[HIGH COURT OF AUSTRALIA.]

LAMSHED . . . . . COMPLAINANT;

AND

LAKE . . . . . DEFENDANT.

H. C. OF A. 1957-1958.

1957, MELBOURNE, *Oct.* 8, 9;

1958, SYDNEY, *April* 17.

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

Constitutional Law (Cth.)—Power to make laws "for the government of any territory" —Position of federal legislature in relation to territory—Whether empowered to make law having operation beyond territory—Provision by federal Act for freedom of trade commerce and intercourse between Northern Territory and the States—Whether incidental to power to make laws for the government of territory—Whether a law limiting State power rather than laying down positive rule—Whether law prevails over inconsistent State law—The Constitution (63 & 64 *Vict. c.* 12) *covering cl.* 5, *ss.* 109, 122—*Northern Territory* (*Administration*) *Act* 1910-1955 (*No.* 27 *of* 1910—*No.* 71 *of* 1955) *s.* 10—*Road and Railway Transport Act* 1930-1939 (*No.* 1967 *of* 1930—*No.* 47 *of* 1939) (*S.A.*) *s.* 14.

Section 122 of the Constitution gives a legislative power to the federal Parliament in its character as the legislature of the Commonwealth established in accordance with the Constitution, and once a law made under the power is shown to be relevant to the subject matter of the power it operates as a binding law of the Commonwealth wherever territorially the authority of the Commonwealth runs. By virtue of s. 109 of the Constitution a law validly made under s. 122 prevails over an inconsistent State law.

So *held* by *Dixon* C.J., *Webb*, *Kitto* and *Taylor* JJ., *McTiernan* and *Williams* JJ. *contra.*

Buchanan v. *The Commonwealth* (1913) 16 C.L.R. 315; *R.* v. *Bernasconi* (1915) 19 C.L.R. 629; *Porter* v. *The King* (1926) 37 C.L.R. 432; *Australian National Airways Pty. Ltd.* v. *The Commonwealth* (1945) 71 C.L.R. 29 and *Attorney-General of the Commonwealth* v. *The Queen* (1957) A.C. 288; 95 C.L.R. 529, referred to.

Section 10 of the *Northern Territory* (*Administration*) *Act* 1910-1955 provides that trade commerce and intercourse between the Northern Territory and the States whether by internal carriage or ocean navigation shall be absolutely free.

Held by *Dixon* C.J., *Webb*, *Kitto* and *Taylor* JJ., *McTiernan* and *Williams* JJ. dissenting, that s. 10 validly applied in the State of South Australia so

as to prevent the *Road and Railway Transport Act* 1930-1939 (S.A.), s. 14, from applying to a carrier in the course of a journey from Adelaide to Alice Springs.

Per Dixon C.J., *Webb*, *Kitto* and *Taylor* JJ.: Section 10 was fairly incidental to the purpose of governing the Northern Territory and was an affirmative law and not merely a denial of State power.

Per McTiernan J.: Section 10 on its true construction was not addressed to the States and, if it had been, it would have been invalid as an attempt to impose a restraint on the constitutional powers of the States.

Per Williams J.: A law made under s. 122 is a non-federal local law which could not be made operative within a State.

CAUSE Removed into the High Court under s. 40 of the *Judiciary Act* 1903-1955.

On 12th December 1956 Kenneth Harrold Lamshed, senior constable, laid a complaint against Percy Lake alleging that he had on 31st July 1956 at Waterloo Corner in South Australia, committed a breach of s. 14 of the *Road and Railway Transport Act* 1930-1939 (S.A.).

On the complaint coming on to be heard on 16th April 1957 before D. R. Downey, Esq., a special magistrate sitting at the Gepps Cross Court of Summary Jurisdiction, by agreement, a statement of agreed facts as follows was received in evidence :—

1. The defendant Percy Lake resides at Alice Springs in the Northern Territory of Australia and is a carrier by occupation.

2. The defendant is the owner of a motor vehicle registered in the Northern Territory of Australia no. N.T. L2864. The said motor vehicle is an International semi-trailer used by the defendant in connexion with and for the purposes of his business as a carrier.

3. The defendant is the holder of a current licence no. G. 117 issued by the Registrar of Motor Vehicles at Darwin in the Northern Territory of Australia pursuant to the *Motor Vehicles Ordinance* 1949 (N.T.) by virtue of which licence the defendant is licensed to ply for hire within the Northern Territory for the carriage of goods.

4. (a) On 31st July 1956, the defendant was driving the said motor vehicle in the State of South Australia in the course of a journey from Adelaide in the said State to Alice Springs in the Northern Territory on the road between Adelaide and Kulpara via Gepps Cross, Two Wells, Dublin and Port Wakefield. At a point on the said road known as Waterloo Corner which is approximately thirteen miles from the General Post Office at Adelaide the defendant

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was stopped and questioned by an inspector of the Transport Control Board (which said board is duly constituted under the *Road and Railway Transport Act* 1930-1939). (b) The said road is a controlled route duly declared as such under the provisions of s. 13 of the *Road and Railway Transport Act* 1930-1939. (c) The " appointed day " for the purposes of s. 14 of the said Act was 1st August 1932. (d) The said motor vehicle was loaded with timber, galvanised iron, wine, spirits, batteries and other merchandise which was being carried by the defendant for hire or reward in the ordinary course of his business as a carrier from Adelaide to various consignees in Alice Springs and elsewhere in the Northern Territory of Australia. No portion of the merchandise being so carried by the defendant was consigned or intended to be delivered to any place in the State of South Australia.

6. The defendant was not on 31st July 1956 or at any material time licensed under the *Road and Railway Transport Act* 1930-1939 to drive on a controlled route a vehicle on which goods were being carried for hire.

The Attorney-General for the State of South Australia having obtained, under s. 40 of the *Judiciary Act* 1903-1955, an order for the removal of the cause into the High Court the parties concurred in stating a special case, which after setting out the statement of agreed facts hereinbefore appearing, proceeded as follows:—

3. At the said hearing counsel for the defendant intimated to the said special magistrate that it would be contended on the defendant's behalf that the said *Road and Railway Transport Act* had no application to the defendant while engaged in trade and commerce between the State of South Australia and the Northern Territory by virtue of s. 10 of the *Northern Territory (Administration) Act* 1910-1955, and s. 109 of the Constitution of the Commonwealth of Australia.

