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Judgment
26, 1956

No. 5 of 1956.

In the Privy Council.

ON APPEAL
FROM THE HIGH COURT OF AUSTRALIA.

20 FEB 1957

UNIVERSITY OF
LONDON
LAW
SCHOOL
LONDON
W.C.1.
20 FEB 1957
RECEIVED
LEGAL STUDIES

BETWEEN

THE COMMISSIONER FOR MOTOR TRANSPORT (Defendant) . . . *Appellant*

AND

ANTILL RANGER & COMPANY PTY. LIMITED (Plaintiff) . . . *Respondent*

AND BETWEEN

THE STATE OF NEW SOUTH WALES, THE HONOURABLE
ERNEST WETHERELL and THE COMMISSIONER FOR
MOTOR TRANSPORT (Defendants) *Appellants*

AND

EDMUND T. LENNON PTY. LIMITED (Plaintiff) *Respondent.*

(Consolidated Appeals)

RECORD OF PROCEEDINGS

LIGHT & FULTON,
24 JOHN STREET,
BEDFORD ROW,
LONDON, W.C.1,
Solicitors for the Appellants.

BAILEYS, SHAW & GILLETT,
5 BERNERS STREET,
LONDON, W.1,
Solicitors for the Respondents.

INSTITUTE OF ADVANCED
LEVEL STUDIES,
25, RUSSELL SQUARE,
LONDON,
W.C.1.

In the Privy Council.

UNIVERSITY OF LONDON
W.C.1

20 FEB 1957

ON APPEAL
FROM THE HIGH COURT OF AUSTRALIA.

46037

BETWEEN

THE COMMISSIONER FOR MOTOR TRANSPORT (Defendant) *Appellant*

AND

ANTILL RANGER & COMPANY PTY. LIMITED (Plaintiff) *Respondent.*

RECORD OF PROCEEDINGS

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ON APPEAL
FROM THE HIGH COURT OF AUSTRALIA.

BETWEEN

THE STATE OF NEW SOUTH WALES, THE HONOURABLE,
 ERNEST WETHERELL and THE COMMISSIONER FOR
 MOTOR TRANSPORT (Defendants) *Appellants*

AND

EDMUND T. LENNON PTY. LIMITED (Plaintiff) *Respondent.*

RECORD OF PROCEEDINGS

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In the Privy Council.

ON APPEAL FROM THE HIGH COURT OF AUSTRALIA.

BETWEEN

THE COMMISSIONER FOR MOTOR TRANSPORT
(Defendant) *Appellant*

AND

10 ANTILL RANGER & COMPANY PTY. LIMITED
(Plaintiff) *Respondent*

AND BETWEEN

THE STATE OF NEW SOUTH WALES, THE
HONOURABLE ERNEST WETHERELL and
THE COMMISSIONER FOR MOTOR
TRANSPORT (Defendants) *Appellants*

AND

EDMUND T. LENNON PTY. LIMITED (Plaintiff) . *Respondent.*

(Consolidated Appeals)

RECORD OF PROCEEDINGS

20

No. 1.

WRIT OF SUMMONS in Cause No. 4415 of 1954.

IN THE SUPREME COURT OF NEW SOUTH WALES.

Between ANTILL RANGER & COMPANY PTY.
LIMITED Plaintiff

and

THE SUPERINTENDENT OF MOTOR
TRANSPORT Defendant.

30 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, To The Superintendent of
Motor Transport of the State of New South Wales.

*In the
Supreme
Court of
New South
Wales.*

No. 1.
Writ of
Summons
in Cause
No. 4415
of 1954,
23rd July
1954.

*In the
Supreme
Court of
New South
Wales.*

No. 1.
Writ of
Summons
in Cause
No. 4415
of 1954,
23rd July
1954,
continued.

WHEREAS the above-named Plaintiff has commenced an action against you in this Court and particulars of his claim are indorsed herein.

WE COMMAND YOU that if you desire to contest his claim you do, within 10 days after service of this writ upon you, file in the office of the Court a notice of appearance in the form prescribed by the rules of Court and serve a copy thereof on the Plaintiff or his solicitor.

AND TAKE NOTICE that such notice of appearance may be filed on your behalf by a solicitor of this Court or by yourself in person in which latter case the address given therein for service of documents upon you must be within two miles of the General Post Office, Sydney. 10

AND TAKE NOTICE that if you fail to file such notice of appearance within the time limited for your appearance herein the Plaintiff may sign final judgment for any sum not exceeding the amount indorsed herein, together with interest at the rate specified, the sum of Eleven pounds five shillings for his costs and for the fees properly paid for service of this Writ upon you AND issue execution forthwith.

Witness, THE HONOURABLE KENNETH WHISTLER STREET,
Chief Justice of Our said Court at Sydney this 23rd day of July 1954.

For the Prothonotary

H. J. MALONEY (L.S.)

Clerk of the Supreme Court. 20

This writ was issued by JAMES HERBERT GARVIN of 16 Barrack Street, Sydney.

The address for service of documents is HUGHES HUGHES & GARVIN, 16 Barrack Street, Sydney.

THE PLAINTIFF CLAIMS Thirty-nine thousand nine hundred and fifty-five pounds sixteen shillings and fivepence and Seven pounds ten shillings for his costs together with the fees properly paid for service of this writ upon you and if those sums be paid to him or to his solicitor within the time above limited 30 for your appearance further proceedings in the action will be stayed.

Particulars of Plaintiff's claim :—

1952	To money had and received by the Defendant to the use of
October 15	the Plaintiff being sums paid under protest by the
to	Plaintiff to the Defendant for charges demanded by the
1954	Defendant in pursuance of the purported powers of the
May 31	Defendant under the State Transport (Co-ordination)
	Act, 1931-1952.

£39,955.16.5

40

J. H. GARVIN,

Solicitor for the Plaintiff.

(L.S.)

No. 2.

DECLARATION.

No. 4415 of 1954.

*In the
Supreme
Court of
New South
Wales.*

No. 2.
Declaration,
13th
December
1954.

IN THE SUPREME COURT OF NEW SOUTH WALES.

The Thirteenth day of December in the year of Our Lord one thousand
nine hundred and fifty-four.

SYDNEY

To WIT

10 ANTILL RANGER & COMPANY PTY. LIMITED a Company duly
incorporated and entitled to sue in and by its said corporate name and
style by JAMES HERBERT GARVIN its Attorney sues the SUPER-
INTENDENT OF MOTOR TRANSPORT a body corporate liable to be
sued in and by his said corporate name and style for money payable by
the Defendant to the Plaintiff for money received by the Defendant for
the use of the Plaintiff AND THE PLAINTIFF CLAIMS Thirty-nine
thousand nine hundred and fifty-five pounds sixteen shillings and fivepence
(£39,955 16s. 5d.).

J. H. GARVIN,
Plaintiff's Attorney,
16 Barrack Street,
Sydney.

20

(L.S.)



