in particular (where applicable) shall have regard to—

- (a) the suitability of the route or road on which a service may be provided under the license;
- (b) the extent, if any, to which the needs of the proposed areas or districts, or any of them, are already adequately served;
- (c) the extent to which the proposed service is necessary or desirable in the public interest;
- 10 (d) the needs of the district, area, or locality as a whole in relation to traffic, the elimination of unnecessary services, and the co-ordination of all forms of transport, including transport by rail or tram;
- (e) the condition of the roads to be traversed with regard to their capacity to carry proposed public vehicular traffic without unreasonable damage to such roads;
- (f) the suitability and fitness of applicant to hold the license applied for;
- 20 (g) the construction and equipment of the vehicle and its fitness and suitability for a license: Provided that the certificate of registration and the certificate of airworthiness of an aircraft issued under the Air Navigation Regulations or a registration of any motor vehicle other than aircraft under any other Act of the State may be accepted as sufficient evidence of suitability and fitness of the vehicle.

(4) The board shall have power to grant or refuse any application of any person for a license or in respect of any vehicle or of any area, route, road, or district.

30 (5) If the holder of any license of a public motor vehicle under this Act, or the owner of any public motor vehicle so licensed, fails to comply with or observe any of the terms or conditions of or attaching to such license he shall be guilty of an offence against this Act.

Sec. 18

(5) The board may, in any license for a public motor vehicle to be issued under this Act that authorises the holder to carry goods or goods and passengers in the vehicle, impose a condition that the licensee shall pay to them (and in addition to any other sums payable under the preceding subsection and any other provision of this Act) such sums as shall be ascertained as the board may determine.

40 The board may determine that the sum or sums so to be paid may be differently ascertained in respect of different licenses and may be ascertained on the basis of mileage travelled as hereinafter mentioned or may be ascertained in any other method or according to any other basis or system that may be prescribed by regulation made under this Act:

Provided that if the sum or sums so to be paid are to be ascertained according to mileage travelled they shall not exceed an amount calculated at the rate of threepence per ton or part thereof of the aggregate

of the weight of the vehicle unladen and of the weight of loading the vehicle is capable of carrying (whether such weight is carried or not) for each mile or part thereof travelled by the vehicle (which mileage may be ascertained for such purposes as prescribed by the regulations or as determined by the board), and if the sum or sums so to be paid to the board are not to be ascertained according to mileage travelled then the board shall repay to the persons entitled thereto any moneys received by the board under this subsection in excess of the amount that would have been payable to the board calculated on the mileage basis in the foregoing manner during the period of the license. 10

For the purposes of this proviso the weight of the vehicle unladen and the weight of loading the vehicle is capable of carrying shall be as mentioned in the license or as determined by the board.

.....
(11) Where the board at any time thinks it desirable that any of the terms, conditions, and authorities in respect of any license for a public motor vehicle should be varied during the currency thereof, or that any new term, condition or authority should be attached to any such license during its currency, they may, subject to this Act and the regulations, vary the same or attach thereto such term, condition or authority accordingly, and the terms, conditions and authorities as so varied or added to as the case may be shall thereafter be the terms, conditions and authorities of the license. 20

.....
Sec. 26(1) There shall be kept in the Treasury a fund to be called the State Transport (Co-ordination) Fund.

(2) There shall be placed to the credit of the said fund any moneys appropriated by Parliament for the purposes of this Act, and the moneys directed by this or any other Act to be paid into such fund.

(3) All moneys in the fund shall be vested in and expended by the board in accordance with this or any other Act. 30

(4) The provisions of the Audit Act, 1902, as amended by subsequent Acts shall, with such modifications as may be made by regulations under this Act, apply to the fund and to the board and to all officers.

(5) Out of the said fund there shall be paid the salaries and other costs of the administration of this Act, including any contribution under any Act in respect of superannuation of any commissioner or officer.

(6) For the purposes of the co-ordination of the facilities for transportation of passengers or goods, the board, with the approval of the Minister, may make from time to time, any payments out of the said fund as subsidies in respect of any public motor vehicles used for providing feeder services to railways or tramways. 40

(7) The board, with the approval of the Minister, may make from time to time any payments out of the said fund to the Government Railways Fund, established under the Government Railways Act, 1912-1930, or to the general fund of any transport trust, and moneys so paid shall form part of the fund into which they are paid.

(8) Subject to this Act, the moneys in the State Transport (Co-ordination) Fund may be applied to the purposes for which they are appropriated by Parliament.

(9) Section forty-six of the Constitution Act, 1902, shall apply in respect of any such appropriation.

.....

10 Sec. 37 (1) If any person operates any public motor vehicle in contravention of this Act the board may impose upon him an obligation to pay to them on demand such sums as the board determines, but such sums shall not exceed the sums that could have been made payable to the board under subsections four and five of section eighteen had the person operating the vehicle been the holder of a license to operate it and had the board imposed therein the conditions provided by such subsections.

(2) This section shall not relieve such person or any other person from the penalties for the offence.

The references to "the board" in sections 4, 10, 12, 14, 17, 18, 26 and 37 have been affected by the following Statutes and an explanation of these references is to be found in paragraph 5 of this Case.

20 Ministry of Transport Act, 1932.

Transport (Division of Functions) Act, 1932-1952.

Transport and Highways Act, 1950.

