

CLASS MARK

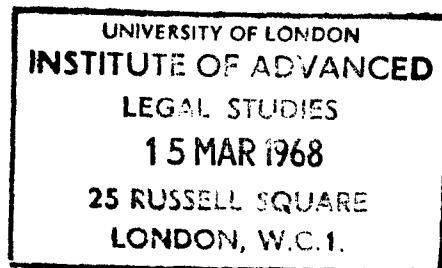
ACCESSION NUMBER

91408

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

(ii)

No.	Description of Document	Date	Page
<u>IN THE PRIVY COUNCIL</u>			
4.	Order in Council granting Special Leave to Appeal to HER MAJESTY IN COUNCIL	28th July 1966	8
5.	Certificate of the District Registrar of the High Court of Australia verifying transcript record of proceedings		11



91408

1.

NO. 1

WRIT OF SUMMONS WITH STATEMENT
OF CLAIM ENDORSED

HIGH COURT
OF AUSTRALIA

No.1

Writ of
Summons with
Statement of
Claim
endorsed
8th March,
1966

IN THE HIGH COURT OF AUSTRALIA } Cause book
NEW SOUTH WALES REGISTRY } No. 2 of 1966

B E T W E E N: FREIGHTLINES & CONSTRUCTION
HOLDING LIMITED

Plaintiff

10

- and -

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

Defendants

ELIZABETH THE SECOND by the Grace of God
of the United Kingdom Australia and Her other
Realms and Territories Queen, Head of the
Commonwealth, Defender of the Faith.

20 TO THE STATE OF NEW SOUTH WALES and THE
COMMISSIONER FOR MOTOR TRANSPORT of 50 Rothschild
Avenue Rosebery in the State of New South Wales

30 WE COMMAND YOU that within fourteen days
after the service of this Writ on you inclusive
of the day of such service you do cause an
Appearance to be entered for you in our High
Court of Australia in an action at the suit of
FREIGHTLINES & CONSTRUCTION HOLDING LIMITED
and take notice that in default of your so doing
the Plaintiff may proceed therein and Judgment
may be given in your absence

WITNESS The Right Honourable Sir Garfield
Barwick G.C.M.G. Chief Justice of Our said
High Court the 8th day of March in the year of
Our Lord One thousand nine hundred and sixty
six

H. Cannon
District Registrar

HIGH COURT
OF AUSTRALIA

No.1

Writ of
Summons with
Statement of
Claim
endorsed
8th March,
1966
(Contd)

N.B. - This Writ is to be served within twelve calendar months from the date thereof or if renewed within six calendar months from the date of the last renewal including the day of such date and not afterwards. If a Defendant resides or carries on business in the State of New South Wales his Appearance to this Writ may be entered either personally or by Solicitor at the New South Wales Registry.

If a Defendant neither resides nor carries on business in the State of New South Wales he may at his option cause his Appearance to be entered either at the Registry above mentioned or at the Principal Registry of the High Court at Melbourne

10

The Plaintiff's claim is for a Declaration:

- (1) That the Road Maintenance (Contribution) Act 1958 is invalid; or alternatively
- (2) That Section 5 and/or Section 6 and/or Section 7 and/or Section 8 and/or The First Schedule and/or The Second Schedule of the Road Maintenance (Contribution) Act, 1958 is or are invalid; or alternatively
- (3) That the Road Maintenance (Contribution) Act, 1958 cannot validly apply in respect of motor vehicles owned by the Plaintiff used exclusively in or for the purpose of interstate trade, commerce or intercourse.

20

30

This Writ was issued by John Lawrence Aston whose address for service is C/- Messrs. Barkell & Peacock, 11 Castlereagh Street, Sydney, Solicitor for the Plaintiff whose registered office is situate at 33 O'Riordan Street, Alexandria in the State of New South Wales.

J.L. Aston

Solicitor for the Plaintiff

STATEMENT OF CLAIMHIGH COURT
OF AUSTRALIA

(Writ issued 8th day of March, 1966)

No. 1Writ of
Summons with
Statement of
Claim
endorsed
8th March,
1966
(Contd.)

