[PRIVY COUNCIL.]

O'SULLIVAN . . . . . APPELLANT;

AND

NOARLUNGA MEAT LIMITED . . . RESPONDENT;

THE COMMONWEALTH; STATE OF NEW SOUTH WALES AND STATE OF TASMANIA . . . . . } INTERVENERS.

ON APPEAL FROM THE HIGH COURT OF AUSTRALIA.

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May 9, 10, 14-17; *July* 4.

Viscount Simonds, Lords Morton of Henryton, Cohen, Keith of Avonholm and Somervell of Harrow.

Privy Council—Appeal—Jurisdiction—Same matter governed by Federal and State laws—Commonwealth Constitution, Section 109*—Plea of inconsistency—Question—Between laws made under powers not between powers—Not inter se—Competency of appeal—Inconsistency—Test—Exhaustive or exclusive legislation—Paramount intention—Metropolitan and Export Abattoirs Act* 1936-1952 *(S.A.), s.* 52*a—Commerce (Meat Export) Regulations (S.R.* 36 *of* 1953*) (Cth.)—Customs Act* 1901-1953, *s.* 270 (1) (*c*)*—The Constitution* (63 *&* 64 *Vict. c.* 12), *ss.* 74, 109.

By s. 74 of the Constitution: "No appeal shall be permitted to the Queen in Council from a decision of the High Court upon any question, howsoever arising, as to the limits *inter se* of the Constitutional powers of the Commonwealth and those of any State or States . . . unless the High Court shall certify that the question is one which ought to be determined by Her Majesty in Council . . .".

A summons having been issued against the respondent company for using its premises for slaughtering stock for export as fresh chilled or frozen meat without a licence to use the premises for that purpose contrary to s. 52a of the *Metropolitan and Export Abattoirs Act* 1936-1952 (S.A.), the company contended that s. 52a was inconsistent with the *Commonwealth Commerce* (*Meat Export*) *Regulations* under and in compliance with which the company's premises were duly registered for the slaughtering of stock for export, and that s. 52a was therefore invalid under s. 109 of the Commonwealth Constitution, which provided that "When a law of a State is inconsistent with a law

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of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid".

A preliminary objection having been first taken by the respondent company and by the Commonwealth of Australia (intervener) to the jurisdiction of the Board on the ground that all the issues in the case, including the question of "inconsistency" and the question whether the regulations were *intra vires* the *Customs Act* 1901-1953, under which they were purported to be made, raised questions as to the limits *inter se* of the constitutional powers of the Commonwealth and the State of South Australia within the meaning of s. 74 of the Commonwealth Constitution and accordingly could not be entertained by the Board in the absence, as was the case here, of a certificate of the High Court of Australia:

Held, (1) that it was the extent of the power that must be in debate in order to raise an *inter se* question, and a question of inconsistency under s. 109 of the Constitution was a question not between powers but between laws made under powers. The plea of inconsistency between the *Commerce (Meat Export) Regulations*—a Commonwealth law—and s. 52a of the *Metropolitan and Export Abattoirs Act*—a State law—under s. 109 of the Constitution did not therefore involve an *inter se* question and the Board accordingly had jurisdiction to entertain the appeal. On the same principle the preliminary objection failed on the issue whether the regulations were *intra vires* the *Customs Act*.

The Board had not in *Jones* v. *Commonwealth Court of Conciliation and Arbitration* (1917) A.C. 528; (1917) 24 C.L.R. 396; *The Commonwealth* v. *Bank of New South Wales* (1950) A.C. 235; (1949) 79 C.L.R. 497; and *Nelungaloo Pty. Ltd.* v. *The Commonwealth* (1951) A.C. 34; (1950) 81 C.L.R. 144, expressed a view which demanded a fresh approach to this *inter se* question from that stated above.

O'Sullivan v. *Noarlunga Meat Ltd.* (1956) 94 C.L.R. 367 (judgment of the High Court of Australia on the application for a certificate in the present case), approved and applied. *Dictum* of *Dixon* C.J., in *Nelungaloo Pty. Ltd.* v. *The Commonwealth* (1952) 85 C.L.R. 545, at p. 577, approved.