30 5. The *State Transport (Co-ordination) Act*, 1931, provided for the setting up of a Board to co-ordinate transport. This Board was replaced by a Board of Commissioners (*Ministry of Transport Act*, 1932, ss. 7, 9). The *Transport (Division of Functions) Act*, 1932, by s.14 abolished the Board of Commissioners and transferred its functions with respect to road transport and tramways to the Commissioner for Road Transport and Tramways (s.5), with respect to railways to the Commissioner for Railways (s.4) and with respect to main roads to the Commissioner for Main Roads (s.6). Functions of the Board of Commissioners, other than those transferred, ceased altogether. The *Transport (Division of Functions) Amendment Act*, 1952, s.11, abolished the office of Commissioner for Road Transport and Tramways and divides his functions between the Director of Transport and Highways, a body corporate, and the Commissioner for Government Tram and Omnibus Services. In the exercise and performance of the powers, duties and functions conferred upon him as a result of the various Statutes the Director of Transport and Highways is subject to the direction and control of the Minister (Act No. 15 of 1952, sec. 3 (4)). Sections 4-11 of the *State Transport (Co-ordination) Act*, 1931-1952 have been either impliedly repealed or are otiose. The planning and co-ordinating authority is now the New South Wales Transport and Highways Commission constituted by the *Transport and Highways Act*, 1950, and presided over by a person, the Director of Transport and Highways. The defendant in this action is the Director of Transport and Highways, a body corporate having no co-ordinating functions, which is constituted by the *Transport (Division of Functions) Amendment Act*, 1952.

40 6. In the High Court of Australia the present Appellant challenged the application to it of the *State Transport (Co-ordination) Act*, 1931-1952, and in

p. 4, l. 12 particular sections 12, 17, 18 and 37 thereof, upon various grounds of which only one is relevant to this appeal, namely, that, but for section 3(2), the said sections were invalid in that they contravened section 92 of the Constitution, and that, as a result of the application of section 3(2), the sections did not operate so as to require the Appellant in respect of purely inter-State journeys to hold a licence for its vehicles or to pay the levy which might be imposed by virtue of the said Act.

p. 17, l. 16—
p. 28, l. 10 7. Dixon C. J. expressed a view in favour of the Appellant, that neither the licensing provisions nor the provisions for the imposition of a levy were consistent with section 92, but held that the Court was bound by an earlier decision of its own to decide to the contrary. 10

pp. 28-32, 33-36,
37-39
pp. 39-47, 47-52,
52-58 McTiernan, Williams and Webb JJ. held that the licensing provisions were valid, Fullagar, Kitto and Taylor JJ. held that the licensing provisions were invalid.

B. SUMMARY OF THE EVIDENCE

p. 2, l. 8 8. The Appellant carries on business as a carrier of general merchandise between Sydney in the State of New South Wales and Brisbane in the State of Queensland and is the owner of certain vehicles in respect of which it holds licences under the Act.

p. 2, l. 17 9. The terms of the licences are set out in the Record of Proceedings. The conditions of the licences with one addition not material to any issue are in the same terms as the licences construed by the High Court in *Duncan and Green Star Trading Co. Pty. Ltd. v. Vizzard* (1935) 53 C.L.R. 493. In the present case the Chief Justice approved of the following conclusion from the construction of the conditions: "It is impossible to imply from these conditions any authority to drive or operate the vehicle on any journey which is for more than fifty miles competitive with the railways." 20

p. 10, l. 18
p. 12, l. 22
p. 14, l. 41 10. The Respondents proved that in respect of some goods no licence would be granted to carry such goods by road for more than fifty miles in competition with the railways. 30

(i) p. 7, ll. 3, 8, 13; p. 8, ll. 9, 37; p. 9, ll. 10, 15, 27, 32, 37; p. 12, l. 18; p. 13, l. 10; p. 14, ll. 1, 20, 25, 36; p. 15, l. 14.
(ii) p. 13, ll. 23, 26, 34, 39; p. 14, ll. 11, 14, 16, 18; p. 15, ll. 4, 7, 9; p. 16, l. 3.

11. The Respondents also proved that the terms and conditions of the licences were varied from time to time by the issue of permits to operate in competition with the railways upon the payment of charges, which themselves varied with (i) the character of the goods carried (ii) the place to which the goods were being carried both in and out of New South Wales (iii) the availability (as defined by the Respondents) of railway trucks for certain non-perishable goods.

(iii) p. 10, ll. 18, 26; p. 12, ll. 9, 23; p. 14, l. 41; p. 16, l. 15.
*p. 12, ll. 16, 27.

*12. The Respondents further proved that the charges which were imposed at maximum permissible rates were designed to prohibit the carriage of goods by road in competition with the railways.

C. SECTION 92 OF THE CONSTITUTION

13. The first paragraph of section 92 of the Constitution provides as follows:—

“ On the imposition of uniform duties of customs, trade, commerce, and intercourse among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free. . . .”

The Appellant submits that sections 12, 17, 18 and 37 are inconsistent with this section of the Constitution.

GENERAL (Part I).

10 14. Section 92 is an overriding constitutional provision guaranteeing the freedom of trade, commerce and intercourse among the States. Sections 51 and 52 are subject to section 92, which also binds the States. Section 92 effectively withdraws from both the Commonwealth and the States power to make any law inconsistent with the freedom guaranteed.

15. The freedom guaranteed is freedom for the people of Australia to carry on trade, commerce and intercourse across States lines: (*James v. The Commonwealth* (1936) A.C. 578, at p.630); *The Commonwealth v. Bank of N.S.W.* (1950) A.C.235, at p.305). The section treats inter-State trade, commerce and intercourse, not as an abstraction or a mere economic phenomenon,
20 but as an activity carried on by individuals. The presence of the word “intercourse” in particular indicates this clearly; (*The Commonwealth v. Bank of New South Wales* (1950) A.C. 235, at p.306).

