[HIGH COURT OF AUSTRALIA.]

PIONEER TOURIST COACHES PROPRIETARY LIMITED . . . . . } PLAINTIFF;

AND

THE STATE OF SOUTH AUSTRALIA AND OTHERS . . . . . } DEFENDANTS.

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MELBOURNE, *May* 10, 11, 12; *June* 9.

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

Constitutional Law (Cth.)—Freedom of inter-State trade commerce and intercourse—State Statute—Prohibition on driving of unregistered motor vehicles on State roads—Payment of heavy fee based on weight and horse-power of vehicle at time of application for registration—Registration for six months or twelve months—Application to vehicles used exclusively for purposes of inter-State trade—Exemption by regulation of vehicles owned by residents of and registered in other mainland States—Amending regulation removing exemption in case of vehicles weighing two and one-half tons or more unladen—Validity—The Constitution (63 & 64 *Vict. c.* 12), *s.* 92—*Road Traffic Act* 1934-1954 (*No.* 2183 *of* 1934—*No.* 48 *of* 1954) (*S.A.*), *ss.* 7 (1), (2), (3), 8 (1), (2), 9 (5)—*Acts Interpretation Act* 1915-1949 (*No.* 1215 *of* 1915—*No.* 58 *of* 1949) (*S.A.*), *s.* 22*a*, *Road Traffic Act Regulations* 1951 (*S.A.*), *reg.* 42, *as amended by Variation of Road Traffic Act Regulations* 1951 *made on* 23*rd December* 1954, *reg.* 2.

Section 7 of the *Road Traffic Act* 1934-1954 (S.A.) provides that no person shall drive a motor vehicle on any road unless the vehicle is registered under Pt. II of the Act. Section 8 provides that at the time of making application for registration a fee calculated in accordance with s. 9 shall be paid to the Registrar of Motor Vehicles who shall register the vehicle for a period of either six or twelve months at the option of the applicant. Under s. 9 (1) the registration fee for a vehicle is calculated by a formula based on the weight of the vehicle and the horse-power of the engine. Section 9 (5) provides a graduated table of fees applicable to motor vehicles (other than, *inter alia*, commercial motor vehicles as defined by the Act). Up to 31st January 1955 reg. 42 of the *Road Traffic Act Regulations* 1951 had provided that a vehicle owned by a resident of one of the five mainland States, if insured and registered under the laws of the State or Territory, might be driven in South Australia without registration, so long as certain conditions were observed. By reg. 2 of regulations under the Act taking effect on 31st January 1955 it was provided that

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the exemptive provision should not apply to motor vehicles the unladen weight of which was two and one-half tons or more. The plaintiff, a carrier for reward of passengers by road, owned vehicles registered in States other than South Australia but used on South Australian roads in the course only of carrying such passengers on inter-State journeys.

Held that the fee payable on registration was a tax on inter-State trade etc. which was inconsistent with s. 92 of the Constitution. For that reason cl. 2 of the amending regulations was void in so far as it related to vehicles registered in other States as distinct from Territories and ss. 7 (1), (2), (3), 8 (1), (2) and 9 (5) could not apply to the vehicles of the plaintiff while such vehicles were used exclusively in or for the purposes of such inter-State journeys etc., although otherwise, by reason of s. 22a of the *Acts Interpretation Act* 1915-1949 (S.A.) the sections were operative.

Hughes & Vale Pty. Ltd. v. *State of New South Wales* [*No.* 2] (1955) 93 C.L.R. 127; *Nilson* v. *State of South Australia* (1955) 93 C.L.R. 292, applied.

DEMURRERS.

On 4th March 1955 the Pioneer Tourist Coaches Pty. Ltd. commenced an action in the High Court of Australia against the State of South Australia, the Honourable Thomas Playford, the Honourable Norman Lane Jude and J. D. Morrissy.

