[HIGH COURT OF AUSTRALIA.]

THE KING

AGAINST

TREBILCO AND OTHERS;

Ex parte F. S. FALKINER AND SONS LIMITED.

H. C. of A. 1936.

Melbourne, *Oct.* 26, 27.

Sydney, *Dec.* 9.

Latham C.J., Starke, Dixon, Evatt and McTiernan JJ.

Land Tax (Cth.)—Release from liability—Functions of board—Discretion—Mandamus—Returns from land seriously impaired—Improved conditions in subsequent years taken into consideration by board—Land Tax Assessment Act 1910-1934 (*No.* 22 *of* 1910—*No.* 14 *of* 1934), *sec.* 66.

Upon an application for relief from taxation under sec. 66 (1) of the *Land Tax Assessment Act* in respect of the years ending June 1932 and 1933 on the grounds that the returns from the taxpayer's land had been seriously impaired and that the exaction of the full amount of tax would entail serious hardship, the board took into consideration that in 1934 there had been a substantial profit and in 1935 only a small loss, and refused the application.

Held that the board had not improperly exercised its discretion.

Functions of the board, and principles governing the issue of mandamus to administrative bodies, considered.

Order Nisi for mandamus.

F. S. Falkiner and Sons Ltd. was a company registered in New South Wales in 1899. It owned a group of station properties in that State and its main sources of income were the growing of wool and the breeding and sale of stud sheep. From 1918 to 1927 the company made substantial profits in every year. In 1928 the company, owing to drought and adverse conditions, made a loss of £28,652, which included £15,989 for Federal income tax. Application for relief was made by the company under sec. 66 of the *Land*

Tax Assessment Act 1910-1934 and was wholly granted by the relief board. In 1930 the company made a loss in similar circumstances of £16,649 and applied for and was granted relief by the board from land tax to the extent of £17,253. Up to 1930 the balance-sheets of the company were made up to 31st March in each year and subsequently to 30th June in each year; the figures in the balance-sheet for 1931 were for the period of fifteen months. In the period ending 30th June 1931 the company made a loss of £58,095. In that period the price of wool sold by the company dropped to 7½d. per pound as compared with 18½d. in 1928 and 16¼d. in 1929. Owing to the drop in the price of wool and to drought conditions in Queensland and Northern New South Wales the average price of rams sold by the company declined to £5 2s. 1d. per head in 1931 from £7 3s. 1d. per head in 1930, the average price over the period 1899 to 1928 being £6 12s. In the year ending 30th June 1932 the company made a further loss of £10,714. In 1932 the average price of wool was 7¾d. and the average price of rams was £4 19s. 1d.

The company was assessed for land tax for the year 1931-1932 in the sum of £9,282 5s. 10d. and for the year 1932-1933 in the sum of £7,391 17s. 6d. In May 1932 the company applied for relief under sec. 66 of the *Land Tax Assessment Act* in respect of the assessment for the year ended 30th June 1931, and in March 1933 the company made a similar application in regard to the land tax assessed for the year ended 30th June 1932. Pursuant to sec. 66 (4) of the *Land Tax Assessment Act* the applications were referred to the board of review constituted under the *Income Tax Assessment Act*. The Commissioner of Taxation required and obtained production of the company's balance sheets from 1930 to 1933 and subsequently the member of the board of review who heard the applications called for the balance-sheets for 1934 and 1935. The balance-sheets for the years 1930-1933 showed substantial losses. The balance-sheet for 1934 showed a profit of £36,194, and that for the year 1935 showed a loss of £2,784. In 1934 the company, in order to improve its financial position, sold portion of its property. The balance-sheet for 1934 was produced at the hearing but the company objected to produce the balance-sheet for 1935 as being irrelevant. The two applications for relief were heard on 28th September 1934. The board disallowed the claims

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for relief, and subsequently the company applied for a reconsideration of its claims and then produced the balance-sheet for 1935. Subsequently, the company was informed that the board adhered to its decision.

On the application of the company *Starke* J. made an order nisi for a mandamus directing the members of the board to hear and determine the applications according to law. The order nisi was made returnable before the Full Court.

