[HIGH COURT OF AUSTRALIA.]

HUGHES AND VALE PROPRIETARY LIMITED . . . . . } PLAINTIFF-APPLICANT ;

AND

GAIR AND OTHERS . . . . . DEFENDANTS.

H. C. OF A. 1954.

SYDNEY, *Dec.* 2.

Dixon C.J., McTiernan, Webb, Fullagar, Kitto and Taylor JJ.

Injunction—Parliament—Restraining officers from presenting Bill for Royal assent.

It is only by reason of exceptional statutory provisions, if ever, that a court will grant an injunction to restrain the presentation of a Bill for the Royal assent.

Attorney-General (N.S.W.) v. *Trethowan* (1931) 44 C.L.R. 394 and *Trethowan* v. *Peden* (1930) 31 S.R. (N.S.W.) 183 ; 48 W.N. 36, referred to.

APPLICATION FOR INJUNCTION.

This was a motion for an *ex parte* injunction, to restrain (1) the defendants the Speaker of the Legislative Assembly of the State of Queensland and certain officers of the parliament from presenting to His Excellency the Governor of the State of Queensland for Her Majesty's assent a Bill which had been passed by the Legislative Assembly of Queensland. The motion also sought injunctions restraining the individual members of the State cabinet their servants and agents from presenting or endeavouring to present or causing to be presented to His Excellency the Governor of the State of Queensland for Her Majesty's assent the said Bill.

J. D. Holmes Q.C. (with him *G. D. Needham*), for the plaintiff-applicant. There are provisions in the Bill which are self-operating and if the Governor's assent is given the applicant's business of an inter-State haulier would be seriously prejudiced. The injunctions sought are based on the self-operating features of this legislation which amount to an absolute prohibition on inter-State trade until State government officials, in their own time, choose to decide how much should be paid by the applicant for a license to carry goods inter-State. The form of the orders sought follows closely the

H. C. OF A. 1954.

HUGHES AND VALE PTY. LTD. v. GAIR.

orders that were made by the Supreme Court of New South Wales in *Trethowan* v. *Peden* (1).

The applicant should not be put into the position of great risk of being irreparably damaged unless it takes the risk of possibly flouting this law with all the penal consequences which follow. The plaintiff is not seeking to interfere with what is done in the Legislative Assembly of Queensland; it is only seeking to restrain officials from presenting a Bill. That distinction was observed in *Trethowan's Case* (1) and accepted as a distinction. Prima facie this Bill is not only void but is a self-operating provision. A question in relation to the right to an injunction could arise only in this country, or, possibly, in the United States of America, but it arises more clearly here because of the provisions of s. 92.

[DIXON C.J. referred to *McDonald* v. *Cain* (2).]

In *Trethowan's Case* (1) there were five judges in New South Wales who took the view that jurisdiction existed. In those circumstances, at least, the plaintiff has made a case for an *ex parte* injunction however soon the Court may make it returnable.

The following judgments were delivered by :—

DIXON C.J. The Court is of opinion that this application should be refused. An application for an injunction restraining the presentation of a Bill for the Royal Assent is, I will say, not unprecedented but it is at least very exceptional. We do not think it should be granted on this occasion or later or in any case.

I should like to say for myself that the problem presented as to the effect of *Attorney-General (N.S.W.)* v. *Trethowan* (3) is by no means new. I was a member of the Court in 1931 when it decided that case and I can say from my own personal recollection that when the Court limited the grant of special leave so that the question should not be argued, and the question before the Court was restricted to the validity of s. 7A of the Act there in question it was not because the Court was of opinion that the decision of the Supreme Court on that particular point was right, but because it was thought inconvenient to allow a procedural question of that sort to intrude itself into such a matter calling for urgent and definite decision. For myself I have long entertained a doubt as to the correctness of the decision of the Full Court of New South Wales in that case even on the terms of that Act. The Act was of a very special character and contained a provision in sub-s. (2) of s. 7A that a Bill for any purpose within sub-s. (1) of s. 7A should

(1) (1930) 31 S.R. (N.S.W.) 183; 48 W.N. 36.
(2) (1953) V.L.R. 411, at p. 419.
(3) (1931) 44 C.L.R. 394.

not be presented to the Governor for His Majesty's assent unless the Bill had been approved by the electors in accordance with the section. Such a provision of course amounted to an express negative provision, containing a prohibition of the course in the event restrained by injunction. Because of the doubt I then entertained, which I still entertain, as to the correctness of that decision, in my own judgment delivered in this Court in *Trethowan's Case* (1), in speaking of the hypothesis I put of a similar Bill coming before the United Kingdom Parliament, I used the expression that if it was found possible, *as appears to have been done in this appeal*, to raise for judicial decision the question whether it was lawful to present a Bill for that assent, the courts would be bound to pronounce it unlawful to do so.

In the present case the applicant, once the Bill is assented to, will have its remedy and if it thinks fit to apply and makes out a prima facie case this Court will not be slow to intervene to give that interlocutory relief which is appropriate. The Court would treat it as an urgent matter.

The application is refused.

McTIERNAN J. I agree with the observations made by his Honour the Chief Justice about *Trethowan's Case* (2), but in stating this I would like to make it understood that I do not consider that a determination of this application prejudices the question whether the judgments of the Justices of the Supreme Court in *Trethowan's Case* (2) are right or wrong. On the question excluded from the grant of special leave to appeal to this Court.

WEBB J. I agree.

FULLAGAR J. I agree.

KITTO J. I agree.

TAYLOR J. I agree.

Application refused.

Solicitors for the plaintiff-applicant, *Higgins, de Greenlaw & Co.*

J. B.

(1) (1931) 44 C.L.R., at p. 426.

(2) (1930) 31 S.R. (N.S.W.) 183; 48 W.N. 36; (1931) 44 C.L.R. 394.