[HIGH COURT OF AUSTRALIA.]

SAUNDERS . . . . . APPELLANT;

AND

BORTHISTLE . . . . . RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1904.

SYDNEY, *June* 20, 21, 22.

Griffith, C.J., Barton and O'Connor, JJ.

Pastures Protection Act, 1902, *No.* 111, *secs.* 4, 97—"*Travelling sheep*"—"*Drover*"—*Person in charge of sheep travelling less than* 40 *miles—Travelling statement not necessary under sec.* 97—*Justices Act*, 1902, *No.* 27, *secs.* 101, 105, 106, 107—*Appeal by way of special case—Order made by Judge sitting in Chambers under sec.* 107—*Judgment of Supreme Court—Appeal to High Court—Constitution of the Commonwealth, sec.* 73.

A person in charge of sheep travelling to a place less than 40 miles distant from the run on which they are ordinarily depastured is not a "drover in charge of any travelling sheep" within the meaning of sec. 97 (1) of the *Pastures Protection Act*, 1902, and therefore he is not guilty of any offence under (2) of that section, if he fails to produce a "travelling statement" to "any inspector, police constable or justice, &c."

King v. *Cundy*, 15 (N.S.W.), W.N., 158, approved.

Order of *Pring*, *J.*, 21 (N.S.W.) W.N., 7, reversed.

An order made by a Judge of the Supreme Court sitting in Chambers, in the exercise of the jurisdiction conferred by sec. 107 of the *Justices Act*, 1902, is a judgment of the Supreme Court from which an appeal will lie to the High Court under sec. 73 of the Constitution.

In re Paul, (1902) 2 S.R. (N.S.W.), 196, not followed.

THIS was an appeal from an order made by *Pring*, J., in Chambers, 21 (N.S.W.) W.N., 7. The following statement of the proceedings and of the facts is taken from the judgment of *Griffith*, C.J. :—The appellant was charged before Justices with having committed a breach of sec. 97 of the *Pastures Protection Act*, 1902, No. 111 (*a*), in that he, being a drover in charge of certain travel-

(*a*) *Pastures Protection Act*, 1902 :—

Sec. 4. In this Act, unless the context or subject-matter otherwise indicates or requires :—

. . . . . .

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ling sheep, did not produce a travelling statement upon demand to a police constable, as required by sub-sec. (ii.) of that section. The facts were admitted, namely, that the appellant, on the date mentioned in the information, was in charge of about 1280 sheep, which were being driven by him from the run on which they were ordinarily depastured to another run less than forty miles away, that the sheep were not travelling, and that the appellant was not a person in charge of sheep travelling, to a place upwards of forty miles distant from that on which they were when their permit to travel, or travelling statement, was granted, and that the appellant did not produce a travelling statement upon demand to a police constable. The magistrate, relying on the case of *King* v. *Cundy*, 15 (N.S.W.) W.N., 158, dismissed the information, and the complainant, who is a sergeant of police, appealed by way of special case stated for the opinion of the Supreme Court under sec. 101 of the *Justices Act*, 1902, No. 27 (*b*). The appeal was heard

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"Drover" means any person in charge of any travelling stock.

. . . . . .

"Stock" means any horses, cattle, sheep or camels.

. . . . . .

"Travelling sheep" means any sheep whilst being driven or carried by land or water, or which have within one month next preceding been so driven or carried along or over any place whatsoever other than the run on which they are ordinarily depastured.

"Travelling stock" means any stock travelling to any place upwards of forty miles distant from that on which they were when their permit to travel or travelling statement was granted.

Sec. 97. (1) Every drover in charge of any travelling sheep and every drover in charge of any travelling horses or cattle, shall be provided at the time of his departure with a "travelling statement" in the prescribed form, signed by the owner of such sheep horses or cattle in the presence of a subscribing witness.

(2) Every drover shall produce such statement, and a permit as hereinbefore provided, upon demand, to any inspector, police constable, or justice, or to the occupier of any run through which or along the boundary road of which such travelling stock may be proceeding.

