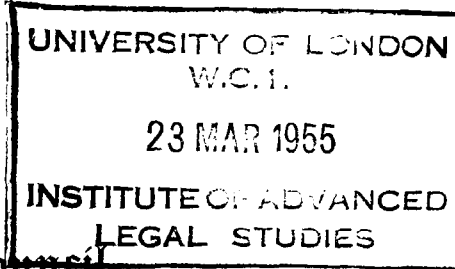


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No. 40 of 1953.

In the Privy Council.

ON APPEAL
FROM THE FULL COURT OF 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 RESPONDENTS

INTRODUCTORY. (PARAGRAPHS 1—10):

RECORD.

20 1. This is an appeal brought by special leave granted on the 19th June, 1953, from a judgment and order of the High Court of Australia which overruled a demurrer by the Plaintiff (Appellant) to the Defence of the Defendants (Respondents). In overruling the Appellant's demurrer the High Court of Australia held that the State Transport (Co-ordination) Act, 1931-1951 was within the powers of the Parliament of the State of New South Wales and did not infringe Section 92 of the Commonwealth of Australia Constitution which provides that:—

pp. 60-61.
p. 59.
pp. 16-17.

“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.”

2. The substantial questions for decision in this appeal are:—

(a) whether the State Transport (Co-ordination) Act which establishes a system for the licensing of public motor vehicles and provides for the payment to the Respondents of certain mileage charges according to the distance travelled by such vehicles in the State of New South Wales infringes section 92 of the Constitution; and

(b) whether the view established in Australia for more than twenty years by a long line of decisions of the High Court of Australia that this Act and similar legislation of other States is valid should be overruled. 10

3. The State Transport (Co-ordination) Act is typical of a number of Acts in force in the various Australian States. As *Rich J.* said in *The King v. Vizzard Ex parte Hill* (1933) (50 C.L.R. 30 at p. 50):—

“Its long title describes it as an Act to provide for the improvement and for the co-ordination of means and facilities for locomotion and transport, and to constitute a Board of Commissioners for that purpose. It is directed to secure an ordered system of public transportation in which the integers (not the least important of which are State railways) do not engage in mutual slaughter by irrational competition. As part of the means to this end it sets up a licensing system for motor vehicles which act as common carriers or which otherwise engage in the carriage of goods. The grounds upon which a licence may be granted or withheld are concerned with the public need for such transport, the suitability of routes, the mutual relation of the proposed service with other services and other matters which attend the co-ordination of a random system of transport.” 20

The Act provides for the issue of licences subject to conditions, including the payment of a mileage charge in respect of the weight and load capacity of the vehicle and the distance travelled in New South Wales. 30

p. 2, ll. 8-10.

p. 2, l. 15.

p. 3, l. 16.

4. The Appellant carries on the business of a carrier of general merchandise between Sydney and Brisbane under licences issued by or on behalf of the Respondents in pursuance of the State Transport (Co-ordination) Act. Such licences authorise the Appellant to operate public motor vehicles for reward on the public roads of New South Wales within certain limits subject to mileage charges being paid to the Respondents in respect of journeys specified in the said Act and the licences issued thereunder. 40

p. 4, ll. 11-35.

5. The Appellant commenced an action in the High Court of Australia against the Respondents on 7th July, 1952, and by its amended Statement of Claim sought declarations:—

(a) that the State Transport (Co-ordination) Act is, or alternatively certain sections thereof are, beyond the powers of the Parliament of the State of New South Wales; and p. 4, ll. 12-17.

(b) that the mileage charges imposed in respect of the operation of public motor vehicles in the State of New South Wales are invalid. p. 4, ll. 18-23.

10 The Respondents by their Defence alleged, *inter alia*, that the licences issued for public motor vehicles and the mileage charges imposed in respect of journeys by such vehicles were issued and imposed in accordance with the State Transport (Co-ordination) Act and certain directions given thereunder by the Respondent, the Director of Transport and Highways, which are annexed to the Defence. p. 5, l. 11—
p. 6, l. 19.

6. The Appellant demurred to the defence of the Respondents on the grounds that:— p. 16, l. 30—
p. 17, l. 9.

(1) The State Transport (Co-ordination) Act, 1931-1951, is beyond the powers of the Parliament of the State of New South Wales and invalid. p. 16, ll. 34-36.

20 (2) Sections 12, 13, 14, 15, 16, 17, 18, 19, 21 and 28 of the said Act are beyond the powers of the Parliament of the State of New South Wales and invalid. p. 17, ll. 1-3.

(3) The Defendant, the Director of Transport and Highways, in imposing the said mileage charges, has exercised powers not authorised by the said Act, or, if so authorised, not within the powers of the Parliament of the State of New South Wales. p. 17, ll. 4-9.

7. By reason of the fact that this matter came before the Full High Court on demurrer there was no trial of the action at which evidence could have been given of:—

30 (a) the circumstances affecting the transport industry in New South Wales at the date of the passing of the State Transport (Co-ordination) Act and the economic geographic social and political conditions out of which the need for that legislation arose;

(b) the circumstances affecting the transport industry in New South Wales between the date of the passing of the said legislation and the date of the commencement of the said action and the economic geographic social and political circumstances which were relevant to the operation of the administrative system established under the said Act for the granting of licences and the imposition of mileage charges;

40 (c) the manner in which the working of the said administrative system effected a regulation and co-ordination of the land transport resources of the State.

Certain of the basic economic geographical social and political circumstances referred to above are dealt with briefly in paragraphs 16 to 19 of this Case.

p. 59.

8. The demurrer was overruled by the High Court of Australia (Dixon C. J., McTiernan, Williams and Webb JJ.; Fullagar, Kitto and Taylor JJ., dissenting).

9. The State Transport (Co-ordination) Act was passed by the Parliament of the State of New South Wales in 1931 and has been amended in minor respects since its passage. The Act, as amended up to the date of the commencement of the action, contains *inter alia*, the following provisions:— 10

“s. 3. (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 sub-section, have been con-
“strued 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.

“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, 20
“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.

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

“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 30
“this Act by the board and unless he is the holder of such licence,
“be guilty of an offence against this Act: Provided that this sub-
“section 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.

“(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 40
“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.

“In any prosecution the onus of establishing the exception
“that the goods are not intended for sale shall lie on the defendant.

10 “13. Any person who after the date appointed under section
“twelve of this Act sends or causes to be sent or conveyed or agrees
“or offers to send or convey any passengers or any goods by any
“public motor vehicle which is not licensed under this Act by the
“board shall be guilty of an offence against this Act. In any prose-
“cution for an offence under this section it shall be a sufficient
“defence if the person charged proves that he had reasonable
“grounds for believing, and did in fact believe, that the motor
“vehicle in respect of which the prosecution is taken, was at the time
“of the alleged offence licensed under this Act.

“14. (1) Every person desiring to operate a public motor vehicle
“shall in addition to any licence 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 licence for such vehicle under this Act.

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

20 “(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;

“(c) the number of passengers or maximum weight of goods
“proposed to be carried on such vehicle;

30 “(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 licence issued in respect of such
“vehicle under the Local Government Act, 1919, or the ordin-
“ances 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 licence:

40 “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.

“15. (1) A licence 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 licence 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 licence.

“16. (1) A licence shall not be issued under this Act for a public motor vehicle other than an aircraft, unless it is registered under the Motor Traffic Act, 1909-1930, or the Transport Act, 1930. 10

“(2) A licence issued for a public motor vehicle other than an aircraft, shall be for a period expiring on the date upon which the current registration of the vehicle under the Motor Traffic Act, 1909-1930, or the Transport Act, 1930, expires.

“(3) A licence issued under this Act for an aircraft shall expire on the anniversary of the date upon which it is issued.

“(4) The provisions of this section shall apply in respect of renewals of licences for public motor vehicles.

“(5) Notwithstanding anything in this Act a licence for a public motor vehicle may be surrendered with the consent of the board. 20

“(6) Where any such licence is surrendered the board may, if it thinks fit, refund the whole or portion of the fee paid in respect of the licence.

“(7) A licence granted to any person under this Act may not be transferred by the licensee, but he or his legal personal representative may apply to the Commissioner for Road Transport and Tramways to transfer his licence to a person nominated by him. Subject to section 17a of this Act the Commissioner for Road Transport and Tramways may, in his discretion, grant such application subject to such conditions, if any, as he shall deem fit, or refuse such application. 30

“(8) In dealing with an application for transfer of a licence the Commissioner for Road Transport and Tramways shall consider all such matters as he may think necessary or desirable including (but without in any way limiting the generality of the foregoing) the public interest, the suitability and fitness of the person nominated, whether he is the owner of the vehicle to which the application relates, and the extent, if any, to which he will, if the application be granted, have the use, control and management thereof. 40

“17 (1) Every licence 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 licence or to the public motor vehicle in respect of which it is issued, and of the provisions contained in or attaching to the licence, and all such provisions shall be conditions of the licence.

