[HIGH COURT OF AUSTRALIA.]

CAMERON . . . . . APPELLANT;

AND

THE DEPUTY FEDERAL COMMISSIONER OF TAXATION FOR TASMANIA. . } RESPONDENT.

H. C. OF A. 1923.

MELBOURNE, *Feb.* 28; *Mar.* 1, 20.

Knox C.J., Isaacs, Higgins, Rich and Starke JJ.

Income Tax—Assessment—Valuation of live-stock—Regulation—Different valuation for each State—Discrimination—Ultra vires—The Constitution (63 & 64 *Vict. c.* 12), *secs.* 51 (II.), 99—*Income Tax Assessment Act* 1915-1918 (*No.* 34 *of* 1915—*No.* 18 *of* 1918), *secs.* 3, 14 (*a*), 65—*Income Tax Regulations* 1917 (*Statutory Rules* 1917, *No.* 280—*Statutory Rules* 1918, *No.* 315), *regs.* 46, 46A; Schedule, Table III.*

Held, that regs. 46 and 46A and Table III. of the *Income Tax Regulations* 1917 (Statutory Rules 1918, No. 315) discriminate between States and parts of States, and are therefore invalid as being an infringement of sec. 51 (II.) of the Constitution.

R. v. *Barger*, (1908) 6 C.L.R., 41, applied.

* Reg. 46 of the *Income Tax Regulations* 1917 provided that "(1) For the purpose of paragraph (*a*) of section fourteen of the Act" (the *Income Tax Assessment Act*) "the value of live-stock on hand at the beginning and end of the year in which the income was derived shall be calculated on the basis of the cost price of the stock. (2) The cost price of natural increase and the cost price of other stock for which the cost price cannot be stated by the taxpayer shall be deemed to be the fair average values as determined by the Commissioner. . . . (4) Where live-stock, which has been purchased, is merged into and becomes part of the general flock or herd of live-stock owned by the taxpayer, the stock remaining on hand at the end of the trading year in which the purchases were made shall be valued at the average cost per head ascertained by taking the stock on hand at the beginning of the year at the actual cost per head . . . and in each succeeding year, at the average cost arrived at under this sub-regulation for the last preceding year, together with the natural increase at the fair average value as determined by the Commissioner under sub-regulation 2 of this regulation and the stock purchased during the year at the purchase price of that stock."

Statutory Rules 1918, No. 315, purported to amend reg. 46 by substituting for the words "as determined by the Commissioner" in sub-reg. 2 and the words "as determined by the Commissioner under sub-regulation 2 of this regulation" in sub-reg. 4, the words "as set forth in Table III. in the Schedule"; and by inserting reg. 46A, which provides, so far as is material,

CASE STATED.

On the hearing of an appeal to the Supreme Court of Tasmania by Donald Norman Cameron from an assessment of him by the Deputy Federal Commissioner of Taxation for Tasmania for income tax for the years ending 30th June 1918 and 30th June 1919, *Ewing* J. stated the following case for the opinion of the High Court :—

1. The appellant lodged an appeal against his assessment under the *Income Tax Assessment Act* 1915-1918 in respect of the amount payable by him for the years ending 30th June 1918 and 30th June 1919.

2. The appeal is upon the merits and upon the ground that the Statutory Rules 1918, No. 315, are invalid and beyond the legislative powers of the Commonwealth.

3. The matter came before me at Deloraine in Tasmania and was referred by me to Launceston, when I adjourned the hearing *sine die*, after having come to the conclusion that the matter was of such importance that it should be decided by the High Court. No evidence was taken.

4. It was urged that the Statutory Rules in question and the schedule thereto discriminate between States and parts of States within the meaning of sec. 51 (II.) of the Constitution.

that "(2) For the purposes of section 14 (*a*) of the" Income Tax Assessment "Act the value of live-stock to be taken into account at the beginning of the period on the income of which tax was assessed for the financial year ending on the thirtieth day of June, one thousand nine hundred and seventeen, shall be the fair average value of the stock, as set forth in Table III. in the Schedule. (3) Live-stock sold after the beginning of that period shall be deemed to have been sold at a profit or a loss to the extent of the excess or shortage respectively of the sale price above or below the fair average value set forth in Table III. in the Schedule. (4) Natural increases of live-stock shall be taken into account at the fair average value set forth in Table III. in the Schedule. (5) Live-stock purchased during the year in which the income was derived and owned at the end of the year shall be taken into account at the end of the year at the purchase price, but for the purpose of subsequent assessments shall be taken into account at the fair average value set forth in Table III. in the Schedule."