"Inconsistency" depended on the intention of the paramount legislature to express by its enactment completely, exhaustively or exclusively what should be the law governing the particular conduct or matter to which its attention was directed, and when a Federal law disclosed such an intention it was inconsistent with it for the law of a State to govern the same matter.

Ex parte McLean ((1930) 43 C.L.R. 472, at p. 483), approved.

Held, (2) that s. 52a was not part of a general slaughtering code, but was a special condition confined to the use of premises for slaughtering for export, and such special conditions were precisely the field which the regulations evinced an intention exhaustively to cover, and the section was therefore inconsistent with the regulations and invalid and inoperative.

Held, further, that the regulations were within the power conferred by s. 270 (1) (*c*) of the *Customs Act*, which provided that " The Governor-General may make regulations . . . for prescribing—. . . (*c*) the conditions of preparation or manufacture for export of any articles used for food . . . ", and the power to prescribe conditions under that section covered the ouster of the condition imposed by s. 52a.

Judgment of the High Court of Australia (1954) 92 C.L.R. 565, affirmed.

APPEAL, by special leave, from an order of the Full Court of the High Court of Australia (1) on a special case stated for the opinion of the Supreme Court of South Australia and removed into the High Court under s. 40A of the *Judiciary Act* 1903-1950, of the Commonwealth of Australia.

The facts appear in the judgment hereunder.

D. I. Menzies Q.C., *R. R. St. C. Chamberlain* Q.C. and *R. A. Gatehouse*, for the appellant.

H. G. Alderman Q.C. and *Ian Baillieu*, for the respondent company.

Sir *Garfield Barwick* Q.C. and *John Brunyate*, for the Commonwealth of Australia (intervener).

Frank Gahan Q.C. and *J. G. Le Quesne*, for the States of Tasmania and New South Wales (interveners).

Their Lordships took time to consider the advice which they would tender to Her Majesty.

LORD SOMERVELL OF HARROW delivered the judgment of their Lordships as follows:

The appellant is an inspector of police of the State of South Australia. On 18th March 1954 a complaint and summons was issued at Adelaide in his name against the respondent for using its premises for slaughtering meat for export contrary to the provisions of s. 52a of the *Metropolitan and Export Abattoirs Act* 1936-1952, a State Act. The magistrate reserved for the consideration of the Supreme Court of South Australia a question of law and stated a special case. The question of law was " Whether section 52a of the *Metropolitan and Export Abattoirs Act* 1936-1952 is a valid and operative enactment ". An agreed statement of facts

(1) (1956) 94 C.L.R. 367.

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was attached. The special case was referred by the Supreme Court to the High Court under s. 40A of the *Judiciary Act* 1903-1950. The order for the removal of the case was made on 16th June 1954 under s. 40 of the *Judiciary Act*. The Commonwealth and the States of New South Wales and Tasmania obtained leave to intervene.

Section 52a is as follows : "(1) No person shall in any part of the State outside the Metropolitan Abattoirs Area use any premises for the purposes of slaughtering stock for export as fresh meat in a chilled or frozen condition unless he is the holder of a licence from the Minister of Agriculture authorising him to use those premises for that purpose. Any person who contravenes this subsection shall be guilty of an offence and liable to a fine not exceeding one hundred pounds and in the case of a continuing offence to an additional fine not exceeding twenty pounds for every day on which the offence continues.

(2) The Minister of Agriculture shall have a discretion to grant or refuse any application for a licence under this section after due consideration of the following matters :—(*a*) whether the applicant is a fit and proper person to hold a licence under this section ; and (*b*) whether the place where it is proposed to establish the premises to be used under the licence is a suitable place for the establishment of such premises ; and (*c*) whether the premises are necessary to meet the requirements of the public : Provided that the Minister shall not refuse an application for such a licence if the premises for which the licence is required are to be erected at least eighty miles from all premises, existing at the date of such application, and established within the State for the purpose of slaughtering stock for export as aforesaid.