The statement of claim was as follows:—1. The plaintiff is a company duly incorporated under the laws of the State of Victoria and is entitled to sue in its corporate name. 2. The defendant the Honourable Thomas Playford is the Treasurer and Attorney-General for the State of South Australia and administers Pts. I, II, IIA, III and VI of the *Road Traffic Act* 1934-1954 (S.A.) (hereinafter referred to as the *Road Traffic Act*). 3. The defendant the Honourable Norman Lane Jude is the Minister of Local Government and Roads for the State of South Australia and is the Minister administering Pts. IV, V and VII of the *Road Traffic Act*. 4. The defendant J. D. Morrissy is the Acting Registrar of Motor Vehicles appointed under the *Road Traffic Act*. 5. The plaintiff carries on the business of carrier of passengers by road. It owns and operates road motor vehicles carrying passengers for reward on inter-State journeys between South Australia and various places in Victoria and New South Wales and in the course of such operating has caused, causes and will cause the vehicles aforesaid to be driven on roads in the State of South Australia. 6. Certain of the vehicles owned by the plaintiff are operated by the plaintiff in South Australia exclusively in the carriage of passengers on inter-State journeys between various places in South Australia and various places in Victoria and New South Wales. Such vehicles are not

used for the carriage of any passengers on any intra-State journeys within the State of South Australia. [Then follow particulars of the vehicles.] 7. The provisions of the *Road Traffic Act* if valid prohibit the plaintiff its servants and agents from driving or causing to be driven the aforesaid vehicles referred to in par. 6 hereof on the roads in South Australia unless the vehicles are registered under the said Act and require the plaintiff to pay upon the registration of such vehicles the fees prescribed by the said Act which amount in the case of each vehicle to an annual fee of £129 or thereabouts or in the case of a vehicle registered for a period of not more than six months to a fee of £68 or thereabouts. 8. The effect of the requirement of the payment of the fees referred to in par. 7 hereof would be to impose a burden in the form of a financial charge on the operation by the plaintiff of its business of carrying passengers for reward inter-State by road, and the imposition of such a burden is invalid. 9. Alternatively with par. 8 hereof, the result of requiring the payment of the fees referred to in par. 7 hereof in the case of vehicles owned by the plaintiff and operated in the State of South Australia in the course of carrying passengers for reward upon inter-State journeys in the said State when such vehicles are registered in a State of the Commonwealth other than South Australia and in respect of which registration fees have been paid in the State in which such vehicles are registered would be to impose a burden in the form of a financial charge on the operation by the plaintiff of its business of carrying passengers for reward inter-State by road. The imposition of such a burden would be invalid. 10. At all times material it was provided under the laws in each of the States of the Commonwealth that a motor vehicle might not be driven on the highways in each such State unless it was registered in each such State, and the fee prescribed as payable upon registration was paid. Further it was provided under the laws in each State of the Commonwealth (except in the State of South Australia as from 31st January 1955) that a motor vehicle might be driven on the highways in that State notwithstanding that it was not registered in that State if the motor vehicle was at the time of being so driven registered in accordance with the law in some other State in the Commonwealth and the prescribed fee upon registration in such other State had been paid. 11. All the aforesaid vehicles of the plaintiff referred to in par. 6 hereof have been and are registered and insured in accordance with the laws of either Victoria or New South Wales and the registration fees in one or other of those States have been paid by the plaintiff in respect of such vehicles. 12. By reason of the provisions of the regulations made under the *Road Traffic Act*

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on 23rd December 1954 entitled "*Variation of Road Traffic Regulations* 1951" the exemption from requirement of registration in the State of South Australia in the case of vehicles registered in any other State of the Commonwealth has since 31st January 1955 been attempted to be removed in the case, *inter alia*, of all vehicles of the plaintiff which exceed two and one-half tons in unladen weight. All of the vehicles referred to in par. 6 hereof exceed two and one-half tons in unladen weight and in consequence the registration fees made payable under the Act and the said regulations would if validly imposed be additional to the fees payable and paid by the plaintiff for the registration of the same vehicles in accordance with the laws of the States of New South Wales or Victoria as referred to in par. 11 hereof. 13. All of the passenger vehicles driven on the roads in South Australia which exceed two and one-half tons in unladen weight are used for the carriage in that State of passengers in the course of trade and commerce. 14. This cause is one within the original jurisdiction of this Honourable Court in that it involves the interpretation of the Constitution. And the plaintiff claims :— 1. A declaration that the *Road Traffic Act* 1934-1954 (S.A.) is beyond the powers of the Parliament of the State of South Australia and invalid. 2. A declaration that ss. 7, 8, 8b, 8c and 9 of the said *Road Traffic Act* are beyond the powers of the Parliament of the State of South Australia and invalid. 3. Alternatively with 1 and 2, a declaration that the said *Road Traffic Act* or ss. 7, 8, 8b, 8c and 9 thereof have no application to vehicles which are driven on the roads in South Australia exclusively on inter-State journeys for the carriage of passengers for reward. 4. Alternatively with 1, 2 and 3, a declaration that the said *Road Traffic Act* or ss. 7, 8, 8b, 8c and 9 thereof have no application to vehicles which are driven on the roads in South Australia exclusively on inter-State journeys for the carriage of passengers for reward and which are registered in accordance with the laws of a State other than South Australia and in respect of which registration fees have been paid in such other State. 5. An injunction restraining the defendants, their servants, agents, successors in title and deputies from enforcing against the plaintiff the provisions of the said *Road Traffic Act* or ss. 7, 8, 8b, 8c and 9 thereof in respect of any of the vehicles referred to in par. 6 hereof or in respect of any other vehicles operated by it in South Australia exclusively on inter-State journeys for the carriage of passengers for reward.