4. At the said hearing counsel for the complainant intimated that it would be contended on the complainant's behalf that s. 10 of the said *Northern Territory (Administration) Act* was invalid and inoperative if on a proper interpretation it purported to confer upon the defendant an immunity from the provisions of the said *Road and Railway Transport Act* in the circumstances of the present case.

5. The question of law for the determination of this Court is whether upon the facts set forth in this special case the above-named defendant is guilty of the offence charged in the said complainant.

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

R. R. St. C. Chamberlain Q.C. Section 14 of the *Road and Railway Transport Act* 1930-1939 (S.A.) stands and operates in the absence of a valid Commonwealth law overriding it. There is no Commonwealth law which answers that description. Section 10 of the *Northern Territory (Administration) Act* 1910-1955 can only operate within the legislative authority of the Commonwealth Parliament. The only power under which it is made is that under s. 122, to make laws for the government of the Territory. This does not include a power to override otherwise valid State laws, either directly or by reason of the incidental power in s. 51 (xxxix.). In other words, the power is to make laws for the government of the territories and not for the government of the States. Section 10 may operate validly as a law for the government of the Territory to restrict the Legislative Council of the Territory from making any ordinance for the peace, order and good government of the Territory under s. 4U, which interferes with freedom of trade, commerce and intercourse with the States. That should be interpreted as having no other meaning or application by virtue of s. 15A of the *Acts Interpretation Act*. The only basis on which it could be argued that the State law is inapplicable by reason of s. 10 is that it is inconsistent with the Commonwealth law and is therefore rendered inoperative by s. 109 of the Constitution. Section 10 is not a law of the Commonwealth within the meaning of s. 109 of the Constitution. Covering cl. 5 and ss. 41, 61 and 80 of the Constitution distinguish between laws of the Commonwealth and laws made by the Parliament of the Commonwealth. Section 10 is a law made by the Parliament but it is not a law of the Commonwealth within the meaning of s. 109. The assumption behind the notion of inconsistency in s. 109 is the existence of two authorities which are constitutionally entitled to make laws on the same subject matter. [He referred to *R.* v. *Bernasconi* (1); *Buchanan* v. *The Commonwealth* (2); *Waters* v. *The Commonwealth* (3).] The most that s. 122 does is to give the Parliament of the Commonwealth the powers of a sovereign State, which do not include the power to invade the legislative domain of another sovereign State. The Commonwealth Parliament under s. 122 can no more interfere with the laws of South Australia than can the Parliament of Victoria

(1) (1915) 19 C.L.R. 629, at pp. 634-636.
(2) (1913) 16 C.L.R. 315, at pp. 329, 330, 335.
(3) (1951) 82 C.L.R. 188, at p. 191.

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or New South Wales. [*McTiernan* J. referred to *Attorney-General of the Commonwealth* v. *The Queen* (1).] The obligations of the States as to freedom of trade are regulated by s. 92 of the Constitution. If s. 10 is to be interpreted as invalidating a State law, it is an attempt to amend s. 92, and would produce exactly the same result if it were done by amendment to s. 92. [He referred to *Australian National Airways Pty. Ltd.* v. *The Commonwealth* (2).]

W. A. N. Wells. Section 51 (xxxix.) of the Constitution only covers incidents in the exercise of an existing power conferred by statute or common law. [He referred to *Attorney-General for the Commonwealth* v. *Colonial Sugar Refining Co. Ltd.* (3).] A distinction is to be drawn between a matter incidental to the execution of a power and a matter incidental to a subject to which the power is addressed. [He referred to *Australian Communist Party* v. *The Commonwealth* (4); *Burton* v. *Honan* (5); *Ex parte Walsh and Johnson*; *In re Yates* (6); *Le Mesurier* v. *Connor* (7); *R.* v. *Kidman* (8).] Before deciding whether a provision may be justified under s. 51 (xxxix.) it is necessary to characterise it. [He referred to *Attorney-General (Vict.)* v. *The Commonwealth* (9).] Section 10 of the *Northern Territory (Administration) Act* has an extra-territorial operation and is enforceable through courts, which include courts other than those of the Northern Territory. Even if, in its other aspects, the section is justifiable under s. 122 of the Constitution, in order to be valid in this aspect, s. 51 (xxxix.) would have to be used to enlarge the obligation in a way which is quite inappropriate. Nor is s. 10 justifiable as incidental to the execution of any other parts of the same Act.

S. J. Jacobs, for the defendant. Section 10 of the *Northern Territory (Administration) Act* is a law of the Commonwealth for the government of the territory in respect of a territory surrendered by a State and forming part of the Commonwealth. It derives its authority from ss. 51 (i.), 111 and 122 of the Constitution. It may be necessary to draw a distinction between a law of the Commonwealth with respect to a territory forming part of the Commonwealth and a law of the Commonwealth which is municipal law

(1) (1957) A.C. 288, 320.
(2) (1945) 71 C.L.R. 29, at pp. 61 et seq., 102, 103.
(3) (1914) A.C. 237, at pp. 254, 255; 17 C.L.R. 644, at p. 655.
(4) (1951) 83 C.L.R. 1, at pp. 192 et seq.
(5) (1952) 86 C.L.R. 169, at pp. 177, 178.
(6) (1925) 37 C.L.R. 36, at p. 121.
(7) (1929) 42 C.L.R. 481, at pp. 496, 497.
(8) (1915) 20 C.L.R. 425.
(9) (1945) 71 C.L.R. 237, at pp. 269, 270.

of the territory. [He referred to *Mitchell* v. *Barker* (1); *Waters* v. *The Commonwealth* (2).] The Constitution envisages parts of the Commonwealth which are not States: see covering cl. 5 and s. 127. The purpose of s. 10 was to preserve to the citizens of the Northern Territory the position they enjoyed as part of a State prior to the surrender. To that extent it may be suggested that the provision made by s. 10 was incidental to the act of surrender. The power contained in s. 122 of the Constitution authorises not merely municipal or local laws of a territory but laws which are laws of the Commonwealth integrating the territory with the Commonwealth. The power to legislate for the territory supports at least some laws which would have effect not merely in the territory but also outside it. [He referred to *Croft* v. *Dunphy* (3).] On the power to integrate a territory into the Commonwealth see, by analogy, *Loughborough* v. *Blake* (4). In *Ffrost* v. *Stevenson* (5) the Supreme Court of New South Wales held that the power of the Commonwealth to legislate for territories was a municipal law-making power only. That view of the matter was not upheld by this Court. Any law which has a real nexus or connexion with the territory is a law for the government of the territory. Section 10 of the *Northern Territory* (*Administration*) *Act*, being a law of the Commonwealth, prevails over State law by virtue of s. 109 of the Constitution. There is no justification for limiting the application of s. 109.