Table III. in the Schedule, which is headed "Fair average value of live-stock (other than stud stock)," sets out that the values of sheep are in New South Wales 10s., in Victoria 12s. 6d., in Queensland 9s., in South Australia 10s., in Tasmania 10s., in the Northern Territory 12s. 6d., in Western Australia values varying from 5s. to 12s. according to the district in which they are; that the values of cattle are in New South Wales £6, in Victoria £6, in Queensland £3, in South Australia £5, in Tasmania £3, in the Northern Territory £2, in Western Australia values varying from £1 15s. to £4 10s. according to the district in which they are; that the values of horses are in New South Wales £8, in Victoria £15, in Queensland £4, in South Australia £7, in Tasmania £20, in the Northern Territory £5; and that the values of pigs are in New South Wales £1, in Victoria £2 10s., in Queensland 15s., in South Australia £2, in Tasmania 15s.

H. C. OF A. 1923.

CAMERON v. DEPUTY FEDERAL COMMISSIONER OF TAXATION.

5. On the hearing the following questions arose, which, being in my opinion questions of law, I state for the opinion of the High Court :—

(1) Whether Statutory Rules 1918, No. 315, are beyond the legislative powers of the Commonwealth;

(2) Whether it is not beyond the legislative powers of the Commonwealth to fix an artificial value for horses and pigs in some parts of Australia and not in others;

(3) Whether as the Act and Regulations stand there is any tax on horses and pigs in those States in which the value is not prescribed, and is this not a discrimination between States;

(4) Whether if the Regulations are invalid any tax exists on sheep, cattle, horses or pigs.

Keating, for the appellant. Reg. 46A is a discrimination between States, and therefore infringes sec. 51 (II.) of the Constitution and is invalid. It is a discrimination, for the values which it places upon live-stock differ according to the particular State in which the live-stock is and regardless of any other circumstances (*R.* v. *Barger* (1); *Colonial Sugar Refining Co.* v. *Irving* (2)). [He also referred to *Knowlton* v. *Moore* (3); *Stone* v. *Federal Commissioner of Taxation* (4).] [Counsel was stopped.]

Sir *Edward Mitchell* K.C. (with him *J. H. Moore*), for the respondent. What the new Regulations purport to do is not to discriminate between States or parts of States, but to make the *discrimen* of taxation the fair average value of stock, and for the purpose of arriving at the fair average value, in some cases States, and in others parts of States, have been taken. There is nothing to show that there has been any favouring of one State over another, and that is necessary to constitute discrimination within the meaning of sec. 51 (II.) of the Constitution, or preference within the meaning of sec. 99. The Regulations are necessary or convenient to be prescribed within the meaning of sec. 65 of the *Income Tax Assessment*

(1) (1908) 6 C.L.R., 41, at pp. 106, 110.
(2) (1906) A.C., 360, at p. 367.
(3) (1900) 178 U.S., 41.
(4) (1918) 25 C.L.R., 389.

Act 1915-1918. The *discrimen* fixed by the Regulations does not depend on locality regardless of any other circumstances, but depends on the average value in particular localities.

Cur. adv. vult.

The following written judgments were delivered :—

KNOX C.J. The first question submitted for decision is whether clause 46A of the *Income Tax Regulations* (Statutory Rules 1918, No. 315, par. 2) is obnoxious to the provisions of secs. 51 (II.) and 99 of the Constitution—in other words, whether the effect of that clause is to discriminate between States and parts of States.