16. There is no contest between the Appellant and the Respondents, nor could there be since the decision of the High Court in *Australian National Airways Ltd. v. The Commonwealth* (71 C.L.R. 29) (on this point approved in *The Commonwealth v. Bank of N.S.W.* ((1950) A.C. 235, at p.311)) that the inter-State carrier of goods is engaged in trade and commerce. Indeed, in *McCarter v. Brodie* (80 C.L.R. 432) the High Court unanimously so held.

30 17. Section 92 guarantees freedom to engage in inter-State trade, commerce and intercourse to persons living in a society regulated by law. Regulation may take the form of denying certain activities to persons by age or circumstances unfit to perform them, or of excluding from passage across the frontier of a State creatures or things calculated to injure its citizens, e.g. infants, lunatics or bankrupts may be restrained from engaging in inter-State trade. A question of fact and degree is here involved (*The Commonwealth v. Bank of N.S.W.* (1950) A.C. 235, at p.312) but the solution of each case depends upon the impact of the law or executive act on the guaranteed freedom and not upon the policy of the governments.

40 18. Laws which prohibit, burden, restrict, impair, hinder or prevent activities conducted across State lines in the course of trade, commerce or intercourse by individuals infringe the freedom guaranteed.

19. The determination of the question whether or not a law does so depends upon the application of two general propositions (*The Commonwealth v. Bank of N.S.W.* (1950) A.C.235 at p.310):—

- (a) that regulation of trade commerce and intercourse among the States is compatible with its absolute freedom.
- (b) that section 92 is violated only when a legislative or executive act operates to restrict such trade commerce and intercourse directly and immediately, as distinct from creating some indirect or consequential impediment which may fairly be regarded as remote.

GENERAL (Part II).

10

20. It is submitted, however, that the following propositions are correct:—

- (a) The freedom guaranteed is not limited to freedom from laws which apply directly at the point of the crossing of State lines.

Laws applying at points and to matters other than such crossing may infringe the section, depending in each case upon what effects such laws have upon that passage. *James v. The Commonwealth* (1936) A.C.578, at pp.630-1; *The Commonwealth v. Bank of N.S.W.* (1950) A.C.235, at p.308.

This may be illustrated by the following laws or executive acts declared to infringe section 92, in cases which were approved by the Privy Council in *James v. The Commonwealth*, (1936) A.C.578:— 20

- (i) A legislative declaration by a State that stock and meat in the State were to be held for the purposes of and kept for disposal by the Crown in aid of supplies for the armed forces:

Foggitt Jones & Co. v. N.S.W., 21 C.L.R.357.

- (ii) A State Statute and an Order thereunder, the combined effect of which was to fix a proportion or quota of a product and to forbid the marketing in Australia of any greater quantity:

James v. South Australia, 40 C.L.R. 1.

James v. Cowan, 43 C.L.R. 386.

James v. Cowan, (1932) A.C. 542. 30

- (iii) The seizure under the same Statute of parcels of the product in the hands of a producer so as to prevent him selling them in defiance of the quota fixed:

James v. Cowan, (1932) A.C. 542.

- (iv) A State scheme for the compulsory marketing of a product by acquiring the product and preventing producers from engaging in all trade therein, domestic, interstate and foreign:

Peanut Board v. Rockhampton Harbour Board, 48 C.L.R. 266.

- (v) The imposition by a State on an importer of petrol of an obligation to buy locally a proportion of power alcohol: (petrol, which is not produced in Australia, being imported into the State sometimes directly from abroad and sometimes immediately from another State). 40

Vacuum Oil Co. v. Queensland, 51 C.L.R. 108.

(vi) A State law providing for payment of a higher fee for a licence to sell all fermented and spirituous liquors than that required for a licence to sell locally-produced wine only:

Fox v. Robbins, 8 C.L.R. 115.

- (b) Laws which merely preclude individuals in one State from intercourse, commercial or other, with other States, must offend section 92.

Laws which merely prohibit individuals from conducting activities across State lines in the course of trade, commerce and intercourse necessarily infringe the section. Likewise, laws which merely prohibit such intercourse or such activities except at governmental discretion or through Government agencies infringe the section:

10

R. v. Smithers, Ex parte Benson, 16 C.L.R. 99, per Isaacs and Higgins JJ., at pp.116-7 and 117-8.

R. v. Connare, Ex parte Wawn, 61 C.L.R. 596 at pp.604-5.

Milk Board v. Metropolitan Cream Pty. Ltd., 62 C.L.R. 116, at p.127.

Gratwick v. Johnson, 70 C.L.R. 1.

Australian National Airways Ltd. v. The Commonwealth, 71 C.L.R.

20

29: approved in *The Commonwealth v. Bank of N.S.W.*, (1950) A.C. 235.

The Commonwealth v. Bank of N.S.W. (1950) A.C. 235.

- (c) Laws which merely prescribe the manner in which the activities of persons may be conducted in the course of trade, commerce and intercourse *prima facie* do not infringe the section; but in particular cases, by reason of the extent and nature of the interference with the activity, they may do so because they are no longer regulatory:

The Commonwealth v. Bank of N.S.W., (1950) A.C. 235, at p.310.

McCarter v. Brodie, 80 C.L.R. 432, at p.497.