*In the
Supreme
Court of
New South
Wales.*

No. 3.

PLEA.

No. 4415 of 1954.

No. 3.
Plea, 1st
February
1955.

IN THE SUPREME COURT OF NEW SOUTH WALES.

The First day of February One thousand nine hundred and fifty-five.

ANTILL RANGER & COMPANY PTY. LIMITED

V.

**THE COMMISSIONER FOR MOTOR TRANSPORT (formerly the
Superintendent of Motor Transport).**

The Defendant by FINLAY PATRICK McRAE his Attorney says 10
that after the commencement of this action the Parliament of the State
of New South Wales passed into law an Act known as the State Transport
Co-ordination (Barring of Claims and Remedies) Act, 1954 and that the
moneys sought to be recovered by the Plaintiff in this action are moneys
of the nature and character referred to in sections 2, 3 and 4 of the said
Act and that the said moneys were dealt with as in the said Act mentioned
and the Defendant further says that by virtue of the said Act the Plaintiff's
cause of action is extinguished and its right to recover the said moneys
is barred.

F. P. McRAE,

20

Solicitor for the Defendant and
Crown Solicitor for the State
of New South Wales,
237 Macquarie Street, Sydney.

No. 4.

DEMURRER.

No. 4415 of 1954.

*In the
Supreme
Court of
New South
Wales.*

IN THE SUPREME COURT OF NEW SOUTH WALES.

No. 4.
Demurrer,
1st
February
1955.

The First day of February in the year of Our Lord one thousand nine hundred and fifty-five.

ANTILL RANGER & COMPANY PTY. LIMITED

V.

10 THE COMMISSIONER FOR MOTOR TRANSPORT (formerly the Superintendent of Motor Transport).

The Plaintiff says that the Defendant's plea is bad in substance.

J. H. GARVIN,
Plaintiff's Attorney,
16 Barrack Street,
Sydney.

20 A matter of law intended to be argued is that the State Transport Co-ordination (Barring of Claims and Remedies) Act 1954 is invalid in that it infringes the provisions of Section 92 of the Commonwealth Constitution and accordingly does not extinguish the Plaintiff's cause of action.

(L.S.)



JOINDER in Demurrer.

*In the
Supreme
Court of
New South
Wales.*

No. 4415 of 1954.

No. 5.
Joinder in
Demurrer,
1st
February
1955.

IN THE SUPREME COURT OF NEW SOUTH WALES.

The First day of February One thousand nine hundred and fifty-five.

ANTILL RANGER & COMPANY PTY. LIMITED

V.

THE COMMISSIONER FOR MOTOR TRANSPORT.

The Defendant by **FINLAY PATRICK McRAE** his Attorney says
that the plea is good in substance. 10

F. P. McRAE,

Solicitor for the Defendant and
Crown Solicitor for the State
of New South Wales,
237 Macquarie Street, Sydney.

(L.S.)



No. 6.

ORDER removing Demurrer into the High Court.

Court Book No. 5 of 1955.

IN THE HIGH COURT OF AUSTRALIA.

New South Wales Registry.

IN THE MATTER of the Judiciary Act 1903-1950 of the Commonwealth of Australia

AND IN THE MATTER of the State Transport Co-ordination (Barring of Claims and Remedies) Act 1954 of the State of New South Wales

10

AND IN THE MATTER of a cause No. 4415 of 1954 pending in the Supreme Court of New South Wales wherein ANTILL RANGER & COMPANY PTY. LIMITED is the Plaintiff and THE COMMISSIONER FOR MOTOR TRANSPORT is the Defendant

AND IN THE MATTER of an application by HER MAJESTY'S ATTORNEY GENERAL FOR THE STATE OF NEW SOUTH WALES under section 40 of the said Judiciary Act 1903-1950.

—————
Before—

HIS HONOUR MR. JUSTICE TAYLOR.

20

Thursday the 3rd day of February 1955.

UPON MOTION made to this Court at Sydney on the 28th day of January, 1955 and this day AND UPON READING the Notice of Motion herein dated the 25th day of January 1955 and the two several affidavits of Finlay Patrick McRae sworn the said 25th day of January 1955 and the 2nd day of February 1955 respectively and filed herein and the exhibits referred to in the said affidavits AND UPON HEARING Mr. R. Else Mitchell of Counsel on behalf of the Attorney General for the State of New South Wales and Mr. T. E. F. Hughes of Counsel on behalf of the above named Plaintiff Antill Ranger & Company Pty. Limited THIS COURT DOTH ORDER pursuant to section 40 of the Judiciary Act 1903-1950 that the demurrer in the above-mentioned cause No. 4415 of 1954 be and the same is hereby removed into the High Court of Australia and THIS COURT DOTH ORDER that the said demurrer be set down for argument before the Full Court of this Court at the sittings appointed to commence in Melbourne on Wednesday the 23rd day of February 1955 AND THIS COURT DOTH FURTHER ORDER that a certified copy of the proceedings in the said cause and of such documents relating thereto as are filed of record in the Supreme Court of New South Wales be transmitted to the New South Wales Registry of this Court at Sydney AND THIS COURT DOTH ALSO ORDER that the costs of this application be reserved.

(L.S.)

By the Court,

M. DOHERTY,
Deputy Registrar.

*In the
High Court
of
Australia.*

No. 6.
Order
removing
Demurrer
into the
High Court,
3rd
February
1955.

*In the
High Court
of
Australia.*

**JOINT REASONS for Judgment of their Honours The Chief Justice Sir Owen Dixon,
Mr. Justice McTiernan, Mr. Justice Williams, Mr. Justice Webb, Mr. Justice Kitto and
Mr. Justice Taylor.**

No. 7.

Joint
reasons for
Judgment
of Their
Honours
the Chief
Justice
Sir Owen
Dixon,
Mr. Justice
McTiernan,
Mr. Justice
Williams,
Mr. Justice
Webb,
Mr. Justice
Kitto and
Mr. Justice
Taylor,
9th June
1955.

ANTILL RANGER AND COMPANY PTY. LIMITED

V.

THE COMMISSIONER FOR MOTOR TRANSPORT.

The question we are called upon to decide in this matter concerns the constitutional validity of Act No. 45 of 1954 of New South Wales, entitled the State Transport (Barring of Claims and Remedies) Act 1954, at all 10 events in respect of part of its purported operation.