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

10

“(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 licence;

20

“(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 the passengers or the quantity, weight, or bulk of the goods that may be carried on the vehicle).

“(3) In dealing with an application for a licence 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 licence;

30

“(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;

“(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;

40

“(f) the suitability and fitness of applicant to hold the licence applied for;

“(g) the construction and equipment of the vehicle and its fitness and suitability for a licence:

“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 air-
 “craft 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 licence or in respect of any vehicle
 “or of any area, route, road, or district.

“(5) If the holder of any licence of a public motor vehicle
 “under this Act, fails to comply with or observe any of the terms or 10
 “conditions of or attaching to such licence he shall be guilty of an
 “offence against this Act.

“18. (1) Unless exempted by the Act or the regulations the
 “holder of every licence for a public motor vehicle under this Act
 “shall in the prescribed manner—

“(a) keep the prescribed books and records in respect of
 “the passengers and goods carried and to be carried (including
 “the prescribed records of all journeys undertaken by each
 “vehicle);

“(b) produce such books and records to the prescribed 20
 “persons;

“(c) make at and for the prescribed times returns in the
 “forms prescribed in respect of passengers and goods carried,
 “freight and fares earned, contracts of carriage entered into and
 “otherwise as prescribed;

“(d) verify such returns as prescribed;

“(e) issue to passengers as prescribed tickets in the
 “prescribed form;

“(f) issue to consignors and consignees of goods as pre-
 “scribed receipts and waybills in the prescribed form. 30

“In addition to and without impairing the liabilities under
 “this Act of other persons to perform such obligations, the regula-
 “tions may require the conductor of the vehicle, or if there is no
 “conductor, the driver thereof, to perform in respect of such vehicle,
 “the obligations mentioned in paragraphs (e) and (f) of this sub-
 “section or any part thereof.

“Any person who commits a breach of this sub-section
 “shall be liable on summary conviction to a penalty not exceeding
 “one hundred pounds.

“(2) Subject to this Act and to any modification of this pro- 40
 “vision made by the regulations, the weight of a public motor
 “vehicle or of goods carried or to be carried by a public motor
 “vehicle shall be determined at a public weighbridge approved

“by the board or at a weighbridge of the Railway Commissioners
“and the certificates of the weighing shall be produced by the
“holder of the licence for the vehicle to the board on demand.

“(3) The regulations may provide that the weight of a
“public motor vehicle for the purposes of any other Act may be
“adopted for the purposes of this Act and that the weight of goods
“carried by any public motor vehicle may be calculated on the
“basis that a stated number of goods, or a stated number of pack-
“ages of or a stated bulk of, goods of a certain class or description
“weighs a stated amount.

10

“(4) The board may, in any licence for a public motor
“vehicle to be issued under this Act that authorises the holder to
“carry passengers or passengers and goods in the vehicle, impose
“a condition that the licensee shall pay to them (in addition to any
“other sums payable under the following sub-section and any other
“provision of this Act), for each and every passenger carried by the
“public motor vehicle a sum not exceeding one penny for each mile
“or part thereof of his journey or (where that sum is less than the
“following sum) a sum not exceeding one penny for each section
“or part thereof included in his journey and for such purposes the
“word ‘section’ means a part of the route of the vehicle in respect
“of which a separate charge may for the time being be made against
“a passenger.

20

“The board may determine that the sums to be paid to it
“under this sub-section may be less than the sums hereinbefore men-
“tioned and may be differently ascertained in respect of different
“licences.

“(5) The board may, in any licence 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 con-
“dition that the licensee shall pay to them (and in addition to any
“other sums payable under the preceding sub-section and any other
“provision of this Act) such sums as shall be ascertained as the
“board may determine.

30

“The board may determine that the sum or sums so to be
“paid may be differently ascertained in respect of different licences
“and may be ascertained on the basis of mileage travelled as here-
“inafter 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:

40

“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 three pence 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 sub-section 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 licence” 10

“For the purposes of this proviso the weight of the vehicle
“unladen and the weight of loading the vehicle is capable of carry-
“ing shall be as mentioned in the licence or as determined by the
“board.

“(6) The sums payable to the board under sub-sections four
“and five of this section shall be paid to the prescribed persons on
“behalf of the board as and when prescribed by the regulations and
“shall constitute a debt due to and recoverable by the board from
“the licensee.

“(7) The board may in their discretion require any appli- 20
“cant to give reasonable security in the prescribed form for due
“compliance with the conditions imposed or to be imposed in or
“attached to the licence pursuant to sub-sections four and five of
“this section in such amount as the board may require in the
“particular case.

“(8) Where a public motor vehicle is solely operated for
“the conveyance of passengers and/or goods on journeys, none of
“which exceeds twenty miles in length, the board may on such
“conditions as they think fit exempt the licence for the vehicle from
“having inserted therein the conditions mentioned in sub-sections 30
“four and five of this section.

“For the purposes of this sub-section where goods are tran-
“shipped from one public motor vehicle to another or are carried
“by a public motor vehicle to a receiving depot, and are carried
“from the place of transshipment or from such depot by a public
“motor vehicle, the whole journey shall be regarded as one journey,
“and each vehicle taking part in it shall be regarded as having
“undertaken the whole journey.

“(9) (a) Where a public motor vehicle is solely operated
“in the carriage of goods on a journey to the nearest practicable rail- 40
“way station for the purposes of the carriage by railway of such
“goods the board shall exempt the licence for the vehicle from
“having inserted therein the condition mentioned in sub-section five
“of this section.

“(b) Where a public motor vehicle carrying passengers and/or goods ought not, in the opinion of the board, to be subject to the condition mentioned in sub-section five of this section, by reason of the state of the roads travelled by the vehicle, or the transport facilities in the area served by the vehicle or for any other reason, the board may, on such conditions as they think fit, exempt the licence for the public motor vehicle from having inserted therein the condition mentioned in the said sub-section.

10 “(10) The board may in its discretion at any time revoke any exemption granted by it under sub-section eight or sub-section nine of this section, and may thereupon impose in respect of the licence the conditions provided for by sub-sections four and five of this section.

20 “(11) Where the board at any time thinks it desirable that any of the terms, conditions, and authorities in respect of any licence 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 licence 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 licence.

“(12) Any person who commits a breach of a condition of an exemption granted by the board under sub-section eight or sub-section nine of this section shall be guilty of an offence against this Act.

30 “19. (1) The board may grant exemption from the requirements to be licensed under this Act in respect of any public motor vehicle or class of public motor vehicles in such cases and under such conditions as they think fit.

“(2) The board may from time to time vary or revoke any such exemption.

“(3) Any person who commits a breach of any condition imposed under this section shall be guilty of an offence against this Act.

40 “21 (1) Any licence granted under this Act in respect of a public motor vehicle may be cancelled by the board if the holder fails to comply with or observe any of the provisions of this Act or of the regulations or any of the terms, conditions, or authorities of or attaching to the licence or of or attaching to any exemption granted by the board under sub-section eight or nine of section eighteen.

“(2) Such cancellation shall be in addition to any penalty in which such failure may by any other provision of this Act or the regulations involve the holder or any other person.

“(3) The licence for a public motor vehicle other than an aircraft shall determine if the registration of the vehicle under the Motor Traffic Act, 1909-1930, or the Transport Act, 1930, determines.

“22. (1) The board may, on payment of the prescribed fees, issue permits, for such period as it thinks fit and subject to any conditions that may be prescribed or imposed by the board, permitting the carrying on a motor vehicle of persons in or over specified districts or routes. 10

“(2) Any such permit may be revoked or varied at any time by the board.

“(3) Any person who commits a breach of any of the conditions of a permit shall be guilty of an offence against this Act.

“23. (1) The board may delegate to the Commissioner of Road Transport or to the Management Board or any transport trust or to the Railway Commissioners or to the Main Roads Board or to the Commissioner of Police or to any person or authority any of its powers, duties, functions, or authorities under this Act or the regulations, and the person, corporation, or authority to whom such delegation is made may exercise and discharge the powers, duties, functions, and authorities delegated as fully and effectually as the board could have exercised and discharged the same. 20

“(2) A delegation may be made in respect of any particular matter or of any class of matters or generally or may be limited to any part of the State and may be made subject to or on such terms and conditions as the board thinks fit.