(*b*) *Justices Act*, 1902, No. 27 :—

Sec. 101. (1) Any party to the proceedings, if dissatisfied with the determination by any justice or justices in the exercise of their summary jurisdiction of any information or complaint as being erroneous in point of law, may within . . . days after such determination apply in writing to the said justice or justices to state and sign a case which may be in the form

by *Pring*, J., in Chambers, exercising the jurisdiction conferred by sec. 107 of the *Justices Act*, 1902 (*c*), who allowed the appeal, and remitted the case to the justices with a direction to convict. Special leave to appeal from this decision was granted by the High Court, as it was represented that no appeal would lie to the Supreme Court from the decision of a Judge in Chambers exercising the jurisdiction conferred by that section of the *Justices Act*.

Dr. Cullen, for the appellant. The magistrates were right. They acted upon the authority of *King* v. *Cundy*, 15 (N.S.W.) W.N., 158. That case was a decision upon the original Act, 41 Vict. No. 19, which has been consolidated, but not in any way amended or altered, by the *Pastures Protection Act*, 1902, and was upon facts exactly similar to the facts of this case. *Pring*, J., assumed that the law had been altered by the consolidation, losing sight of the fact that the Acts which were consolidated, 30 Vict. No. 16, and 41 Vict. No. 19, were, by sec. 1 of the latter Act,

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in the third schedule to this Act setting forth the facts and grounds of such determination for the opinion of the Supreme Court.

Sec. 105. The appellant shall within five days of receiving the case, give notice in writing of such appeal, together with a copy of the case as stated and signed, to the respondent, and shall thereafter and within the said time transmit such case to the Prothonotary of the Supreme Court.

Sec. 106. (1) The Court shall hear and determine the question or questions of law arising on such case and shall—

(*a*) reverse affirm or amend the determination in respect of which the case was stated ; or

(*b*) remit the matter to the justice or justices with the opinion of the Court thereon ; or

(c) make such other order in relation to the matter as seems fit.

(2) . . . . .

(3) . . . . .

(c) *Justices Act* 1902, No. 27 :—

Sec. 107. (1) The authority and jurisdiction hereby vested in the Supreme Court may, subject to any rules and orders of the said Court in relation thereto, be exercised by a Judge of the said Court sitting in Chambers as well in vacation as in term.

(2) The Supreme Court may make and alter rules and orders to regulate the practice and proceedings in reference to the stating of cases as herein provided.

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to be read together. The difficulty has arisen from the legislature having brought together into one section terms and definitions which were originally in separate Acts. "Travelling sheep" was a term used originally in an "Act for the prevention and cure of diseases in sheep," and defined for the purposes of that Act. That Act contained provisions with reference to diseased sheep, and sheep travelling in districts where disease was known or suspected to exist, and certain duties were imposed upon the owners of such sheep for the furtherance of the objects of the Act. Then the Act 41 Vict. No. 19, called "Diseases in Sheep Amending Act," was passed, which was (sec. 1), to be read with the 30 Vict. No. 16. The later Act, in one part (secs. 15 to 20), dealt with "travelling stock" pure and simple, and imposed duties upon "drovers," and both these terms were for the first time defined, in the interpretation clause, for the purposes of that part. That group of sections (15-20), is identical with secs. 97-102 in Part IV. of the Consolidated Act, under the heading "Travelling Stock." The governing words of sec. 97 are "drover" and travelling stock." The duty is imposed on the "drover," the person in charge, but by the definition in sec. 4 the person in charge is not a "drover" unless the stock in his charge are "travelling stock," *i.e.*, are "travelling 40 miles and upwards," &c. When the section speaks of a "drover in charge of travelling sheep," it must mean sheep that come within the definition of "travelling stock." Otherwise the meaning of "drover" must be different in the two parts of the section. Moreover, the latter part of the section assumes that the duty is imposed only in respect of "travelling stock," for it uses the words "such travelling stock" to refer to the "stock" previously mentioned, *i.e.*, sheep, horses or cattle. The words "travelling sheep" in the first part of the section cannot mean "travelling sheep" in the technical sense of the definition in sec. 4, but mean simply "travelling stock" which happen to be "sheep." It cannot be assumed from the mere fact of the definition of the term "travelling sheep" being placed in the same section as those of "drover" and "travelling stock," that the legislature intended to alter the law. Such an intention is clearly negatived by the grouping of the sections, and by the headings in the Consolidated Act. These have been arranged in

such a way as to keep the provisions dealing with each subject in a separate part, maintaining the divisions of the original Acts.