The nature of the proceedings before us determines the precise limits of the question. It is a demurrer to a plea. The demurrer has been removed from the Supreme Court into this Court under sec. 40 of the Judiciary Act 1903-1950 on the application of the Attorney-General for New South Wales. The action was commenced in the Supreme Court on 23rd July 1954, that is before the decision of the Privy Council in *Hughes and Vale Pty. Ltd. v. New South Wales* [1954] 3 W.L.R. 824; [1954] 3 A.E.R. 607, which was given on 17th November 1954 and before, as a consequence of that decision, Act No. 45 of 1954 was passed. It was in fact 20 assented to on 16th December, the same date as the assent to No. 48 of 1954. The Plaintiff had declared in the action three days earlier. The declaration consisted of a simple count for money had and received against the Superintendent of Motor Transport, a functionary whose name was altered by Act No. 48 of 1954, sec. 5, to Commissioner for Motor Transport. On 1st February 1955 the Defendant filed a single plea to the declaration. It is a plea by way of confession and avoidance. The material part of the plea avers that "after the commencement of this action the Parliament of the State of New South Wales passed into law an Act known as the State Transport Co-ordination (Barring of Claims and 30 Remedies) Act, 1954 and that the moneys sought to be recovered by the Plaintiff in this action are moneys of the nature and character referred to in sections 2, 3 and 4 of the said Act and that the said moneys were dealt with as in the said Act mentioned and the Defendant further says that by virtue of the said Act the Plaintiff's cause of action is extinguished and its right to recover the said moneys is barred." The demurrer is to this plea.

The plea will be bad unless the allegations it contains afford an answer to every set of facts which would give a cause of action against the Defendant in money had and received and so, if established, would support 40 the Plaintiff's declaration. What may be established to support the declaration may, however, be taken to be limited by the Plaintiff's particulars and they were endorsed on the writ. See sec. 24 of the Common Law Procedure Act 1899 and rule 102. The particulars identify the sum

it is sought to recover as moneys paid between 15th October 1952 and 31st May 1954 under protest by the Plaintiff to the Defendant for charges demanded in pursuance of the purported powers of the Defendant under the State Transport (Co-ordination) Act 1931-1952. For the purpose of testing the sufficiency of the plea it is proper to suppose that the declaration will be supported, within the scope of these particulars, by a set of ultimate facts constituting a cause of action in money had and received which will be consistent with the allegations in the plea but otherwise least favourable to its validity. The plea alleges that the moneys it is sought to recover are moneys of the nature and character referred to in secs. 2, 3 and 4 of Act No. 45 of 1954 and of course it must be taken that in all respects they correspond with that description.

On the footing stated the question is whether constitutionally the Act can apply to the cause of action and so bar or extinguish it.

It is necessary to give, as briefly as may be, the substance of the three sections. Sec. 2 deals with the application of the moneys to which it relates. By sec. 25 of the State Transport (Co-ordination) Act 1931-1952, called in Act 45 of 1954 the Principal Act, it was necessary that the amounts payable to the Commissioner under sec. 18 (4) and (5) and sec. 37 of that Act, and fees payable for licences and permits thereunder, should be paid into the State Transport (Co-ordination) Fund. Sec. 26 of that Act authorised the disbursements from the Fund. What sec. 2 of the Act now in question does is to provide that moneys dealt with under sec. 26 shall be deemed to have been lawfully so dealt with. It is not part of the purpose of this provision to bar recovery from the persons who collected any such moneys by a person from whom they were collected if a cause of action otherwise existed in that person. The section may therefore be neglected except as supplying a description of which the plea avails itself to define, by reference, the character the moneys filled. To satisfy the description given in sec. 2 the moneys must consist of sums collected received or recovered in relation to the operation of a public motor vehicle in the course of or for the purpose of interstate trade before 16th December 1954; the moneys must have been collected etc. or purported to have been collected etc. either pursuant to sec. 18 (4) and (5) or sec. 37 or on the issue of a licence or permit under the Principal Act or of a document purporting to be such a licence or permit or pursuant to any condition imposed on the issue thereof. Sec. 18 (4) and (5) of the Principal Act deal with the imposition of a charge under a condition of a licence to carry passengers or goods; sec. 37 with the imposition of a charge upon public motor vehicles operated in contravention of the Act. Sec. 3 (a) of Act No. 45 of 1954 is really the provision upon which the plea depends. The description of the moneys with which it deals is precisely the same as that contained in sec. 2 but it provides that any and every cause of action, claim and demand whatsoever by any person whomsoever against Her Majesty or the State of New South Wales or any Minister or the Superintendent of Motor Transport or against any authority, officer or person acting or purporting to act in the execution of the Principal Act for the recovery of any of the sums of that description shall be extinguished. Sec. 4 so far as relevant provides that no action, suit, claim or demand shall lie or be brought or made or allowed or continued by or on behalf of any person against Her Majesty or the State of New South Wales or any Minister or

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the Superintendent of Motor Transport or against any authority, officer or person for the recovery of any of the sums referred to in sec. 3 (a). In terms sec. 3 (a) and sec. 4 would cover the Plaintiff's case, as it appears upon the record, and would extinguish the Plaintiff's cause of action and bar the Plaintiff's remedy. The question is whether to allow it this operation is consistent with the Commonwealth Constitution and more particularly with sec. 92. If it is not consistent with the Constitution then, by sec. 1 (3), the Act is to be read as not covering the case. On this record it must be assumed for the purpose of the demurrer that the moneys sued for were moneys collected over the Plaintiff's protest from the Plaintiff by the Defendant in relation to the operation of the Plaintiff's motor vehicles in the course of or for the purpose of interstate trade, whether collected as under sec. 18 (4) or (5) or sec. 37, and that they were involuntary payments which the Defendant exacted from the Plaintiff *colore officii* under threats, express or implied, that, by seizure of the vehicles or some other means unauthorized by any valid law, he would prevent the Plaintiff carrying out transactions of interstate transportation in which the vehicles were engaged. Since, on the facts assumed, sec. 92 protected the Plaintiff from any such exaction or seizure or the like, the Defendant was acting unlawfully, and as an executive officer of the State, in violation of the freedom guaranteed by sec. 92 to trade commerce and intercourse among the States. 10 20

The cause of action to which the Plaintiff thus became entitled is not for infringement of some right given to him by sec. 92. "Juristically it is doubtless true that s. 92 does not confer private rights upon individuals: at all events so I decided in *James v. The Commonwealth* (1939) 62 C.L.R., at pp. 361, 362. It may perhaps also be true that its purpose is not the protection of the individual trader. But it assumes that without governmental interference trade, commerce and intercourse would be carried on by the people of Australia across State lines, and its purpose is to disable the governments from preventing or hampering that activity"—Dixon J. *Bank of New South Wales v. The Commonwealth* (1948) 76 C.L.R. 1, at p. 388. In delivering the judgment of the Privy Council in *The Commonwealth v. Bank of New South Wales* [1950] A.C. 235, at p. 305, Lord Porter said: "It is true, as has been said more than once in the High Court, that s. 92 does not create any new juristic rights, but it does give the citizen of State or Commonwealth, as the case may be, the right to ignore, and if necessary, to call on the judicial power to help him resist, legislative or executive action which offends against the section." The Plaintiff's cause of action is in this sense the consequence of sec. 92, although it is given by the common law. 30 40

The taking of the money from the Plaintiff was not merely against his will and wrongful. It was done in opposition to the constitutional guarantee of freedom the enjoyment of which he was asserting. The statute now in question does not give him some other remedy by which he may regain the money or obtain reparation. It does not impose a limitation of time or require affirmative proof of the justice of the claim. It simply extinguishes the liability altogether, not only the liability of the officers of the State but of the State itself. The effect is to leave the Plaintiff in the same position as if the exaction of the tax or charge had been lawful under the Constitution. Is it competent to the State to legislate in such a way? The answer must depend on sec. 92. There is no due process clause in our 50

Constitution. It is not a question of exceeding the limits of some affirmative power defined according to subject matter. It is a question of infringing upon a constitutional immunity.