1. This matter is within the original jurisdiction of this Honourable Court for the reason that it involves the interpretation of the Constitution of the Commonwealth of Australia. The Plaintiff's claim is for a Declaration that the Road Maintenance (Contribution) Act, 1958-1965 of the State of New South Wales, or alternatively certain provisions thereof, are invalid or alternatively that the said Act cannot validly apply in respect of motor vehicles owned by the Plaintiff used exclusively in or for the purpose of inter-State trade, commerce or intercourse, by reason of the provisions of Section 92 of the Constitution.
2. The Plaintiff, Freightlines & Construction Holding Limited, is and has been at all material times a Company duly incorporated in and in accordance with the laws of the State of New South Wales and is entitled to sue in and by its said corporate name and style.
3. The Defendant The Commissioner for Motor Transport is and has been at all material times a body corporate under the laws of the State of New South Wales and is liable to be sued in and by his said corporate name and style.
4. On 8th April 1958 assent was given to the Road Maintenance (Contribution) Act 1959 of the State of New South Wales which said Act is and has been at all material times administered by the Defendant The Commissioner for Motor Transport.
5. By Proclamation in Government Gazette No. 41 of 18th April 1958 1st May 1958 was appointed as the day upon which the said Act should commence and 1st June 1958 was fixed as the proclaimed date for the purposes of Section 7(1) of the said Act.
- 5A. The said Road Maintenance (Contribution) Act 1958 was amended in certain respects by

HIGH COURT
OF AUSTRALIA

No. 1

Writ of
Summons with
Statement of
Claim
endorsed
8th March,
1966
(Contd.)

the Road Maintenance (Contribution) Amendment Act, 1964 of the State of New South Wales and was further amended in certain respects by the Decimal Currency Act, 1965 of the said State

6. The Plaintiff carries on and has at all material times carried on business as an inter-State carrier of goods by road for reward. The Plaintiff is and has been at all material times the owner of certain motor vehicles (being "commercial goods vehicles" within the meaning of the said Act (as amended as aforesaid) having a "load capacity" within the meaning of the said Act (as amended as aforesaid) of more than four (4) tons) which are used for the purposes and in the course of the Plaintiff's said business on journeys from one to another of the following cities, that is to say: Sydney in the State of New South Wales, Melbourne in the State of Victoria, Brisbane in the State of Queensland and Adelaide in the State of South Australia, and for no other purposes. During the course of many of the said journeys the said motor vehicles travel along various public roads in the State of New South Wales

7. The Defendant, The Commissioner for Motor Transport has claimed and continues to claim that the Plaintiff is bound pursuant to the said Act (as amended as aforesaid):

(a) To pay to the said Defendant certain charges in accordance with Section 5 of the said Act (as amended as aforesaid)

(b) To keep accurate daily records of all journeys of each of the said motor vehicles along public streets in New South Wales and to retain for a period of six (6) months after the completion of any such journey and on demand to make available to the said Defendant or an authorised officer a copy of each such record for inspection when so required in accordance with the provisions

5.

of Section 6 of the said Act (as amended as aforesaid), and

HIGH COURT
OF AUSTRALIA

No.1

- (c) To deliver to the said Defendant at his office in Sydney in respect of each of the said motor vehicles certain records and certain moneys in accordance with the provisions of Section 7 of the said Act (as amended as aforesaid)

Writ of
Summons with
Statement of
Claim
endorsed
8th March,
1966
(Contd.)

10 THE PLAINTIFF CLAIMS:

- (1) A Declaration that the Road Maintenance (Contribution) Act, 1958-1965 of the State of New South Wales is invalid.

Alternatively

- (2) A Declaration that Section 5 and/or Section 6 and/or Section 7 and/or Section 8 and/or The First Schedule and/or The Second Schedule of the Road Maintenance (Contribution) Act, 1958-1965 of the State of New South Wales is or are invalid.