“(3) Every delegation under this section shall be revocable at the will of the board, but no delegation shall prevent the exercise of any power, duty, function, or authority by the board. 30

“24. Any person who at the time of the coming into force of this Act is the holder of a registration for a motor vehicle under the Motor Traffic Act, 1909-1930, or the Transport Act, 1930, and who shall at any time thereafter consider himself aggrieved by any decision of the board under section twenty-one may appeal to the Transport Appeal Court established under the Transport Act, 1930. Such appeal shall be prosecuted within a period to be fixed by rules of the Transport Appeal Court. The court may award costs to any party as in its discretion it shall see fit. 40

“25. All amounts payable to the board under subsections four and five of section eighteen and under section thirty-seven, and all

“fees payable in respect of licences and permits under this Act,
 “shall be paid into the State Transport (Co-ordination) Fund estab-
 “lished by this Act.

“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.

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

“(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.

20 “(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 pay-
 “ments out of the said fund as subsidies in respect of any public
 “motor vehicles used for providing feeder services to railways or
 “tramways.

“(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
 30 “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.

“28 (1) No person shall, except in pursuance of a permit under
 “this Act or under an exemption granted or declared under this
 “Act, drive or operate or cause or permit to be driven or operated
 40 “as a public motor vehicle any motor vehicle unless the motor
 “vehicle is licensed as a public motor vehicle and is used in con-
 “formity with the licence.

“(2) Any person contravening the provisions of this section shall be guilty of an offence against this Act.

“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 sub-sections four and five of section eighteen had the person operating the vehicle been the holder of a licence to operate it and had the board imposed therein the conditions provided by such sub-sections.

10

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

p. 21, ll. 3-22.
p. 36, ll. 8-10.
p. 55, ll. 2-6.

10. By virtue of various other Acts the Respondent the Director of Transport and Highways now exercises the powers and authorities conferred on the Board by the State Transport (Co-ordination) Act.

LICENCES AND MILEAGE CHARGES: (PARAGRAPHS 11-20):

p. 2, l. 17—
p. 3, l. 16.

11. In pursuance of the said Act licences are issued to owners and operators of public motor vehicles (including the Appellant) subject to the following conditions which are set forth in the licences:—

“SPECIAL CONDITIONS (Non-competitive Licence)

20

“(1) The within-mentioned vehicle is authorised to operate as a goods motor vehicle on or in routes, roads, areas or districts within the State of New South Wales:—

“(a) on journeys none of which, for a distance exceeding fifty (50) miles, is competitive with the Railways or Tramways;

“(b) when used solely for the transport of fresh fruit, vegetables, eggs or poultry from farm to market on journeys of any distance.

“(2) In respect of any journey which is wholly or partly competitive with the railways or tramways, the licensee shall pay to the Commissioner for Road Transport and Tramways for the full competitive distance (in addition to any other sums payable under the State Transport (Co-ordination) Act, 1931, as amended, and this Licence or either of them):—

“Three pence 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 for each and every mile, or part thereof, travelled by the within-mentioned vehicle along a public street.

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“(3) Provided that the terms conditions and authorities of or
 “attached to this licence are complied with, the licensee and the
 “driver of the vehicle herein referred to, and each of them, shall
 “be exempt from the condition mentioned in Sub-section 5 of
 “Section 18 of the State Transport (Co-ordination) Act, 1931, as
 “amended, and unless the Commissioner otherwise determines,
 “from the obligations imposed by Regulations 9 and 10 under that
 “Act in respect of any journey which is not, for a distance exceed-
 “ing fifty (50) miles, competitive with the railways or tramways,
 10 “or of a journey of any distance when the vehicle herein referred
 “to is used solely for the transport of fresh fruit, vegetables, eggs or
 “poultry from farm to market. For the purposes of the terms, con-
 “ditions and authorities of or attached to this licence and of this
 “exemption, where goods are transhipped from one public motor
 “vehicle to another or are carried by a public motor vehicle to a
 “receiving depot, shop or store, and are carried from the place of
 “transhipment or from such receiving depot, shop or store by a
 “public motor vehicle the whole journey shall be regarded
 20 “as one journey and if the vehicle to which this licence relates
 “takes part in it, it shall be regarded as having undertaken the
 “whole journey.”

12. From time to time the said mileage charge referred to in
 Special Condition (2) has been reduced or payment thereof has been
 waived by the Respondent the Director of Transport and Highways in
 respect of certain routes and journeys where other means of transport
 (particularly rail transport) are not readily available, and in respect
 of the carriage of certain classes of goods. At the time of the institution
 of this action mileage charges were payable by operators of public motor
 vehicles carrying general merchandise in respect of the distance
 30 travelled on the roads of the State of New South Wales at the following
 rates:—

(a) on routes to the border between New South Wales and
 Queensland—

3d. per ton per mile as provided in Special Condition (2)
 of the licences;

(b) on routes to the borders between New South Wales and
 Victoria or South Australia—

40 3d. per ton per mile for the first 100 miles; 2d. per ton per
 mile for the second 100 miles; and 1d. per ton per mile for
 such further distance thereafter travelled in the State of New
 South Wales.

The circumstances in which the said rates were payable and reductions
 in the said mileage charge were made, and in which the said mileage
 charge was not payable, are set out in directions given by the Respondent

p. 6, l. 30—

p. 16, l. 20.

p. 3, ll. 27-34.

p. 3, l. 39—

p. 4, l. 5.

p. 6, l. 30—

p. 16, l. 20

the Director of Transport and Highways to District Motor Registries, which are annexed to the Defence.

p. 3, ll. 16-26.

13. Payment of the said mileage charge at the rate prescribed by the said licences or at the reduced rate referred to in the said directions is ensured by the issue of permits authorising the operation of a public motor vehicle for a specified day or period for the carriage of specified goods. Such permits are issued by the Respondent Director of Transport and Highways or District Motor Registries upon payment of the mileage charge (if any) appropriate to the journey for the distance travelled in New South Wales.

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p. 5, ll. 31-36.

14. The Respondent Director of Transport and Highways is charged with the function under the said Act of co-ordinating all forms of transport within the State of New South Wales and the directions given by him with respect to the mileage charges payable and the issue of permits were formulated after a consideration of all transport facilities available in the said State and in the light of the geographical, economic and other facts mentioned in paragraphs 16 to 19 inclusive.

pp. 5-16.

15. The administrative system for the issue of licences for public motor vehicles whereunder mileage charges are payable is a means of co-ordinating the transport facilities of the State of New South Wales to ensure the economical use of such facilities (including the State-owned railways). The way in which this administrative system operates to co-ordinate transport in the State of New South Wales and to regulate the use of transport facilities cannot be fully understood without a knowledge of some basic geographical and economic facts which are well known in Australia and some of which from time to time have been adverted to in the judgments of the High Court of Australia in the *Transport Cases*, referred to in paragraph 21, or during the course of the argument thereon.

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16. The area of the State of New South Wales is 309,433 square miles. This area is served by a railway system built and operated by a department of the New South Wales Government. It was inaugurated in the year 1855 and has been continuously added to and enlarged until the operating mileage was, as at the 30th June, 1952, 6,113 miles. The total capital cost of the whole system was, at the 30th June, 1952, estimated at £217,622,000; the current annual operating cost of the system for the year ending the 30th June, 1952, was, exclusive of capital charges and interest approximately £63,585,000 and the revenue for that year was approximately £68,910,000. The total mileage of State Highways, Trunk Roads, Main Roads, Secondary Roads and Developmental Roads proclaimed under the Main Roads Act, 1924-1951, as at the 30th June, 1952, was 26,322 miles. The cost of construction and maintenance of these highways and roads is shared between local authorities and the Government of the State of New South Wales. Of the expenditure, including capital charges and interest, upon these

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highways and roads for the year ending the 30th June, 1952, the sum of approximately £9,600,000 was paid by the Government of the State of New South Wales. The population of the said State was, as at the 30th June, 1952, approximately 3,356,000.

17. Much of the cargo carried by the railway system in the said State consists of primary produce grown in remote areas of the State which must be carried long distances to points of export for shipment abroad at low freight rates because the price therefor is determined by the price on international markets. Hence the cost of transporting these
10 commodities is an important factor in the economy of the State, which is largely dependent upon its capacity to dispose of primary products at a competitive price on the markets of the world.

