

RC
GDLG-6

IN THE PRIVY COUNCIL

Judgment of 4, 1966

No. 19 of 1965.

No. 20 of 1965.

O N A P P E A L

FROM THE FULL COURT OF THE SUPREME COURT
OF QUEENSLAND

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B E T W E E N

COBB & CO. LIMITED
DOWNS TRANSPORT PTY. LTD.
SOUTH QUEENSLAND TRANSPORT PTY. LTD.
NORTHERN DOWNS TRANSPORT PTY. LTD.
NORTHERN TRANSPORT PTY. LTD. and
COBB & CO. COACHES PTY. LTD.

Appellants

- and -

NORMAN EGGERT KROPP

Respondent

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AND BETWEEN

COBB & CO. LIMITED
DOWNS TRANSPORT PTY. LTD.
SOUTH QUEENSLAND TRANSPORT PTY. LTD.
NORTHERN DOWNS TRANSPORT PTY. LTD. and
NORTHERN TRANSPORT PTY. LTD.

Appellants

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- and -

THE HONOURABLE THOMAS ALFRED HILEY
and NORMAN EGGERT KROPP

Respondents

C A S E FOR THE APPELLANTS

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1. This single case for the Appellants is filed pursuant to the Order of the Judicial Committee dated the 29th November 1965, whereby it was ordered that the two appeals herein be consolidated and that one Case be filed on either side.

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2. The first of the above appeals is against a judgment of the Full Court of the Supreme Court of Queensland (Stable, Gibbs and Hart JJ.) dated the 14th April 1965, which allowed a demurrer by the Respondent against the Appellants' Statement of Claim, which had claimed

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repayment of sums totalling £262,064-10-9 levied by the Respondent under the State Transport Facilities Act 1946-55 and the State Transport Facilities Act 1946-59 in respect of the carriage of goods and passengers on motor vehicles operated by the Appellants in the State of Queensland, and dismissed the Appellants' action with costs.

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3. The second of the above appeals is against a judgment of the Full Court of the Supreme Court of Queensland (Stable, Gibbs and Hart JJ.) dated the 18th June 1965, which allowed a demurrer by the Respondent against the Appellants' Statement of Claim, which had claimed repayment of sums totalling £122,816-19-1 levied by the Respondent under the State Transport Act 1960 in respect of the carriage of goods on motor vehicles operated by the Appellants in the State of Queensland and dismissed the Appellants' action with costs. A B

4. The issue raised by these appeals is whether it is competent for the Queensland Legislature to set up an authority, in this instance governing transport, having sovereign powers, including that of taxation, equal to those of the Legislature itself and virtually unrestricted by any reservation of control by the Legislature or in any other way. C

5. The whole of the provisions and effect of the State Transport Facilities Act 1946-59 (hereinafter called "the Facilities Acts") and of the State Transport Act 1960 are relevant to the present appeals, and the Appellants will refer to such provisions on the hearing of the appeals. For convenience, those provisions directly relevant are summarised below. D E

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
25 APR 1967
25 RUSSELL SQUARE
LONDON, W.C.1.

The State Transport Facilities Act was enacted in 1946, and amendments were made from time to time up to 1959, when the Facilities Acts reached their final form; however no issue in these appeals turns upon such amendments. F

The Facilities Acts provided for the appointment by the Governor in Council of a Commissioner for Transport (Section 9), whose decisions had to be submitted to the Minister of Transport for confirmation (Section 16). Section 23 was a central provision and prohibited the use of vehicles for the carriage of passengers or goods on any road unless authorised by the Act or under license from the Commissioner. Section 27 authorised the Commissioner to issue licences at his discretion, and Section 32 contained terms and conditions which might be included in licenses. Section 35 contained provisions regarding licensing fees, which gave the Commissioner a wide discretion in fixing the amount of such fees in any particular case. Section 36 enables the Commissioner to amend or vary the terms of and G H I

rates for licences.

