

the whole £6 must be deducted, leaving a balance of property income £7. H. C. OF A.
1919.

The total taxable income is consequently £278, consisting of £271 from personal exertion and £7 from property. BOWLES
v.
FEDERAL
COMMISSIONER OF
TAXATION.

Questions answered: (1) No; (2) Nothing;
(3) (a) £271 and (b) £7.

Solicitors for the appellant, *Minter, Simpson & Co.*

Solicitor for the respondent, *Gordon H. Castle*, Crown Solicitor for the Commonwealth.

B. L.

[HIGH COURT OF AUSTRALIA.]

THRELFALL (COLLECTOR OF CUSTOMS FOR
SOUTH AUSTRALIA) } APPELLANT;
DEFENDANT,

AND

MATTHEW GOODE AND COMPANY }
LIMITED } RESPONDENT.
PLAINTIFF,

ON APPEAL FROM THE SUPREME COURT OF
SOUTH AUSTRALIA.

Customs Duties—Duty according to value—Goods purchased abroad—Time at which value to be taken—Time of export or time of purchase—Customs Act 1901-1910 (No. 6 of 1901—No. 36 of 1910), secs. 154, 155. H. C. OF A.
1919.

Sec. 154 of the *Customs Act 1901-1910* provides that “When any duty is imposed according to value—(a) The value shall be taken to be the fair market value of the goods in the principal markets of the country whence the same were exported in the usual and ordinary commercial acceptation of the term and free on board at the port of export in such country and a further addition of ten per cent. on such market value”; &c. MELBOURNE,
May 13, 16.
Barton, Isaacs,
Gavan Duffy,
Powers and
Rich J.J.

H. C. OF A.
1919.

THRELFALL
v.

MATTHEW
GOODE & CO.
LTD.

Held, that where goods subject to a duty according to value are purchased abroad by the importer the "fair market value of the goods" must, for the purposes of sec. 154, be taken as at the date of export from the country whence they were exported, and not as at the date of their purchase.

Decision of the Supreme Court of South Australia reversed.

APPEAL from the Supreme Court of South Australia.

An action was brought in the Supreme Court by Matthew Goode & Co. Ltd. against Arthur Creswell Threlfall, Collector of Customs for South Australia, by which the plaintiff sought to recover the sum of 14s. 7d., being the difference between the sum of £2 4s. 8d., which the plaintiff had paid under protest as customs duty on two packages of linoleum imported by it from England into South Australia, and the sum of £1 10s. 1d., which the plaintiff contended was the proper amount of duty.

Certain admissions of fact having been made by the parties, the plaintiff, on summons, applied to have the action summarily disposed of. The material facts are stated in the judgments hereunder.

The summons was heard by *Murray C.J.*, who gave judgment for the plaintiff with costs, holding that in sec. 154 of the *Customs Act* 1901-1910 the words "the fair market value" mean the fair market value at the time of the purchase of the goods, and not at the time of their export.

From that decision the defendant now, by special leave, appealed to the High Court.

Mann, for the appellant. The market value at the date of export is the value referred to in sec. 154 of the *Customs Act* 1901-1910. The price for which the goods were sold as stated in the genuine invoice is evidence of that value, but not conclusive evidence. Sec. 155 does not cast any doubt on that interpretation. The reason for mentioning the date of shipment in sec. 155 (b) is that, as there has been no sale of the goods, there is no invoice in the ordinary meaning of that term, and an artificial document, which would not otherwise come into existence, is required to be prepared. That document is called "a genuine invoice," and is required to state the value of the goods at the date of shipment. That does not indicate that in sec. 154 (a) some other date must be taken. There is a strong presumption

that there should be equality of taxation as between goods exported by the seller and those exported by the consignor of goods for sale in Australia. Form 12 of the *Customs Regulations* 1909 (Statutory Rules 1909, No. 126) assumes that the date of shipment is the date as at which the value is to be ascertained. A construction of a taxing Act adopted by a Government Department and accepted by the public for a long time will not be altered unless there is the strongest reason for saying that it is illegal (*Robertson v. Downing* (1); *United States v. Healey* (2)).