D. I. Menzies Q.C. (with him *K. A. Aickin*), for the Commonwealth of Australia, as *amici curiae*. A law made under s. 122 of the Constitution is a law of the Commonwealth. Any exercise of legislative power by the Parliament pursuant to the Constitution constitutes a law of the Commonwealth. *R.* v. *Bernasconi* (6) decides no more than that Chap. III and particularly s. 80 of the Constitution do not apply to courts set up under s. 122 and although s. 80 uses the words "against any law of the Commonwealth" that is a case where, because of its setting in Chap. III it may be regarded as a law of the Commonwealth other than a law made under s. 122. A territory is part of the Commonwealth of Australia which is the political entity established by the Constitution. [He referred to covering cl. 5 and to s. 51 (xxiv.), (xxv.) of the Constitution.] There are two forms of admission into the Commonwealth, namely under s. 121 and s. 122 of the Constitution. The Court should not

(1) (1918) 24 C.L.R. 365, at pp. 367, 368.
(2) (1951) 82 C.L.R. 188, at p. 192.
(3) (1933) A.C. 156, at p. 164.
(4) (1820) 5 Wheat. 317, at p. 318 [5 Law. Ed. 98].
(5) (1937) 58 C.L.R. 528.
(6) (1915) 19 C.L.R. 629, at p. 635.

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readily come to the conclusion that the *dicta* which would treat the territories as entirely outside the operation of s. 51 of the Constitution justify a conclusion that s. 122 is disjointed from the rest of the Constitution. [He referred to *Buchanan* v. *The Commonwealth* (1); *R.* v. *Bernasconi* (2).] A law made under s. 122 can operate outside the confines of the territory for the government of which it is made. The territory is part of the Commonwealth and a valid Commonwealth law would operate anywhere where the jurisdiction of the Commonwealth runs. It is necessary that the Commonwealth should not merely have power to make local laws which would operate within the confines of the territory but it must regulate the position of the territory *vis-à-vis* neighbouring States. An essential part of the government of the territory is the preservation of means of communication and for that power to be effective the Commonwealth must have power to bind those who are outside the State. It has been decided that the Commonwealth Parliament can take advantage of other constitutional instrumentalities for the purposes of the government of a territory. [He referred to *Porter* v. *The King*; *Ex parte Yee* (3); *Cohens* v. *Virginia* (4); *Ffrost* v. *Stevenson* (5); *Australian National Airways Pty. Ltd.* v. *The Commonwealth* (6).] The words of s. 122 are apt to authorise the utmost discretion of enactment for the attainment of the object referred to in the section, namely the government of the territory. If the law is a law for the government of the territory it operates throughout Australia and it is no objection that it has the same operation with regard to the States as to the territory.

R. R. St. C. Chamberlain Q.C., in reply.

Cur. adv. vult.

1958, April 17.

The following written judgments were delivered :—

DIXON C.J. This case comes before the Court in an unusual way. The complainant Lamshed, a senior constable in the police force of South Australia, stationed at Gepps Cross, laid a complaint against the defendant Lake of Alice Springs in the Northern Territory, by occupation a carrier. The complaint was for an offence against s. 14 of the *Road and Railway Transport Act* 1930-1939 (S.A.). The charge was that on 31st July 1956, not being the holder of a licence under that Act or employed by the holder of such a licence,

(1) (1913) 16 C.L.R. 315, at pp. 319, 320, 327, 328, 335.
(2) (1915) 19 C.L.R. 629, at p. 637.
(3) (1926) 37 C.L.R. 432.
(4) (1821) 6 Wheat. 264, at p. 423 [5 Law. Ed. 257, at p. 295].
(5) (1937) 58 C.L.R. 528, at pp. 562, 563, 614, 615.
(6) (1945) 71 C.L.R. 29, at pp. 83-85.

the defendant did in relation to a controlled route drive a vehicle on which goods were carried for hire.

The hearing of the complaint was begun before a special magistrate in and for South Australia at Gepps Cross Court. For the defendant a defence was raised that he was not subject to the prohibition expressed in s. 14 of the State Act because he was in the course of a journey from Adelaide to Alice Springs carrying goods between those two places and not otherwise and by s. 10 of the *Northern Territory* (*Administration*) *Act* 1910-1955 it is provided that trade commerce and intercourse between the Territory and the States, whether by means of internal carriage or ocean navigation shall be absolutely free.

The Attorney-General of South Australia thereupon applied to this Court under s. 40 of the *Judiciary Act* 1903-1955 on the footing that this defence brought with it a question under the Constitution and he obtained an order for removal of the cause into this Court an order to which, it is needless to say, the Attorney-General of a State is entitled as of right when the interpretation of the Constitution is involved.

The cause having been removed here the parties availed themselves of O. 35, r. 1, and stated the facts in the form of a special case. The question submitted by the special case is whether upon the facts the defendant is guilty of the offence charged.

The facts are simple. The defendant is the owner of a semi-trailer registered in the Northern Territory and is licensed to ply for hire in the Northern Territory for the carriage of goods. He employs the semi-trailer in carrying goods between Adelaide and Alice Springs. On the occasion of the alleged offence he was carrying a load of about nine tons consisting of timber and iron for building and various supplies including wine, spirits and groceries. He was carrying them for hire and all the goods were consigned to Alice Springs or thereabouts. By the *Road and Railway Transport Act* 1930-1939 (S.A.) provision is made for declaring that a road or roads shall be a controlled route. A day may be fixed after which it shall not be lawful for any unlicensed person to operate any vehicle on the route for the carriage of passengers or goods for hire. It is then an offence to drive any vehicle or cause any vehicle to be driven on a controlled route for the purpose of carrying passengers or goods for hire unless the driver is the holder of a licence or employed by the holder of a licence and drives in conformity with the conditions of the licence; see ss. 13 and 14. The defendant held no such licence and of course was not employed by the holder of one. All the roads, or at all events all the practicable roads,

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by which the defendant might have driven his load to Alice Springs had been declared controlled routes. Accordingly it was impossible for him to perform his intended journey consistently with the provisions of the State enactment. In fact he was stopped by the South Australian police and questioned at a place known as Waterloo Corner after he had driven only some thirteen miles of his long journey.