A Section 20 of the Facilities Acts prevented
any court from enquiring into any determination of
the Commissioner or the Minister of Transport in
relation to the issue of any licence or other permit,
or anything connected therewith. Section 68
empowered the Commissioner to issue notices of his
determinations, and Section 69 required all
proclamations, Orders in Council and regulations
B made under the Facilities Acts to be published.

6. The Facilities Acts were repealed and replaced
by the State Transport Act 1960, coming into force
on the 27th February 1961, which was substantially
C to the same effect. Among the principal alterations
was that licences were replaced by "permits" for the
carriage of goods, and a further "licence to hire"
is required for any carrier of goods or passengers.
By Section 6 the Commissioner's determinations no
longer had to be approved by the Minister, but the
D former was to have regard to any directions which
the Minister might from time to time give as respects
policy. Section 45 permits the Commissioner to
grant exemption from permit fees in a number of
special cases, and also generally. By Sections 7,
E 9 and 10 the Commissioner is given security of
tenure to a considerable degree and is not subject
to any Parliamentary control, except that by Section
79, his report has to be laid before Parliament.

F 7. The Constitution Act Amendment Act of 1934 of
Queensland provides by Section 3 that the Parliament
of Queensland "shall not be altered in the direction
of providing for the restoration and/or constitution
and/or reestablishment of another legislative body
(whether called the "Legislative Council", or by
G any other name or designation, in addition to the
Legislative Assembly) except in the manner provided
in this section," which then set out the requirement
for approval of such a bill by referendum among the
citizens of Queensland.

H 8. The Appellants' Statement of Claim in the
first appeal, dated the 28th April 1964, claimed
repayment of various sums paid by the Appellants
from time to time as licence fees under the
Facilities Acts between April 1958 and April 1961
I totalling £262,064-10-9 on the ground that such
amounts had been paid under compulsion to the
Respondent, the Commissioner for Transport, and
that his demand had been unlawful on the ground that

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the Facilities Acts had not at any time been valid or had had legal operation.

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9. The Respondent entered a demurrer on the 25th May 1964 to the Appellants said Statement of Claim, claiming inter alia that there was no cause of action since the Facilities Acts had at all material times been good and valid law.

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10. The demurrer entered by the Respondent was heard by the Full Court of the Supreme Court of Queensland (Stable, Gibbs and Hart JJ.) on the 23rd and 24th February 1965, and on the 14th April 1965, the Full Court gave judgment, allowing the demurrer and dismissing the Appellants' action with costs.

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pp.6-10.

Stable, J., after setting out the issue raised by the demurrer, said that Parliament by enacting the Facilities Acts and providing for the appointment of a Commissioner for Transport had at all times kept a Parliamentary hand on the Commissioner's shoulder. The Appellants' argument had raised four propositions:-

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- 1) the fees imposed under the Acts as licensing fees (or permit fees) constituted taxation;
- 2) taxation and appropriation without the authority of Parliament were illegal and void;
- 3) in so far as the Commissioner for Transport imposed or remitted taxes such taxes were imposed or remitted without the authority of Parliament;
- 4) by these Acts Parliament had purported to create a separate legislative body - the Respondent.

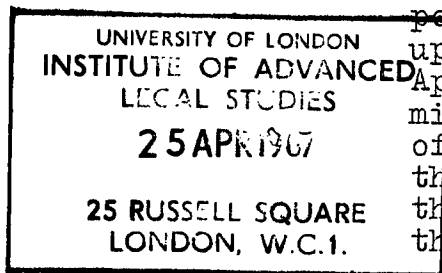
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The learned judge held that the first two propositions were correct. As to the third and fourth, the essence of the Appellants' argument was that Parliament had given away its taxing power to the Respondent. This argument was based upon the terms of the Bill of Rights, but the Appellants' propositions were based on a misconception of the meaning of the words "grant of Parliament" in that statute, which was part of the law of Queensland. The Bill of Rights meant that no taxation was justified unless imposed by the authority of Parliament. In passing the