Wilbur Ham K.C. (with him *Fullagar* K.C. and *Knight*), for the prosecutor. The prosecutor applied for relief from taxation under sec. 66 of the *Land Tax Assessment Act*. The implication from sec. 66 is that relief has to be considered in a particular year. The tax is levied for the financial year in respect of income for the preceding year, and in looking at the question of hardship or the impairment of returns it is necessary to look at the year in which the income was derived to see whether the circumstances arise; then, in the next year, the financial year, the tax is levied, and if relief is granted in each year it is the duty of the board or the commissioner to lay the matter before Parliament. But in this case two years and four months elapsed after the year of income before it was considered, and the board then took into consideration the fact that in subsequent years the taxpayer made a profit large enough to enable him to pay the back tax. This they had no authority to do. The impairment of returns relates to the year in which the income was derived and not to subsequent years. The board even considered the returns for 1935, when there was a loss which did not completely wipe out the profit of 1934. *Ex parte Falkiner* (1) is distinguishable from the present case. The board should not have taken extraneous circumstances into consideration (*Sharp* v. *Wakefield* (2); *Randall* v. *Northcote Corporation* (3); *R.* v. *Adamson* (4)). A discretion is given to the board and that must be exercised honestly according to law and not arbitrarily or capriciously, even though it is not a judicial function that is

(1) (1929) 35 A.L.R. 303.
(2) (1891) A.C. 173, at p. 179.
(3) (1910) 11 C.L.R. 100, at pp. 109, 110, 115.
(4) (1875) 1 Q.B.D. 201.

being performed (*R.* v. *Vestry of St. Pancras* (1); *R.* v. *War Pensions Entitlement Appeal Tribunal*; *Ex parte Bott* (2); *Architects Registration Board of Victoria* v. *Hutchison* (3)).

Herring K.C. (with him *Sholl*), for the respondents. The board acted properly in considering the figures for 1934 and 1935. The original decision of the board was right, and that decision was reached without reference to the 1935 balance-sheet. The board merely confirmed its decision after reading the figures for 1935. This case is governed by *Ex parte Falkiner* (4). The prosecutor has to show that the board acted wrongly; that it has misconceived the law or taken into account extraneous circumstances. In *Sharp* v. *Wakefield* (5) the justices were exercising a judicial power. *R.* v. *Vestry of St. Pancras* (6) turned upon the special facts of the case, and in *R.* v. *Adamson* (7) the justices declined to exercise jurisdiction. In the present case there has been no refusal to exercise their powers and no improper exercise of them. The board is entitled to look at the whole stretch of years available.

Wilbur Ham K.C., in reply.

Cur. adv. vult.

Dec. 9.

The following written judgments were delivered :—

LATHAM C.J. The respondents to this application were the members of a board appointed under sec. 66 of the *Land Tax Assessment Act* 1910-1934 to hear applications for release from liability to pay land tax. Upon the application of F. S. Falkiner and Sons Ltd. an order was made by *Starke* J. directing them to show cause before this court why a writ of mandamus should not issue directing them to hear and determine according to law the application of the company for a release from liability for land tax in respect of the financial years 1931-1932 and 1932-1933 pursuant to sec. 66.

(1) (1890) 24 Q.B.D. 371, at pp. 375, 376.
(2) (1933) 50 C.L.R. 228, at p. 242.
(3) (1925) 35 C.L.R. 404, at p. 407.
(4) (1929) 35 A.L.R. 303.
(5) (1891) A.C. 173.
(6) (1890) 24 Q.B.D. 371.
(7) (1875) 1 Q.B.D. 201.

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It is objected on behalf of the company that the board, in considering the application, wrongly took into consideration the fact that in the year ending 30th June 1934, which is subsequent to the years to which the application related, the company made a profit, and the further fact that in the year ending 30th June 1935 the company made a relatively small loss.

The general grounds upon which the company applied for release from its liability for land tax assessed for the financial year 1931-1932 were that the returns from the land owned by the company had been seriously impaired and that the payment of the tax would entail extreme hardship. The grounds upon which the application relating to land tax assessed for the financial year 1932-1933 was based were that the returns from the land owned by the company had been seriously impaired through adverse conditions and that payment of the tax would entail serious hardship (See *Land Tax Assessment Act* 1910-1934, sec. 66 (1) (*a*) and (*b*)). As the amount of land tax from which the taxpayer applied to be released (over £16,500) was not less than £500, the applications were referred by the board to the board of review constituted under the *Income Tax Assessment Act* 1922-1932 for inquiry and report by a member thereof (sec. 66 (4)). A report was duly received by the board from J. P. Hannan, the member of the board of review who heard the evidence given on behalf of the company. The board considered the application with the report, the record of the evidence, and the exhibits and statements placed before Mr. Hannan. The board also had before it records and reports supplied from the office of the Commissioner of Taxation, for whom the respondent H. H. Trebilco was acting as a substitute on the board under the provisions of sec. 66 (1).