[GRIFFITH, C.J.—When a statutory provision has received judicial interpretation, and it is afterwards repealed and re-enacted in the same terms, it should ordinarily receive the same interpretation as before. This applies *a fortiori* in the case of an amending Act; *Hardcastle on Interpretation of Statutes.*]

The headings would remove any doubt there might be about the matter; *Beale's Cardinal Rules of Interpretation.*

[GRIFFITH, C.J., as to the effect of headings and divisions in Statutes, referred to *Eastern Counties Railway Co.* v. *Marriage*, 9 H.L. Ca., 32; and *Inglis* v. *Robertson*, 1898 A.C., 616.]

Sir Julian Salomons, K.C., and *Windeyer*, for the respondent. The Court has no jurisdiction to entertain this appeal, because the order appealed from is not a judgment of the Supreme Court within the meaning of sec. 73 of the Constitution. There was no appeal from the decision of *Pring*, J., sitting in Chambers, to the Privy Council; *In re Paul*, (1902) 2 S.R. (N.S.W.), 196. By sec. 107, a Judge sitting in Chambers may exercise the authority of the Supreme Court, but that does not make his decision that of the Supreme Court. There has never been any attempt to appeal from such decisions to the Privy Council. The appellant should have appealed to the Full Court; *Teggin* v. *Langford*, 10 M. & W., 556; *Ex parte Baillie*, 5 S.C.R. (N.S.W.), 17; *contrâ*, *Shortridge* v. *Young*, 12 M. & W., 5. *Banks* v. *Norris*, 11 N.S.W.L.R., 77, and *Re Knight*, 18 N.S.W.L.R., 315, which decided the contrary, were wrongly decided. It cannot be that the decision of a single judge, which may be taken at the option of an appellant, is final; *Peterson* v. *Davis*, 17 L.J.C.P. (N.S.), 292.

[*Cullen* referred to *Ex parte Stevenson*, (1892) 1 Q.B., 394, on the question of there being an appeal from a Judge in Chambers.]

[GRIFFITH, C.J.—In one sense every act of a Judge is an act of the Court.

On the main point, the decision of *Pring*, J., was right. In *King* v. *Cundy* (*supra*) the Court fell into error through their attention not having been called to the provision in 40 Vict. No. 16, s. 1, that it was to be read with 30 Vict. No. 16. To remedy

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the difficulty that there arose, and remove any ambiguity, the legislature brought all the Acts together, and used terms that admitted of no mistake. The *Pastures Protection Act*, 1902, amends as well as consolidates. The interpretation clause defines "travelling sheep" as sheep removed from the run on which they are usually depastured. There is no question of distance, and in that respect they are distinguishable from other kinds of travelling stock, which can only be said to be "travelling" when they are travelling a distance of forty miles.

[GRIFFITH, C.J.—It is not contended that these sheep are not "stock," but that some "travelling sheep" are not "travelling stock" within the meaning of the Act.

O'CONNOR, J.—Dr. Cullen argues that it is only a "drover" who can be guilty of an offence within the section, and that all the terms used in that section, including "drover," are clearly defined.]

There is no doubt that "sheep" are "stock," and the effect of the interpretation section is that when they are "travelling" as defined by that section, they are *ipso facto* "travelling stock," and a permit and statement are necessary. The legislature has removed all possibility of confusion by the definition of "travelling sheep," which makes them "travelling stock" when they are moving in a certain way, whatever the distance they are travelling. That is the clear meaning of the Act, and the head-notes cannot be looked at to vary it, though they might have been important if there had been any uncertainty in the terms used in the sections.

Windeyer followed. The interpretation clause expressly states that the context may be looked at in order to see whether the definition is to be applied. In this case it results in an absurdity if applied strictly. Unless the words have been used by inadvertence, as was suggested by *Darley*, C.J., in *King* v. *Cundy* (*supra*), the appellant's argument must fail. The Court will not assume that that has been done. The meaning contended for by the appellant could have been conveyed by apt words if it had been intended. It must be assumed that the words "travelling sheep" and "travelling horses or cattle" were used separately in

order that the definition of "travelling sheep" might be applied. The different kinds of "stock" were specified in order to prevent ambiguity. The words "such travelling stock" at the end of the section were used not in reference to the definition, but as a convenient term to cover the sheep, horses, and cattle above referred to. The word "drover" was similarly used, to mean the person in charge, and not in strict conformity with the definition.