H. C. OF A.
1919.
THRELFALL
v.
MATTHEW
GOODE & CO.
LTD.

Cleland K.C. (with him *C. L. Jessop*), for the respondent. On the face of sec. 154 there is no more reason for selecting the time of export than for selecting the time of arrival in Australia. If the market value is to be "verified" by the invoice, which is a document showing the price paid for the goods, the inference is that the Legislature thought that the price *bonâ fide* paid for the goods would ordinarily be their price in the principal markets of the country of export, that is, their "market value," and were satisfied that for purposes of convenience that price should be taken to be the value for duty (*Wollaston on Customs Law*, p. 93). That is borne out by sec. 155.

[RICH J. "Market value" means the price in the market irrespective of the particular contract (*Orchard v. Simpson* (3)).]

When there is no sale of the goods, and so no price fixed, the Legislature, by sec. 155 (b), chose another time for ascertaining the value, namely, the date of shipment. Where there has been a sale of the goods, the invoice may show a price which is less than the market price at the time of the sale. That is provided for in sec. 154 (b) by requiring a declaration as to the value, but the declaration always has reference to the value at the time of the sale.

Cur. adv. vult.

The following judgments were read :—

BARTON J. The respondent Company, which is plaintiff in this action, recovered 14s. 7d. by judgment of the learned Chief Justice

May 16.

(1) 127 U.S., 607, at p. 613.

(2) 160 U.S., 136, at p. 141.

(3) 2 C.B. (N.S.), 299.

H. C. OF A. of South Australia, in refund of duty claimed to have been charged
1919. in excess of the correct amount.

THRELFALL v. MATTHEW GOODE & CO. LTD.
Barton J.

The plaintiff imported from England to Port Adelaide, for home consumption, two packages of linoleum. The customs duty is ten per cent. *ad valorem*. The purchase price paid was 2s. 3d. a yard (less discounts). Before shipment the price rose, and at the date of shipment, which was also the date of the invoice, the price was 3s. 4d. per yard (less discounts). Admittedly the price of 2s. 3d. was at the time of purchase the fair market value of the goods in the principal markets of the country "and free on board at the port of export in such country." The price of 3s. 4d. per yard (less discounts) was the fair market value of the goods free on board at the date of the invoice, and not more than the fair market value at the date of shipment for export and at the date of export. On the basis of a fair market value of 2s. 3d. per yard (less discounts) the proper duty payable on importation by the plaintiff Company for home consumption would be £1 10s. 1d., and on the like basis with the price at 3s. 4d. per yard (less discounts) the proper amount of duty would be £2 4s. 8d. It is the difference between these two sums that the respondent Company has recovered, and which the appellant, representing the Customs, claims to have been wrongly recovered.

The *Customs Act* 1901-1910 provides by sec. 154 as follows:—
"When any duty is imposed according to value—(a) The value shall be taken to be the fair market value of the goods in the principal markets of the country whence the same were exported in the usual and ordinary commercial acceptance of the term and free on board at the port of export in such country and a further addition of ten per cent. on such market value. (b) The value shall be verified at the time of entry by the production of the genuine invoice and by a declaration signed by the owner in the presence of the Collector."

It is as well to mention that the regulations give forms of entry and of declaration. Three headings on the form of entry are "Invoice Value," "10 per cent.," and "Value for Duty." In the form of declaration, par. 3 is: "That the value of the goods mentioned in this entry is, to the best of my belief, the fair market

value of the goods *at the time of shipment* in the principal markets of the country whence they were exported, and free on board at the port of export in such country." And par. 4 is: "That, to the best of my knowledge and belief, the price of the goods stated in the invoice is the usual and ordinary price paid for goods of the same kind and quality *at the time of shipment* in the country whence they were exported, without any deduction whatever, other than such as would be allowed in the ordinary course to any purchaser for cash of similar quantities for consumption or use in the country of export." These regulations elucidate the contention of the Customs, namely, that the time of shipment is the point of the ascertainment of fair market value in the country of export. They also elucidate the distinction that the Department draws between value and price. I do not quote them with the idea that they can aid in the construction of the Statute. If they are inconsistent with it, they are invalid. The appellant, indeed, cited two American cases. In the first, *Robertson v. Downing* (1), the Court laid down that when there has been a long acquiescence in a departmental regulation, and by it rights of parties for many years have been determined and adjusted, it is not to be disregarded without the most cogent and persuasive reasons. The Court had just said "the regulation of a Department of the Government is not of course to control the construction of an Act of Congress when its meaning is plain." In this proposition everyone may agree. In this case there is nothing to show "long acquiescence in the regulation," or that by it "rights of parties for many years have been determined and adjusted." The second case cited was *United States v. Healey* (2). There the Court said in effect (3) that when the practice in a Department in interpreting a Statute is uniform, and the meaning of the Statute is found to be doubtful or obscure, the Court will accept the interpretation by the Department as the true one; but where the departmental practice has not been uniform, the Court must determine the true interpretation for itself without reference to the practice. On this I would say that we do not know, although the form of declaration is in print, that the practice of the Customs Department in interpreting the