The evidence showed that the losses of the company for several years prior to 1934 had been very substantial. Land tax had been remitted in respect of 1925 and 1930 to the extent of about £34,000. In 1934 there was a profit of £36,000. In 1934 the company, in order to improve its difficult financial position, sold a large area of land—a fact which was relied upon by the company in support of its application. The board refused the application on 11th July 1935. Upon the request of the company, the board reconsidered

the application more than once, but on each occasion affirmed its previous decision. On the last occasion, the board had before it accounts of the company for the year ending 30th June 1935, which were produced under cover of a protest that they were irrelevant.

Sec. 66 (1) of the *Land Tax Assessment Act* 1910-1934 was in operation at the time when the application was heard and the company was, I think, entitled to rely upon any of the grounds for release mentioned in the section. Sec. 66 (1) is as follows :—

" In any case where it is shown to the satisfaction of a board consisting of the commissioner, the Secretary to the Treasury and the Comptroller-General of Customs, or of such substitutes for any or all of them as the Minister from time to time appoints—(*a*) that a taxpayer liable to pay land tax has become bankrupt or insolvent, or has suffered such a loss that the exaction of the full amount of tax would entail serious hardship ; (*b*) that, by reason of drought or adverse seasons or other adverse conditions, the returns from any land owned by the taxpayer upon which he carries on agricultural or pastoral pursuits have been seriously impaired ; or (*c*) that, owing to low prices in respect of primary products the income derived from the land the subject of land tax has been so reduced that the taxpayer is unable to pay the whole of the tax out of his income derived in the financial year for which the land tax is assessed, and that the financial position of the taxpayer is such that the exaction of the full amount of land tax would entail serious hardship, the board may release such taxpayer wholly or in part from his liability for land tax or for land tax in respect of any particular land the returns from which have been so impaired, and the commissioner shall make such alterations in the amount of tax payable and shall make such refund of tax already paid as is necessary to give effect to the decision of the board."

Under sub-sec. 6 of sec. 66 the member of the board of review to whom an application is referred under sub-sec. 4 may require the taxpayer to appear before him, either in person or by a representative, and may examine the taxpayer upon oath concerning any statements which the taxpayer has, or may desire to have, placed before the board constituted by this section. A record is to be made of the information elicited by the member of the board

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and is to be sent to the board. The member of the board of review is required to submit a report to the board upon the facts disclosed by his examination and he can draw the attention of the board to any facts which in his opinion have particular bearing upon the application (sub-secs. 9 and 10). This procedure was followed.

Thus the statute gives the board authority to release the taxpayer wholly or in part from liability for land tax if any one of three conditions is established to the satisfaction of the board. No provision is made for the board hearing any evidence at all. An application involving not less than £500 tax must be referred to a member of a board of review and other applications may be so referred. Where an application is referred, the member of the board of review may require the taxpayer to give evidence. The taxpayer is not bound to give evidence unless required and it cannot be said to be certain that the member of the board of review can be compelled to exercise his right to require him to give evidence.

The authority and duty of the board is to consider an application, to determine whether any of the conditions *a*, *b* or *c* are satisfied, and then, if the board thinks proper, to grant a remission in whole or in part of the tax which the applicant is prima facie bound to pay, or to refuse to grant any remission at all. There is no appeal from a decision of the board. Its functions are administrative in character and not judicial.

In *Errington* v. *Minister of Health* (1) it was held that the object of particular provisions in the *Housing Act* 1930 was to determine a contest between the owners of private property and a local authority. Accordingly, the Minister, in determining whether or not to confirm an order which involved destruction of private property, was exercising quasi-judicial functions. After an examination of the leading authorities, it was held that, as the Minister was exercising quasi-judicial functions, he could not lawfully make his decision upon the basis of an ex parte inquiry. The case is quite different here. The *Land Tax Assessment Act*, sec. 66, provides expressly for an ex parte inquiry by a member of a board of review, and even for that inquiry only in certain cases.