The defendants demurred to the whole of the statement of claim on the ground that it did not disclose any ground for the relief claimed or any part thereof and, in addition, pleaded to it as

follows :—1. The defendants admit the allegations contained in pars. 1, 2, 3, 4 and 14 of the statement of claim. 5. The defendants admit that the plaintiff carries on the business of carrier of passengers by road. No road motor vehicles owned or operated by the plaintiff carry passengers for reward or otherwise on journeys between South Australia and any place outside South Australia, nor, in the course of those or any other journeys, has the plaintiff caused nor does it cause the said or any vehicles to be driven on roads in the State of South Australia. 6. No vehicles owned by the plaintiff are operated by the plaintiff in South Australia, exclusively or otherwise, in the carriage of passengers on inter-State or intra-State journeys either between South Australia and places outside South Australia or in the said State. The defendants deny that the vehicles specified in the particulars to par. 6 of the statement of claim or any other vehicle or vehicles have been, are, or will be used or operated in South Australia whether on inter-State or intra-State journeys. 7. The defendants do not admit any of the allegations contained in par. 7 of the statement of claim. 8. The defendants deny that the requirement of the payment of the fees referred to in par. 7 (which is denied) would be to impose a burden of any sort on the operation by the plaintiff of any part of its business, and the defendants deny that any of the requirements of the said Act are invalid. 9. The defendants deny that the result of requiring the payment of fees referred to in par. 7 of the statement of claim (which is denied) is that any burden of any sort is imposed by reason of registrations of the said vehicles in other States (which are not admitted) on the operation by the plaintiff of any part of its business. 10. The defendants do not admit the allegations contained in par. 10 of the statement of claim. 11. The defendants deny that the vehicles specified in par. 6 of the statement of claim are registered or insured in the State of New South Wales, Victoria or any other State. 12. The regulations specified in par. 12 of the statement of claim remove the exemption from the requirement of registration in the State of South Australia in the case of motor vehicles registered in any other State in the Commonwealth where the unladen weight of any such motor vehicle is two and one-half tons or more. The defendants do not admit that any of the plaintiff's vehicles are of or exceed two and one-half tons in unladen weight or that any registration fees, additional or otherwise, are payable in consequence. 13. The defendants deny that all the passenger vehicles driven on the roads in South Australia which exceed two and one-half tons in unladen weight are used in that State for the carriage of passengers in the course of trade and

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commerce or for any similar purpose. 15. The roads usually used by inter-State transport are "main roads" within the meaning of the *Highways Act* 1926-1954, and these roads cannot carry present day traffic both intra- and inter-State without continuous supervision, maintenance, redesigning and reconstruction. 16. Without such supervision, maintenance, redesigning and reconstruction the wear and tear to the roads which carry inter-State traffic would cause marked deterioration therein to an extent which would greatly raise the cost of maintenance and repair of vehicles using the same and ultimately render the business of carrying goods by road inter-State impracticable. 17. In the State of South Australia the carrying out of such work, and the providing of local authorities with funds for road works is the responsibility of, and is at all times effected by, the Highways and Local Government Department under the administration of the third defendant. 18. All amounts received from licence fees and registration fees under Pt. II of the *Road Traffic Act*, and from licence fees under Pt. III of the said Act, not less frequently than once in every three months, are required to be, and are, paid into the State Highway Fund in pursuance of s. 31 of the *Highways Act* 1926-1954. 19. The moneys standing to the credit of the said Highways Fund are required to be, and are, paid applied or laid out in and for the purposes set forth by s. 32 (1) of the said *Highways Act* and for no other purposes. 20. None of the moneys received as aforesaid in pursuance of Pts. II and III of the said *Road Traffic Act* and paid into the Highways Fund have for at least the three years immediately prior to these proceedings been allocated to the purposes set forth in s. 32 (1) (f) of the *Highways Act*. 21. For at least three years immediately prior to these proceedings the annual amount spent on main roads (including the main roads mentioned in par. 15 hereof) has greatly exceeded the annual amount received into the said Highways Fund from registration and licence fees as described in par. 18 hereof.