18. These facts determine to a very great extent the general form and nature of the railway freight structure. The costs of operation must be distributed over all classes of cargoes but a large proportion of the total tonnage to be carried requires rates so low that other rates must be correspondingly higher. This situation invites unfair and inequitable competition from road transport operators who may select
20 those classes of goods which are profitable and leave the railways to carry those commodities which by their nature can only be carried at low rates. The imposition of a mileage charge in fields where such competition is possible is a convenient means of equalizing competition.

19. The administrative system for the issue of licences and the imposition of variable mileage charges within the maximum prescribed by the Act achieves a regulation of the transport industry as a whole, particularly in the light of the following considerations:—

(a) the substantial total funds expended upon the construction and maintenance of public highways and the necessity to collect from commercial users of such highways some contribution towards the cost of maintaining the public highways according to the weight of the loads and the distances travelled;

30 (b) the necessity to provide a fair and equitable regime of competition in rates charged by road transport operators over routes parallel to or in competition with the existing railway system;

(c) the necessity to ensure that in a country of vast distances and in some areas of sparse population the existing transport facilities of the State shall be available to sustain the community and especially the primary producing rural areas.

20. The statutory powers contained in the State Transport (Co-ordination) Act are appropriate for and are used and administered
40 to bring about a co-ordination of the functions and activities of the railway system operating over fixed routes and those of a flexible road

pp. 5-16.

transport system providing, amongst other services, collection and distribution services to and from railway terminals. This co-ordination is in fact effected by the imposition of variable mileage charges or by the waiver of such charges according to the nature and economic importance of the services being performed by the road carrying vehicles considered as integers in the land transport system of the State.

PREVIOUS DECISIONS OF THE HIGH COURT.

21. On several occasions prior to the institution of this action the validity of the State Transport (Co-ordination) Act and of similar Acts in other States has been upheld by the High Court of Australia:— 10

(a) In *R v. Vizzard; Ex parte Hill* (1933) (50 C.L.R.327) the validity of the State Transport (Co-ordination) Act was upheld. This decision, which was given after *James v. Cowan* ((1932) A.C.542; 47 C.L.R.386) was followed in *O. Gilpin Ltd. v. The Commissioner for Road Transport* (1935) (52 C.L.R.189) and *Duncan and Green Star Trading Co. Pty. Ltd. v. Vizzard* (1935) (53 C.L.R.493).

(b) In *Bessell v. Dayman* (1935) (52 C.L.R.215) the validity of the Road and Railway Transport Acts 1930-31 of the State of South Australia was upheld. 20

(c) In *Riverina Transport Pty. Ltd. v. Victoria* (1937) (57 C.L.R.327) the validity of the Transport Regulation Act, 1933, of the State of Victoria was upheld. This decision was given after *James v. The Commonwealth* ((1936) A.C.578; 55 C.L.R.1). The validity of this Act was again upheld in *McCarter v. Brodie* (1950) (80 C.L.R.432) after the decision in the *Banks' Case* (*Bank of New South Wales v. The Commonwealth* ((1950) A.C.235; 79 C.L.R.495).

The decisions in *Vizzard's Case*, *O. Gilpin's Case*, *Duncan's Case*, *Bessell v. Dayman* and the *Riverina Transport Case* are, for purposes of convenience, referred to as the "Transport Cases". Leave to appeal 30 to His Majesty in Council was refused in *O. Gilpin Ltd v. The Commissioner for Road Transport* and *Duncan and Green Star Trading Co. Pty. Ltd. v. Vizzard* and in *McCarter v. Brodie*.

HEARING BY AND ARGUMENTS SUBMITTED TO THE HIGH COURT: (PARAGRAPHS 22-24):

p. 59.

22. The judgment appealed from in the present case was given by the High Court on 16th April, 1953, after argument on the 15th, 16th, 17th, 20th and 21st October, 1952. At the hearing the Commonwealth of Australia, the State of Victoria and the State of Queensland were granted leave to intervene and by their respective Counsel submitted 40 arguments in support of the validity of the State Transport (Co-ordination) Act and contended that the demurrer of the Appellant should be overruled.

23. On the hearing of the demurrer the contentions of the Appellant with respect to the questions raised in this appeal were:—

(a) that the conduct of the business of a carrier of merchandise by road is trade and commerce within section 92 of the Constitution;

(b) that legislation prohibiting the conduct of a trade or business without a licence where the grant of a licence is in the absolute discretion of an official infringes section 92 of the Constitution;

10 (c) that the State Transport (Co-ordination) Act confers an absolute discretion upon the Respondent Director of Transport and Highways to determine the persons who may engage in inter-State trade as carriers of merchandise by road;

(d) that the effect of the decisions in *James v. Cowan*, *James v. The Commonwealth* and the *Banks' Case* was to overrule *Vizzard's Case* and the subsequent *Transport Cases*;

(e) that *McCarter v. Brodie* rested for its authority on the *Transport Cases* and should not be followed; and

20 (f) that the mileage charges imposed by the Respondent the Director of Transport and Highways are a discriminatory burden on inter-state trade and are invalid.

24. On the hearing of the demurrer the contentions of the Respondents with respect to the questions raised in this appeal were:—

(a) that the decisions in the *Transport Cases* and *McCarter v. Brodie* were correct and should be followed;

(b) that as the policies of the governments of the States had been formulated on the basis of these decisions the doctrine of *stare decisis* should be given full effect;

(c) that *Vizzard's Case* had been confirmed by the decisions in *James v. The Commonwealth* and the *Banks' Case*;

30 (d) that the authority of the *Transport Cases* had been recognised by the refusal of His Majesty in Council to grant leave to appeal from the judgments of the High Court of Australia in *O. Gilpin's Case*, *Duncan and Green Star Trading Co. Pty. Ltd. v. Vizzard* and *McCarter v. Brodie* (the last mentioned application having been made after the decision in the *Banks' Case*);

(e) that the State Transport (Co-ordination) Act was a regulatory measure designed to co-ordinate all forms of transport in the State of New South Wales and to regulate competition between railway and road transport;

40 (f) that any impact of the Act on inter-State trade was not direct and immediate but was remote or consequential;

(g) that the Act was a uniform measure applying to all road transport within the State of New South Wales and not discriminating against inter-State trade or commerce;

(h) that the Act does not confer an absolute discretion to grant or refuse licences and in particular does not authorise the refusal of a licence because the applicant desires to engage in inter-State trade or commerce;

(i) that the Parliament of the State of New South Wales is entitled to regulate competition between the State-owned railways and carriers using the public roads of the State with a view to ensuring the economic use of all transport facilities protecting the railways from undue competition and preventing excessive use of the roads; 10

(j) that the mileage charges imposed by the Respondent the Director of Transport and Highways do not impose a burden on inter-State trade contrary to section 92 of the Commonwealth of Australia Constitution;

(k) that the Appellant having been granted licences under the Act had no title to complain of the licensing system established thereby. 20

DECISION AND REASONS OF THE HIGH COURT:
(PARAGRAPHS 25-32):

p. 59. 25. The High Court of Australia (*Dixon C.J., McTiernan, Williams and Webb JJ.*; *Fullagar, Kitto and Taylor JJ.* dissenting) overruled the Appellant's demurrer and held that the State Transport (Co-ordination) Act was within the powers of the Parliament of the State of New South Wales and that the mileage charges levied upon the Appellant under the said Act were not invalid. The reasons of the respective Justices are summarized in the ensuing paragraphs.

p. 21, l. 44—
p. 23, l. 27. 26. Dixon C.J., after stating his personal views on some aspects of section 92 of the Constitution, held:— 30

p. 23, ll. 28-46. (a) that the application of the *Transport Cases* should be confined to the particular conditions or considerations which arise in relation to road transport from the fact that the railways and the roads form facilities for the carriage of goods for the provision and maintenance of which the State is responsible;

p. 24, ll. 4-12. (b) that these conditions or considerations were taken into account by the justices of the High Court of Australia who gave different degrees of emphasis to them in the *Transport Cases*;

p. 24, l. 12—
p. 26, l. 46. (c) that *McCarter v. Brodie* as a considered decision of the High Court of Australia should not be reviewed and, in accordance with that decision the *Transport Cases*, should be regarded as correctly decided, but as confined to the control by the States of the 40

use of roads provided and maintained by the States as an alternative to the use of railways also provided and maintained by the States;

(d) that the mileage charges imposed by the Respondent the Director of Transport and Highways upon the Appellant did not discriminate against inter-State trade. p. 27, ll. 30-41.