In effect the clause in question provides that, in ascertaining for purposes of income tax the value at which live-stock is to be taken into account and the profits made on the sale of live-stock, different values shall be placed on stock of the same class in different States. For instance, horses in New South Wales are to be valued at £8 and in Victoria at £15 a head, cattle in New South Wales are to be valued at £6 and in Queensland at £3 a head, and on sales of live-stock the profit is to be ascertained by deducting from the purchase price per head the so-called fair average value per head prescribed by Table III. for the State in which the live-stock were held by the taxpayer. It is manifest that the fair average value, as found by the table, of stock in different States varies according to the State in which such stock are found ; and that this is the only *discrimen* pointed out in the table. Mr. *Keating* for the appellant contends that if this regulation is within the rule-making power conferred by sec. 65 of the Act read in conjunction with the definition of " value " in sec. 3, the regulation and the provisions of the Act purporting to authorize it are obnoxious to secs. 51 (II.) and 99 of the Constitution and that if, on the other hand, the regulation is not within the rule-making power conferred by the Act it is void and of no effect. The respondent can only succeed by establishing that the regulation in question is within the rule-making power, and does not infringe the provisions of the Constitution. Assuming the regulation to be within the rule-making power conferred by the Act, I have no doubt that it infringes sec. 51 (II.) of the Constitution,

H. C. OF A. 1923.

CAMERON v. DEPUTY FEDERAL COMMISSIONER OF TAXATION.

KNOX C.J.

which requires that laws made by the Commonwealth Parliament with respect to taxation shall not discriminate between States or parts of States. This provision was considered by this Court in *Barger's Case* (1). In that case my brother *Isaacs* said (2): "Discrimination between localities in the widest sense means that, because one man or his property is in one locality, then, regardless of any other circumstance, he or it is to be treated differently from the man or similar property in another locality." I respectfully agree with this definition, and add that when the localities selected to furnish the *discrimen* are States or parts of States the discrimination is expressly forbidden by sec. 51 (II.) of the Constitution. And my brother *Higgins* (3), in stating his reasons for thinking that in that case there was no infringement of sec. 51 (II.), pointed out that the Act then under consideration did not impose one rate of excise for Queensland and another for Western Australia or one set of conditions of exemption for Tasmania and another for Victoria. Presumably, if it had done so, he would have regarded it as offending against sec. 51 (II.).

In the case now before us, as I have already pointed out, the only test supplied by the regulations for determining the value of live-stock is the State or part of a State in which it is found. In order to determine by reference to this table whether cattle shall be valued at £6 or £3 or £5 or £2 or some other sum the only question to be answered, except in the case of cattle in Western Australia, is: "In what State were such cattle at the relevant date?" I find it difficult to conceive a clearer case of discrimination between States.

It follows that in my opinion the regulation, if made by the Commonwealth Parliament, would be outside its law-making power, and it is not suggested that Parliament may confer by delegation power to do that which is outside its own constitutional powers.

Question 1 should be answered "Yes."

The case stated contains no statement of facts raising the other questions submitted, and in my opinion these questions should not be answered.

(1) (1908) 6 C.L.R., 41. (2) (1908) 6 C.L.R., at p. 110.
(3) (1908) 6 C.L.R., at pp. 130-131.

ISAACS J. The first question is " whether Statutory Rules 1918, No. 315, are beyond the legislative powers of the Commonwealth." The second and third questions are variants of the first, and so the three may be answered together. The answer depends on whether the Rules contravene the express prohibition in the second sub-section of sec. 51 of the Constitution, namely, " but so as not to discriminate between States or parts of States."

I may say at once that, if they are lawful as to live-stock, similar regulations would be equally lawful as to all kinds of produce, goods and merchandise. The way would then be clear for a new but very real kind of border distinctions that the Constitution has been expressly framed to make impossible. The importance of the question, therefore, is very great.

The Rules are made as under the authority of sec. 65 of the *Income Tax Assessment Act*. Mr. *Keating*, who for the appellant contended for the constitutional invalidity of the Regulations, rested his argument tersely and effectively on the provisions of the Regulations themselves, irrespective of whether they were or were not within the actual scope of the Act itself. It is plain that if the Regulations contravene the Constitution it is immaterial whether the Parliamentary enactment behind them purports to authorize them or does not. The Regulations enact Table III., and they enact that table for two purposes. One is under reg. 46, which is indefinite in duration, and the other is under reg. 46A, which is limited to two specific years or perhaps, on construction, to one only. The language is not clear. Reg. 46A apparently applies to this case, if it applies at all, in respect of the year 1917-1918. But reg. 46 does certainly apply. It is necessary, therefore, to consider both regulations.

Before doing so, I may crystallize the opposing views. For the appellant it is said that the Regulations, in enacting Table III., enact for the purposes of liability to income tax different standards referable solely to whether live-stock are in one State or another. In other words the *discrimen* is " which State ? " The respondent's answer is that, while it is true a different standard is adopted for different States, it is not an arbitrary standard, but is the actual average value of the live-stock within that State which is merely

H. C. OF A. 1923.

CAMERON v. DEPUTY FEDERAL COMMISSIONER OF TAXATION.