The question is not an easy one. Obviously the denial of the Plaintiff's right to repayment now of the money taken from it between October 1952 and May 1954 does not amount to an interference with its present freedom to enter upon or complete a transaction of trade or commerce that is in contemplation or in course of execution. But it does bring to nought the justifiable reliance which the Plaintiff placed on sec. 92 when the Plaintiff protested, as it must be taken to have done, against payment of the money and sought to exercise the freedom of interstate trade assured by the Constitution. On the other hand, if the *de facto* situation arising at the end of 1954 from the decision of the Privy Council in *Hughes and Vale Pty. Ltd. v. New South Wales* is looked at as a whole and from the State's point of view, it might seem reasonable to bar claims to money that had been exacted under provisions which had been administered for so long a time as valid. It was not a simple situation. The claims to the repayment of money were doubtless numerous. Only those were enforceable as a matter of legal right which were in respect of involuntary payments. Those who had paid without protest or show of resistance and under no express or implied threat or the like could not recover. If the State was to stand on legal right, this meant an inquiry and investigation in every instance. The claimants might include persons whose payments had been made years ago, at any time in fact within six years. It might well be that the carriers who actually made the payments had more or less recouped themselves by increased freights. Considerations such as these might seem to give the matter a somewhat different aspect and distinguish it from a bare attempt to legislate so as to avoid the legal consequence of offending against the Constitution. The difficulty, however, of this view of the matter is that the statute extinguishes all claims alike. It is not an attempt to clear up a difficult administrative situation or a prospect of litigation by substituting some other means of reaching an expeditious but just result. Every liability is covered which arose from the administrative enforcement of the unconstitutional provisions. In this very case the Plaintiff had issued its writ long before the decision of the Privy Council. However strongly payment might have been resisted by an interstate trader and however great may have been the threatened duress which occasioned the payment, the statute would extinguish his right. It is for this reason that it seemed important to note exactly the assumptions of fact that on the state of the record must be made for the purposes of deciding the demurrer.

When sec. 92 says that trade commerce and intercourse among the States shall be free it gives an immunity from interference by governmental action that cannot be transient or illusory. In protecting the freedom of individuals to trade across State lines it invalidates any law purporting to confer any anterior authority to stop him doing so. Can the State by its functionaries stop him without legal justification and immediately afterward confirm the act, give it a legal justification and deny him all remedy? It seems implicit in the declaration of freedom of interstate trade that the protection shall endure, that is to say, that if a governmental interference could not possess the justification of the anterior authority

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of the law because it invaded the freedom guaranteed, then it could not, as such, be given a complete *ex post facto* justification. By the words "as such" is meant that it cannot be given a justification *ex post facto* in virtue or by reason of its very nature as an interference with the freedom of interstate trade. Yet that is what is done by the statute now in question. It takes the operation of the vehicle in the course of interstate trade or for the purpose thereof. It takes the collection of the money under the purported authorities to which it refers, authorities *pro tanto* invalid because the vehicle was operating in the course of or for the purposes of interstate trade. It assumes that a cause of action thereupon arose. 10
On that basis it extinguishes every cause of action so arising and bars the remedy. It leaves the interstate trader with no means of reparation and in exactly the same condition as he would occupy had there been an antecedent valid legal authority for the exaction. One of the effects of sec. 92 is that legislation cannot impose a burden on interstate trade. If the executive authority takes his money and the legislature says it may keep it, that surely amounts to a burden. It would defeat sec. 92 to allow validity to such a statute. Sec. 3 cannot consistently with sec. 92 operate to extinguish the Plaintiff's supposed cause of action and sec. 4 cannot operate to bar the remedy. 20

The demurrer should be allowed. Judgment in demurrer should be given for the Plaintiff. The cause should be remitted to the Supreme Court to deal with according to law consistently with this judgment.

REASONS for Judgment of His Honour Mr. Justice Fullagar.

ANTILL RANGER & CO. PTY. LTD.

V.

COMMISSIONER FOR MOTOR TRANSPORT.

JUDGMENT.

FULLAGAR J.

In considering this case I have been very much pressed by the very exceptional circumstances which led to the enactment of the State Transport
 10 Co-ordination (Barring of Claims and Remedies) Act 1954. It is by no means a simple case of a State legislating to rid itself of a liability justly resting upon it. The moneys in question were exacted under legislation which was believed not without reason to be valid. Not only were the claims for repayment doubtless numerous, but most probably the payments were made in a great variety of circumstances. In come cases, no doubt, an action at common law for money had and received would lie, while in other cases it would not. In many cases—perhaps in most—the charges paid would in fact have been “passed on” by the carrier to his customer, so that the carrier suffered little or no real loss. On the other hand, many
 20 persons—perhaps after considerable expenditure on plant, etc.—must have been prevented or deterred altogether from carrying on a business which they were entitled to carry on, and most of these could have no redress at law. Others again had taken the risk of operating without a licence, and these (though a few may have escaped detection) had been prosecuted and punished. These again could have no redress at law. A further factor in the situation was that, although the charges actually imposed were invalid, the State could (as has now been held) have lawfully demanded some amounts by way of contribution to the maintenance of highways. In the face of a situation so complex and many-sided, it may well have
 30 seemed that to cut the knot and deny redress to all alike provided a solution which was not merely rational but, on the whole, fair enough.

I have not been able, however, to find any legal principle on which the Act of 1954 can be upheld, or to see any escape from the view that it is unconstitutional. It seems to me that, in the last analysis, this case is governed by the same considerations as those which have led to the decision in *Deacon v. Grimshaw*.

The Plaintiff's action is for money had and received. There are several elements in its cause of action, any one or more of which it may fail ultimately to establish. What the Act says is that, if it does establish
 40 all those elements, it must nevertheless fail. The right asserted is a common law right, but an essential element in the cause of action is that the moneys in question were unlawfully exacted from it. If the unlawfulness of the exaction depended upon State law, the State could, of course, by statute

*In the
High Court
of
Australia.*

No. 8.
Reasons for
Judgment
of His
Honour
Mr. Justice
Fullagar,
9th June
1955.