(1) (1935) 1 K.B. 249.

There is no question of depriving persons of their property or of otherwise affecting their rights. Even if the principles applied in *Errington* v. *Minister of Health* (1) were applicable to this case, there would be no grounds for objection on the part of the taxpayer. He has been given a fair and full opportunity of presenting his claim for relief. All the evidence upon which he desired to rely and the arguments relating to that evidence, together with his objections to the relevancy of further evidence, have been considered by the board. In my opinion, therefore, the functions of the board are not quasi-judicial, but, even if they are, there is in this case no ground for complaint on the part of the taxpayer.

Even if the conditions under which the authority of the board can be exercised are shown to exist, the board is not bound to exercise its authority in favour of the taxpayer. This is settled by the decision of this court in *Ex parte Falkiner* (2), where *Knox* C.J. said: "The board has an absolute discretion, even if those matters" (i.e., conditions *a* or *b*) "are proved, to say that in its opinion the relief should not be granted." *Isaacs* J. added: "I think that the only right of the taxpayer under this section is to have a chance of getting the discretion of the board exercised in his favour."

But it must nevertheless be conceded that if it is shown that the board has not discharged the duty imposed upon it by exercising the discretion entrusted to it, mandamus would lie in a proper case. But it must be shown that the board has not really performed its duty. An example would be found where it was shown that upon the basis of an erroneous interpretation of the law the board had refused to consider an application. Another example would be provided if the board, in determining the application, took extraneous considerations into account—such as circumstances which had no relation whatever to the position of an applicant as a taxpayer or to his financial capacity or to land taxation—such as, for example, the fact that the applicant was engaged in some occupation of which the board disapproved (*R.* v. *Vestry of St. Pancras* (3); *R.* v. *War Pensions Entitlement Tribunal*; *Ex parte Bott* (4)).

It is urged that the board did, in this case, consider extraneous matters, namely, the financial position of the taxpayer in 1934 and

(1) (1935) 1 K.B. 249.
(2) (1929) 35 A.L.R. 303.
(3) (1890) 24 Q.B.D. 371.
(4) (1933) 50 C.L.R. 228.

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1935. As far as the year 1934 is concerned, it is a sufficient answer to point out that the taxpayer himself, of his own motion, placed his accounts for 1934 before the inquiry officer for submission to the board. He cannot now be heard to say that the board should not have considered material upon which he relied in his application. Mandamus is a discretionary remedy and the fact mentioned is a sufficient reason for refusing the writ. The information relating to the year 1935 came before the board some months after it had given its decision, upon an application for reconsideration. It did not affect the decision of the board upon the application when it was originally made.

But, apart from these circumstances, the case can be decided upon the broad principle that the board is entitled to take into account any facts affecting the financial position of the applicant at the time when the application is being considered. There is no ground for limiting the relevant considerations by reference to the year in which the tax is imposed or the year in which the facts occurred upon which the applicant relies. Under condition *a* of sec. 66 (1) the board could, if it thought proper, give relief in respect of land tax for a particular year by reason of a bankruptcy which took place at any time before or after that year. Under condition *b* the board is not only entitled to consider, but must consider, a series of years, in order to discover whether there has been a serious impairment of returns from the land. When, as in this case, serious hardship is alleged (whether under *a* or *c*) the general financial position of the applicant, including his probable future financial position, may be taken into consideration.

Thus, in my opinion, there is nothing to show that the board has taken into account any matters which can be considered by a court " not to be proper for the guidance of their discretion " (*R.* v. *Vestry of St. Pancras* (1)).

Accordingly, the order nisi should be discharged.

STARKE J. The order nisi for a mandamus should be discharged.

The sixty-sixth section of the *Land Tax Assessment Act* 1910-1934 allows an indulgence to certain Crown debtors, namely, persons liable

(1) (1890) 24 Q.B.D., at p. 376.

to land tax. The only cases in which such an indulgence can be allowed are stated in sub-secs. *a*, *b* and *c*. They must be established by relevant facts, and both the Crown and the taxpayer might, I should think, by appropriate proceedings confine a board set up by the section to those facts, in any determination involving the question whether those cases or any of them were established to its satisfaction. But if those cases or any of them be established, as may be assumed in the matter now before us, then the board may release the taxpayer wholly or in part from his liability for land tax. The taxpayer has no right to any such release; a discretion is given to the board; and in my judgment, assuming bona fides on the part of the board, then it is an uncontrolled and unfettered discretion, which is not and should not be subject to interference on the part of any court of law or other judicial tribunal. The decision of this court in *Ex parte Falkiner* (1) supports this view, and the Judicial Committee refused to grant special leave to appeal therefrom.