Isaacs J.

recognized and enforced by the Regulations as a necessary and convenient and, on the whole, just method of valuing stock for the purposes of income tax. It would, as a matter of law, be sufficient to say that the answer is demurrable, for it is when tested by the Constitution an acknowledged transgression of the express limitation placed on the power of taxation. But so short and summary a disposal of the matter would not be satisfactory or help very much those who are charged with the responsible duty of administering the law.

There has, of course, been no intention to overstep the Constitution or to do injustice, and a careful examination of the relevant provisions will explain how I arrive at my conclusion of law and why I cannot accept the answer of the respondent.

Sec. 14 of the *Income Tax Assessment Act* declares that "The income of any person shall include—(*a*) profits derived from any trade or business and converted into stock-in-trade or added to the capital of or in any way invested in the trade or business: Provided that for the purpose of computing such profits the value of all live-stock, produce, goods and merchandise (not being plant used in the production of income) not disposed of at the beginning and end of the year in which the income was derived shall be taken into account;" &c. By reg. 49 of the Statutory Rules of 1917, No. 280 (made on 24th October 1917), all previous regulations were repealed and new regulations enacted. Among these is reg. 46 for the purpose of par. (*a*) of sec. 14 of the Act, as to live-stock. In that regulation clause 1 says the value of live-stock on hand at the beginning and end of the year shall be calculated on the cost price of the stock. But there cannot be any "cost price" of natural increase. And in some other cases, as, for instance, where a lump sum is paid on a walk-in walk-out transaction the cost price of stock cannot be stated. Therefore clause 2 is enacted, which says: "The cost price of natural increase and the cost price of other stock for which the cost price cannot be stated by the taxpayer shall be deemed to be *the fair average values as determined by the Commissioner.*" I am not sure what is meant by the word "average" in that connection. I could understand "fair values," but the word "average" introduces an element as to which I say

nothing, as anything I should say would be *obiter*. But at all events, assuming the provision to be unexceptionable, it is accompanied by the qualification "as determined by the Commissioner." Again I assume that to be authorized, and then the meaning of the provision is that the Commissioner is to consider all the relevant circumstances and determine with respect to the stock under consideration what in fact and in truth are their "fair average values." Among these relevant circumstances would be, in the case of cattle situated near the border of a State, the values of similar cattle in a neighbouring State on the other side of the border. The value of bullocks or of horses in Albury cannot be uninfluenced by the values of similar animals in Wodonga. Then as to the natural increase of purchased cattle merged into the general stock or herd there is a somewhat similar provision made by clause 4 for the year succeeding the year of purchase.

Now, by the Statutory Rules 1918, No. 315, a distinct change is made. By reg. 1 of these Rules the 46th regulation is amended by striking out the words "as determined by the Commissioner," and inserting instead the words "as set forth in Table III. in the Schedule." This is as to both clause 2 and clause 4 of the 46th regulation. Reg. 3, as above mentioned, enacts the table as part of the Schedule. All this is for general and continued application. Besides this, a new regulation, reg. 46A, is introduced which applies only to the years 1916-1917 and 1917-1918. There are very puzzling provisions when dates are considered in the various clauses of reg. 46A, but it is sufficient to instance the third and fourth clauses, which are in these terms:—"(3) Live-stock sold after the beginning of that period shall be deemed to have been sold at a profit or a loss to the extent of the excess or shortage respectively of the sale price above or below the fair average value set forth in Table III. in the Schedule. (4) Natural increases of live-stock shall be taken into account at the fair average value set forth in Table III. in the Schedule." It is manifest that the expression "fair average values" as used in the original 46th regulation has now entirely lost its meaning. From being a "fair average value" in fact at the time of liability, and determined by the Commissioner on real commercial considerations including, where that was an operating circumstance, the values

H. C. OF A. 1923.

CAMERON v. DEPUTY FEDERAL COMMISSIONER OF TAXATION.