*In the
High Court
of
Australia.*

No. 8.
Reasons for
Judgment
of His
Honour
Mr. Justice
Fullagar,
9th June
1955,
continued.

make the exaction retrospectively lawful, or abolish the common law remedy in respect of the exaction. But the unlawfulness of the exaction does not depend upon State law. It depends on the Constitution. No State law can make lawful, either prospectively or retrospectively, that which the Constitution says is unlawful. And that is what sec. 3 of the Act of 1954 in substance purports to do when it says that every cause of action arising out of an exaction made unlawful by the Constitution shall be "extinguished".

Section 3 deals with rights, which it extinguishes. Section 4 deals with remedies, which it denies. The technical distinction between rights and remedies is well recognised in English law, and is sometimes of practical importance. But I do not think that the distinction is of any significance here. If the Constitution preserves a common law right, it must be taken to preserve the appropriate common law remedy. If it protects a common law right against State invasion, the State cannot make that protection ineffective by denying all remedy for State invasion. 10

So far as the State itself is concerned, it might be said that the State is sovereign within its own territory, and that no remedy can be pursued against it in the Courts without its consent. As a general rule this is, of course, true, but, within the limited class of case to which sec. 58 of the Judiciary Act applies, the position is governed by that section, which is an exercise of the power given by sec. 78 of the Constitution. A claim for repayment of moneys alleged to have been exacted in contravention of sec. 92 is a matter arising under the Constitution or involving its interpretation. It is also a "claim in contract" within the meaning of sec. 58: see *Lorimer v. The Queen* (1862), 1 W. & W. (L.) 244, *Daly v. Victoria* (1920), 28 C.L.R. 395, at p. 399. It seems to me that the general power of a State to say whether a remedy may be pursued against it in the Courts or not is limited by sec. 58, and, so far as such claims are concerned, is taken away. So far, therefore, as the State itself is concerned, sec. 4 of the Act of 1954 is inconsistent with a paramount law of the Commonwealth. 20 30

I would add only one observation. If the Act did no more than limit the remedy, while leaving practically effective redress open to the Plaintiff, I am disposed to think that it would not be inconsistent with the Constitution. It might, for example, provide that no person other than the State should be liable, or that all questions of liability should be determined by a special tribunal. Cf. *Burrill v. Locomobile Coy.* (1922), 258 U.S. 34, *Anniston Manufacturing Coy. v. Davis* (1937), 301 U.S. 337. But sec. 4 simply takes away all remedies against anybody, and no severance or reading down seems to me to be possible. 40

I agree with the Order proposed.

ORDER of the Full Court of the High Court of Australia.

*In the
High Court
of
Australia.*

No. 4 of 1955.

IN THE HIGH COURT OF AUSTRALIA.

New South Wales Registry.

Between ANTILL RANGER & COMPANY PTY.
LIMITED Plaintiff

and

10 THE COMMISSIONER FOR MOTOR
TRANSPORT Defendant.

No. 9.
Order of
the Full
Court of
the High
Court of
Australia,
9th June
1955.

Before Their Honours the CHIEF JUSTICE SIR OWEN DIXON,
Mr. JUSTICE MCTIERNAN, Mr. JUSTICE WILLIAMS, Mr. JUSTICE
WEBB, Mr. JUSTICE FULLAGAR, Mr. JUSTICE KITTO, and
Mr. JUSTICE TAYLOR.

Thursday the 9th day of June 1955.

THE DEMURRER of the Plaintiff Antill Ranger & Company Pty.
Limited to the plea of the Defendant The Commissioner for Motor Transport
in Cause No. 4415 of 1954 pending in the Supreme Court of New South
Wales which Demurrer was removed into this Court by an order made by
20 His Honour Mr. Justice Taylor on the 3rd day of February 1955 pursuant
to section 40 of the Judiciary Act 1903-1955 coming on for argument before
this Court at Sydney on the 24th, 25th and 28th days of March 1955
UPON READING the transcript record of the proceedings herein AND
UPON HEARING Mr. Macfarlan of Queen's Counsel and Mr. Hughes of
Counsel for the Plaintiff and Mr. Hardie of Queen's Counsel and Mr. Else
Mitchell and Mr. Holland of Counsel for the Defendant THIS COURT
DID ORDER on the said 28th day of March 1955 that the Demurrer
should stand for judgment and the same standing for judgment this day
accordingly at Melbourne THIS COURT DOTH ORDER that the said
30 Demurrer be and the same is hereby allowed AND THIS COURT DOTH
FURTHER ORDER that there be judgment for the Plaintiff in Demurrer
AND THIS COURT DOTH FURTHER ORDER that the cause be
remitted to the Supreme Court of New South Wales to be dealt with
according to law consistently with the judgment of this Court 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 Plaintiff
of the Demurrer and other proceedings in this Court and that such costs
when so taxed and certified be paid by the Defendant to the Plaintiff.

40

By the Court,
M. DOHERTY,
District Registrar.

(L.S.)



*In the
High Court
of
Australia.*

No. 10.

WRIT OF SUMMONS in Cause No. 15 of 1955.

No. 10.
Writ of
Summons
in Cause
No. 15 of
1955,
8th March
1955.

IN THE HIGH COURT OF AUSTRALIA.

New South Wales Registry.

Between EDMUND T. LENNON PTY. LIMITED . Plaintiff

and

THE STATE OF NEW SOUTH WALES, THE
HONOURABLE ERNEST WETHERELL
and THE COMMISSIONER FOR MOTOR
TRANSPORT

Defendants. 10

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, to the State of New South Wales, The Honourable Ernest Wetherell and The Commissioner for Motor Transport.

WE COMMAND YOU that within Fourteen days after the service of this Writ upon 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 Edmund T. Lennon Pty. Limited.

AND TAKE NOTICE that in default of your so doing the Plaintiff 20 may proceed therein and Judgment may be given in your absence.

Witness: The Right Honourable Sir Owen Dixon 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 fifty-five.

F. C. LINDSAY,
District Registrar.
(L.S.)

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. 30

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 Solicitors, at the New South Wales Registry of the High Court of Australia.

If a Defendant neither resides or 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 Canberra A.C.T.

*In the
High Court
of
Australia.*

THE PLAINTIFF'S CLAIM is that it is entitled to a Declaration that the State Transport Co-ordination (Barring of Claims and Remedies) Act 1954 is beyond the powers of the Parliament of the State of New South Wales and invalid.

No. 10.
Writ of
Summons
in Cause
No. 15 of
1955,
8th March
1955,
continued.

The Plaintiff invokes the original jurisdiction of this Honourable
10 Court pursuant to Section 30 of the Judiciary Act 1903-1950.

The Defendant the State of New South Wales has enacted the State Transport Co-ordination (Barring of Claims and Remedies) Act 1954 thereby seeking to prevent the freedom of trade commerce and intercourse between the State of New South Wales and other States.