H. C. OF A.
1919.
THRELFALL
v.
MATTHEW
GOODE & Co.
LTD.
Barton J.

(1) 127 U.S., 607.

(2) 160 U.S., 136.

(3) 160 U.S., at p. 145.

H. C. OF A. Statute is uniform. This Court must determine for itself what
1919. is the true interpretation. And I go so far as to say that, even
THRELFALL if this enactment were doubtful or obscure, I should not be guided
v. in any way by the asserted departmental practice in view of the
MATTHEW ordinary canons for the construction of Statutes.
GOODE & CO.
LTD.

Barton J.

However, we see now what the parties are fighting about. The appellant says that the value at the date of export is the criterion, and the respondent Company denies this, and says that the value arrived at under the section must be on the basis of the value at the time of purchase.

Par. (a) does not expressly indicate the time at which the "value" is to be reckoned. The "fair market value" must fluctuate in varying circumstances, and so must transportation and other charges to be defrayed before goods can be "free on board at the port of export." So that the only component part of par. (a) which is constant is the rate of the addition to the market value, namely, 10 per cent., a constancy expressing itself only by way of rate.

The conditions attaching to purchase for exportation being so fluctuating in their character, what would be the course of trade? I am speaking of normal circumstances such as existed before the War. A person desiring to import goods will certainly not make a practice of buying in the country of export at a date long anterior to the proposed exportation. He will almost certainly buy through his agents as he requires the goods, and will thus bring the dates of purchase and exportation as closely as he can together. By that process it will ordinarily be the fact that he will pay for his purchase a price very nearly approximating to that ruling at the date of exportation. (Probably that is why by par. (b) the value is to be verified by the production of the genuine invoice and a declaration.) It is not that the invoice necessarily proves the fair market value at the material time, but that it is evidence of the value more or less cogent, the remaining elements of value being supplied by the entry and declaration. The invoice only shows price. That price may or may not be value. That may, and often will, depend on the nearness of the date of purchase to the date of export, that is, on the closeness between the price at the one time and the purchase value at the other.

Examination of pars. (a) and (b) of sec. 154 seems to make one thing very clear. The object of an *ad valorem* duty is practically explained by the term itself. It is a duty according to value—not value at some period more or less remote, but value at the time the goods came into the country which charges the duty. As it is difficult for the Customs authorities to assess, certain means are prescribed to help them. “The value” in par. (a) is the value at the time of the entry required by par. (b), and it is directed to be made up of the fair market value in the principal markets of the country of export, the goods being placed free on board at the port of export, with the further addition of 10 per cent. on the fair market value. The more this is considered as a purely arbitrary process of reaching what may be called the arrival value, the less is it probable that evidence of value or prices at a period substantially anterior to the date of export is of much weight for the purpose. It is after all for the Customs authority to arrive at the value on which to charge duty, but always at the risk of having to refund any charge based on an excessive valuation. The evidence to be exacted from the importer is apparently such only as he can furnish. The Collector is not obliged to abide by it, nor is it the case that flimsy or erroneous evidence of value, however innocently calculated, must be accepted.

If the matter rested on sec. 154 alone, I should be prepared to say that the respondent Company had succeeded below on an erroneous interpretation of the section; but the matter does not rest there.

By sec. 155 means in addition to those prescribed in the preceding section are given for ascertaining value at the time of entry. In that section par. (b) has been relied on by the importing company to show that where the date of shipment is the material point of time it is so expressed in the Statute, and that the ambiguity of sec. 154 (I guard myself against admitting that such a thing exists) is cleared up by the contrast between the two early paragraphs of that section. But par. (b) of sec. 155 is not designed for the case where an importer has purchased the goods to be sent to him here, and therefore there can be no real invoice in evidence of a sale in the country of export. It is there the exporter who consigns the goods to be sold in Australia, and, not being necessarily able to show any recent purchase by him for export, he is allowed to show the price

H. C. OF A.
1919.

THRELFALL
v.
MATTHEW
GOODE & Co.
LTD.