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A Facilities Acts, Parliament had lent its powers of
taxation to the Commissioner, but had given him no
powers to act outside the law as laid down by
Parliament; a frame work had been laid down within
which the Commissioner was to act in administering
the imposition of fees. The taxes levied by him
were levied under the authority of the Acts. As
had been said in Powell v Apollo Candle Co. (1885)
10 Ap. Cas.282, the Legislative had not parted with
B its perfect control over him and had the power at
any moment of withdrawing or altering the power
granted to him. The Appellants had failed to show
that the Facilities Acts had not had at any time
valid or lawful operation.

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C 11. Gibbs, J., in his judgment, summarised the
issues and the relevant provisions of the
Facilities Acts; in referring to Section 35, dealing
with the calculation of licence fees, the learned
judge said:-

D "I am content to assume (although I do not
intend to suggest that the assumption is
necessarily correct) that the Acts themselves do
not in every case effectively prescribe the
maximum fee that may be determined by the
E Commissioner. It is, of course, clear that in no
case do the Acts prescribe a minimum".

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The learned judge continued that there was
no dispute that the licence fees could be varied
as between one licensee and another, and that the
F fees were a form of taxation, as decided in
Brown's Transport Ltd. v. Kropp (1958) 100 C.L.R.
117. The issue raised by the Appellants was
whether such an imposition of taxation was contrary
to the Bill of Rights. However the words of that
G statute had been considered in more recent cases,
which showed that it was not a correct interpretation
to allege that Parliament itself must fix a rate
of tax and cannot confer on its delegates the
discretionary power of fixing the amount of a tax.
H It was well settled that a Legislature such as
that of Queensland can delegate its powers to
subordinate agencies and no distinction can be
drawn between powers of taxation and other powers.
I Even if the Facilities Acts were inconsistent with
the Bill of Rights, there was no reason why in
such a conflict the later Acts should not prevail.

The learned judge went on to reject the
further argument raised by the Appellants that the
Facilities Acts were invalid as being contrary to the

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- Constitution Act Amendment Act 1934. It was clear that that Act had been passed to prevent the reestablishment of the Legislative Council of Queensland, which was abolished in 1922, and did not apply to the present case; the Commissioner of Transport had not been established a legislative body within Section 3 of that Act. The demurrer should accordingly be allowed. A
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12. Hart J., in his judgment, described the legislative history of the Facilities Acts and the facts giving rise to the Transport Laws Validation Act of 1962, by which they were retrospectively validated. The learned judge set out the four heads of argument of the Appellants, and said that the first two had been conceded by the Respondent, that is that the licence fees were an imposition of taxation, which was illegal and void if not done with the authority of Parliament. The third and fourth heads of argument raised the sole issue of whether the Acts were within the legislative competence of the State of Queensland. If the Facilities Acts were in conflict with the Bill of Rights, then the latter Act was repealed to the extent of the conflict; the powers of the Legislature in Queensland were uncontrolled. However the Facilities Acts were within the competence of the Queensland Legislature, and this was confirmed by Powell v. Apollo Candle Co. and Hodge v. The Queen 9 Ap. Cas.117. The argument that Section 3 of the Constitution Amendment Act 1934 invalidated the Facilities Acts was not sustainable as that section had no application to the provisions of those Acts. The demurrer accordingly should be upheld. B C D E F
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13. The second action of the Appellants was begun by a writ dated the 8th February 1965 having endorsed on it a Statement of Claim by which the Appellants in that case claimed repayment of £122,816-19-1 as moneys paid to the Respondent, the Commissioner for Transport, between September 1963 and November 1964 as licensing and permit fees purportedly exacted under the State Transport Act 1960 and paid by the Appellants under protest. G H
- pp.5-6
14. The Respondent entered a demurrer to the Appellants' Statement of Claim raising the same grounds as those raised against the earlier Statement of Claim, including the ground that the State Transport Act 1960 had at all material times been a good and valid law within the competence of the Legislature of Queensland. I J

A 15. By agreement in correspondence between the solicitors for the Appellants and for the Respondent, the demurrer in the second action, relating to the validity of the State Transport Act 1960, came before the Full Court of the Supreme Court of Queensland, who, without hearing any argument on the 18th June 1965 allowed the demurrer without giving any reasons. p.6. The action was consequently dismissed with costs.