Dr. Cullen in reply. This is a penal Statute, and the benefit of any doubt should be given to the appellant. As to the question of jurisdiction, this Court will not hastily interfere with decisions of the Supreme Court as to its own procedure, and that Court has clearly held that there is no appeal from a single Judge to the Supreme Court in such cases as this. The order of *Pring*, J., was a judgment of the Supreme Court. A special case is stated for the opinion of the Supreme Court, and the Judge sitting in Chambers is authorized to exercise the power of the Court. It does not depend on the option of a party, but on the rules made by the Judges of the Supreme Court; sec. 107.

This question does not depend upon *In re Paul* (*supra*), because it is immaterial whether there was an appeal to the Supreme Court or not, so long as the order is a judgment of the Supreme Court within the meaning of sec. 73 of the Constitution. In *Ex parte Stevenson*, (1892) 1 Q.B., 394, *Coleridge*, L.C.J., held that leave granted by a Judge of the High Court of Judicature, given under sec. 26 of the *Housing of the Working Classes Act*, 1890, which provides that the leave of "the High Court" may be granted by "such Court or any Judge thereof," was the leave of the High Court, and not that of the Judge.

Sir Julian Salomons in reply, on the question of jurisdiction. If there was an appeal to the Supreme Court, there is no appeal to the High Court or to the Privy Council. If the appellant is right, the time of the High Court might be wholly taken up in dealing with appeals from decisions of this kind. The Supreme Court was wrong in holding that there was no appeal to the Full Court from a single Judge in such cases as this.

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GRIFFITH, C.J. The case has been very well and fully argued, and nothing would be gained by reserving our judgment.

This is an appeal from an order made by *Pring*, J., in Chambers upon an appeal by way of special case stated under sec. 101 of the *Justices Act*, 1902. [His Honor then stated the proceedings and the facts as reported above, and proceeded.]

On the matter coming before us, Sir Julian Salomons, for the respondent, contended that we had no power to entertain the appeal because the decision appealed from was not a judgment of the Supreme Court within the meaning of sec. 73 of the Constitution. That section gives the High Court jurisdiction to hear and determine appeals from all judgments decrees orders and sentences of the Supreme Court of any State, or of any other Court of any State from which, at the establishment of the Commonwealth, an appeal lay to the Queen in Council. It was objected that the decision of *Pring*, J., under the circumstances, was not a judgment of the Supreme Court. It is necessary, therefore, to see what is the law under which he gave his decision. The *Justices Act*, 1902, Part V., contains provisions relating to appeals to the Supreme Court from the decisions of justices by way of special case. The provisions in those sections are analogous to those which have been in force for many years in England, and in most of the Australian States. The appellant is entitled—[His Honor read sec. 101]. The case is then sent to the Prothonotary of the Supreme Court. Then sec. 106 provides—[His Honor read the section.] Then comes the section under which the objection is now raised before us, viz.. sec. 107—[His Honor read the section]. Sec. 108 provides that "any justice or justices may enforce any conviction or order affirmed amended or made by the Supreme Court in the determination of any such case in the same manner as the justice or justices who originally decided the matter might have enforced his or their determination if there had been no appeal." So it is plain from the scheme of the Act that the right of appeal that is given is to the Supreme Court. After the Court has dealt with the appeal the justices are directed to enforce the order or award of the Supreme Court. The jurisdiction is therefore conferred upon the Supreme Court, but it is provided that the jurisdiction, so vested in it, may, subject to any rules