On 15th April 1955 the plaintiff replied, joining issue, save as to the admissions contained in the defence, and demurred thereto as follows :—The plaintiff demurs to pars. 15, 16, 17, 18, 19, 20 and 21 of the defence herein and says that the said paragraphs do not constitute any defence or part of any defence or disclose a defence to this action on the grounds that :—1. The matters alleged in the said paragraphs are not relevant or admissible in law to establish the validity of the provisions of the *Road Traffic Act* 1934-1954 (S.A.) or any of them. 2. The matters alleged in the said paragraphs do not affect the burden of the financial charge imposed on the operation by the plaintiff of its inter-State business of carrying

passengers for reward and therefore do not constitute matters relevant to the question of the validity of the *Road Traffic Act* 1934-1954.

The case was argued together with *Nilson* v. *State of South Australia* (1) in the report of which, at pp. 295 et seq., the argument appears.

P. D. Phillips Q.C. and *C. I. Menhennitt*, for the plaintiff.

R. R. St. C. Chamberlain Q.C. and *W. A. N. Wells*, for the defendants.

Cur. adv. vult.

June 9.

The following written judgments were delivered :—

DIXON C.J., MCTIERNAN* AND WEBB JJ. This case comes before us upon a demurrer to the statement of claim. The purpose of the suit, like that of *Nilson* v. *State of South Australia* (1) is to obtain declarations of right which would relieve the plaintiff from the operation upon vehicles registered in other States and employed by the plaintiff in inter-State transportation, of those provisions of the *Road Traffic Act* 1934-1954 (S.A.) which require registration in South Australia and payment of a periodical tax in the form of a fee or charge. Apart from the form of the proceeding, the difference between the two cases lies in the fact that here the plaintiff company, which sues on its own behalf only, carries on a business of carrying passengers, not goods. Its vehicles do not fall within the definition of " commercial motor vehicle " contained in s. 4 (1) of the Act. The facts alleged in the statement of claim are that the plaintiff carries on the business of a carrier of passengers by road ; that it owns and operates certain road motor vehicles, twenty-eight in number, carrying passengers for reward on inter-State journeys between South Australia and various places in Victoria and New South Wales and that in the course of operating the vehicles the plaintiff causes them to be driven on roads in South Australia. All the vehicles, so it is alleged, are registered and insured under the laws of Victoria or of New South Wales ; such vehicles are used exclusively in the carriage of passengers on inter-State journeys between various places in South Australia and the other two States and are not used for the carriage of passengers on any intra-State journey within South Australia. The pleading states that the annual fee which the plaintiff is required under the legislation to pay for each vehicle amounts to about £129. The six-

(1) (1955) 93 C.L.R. 292.

* See *addendum* (1955) 93 C.L.R., at p. 183.

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monthly fee is about £68. It is alleged that the weight of each vehicle exceeds two and a half tons. Under the amendment made on 23rd December 1954 to reg. 42 of the *Road Traffic Act Regulations* 1951 inter-State vehicles over that weight have no exemption. While the defendants demur to the statement of claim, they also plead to it. In their defence they deny that any road motor vehicles owned or operated by the plaintiff carry passengers on journeys between South Australia and any place outside South Australia and that any of the vehicles is operated in South Australia, exclusively on inter-State journeys or otherwise. The defence denies too that the vehicles are registered in New South Wales or Victoria and that they are of a greater weight than two and a half tons. With the issues thus taken by the defence outstanding we probably would not have consented to determine the demurrer had it not been that in effect the same questions arose in *Nilson* v. *State of South Australia* (1). The two cases were argued together.