This Writ was issued by LIONEL DARE & REED & MARTIN of 11C Castlereagh Street, Sydney, Solicitors for the said Plaintiff whose registered office is at 15A Cunningham Street, Sydney in the State of New South Wales.

LIONEL DARE,

Solicitor for the Plaintiff.

(L.S.)

*In the
High Court
of
Australia.*

AMENDED STATEMENT OF CLAIM.

Cause No. 15 of 1955.

No. 11.
Amended
Statement
of Claim,
16th March
1955.

IN THE HIGH COURT OF AUSTRALIA.
New South Wales Registry.

Between **EDMUND T. LENNON PTY. LIMITED** . Plaintiff
and

**THE STATE OF NEW SOUTH WALES, THE
HONOURABLE ERNEST WETHERELL
and THE COMMISSIONER FOR MOTOR
TRANSPORT** Defendants.

10

AMENDMENT STATEMENT OF CLAIM.

1. The Plaintiff is a Company duly incorporated under the laws of the State of New South Wales and is entitled to sue in and by its corporate name.

2. The Defendant the Honourable Ernest Wetherell (hereinafter called "the Minister") is the Minister of State for transport of the State of New South Wales and as such is the Minister responsible for the administration of the State Transport (Co-ordination) Act 1931-1950 and the State Transport Co-ordination (Barring of Claims and Remedies) Act 1954 hereinafter referred to. 20

3. The Defendant the Commissioner for Motor Transport is a body corporate.

4. The Plaintiff carries and at all material times has carried on business as a carrier of general merchandise operating between Sydney in the State of New South Wales and Adelaide in the State of South Australia.

5. The Plaintiff was the owner at all material times of certain vehicles in respect of which it held licenses under Section 12 of the State Transport (Co-ordination) Act 1931-1950 to operate the said motor 30 vehicles as public motor vehicles within the meaning of the said Act.

6. The Defendants the Minister and the Commissioner for Motor Transport have from time to time imposed upon and demanded of the Plaintiff certain charges pursuant to the provisions of the said State Transport (Co-ordination) Act 1931-1950 and Regulations made thereunder in respect of the operation of the said motor vehicles when carrying goods from the State of New South Wales into the State of South Australia and from the State of South Australia into the State of New South Wales, the amount of such charge being calculated in respect of the distance travelled on public roads in New South Wales in the course of such operation, and 40 the Plaintiff paid such moneys involuntarily.

7. The Plaintiff has been required at all material times by the Defendants the Minister and the Commissioner for Motor Transport in respect

of the operation of its said motor vehicles when carrying goods on public roads in the State of New South Wales to pay the charge mentioned in paragraph 6 hereof.

8. The said State Transport (Co-ordination) Act 1931-1950 in so far as it purported to authorise the Defendants the Minister and the Commissioner for Motor Transport to impose or require the payment of the said charges was and is invalid and beyond the powers of the Parliament of the State of New South Wales and contrary to the provisions of the Constitution of the Commonwealth of Australia and the imposition and
10 collection of such charges was unlawful and unauthorised.

9. The Plaintiff has demanded from the Defendants the Minister and the Commissioner for Motor Transport the repayment of the moneys so imposed levied or demanded by the said Defendants upon and of it but the said Defendants have refused and still refuse to pay the said moneys or any of them upon the grounds that the said moneys were collected and received in relation to the operation of a public motor vehicle in the course of and for the purposes of interstate trade prior to the 16th December, 1954, and were collected pursuant to the provisions of Sub-Section 4 and/or
20 (Co-ordination) Act 1931-1950 and were collected on and pursuant to a condition imposed on the issue of a license under the said State Transport (Co-ordination) Act 1931-1950 or of a permit under the said Act or of a document purporting to be a license or permit under the said Act and are not repayable pursuant to the provisions of the State Transport Co-ordination (Barring of Claims and Remedies) Act 1954.

THE PLAINTIFF CLAIMS :—

(1) A declaration that the State Transport Co-ordination (Barring of Claims and Remedies) Act 1954 is beyond the powers of the Parliament of the State of New South Wales and invalid
30 in so far as the same would preclude the Plaintiff from recovering from the Defendants or some one or more of them such part of the moneys referred to in paragraphs 6 and 9 hereof as would otherwise be recoverable.

(2) Alternatively, a declaration that Sections 2, 3 and 4 of the said Act are beyond the powers of the Parliament of the State of New South Wales and invalid in so far as the same would preclude the Plaintiff from recovering from the Defendants or some one or more of them such part of the moneys referred to in paragraphs 6 and 9 hereof as would otherwise be recoverable.

(3) Such further or other order as to the Court may seem
40 meet.

(4) Costs.

Dated this 16th day of March, 1955.

LIONEL DARE & REED & MARTIN,
Solicitors for the Plaintiff.

This Statement of Claim is filed by LIONEL DARE & REED & MARTIN whose address for service is 11C Castlereagh Street, Sydney.

*In the
High Court
of
Australia.*

No. 11.
Amended
Statement
of Claim,
16th March
1955,
continued.

*In the
High Court
of
Australia.*

No. 12.
Demurrer,
17th March
1955.

IN THE HIGH COURT OF AUSTRALIA.

New South Wales Registry.

Between EDMUND T. LENNON PTY. LIMITED . Plaintiff

and

THE STATE OF NEW SOUTH WALES, THE
HONOURABLE ERNEST WETHERELL
and THE COMMISSIONER FOR MOTOR
TRANSPORT Defendants.

10

DEMURRER.

Delivered the 17th day of March, 1955.

The Defendants demur to the whole of the Statement of Claim as amended on the grounds :—

1. That it discloses no cause of action.

2. The State Transport Co-ordination (Barring of Claims and Remedies) Act 1954 and every part thereof is a valid exercise of the legislative powers of the Parliament of the State of New South Wales.

3. Alternatively to 2, the provisions of the State Transport Co-ordination (Barring of Claims and Remedies) Act 1954, in so far as they apply to charges imposed and collected in respect of the operation of motor vehicles upon public roads in the State of New South Wales, are and each of them is a valid exercise of the legislative powers of the Parliament of the said State.

20

Dated this 17th day of March, 1955.

F. P. McRAE,

Crown Solicitor for the State of
New South Wales and Solicitor
for the Defendants,
237 Macquarie Street, Sydney.

30



JOINT REASONS for Judgment of Their Honours The Chief Justice Sir Owen Dixon, Mr. Justice McTiernan, Mr. Justice Williams, Mr. Justice Webb, Mr. Justice Kitto and Mr. Justice Taylor.

*In the
High Court
of
Australia.*

EDMUND T. LENNON PTY. LIMITED

V.

**THE STATE OF NEW SOUTH WALES,
THE MINISTER FOR TRANSPORT OF NEW SOUTH WALES and
THE COMMISSIONER FOR TRANSPORT.**

No 13.
Joint
reasons for
Judgment
of Their
Honours
the Chief
Justice
Sir Owen
Dixon,
Mr. Justice
McTiernan,
Mr. Justice
Williams,
Mr. Justice
Webb,
Mr. Justice
Kitto and
Mr. Justice
Taylor,
9th June
1955.