Isaacs J.

of similar stock in a neighbouring State, the expression "fair average value" has become a permanently fixed standard, beyond the power of even the Commissioner to question, but based on one distinguishing consideration, the restriction to purely State circumstances. Queensland cattle are subject to a standard framed on Queensland values exclusively, and are rigidly fixed at a £3 value, whether they are at the Gulf of Carpentaria or just north of the State line at Wallangarra. New South Wales cattle are rigidly controlled by values in that State exclusively and fixed at £6 values, whether in the Riverina or just south of the State line at Wallangarra. And so with every other State. For instance, a horse at Albury is deemed to be worth exactly £8, while the same horse if it had been across the river at Wodonga would be deemed to be worth exactly £15. With the justice or injustice of all this I have no concern. But though the regulation aims at a "fair average value," it is with reference purely to the State in which the stock is found. The *discrimen* for different values is the State in each case. That is irretrievably in conflict with the constitutional provision prohibiting discrimination between States.

My opinion as to the true meaning of the constitutional provision in sec. 51 (II.) was fully expressed in *R.* v. *Barger* (1), and to that opinion I refer. I would, however, repeat one sentence, which was relied on in this case by both sides, in order that I may apply it to the present circumstances. At p. 110 I said: "Discrimination between localities in the widest sense means that, because one man or his property is in one locality, then, regardless of any other circumstance, he or it is to be treated differently from the man or similar property in another locality." It was said by Sir *Edward Mitchell* that as a "fair average value" was applied in each State, that was not "regardless of any other circumstance" than State situation. But that is an error. Stock in Queensland and stock in New South Wales are, by reason solely of their State situation, "treated differently," by the mere fact that different standards are applied to them respectively. It does not matter whether those legal standards are arbitrary or measured, whether dictated by a desire to benefit or to injure, the simple fact is they are "different,"

(1) (1908) 6 C.L.R., at pp. 105-111.

and those different legal standards being applied simply because the subject of taxation finds itself in one State or the other there arises the discrimination by law between States which is forbidden by the Constitution. Much was said as to the practical inconvenience which would inevitably arise if no working standard were possible. If that were true, it would be no answer. But nothing I say must be taken to indicate the impracticability of establishing a working rule. There is all the difference in the world between, on the one hand, an arbitrary legal standard which, being enacted as law, is the exact measure of rights and liability and, on the other, a rule of office practice, a just prima facie expedient, which still leaves the true legal standard untouched and affords the taxpayer a proper opportunity if he wishes to correct an error.

As to the fourth question, there are no facts which raise it. Being, on the case as stated, purely hypothetical, it is not answerable (see *Boese* v. *Farleigh Estate Sugar Co.* (1)).

HIGGINS J. In my opinion, the Statutory Rules in question—No. 315 of 1918—discriminate between States as to taxation, and are, therefore, invalid for the purpose of the Income Tax Acts. The power to make laws with respect to taxation (sec. 51 (II.) of the Constitution) is limited by the words " but so as not to discriminate between States or parts of States."

The appellant here is described in the case stated as a " pastoralist." We have not seen his return ; and no evidence was taken before the learned Judge who has stated the case. The point of unconstitutionality was taken on the Statutory Rules as they stand ; and it must be decided as if on a demurrer.

The Rules treat the proviso to sec. 14 (*a*) of the *Income Tax Assessment Act* 1915-1918 as applicable ; and the proviso is as follows : " Provided that for the purpose of computing such profits " (the profits derived from any trade or business, and included in the income of a taxpayer) " the value of all live-stock . . . not disposed of at the beginning and end of the year in which the income was derived shall be taken into account."

The income tax depends on the profits ; and the profits depend on

(1) (1919) 26 C.L.R., 477.

H. C. OF A. 1923.

CAMERON v. DEPUTY FEDERAL COMMISSIONER OF TAXATION.

Higgins J.

the value at the beginning and end of the year. These Statutory Rules provide a table of values varying according to the States in which the live-stock are respectively found. For instance, in the case of cattle, the value of a beast (" fair average value ") is fixed for Tasmania at £3 ; for South Australia at £5 ; for New South Wales at £6. Therefore, if there are two beasts, of the same actual value, one in Tasmania and the other in New South Wales, and if they are both sold for £10, the taxpayer in Tasmania is to be treated as making £7 profit, whereas the taxpayer in New South Wales is to be treated as making only £4 profit. Under the new regulation (46A (3)), live-stock sold during the year of assessment " shall be deemed to have been sold at a profit or a loss to the extent of the excess or shortage respectively of the sale price above or below the fair average value set forth in Table III. in the Schedule." The values in the Schedule, State by State, are to be taken as the values of the stock held at the beginning of the year ; and the Schedule is to be used also for determining the values of natural increases of live-stock. Live-stock purchased during the year are to be taken into account at the end of the year at the purchase price ; but in all subsequent years at the values set out in the Schedule.