If the Northern Territory were a State it is clear enough that s. 92 of the Constitution would have protected the defendant from the application to the journey of s. 14 of the State Act. The question is whether s. 10 of the *Northern Territory (Administration) Act* has that effect. For the complainant it is maintained that it cannot do so. In the first place, it is said, that whatever may be the effect of s. 10 inside the Northern Territory it cannot operate outside that Territory, that is to say in the State of South Australia. In the next place, it is maintained that s. 10 of the *Northern Territory (Administration) Act* is not a law of the Commonwealth within the meaning of s. 109 of the Constitution and accordingly it cannot under that section prevail over State law. Even if State law is inconsistent with s. 10 there is nothing to render State law, to the extent of the inconsistency, invalid.

Section 10 was not enacted in its present form by the *Northern Territory (Administration) Act* 1910. In its original form s. 10 related only to postal charges. But by s. 4 of Act No. 16 of 1926 that provision was repealed and eventually by s. 6 of Act No. 5 of 1931, s. 10 was inserted in its present form. At the establishment of the Commonwealth the Northern Territory formed part of South Australia. In the definition of " The States " contained in s. 6 of the covering clauses of the *Commonwealth of Australia Constitution Act*, it is particularly mentioned, and after the reference to South Australia as a colony there occur the words " including the northern territory of South Australia ". It formed part of a colony whose people agreed with the other colonies " to unite in one indissoluble Commonwealth ". It formed part of the Commonwealth mentioned in the preamble and the subject of the Queen's proclamation by which pursuant to ss. 3 and 4 of the covering clauses the Commonwealth was established. In fact the Northern Territory had been annexed to the Province of South Australia by Letters Patent in 1863. On 7th December 1907 an agreement was entered into between the State of South Australia and the Commonwealth for the surrender to the latter by the former of the Northern Territory on certain terms which are not material.

The agreement was ratified by the Parliaments of State and Commonwealth. The Parliament of the Commonwealth ratified the agreement by the *Northern Territory* (*Acceptance*) *Act* 1910, s. 6 of which declared that it was accepted by the Commonwealth as a Territory under the authority of the Commonwealth by the name of the Northern Territory of Australia. This declaration follows the language of s. 122 of the Constitution. Section 122 is as follows: "The Parliament may make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth, or of any territory placed by the Queen under the authority of and accepted by the Commonwealth, or otherwise acquired by the Commonwealth, and may allow the representation of such territory in either House of the Parliament to the extent and on the terms which it thinks fit." The *Northern Territory* (*Administration*) *Act* 1910-1956 contains many provisions relating to the law and government of the Territory and in the main is an exercise of the legislative power conferred upon the Parliament by s. 122.

The chief ground upon which it is said that s. 10 declaring trade commerce and intercourse between the Territory and the State shall be free can have no effect upon the laws of the State of South Australia is that s. 122 empowers the Parliament to make laws for the government of the Territory and no more. Accordingly it is said that laws made under the power cannot have a direct operation in the rest of Australia. It is just as if the Commonwealth Parliament were appointed a local legislature in and for the Territory with a power territorially restricted to the Territory.

It is an interpretation of s. 122 which I wholly reject. To my mind s. 122 is a power given to the national Parliament of Australia as such to make laws "for", that is to say "with respect to", the government of the Territory. The words "the government of any territory" of course describe the subject matter of the power. But once the law is shown to be relevant to that subject matter it operates as a binding law of the Commonwealth wherever territorially the authority of the Commonwealth runs.

In considering the operation of s. 122 an obvious starting point is that it is "the Parliament" that is to make the law pursuant to the power s. 122 confers. That necessarily refers to s. 1 of the Constitution and carries with it the provisions of Pts. I, II, III and IV of Chap. I. Leaving aside, for the time being, Pt. V relating to the legislative powers of the Commonwealth, the next thing to point out in s. 122 is the use of the expressions "accepted by the Commonwealth" and "placed under the authority of the Commonwealth". The Commonwealth is the polity established by the

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Constitution and the " authority " is the full legal authority which under the Constitution it possesses. No one can doubt that the authority of the Executive Government is contemplated and it is of course the Executive Government as described by Chap. II. The legislative power given by s. 122 to the federal Parliament is necessarily not a power to make laws with respect to a subject matter defined with reference to a description of conduct, activity or head of law (like bills of exchange) considered suitable for control by a central as distinguished from the local State legislatures. For that reason most of Pt. V of Chap. I has no relation to it, and since Chap. III has been considered to be concerned with judicature in relation to that division of powers (*R.* v. *Bernasconi* (1)) it may be treated as inapplicable so that laws made mediately or immediately under s. 122 are primarily not within the operation of the Chapter. Thus in reference to *R.* v. *Bernasconi* (1) and *Porter* v. *The King; Ex parte Yee* (2) Viscount *Simonds*, speaking for the Privy Council, said : " It appears to their Lordships that these decisions (the latter of which was not reached without difficulty and dissent) can be satisfactorily reconciled with the opinion they have formed in the present case by regarding Chap. III as exhaustively describing the federal judicature and its functions in reference only to the federal system of which the Territories do not form part. There appears to be no reason why the Parliament, having plenary power under s. 122, should not invest the High Court or any other court with appellate jurisdiction from the courts of the Territories. The legislative power in respect of the Territories is a disparate non-federal matter :" *Attorney-General of the Commonwealth* v. *The Queen* (3). But the legislative power with reference to the Territory, disparate and non-federal as in the subject matter, nevertheless is vested in the Commonwealth Parliament as the National Parliament of Australia ; and the laws it validly makes under the power have the force of law throughout Australia. They are laws made by the Parliament of the Commonwealth and s. 5 of the covering clauses makes them binding on the courts, judges and people of every State notwithstanding anything in the laws of any State.