Because the vehicles are not commercial motor vehicles the scale of fees or charges applicable is that set out in sub-s. (5) of s. 9 of the *Road Traffic Act*. Otherwise the registration of the vehicles and the exaction of the fee are governed by the same provisions of the Act and regulations as are considered in *Nilson* v. *State of South Australia* (1). No relevant distinction can be taken between the two cases. It is therefore enough to say that the reasons given in that case, incorporating as they do the judgment in *Hughes & Vale Pty. Ltd.* v. *State of New South Wales* [*No.* 2] (2) apply and that the demurrer must therefore fail.

The defence pleads by pars. 15, 16, 17, 18, 19, 20 and 21 a number of facts relating to the description and condition of the roads of South Australia, to the burden upon them and to the financing of the construction and maintenance of such roads. These facts were pleaded no doubt on the footing that they supply considerations material to the question whether the tax constituted by the fees prescribed by s. 9 (5) can be levied on vehicles exclusively engaged in inter-State trade. To the paragraphs the plaintiff demurs, on the ground that they afford no defence and form no part of a defence. It is necessary to say no more about the matters stated in the paragraphs than that they could not possibly lead to this particular tax being supported as a valid exaction from inter-State commerce. The plaintiff's demurrer must succeed. The defendants' demurrer to the statement of claim should be overruled; the plaintiff's demurrer to pars. 15 to 21 of the defence should be allowed.

(1) (1955) 93 C.L.R. 292.

(2) (1955) 93 C.L.R. 127.

WILLIAMS J. The principles applicable in this case must be the same as those applicable in *Nilson* v. *State of South Australia* (1). The two cases are indistinguishable in substance. I agree with the order proposed by his Honour the Chief Justice.

FULLAGAR J. I agree with the order proposed. I think the case is covered by the reasons which I gave in *Hughes & Vale Pty. Ltd.* v. *State of New South Wales* [*No.* 2] (2) in relation to the *Motor Vehicles Taxation Management Act* 1949-1951 (N.S.W.) and the *Motor Vehicles* (*Taxation*) *Act* 1951 (N.S.W.).

KITTO J. I adhere to the opinion I have expressed as to charges in the case of *Hughes & Vale Pty. Ltd.* v. *State of New South Wales* [No. 2] (2) but otherwise I agree with the judgment which the Chief Justice has delivered.

TAYLOR J. In this matter questions were raised by demurrer concerning the validity of the *Road Traffic Act* 1934-1954 (S.A.) and as to whether that Act, or certain provisions thereof, could lawfully apply to vehicles driven on the public roads of the State of South Australia in the course of journeys undertaken exclusively for the commercial carriage of passengers to and from that State from and to other States of the Commonwealth.

The operation of the Act in relation to such vehicles is not dissimilar to that of the *Motor Vehicles* (*Taxation*) *Act* 1951 (N.S.W.) and the *Motor Vehicles Taxation Management Act* 1949-1951 (N.S.W.) which were under review in *Hughes & Vale Pty. Ltd.* v. *State of New South Wales* [*No.* 2] (2). Indeed, I am quite unable to perceive any feature of the South Australian legislation which, for the purpose of dealing with the questions which are raised, could be regarded as a distinguishing feature. Nor, I should add, am I able to understand how the matters of fact asserted by the defendants in their statement of defence are relevant in considering the validity of an Act in this form or the extent to which it may lawfully operate. For the reasons expressed in the case referred to I am of the opinion that the provisions of the challenged legislation cannot validly apply to vehicles engaged *exclusively* in trade or commerce among the States.

In view of the provisions of s. 22 (a) of the *Acts Interpretation Act* 1915-1949 (S.A.) the licensing provisions of the Act should be construed so as not to apply to vehicles which are driven on the roads

(1) (1955) 93 C.L.R. 292.

(2) (1955) 93 C.L.R. 127.

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in South Australia exclusively on inter-State journeys for the carriage of passengers for reward. In the result, therefore, the defendants' demurrer to the plaintiff's statement of claim should be overruled and the plaintiff's demurrer to the paragraphs of the statement of defence by which the matters of fact above referred to were asserted should be allowed.

Defendants' demurrer to the statement of claim overruled. Plaintiff's demurrer to pars. 15 *to* 21 *of the defence allowed. Costs of the demurrers to be paid by the defendants.*

Solicitors for the plaintiff, *Alexander Grant, Dickson & King.*

Solicitor for the defendants, *R. R. St. C. Chamberlain,* Crown Solicitor for the State of South Australia.

R. D. B.