27. *McTiernan J.* held:—

(a) that the principle of *stare decisis* should be applied and the decisions in the *Transport Cases* followed; p. 28, ll. 18-33.

10 (b) that the decision in *Vizzard's Case* was correct and was affirmed in *McCarter v. Brodie* upon the propositions laid down in the *Banks' Case* as well as by the refusal of His Majesty in Council to grant special leave to appeal on more than one occasion; p. 28, l. 34—
p. 29, l. 21.

(c) that as *Vizzard's Case* was decided at a time when it was thought that section 92 did not bind the Commonwealth its authority was not touched by *James v. The Commonwealth* or the *Banks' Case*. p. 29, ll. 22-31.

20 (d) that section 92 of the Constitution did not prohibit a State legislature from passing non-discriminatory laws with a primary object directed to matters within its powers even though the freedom of inter-State trade is incidentally affected; p. 29, ll. 32-40.

(e) that *McCarter v. Brodie* was decided by applying the principles and rules worked out in the *Banks' Case* to test a law for invalidity under section 92; p. 29, ll. 41-46.

(f) that, in conformity with the judgment of *Rich J.* in *Vizzard's Case* any impact of the State Transport (Co-ordination) Act on inter-State trade was not direct and immediate but remote and consequential; p. 29, l. 47—
p. 30, l. 13.

30 (g) that *McCarter v. Brodie* should not be reviewed because the same arguments were presented on the application for leave to appeal as were presented in this case; p. 30, ll. 14-26.
p. 30, l. 46—
p. 31, l. 4.

(h) that the discretion conferred by the Act to grant or refuse licences did not infringe section 92 because in the *Banks' Case* it was said that *Vizzard's Case* might be reconciled with *James v. Cowan*; p. 30, ll. 27-39.

(i) that the discretion to grant or refuse licences conferred by the Act was not absolute, as authority was not granted to refuse a licence for a vehicle merely because the applicant wanted to use it in inter-State transportation; p. 30, ll. 40-45.

40 (j) that tolls and charges for the use of public roads and bridges which fall equally on inter-State and intra-State carriers did not infringe section 92; and p. 31, ll. 15-31.

p. 32, ll. 36-49.

(k) that roads were constructed for the convenience of all classes of traffic that could be accommodated upon them, as feeders for the railways, for the development of the State and often with an eye to defence, and that section 92 did not operate as a dedication of the public roads and bridges of the State to inter-State transport.

28. *Williams J.* held:—

p. 33, ll. 1-36.

(a) that in view of the *Banks' Case* and the refusal of His Majesty in Council to grant leave to appeal from the decision in *McCarter v. Brodie* the long line of cases which preceded it should not be re-opened without the greatest hesitation; 10

p. 35, ll. 21-29.

(b) that differences of opinion were contemplated by the decision in the *Banks' Case* but such differences were not a ground for upsetting a long line of previous decisions;

p. 33, l. 40—
p. 34, l. 38.

(c) that regulatory laws which did not infringe section 92 were not confined to laws which left it open for anyone to compete in an industry;

p. 34, ll. 38-40.

(d) that regulatory laws might in appropriate circumstances restrict the number of persons authorised to engage in trade and commerce; 20

p. 34, l. 40—
p. 35, l. 11.

(e) that laws regulating a trade presupposed the Continued Existence of the trade but not the right of every individual to engage in it;

p. 35, ll. 12-20.

(f) that economic problems in Australia required that the States must be able to control competition with the State-owned railways and give carriage by rail priority where carriage by rail and road come into competition;

p. 35, l. 37—
p. 36, l. 6.

(g) that the problem of controlling transport by rail and road was a world wide problem which had been similarly dealt with in England and the United States; 30

p. 36, ll. 10-25.

(h) that the wide discretion conferred by the State Transport (Co-ordination) Act to grant and refuse licences was not unlimited, but must be exercised *bona fide* so as to carry into effect the purposes of the Act and the duty to exercise it might be enforced by mandamus;

p. 36, ll. 26-43.

(i) that the problems dealt with in *James v. Cowan* and *James v. The Commonwealth* were altogether different from those arising under the State Transport (Co-ordination) Act in that the legislation dealt with in those cases prevented trade whilst this Act does not prevent anyone carrying on business as an inter-State carrier but merely compels him to rely on such vehicles as the State authorises to use the State owned railways and the roads provided by the State. 40

29. *Webb J* held—

(a) that the decision in *Vizzard's Case* on the State Transport (Co-ordination) Act had received the approval of His Majesty in Council in *James v. The Commonwealth* and such approval was not withdrawn by the *Banks' Case*; p. 37, ll. 2-17.

(b) that because of the differences between banking and road transport the decision in the *Banks' Case* that the legislation there in question infringed section 92 of the Constitution had no application to transport legislation of the States; p. 38, ll. 2-13.

10 (c) that, if, as was said in the *Banks' Case*, State monopoly would in some circumstances not infringe section 92, the State Transport (Co-ordination) Act which fell short of monopoly was consistent with that decision; p. 37, ll. 17-43.
p. 38, l. 14—
p. 39, l. 3.

(d) that for the reasons stated by *Williams J.* in *McCarter v Brodie* the *Transport Cases* should not be re-opened. p. 39, ll. 4-6.

30. *Fullagar J.*, after stating that he saw no reason for changing or modifying the opinions he had expressed in *McCarter v Brodie*. held:— p. 39, ll. 12-14.

20 (a) that section 92 of the Constitution was concerned not only with inter-State customs duties, but applied to all restrictions whether in the form of a customs duty, a prohibition subject to licence or the imposition of a quota; p. 40, l. 6—
p. 41, l. 43.

(b) that the State Transport (Co-ordination) Act and the Act in question in *McCarter v Brodie* imposed restrictions inconsistent with any conception of freedom of trade; p. 41, l. 14—
p. 42, l. 15.

(c) that the State Transport (Co-ordination) Act was substantially the same as the Act declared invalid in *James v The Commonwealth* and in accordance with that decision should be held invalid; p. 42, ll. 15-33.

(d) that all the *Transport Cases* were wrongly decided; p. 42, l. 39—

30 (e) that the decision in the *Banks' Case* vindicated the view of section 92 taken by the minority judges in the *Transport Cases*; p. 44, l. 8.
p. 44, ll. 12-22.

(f) that *McCarter v. Brodie* attempted to justify the *Transport Cases* on new grounds which he thought untenable namely— p. 44, l. 34—
p. 45, l. 28.

(i) that the legislation was regulatory; and

(ii) that the States, because they provided facilities for transport, must have power to control the use of those facilities in any manner thought fit;

40 (g) that the reference to "internal carriage" in section 92 includes commerce by means of public highways, but this did not prevent the States making laws controlling the use of highways; p. 45, ll. 29-36.

(h) that the State Transport (Co-ordination) Act was not a law regulating the use of roads nor was it conditioned by the fact that the State maintained or had the function of maintaining public highways; p. 45, l. 36—
p. 46, l. 2.

p. 46, ll. 9-28.

(i) that, although a State Parliament might prohibit intra-state carrying of goods or passengers, it must leave free the inter-State carriage of goods or passengers and had no power to protect the railways from competition arising from the inter-State carriage of goods by road;

p. 46, l. 36
p. 47, l. 26.

(j) that the argument that legislation co-ordinating transport was valid represented a reversion to the discredited volume theory of section 92;

p. 47, ll. 27-32.

(k) that *McCarter v. Brodie* should not be followed because the views which prevailed in that case were inconsistent with *James v. Cowan*, *James v. The Commonwealth* and the *Banks' Case*. 10

31. *Kitto J.* held:—

p. 48, ll. 14-28.

(a) that *McCarter v. Brodie* was wrongly decided and the minority judgments in that case are correct;—

p. 48, ll. 29-33.

(b) that the only reason for following the decision in *McCarter v. Brodie*, namely the maxim *stare decisis*, was not applicable because—

p. 50, l. 43.
p. 49, l. 7.

(i) the majority did not lay down any principle which produced a reconciliation between section 92 of the Constitution and the application of the State Transport (Co-ordination) Act 20 to inter-state transport;

p. 49, ll. 8-17.

(ii) the majority did not construe the *Banks' Case* as indicating approval of the reasoning or the actual decision in the *Transport Cases*; and

p. 50, l. 43.
p. 51, l. 11.

(iii) there was no proposition which could be regarded as the *ratio decidendi* of that case;

p. 51, ll. 12-27.