Most of the provisions in Chap. V, on their own terms, cannot have any relevance to laws made under s. 122. But it would seem clear enough that when s. 118 requires full faith and credit to be given throughout the Commonwealth to the laws the public acts and records and the judicial proceedings of every State, the Northern Territory falls within the words " throughout the Commonwealth ".

(1) (1915) 19 C.L.R. 629.
(2) (1926) 37 C.L.R. 432.
(3) (1957) A.C. 288, at p. 320 ; 95 C.L.R. 529, at p. 545.

Nor do I see why s. 116 should not apply to laws made under s. 122. Again there seems no very strong reason why s. 120 should not include offences created under s. 122. If one turns back to Pt. V of Chap. I it is easy to find provisions which would appear on their face to link up with a territory. To begin with, s. 52 (i.) relating to the seat of government and places acquired by the Commonwealth for public purposes seems to refer to ss. 125, 111 and 51 (xxxi.) all at once. It is hard to believe that s. 122 may not be used too.

Within s. 51 it rather taxes legal credulity to believe that the naval and military defence of the Commonwealth and of the several States does not include the Northern Territory, that the postal power does not, that fisheries in Australian waters beyond territorial limits do not extend to waters off the Northern Territory, that a State bank trading in that Territory is not within the legislative power over State banking extending beyond the limits of the State concerned, and so with State insurance, that the legislative power with respect to naturalisation of aliens did not contemplate the same laws for Australia, State and Territory alike, that legislation with respect to the relations of the Commonwealth with the islands of the Pacific and legislation under s. 122 could have no connexion with one another and that an industrial dispute extending from a State into the Northern Territory does not extend beyond the limits of one State within the meaning of s. 51 (xxxv.).

In particular I have found it impossible to understand why s. 51 (xxxix.) should not apply to matters incidental to the execution of the power vested in the Parliament under s. 122. One would suppose too that s. 49 applies as much to the Senate or the House of Representatives when a Bill for the exercise of the power conferred by s. 122 is before the House as if a Bill for the exercise of a power conferred by s. 51 were under consideration.

Again, s. 92 itself, while on its very terms it does not protect trade between a State and a territory, may well protect trade commerce and intercourse between two States during its passage through a territory. Suppose for example that goods are seaborne from a port in Queensland to a port in Western Australia, for example from Cairns to Broome. Can the carriage of the goods be interrupted at Darwin by federal authority for reasons that within a State, s. 92 would not permit ?

What has been said is enough to show that when s. 122 gives a legislative power to the Parliament for the government of a territory the Parliament takes the power in its character as the legislature of the Commonwealth, established in accordance with the Constitution as the national legislature of Australia, so that the territory

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may be governed not as a *quasi* foreign country remote from and unconnected with Australia except for owing obedience to the sovereignty of the same Parliament but as a territory of Australia about the government of which the Parliament may make every proper provision as part of its legislative power operating throughout its jurisdiction.

The contrary view seems to lead to many absurdities and incongruities. Take for example the legislative power over trade and commerce with other countries and among the States. Under that power it could hardly be doubted that the Commonwealth Parliament could provide in effect upon what conditions this or that commodity might be shipped to New Zealand or to Tasmania without other restraint. Any law of South Australia at variance with the enactment would be void; see *O'Sullivan* v. *Noarlunga Meat Ltd.* (1). Is it to be supposed that a law to the same effect with respect to a federal territory is outside the competence of the federal Parliament? Is any State to prohibit exports to a territory in its uncontrolled discretion? The Parliament has power to authorise the service of a writ issued out of the Supreme Court of New South Wales in any other State or in a territory. Has it no power to authorise the service of a writ issued out of the Supreme Court of the Northern Territory in a State? Must it always be left open to the legislature of a State to prohibit the free passage through the State to a territory and if so, is this true of the Federal Capital Territory? In *Australian National Airways Pty. Ltd.* v. *The Commonwealth* (2) much the same question was discussed. The Court was unanimous in its conclusion but *Latham* C.J. expressed views upon the operation of s. 122 which I found myself respectfully unable to share. I stated my own views (3) in a passage to which I refer without repeating it except for the conclusion. After describing an American view of the commerce power in relation to territories I said: "But however that may be, it seems to me that, by placing a territory under the authority of a government with full power to govern it by direct legislation and otherwise, it is necessarily implied that it may control communication, including transport between the two countries, if they are separated by sea, or, if not, across the common boundary by inland means. We should avoid pedantic and narrow constructions in dealing with an instrument of government and I do not see why we should be fearful about making implications. It is absurd to contemplate a central government with authority over a territory and yet without power

(1) (1954) 92 C.L.R. 565: (1956) 95 C.L.R. 177.

(2) (1945) 71 C.L.R. 29.

(3) (1945) 71 C.L.R., at pp. 83-85.

to make laws, wherever its jurisdiction may run, for the establishment, maintenance and control of communications with the territory governed. The form or language of s. 122 may not be particularly felicitous but, when it is read with the entire document, the conclusion that the legislative power is extensive enough to cover such a matter seems inevitable. For my part, I have always found it hard to see why s. 122 should be disjoined from the rest of the Constitution and I do not think that *Buchanan's Case* (1) and *Bernasconi's Case* (2) really meant such a disjunction" (3). To this view I adhere.

The legislature itself has long acted on the supposition that s. 122 empowers legislation with respect to territories that operates as law inside the boundaries of the States. For example, a statute constantly put into application is the *Removal of Prisoners (Territories) Act* 1923-1950. That statute extends beyond the power conferred by s. 120 of the Constitution and authorises the removal from territories into the custody of State authorities not only of convicted prisoners but of lunatics. Many other examples may readily be found of federal statutes depending for their validity on the supposition that under s. 122 laws may be made which operate within the States. To take a simple case: the judge of the Supreme Court of the Australian Capital Territory may, according to ss. 9 and 12 (2) of the *Australian Capital Territory Supreme Court Act* 1933-1956, sit anywhere in the Commonwealth. A clear enough example is the *Air Navigation Act* 1920-1956 (particularly s. 5 (2), and the regulations thereunder, but the similarity of the questions they raise to those dealt with in the *A.N.A. Case* (4) makes it superfluous to pursue the example. A more important illustration perhaps is supplied by the manner in which the *Navigation Act* 1912-1956 deals with the same kind of question in s. 2 and in s. 7, defining "coasting trade".