30

- (d) The fact that a law operates generally and does not discriminate against interstate trade, commerce and intercourse is not conclusive of validity. (*The Commonwealth v. Bank of N.S.W.* (1950) A.C. 235, at pp.305, 306, 311.) If the restriction of, or power to restrict, interstate trade is included in the operation of the law, the fact that other trade is equally affected does not diminish the restriction. The expression "absolutely free" does not mean merely "as free as non-interstate trade."

40

The contention that a general law applying equally to interstate and other trade and commerce cannot infringe section 92 is inconsistent with the decisions of the Privy Council in *James v. The Commonwealth*, (1936) A.C. 578, at p.628, and in *The Commonwealth v. Bank of N.S.W.*, (1950) A.C. 235, at pp.305, 306, 311, and with the settled view of the High Court of Australia.

- (e) The freedom guaranteed is not freedom merely from laws on the subject of trade, commerce or intercourse. Section 92 effectively withdraws power from the States and the Commonwealth to make any law upon any subject which infringes the guaranteed freedom. (*The Commonwealth v. Bank of New South Wales* (1950) A.C. 235, at pp. 312, 313.)

APPLICATION OF THESE CONSIDERATIONS TO SECTIONS 12 & 17.

21. Section 12 prohibits the operation of a public motor vehicle unless such vehicle is licensed under the Act. Section 17(3) provides, *inter alia*, that in dealing with an application for a licence, the licensing authority shall consider all such matters as it may think necessary or desirable, and section 17(4) that it shall have power to grant or refuse any application for a licence.

22. Thus sections 12 and 17 may effect the complete prohibition of the carrying on of the business of transporting goods for hire in New South Wales by all persons other than Government authorities, or restrict the number of licensees at the will of the licensing authority. 10

23. The prohibitions effected by sections 12 and 17 extend to inter-State and intra-State haulage business alike, and, apart from the effect of section 3(2) (as to which see par. 36 of this Case) cannot be limited to non-interstate business. The prohibition of the carrying on of inter-State haulage business is thus within the operation of the sections themselves.

24. The operation of the sections is to prevent all persons and bodies other than the Government from engaging in the business of inter-State haulage in New South Wales, without the permission of the licensing authority, which has a discretion, not limited to regulation, to restrict or select the licensees.

25. It may be conceded that laws which contain a licensing scheme with an ancillary prohibition of unlicensed persons, may, on examination in the light of the circumstances to which they apply, prove to be no more than a regulation of the manner in which the activities of persons may be carried on, and therefore not obnoxious to section 92. In the case of such laws, it may be said that the State of New South Wales selects the actors. But the Appellant submits that a law which requires that a licence be obtained to carry on interstate haulage, and provides that the licence may be arbitrarily granted or refused, does deny the freedom guaranteed by section 92. 20

26. This is well illustrated by a consideration of Regulation 79 of the Air Navigation Regulations, the subject of the unanimous decision of the High Court in *Australian National Airways v. The Commonwealth* (71 C.L.R. 29) and approved in *The Commonwealth v. Bank of N.S.W.* (1950) A.C. 235. This regulation provided:— 30

“The Director-General may issue a licence . . . upon such conditions, . . . as the Director-General considers necessary or he may refuse to issue the licence.”

In this form the regulation was obnoxious to section 92.

In its unamended form the regulation had provided that:—

“The Board shall, if satisfied as to the safety of the proposed service, issue a licence subject to such conditions in addition to compliance with these Regulations, as the Board considers necessary to ensure the safety of the aircraft and of the persons to be carried by the aircraft.” 40

In this form the regulation was an example of what is meant by selection of actors.

27. Further illustrations of licensing systems containing an absolute discretion, which have been held to infringe the freedom guaranteed by Section 92, are to be found in *James v. The Commonwealth* ((1936) A.C. 578), *The Commonwealth v. Bank of New South Wales* ((1950) A.C. 235) and in *Gratwick v. Johnson* (70 C.L.R. 1).

(i) In *James v. Commonwealth* ((1936) A.C. 578) a Commonwealth Act provided that, except as provided by regulations, (a) the owner or person having possession or custody of dried fruits should not deliver any dried fruits to any person for carriage into or through another State to a place in Australia beyond the State in which the delivery was made, and (b) the owner or any other person should not carry any dried fruits from a place in one State into or through another State to a place in Australia beyond the State in which the carriage began, unless he was the holder of a licence authorising him so to do and the delivery or carriage was in accordance with the terms and conditions of the licence. It also provided that prescribed authorities might issue licences for such periods and upon such conditions as should be prescribed, permitting the delivery of dried fruits from a place in one State to a place in Australia beyond that State.

(ii) In *Commonwealth v. Bank of New South Wales* ((1950) A.C. 235) a Commonwealth Act provided that the Treasurer might by notice require a private bank to cease carrying on banking business in Australia.

(iii) In *Gratwick v. Johnson* (70 C.L.R. 1) a Commonwealth regulation under the defence power provided that no person should travel by rail or commercial passenger vehicle from one State to any other without a permit, which could be granted or refused by an official in his absolute discretion.

28. The prohibitions effected by sections 12 and 17 have the necessary effect of subjecting to the licensing authority the trade of the owner of goods in transporting them inter-State. Section 12(2) does this in terms where the owner of goods is transporting his goods which are either for sale or which have been sold in inter-State trade; in other cases, the Executive Government of the State may determine without further legislation the extent to which and the conditions upon which an inter-State trader in goods may make use of inter-State transport facilities.

29. The sections therefore subject the owners of goods in their inter-State trade and commerce to the direct control of the licensing authority in the performance of that trade.

APPLICATION OF THESE CONSIDERATIONS TO SECTIONS 18 (5) AND (11) AND 37.

