

IN THE PRIVY COUNCIL

No. 34 of 1966

ON APPEAL
FROM THE HIGH COURT OF AUSTRALIA

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
15 MAR 1968
25 RUSSELL SQUARE
LONDON, W.C.1.

B E T W E E N :

FREIGHTLINES & CONSTRUCTION
HOLDING LIMITED Appellant

- and -

10 THE STATE OF NEW SOUTH WALES
and THE COMMISSIONER FOR MOTOR
TRANSPORT Respondents

- and -

- (1) T.N.T. (SYDNEY) PTY LIMITED
- (2) THE COMMONWEALTH OF AUSTRALIA
- (3) THE STATE OF SOUTH AUSTRALIA and Another
- (4) THE STATE OF VICTORIA and Others
- (5) THE STATE OF QUEENSLAND and another and
- (6) THE STATE OF WESTERN AUSTRALIA

Interveners

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CASE FOR THE INTERVENERS THE STATE OF VICTORIA
THE ATTORNEY-GENERAL OF THE STATE OF VICTORIA THE
STATE OF TASMANIA AND THE ATTORNEY-GENERAL OF THE
STATE OF TASMANIA

Record

1. This Appeal is brought by Special Leave granted by Her Majesty by Order in Council dated the Twenty eighth day of July 1966 from a judgment of the Full Court of the High Court of Australia dated the second day of May, 1966, whereby the said Full Court of the High Court of Australia upheld with costs a Demurrer by the Respondents to the whole of the Statement of Claim of the Appellant.

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2. By its Statement of Claim the Appellant sought a Declaration that the Road Maintenance (Contribution) Act 1958-65 of the State of New South Wales generally or, in the alternative, certain specified sections and schedules thereof was or were invalid by reason of the provisions of Section 92 of the Constitution of the Commonwealth of Australia. Alternatively, the Appellant sought a Declaration that the said Act cannot validly apply in respect of motor vehicles owned by the Respondent and used exclusively in and for the purposes of interstate trade commerce and intercourse.

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p.5 & 4

3. In upholding the Respondents' said Demurrer the Full Court of the High Court of Australia held that the said Act in its application to motor vehicles used exclusively in the course and for the purposes of interstate trade and commerce does not infringe Section 92 of the Constitution.

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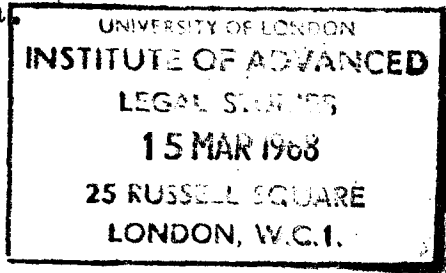
4. The Road Maintenance (Contribution) Act 1958-65 of the State of New South Wales has, for its essential purpose, the collection of compensation for wear and tear to public streets in New South Wales caused by vehicles of a load capacity of more than four tons. The Act provides for the payment by the owners of certain commercial goods vehicles to the Commissioner of Road Transport a charge of one-third of one penny per ton of the sum of the tare weight of the vehicle and forty per centum of the load capacity of the vehicle per mile of public streets along which the vehicles travels in New South Wales. The Act provides for the monies collected by way of such charges to be paid into special accounts and applied exclusively to the maintenance of public streets in New South Wales.

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5. In the State of Victoria Part II. of the Commercial Goods Vehicles Act 1958 (as amended) has for its essential purpose the same object as the New South Wales Act, namely, the collection of compensation from the owners of certain commercial goods vehicles for the wear and tear caused by such vehicles to public highways in Victoria.

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6. The Victorian Act provides for the payment by the owner of every commercial goods vehicle the load capacity of which is more than four tons of a charge of five-eighteenths of one cent per ton of the sum of the tare weight of such vehicle and forty per centum of the load capacity of the vehicle per mile of public highway along which the vehicle travels in Victoria. The Victorian Act provides for the payment of the monies received by way of such charges into a special account and for the application of such monies exclusively for the maintenance of public highways in Victoria, including grants to municipalities for that purpose.

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7. Existing legislation in the State of Tasmania is not at present comparable with the provisions of the New South Wales Act but the constitutional questions raised in this Appeal affect the legislative power of the State and are of considerable importance to it.

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8. The validity of the Victorian Act so far as it related to motor vehicles engaged exclusively in interstate trade and commerce was the subject of a challenge in 1957 and the Full Court of the High Court of Australia in *Armstrong v. The State of Victoria* (No. 2) 99 C.L.R. 28 by a majority held that the collection of contributions for the purpose of road maintenance was not in contravention of Section 92 of the Constitution. The Privy Council refused special leave to appeal against this decision.

9. Since the Victorian Act came into operation the charges provided for have continued to be collected by the Transport Regulation Board and paid into the Roads Maintenance Account.

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10. In the financial year 1965-66 a total of \$6,378,240 was received and paid into the account of which sum it is estimated that approximately \$1,850,000 was paid by the owners of commercial goods vehicles engaged in interstate trade in respect of those vehicles. In the same period the Country Roads Board, a government instrumentality concerned with the maintenance and construction of roads in

Record

Victoria, expended an estimated amount of \$14,957,722 on road maintenance, including grants to municipalities for the purposes of road maintenance. In association with these grants, municipalities contributed a further \$1,075,505 from municipal funds for the purpose of road maintenance. Municipalities expended an estimated sum of \$15,000,000 on road maintenance during the same year which was not in association with grants from the Country Roads Board. Money expended on new construction of roads has been excluded from the foregoing figures. It will be seen therefore that the charges imposed upon commercial goods vehicles by the Victorian legislation represent merely a contribution towards the cost of the continuous operations which are carried out to maintain the roads of the State in a safe and satisfactory condition.

11. It is submitted that the charges imposed by the Road Maintenance (Contribution) Act of the State of New South Wales are valid insofar as they apply to vehicles exclusively engaged in interstate trade and commerce and cannot be said to constitute a burden or tax upon interstate trade and commerce in the relevant sense. Such charges constitute a payment by way of compensation for the wear and tear inevitably caused to roads by heavy vehicles and are for the purpose of maintaining roads in order that the operations of trade and commerce, including interstate trade and commerce, may be carried out speedily and safely. It is submitted that the charges, when viewed in their true light, cannot be regarded as a direct burden on interstate trade and commerce and must be regarded as merely indirect or consequential costs which vehicles engaged in interstate trade, along with all other vehicles, are called upon to bear in the same way as they must bear various other operating costs.

12. For the reasons set out in the Case for the Respondents, which they adopt, these interveners respectfully submit that this Appeal should be dismissed.

B. L. MURRAY
ROBERT GATEHOUSE

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FREIGHTLINE & CONSTRUCTION
HOLDINGS LIMITED

Appellant

-- and --

THE STATE OF NEW SOUTH WALES
and ANOTHER

Respondent

-- and --

T. N. T. (SYDNEY) PTY LTD.
and OTHERS

Interveners

C A S E

-- FOR --

THE INTERVENERS THE STATE OF
VICTORIA AND THE ATTORNEY GENERAL
FOR THE STATE OF VICTORIA AND
THE STATE OF TASMANIA AND THE
ATTORNEY GENERAL FOR THE STATE
OF TASMANIA

FRESHFIELDS,
1, Bank Buildings,
Princes Street,
London, E.C.2.
Solicitors for the Victoria
and Tasmania Interveners.