One may hesitate to say how the more limited interpretation of s. 122 would leave the operation of the *Matrimonial Causes Act* 1945, Pt. II, in cases where the place of domicil is a territory but it seems clear enough that it was assumed that rights acquired by a party so domiciled were enforceable elsewhere in the Commonwealth. But that might be supported on grounds outside the legislative power arising under s. 122.

I am disposed to think that the provisions of the *Service and Execution of Process Act* 1901-1950 relating to the process of the territories must be justified under s. 122. At all events s. 51 (xxiv.)

(1) (1913) 16 C.L.R. 315.
(2) (1915) 19 C.L.R. 629.
(3) (1945) 71 C.L.R., at p. 85.
(4) (1945) 71 C.L.R. 29.

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does not extend to the service in the States of process issuing from the Territories. The same observation may be made about the *State and Territorial Laws and Records Recognition Act* 1901-1950 and s. 51 (xxv.) of the Constitution. Cf. ss. 2, 4, 14, 16, 16A and 18 et seqq. of the first mentioned Act and s. 2 (definitions of "Court" and "Territory") and ss. 3, 4, 5, 6, 7, to 11, 12, 13, 14A, 15A, 16, 17 and 18 of the second mentioned Act.

In my opinion it would be contrary to the true meaning and spirit of the Constitution to interpret s. 122 as giving to the Parliament a legislative authority in the exercise of which the Parliament could not make a law operating outside the territory itself. Provided that the law is otherwise within the power, in my opinion it will operate according to its tenor wherever the jurisdiction of the Parliament extends. It must of course be within power but I see no reason why the expression "for the government of any territory" should not receive a wide meaning or why everything that is fairly incidental to the legislative power should not fall within it.

The question in the case, as it seems to me, is whether s. 10 is within what is fairly incidental to the exercise of the power to legislate for the government of the Northern Territory. In dealing with matters incidental to a main power it is always necessary to consider the circumstances to which the power is applied. The detailed consequences or incidents of the application of the legislative power to one territory may not be true of another.

Here we are dealing with a territory formerly part of a State and bounded by States on the south, the east and the west and on the north by the sea. There are roads from various parts of the Territory into the States and the traffic upon the roads in goods and people into the Territory has always been important to the Territory and has been continually growing. If it matters, this has been particularly true of the routes from South Australia. There is of course also the railway to be remembered. It would be inconceivable that a State should impede or have the power to impede intercourse with the Northern Territory by air. In every way freedom of trade into the Territory may be considered imperative. Now the terms of s. 10 of the *Northern Territory (Administration) Act* were doubtless suggested by s. 92 of the Constitution. Two questions arise upon them. First, are they too wide properly to be incidental to the purpose of governing the Northern Territory? Secondly, is the provision really a law directed to the purpose or is it no more than an attempt to limit the constitutional powers of States?

The first of these questions involves a question of degree. The meaning and effect of s. 92 has gradually been reduced by judicial decision to some definition. Provided there is an adherence to the interpretation that has been adopted by, and under the guidance of, the Privy Council it is reasonable to suppose that the application of the provision will be attended with no more uncertainty than is experienced in the case of other constitutional restrictions which ingenuity may be expected constantly to seek to evade or avoid. The implications involved in the Commonwealth power to govern territories are not altogether obscure. Communications with the Territory must be kept open. So must be trade where the Territory needs supplies or for that matter a market. Surely there can be no less power in that respect over the relations of the Territory to the rest of Australia than s. 51 (1) gives in inter-State or overseas commerce.

I think that s. 10 does not go beyond a reasonable exercise of the power incidental to the government of the Northern Territory. But if it did, it must be remembered that s. 15A of the *Acts Interpretation Act* is as much applicable to legislation under s. 122 as to that under s. 51. No doubt there would be some difficulty in saying how it operated to restrict such a provision as s. 10. The difficulty would arise from the necessity of first deciding how far the constitutional power permitted the Parliament to go. We are not concerned with the operation of the law inside the Northern Territory but outside the borders of the Territory. As I am of opinion that the power is large enough to authorise s. 10, if its words bear the interpretation attached to s. 92, and to authorise it as a law operating throughout Australia, the difficulty is one which *ex hypothesi* does not arise for me.

But there remains the question whether s. 10 is not a law seeking rather to limit State power than to lay down a positive rule. The distinction is a difficult one. There is an example in s. 17 of the *Commonwealth Railways Act* 1917-1956. That section provides that no rates tax or assessment shall be made or charged or levied upon any railway or other property vested in the Commissioner except as sanctioned by the Minister. Probably in aid of this provision, in its varying applications, ss. 51 (xxxiii.) and (xxxiv.), 114 and 122 would be invoked. But prohibitory as are its terms and directed as they are in part at least against an authority belonging to a State, it is difficult to know how else the end could be accomplished and the end seems entirely within power.

This was true of the provision of s. 52B of the *Commonwealth Inscribed Stock Act* 1911-1918 the validity of which was upheld

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in *The Commonwealth* v. *State of Queensland* (1). There is of course the well-known examination of the subject by *Evatt* J. in *West* v. *Commissioner of Taxation* (N.S.W.) (2), an examination which brings out the distinction very clearly. In the present instance it is important that s. 122 is dealing with laws relating to the government of a territory. It is not a power directed to a matter of private law as for example, bills of exchange, marriage and so on. The power itself contemplates the establishment of governmental institutions. What is in view is the establishment of a part of Australia (to speak in terms of the Northern Territory) as a distinct area for purposes of administration and government. The Territory takes its place in the organisation of government in Australia with the six States though the States form part of the " federal system" and the Territory be governed only by one legislature. In these circumstances an affirmative declaration of the freedom of trade with the Territory might operate negatively, but how else could the freedom of trade etc. with the Territory be assured ? It is an affirmative law, not simply a denial of State power. In my opinion it is a valid exercise of the legislative power of the Commonwealth.