30. Section 18 (5) provides, *inter alia*, that the licensing authority may, in any licence for a public motor vehicle, impose a condition that the licensee shall pay such sums as the authority shall determine not exceeding an amount calculated at the rate of threepence per ton or part thereof of the aggregate of the weight of the vehicle unladen and of the weight of loading the vehicle is capable of carrying (whether such weight is carried or not) for each mile or part

thereof travelled by the vehicle. Section 37 provides that if any person operates a vehicle in contravention of the Act, the licensing authority may impose upon him an obligation to pay such sums as it determines, not being in excess of the sums that could have been made payable under section 18 (5) had the person operating the vehicle been the holder of a licence to operate it and the licensing authority had imposed in the licence the conditions provided by section 18 (5).

31. If it should be held that sections 12 and 17 do not apply to the Appellant while operating a public motor vehicle in the course of inter-State trade, then no question as to these provisions will arise. Alternatively, if the Appellant is, contrary to the submissions herein contained, subject to the provisions of the Act requiring it to hold a licence in respect of each of its public motor vehicles, it is submitted that it is entitled to a licence free of the conditions authorised to be imposed by section 18 (5) and to a declaration that it is not subject to section 37. 10

32. The sums which may be imposed by the licensing authority are a tax upon the carrier and therefore a burden upon his inter-State trade. The *State Transport (Co-ordination) Act*, 1931-1952, does not relate the charges to the use of the highway. The discretion of the licensing authority in imposing the charges is absolute; in particular it is not restricted to a charge for the use of the highways or any other facility provided by the State. 20

33. The powers of the licensing authority include a power to impose charges not restricted to charges for services but for the purpose of forcing the haulier including (apart from section 3(2) as to which see par. 36 of this Case) the inter-State haulier off the highway. Therefore the Act operates to authorize a direct restriction upon the inter-State trade of the Appellant (*The Commonwealth v. Bank of New South Wales* (1950) A.C. 235, at p.307; *James v. Cowan* (1932) A.C. 555; *James v. South Australia*, 40 C.L.R. 1); *James v. The Commonwealth* (1936) A.C. 578. It was in pursuance of this object that the licensing authority imposed charges at the maximum rate which were operating at all material times. 30

p. 12, ll. 16, 27.

34. The sums which may be levied under section 18 (5) or section 18 (11), being the sums which also may be imposed and collected under section 37, are capable of being fixed so as to provide for the protection of the industries of one State against those of another, which would permit a clear breach of section 92 (*McCarter v. Brodie* (1950) 80 C.L.R. 432 at p.499). An illustration of this is to be found in the fact that at one period the charges levied in respect of the carriage of general merchandise were at a greater rate if the goods came from or went into Queensland than if they came from or went into Victoria or South Australia.

p. 16, l. 3.

35. The Respondents have imposed a monopoly of the carriage of certain goods for distances exceeding 50 miles in competition with the railways, which can be extended to all goods. Indeed the exception from the monopoly need not so far as the legislation is concerned be maintained. 40

p. 12, l. 23.
p. 14, l. 41.

APPLICATION OF SECTION 3 (2) TO SECTIONS 12, 17, 18 (5),
18(11) AND 37.

36. This section and similar provisions in other legislation have consistently been held in the High Court of Australia to establish a presumption that to the extent that its operation is within the power of the Legislature a law is to be valid notwithstanding that as expressed it is in excess of power.

Carter v. The Potato Marketing Board (1951) 84 C.L.R. 460, at p.484.

Cam & Sons Pty. Ltd. v. The Chief Secretary of New South Wales (1951)
84 C.L.R. 442, at p.456.

- 10 *Matthews v. Chickory Marketing Board (Vict.)* (1938) 60 C.L.R. 263, at pp.273-274, 283.

D. CRITICISM OF THE DECISIONS IN THE TRANSPORT CASES

37. The *Transport Cases* herein referred to are the following:—

The King v. Vizzard, Ex parte Hill (1933) 50 C.L.R. 30; *O. Gilpin Ltd. v. Commissioner for Road Transport* (1935) 52 C.L.R. 189; *Bessell v. Dayman* (1935) 52 C.L.R. 215; *Duncan and Green Star Trading Co. Pty. Ltd. v. Vizzard* (1935) 53 C.L.R. 493; *Riverina Transport Pty. Ltd. v. Victoria* (1937) 57 C.L.R. 327; *McCarter v. Brodie* (1950) 80 C.L.R. 432.

- 20 Reference has also been made in this part of the Case to *Australian National Airways Pty. Ltd. v. The Commonwealth* (1945) 71 C.L.R. 29, which, while not usually included in the general description, deals, in the Appellant's submission, with a similar question.

38. The decisions in the *Transport Cases* are based upon conceptions which, with one exception, have been declared by the Privy Council to be erroneous. Those conceptions are:—

- (i) That section 92 of the Constitution does not guarantee the freedom of individuals.

The King v. Vizzard (1933) 50 C.L.R. 30, per Rich J., at pp.51, 52; per Evatt J., at pp.79, 82, 94.

- 30 *O. Gilpin Ltd. v. Commissioner for Road Transport* (1935) 52 C.L.R. 189, per Evatt & McTiernan JJ. (Rich J. agreeing), at p.213.

The contrary of this proposition is established by *James v. Cowan* (1932) A.C. 542, *James v. The Commonwealth* (1936) A.C. 578, *The Commonwealth v. Bank of New South Wales* (1950) A.C. 235, at p.305.