DIXON J. A writ of mandamus is sought directed to the members of a board appointed under sec. 66 of the *Land Tax Assessment Act* 1910-1934.

The prosecutor is a taxpayer carrying on pastoral pursuits in the Riverina district, where it holds large areas of land. It applied for relief from the land tax to which it was assessed for the financial years beginning 1st July 1931 and 1932. The grounds of its application were that the returns from the land owned by the company had been seriously impaired and that payment of the tax would entail extreme hardship. The grounds clearly refer to the matters specified by par. *b* of sec. 66 (1) and seem to have been intended to include a reference to par. *c*, which applied to the second of the two years in question. Perhaps the grounds also cover so much of par. *a* as relates to a loss of such a nature that the exaction of the full amount of tax would entail serious hardship.

The application was referred under sec. 66 (4) to a member of a board of review, who heard the representatives of the taxpayer and took evidence. He reported that, during the year of income

(1) (1929) 35 A.L.R. 303.

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ending 30th June 1931, the date as on which the taxpayer was assessed for land tax for the ensuing financial year, the first in question, the taxpayer's operations resulted in a net loss of £43,045, for which drought conditions were in part responsible. During the next year he reported a loss of £21,482, brought about mainly by the decline in wool and stock prices. For the year following that he gave the loss at £25,180, which he attributed also to the decline in prices. That year of income is the second of the two financial years in respect of which relief from tax is claimed. The report went on to state that for the next ensuing year, namely, that beginning on 1st July 1933, the taxpayer made a profit of £47,905. The report concluded with two findings. The first was that by reason of adverse conditions, including the low prices of wool and sheep, the returns from the taxpayer's land have been seriously impaired. The second was that the taxpayer made losses in each of the years which ended 30th June 1932 and 1933, that is, in the financial years for which the tax in question was levied. If instead of those financial years the report had taken the two years of income terminating on the thirtieth days of June as on which the tax for the financial years was assessed, the loss as appeared from the report would have been greater. Notwithstanding these findings, the board refused the application for relief. The taxpayer says that the refusal was based wholly or in part upon the circumstance that its operations in the financial year beginning 1st July 1933 resulted in the profit already stated. It contends that such a reason is irrelevant and could not lawfully affect the exercise of the authority confided by sec. 66 to the board. Treating the purported exercise of discretion by the board as thus vitiated, the taxpayer seeks a mandamus commanding the board to hear and determine its application according to law.

The principles governing the issue of a writ of mandamus to an administrative body exercising a discretionary authority are stated in *Ex parte Bott* (1). According to those principles the taxpayer would be entitled to the writ if it made out its allegation of fact that the board's judgment was influenced by the making of profits in the later year, and if, upon the true interpretation of sec. 66, such a reason were inadmissible in law.

(1) (1933) 50 C.L.R., at pp. 242, 243.

The board does not admit the fact and contests the interpretation placed by the taxpayer on the section.

The taxpayer necessarily depends upon purely circumstantial evidence to prove the fact; for the board gave no reasons. But the circumstances relied upon do, in my opinion, amount to prima facie evidence that the reason alleged played a part in the board's decision. The fact is peculiarly within the knowledge of the party denying it and not in that of the party affirming it, and in weighing the proof advanced this is a very material consideration.

In answer the members of the board have deposed to a formula. The affidavit of each of them contains a brief but careful statement concluding: "It is not correct to say that the refusal of its applications was due to the fact that it made a profit in a year subsequent to the relative years." So much depends in this statement upon the word "due" that, in the absence of any positive account of the grounds which did actuate the board, we should not, I think, allow it to displace the inference that the improvement in the later year in the taxpayer's affairs did influence the decision. But, in my opinion, sec. 66 does not exclude such a consideration from the grounds upon which the board may refuse relief. Pars. *a*, *b* and *c* of sub-sec. 1 state conditions, one of which must be fulfilled before a taxpayer qualifies for relief. But if a taxpayer does satisfy one of the conditions precedent so laid down, he does not obtain a right to relief. In my opinion, he obtains only a title to the consideration by the board of the general circumstances of his case and to a determination whether it is just and proper that he should receive any, and if so what, relief. The words which immediately follow the statement of the three conditions described by pars. *a*, *b* and *c* appear to me to have this effect. They are: "the board may release such taxpayer wholly or in part from his liability for land tax or for land tax in respect of any particular land the returns from which have been so impaired." The suggestion that "may" confers an authority which must be exercised if one of the prescribed conditions is fulfilled is negatived by *Ex parte Falkiner* (1). But it is scarcely necessary to rely on that decision in order to exclude the suggested interpretation. The provision confers an authority