10 The object of this action was to raise the same question as that decided in *Antill Ranger & Co. Pty. Ltd. v. Commissioner for Motor Transport*. The relief claimed, however, consists in declarations of right. The statement of claim has been demurred to and it is the demurrer that is before us. The pleading as it stood at the opening of the argument did not even allege that the payments made by the Plaintiff were not voluntary payments and did not allege any facts sufficient to show that apart from Act No. 45 of 1954 the moneys would have been recoverable. However, the statement of claim was amended during the argument.

20 The substance of the matter is decided in *Antill Ranger & Co. Pty. Ltd. v. Commissioner of Motor Transport* and really the only question that remains in this case is whether, applying the decision to this case, the allegations in the pleading suffice to enable the Plaintiff to obtain some form of relief. On the whole, there seems to be enough to sustain the pleading on demurrer and to justify declarations in the following form: Declare that sec. 3 (a) of the State Transport Co-ordination (Barring of Claims and Remedies) Act 1954 does not validly operate to extinguish any cause of action to which in consequence of the invalidity or inapplicability of the State Transport (Co-ordination) Act 1931 (as amended) by reason of sec. 92 of the Constitution the Plaintiff was at the passing of that
30 first mentioned Act entitled as against any of the Defendants for the recovery of moneys demanded of the Plaintiff in purported pursuance of sec. 18 (5) or sec. 37 of the said State Transport (Co-ordination) Act 1931 or of a condition imposed upon a licence or permit or demanded upon the issue of such a licence or permit. Declare that sec. 4 does not validly operate to bar the remedy for the enforcement of any such cause of action.

The demurrer should be overruled and such a declaration made accordingly.

*In the
High Court
of
Australia.*

No. 14.

REASON for Judgment of His Honour Mr. Justice Fullagar.

No. 14.
Reasons for
Judgment
of His
Honour
Mr. Justice
Fullagar,
9th June
1955.

EDMUND T. LENNON PTY. LTD.

V.

STATE OF NEW SOUTH WALES & ORS.

JUDGMENT.

FULLAGAR J.

This action seeks in effect a declaration that if the Plaintiff chooses to bring an action against the Defendants, and if the Defendants or any of them choose to raise a particular defence, that particular defence must fail. 10
Apart from very special circumstances, of which there is no suggestion here, no declaration of such a character ought, in my opinion, to be made. The only proper course is to leave the Plaintiff to bring its action, to which there may be found to be other defences. However, in the present case no objection that the action was misconceived was raised, and, if the demurrer is to be treated as properly raising the questions which were argued, then I am of opinion that it should be overruled for the reasons given in *Antill Ranger & Co. Pty. Ltd. v. Commissioner for Motor Transport*.

I agree with the Order proposed.

ORDER of the Full Court of the High Court of Australia.

*In the
High Court
of
Australia.*

IN THE HIGH COURT OF AUSTRALIA.

No. 15 of 1955.

New South Wales Registry.

No. 15.
Order of
the Full
Court of
the High
Court of
Australia,
9th June
1955.

Between EDMUND T. LENNON PTY. LIMITED . Plaintiff

and

THE STATE OF NEW SOUTH WALES, THE
HONOURABLE ERNEST WETHERELL
and THE COMMISSIONER FOR MOTOR
TRANSPORT Defendants.

10

Before Their Honours the CHIEF JUSTICE SIR OWEN DIXON,
Mr. JUSTICE MCTIERNAN, Mr. JUSTICE WILLIAMS, Mr. JUSTICE
WEBB, Mr. JUSTICE FULLAGAR, Mr. JUSTICE KITTO, and
Mr. JUSTICE TAYLOR.

Thursday the 9th day of June, 1955.

THE DEMURRER of the Defendants The State of New South Wales
The Honourable Ernest Wetherell and The Commissioner for Motor
Transport to the whole of the Statement of Claim (as amended) of the
Plaintiff Edmund T. Lennon Pty. Limited in this action coming on for
20 argument before this Court at Sydney on the 24th 25th and 28th days of
March 1955 UPON READING the pleadings filed herein AND UPON
HEARING Sir Garfield Barwick of Queen's Counsel and Mr. Woodward
of Counsel for the Plaintiff and Mr. Hardie of Queen's Counsel and Mr. Else
Mitchell and Mr. Holland of Counsel for the Defendants THIS COURT
DID ORDER on the said 28th day of March 1955 that the Demurrer should
stand for judgment and the same standing for judgment this day
accordingly at Melbourne THIS COURT DOTH ORDER that the
said Demurrer be and the same is hereby overruled AND THIS COURT
DOTH FURTHER ORDER that judgment in the suit be entered for the
30 Plaintiff with costs AND THIS COURT DOTH DECLARE that
section 3 (a) of the State Transport Co-ordination (Barring of Claims and
Remedies) Act 1954 does not validly operate to extinguish any cause of
action to which in consequence of the invalidity or inapplicability of the
State Transport (Co-ordination) Act 1931 (or that Act as amended) by
reason of section 92 of the Constitution the Plaintiff was at the passing of
the State Transport Co-ordination (Barring of Claims and Remedies)
Act 1954 entitled as against any of the Defendants for the recovery of
moneys demanded of the Plaintiff in purported pursuance of section 18 (5)
or section 37 of the said State Transport (Co-ordination) Act 1931 (or that
40 Act as amended) or of a condition imposed upon a licence or permit or
demanded upon the issue of such a licence or permit AND THIS COURT

*In the
High Court
of
Australia.*

No. 15.
Order of
the Full
Court of
the High
Court of
Australia,
9th June
1955,
continued.

DOTH FURTHER DECLARE that section 4 of the State Transport Co-ordination (Barring of Claims and Remedies) Act 1954 does not validly operate to bar the remedy for the enforcement of any such cause of 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 Plaintiff of this action and that such costs when so taxed and certified be paid by the Defendants to the Plaintiff.

By the Court,

M. DOHERTY,

(L.S.)

District Registrar. 10

*In the
Privy
Council.*

No. 16.
Order in
Council
granting
special
leave to
Appeal and
directing
that the
two Appeals
be con-
solidated,
1st
December
1955.

No. 16.

ORDER IN COUNCIL granting Special Leave to Appeal and Directing that the two Appeals be Consolidated.

(L.S.)