(3) Every licence shall be for such period and contain such restrictions, terms and conditions as the Minister thinks proper.

(4) This section shall not apply to the Government Produce Department."

The respondent had used its premises for slaughtering stock for export and had no licence from the Minister of Agriculture as required by s. 52a. The respondent submitted that s. 52a was inconsistent with the Commonwealth *Commerce* (*Meat Export*) *Regulations* and therefore invalid under s. 109 of the Constitution which provides that : " When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid ". On this question the High Court was equally divided and the opinion of the Chief Justice who held that there was inconsistency prevailed under s. 23

of the *Judiciary Act*. The Chief Justice and *Kitto* J. agreed with the judgment of *Fullagar* J.

The appellant who submitted there was no inconsistency further submitted that the regulations, if "inconsistent" on their true construction with s. 52a, were (a) ultra vires the power to make regulations conferred by the *Customs Act* and (b) ultra vires the legislative power of the Parliament of the Commonwealth conferred by s. 51 (i.) of the Constitution.

The Chief Justice, *Fullagar* J. and *Kitto* J. held that (1) the regulations were within the regulation-making power of the *Customs Act*, and (2) were not outside the legislative powers of the Commonwealth. It is common ground that this last point is one as to the limits *inter se* of the Constitutional powers of the Commonwealth and those of the States within s. 74 of the Constitution.

It was therefore held that s. 52a was not a valid and operative enactment and the prosecution failed.

By an Order in Council dated 21st June 1955 the appellant was given leave to appeal "save as to any question as to the limits *inter se* of the Constitutional powers of the Commonwealth and the State". The appellant applied to the High Court for a certificate under s. 74 of the Constitution. On 2nd March 1956 the application was refused (1).

On 7th May 1956 the respondent lodged a petition asking that the appeal should be dismissed on the ground that the appellant in his case had abandoned important contentions as stated when leave to appeal was granted and that the issues remaining were not of sufficient importance to justify leave to appeal. The appellant in par. 13 of his case states that he accepts the decision of the High Court upon the meaning of s. 109 whereas when he applied for leave this was one of the matters which he desired to argue subject to the question whether it raised an "*inter se*" issue under s. 74.

The appellant by accepting the meaning placed upon s. 109 by the High Court did not wish to be taken as admitting that the "meaning" of s. 109 raised an "*inter se*" question within s. 74. That could not arise in his argument once he had accepted the High Court decision on the meaning. It was also said in support of the petition that the appellant having previously suggested that the decision of the High Court on the issues competent in the appeal was far reaching now treated it as a narrow decision.

Their Lordships are of opinion that the petition should be dismissed with costs and will advise Her Majesty accordingly. The remaining issues are both difficult and important.

(1) (1956) 94 C.L.R. 367.

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The relevant facts have now been stated and their Lordships must deal at once with a preliminary objection to jurisdiction which was taken both by the respondent and the Commonwealth of Australia as intervener.

It was submitted that all the issues in the case including the question of " inconsistency " and the question whether the regulations were *intra vires* the *Customs Act* raised questions as to the limits *inter se* of the constitutional powers of the Commonwealth and the State of South Australia within the meaning of s. 74 of the Constitution. In other words there was no issue on which the Order in Council giving leave to appeal could operate.

It is not in dispute that it is competent for their Lordships to decide whether a question is an *inter se* question. If it is such a question they cannot entertain an appeal upon it without a certificate of the High Court.

The importance of the objection that has been raised in the present case has been emphasized by learned counsel for the Commonwealth. It can hardly be exaggerated. For the question that has now for the first time been raised before their Lordships is whether a plea of inconsistency between a Commonwealth law and a State law under s. 109 of the Constitution involves an *inter se* question and it is clear that a decision upon this question must have far reaching effects not only on the jurisdiction of Her Majesty in Council but also on that of the State courts and the High Court respectively under the *Judiciary Act*.