Barton J.

H. C. OF A.
1919.
THRELFALL
v.
MATTHEW
GOODE & CO.
LTD.
Barton J.

at which he could have bought the goods at the time of export in the principal market of the country of export, and for that purpose he is allowed to send a document which the Act calls an invoice. To provide for the case of a merchant or manufacturer sending out goods of his own to Australia to be sold there, he is allowed to show their saleable value, of course as increased at the date of shipment by putting these goods on board free.

It is clear to my mind that this paragraph does not show, by comparison with sec. 154, any intention in the last-named section that the date at which the value in the exporting country is to be ascertained should be a different one. On the contrary, there is much to lead us to think that the intention of sec. 154 in this respect does not differ from that of 155 (b). The material point for the purpose of enabling the Customs authorities here to arrive at the value in Australia for duty seems from every probability to be the same in the one case as in the other, and I cannot see that in sec. 154 the intention of the Act is to allow the importer to force the authorities to rely on a guide which must at the best be fallacious.

Mr. Cleland argued that the declaration required by sec. 154 (b) carried the matter no further than the factors expressed in sec. 154 (a) as the Act does not limit the contents of the declaration, nor is it imperative that any regulation should do so except to the extent of the necessity for consistency with the Act (sec. 270). It is plain that the Executive may require by regulation any relevant particulars as to value in addition to production of the invoice so long as inconsistency is avoided. Of course, the particulars must relate to the question of value.

On the whole case I am of opinion that the Collector was justified in rejecting the valuation at 2s. 3d. per yard, and that as the respondent has not established a cause of action the appeal of the Customs must be allowed, and a verdict entered for the defendant.

ISAACS, POWERS AND RICH JJ. The short point in this case is whether, when goods dutiable *ad valorem* which have been purchased abroad by the importer are valued for duty on importation in Australia, their foreign market value is to be taken as at the date of purchase, whenever that was, and not at the date of exportation

from the foreign country. The learned Chief Justice of South Australia has held that upon the true construction of the *Customs Act* 1901-1910, secs. 154 and 155, the proper date is the date of actual purchase.

The pivot on which that decision turns is the difference between pars. (a) and (b) of sec. 155. It is argued in support of it that the Legislature has by its studied difference of language in those two paragraphs expressly adopted in the case of sales the date of sale, and in the case of consignment for sale the time of shipment, as the respective periods for ascertaining the market value of goods in the principal markets of the country of export. And it is said—and perhaps for the argument necessarily said—that these points of time must be accepted because sec. 154 itself fixes no point of time. But on this assumption a serious difficulty at once presents itself. Sec. 155 refers to two cases only, namely, (a) sale and (b) consignment for sale. But what of other importations? Suppose a foreign manufacturer imports his own manufactured goods to be sold by himself here; what is the appropriate date, since there is no invoice in such a case? By the respondent's assumption, sec. 154 gives none, and inasmuch as sec. 155 does not apply to such a case, the respondent's construction of the Act creates an impasse.

The truth is that, when a customs duty is imposed on imported goods *ad valorem*, that means according to their value on arrival here. To secure uniformity of treatment and afford facility of arriving at the value for duty, sec. 154 enacts that two factors shall be ascertained, and their sum total shall be taken to be the taxable value of the goods. These factors are (1) the fair market value of the goods in the principal markets of the country whence the same were exported in the usual and commercial acceptance of the term and free on board at the port of export in such country, and (2) a further addition of ten per cent. on such market value. Those two factors cover the one complete transaction of transferring the goods from the foreign country to Australia, a transaction which begins at the port of export and ends at the port of import. The ten per cent. addition to the first factor is the assumed normal average cost of the transfer, and leaves to be considered only the true amount of the first factor.

H. C. OF A.
1919.

THRELFALL
v.

MATTHEW
GOODE & Co.
LTD.

Isaacs J.
Powers J.
Rich J.

H. C. OF A.
1919.

THRELFALL
v.
MATTHEW
GOODE & Co.
LTD.

Isaacs J.
Powers J.
Rich J.