- (ii) That if the same volume of trade flowed from State to State before as after the interference with the individual trader . . . then the freedom of trade among the States remained unimpaired.

The King v. Vizzard (1933) 50 C.L.R. 80, per Gavan Duffy C.J., at p.48; per Rich J., at p.51; per Evatt J., at pp.77, 94.

- 40 *O. Gilpin Ltd. v. Commissioner for Road Transport* (1935) 52 C.L.R. 189, per Evatt & McTiernan JJ., (Rich J. agreeing), at p.213.

Riverina Transport Pty. Ltd. v. Victoria (1937) 57 C.L.R. 327, per Rich J., at p. 357; per Evatt J., at pp.368, 369; per McTiernan J., at p.371.
Australian National Airways Pty. Ltd. v. The Commonwealth (1945) 71 C.L.R. 29, per Williams J., at p.110.

The contrary of this proposition is established by *The Commonwealth v. Bank of New South Wales* (1950) A.C. 235 at pp.305/6.

(iii) That the absence of discrimination is a factor which shows that the law is not directed at inter-State trade.

The King v. Vizzard (1933) 50 C.L.R. 30, per Evatt J., at pp.76, 92/3.
Duncan and Green Star Trading Co. Pty. Ltd. v. Vizzard (1935) 53 C.L.R. 10 493, per Rich J., at p.503; per Evatt J. (McTiernan J. agreeing), at p.508.

The contrary of this proposition is established by *James v. The Commonwealth* (1936) A.C. 578, at p.628 and *The Commonwealth v. Bank of N.S.W.* (1950) A.C. 235, at pp.305, 306, 311.

(iv) That the object or purpose of an Act challenged as contrary to section 92 is to be found in the assumed policy of the legislature.

The King v. Vizzard (1933) 50 C.L.R. 30, per Gavan Duffy C.J., at p.47; per Evatt J., at pp.77, 82, 92, 93, 94; per McTiernan J., at pp.102, 103.
Riverina Transport Pty. Ltd. v. Victoria (1937) 57 C.L.R. 327, per Evatt 20 J., at p.368.

The Commonwealth v. Bank of N.S.W. (1950) A.C. 235, at p.307, establishes that the object is to be ascertained by the necessary legal effect, not the ulterior effect economically or socially.

(v) That the application of the "pith and substance" test to the legislation results in the view that the legislation is regulatory.

The King v. Vizzard (1933) 50 C.L.R. 30, per Gavan Duffy, C.J., at p.47; per Evatt J., at p.79; per McTiernan J., at p.103.
Riverina Transport Pty. Ltd. v. Victoria (1937) 57 C.L.R. 327, per Evatt 30 J., at p.365.
McCarter v. Brodie (1950) 80 C.L.R. 432, per Latham C.J., at p.461; per McTiernan J., at p.471; per Williams J., at pp.477, 478.

The Commonwealth v. Bank of N.S.W. (1950) A.C. 235, at pp.312, 313, decided that the test may serve a useful purpose in the process of deciding whether an enactment which works some interference with trade, commerce and intercourse among the States is nevertheless untouched by section 92 as being essentially regulatory in character, but that, where no question of regulatory legislation can fairly be said to arise, it does not help in solving the problems which section 92 presents.

(vi) That the function of transporting goods from State to State is not a 40 thing which is itself comprehended within the expression "trade and commerce" in section 92. It is merely an incident of trade and commerce, a means whereby trade and commerce are carried on.

The King v. Vizzard (1933) 50 C.L.R. 30, per Gavan Duffy, C.J., at p.48; per Rich J., at p.51; per Evatt J., at pp.82, 88, 91.

Riverina Transport Pty. Ltd. v. Victoria (1937) 57 C.L.R. 327, per Evatt J., at p.365.

This conception was rejected by the High Court in *Australian National Airways Pty. Ltd. v. The Commonwealth* (1945) 71 C.L.R. 29, which has been approved by the Privy Council in the *Banking Case* (1950) A.C. 235, at p.305.

E. OPINIONS OF THE JUSTICES OF THE HIGH COURT OF AUSTRALIA IN THIS ACTION

10 39. *The Opinion of the Chief Justice, Sir Owen Dixon.*

(a) The Chief Justice was of the opinion that the High Court was bound by its previous decision in *McCarter v. Brodie* (1950) 80 C.L.R. 432, because it could be confined to commercial transport by road, and for that reason only came to a decision against the Appellant. This view was not shared by any other Justice.

p. 23, l. 32, *et seq.*
p. 27, l. 1, *et seq.*
p. 28, ll. 6 & 7.

(b) His Honour, had he felt free to follow his own view, would, as indeed he must, have decided the case in favour of the Appellant because:—

(i) His Honour had dissented in *R. v. Vizzard: Ex parte Hill* (1933) 50 C.L.R. 30; *O. Gilpin Ltd. v. Commissioner for Road Transport* (1935) 52 C.L.R. 189; *Bessell v. Dayman* (1935) 52 C.L.R. 215, and *McCarter v. Brodie* (1950) 80 C.L.R. 432.

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(ii) His Honour has been at all times of the opinion that legislation such as that here in question, both in respect of the licensing system and the levy, involves an infringement upon the freedom of trade commerce and intercourse assured by the terms of section 92.

p. 21, ll. 33-42.
p. 27, ll. 4-8.

(iii) His Honour was of opinion that the said legislation was not regulatory.

p. 22, ll. 23-39.

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(iv) His Honour was of opinion that the grounds of decision of the Transport Cases were, after the *Banking Case* (1950) A.C. 235, no longer tenable.

p. 23, ll. 8-12, 19-22, 28-32.