The meaning of s. 109 not being in issue, the test of inconsistency has been authoritatively stated in a number of cases in the High Court. It is sufficient for the present purpose to quote a few lines from the judgment of *Dixon* J. in *Ex parte McLean* (1) which have often been cited with approval: " The inconsistency " said that learned judge " does not lie in the mere coexistence of two laws which are susceptible of simultaneous obedience. It depends upon the intention of the paramount legislature to express by its enactment, completely, exhaustively, or exclusively, what shall be the law governing the particular conduct or matter to which its attention is directed. When a Federal statute discloses such an intention, it is inconsistent with it for the law of a State to govern the same conduct or matter " (2).

This being the accepted test of inconsistency, the question is whether it involves the determination of an *inter se* question to decide whether in a particular case that test is satisfied. Upon this question their Lordships find themselves so fully in accord with

(1) (1930) 43 C.L.R. 472.

(2) (1930) 43 C.L.R., at p. 483.

the view consistently taken by the High Court that they can deal with the matter shortly. It has already been said that in the present case an application was made for a certificate and was refused. In the course of the joint judgment of *Dixon* C.J., *Williams*, *Webb* and *Fullagar* JJ. it was said " Once the constitutional principle (*scil.* the meaning of s. 109) is accepted, we have never regarded the application of it in deciding whether a given State law gave way to a given federal law as amounting in itself to a question as to the limits *inter se*. In this Court it has always been regarded as a question, not between powers, but between laws made under powers " (1). This statement is amply justified by a consideration of the numerous cases to which their Lordships were referred.

It was however said that in three or perhaps four cases which had come before the Board their Lordships had expressed a view which, if not in direct conflict with that consistently taken by the High Court, at least demanded a fresh approach to the question. From this proposition their Lordships strongly dissent. After the case of *Nelungaloo Pty. Ltd.* v. *The Commonwealth* (2) (being one of the cases relied on by the respondent) had been heard by the Board and the appeal had been dismissed on the ground that an *inter se* question was raised and no certificate had been given, an application for a certificate was made to the High Court. In the course of his judgment *Dixon* J. said: " Notwithstanding the difficulties that were pointed out I do not think that the judgments of the Privy Council in the three cases demand any radical revision of the conception which has prevailed in this Court of what are questions as to the limits *inter se* of the constitutional powers of the Commonwealth and those of the States " (see (3)). With this statement their Lordships are in full agreement except that they think that the word " radical " suggests an unnecessary qualification: they do not think that any revision is demanded.

In *Jones* v. *Commonwealth Court of Conciliation and Arbitration* (4), the first of the cases upon which the respondent relies, the essential question was as to the validity of an award by the President of a court constituted by the Commonwealth Parliament under placitum (xxxv.) of s. 51 of the Constitution. That depended on the power of the Commonwealth and upon the determination of the extent of that power depended the power of the State. Here was a direct issue as to the relative constitutional powers of Commonwealth and State which gave rise to an *inter se* question. As was observed by

(1) (1956) 94 C.L.R., at p. 374.
(2) (1951) A.C. 34; (1950) 81 C.L.R. 144.
(3) (1952) 85 C.L.R., at p. 577.
(4) (1917) A.C. 528; (1917) 24 C.L.R. 396.

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the High Court in *Australian National Airways Pty. Ltd.* v. *The Commonwealth* [*No.* 2] (1) " the settled interpretation of the crucial words of s. 74 . . . is that they cover any decision upon the extent of a paramount power of the Commonwealth " (2). These words which were cited with approval in the *Nelungaloo Case* (3) are repeated here because they go to the heart of the matter. It is the extent of the power that must be in debate in order to raise an *inter se* question : the extent to which such a power has been exercised, when the validity of its exercise is not in question, is apt to raise an issue under s. 109, but it does not raise an *inter se* question.

In the second of the three cases, *The Commonwealth* v. *Bank of New South Wales* (4) their Lordships can find nothing which in any way supports the view that the issue of inconsistency under s. 109 by itself raises an *inter se* question. In that case an attempt was made to elucidate the very difficult problem which arises where other pleas than a plea to jurisdiction under s. 74 are raised. In so far as it is relevant to the present appeal, it indicates that there is no justification for the Board refusing to entertain jurisdiction.