Now, what in the usual and ordinary commercial acceptance of the term is the fair market value of goods in the principal markets of the exporting country and free on board at the port of export? Observe the market value assumes the goods are to be put on board, and therefore includes the cost of doing so. In *Fram-Jee Cowas-Jee v. Thompson* (1) the Privy Council said that "free on board" means that the seller is to put the goods on board at his own expense but on account of, and thenceforward at the risk of, the purchaser. So that we have to assume a hypothetical purchase in a principal market on the terms that the goods are put free on board as above interpreted. This assumed purchase is to apply to *all* goods imported whether actually sold or not, and it is only for the purpose of ascertaining their dutiable value. Par. (a) of sec. 154 provides this, and it is the cardinal provision. The rest of that section, and also sec. 155 and following sections are subordinate and ancillary provisions.

Par. (b) of sec. 154 provides that "The value shall be verified at the time of entry by the production of the genuine invoice and by a declaration signed by the owner in the presence of the Collector." In view of the argument, it is necessary to observe what this paragraph prescribes. First of all, it is the "value" that is to be verified. Now, the "value" is not the market value but the dutiable value, that is, the sum of the two factors mentioned. The word "value" occurs in the first and governing line of sec. 154, and in the opening and governing words of par. (a) of sec. 154, and it is the same word in the beginning of par. (b) of sec. 154. The invoice, of course, even where there is a sale, cannot set out the second factor of the dutiable value. In many cases it will not set out the second ingredient in the first, that is, the cost of putting the goods on board, consequently the word "verified" must mean "proved" in the sense of being offered in evidence. The next point in par. (b) is that the "value" is to be verified also by a declaration signed by the owner. The declaration, of course, covers the whole "value," that is, within the meaning of par. (b), whatever may be the form prescribed by regulation. But the vital point relevant here is that the invoice and the declaration alike verify the "value"; and, as they are so far on the same footing with reference

(1) 5 Moo. P.C.C., 173.

to the value, there is no more reason for ascribing finality to the one than to the other. The declaration, however, cannot be dispensed with; the invoice may be, as appears later.

Sec. 155 is merely an interpretation section. It defines what is meant by the words "genuine invoice" in par. (b) of sec. 154. It is true that in the case of a sale the actual price paid is to be stated, but it is to be noted that the provision as to "price" is not regarded as binding. On the argument of the respondent the actual price may be disregarded entirely. But what is to be regarded according to the respondent is the *time*. Now, if the Legislature intended that the *time* of the purchase was to be the important fact, not the actual price, is it not strange that the price should be expressly required to be stated, but not a word said about the time of purchase? An undated invoice might be the genuine invoice and would not be outside the Act; the invoice, however genuine in the ordinary sense, would be outside the Act if the actual price were not stated; and a dated invoice might not contain the date of the sale, though it usually would. The real fact is that in requiring the actual market value to be ascertained the Legislature, knowing the practical difficulties of the Customs in ascertaining the export value, has required that where invoices exist according to ordinary trade practice they shall be produced. They are or may be some material guide and assistance to the Customs. Where they should exist, they must be produced or a substitute (sec. 156) provided. The fact that the invoice in case of sale must show the actual price, while a consignment invoice must show the price procurable at the date of shipment, only shows that what in normal times is an excellent practical guide to the Customs is insisted on. But in each case it is a guide, not a standard, either as to amount or time. The standard is fixed by sec. 154 (a).

Many cases of inequality of taxation arise if the respondent's view were to prevail. A manufacturer of goods abroad sending to Australia two lots of the same class of goods, (1) on sale to A and (2) on consignment to B, the goods, though identical in real value everywhere, would be taxed differently. Again, one importer purchasing under specially advantageous conditions—perhaps a forced sale—would be taxed more lightly than another purchasing

H. C. OF A.
1919.

THRELFALL
v.
MATTHEW
GOODE & Co.
LTD.

Isaacs J.
Powers J.
Rich J.

H. C. OF A.
1919.
THRELFALL
v.
MATTHEW
GOODE & CO.
LTD.

Isaacs J.
Powers J.
Rich J.

under ordinary conditions. Mr. *Mann* argued that, where the words permit, a taxing Act should be construed so as to prevent inequalities. That is a sound argument, and in a recent case upon the Federal *Income Tax Assessment Act* (*Bowles v. Federal Commissioner of Taxation* (1)) this Court gave effect to it. The principle, as stated by Lord *Blackburn* in *Coltness Iron Co. v. Black* (2), and referred to with approval by Lord *Herschell* in *Colquhoun v. Brooks* (3), was quoted in *Bowles's Case*, and need not be repeated.