(1) (1929) 35 A.L.R. 303.

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on an administrative board consisting of officers concerned with fiscal administration. It is not a power to effectuate rights elsewhere given to or otherwise existing in the subject. The authority is to absolve the subject from a liability to taxation imposed upon all alike whose property is of the taxable description. The degree of relief is left to the board in express terms. A power given by the word " may " in such a provision must, I think, be understood as discretionary. It confers a discretion to release, or not to release, the taxpayer according to the board's opinion of the justice of the case. Except for implications or inferences from the three paragraphs prescribing the conditions precedent, the sub-section gives no information as to the considerations by which an exercise of the discretion is to be guided. The nature of those considerations must be gathered from the scope and object of the provision. No doubt in a case coming within one of the prescribed conditions the board cannot proceed to grant or withhold relief on grounds which are irrelevant to the incidence and consequences of the tax and the effect of its exaction upon the affairs of the taxpayer. It would, for example, be outside the ambit of their discretion to withhold relief in order to force the taxpayer to conform with some quite unconnected administrative policy adopted by another department of government. Expressions to be found in *Ex parte Falkiner* (1) cannot be pressed too far. When *Isaacs* J. says that the only right of the taxpayer is to have a chance of getting the discretion of the board exercised in his favour, he should not be understood as meaning that the taxpayer has no right to insist that the board shall make a discretionary determination of his application and that it shall act on grounds only which fall within the scope and purpose of the provision. The right may not be very valuable. For, in the first place, the members of the board are not obliged to state their reasons and they may make it well nigh impossible for him to discover why they refused his application. In the second place, where no limits are expressly imposed by the legislature on an administrative discretion, the questions what are, and what are not, legitimate considerations for its exercise must always be disputable and open to wide differences of opinion. But, nevertheless, in theory a legal right exists to compel an exercise of the discretion on grounds which are not extraneous and irrelevant to its purpose. I do not think that par. *a*, *b* or *c* of sub-sec. 1 or sub-sec. 3 contains anything

(1) (1929) 35 A.L.R. 303.

which justifies an implication or inference that the financial position of the taxpayer right up to the time when his application is considered is to play no part in the board's determination. The references in par. *a* to hardship and in par. *c* to the taxpayer's financial position and to consequent hardship upon him appear to me to show that his present resources and his receipts up to date are not matters which fall outside the grounds of relief. It is true that under par. *b* these matters form no part of the qualification for relief. But it does not appear to me to follow from this fact that in a case falling under that paragraph they must be excluded from the final exercise of the discretion which is conferred by the word "may." The statement of the conditions to be fulfilled before relief may be granted may result in giving to the provision some appearance of laying down the criteria which shall control the discretion. But, in my opinion, a closer examination of the subsection shows that this is not so. The word "may" gives a further discretion and its exercise may defeat the application for relief although one or more of the conditions expressly stated have been satisfied.

In my opinion the order nisi should be discharged.

EVATT J. In this matter I agree that the order nisi should be discharged.

But for the previous decision of the High Court dealing with the section of the Act under consideration, I would have been prepared to make the order absolute, chiefly for the reasons contained in the dissenting judgment of *Rich* J. In view, however, of that decision, and for the reasons stated in the judgment of my brother *Dixon*, I agree that the order nisi should be discharged.

MCTIERNAN J. I have had the opportunity of reading the judgments of the Chief Justice and *Dixon* J., and agree that, for the reasons therein stated, the rule nisi should be discharged.

Order nisi discharged with costs.

Solicitors for the prosecutor, *Weigall & Crowther.*

Solicitor for the respondents, *W. H. Sharwood,* Crown Solicitor for the Commonwealth.

H. D. W.