(v) His Honour also found that the virtual disappearance of the co-ordinating powers of the old State Transport (Co-ordination) Board and the vesting in an officer bound by Ministerial control of the authority to licence did not provide a ground upon which to distinguish the *Transport Cases*.

p. 27, ll. 28 & 29

40. *Opinion of McTiernan J.*

His Honour held:—

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(a) That *R. v. Vizzard; Ex parte Hill* (1933) 50 C.L.R. 30 was correctly decided.

p. 28, l. 34.

(b) That *Vizzard's Case* was affirmed in *McCarter v. Brodie* (1950) 80 C.L.R. 432 “upon the propositions which the Judicial Committee in the *Bank Case* laid down with respect to section 92.”

p. 28, ll. 34-36; p. 29, ll. 44-46.

It is submitted that the Justices who formed the majority in *McCarter v. Brodie* came to their conclusions for differing reasons (as is pointed out by Kitto J. in this case), and the said Justices were not agreed upon any one reason for deciding that the legislation was regulatory.

p. 28, l. 36, et
seq.; p. 29, ll. 16-
21; p. 30, l. 14, et
seq.

(c) That the circumstance that the Judicial Committee had refused special leave to appeal in *O. Gilpin Ltd. v. Commissioner for Road Transport* (1935) 52 C.L.R. 189; *Duncan and Green Star Trading Co. Pty. Ltd. v. Vizzard* (1935) 53 C.L.R. 493 and *McCarter v. Brodie* (1950) 80 C.L.R. 432, supported the view that those cases and *Vizzard's Case* were correctly decided.

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It is submitted with respect that it is erroneous to base a conclusion upon the Judicial Committee's refusal in its discretion to grant special leave to appeal.

p. 28, l. 40; p. 29,
l. 5

(d) That *Vizzard's Case* had been approved by the Judicial Committee in *James v. The Commonwealth* (1936) A.C. 578, at p.622. (His Honour in *McCarter v. Brodie* (1950) 80 C.L.R. 432, at p.469 had said, and in this case adhered to his opinion, that in the *Banking Case* the Judicial Committee had approved the decision in *Vizzard's Case*.)

p. 29, ll. 13-15.

p. 30, l. 1, et seq.

(e) That "The refusal of a licence would, of course, result in interference with interstate commerce if the applicant for the licence were an interstate carrier; for the Act would prohibit him from operating the vehicle, for which licence was sought in New South Wales. But it would be a purely accidental circumstance that the carrier's activities were of an interstate character." In this passage His Honour, it is submitted, correctly construed the legislation. His Honour's reference to "accidental" has been understood by the Appellant to mean "indirect" or "remote." It is submitted that to say that simple prohibition of the interstate trade of an individual is "accidental," "indirect," "remote" or "consequential" is to apply to the legislation the "volume of trade" test which was finally rejected in the *Banking Case* (1950) A.C. 235, at pp.305-306.

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p. 30, ll. 40-43.

(f) That authority was not granted by the Act to refuse a licence merely because the applicant wished to use the vehicle for which the licence was sought in interstate transportation across New South Wales. It is submitted that His Honour was in error in this construction of the legislation. Had His Honour construed the legislation as permitting the refusal of a licence in such circumstances it is submitted that he must have considered it invalid.

(g) His Honour would still have found against the Appellant for the reason that His Honour was of opinion that *Vizzard's Case* had been approved by the Judicial Committee, and was persuaded by the refusal of the Judicial Committee to grant special leave to appeal in *McCarter v. Brodie*.

41. *Opinion of Williams J.*

His Honour held:—

p. 33 cl. 10 & 11.

(a) That *McCarter v. Brodie* (1950) 80 C.L.R. 432 was correctly decided.

(b) That properly construed the Act co-ordinated road and rail transport and so regarded was regulatory. p. 36, ll. 6, *et seq.*

42. His Honour followed the view which historically he had first expressed in *Australian National Airways Pty. Ltd. v. The Commonwealth* (1945) 71 C.L.R. 29, at pp.108-109, in distinguishing the *Transport Cases*, and later relied upon in *McCarter v. Brodie* (1950) 80 C.L.R. 432, at pp.477, 478, that the legislation was regulatory because it did not prevent individuals carrying on the business of land transport among the States without a licence, but only prevented individuals plying their vehicles on the public roads of the States without a licence. In *McCarter v. Brodie* no other member of the Court espoused this view. *Webb J.* expressly declined to accept it, and *Latham C.J.* and *McTiernan J.* made no comment upon it. In this case *Dixon C.J.* did not agree with it, and though *McTiernan J.* referred to the power of the State to control roads, he did not, it is submitted, concur in the view of *Williams J.* p. 36, ll. 34-38.
p. 23, l. 46-p. 24, l. 2; p. 27, ll. 1-8.
p. 32, ll. 43-49.

43. *Opinion of Webb J.*

His Honour held:—

(a) That *McCarter v. Brodie* was correctly decided. p. 38, ll. 29-31.
(b) That *Vizzard's Case* should be regarded as rightly decided. p. 37, ll. 12-14.
(c) That except for the observations of the Judicial Committee in *James v. The Commonwealth* (1936) A.C. 578 and the *Banking Case* (1950) A.C. 235, he would have decided in favour of the Appellant. p. 38, ll. 29-35.