Reference has already been made to the third of the cases, the *Nelungaloo Case* (5). There too the constitutional validity of a regulation made under a Commonwealth Act was challenged and it was for that reason that an *inter se* question was held to arise. In delivering the opinion of the Board Lord *Normand* said : " But s. 51 does not expressly divest the States of any power, and it falls to the courts to determine where the limits of the States' powers and the limits of the Commonwealth powers are fixed. These questions of the limits of power spring from the Constitution and they are questions as to the limits *inter se* of the powers of the Commonwealth and the States " (6). As little in this as in the earlier cases do their Lordships see any justification for saying that the view consistently taken by the High Court of the scope of s. 74 and its relation to s. 109 has been questioned by the Board. If any phrase taken from its context raised any doubt, it should be set at rest by the statement made in *Grace Bros. Pty. Ltd.* v. *The Commonwealth* (7) which immediately followed : " The question for decision is the same as that dealt with by their Lordships in the *Nelungaloo Case* (5). It was there decided that any question

(1) (1946) 71 C.L.R. 115.
(2) (1946) 71 C.L.R., at p. 122.
(3) (1951) A.C., at p. 50 ; (1950) 81 C.L.R., at p. 156.
(4) (1950) A.C. 235 ; (1949) 79 C.L.R. 497.
(5) (1951) A.C. 34 ; (1950) 81 C.L.R. 144.
(6) (1951) A.C., at p. 48 ; (1950) 81 C.L.R., at p. 155.
(7) (1951) A.C. 53 ; (1950) 82 C.L.R. 357.

whether the Commonwealth has exceeded the powers conferred on it by s. 51 was an *inter se* question " (1).

Their Lordships conclude by saying again that they endorse the view expressed by the High Court upon an application for a certificate in the present case since they too regard a question of inconsistency under s. 109 as " a question not between powers but between laws made under powers ". On the same principle the preliminary objection fails on the issue whether the regulations were *intra vires* the *Customs Act*, it being accepted that the regulations were *intra vires* the Commonwealth powers. The conflict suggested was not between powers but between " laws ", namely a section of an Act and regulations made or purporting to be made under it. Their Lordships therefore reject the preliminary plea to jurisdiction.

It is necessary therefore to consider the two issues raised by the appellant. First, is there an inconsistency ; Second, are the regulations *intra vires* the *Customs Act* under which it was said they were made ? The meaning of s. 109 which has already been referred to in dealing with the preliminary plea was stated in the following words in the judgment of *Fullagar* J. : " The test of inconsistency which is now generally applied was laid down in *Clyde Engineering Co. Ltd.* v. *Cowburn* (2). It has been applied in a number of later cases : see especially *H. V. McKay Pty. Ltd.* v. *Hunt* (3) ; *Hume* v. *Palmer* (4) ; *Ex parte McLean* (5) ; *Colvin* v. *Bradley Bros. Pty. Ltd.* (6) and *Wenn* v. *Attorney-General* (*Vict.*) (7). In *Clyde Engineering Co. Ltd.* v. *Cowburn* (2), *Isaacs* J. said : ' If . . . a competent legislature expressly or impliedly evinces its intention to cover the whole field, that is a conclusive test of inconsistency where another legislature assumes to enter to any extent upon the same field ' (8). The test was analyzed and fully stated by *Dixon* J. in *Ex parte McLean* (5), in a passage which is often cited. His Honour said : ' When the Parliament of the Commonwealth and the Parliament of a State each legislate upon the same subject and prescribe what the rule of conduct shall be, they make laws which are inconsistent, notwithstanding that the rule of conduct is identical which each prescribes, and s. 109 applies. That this is so is settled, at least when the sanctions they impose are diverse (*Hume* v. *Palmer* (4)). But the reason is that, by prescribing the rule to be observed, the Federal statute shows an intention to cover the subject

(1) (1951) A.C., at p. 61 ; (1950) 82 C.L.R., at p. 363.
(2) (1926) 37 C.L.R. 466.
(3) (1926) 38 C.L.R. 308.
(4) (1926) 38 C.L.R. 441.
(5) (1930) 43 C.L.R. 472.
(6) (1943) 68 C.L.R. 151.
(7) (1948) 77 C.L.R. 84.
(8) (1926) 37 C.L.R., at p. 489.