Then finally it is said that it cannot be a law of the Commonwealth within s. 109. For that view the decision in *R.* v. *Bernasconi* (3) is relied upon. But it does not follow that because for the purpose of s. 80 a territorial ordinance was not to be counted a law of the Commonwealth, a law made by the Parliament of the Commonwealth in the exercise of the legislative power conferred by s. 122 of the Constitution and by the implications carried with it is not a law of the Commonwealth within s. 109. In my opinion s. 109 is applicable to any valid enactment of the Parliament whether under s. 122 or any other power. But if it were otherwise, s. 5 of the covering clauses of the Constitution would give it paramount effect.

The view which I take may be summarised by saying that after all the purpose of the Constitution was to create a central government for the whole of Australia, supreme within its powers, and where it legislates the question cannot be one of paramountcy. It can only be one of the line where its power to legislate at all is drawn. Where the government of a territory is concerned the line is drawn only where what is incidental to the purpose stops.

For these reasons I would answer the question in the case stated by the parties No.

(1) (1920) 29 C.L.R. 1.
(2) (1937) 56 C.L.R. 657, at pp. 685 et seqq.
(3) (1915) 19 C.L.R. 629.

McTIERNAN J. The facts prove that at the time when, as the complaint alleges, the defendant contravened s. 14, he was engaged in commerce which s. 10 of the *Northern Territory (Administration) Act* describes as " between the Territory and the States ", and says " shall be absolutely free ". It is argued for the defendant that he was not bound to observe s. 14 because it is inconsistent with s. 10 and is therefore invalidated by s. 109 of the Constitution to the extent to which it applies to commerce " between the Territory and the States ". Section 10 cannot be supported by reference to any of the specific subjects of legislative power under which the Parliament may make laws for the peace order and good government of the Commonwealth.

Section 122 is a general power to make laws for the government of any territory to which this section applies. This power enables the Parliament to make laws with respect to trade commerce and intercourse " between the Territory and the States " passing within the Territory. I cannot share in the view that under s. 122 or under that section with s. 51 (xxxix.), it is permissible for the Parliament to make a law giving to such trade commerce and intercourse, while passing through the territories of the States, a guarantee of freedom on a par with s. 92.

I agree that s. 10 is a valid law under s. 122 and that it is a law of the Commonwealth. It is right to describe it as such because it is a law made for the government of a part of the Commonwealth. But it is not a law within the federal order of the Commonwealth ; it is not a law for the regulation of matters within the jurisdiction of the States.

In the view which I take of the construction and application of s. 10 it is not a law which could result in s. 109 having any operation on s. 14 at all. Section 10 is in the form of a constitutional guarantee of the rights of individuals against interference by legislative or executive action. These rights, as appears from the section, are to trade and travel between the Northern Territory and the States. The Act in which s. 10 occurs is a constituent instrument for the government of the Northern Territory. Section 4U says that " subject to this Act the Legislative Council of the Territory may make Ordinances for its government ". The words " subject to this Act " make this power subject to s. 10. Reasoning from the form of s. 10, I conclude that its intention is to restrain governmental action ; and from the occurrence of the section in the above-mentioned Act I feel bound to conclude that the section is addressed to the legislature and executive established under the Act but not to the States whose jurisdiction is independent

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of the Act. In this view of the construction and application of s. 10, it is valid under s. 122 of the Constitution. But s. 10 would be clearly contrary to the Constitution if it were an attempt to impose a restraint upon the constitutional powers of the States which, in truth, include power over trade commerce and intercourse between the Northern Territory and those passing within their respective territories. Such a law would clearly violate the federal nature of the Constitution and being contrary to it would be invalid: *Melbourne Corporation* v. *The Commonwealth* (1). Whether any restriction on the power of a State to pass laws interfering with or hindering trade commerce and intercourse between it and a territory should be implied from the relationship of the territory as part of the Commonwealth is not a point upon which this case depends and I express no opinion on it. Whether s. 10 results in the invalidation of s. 14 by s. 109 is a point of a different kind. The view which I take leads to the conclusion that the defendant is guilty of the offence charged in the complaint, and I would therefore answer the question in the special case " Yes ".

WILLIAMS J. I adhere to the opinion shortly expressed in *Australian National Airways Pty. Ltd.* v. *The Commonwealth* (2) that legislation of the Commonwealth Parliament under s. 122 of the Constitution " for the government of any territory " cannot have an extra-territorial operation so as to bind a State. In support of the statement (3) to the effect that there is a great deal in the reasoning in the cases there cited that supports this opinion I would, in particular, refer to the passages which occur in *Buchanan* v. *The Commonwealth* (4); in *R.* v. *Bernasconi* (5); and in *Porter* v. *The King; Ex parte Yee* (6). In *Attorney-General of the Commonwealth* v. *The Queen* (7) Viscount *Simonds*, delivering the judgment of the Privy Council, said: " The legislative power in respect of the Territories is a disparate and non-federal matter " (8).

The Constitution empowers the Commonwealth Parliament to make, on the one hand, federal laws on a number of specific subject matters for the peace, order and good government of the Commonwealth and, on the other hand, general but non-federal local laws for the government of territories. A law of the former class is a law of the Commonwealth and operates within the States.

(1) (1947) 74 C.L.R. 31.
(2) (1945) 71 C.L.R. 29, at pp. 102, 103.
(3) (1945) 71 C.L.R., at p. 103.
(4) (1913) 16 C.L.R. 315, at pp. 329, 330, 335.
(5) (1915) 19 C.L.R. 629, at pp. 635, 637, 638.
(6) (1926) 37 C.L.R. 432, at pp. 439, 441.
(7) (1957) A.C. 288; 95 C.L.R. 529.
(8) (1957) A.C., at p. 320; 95 C.L.R., at p. 545.

A law of the latter class operates within a territory and cannot be made operative within a State just as a law of the State cannot be made operative within a territory. The fact that laws for the government of a territory are made by the Commonwealth Parliament cannot, in my opinion, enlarge their territorial limits. The Parliament, when legislating under s. 122, is legislating only for the government of a territory. It is not legislating for the government of the Commonwealth. A law made under s. 122 is not a law of the Commonwealth: *Bernasconi's Case* (1). It is a law of a territory. No question of inconsistency between a law of a territory and a law of a State can therefore arise under s. 109 of the Constitution since that section relates to inconsistency between a law of a State and a law of the Commonwealth.