The appeal should, in our opinion, be allowed.

GAVAN DUFFY J. The statement of claim in this action contains an elaborate recital of the plaintiff's case, but before us his contention was reduced to this: that where any duty is imposed on goods according to value within the meaning of sec. 154 of the *Customs Act* 1901 and the value is verified by the production of the genuine invoice as defined by sec. 155 (a), the fair market value of such goods within the meaning of sec. 154 (a) is the fair market value at the time of the transaction recorded by such invoice. In my opinion this contention is not maintainable.

The effect of the *Customs Tariff* with respect to an *ad valorem* duty is to impose a duty based on the value of the goods at the time of their entry, and secs. 154 and 155 of the *Customs Act* 1901-1910 merely enable that value to be ascertained. Sub-sec. (a) of sec. 154 is as follows: "The value shall be taken to be the fair market value of the goods in the principal markets of the country whence the same were exported in the usual and ordinary commercial acceptance of the term and free on board at the port of export in such country and a further addition of ten per cent. on such market value." We have here an enumeration of the factors which constitute value, but no suggestion that the value to be calculated is the value at any time other than the time of entry. Sub-sec. (b) is as follows: "The value shall be verified at the time of entry by the production of the genuine invoice and by a declaration signed by the owner in the presence of the Collector." It was argued that this sub-section indicates that the price stated

(1) *Ante*, p. 205.

(2) 6 App. Cas., 315, at p. 330.

(3) 14 App. Cas., 493, at p. 505.

in the invoice should be the basis of the value to be computed, or that, at all events, it indicates that the value to be verified is the value at the time of the transaction recorded by the invoice as it cannot verify the value at any other time. The invoice, it is said, gives the price actually paid, and to that extent may indicate the value of the goods at the time of the sale, but the price paid at one time does not and cannot indicate the value at another time. In my opinion the production of the invoice is not required as necessarily indicating the value of the goods at any time, for even if the invoice accurately records the transaction the price paid may have been very much less or very much greater than the real value of the goods. It is required so that the Customs authorities may be set on immediate inquiry if the importer declares a value less than that which would seem justified by the invoice. When an entry of goods is made, it is the duty of the Customs official to ascertain their fair market value at that time in the principal markets of the country whence they were exported, and the price stated in the invoice will no doubt generally be accepted as the basis of such value, because the invoice usually records a transaction of recent date, and honest merchants generally pay the fair market value; but, having received the invoice, the Customs authorities are at liberty to ignore it if they choose. Reliance was placed on the language of sec. 155. It was argued that on a comparison of sub-secs. (a) and (b) it would be seen that where the importer had purchased the goods abroad and held an invoice from the seller the value was to be verified by the production of the invoice, but where the goods were consigned by the owner abroad for sale in Australia and no such invoice existed the importer must produce an original invoice prepared and issued by the consignor, showing the true description of the goods and the actual money price for cash at which such goods were saleable in the principal markets of the country whence such goods were exported at the date of the shipment of such goods free on board at the port of export in such country. But this merely shows that the Legislature in each case adopts the best practical means of checking the importer's valuation of his goods. If the goods have been bought for importation, the importer must show the price which he actually

H. C. OF A.
1919.

THRELFALL
v.
MATTHEW
GOODE & Co.
LTD.

Gavan Duffy J.

H. C. OF A. 1919.
 THRELFALL
 v.
 MATTHEW
 GOODE & Co. LTD.
 paid; if no such price has been paid, the consignor must furnish an invoice showing the market price of such goods in the country of export at the latest date at which he can reasonably be asked to prepare such an invoice, namely, at the date when such goods were shipped for export.

—
 Gavan Duffy J.
 For the reasons I have stated, I think that the plaintiff failed to establish any cause of action, and the judgment which he obtained must be set aside.

Appeal allowed. Judgment appealed from discharged and judgment entered for the defendant with costs as if the Local Courts Act 1886 had not been passed. Respondent to pay costs of appeal.

Solicitor for the appellant, *Gordon H. Castle*, Crown Solicitor for the Commonwealth.

Solicitors for the respondent, *Shierlaw & Jessop*, Adelaide, by *Elder & Graham*.

B. L.