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matter and provide what the law upon it shall be. If it appeared that the Federal law was intended to be supplementary to or cumulative upon State law, then no inconsistency would be exhibited in imposing the same duties or in inflicting different penalties. The inconsistency does not lie in the mere coexistence of two laws which are susceptible of simultaneous obedience. It depends upon the intention of the paramount legislature to express by its enactment, completely, exhaustively, or exclusively, what shall be the law governing the particular conduct or matter to which its attention is directed. When a Federal statute discloses such an intention, it is inconsistent with it for the law of a State to govern the same conduct or matter' (1) " (2). In applying this principle it is important to bear in mind that the relevant field or subject is that covered by the law said to be invalid under the section. In the present case the law challenged is in one section in an Act of one hundred and twenty-eight sections. The question is whether the regulations express an intention to cover exhaustively the field or subject covered by that section. A decision that they do may or may not cover other provisions of the Act.

The *Commerce (Meat Export) Regulations* with schedules occupy forty-six pages. It is unnecessary to consider the many detailed provisions which they contain. The export of meat is prohibited unless the establishment at which it is slaughtered, treated and stored has been registered. There are detailed provisions as to the lay out, necessary machinery and sanitation. The operations of every registered establishment are subject to the supervision of an inspector. There are detailed provisions as to how carcases are to be dealt with, rejection of diseased carcases, tins or containers for canning and so on. There are provisions as to marking. Finally if the regulations have been complied with the inspector has to issue an export permit in a prescribed form. Regulation 4 of the *Meat Export Control (Licences) Regulations* prohibits the export of meat except by persons who hold licences, and the licensee has to comply with the *Commerce (Meat Export) Regulations*.

Fullagar J. held that the regulations evince an intention to express completely and exhaustively the requirements of the law with respect to the use of premises for the slaughter of stock for export. It might be said to follow from this that if premises were to be used solely for slaughter for export everything to do with them including their situation would be outside all State law. Their Lordships cannot read the regulations as evincing so wide an intention. Their

(1) (1930) 43 C.L.R., at p. 483.

(2) (1954) 92 C.L.R. 565, at pp. 591, 592.

Lordships are unable to find in the regulations an intention to override generally all provisions of a State code dealing with slaughtering. They do not purport in their Lordships' opinion to oust, for example, State laws, if any, based on town planning considerations which might be of vital importance to the State but would normally be irrelevant to the regulation of the export trade. Assuming so complete an ouster would be within the powers of the Commonwealth it is not in their Lordships' opinion effected by the present regulations. If the State code dealing with slaughtering generally covered any specific matters dealt with in the regulations, the latter would no doubt oust and supersede the former quoad slaughter for export.

In the present case the respondent's slaughter-house had at all relevant times been licensed by the District Council of Noarlunga pursuant to Pt. XXVII of the *Local Government Act* 1934-1952 and pursuant to the by-laws of the council. On 29th June 1953, the respondent received a licence to export meat under s. 17 of the *Meat Export Control Act* 1935-1953 (Cth.). On 9th September the respondent's premises were registered under the regulations as an establishment in which subject to certain conditions which need not be detailed slaughtering for export could be conducted. It is not suggested that other requirements of the regulations were not complied with in respect of the slaughtered lambs the basis of the complaint. The illegality is based on the fact that having applied on 31st January 1953 for a licence under s. 52a, the Minister of Agriculture of the State by letter of 9th July refused the application.