(c) that the High Court was bound to overrule *McCarter v. Brodie* in view of the pronouncements of the Privy Council in *James v. Cowan*, *James v. The Commonwealth* and the *Banks' Case*;

p. 51, l. 28—
p. 52, l. 10.

(d) that legislation imposing a simple prohibition subject to a discretionary power to grant exemptions was not regulatory in character and was therefore incompatible with section 92; 30

p. 52, ll. 11-15.

(e) that the licensing provisions of the State Transport (Co-ordination) Act in their application to trade commerce and inter-course among the States were repugnant to section 92 and inoperative.

32. *Taylor J.* held:—

p. 53, ll. 13-21.

(a) that if the views expressed in *McCarter v. Brodie* had established some common principle he would be bound to apply it;

p. 55, ll. 7-12.

(b) that the *Banks' Case* established beyond question that any direct, as distinct from remote or merely consequential, interference with or restriction upon inter-state trade, *which was not justifiable* 40

as regulation of such trade, was a violation of section 92 of the Constitution;

(c) that it was not material to the validity of such laws—

(i) that any interference or restriction might leave unimpaired the total volume of trade; or p. 55, ll. 12-14.

(ii) that it was not the purpose of the legislation to impose restrictions on inter-State trade as such; or p. 55, ll. 14-16.

(iii) that the legislation was not "directed against" or "aimed at" inter-state trade; p. 55, ll. 16-38.

10 (d) that the effect of the decisions in *James v. Cowan* and the *Banks' Case* was to invalidate any legislation prohibiting the conduct of a business at the absolute discretion of a licensing authority; p. 55, l. 38—
p. 56, l. 6.

(e) that the views of the minority in *Vizzard's Case* were in substance adopted in the *Banks' Case*, *James v. South Australia* (1927) 40 C.L.R. 1; *James v. The Commonwealth*, *Gratwick v. Johnson* (1945) (70 C.L.R. 1); *Australian National Airways Pty. Ltd. v. The Commonwealth* (1945) (71 C.L.R. 29) and by a majority of members of the Court in *McCarter v. Brodie*; p. 56, l. 22—
p. 57, l. 11.

20 (f) that section 17 of the State Transport (Co-ordination) Act conferred an arbitrary authority to refuse licences on grounds other than those which might properly be regarded as regulatory of the trade or commerce concerned and was subject to no saving limitation; p. 57, ll. 12-29.

(g) that the prescription in section 17 (3) of matters to be considered in dealing with an application for a licence did not detract from the unlimited power in sub-section (4) of that section; p. 57, ll. 19-36.

(h) that the Act was not in any sense a regulatory measure except in the sense that it regulated the totality of a trade and accordingly infringed section 92 which protects the freedom of the individual; p. 57, l. 41—
p. 58, l. 8.

30 (i) that the Act, in view of the provisions of section 3 (2), was not wholly invalid, but had no application to public motor vehicles which were operated in the course of and for the purposes of inter-State trade. p. 58, ll. 11-31.

RESPONDENTS' CONTENTIONS (PARAGRAPHS 33-53).

33. The contentions of the Respondents in support of the judgment appealed from which are stated in more detail in paragraphs 34-53 hereof can be summarized as follows:—

40 (a) The validity of the State Transport (Co-ordination) Act and of similar legislation in other States has been upheld by the High Court in a long line of decisions extending over many years which

have been approved by the Judicial Committee and the principle of *stare decisis* should be applied. (Paragraphs 34-35.)

(b) The decision appealed from is consistent with the principles laid down by the Judicial Committee in the *Banks' Case* (Paragraphs 36-40.)

(c) The State Transport (Co-ordination) Act is valid as a measure regulatory of trade. (Paragraphs 41-46.)

(d) The impact of the Act on inter-state trade is not direct and immediate but remote and consequential. (Paragraph 47.)

(e) The power or discretion to issue licences under section 17 of the Act is not an arbitrary or unfettered discretion. (Paragraph 48.) 10

(f) Even if the relevant sections of the said Act on their true construction confer an arbitrary or unfettered discretion, section 92 of the Constitution would not invalidate those provisions but would merely prevent the discretion being exercised on grounds which discriminate against inter-State trade, commerce or intercourse. (Paragraph 49.)

(g) The Appellant, having been granted licences under the Act, has no title to complain of the licensing system established thereby. (Paragraph 50.) 20

(h) If the prior decisions of the High Court upholding the Act and similar Acts of other States are to be reconsidered, all the other decisions of the High Court on section 92 of the Constitution should be likewise reconsidered and section 92 should be given a construction which, in its application to State laws, merely guarantees freedom from pecuniary imposts and dues comparable to duties of customs and from prohibitions and burdens imposed on goods or persons passing across the border. (Paragraphs 51-3.)

34. The validity of the State Transport (Co-ordination) Act was upheld in *Vizzard's Case*, *O. Gilpin's Case* and *Duncan and Green Star Trading Co. Pty. Ltd. v. Vizzard* and leave to appeal to His Majesty in Council was refused in the two last-mentioned cases. Similar legislation of the States of South Australia and Victoria was upheld in *Bessell v. Dayman*, *Riverina Transport Pty. Ltd. v. Victoria* and *McCarter v. Brodie*, and leave to appeal to His Majesty in Council was refused in the last-mentioned case. The policies of the governments of the States have been formulated on the basis that the Transport Cases were correctly decided (*McCarter v. Brodie* 80 C.L.R. 432 at 477). 30

35. These decisions of the High Court of Australia extend over a period from 1933 to 1950 during which the scope of section 92 of the Constitution was twice considered in detail by the Judicial Committee (in *James v. The Commonwealth* and the *Banks' Case*) and the authority 40

of the *Transport Cases* remained unaffected. In *James v. The Commonwealth* the decision in *Vizzard's Case*, and particularly the judgment of *Evatt J.* was expressly approved whilst in the *Bank's Case* ((1950) A.C. at p. 309; 79 C.L.R. at p. 638) it was said that:—

“The decisions in *James v. Cowan* and in *Vizzard's Case* may be reconciled: it would not be easy to reconcile *all* that was said by *Evatt J.* in the one case with *all* that was said by *Isaacs J.* in the ‘other.’”

10 36. In the *Banks' Case* ((1950) A.C. at p. 310; 79 C.L.R. at p. 639) the Judicial Committee approved of the following two general propositions as the primary rules to be applied in determining the validity of legislation under section 92:—

“(1) That regulation of trade, commerce and intercourse ‘among the States is compatible with its absolute freedom, and

“(2) 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.’”

20 Similar propositions were originally formulated by *Rich J.* in *James v. Cowan* (1930) (43 C.L.R. 386 at p. 425) and were used as the basis of the decisions in *Willard v. Rawson* (1933) (48 C.L.R. 316) and the *Transport Cases* by the majority judges. They were adopted by *Latham C.J.* in *Milk Board v. Metropolitan Cream Pty. Ltd.* (1939) (62 C.L.R. 116 at p. 127) and stated by him in the following terms:—

30 “One proposition which I regard as established is that simple ‘legislative prohibition (Federal or State), as distinct from regulation, of inter-State trade and commerce is invalid. Further, a law ‘which is ‘directed against’ inter-State trade and commerce is ‘invalid. Such a law does not regulate such trade, it merely ‘prevents it. But a law prescribing rules as to the manner in which ‘trade (including transport) is to be conducted is not a mere prohibition and may be valid in its application to inter-State trade ‘notwithstanding section 92. *R. v. Vizzard; Ex parte Hill* is an ‘outstanding example of this class of case.’”

This statement, omitting the last sentence only, was repeated by *Latham C.J.* in the Airlines Case (*Australian National Airways Pty. Ltd. v. The Commonwealth* (1945) (71 C.L.R. 29 at p. 61) and was quoted and expressly approved by the Judicial Committee in the *Banks' Case* ((1950) A.C. at pp. 310-311; 79 C.L.R. at p. 640).

40 37. The decisions in *Willard v. Rawson* and all the *Transport Cases* other than *Riverina Transport Pty. Ltd. v. Victoria* were given at a time when the view of the High Court was that Section 92 did not bind the

Commonwealth, and the doctrine of *McArthur's Case* (*W & A McArthur Ltd. v. Queensland* (1920) 28 C.L.R. 530) prevailed that any interference whatsoever by a State in inter-state trade violated Section 92. As the decision in *James v The Commonwealth* negatived this doctrine and allowed the States wider legislative powers it would be inconsistent with the wider powers of the States to invalidate now State legislation which was held valid whilst the doctrine of *McArthur's Case* prevailed.