44. *Opinion of Fullagar J.*

His Honour held:—

(a) That the legislation “stands forth as a conspicuous breach of section 92 in its plainest and most elementary aspect.” p. 42, ll. 17 & 18.
(b) That the grounds supporting the *Transport Cases* were shifted in *McCarter v. Brodie* (1950) 80 C.L.R. 432. The two grounds appearing in that case are: (i) that the legislation was merely regulatory; and (ii) that the States, because they provide facilities for transport, must have power to control the use of those facilities in any manner thought fit. The first proposition depends on the “volume of trade” theory. The second can hardly stop short of saying that, whenever a real State interest is involved, there is immunity from section 92. p. 44, ll. 35 & 36, ll. 42, *et seq.*
p. 46, ll. 36, *et seq.*
(c) That the decision in *McCarter v. Brodie* is inconsistent with *James v. South Australia* 40 C.L.R. 1, *James v. Cowan* (1932) A.C. 542, with the decision in *James v. The Commonwealth* (1936) A.C. 578, and with the conclusion and the reasons for the conclusion in the *Banking Case* (1950) A.C.235. p. 47, ll. 27-32.

His Honour therefore held that his proper course was to refuse to follow *McCarter v. Brodie*, and to decide this case in favour of the Appellant. p. 47, ll. 33-39.

45. *Opinion of Kitto J.*

His Honour held:—

p. 48, ll. 14-21

(a) That, considering the question apart from *McCarter v. Brodie* (1950) 80 C.L.R. 432, the exposition of section 92 in the *Banking Case* made the conclusion logically inevitable that the legislation was in flat contradiction of section 92.

p. 51, ll. 3-11

(b) That there is no proposition which can be regarded as the *ratio decidendi* of *McCarter v. Brodie*, and that in respect of every reason given for holding the legislation to be consistent with section 92 there was a majority of the Court consisting of judges who either dissented from that reason or refrained from supporting it.

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p. 51, ll. 17-27

(c) That, in view of the three decisions of the Privy Council on section 92, the Court is thrice bound to overrule *McCarter v. Brodie*. Simple prohibition is not regulation, and a prohibition is none the less simple because someone has a power, which he may exercise or refuse to exercise at discretion, to restore the freedom which that prohibition denies.

p. 51, l. 40; p. 52,
l. 3.46. *Opinion of Taylor J.*

His Honour held:—

p. 56, ll. 26-32.

(a) That upon a consideration of the observations of the Judicial Committee, not only in relation to the legislation under consideration in the *Banking Case*, but also with respect to the decisions in *James v. South Australia* (40 C.L.R. 1) and *James v. The Commonwealth* (55 C.L.R. 1), the conclusion that a legislative prohibition against trading, including inter-State trading, except pursuant to a licence which might be arbitrarily refused, constitutes an infringement of section 92, is irresistible, and should be adopted by the Court.

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p. 56, ll. 32-41

(b) That such a conclusion was of the very essence of the decision in *Gratwick v. Johnson* (70 C.L.R. 1), and was a substantial basis for the decision in *Australian National Airways Pty. Ltd. v. The Commonwealth* (71 C.L.R. 29). It was also the opinion entertained by the majority of the Court in *McCarter v. Brodie*.

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p. 57, ll. 12-16.

(c) That section 17 of the Act under review confers an authority to refuse licences on grounds other than those which may properly be regarded as regulatory of the trade and commerce concerned.

47. The Appellant relies upon the reasons for judgment of their Honours, Fullagar, Kitto and Taylor JJ.

F. CONCLUSIONS

48. The Appellant therefore submits that the decision of the High Court of Australia is erroneous and ought to be reversed, that this appeal should be allowed and the order of the High Court set aside, and in lieu thereof the plaintiff's demurrer should be upheld and a declaration should be made that the Act does not apply to the Appellant while operating its vehicles in the

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course of and for the purposes of inter-State trade, for the following amongst other:—

REASONS.

- (a) Because the State Transport (Co-ordination) Act, 1931-1952, has no application to public motor vehicles which are operated, within the meaning of that Act, in the course of and for the purposes of inter-State trade.
- 10 (b) Because the actual decision of the Privy Council in *James v. The Commonwealth* (1936) A.C. 578, that section 3 of the Dried Fruits Act, 1928-1935 (Commonwealth) was invalid, authoritatively determined that like provisions such as the legislation here in question have no application to the operation of the Appellant's vehicles in the course of and for the purposes of inter-State trade.
- (c) Because the statutory provisions here in question operate directly and immediately to prohibit or partially prohibit trade and commerce among the States, and are not justifiable as regulation of such trade.
- 20 (d) Because an arbitrary power, or a discretionary power which goes beyond regulation, to license inter-State carriers upon conditions which include the imposition of a levy is inconsistent with absolute freedom of trade and commerce among the States, that is to say, with a "free border."
- (e) Because the provisions of the legislation whereby a charge may be imposed are a direct burden upon inter-State trade and are not regulatory.

J. D. HOLMES

G. D. NEEDHAM

In the Privy Council.

ON APPEAL

FROM THE HIGH COURT OF AUSTRALIA

Between

HUGHES AND VALE PTY. LIMITED *Appellant*

and

THE STATE OF NEW SOUTH WALES, THE
HONOURABLE WILLIAM FRANCIS SHEAHAN
and the DIRECTOR OF TRANSPORT AND
HIGHWAYS - - - - *Respondents*

and

THE COMMONWEALTH OF AUSTRALIA, THE
STATE OF VICTORIA and THE STATE OF
QUEENSLAND - - - - *Interveners.*

Case for the Appellant.

FARRER & CO.,
66, Lincoln's Inn Fields, W.C.2,
Solicitors for the Appellant.