Alternatively

- (3) A Declaration that the Road Maintenance (Contribution) Act, 1958-1965 of the State of New South Wales cannot validly apply in respect of motor vehicles owned by the Plaintiff used exclusively in or for the purpose of inter-State trade commerce or intercourse

- (4) And in addition an order that the Defendants pay the Plaintiff's costs of this action

M.H. McLelland

Counsel for the Plaintiff

This Statement of Claim is delivered on the 8th day of March, 1966 by John Lawrence Aston, Solicitor for the Plaintiff, of Messrs. Barkell & Peacock, 11 Castlereagh Street, Sydney.

40

6.

HIGH COURT
OF AUSTRALIA

NO. 2

DEMURRER

Dated 13th April
1966

No.2

Demurrer
13th April
1966

IN THE HIGH COURT OF AUSTRALIA)
NEW SOUTH WALES REGISTRY)

Cause book No.
2 of 1966.

B E T W E E N: FREIGHTLINES & CONSTRUCTION
HOLDING LIMITED

Plaintiff

10

- and -

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

Defendants

Delivered the 13th day of April 1966

1. The Defendants demur to the whole of the statement of claim of the plaintiff on the ground that the facts alleged do not show a cause of action to which effect can be given by the Court as against the Defendants. 20

2. One ground in law for this demurrer is that the Act and all the Sections and Schedules thereof referred to in the statement of claim are valid and validly apply in respect of the plaintiff's vehicles and the statement of claim therefore discloses no cause of action.

Michael M. Helsham

Counsel for the Defendants

7.

NO. 3

ORDER ON DEMURRER
Dated 2nd May, 1966

HIGH COURT
OF AUSTRALIA

No.3

IN THE HIGH COURT OF AUSTRALIA)
NEW SOUTH WALES REGISTRY

Full Court
No.28 of 1966

Order on
Demurrer
2nd May 1966

B E T W E E N: FREIGHTLINES & CONSTRUCTION
HOLDING LIMITED

Plaintiff

- and -

10

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

Defendants

BEFORE THEIR HONOURS MR. JUSTICE TAYLOR, MR.
JUSTICE WINDEYER AND MR. JUSTICE OWEN

MONDAY THE 2ND DAY OF MAY, 1966

20

THE DEMURRER of the Defendants to the whole of
the Statement of Claim of the Plaintiff coming
on for argument before this Court this day at
Sydney UPON READING the said Demurrer and the
said Statement of Claim (amended by leave of
this Court this day) AND UPON HEARING Mr. Deane
of Counsel and Mr. McLelland of Counsel for the
Plaintiff and Mr. Snelling of Queen's Counsel,
the Solicitor-General for the State of New South
Wales, and Mr. Helsham of Counsel for the
Defendants THIS COURT DOTH ORDER that the
said Demurrer be and the same is hereby allowed
AND THIS COURT DOTH FURTHER ORDER that there
be judgment for the Defendants in the action
AND THIS COURT DOTH FURTHER ORDER that it be
referred to the proper officer of this Court
to tax and certify the costs of the Defendants
of the Demurrer and of the action and that
such costs when so taxed and certified be paid
by the Plaintiff to the Defendants or to their
Solicitor, the Crown Solicitor for the State of
New South Wales.

30

40

BY THE COURT
H. Cannon

DISTRICT REGISTRAR

IN THE PRIVY
COUNCIL

No. 4

Order in Council
granting Special
Leave to Appeal
to Her Majesty
in Council
28th July 1966

NO. 4

ORDER IN COUNCIL GRANTING
SPECIAL LEAVE TO APPEAL TO
HER MAJESTY IN COUNCIL
Dated 28th July 1966

AT THE COURT AT BUCKINGHAM
PALACE

The 28th day of July 1966

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY	10
Lord President	Mr. Short
Lord Shepherd	Mr. Diamond

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 20th day of July 1966 in the words following, viz:-

"WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Freightlines and Construction Holding Limited in the matter of an Appeal from the High Court of Australia between the Petitioner and (1) The State of New South Wales and (2) The Commissioner for Motor Transport Respondents setting forth that the Petitioner desires to obtain special leave to appeal from a Judgment and Order of the Full Court of the High Court of Australia of the 2nd day of May, 1966 whereby the said Court upheld with costs a Demurrer by the Respondents to the whole of the Statement of Claim of the Petitioner: that by its said Statement of Claim the Petitioner sought a

20

30

9.