and orders of the Court, be exercised by a Judge of the Court sitting in Chambers as well in vacation as in term. The question, therefore, is, what jurisdiction is he exercising in such a case. Now there is only one Supreme Court, though there are several Judges. Sometimes two or more Judges sit together as the Court, in many cases one Judge exercises the jurisdiction of the Court, but in every case the judgment of the Judge or Judges is in law the judgment of the Supreme Court. There may or may not be an appeal from the judgment, but the jurisdiction can only be exercised by the Court. Suppose the question arose in pleading afterwards, the judgment would be pleaded as a judgment of the Supreme Court. Could the plea be objected to on the ground that it was merely the decision of a Judge sitting in Chambers. It seems to me impossible to contend that the decision of a Judge exercising this jurisdiction is anything but a judgment of the Supreme Court within the meaning of sec. 73 of the Constitution. It is said that this is inconsistent with the decision in the case, *In re Paul* (1902), 2 S.R. (N.S.W.), 196, a petition for leave to appeal from the order of a Judge sitting in Chambers, in which it was held that there was no appeal to the Privy Council from such a decision. My opinion may or may not be reconcilable with that case. If it is not, I cannot help it. I am of opinion that the decision of *Pring*, J., was a judgment of the Supreme Court, and that therefore an appeal lies from it to the High Court, unless the amount involved is under the appealable amount, in which case there is an appeal only by special leave, under the conditions prescribed by the Constitution. It is objected, that if the Court holds that this was such a judgment, a great number of appeals will come to this Court from the decisions of Judges sitting in Chambers, but the answer to that objection is that an appeal would only lie by special leave where the amount was below £300, and the Court could, if it thought fit, refuse to grant such leave. This Court has already refused special leave to appeal from the decision of a single Judge where there was a right of appeal to the Supreme Court. This was done in two cases in Melbourne and in one in Western Australia on that ground. This decision does not affect the question whether an appeal will lie to the Supreme Court or not from a decision of a Judge sitting in Chambers

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under these sections of the *Justices Act*, and it is not necessary to decide that point. That question depends upon other and quite different considerations, and it will be time enough to deal with it when it comes directly before us on appeal. For these reasons I am of opinion that this appeal is a matter which we have power to entertain.

As to the main point, the merits of the appeal, sec. 97 of the *Pastures Protection Act*, 1902, under which the complaint was laid, provides that: [His Honor read the section]. *Pring*, J., was of opinion that the sheep in question were "travelling stock" within the meaning of that section. The question depends upon the words of the interpretation clause in which definitions are given of the terms used in sec. 97. That clause, sec. 4, is to the following effect:—[His Honor read that portion of the section containing the definitions of "stock," "travelling stock" and "travelling sheep."] There is no doubt that the sheep in question came within the meaning of the definition of "travelling sheep." The question then is whether they are "travelling stock" in the sense in which that term is used in sec. 97. It is to be observed that the section uses three of the terms defined in the interpretation section. It uses the terms "drover," "travelling stock" and "travelling sheep," and, in speaking of the same "travelling sheep," it uses the term "drover" as meaning the person in charge. If the respondent's contention is correct that any sheep "travelling," however short a distance, from the run on which they are ordinarily depastured, are "travelling stock," the term "travelling" will not bear the same sense in all the three instances in which it is used in the section. Again: on that construction, the word "drover" when used in connection with "travelling sheep" cannot be construed in accordance with the definition, for, by that, "drover" means any person in charge of any "travelling stock." *i.e.*, stock travelling to a place upwards of forty miles from their place of depasture. Again: on that construction the term "travelling stock" where used in the second paragraph of the section as including the travelling sheep already mentioned, cannot, as to them, be used in the sense stated in the definition, because "travelling sheep" are not "travelling stock" unless they are travelling to a place upwards of forty miles distant. Again: the only person

upon whom the duty is imposed is a "drover." If the respondent's contention is correct the section should read "any person in charge of any travelling sheep, and any person in charge of any travelling horses or cattle, shall be provided, &c." That is not the natural construction of the words. A "drover" is expressly defined to mean any person in charge of travelling stock, *i.e.*, stock travelling 40 miles and upwards from the place whence they originally started. "Stock" may be either sheep, cattle, or horses. Reading the definition into sec. 97, it would run: "every person in charge of travelling stock, such stock being sheep," and "every person in charge of travelling stock, such stock being horses or cattle, shall be provided, &c." If not read in that way the word "drover" must mean "every person," which would be a somewhat remarkable construction in view of the definition. If, however, there were any difficulty in determining whether the section applied to all persons in charge of travelling sheep, great light would be thrown on the matter by the rule laid down by Lord *Herschell*, L.J., in *Inglis* v. *Robertson*, (1898) A.C., 616. In that case, speaking of the *Factors' Act* of 1889, which was divided into parts, he says, at p. 630: "The Act is divided into parts. The first, headed 'Preliminary,' consists of a definition clause. The last part, headed 'Supplemental,' contains provisions as to the mode of transfer 'for the purposes of this Act,' and certain savings. . . . These headings are not, in my opinion, mere marginal notes, but the sections in the group to which they belong must be read in connection with them, and interpreted by the light of them. It appears to me that the legislature has clearly indicated the intention that the provisions of sec. 3 should not be treated as an enactment relating to all pledges of documents of title, but only to those effected by mercantile agents."