Section 52a is not part of a general slaughtering code. It is a special condition confined to the use of premises for slaughtering for export. Special conditions for slaughtering for export are precisely the field which in their Lordships' opinion the regulations evince an intention exhaustively to cover. In words used by *Fullagar* J., "a State statute which has the effect of prohibiting the use of premises registered under the Commonwealth regulations for the very purpose for which they have been registered under those regulations is plainly inconsistent with those regulations" (1).

It was suggested that it was illogical to hold s. 52a to be inconsistent with the regulations and at the same time to allow any operation for State law. What, it is said, would have been the position if a section passed in an Act with a different title and scope had provided that all those who wished to slaughter stock must obtain a licence from the Minister of Agriculture as provided in s. 52a ? It might be sufficient to say that that is not the case with

(1) (1954) 92 C.L.R., at p. 591.

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which the Board has to deal. What happened in the present case would lead one to suppose that the respondent would have got a licence under such an Act since it obtained a general licence under the *Local Government Act*. Such a hypothetical law might or might not be challengeable on other grounds but it could not be attacked, as is s. 52a, as a condition restricting and applicable only to the export trade.

Reliance was placed by both sides on reg. 103. It reads as follows and was one of the original regulations :—" 103. Where by the law of any State any goods are required to be inspected and approved by a State authority before export, and the Minister is satisfied that such inspection and approval are as efficient as inspection and markings under these regulations, the Minister may direct that such inspection and approval shall be accepted, wholly or partly, in lieu of examination and marking under these regulations."

It was argued for the appellant that this meant that State legislation on the subject matter of the regulations could exist alongside Commonwealth law and that the State authority after inspection could prohibit export although the Commonwealth authorities under the regulations had passed the meat as proper to be exported. Their Lordships agree with *Fullagar* J. that the paragraph means only that if satisfactory machinery happens to exist at any port, the Minister in the interests of economy may use it. If it is not so used then the Commonwealth will set up its own inspectorate to deal with meat for export. It does not imply that the State inspector could prohibit for export what the Commonwealth inspector had passed for export.

The appellant submitted to the Board in support of his case Ordinances of the Legislative Council for the Northern Territory providing for the establishment of abattoirs and the regulation and control of the slaughtering of stock. These were of general application. There was no provision to the effect that they should not apply to slaughtering for export. On the argument put forward by the respondent before the Board these ordinances do not assist the appellant's case. A person desiring to set up an abattoir for slaughter for export would have to satisfy the provisions of the local law as to slaughtering generally, and get his local licence before he could apply for and get registration under the Commonwealth regulations.

The appellant in the second place submitted that the regulations so construed were ultra vires the *Customs Act* under which it was said they were made. The regulation-making powers under the *Customs Act* are contained in s. 112 as amended by No. 56 of 1951

and s. 270. Section 112 (1) provides: "The Governor-General may, by regulation, prohibit the exportation of goods from Australia. (2) The power conferred by the last preceding subsection may be exercised . . . (*c*) by prohibiting the exportation of goods unless prescribed conditions or restrictions are complied with."

Section 270 provides as follows: "(1) The Governor-General may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or as may be necessary or convenient to be prescribed for giving effect to this Act or for the conduct of any business relating to the Customs, and in particular for prescribing . . . (*c*) the conditions of preparation or manufacture for export of any articles used for food or drink by man or used in the manufacture of articles used for food or drink by man; (*d*) the conditions as to purity, soundness, and freedom from disease to be conformed to by goods for export." *Fullagar* J. held that the regulations were within the power conferred by s. 270 (1) (*c*) and their Lordships agree. In other words the power to prescribe conditions under that section covers the ouster of the condition imposed by s. 52a.

Their Lordships will therefore humbly advise Her Majesty that the appeal should be dismissed. The respondent failed on its preliminary point of jurisdiction but otherwise succeeded on the appeal. The appellant will pay two-thirds of the respondent's costs of the appeal.

Solicitors for the appellant, *Blyth, Dutton Wright and Bennett.*

Solicitors for the respondent, *Freshfields.*

Solicitors for the interveners, *Coward, Chance & Co.* (for the Commonwealth of Australia), *Light & Fulton* (for the States of Tasmania and New South Wales).

J. B.