10 Declaration that the Road Maintenance
(Contribution) Act, 1958-1965 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: that
alternatively the Petitioner sought
a Declaration that the said Act could
not validly apply in respect of motor
vehicles owned by the Petitioner and
used exclusively in or for the purposes
inter-State trade commerce or inter-
course by reason of the said Section
of the Constitution: that in upholding
the Respondents' said Demurrer to the
Statement of Claim the Full Court of
the High Court held that the said Act
20 in its application to motor vehicles
used exclusively in the course and for
the purposes of inter-State trade and
commerce did not infringe Section 92 of
the Constitution: And humbly praying
Your Majesty in Council to order that
the Petitioner should have special leave
to appeal from the said Judgment and
Order of the High Court of Australia
delivered on the 2nd day of May 1966
30 and for such further or other order as
to Your Majesty may seem fit:

40 "THE LORDS OF THE COMMITTEE in
obedience to His Late Majesty's said
Order in Council have taken the said
humble Petition into consideration and
having heard Counsel in support thereof
and in opposition thereto Their
Lordships do this day agree humbly
to report to Your Majesty as their
opinion that leave ought to be granted
to the Petitioner to enter and prosecute
its Appeal against the Judgment and Order
of the Full Court of the High Court of
Australia dated the 2nd day of May
1966 upon depositing in the Registry
of the Privy Council the sum of £400
as security for costs:

IN THE PRIVY
COUNCIL

No.4

Order in Council
granting Special
Leave to Appeal
to Her Majesty
in Council
28th July 1966
(Contd.)

IN THE PRIVY
COUNCIL

No. 4

Order in Council
granting Special
Leave to Appeal
to Her Majesty
in Council
28th July 1966
(Contd.)

"And Their Lordships do further report to Your Majesty that the proper officer of the said High Court ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same."

10

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor-General or Officer administering the Government of the Commonwealth of Australia for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

20

W.G. AGNEW

11.

NO. 5

CERTIFICATE OF THE DISTRICT
REGISTRAR OF THE HIGH COURT
OF AUSTRALIA VERIFYING TRANS-
SCRIPT RECORD OF PROCEEDINGS

IN THE PRIVY
COUNCIL

No.5

Certificate of
the District
Registrar of the
High Court of
Australia
Verifying
Transcript
Record of
Proceedings.

IN THE PRIVY COUNCIL

ON APPEAL FROM THE HIGH

COURT OF AUSTRALIA

} No. 34 of 1966
}

10

CERTIFICATE VERIFYING
TRANSCRIPT RECORD OF
PROCEEDINGS

B E T W E E N: FREIGHTLINES &
CONSTRUCTION HOLDING
LIMITED Appellant

- and -

THE STATE OF NEW SOUTH
WALES and THE COMMISSIONER
FOR MOTOR TRANSPORT Respondent

20

CERTIFICATE OF DISTRICT REGISTRAR OF
HIGH COURT OF AUSTRALIA, NEW SOUTH WALES
REGISTRY.

I, Harold Oscar Frederick CANNON District
Registrar of the High Court of Australia
New South Wales Registry DO HEREBY CERTIFY
as follows:-

30

1. That this Transcript Record of Proceedings contains a true copy of all such Orders, Judgments and documents as have relation to the matter of this appeal.
2. Each of the Respondents herein has received notice of the Order of Her Majesty in

IN THE PRIVY
COUNCIL

—
No. 5

Certificate of
the District
Registrar of the
High Court of
Australia
Verifying
Transcript
Record of
Proceedings
(Contd)

Council giving the Appellant leave to
appeal to Her Majesty in Council AND
has also received notice of the dispatch
of the Transcript Record to the Registrar
of the Privy Council:

Dated at Sydney in the State of New
South Wales this 15th day of November One
thousand nine hundred and sixty six.

H. CANNON

District Registrar of the
High Court of Australia.