38. In the *Banks' Case* the Judicial Committee, after stating the general propositions quoted in paragraph 36 above, said:—

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“In the application of these general propositions, in determining whether an enactment is regulatory or something more, or whether a restriction is direct or only remote or incidental, there cannot fail to be differences of opinion. The problem to be solved will often be not so much legal as political, social, or economic, yet it must be solved by a court of law. For where the dispute is, as here, not only between Commonwealth and citizen but between Commonwealth and intervening States on the one hand and citizens and States on the other, it is only the court that can decide the issue.” (1950) A.C. at p. 310; 79 C.L.R. at pp. 639–40.

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“For their Lordships do not intend to lay it down that in no circumstances could the exclusion of competition so as to create a monopoly either in a State or Commonwealth agency or in some other body be justified. Every case must be judged on its own facts and in its own setting of time and circumstance, and it may be that in regard to some economic activities and at some stage of social development it might be maintained that prohibition with a view to State monopoly was the only practical and reasonable manner of regulation, and that inter-State trade, commerce and intercourse thus prohibited and thus monopolized remained absolutely free.”

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“Nor can one further aspect of prohibition be ignored. It was urged by the appellants that prohibitory measures must be permissible, for otherwise lunatics, infants and bankrupts could without restraint embark on inter-State trade, and diseased cattle or noxious drugs could freely be taken across State frontiers. Their Lordships must therefore add, what, but for this argument so strenuously urged, they would have thought it unnecessary to add, that regulation of trade may clearly 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. Here again a question of fact and degree is involved.” (1950) A.C. at pp. 311–312; 79 C.L.R. at pp. 640–1).

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“But it appears to their Lordships that, if these two tests are applied: first, whether the effect of the Act is in a particular respect direct or remote; and, secondly, whether in its true character it is regulatory, the area of dispute may be considerably narrower.” (1950) A.C. at p. 313; 79 C.L.R. at p. 642).

39. The Respondents submit that these statements of principle were formulated so as to admit of considerable flexibility in the application of the two primary general propositions stated above to legislation in the light of economic social and political factors and as a matter of fact and degree. Accordingly the Respondents submit that regard properly can and should be had to:—

(a) the existence of competing transport facilities by rail and road;

(b) the facts that the railway systems in Australia are now and before Federation were State-owned and that vast sums of public money are invested in such systems;

(c) the fact that the State railways systems are conducted not as profit-making enterprises but for the convenience of the public and the development of the States;

20 (d) the fact that the roads are constructed and maintained by public authorities of the States from revenue raised by various forms of taxation and grants of public moneys by the States and the Commonwealth;

(e) the increase in road transport as a competitor with the railways and its impact on the earning capacity of the State-owned railways;

(f) the special position of railways under sections 98, 102, and 104 of the Constitution, discussed by *Latham C.J.* in the *Riverina Transport Case* (1937) (57 C.L.R.327 at pp. 346-356); and

30 (g) the existence of common State policies with respect to the roads and the railway systems.

So far as these are matters of fact, they are matters of common knowledge of which the High Court has from time to time taken judicial notice.

40. The Respondents submit that in the light of the foregoing matters the State Transport (Co-ordination) Act does not infringe section 92 for the following reasons taken separately or in combination:—

(a) it is uniform in its application to both intra-State and inter-State trade and does not discriminate against inter-State trade;

40 (b) it deals with vehicles as instruments of trade and not with the business of carriers as such;

(c) it does not contemplate simple or total prohibition of trade;

(d) it is a law relating to the use of State-owned roads;

(e) it imposes a mileage charge which is in substance a charge for the use of the State-owned roads.

41. The considerations mentioned in the preceding paragraphs support the Respondents' argument that the Act is valid as a regulatory law. The Respondents' submissions on this argument are as follows:—

(a) regulation may include both prohibition and prohibition *sub modo*, and a power to regulate may likewise include a power to prohibit under licence;

(b) the concept of a regulatory law is a concept applying to the totality of the trade as distinct from the trade of an individual because otherwise no law could ever prohibit the conduct of trade by any person; 10

(c) the *Banks' Case* recognises that certain persons can be prohibited from carrying on trade;

(d) the imposition of mileage charges at varying rates within the limits of the prescribed maximum, which are not prohibitive, is a method of regulating the totality of trade and as well the trade of every individual engaged therein;

(e) the imposition of the mileage charges on road transport reduces the economic inequality between road and rail transport by depriving carriers by road of the advantages which they possess in consequence of 20

(i) not having to bear any part of the cost of road construction and maintenance;

(ii) being free to select the most profitable cargoes such as general merchandise; and

(iii) not having to discharge the responsibilities of the railway system in

(a) the provision of services to regular schedules throughout the State including sparsely settled areas; 30

(b) the movement of commodities at rates which will permit the carrying on and development of primary and secondary industries; and

(c) the carriage of sheep, cattle and fodder at nominal rates in times of drought, flood or other national emergency.

42. The regulatory character of the transport legislation is emphasised in two of the majority judgments appealed from as based on the control of the use of State roads in the interests of State railways (cf. *McCarter v Brodie* (1950) 80 C.L.R.432 per *Latham* C.J. at p. 461 and per *Williams* J. at p. 477). The essential feature of the administrative scheme based on the State Transport (Co-ordination) Act which makes that Act 40

a regulatory measure is to be found, not so much in the issue of licences, but in the imposition of variable mileage charges within the limits prescribed by section 18 (5) of the Act and the licences issued thereunder. The variation of these charges and the granting of exemptions in relation to goods of different classes enables an economic balance to be maintained between rail and road facilities having regard to the cargoes available. If some such scheme were not adopted—

10 (a) unrestricted competition would result, with economic loss to the railways which would have far-reaching consequences to the finances of the State and necessitate a reconstruction of the whole system of railway rates;

(b) the railways would be left to carry the unprofitable cargoes because they are common carriers and as such are obliged to accept all cargoes (Government Railways Act, 1912-1945, s. 33; Common Carriers Act, 1902);

20 (c) road services would absorb the profitable traffic consisting chiefly of general merchandise which is relied on by the railways to compensate for primary products and like cargoes which are carried at concessional freight rates and also for the running of trains to regular schedules in sparsely populated areas and for carrying sheep cattle and fodder at nominal rates in periods of drought flood or other national emergency;

(d) adequate road transport would not be available to provide services in those areas and over those routes to which that form of transport is most appropriate.

43. The defence and the directions annexed thereto show that variable mileage rates have been fixed and some classes of goods exempted on certain routes after a consideration of the circumstances arising from the nature of the goods themselves, the arrangements necessary for their distribution and marketing and all available transport services. These rates have not been arbitrarily fixed, but in each case some particular considerations of the type mentioned in paragraph 42 have dictated fixation of the relevant rate or the granting of the exemption. The full implications of the rates appropriate to each and every item specified in the directions cannot be determined without an examination of the railway freight rate structure, the capacity of the railways to provide an efficient transport service for these goods and the relative economic capacity of road and rail services to carry these goods at a particular rate on particular routes. These are matters which must be considered and reviewed at frequent intervals and therefore admit of determination only by an administrative authority such as the Respondent, the Director of Transport and Highways. pp. 5-16.

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44. Regulation of trade includes the limitation by quotas, priorities or other preferential systems of (i) the persons to engage in trade, or

(ii) the particular goods in which such trade may take place, or (iii) the routes or areas to which such trade should be confined. Prescription by legislation in an inflexible form is impracticable, but the formulation from time to time of categories of goods with variations in routes, areas, mileage rates and exemptions is a reasonable and proper means of achieving a systematic, economical and flexible regulation of transport within the State of New South Wales.

45. It was stated in the *Banks' Case* ((1950) A.C. at p. 311; 79 C.L.R. at pp. 640-1) that in some cases monopoly or total prohibition may be permissible as regulation of a trade, depending on time and circumstance and it is on this basis that the measures referred to in *James v. The Commonwealth* ((1936) A.C. 578 at p. 625) do not infringe section 92 of the Constitution. Thus the postal service monopoly must be regarded as falling in a special category and being justified on economic and historical grounds because—

(i) it had always been a government monopoly even before Federation;

(ii) it represents a vast public investment.

The Respondents contend that:—

(a) The railway services of the States similarly fall into a special category of their own because—

(i) they were historically the basic and (apart from shipping) before federation, the sole means of transport in inter-State trade;

(ii) they represent substantial public investments;

(iii) they found particular place in the Constitution (ss. 98, 102, 104).