B It was a term of such agreement between the parties that the arguments on appeal in this appeal would be limited to the argument put forward before the Full Court on the consideration of the demurrer in the earlier action.

C 16. The Appellants respectfully submit that the judgment of the Full Court of the Supreme Court of Queensland in each of the cases in this appeal was wrong and ought to be reversed.

D It is respectfully submitted that the Facilities Acts and the State Transport Act 1960 were not at any time valid or effective statutes within the competence of the Legislature of Queensland. Those Acts purported unlawfully and unconstitutionally to delegate to the Commissioner for Transport the sovereign powers of the Legislature, and in particular the powers to impose and levy taxes, under the guise of licence and permit fees, in his virtually unrestricted discretion, which violates the principle that no tax may be imposed save with the full assent of Parliament. The Commissioner is also unlawfully given power to repeal alter and amend the taxes imposed by him and to substitute other taxes therefor. Parliament, in the said Acts, has purported to abrogate its taxing power in respect of road transportation.

G 17. It is further respectfully submitted that the terms of the said Acts permit the Commissioner for Transport to act effectively as a legislature for transportation, contrary to the provisions of Section 3 of the Constitution Act Amendment Act 1934. H The said Acts constitute an unlawful transfer of sovereign power in the field of transport by the Legislature to the Commissioner and an abdication of such power in his favour. The said Acts purport to give the Commissioner a power to differentiate I between individuals, and a power to dispense from compliance with the law upon any conditions he thinks fit. The said Acts confer upon the Governor-in-Council and the Commissioner power to repeal some

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or all of their provisions in regard to individuals or the public as a whole.

18. It is further respectfully submitted that the authorities relied upon by the Full Court are clearly distinguishable from the present appeals, and, so far from supporting the conclusions of the learned judges, when considered in their proper light, support the arguments of the Appellants.

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19. The Appellants further respectfully submit that each determination of a monetary nature by the Commissioner or the Governor in Council is an appropriation of revenue, or imposition, or variation, or repeal of taxes which should be attended, and is not, by the due formalities necessary for the passage of a "money bill" through the Legislature, and takes over unconstitutionally the exclusive right and duty of Parliament to govern supply, and to impose, vary or repeal taxes. The said Acts in any event, it is further submitted, so entrenched upon the Royal Prerogative relating to transport that they should have been reserved for the personal assent of the Sovereign.

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20. The Appellants therefore respectfully submit that these appeals should be allowed with costs and that the judgments of the Full Court of the Supreme Court of Queensland should be set aside, and that judgment should be entered for the Appellants in both actions, for the following (among others)

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REASONS

1. BECAUSE the Facilities Acts and the State Transport Act of 1960 were at all material times invalid and void.

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2. BECAUSE the Queensland Legislature acted outside its powers by purporting to abrogate its exclusive power of taxation.

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3. BECAUSE it was not constitutionally right or possible for the Commissioner of Transport to be given an unfettered power of taxation.

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4. BECAUSE the acts and determinations of the Commissioner were invalid and unconstitutional.

5. BECAUSE the Facilities Acts and the State Transport Act of 1960 were not enacted in accordance with Section 3 of the Constitution Act Amendment Act 1934.
- A 6. BECAUSE the Facilities Acts and the State Transport Act of 1960 were enacted contrary to the constitutional principle relating to taxation embodied in the Petition of Right and in the Bill of Rights.

MERVYN HEALD