The position of the taxpayer is that he has to pay on his income ; that his income depends on his profits ; that the profits depend on the value of his stock ; and that the values depend on the State in which he happens to carry on his business. Two pastoralists may in fact make £1,000 net profit—one in New South Wales, the other in Queensland ; and yet under these Rules they may be treated as making unequal profit, and be liable to pay unequal income tax. The only reason for this result is that one is in Queensland, the other in New South Wales. This, in my opinion, is clearly a discrimination between States as to taxation. Attention has been called to the case of *R.* v. *Barger* (1), and to the judgments delivered by my brother *Isaacs* and myself so far as they relate to discrimination in taxation between States. We were in the minority in that case as to the main decision ; but I cannot find that as to our general understanding of discrimination between States, as to

(1) (1908) 6 C.L.R., 41.

our major premiss, we were in conflict with the majority of the Court. Unless and until overruled on the subject, I adhere to what I then said.

RICH J. The only question which we can entertain on this special case is (1) whether Statutory Rules 1918, No. 315, are "beyond the legislative powers of the Commonwealth." I shall assume that they are within the power conferred by sec. 65 of the *Income Tax Assessment Act*. Do they then conflict with the prohibition of secs. 51 (II.) and 99 of the Constitution? The Rules purport to fix the value of stock by the State or part of the State in which the stock happen to be. They aptly illustrate the definition given by my brother *Isaacs* in *Barger's Case* (1) (see also per *Higgins* J. (2)), and are, in my opinion within the prohibition.

I answer the question in the affirmative.

STARKE J. The question is whether the Statutory Rules 1918, No. 315, if authorized by the *Income Tax Assessment Act* 1915-1918, do not contravene the provisions of the Constitution, secs. 51, pl. II., and 99.

A law with respect to taxation applicable to all States and parts of States alike does not infringe the Constitution merely because it operates unequally in the different States—not from anything done by the law-making authority, but on account of the inequality of conditions obtaining in the respective States. On the contrary, a law with respect to taxation which takes as its line of demarcation the boundaries of States or parts of States necessarily discriminates between them, and gives a preference to one State or part thereof over another State or part thereof (*Colonial Sugar Refining Co.* v. *Irving* (3); *Barger's Case* (4)).

In the present case the regulation directs that live stock shall, for the purpose of assessment of income, be deemed to have been sold at a profit or at a loss to the extent of the excess or shortage above or below the fair average value set forth in the Schedule. And this fair average value is fixed by the Schedule by reference to the boundaries of the States or parts of States in which the live-stock are located.

(1) (1908) 6 C.L.R., at p. 110.
(2) (1908) 6 C.L.R., at p. 131.
(3) (1906) A.C., at p. 367.
(4) (1908) 6 C.L.R., 41.

H. C. OF A. 1923.

CAMERON v. DEPUTY FEDERAL COMMISSIONER OF TAXATION.

Starke J.

The regulation is a plain infringement of the Constitution. Sir *Edward Mitchell* endeavoured to sustain the regulation on the footing that it only gave effect to average values that had been ascertained in point of fact in the States; in other words, that the regulation operated only upon unequal conditions that existed in the States. The true construction of the regulation does not, I think, support the suggestion, but even if it did the regulation would be equally bad. Parliament cannot, by any law with respect to taxation, discriminate between States, or prefer one State over another. And if the law is not applicable to all States alike, then it operates un-unequally in the States and discriminates as a law between them.

Question 1 should be answered in the affirmative. Question 2 seems to be a corollary to 1, and need not be answered. Questions 3 and 4 cannot be answered on the facts stated in the case.

But I desire to add that it does not at all follow that, because the regulation is invalid, the taxpayer escapes all taxation.

Question 1 *answered in the affirmative. Other questions not answered. Costs of special case to be costs in the appeal. Case remitted to Supreme Court of Tasmania.*

Solicitor for the appellant, *Harold Bushby*, Launceston, by *Rylah & Anderson.*

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

B. L.