AT THE COURT AT BUCKINGHAM PALACE

The 1st day of December, 1955

Present :

THE QUEEN'S MOST EXCELLENT MAJESTY

LORD PRESIDENT

Mr. BOYD-CARPENTER

EARL OF MUNSTER

Mr. MAUDLING

20

WHEREAS there was this day read at the Board a report from the Judicial Committee of the Privy Council dated the 14th day of November 1955 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 the Commissioner for Motor Transport in the matter of an Appeal from the High Court of Australia between the (Defendant) Petitioner and Antill Ranger & Company Pty. Limited (Plaintiff) Respondent setting forth (amongst other matters) that the Petitioner is desirous of obtaining special leave to appeal from a Judgment of the High Court of Australia holding invalid a New South Wales Act namely the State Transport Co-ordination (Barring of Claims and Remedies) Act 1954 (thereinafter referred to as the Barring Act) passed for the purpose of validating the disbursement of certain moneys collected from operators of public motor vehicles and prohibiting the recovery back of such moneys ; that these moneys had been paid by transport 30

operators in pursuance of licences permits and other authorities issued to them under the State Transport (Co-ordination) Act 1931 which established a system for the licensing of public motor vehicles in New South Wales and provided for the payment of mileage charges on the distance travelled by their vehicles on the roads of New South Wales: that by Order in Council dated the 24th November 1954 made in the Appeal *Hughes and Vale Pty. Ltd. v. New South Wales* it was held that the licensing provisions of the State Transport (Co-ordination) Act 1931 could not validly apply to persons operating public motor vehicles in the course of and for the purpose of interstate trade on the ground that the requirement to be licensed infringed Section 92 of the Constitution: that the result was that the mileage charges which had been imposed and collected over a period of more than twenty years from persons engaged on interstate journeys had been so imposed and collected without legal authority and in consequence the Parliament of New South Wales on 16th December 1954 passed the aforesaid Barring Act: that the Petitioner who was the sole Defendant in an Action brought by the Respondent in the Supreme Court of New South Wales in answer to the declaration for money had and received filed a plea alleging that the moneys sought to be recovered were moneys of the nature referred to in the said Barring Act and that such moneys had been dealt with as in that Act mentioned and that the cause of action was thereby extinguished and the right to recovery barred: that the Respondent demurred on constitutional grounds and the Demurrer was on the application of the Petitioner with the Respondent's consent removed to the High Court which on the 9th June 1955 allowed the Demurrer and gave Judgment for the Respondent: And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal from the said Judgment of the High Court of Australia dated the 9th day of June 1955 and for further or other relief:

“ AND WHEREAS by virtue of the aforesaid Order in Council of the 18th day of October 1909 there was also referred unto this Committee the humble Petition of the State of New South Wales the Honourable Ernest Wetherell and the Commissioner for Motor Transport in the matter of an appeal from the High Court of Australia between the (Defendants) Petitioners and Edmund T. Lennon Pty. Limited (Plaintiff) Respondent setting forth (amongst other matters) some of the facts adumbrated in the foregoing Petition and that on the 14th January 1955 the Respondent similarly commenced proceedings in the Supreme Court of New South Wales against the Petitioners for the recovery of moneys paid by it under the State Transport (Co-ordination) Act: that on the 8th March 1955 it commenced a Suit in the High Court claiming *inter alia* declarations that the State Transport Co-ordination (Barring of Claims and Remedies) Act 1954 or alternatively certain Sections thereof were invalid or inapplicable to it: that on the 17th March 1955 the Petitioners demurred on constitutional and other grounds: that on the 9th June 1955 the Court overruled the Demurrer and gave Judgment for the Respondent: And humbly

*In the
Privy
Council.*

No. 16.
Order in
Council
granting
special
leave to
Appeal and
directing
that the
two Appeals
be con-
solidated,
1st
December
1955,
continued.

*In the
Privy
Council.*

No. 16.

Order in
Council
granting
special
leave to
Appeal and
directing
that the
two Appeals
be con-
solidated,
1st
December
1955,
continued.

praying Your Majesty in Council to grant the Petitioners special leave to appeal from the said Judgment of the High Court of Australia dated the 9th day of June 1955 and for further or other relief :

“THE LORDS OF THE COMMITTEE in obedience to His late Majesty’s said Order in Council have taken the humble Petitions 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 Petitioners to enter and prosecute their Appeals 10 against the two Judgments respectively of the High Court of Australia dated the 9th day of June 1955 :

“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 Appeals upon payment by the Petitioners of the usual fees for the same :

“AND in case Your Majesty should be pleased to approve of this Report Their Lordships do direct that the two Appeals be 20 Consolidated and heard together on one Printed Case on each side.”

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.

W. G. AGNEW. 30

CERTIFICATE of the District Registrar of the High Court of Australia.

*In the
Privy
Council.*

IN THE PRIVY COUNCIL.

On Appeal from the High Court of Australia.

Between THE COMMISSIONER FOR MOTOR
TRANSPORT (Defendant) *Appellant*
and
ANTILL RANGER & COMPANY PTY.
LIMITED (Plaintiff) *Respondent*

Certificate
of the
District
Registrar
of the
High Court
of
Australia,
28th
February
1956.

AND

10 On Appeal from the High Court of Australia.

Between THE STATE OF NEW SOUTH WALES THE
HONOURABLE ERNEST WETHERELL
and THE COMMISSIONER FOR MOTOR
TRANSPORT (Defendants) *Appellants*
and
EDMUND T. LENNON PTY. LIMITED
(Plaintiff) *Respondent.*

I, MICHAEL DOHERTY, District Registrar of the High Court of Australia, New South Wales Registry Do Hereby Certify as follows:—

20 That this transcript record contains a true copy of all such orders, judgments and documents as have relation to the matters of these appeals and a copy of the reasons for the respective judgments pronounced in the course of the proceedings out of which the appeals arise.

That the Respondents herein have received notice of the Order of Her Majesty in Council giving the Appellants leave to appeal to Her Majesty in Council AND have also received notice of the despatch of this transcript record to the Registrar of the Privy Council.

Dated at Sydney in the State of New South Wales this 28th day of February 1956.

30

M. DOHERTY,
District Registrar of the High Court of Australia.

(L.S.)



In the Privy Council.

ON APPEAL
FROM THE HIGH COURT OF AUSTRALIA.

BETWEEN
THE COMMISSIONER FOR MOTOR TRANSPORT (Defendant) . *Appellant*

AND

ANTILL RANGER & COMPANY PTY. LIMITED (Plaintiff) . . . *Respondent*

AND BETWEEN

**THE STATE OF NEW SOUTH WALES, THE HONOURABLE
ERNEST WETHERELL and THE COMMISSIONER FOR
MOTOR TRANSPORT (Defendants) *Appellants***

AND

EDMUND T. LENNON PTY. LIMITED (Plaintiff) *Respondent.*

(Consolidated Appeals)

RECORD OF PROCEEDINGS

LIGHT & FULTON,
24 JOHN STREET,
BEDFORD ROW,
LONDON, W.C.1,
Solicitors for the Appellants.

BAILEYS, SHAW & GILLETT,
5 BERNERS STREET,
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Solicitors for the Respondents.