(b) The use of public funds by the State to develop highways which compete with its own railways and in which it has an acknowledged monopoly must imply—

(i) the right to protect and restrict the use of these highways;

(ii) the right to charge for the use of such highways by licence fee or tolls, whether they go to a special fund or to general State revenue;

(iii) the right to select the vehicles which may use the highways;

(iv) the right to ensure that the persons who conduct commercial goods carrying operations are qualified for the work.

(c) the choice of the means by which these rights are exercised must be a matter largely of policy and of the discretion of the legislature of the State.

46. The matters mentioned in the preceding paragraphs hereof demonstrate the fundamental difference between road transport legislation such as the State Transport (Co-ordination) Act and the Acts which were held invalid in *James v. Cowan* (1932) A.C. 542; 47 C.L.R.386, *James v. The Commonwealth* (1936) A.C. 578; 55 C.L.R.1. *Gratwick v. Johnson* (1945) 70 C.L.R.1, the *Airlines Case* (1945) 71 C.L.R.29 and the *Banks' Case* (1950) A.C. 235; 79 C.L.R.497. In each of these cases there was some other special and compelling feature which condemned the legislation as being in breach of s. 92;

10 (i) *James v. Cowan* involved an expropriation under State law which completely prohibited the Plaintiff's trade in the goods expropriated;

(ii) *James v. The Commonwealth* and *Gratwick v. Johnson* concerned Commonwealth laws imposing a discretionary prohibition at the border.

(iii) The *Airlines Case* and the *Banks' Case* dealt with Commonwealth laws for the creation of a Government monopoly.

20 The dissenting judgments in the instant case are based upon a misconception of the effect of those decisions. They do not establish, as the dissenting judgments suggest, that under no circumstances can there be consistently with Section 92 of the Constitution, a regulation of a trade business or activity by means of a discretionary licensing system.

47. A burden or restriction imposed on inter-State road transport by or pursuant to State laws of uniform application which do not discriminate against inter-State road transport is not direct but remote or consequential. This is especially so in the case of the mileage charges imposed by section 18 (5) of the State Transport (Co-ordination) Act and Special Condition (2) of the licences issued under that Act; the burden so imposed on the trade of individual carriers varies according to the efficiency of the individual trader and the economic capacity of his business to compete with other means of transport (including the railways).

p. 2, l. 18—
p. 3, l. 16.

48. The Respondents further contend that the scope of the discretion to grant or refuse licences under the State Transport (Co-ordination) Act is limited by the purpose and provisions of the Act and is in substance not an arbitrary or unfettered discretion. The exercise of the discretion is conditioned by the following requirements:—

(a) that it can be exercised only for the purposes of the Act;

40 (b) that regard is to be had to the matters specified in the application (see section 14(2)) and the matters mentioned in section 17; and

(c) that it must be exercised so as not to exceed the bounds of constitutional power in conformity with section 3(2) of the Act.

These considerations preclude a decision being made to refuse a licence on the ground that the applicant proposes to engage the vehicle in inter-State trade and any purported decision to that effect would be invalid and could be redressed by mandamus. Support for this construction is to be found in the judgments of *McTiernan J.* and *Williams J.* and in the decision in *McCartney v. Victorian Railways Commissioners (1935)* (52 C.L.R.383). See also per *Williams J.* in *Hospital Provident Fund Ltd. v. Victoria (1953)* A.L.R.258 at pp. 273-4; 87 C.L.R.1 at 29.

49. The effect of section 3(2) is to compel a construction of the Act which limits its operative effect to matters within legislative power (*Carter v. Potato Marketing Board (1951)* 84 C.L.R.460), and thus prevents the Act being invalid if the discretion it confers should be held capable of exercise so as to burden inter-State trade. Further, the effect of this provision is to remit any enquiry as to the validity of the Act to an enquiry as to the validity of any exercise of discretion under the Act. (*Willcox Mofflin & Co. Ltd. v. New South Wales (1952)* 85 C.L.R.488 at pp. 520-522). This enquiry cannot be made until there has been an adverse exercise of discretion of which some competent Plaintiff can complain. The discretion of the Respondent the Director of Transport and Highways has not been exercised against the Appellant in any manner inconsistent with section 92 of the Constitution. 10 20

pp. 2-3.

50. The Statement of Claim shows that the Appellant has been granted licences and permits for the operation of its vehicles. This being so, the Appellant is not entitled to invoke Section 92 for the purpose of attacking the validity of the licensing and permit system established under the Act. The Appellant has no title or standing to maintain the action except on the narrow ground that the imposition of the mileage charges complained of in the Statement of Claim constitute an infringement of Section 92. (See paragraphs 10 and 11 and prayers 3 and 3A of Statement of Claim.) 30

pp. 3-4.

51. The overruling of the Transport Cases would compel a reconsideration of the whole course of judicial decision in the High Court on section 92 to determine whether the scope of the constitutional guarantee created by that section has not been unduly extended. The decisions since *McArthur's Case* have failed to furnish any tests or principles which will enable the validity of legislation to be determined with any certainty and the existence of dissenting judgments, based on fine distinctions and shades of meaning, preclude the ready ascertainment by a citizen of the important question whether his constitutional rights have been infringed. This was recognised by the reasons in the *Banks' Case* (1950) A.C. at p. 313; 79 C.L.R. at p. 642) where it was said of the tests and propositions there stated:— 40

“Used as they have been to advance the argument of the Appellants they but illustrate the way in which the human mind tries,

10 “and vainly tries, to give to a particular subject matter a higher
 “degree of definition than it will admit. In the field of constitu-
 “tional law—and particularly in relation to a Federal Constitution
 “—this is conspicuously true, and it applies equally to the use of
 “the words ‘direct’ and ‘remote’ as to ‘pith and substance’ But it
 “appears to their Lordships that, if these two tests are applied: first,
 “whether the effect of the Act is in a particular respect direct or
 “remote; and, secondly, whether in its true character it is regula-
 “tory, the area of dispute may be considerably narrower. It is
 “beyond hope that it should be eliminated.”

52. The history of section 92 and its place in the Constitution suggest that it was directed to the elimination of customs duties, border tariffs, passport restrictions and the like rather than the granting of immunity from legislative or executive measures operating on trade and commerce within a State. The construction contended for by the Respondents is supported by the context in which section 92 is found in the Constitution and in particular by:—

(a) the terms of the second paragraph of the section which reads:—

20 “But notwithstanding anything in this Constitution, goods
 “imported before the imposition of uniform duties of customs
 “into any State, or into any Colony which, whilst the goods
 “remain therein, becomes a State, shall, on thence passing into
 “another State within two years after the imposition of such
 “duties, be liable to any duty chargeable on the importation of
 “such goods into the Commonwealth, less any duty paid in
 “respect of the goods on their importation.”

(b) the scope of Chapter IV of the Constitution, which is entitled “Finance and Trade”;

30 (c) the provisions of sections 88, 90, 93, 99, 112;

(d) the grant to the Commonwealth Parliament of legislative power over “trade and commerce with other countries, and among
 “the States”.

53. Further, the Respondents contend that section 92, in its application to “internal carriage” does no more than guarantee freedom of trade commerce or passage over the border so as to leave untouched State laws which operate uniformly throughout the State and do not discriminate against inter-State trade by imposing some burden thereon which is not equally imposed on other trade within the State.

40 54. The Respondents therefore submit that the appeal should be dismissed with costs for the following amongst other—

REASONS.

1. BECAUSE the decision of the High Court of Australia followed and applied a long line of decisions upholding the validity of the State Transport (Co-ordination) Act and similar Acts of other States.
2. BECAUSE the State Transport (Co-ordination) Act is a regulatory measure.
3. BECAUSE the impact of the State Transport (Co-ordination) Act on inter-State trade is remote or consequential.
4. BECAUSE the State Transport (Co-ordination) Act does not confer an absolute and unfettered discretion. 10
5. BECAUSE the Appellant not having been refused a licence has no title to complain.
6. BECAUSE section 92 of the Commonwealth of Australia Constitution only applies to pecuniary imposts and dues comparable to duties of customs.
7. BECAUSE section 92 of the Commonwealth of Australia Constitution, in its application to "internal carriage", only invalidates State laws imposing prohibitions and burdens on trade, commerce or intercourse at the border.

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Counsel for the Respondents.

In the Privy Council.

ON APPEAL

FROM THE FULL COURT OF 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 RESPONDENTS.

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