Applying that principle to the case before us we find that sec. 97 is one of a group of sections in Division IV. which deals with "travelling stock." The previous Division III. deals with "travelling sheep," and there is a marked distinction between the two. *Primâ facie* this section relates only to "travelling stock" as defined in the interpretation clause. If there were any real doubt about the effect of the section, this ought to be sufficient to solve it. But there is another reason, which appears to me con-

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clusive, for our holding that the construction which I have put upon the section is the true one. The Act of 1902 consolidated and amended a number of earlier Statutes, and the words in the later Act are an exact transcript of the previous Acts; these particular words coming from sec. 15 of the Act 41 Vict. No. 19, which was the subject of judicial interpretation in *King* v. *Cundy*, 15 (N.S.W.) W.N., 158. That interpretation having been put upon the words by the Supreme Court, the legislature thought fit to repeal and re-enact them in identical language. There is a well-known rule that, when an Act which has received authoritative interpretation by judicial decision is repealed and re-enacted, it should be assumed that the legislature intended the words adopted to bear the meaning which has been judicially put upon them.

I should be prepared for myself to rest my decision upon *King* v. *Cundy*, even if I thought that it was wrongly decided. In the interpretation of State Acts which have been interpreted by State Courts, this Court ought, if possible, to follow the interpretation which those Courts have put upon them. I entirely agree with that decision, but even if I differed from it I think that we ought to follow it. *Pring*, J., before whom the matter does not seem to have been fully argued, thought that he was not bound by the decision in that case. It appears from reading his judgment that his attention was not drawn to two most important matters. He thought that the term "travelling stock" was not used in the section at all, and he was under the impression that the Statute interpreted in *King* v. *Cundy* contained no definition of "travelling sheep." For these reasons I think that *King* v. *Cundy* was rightly decided, and that *Pring*, J., was wrong, and that the appeal should be allowed.

BARTON, J. I concur with the Chief Justice, not only in the conclusion at which he has arrived, but also in the reasons which he has given for that conclusion. It would not therefore be of any use to add anything to what he has already said.

O'CONNOR, J. I am of the same opinion.

Appeal allowed with costs.

Solicitors, for appellant, *Lee, Colquhoun & Bassett.*

Solicitor, for respondent, *The Crown Solicitor of New South Wales.*

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[HIGH COURT OF AUSTRALIA.]

DONOHOE . . . . . APPELLANT;

AND

BRITZ . . . . . RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1904.

SYDNEY, *June*, 13, 14, 28, 29.

Griffith, C.J., Barton and O'Connor, JJ.

Commonwealth Customs Act (*No.* 6 *of* 1901), *secs.* 130, 144, 154 (*a*), 234 (*e*)—*Untrue declaration—Proprietary medicine—Value for duty—"Ordinary market value in the country whence imported"—Customs Tariff* (*No.* 14 *of* 1902), *secs.* 4, 5, 6—*Time of imposition of uniform duties—Validation of collections under tariff proposals—Effect of retrospective legislation—Special leave to appeal—Delay.*

On 16th October, 1901, the respondent made a declaration as to the value of certain medicinal preparations imported by him from abroad, which were not dutiable under the then existing tariff of New South Wales, but were made dutiable under the *Customs Tariff* 1902.

On 10th November, 1903, the respondent was charged under sec. 234 of the *Customs Act*, with having made an untrue statement in his declaration. It was admitted that the statement was true in the natural and ordinary meaning of its terms, and that it was only untrue when construed in the light of the artificial rule laid down in sec. 144 of the *Customs Act* 1901, for valuing goods of that kind (*a*).

(*a*) 144. All medicinal or toilet preparations not completely manufactured but imported for completing the manufacture thereof or for the manufacture of any other article by the addition of any ingredient or by mixing such preparations or by putting up or labelling the same alone or with other articles or compounds under any proprietary or trade name shall be irrespective of cost valued for duty and duty shall be paid thereon at the ordinary market value in the country whence imported of the completed preparation when put up and labelled under such proprietary or trade name less the actual cost of labour and material used or expended in Australia in completing the manufacture thereof or of putting up or labelling the same.