The Territory of Northern Australia is in one respect different to the other territories of the Commonwealth. It became part of the Commonwealth by s. 6 of the *Commonwealth of Australia Constitution Act* which provides that the State of South Australia includes the northern territory of South Australia. The surrender of that territory to the Commonwealth by the State of South Australia would not cause it to cease to be part of the Commonwealth just as a part of a State surrendered to the Commonwealth under s. 111 would still leave that part of the State part of the Commonwealth. (Whether a law made by the Parliament for the government of such a part could be made operative beyond the boundaries of that part would depend upon whether it would be a law within the meaning of s. 52 (iii.) of the Constitution—a question which does not at present arise.)

There is no reason in my opinion why the Northern Territory should not like the States be subject to federal laws which the Commonwealth Parliament is empowered to make for the government of the whole area of the Commonwealth. For instance, to laws made under s. 51 pars. (vi.), (xxii.) or (xxiv.) of the Constitution. The Constitution appears to me to define the extent of the geographical area over which the Parliament may make its laws operative with a considerable degree of precision. The geographical area of the Commonwealth at present comprises the whole of Australia including the Northern Territory and Tasmania. That area may be enlarged in the future by the admission or establishment of further States situated beyond Australia. Where the Commonwealth Parliament has power to make laws for the peace order and good government of the Commonwealth, as it has by the opening words of ss. 51 and 52 of the Constitution, it can make its legislation upon the subject matters there enumerated operative throughout

(1) (1915) 19 C.L.R. 629.

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the whole of Australia and Tasmania, unless the language conferring the power imposes some geographical limit upon the extent of this operation as it does, for instance, in pars. (xxxiv.), (xxxvii.) and (xxxviii.) of s. 51.

The Constitution does not authorise the Commonwealth Parliament to make federal laws with respect to trade and commerce operative throughout the whole of this area. Its power is limited by s. 51 (i.) to trade and commerce with other countries and among the States. The Northern Territory is not another country. Nor is trade and commerce between a State and a territory trade and commerce among the States. There is therefore no federal head of power under which the Parliament is authorised to legislate with respect to trade and commerce throughout the Commonwealth. It has no power to legislate with respect to intra-State trade and commerce or trade and commerce between a State and a territory. I can find nothing in the Constitution to indicate that the latter hiatus may be filled by legislation under s. 122. The section does not authorise the Parliament to pass laws for the government of the States.

In my opinion s. 10 of the *Northern Territory (Administration) Act* 1910-1955 has no operation in South Australia and the question asked in the case stated should be answered " Yes ".

WEBB J. For the reasons given by the Chief Justice I would answer the question in the case stated by the parties, No.

KITTO J. The question to be decided in this case concerns the validity of s. 10 of the *Northern Territory (Administration) Act* 1910-1955 (Cth.), a provision inserted in the Act by an amendment made in 1931. The section provides, in terms adapted from s. 92 of the Constitution and obviously intended to have a similar meaning, that trade, commerce and intercourse between the territory and the States, whether by internal carriage or ocean navigation, shall be absolutely free.

The Parliament of the Commonwealth is empowered by s. 122 of the Constitution to make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth. The Northern Territory is such a territory. If s. 10 of the *Northern Territory (Administration) Act* applied only within the confines of the Territory, it would plainly be valid as a law for the government of the Territory. But it is relied upon by the defendant here as operating outside the Territory and in the State of South Australia. We must decide whether such an operation, clearly enough within the intention of the section, is authorised by s. 122.

If, in the context of s. 122, the expression " laws for the government of any territory " means only laws *for* any territory, s. 10 must be invalid so far, at least, as it would apply elsewhere than in the Northern Territory itself. When the fuller expression " laws for the peace order and good government of " an area is found in such provisions as ss. 51 and 52 of the Commonwealth Constitution and in the Constitution Acts of the several States (e.g. in s. 5 of the *Constitution Act* 1902 (N.S.W.)), it is limited to laws operating in and for the area. We are invited to decide that the expression in s. 122 has a similar meaning. The power which that section confers on the Commonwealth Parliament, it is said, is the same as that which a State Parliament has in respect of its State ; and as a corollary, a law made under the authority of the section cannot operate outside the particular territory for which it is made.

In my opinion it would be a mistake so to decide. It seems to me that it is necessary only to read s. 122 in its context to see that it is different in nature from enactments which confer powers upon the legislative organs of communities to make laws for the government of their own communities. Enactments of that kind are necessarily to be understood as giving power which, though plenary, extends only to regulating the legal situation within the borders of the relevant area. Section 122, however, appearing as it does in the Constitution of a federation, confers on the legislative organ of the federation plenary power in respect of such areas as may be offered to and accepted by the federation so as to become territories to be governed by the federation. Both the character of the Parliament and the nature of a federal territory are overlooked when the section is likened to a provision such as s. 5 of the *Constitution Act* of New South Wales. Section 122 is a grant of power, not for the government of a community by a legislature established for it, but for the exercise of superior authority over a community by the legislature of another community. The repository of the power is the Parliament which exists primarily for the government of the federation. Possessing that character, it is given the additional power of making " laws for the government " of each territory which comes under federal control. Can this mean anything less than that the federation, acting by its legislative organ, may deal with the whole subject of running each such territory as a federal territory. It has sometimes been remarked that the placing of s. 122 in a late and not altogether appropriate position in the Constitution does less than justice to the far-reaching importance of the subject with which it deals. But the fact that the section is found embedded in the agreed terms of federation, with every

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appearance of having been regarded in the process of drafting as a provision upon a matter germane to the working of the federation, seems to me to underline the necessity of adopting an interpretation which will treat the Constitution as one coherent instrument for the government of the federation, and not as two constitutions, one for the federation and the other for its territories. If that necessity is recognised, the section cannot fairly be read as meaning that the national Parliament, when it turns to deal with a territory which has come under the nation's authority, shall shed its major character and take on the lesser role of a local legislature for the territory, concerned only to regulate the local law. Surely it means that a territory which has been accepted by the Australian Federation may be fitted into the Australian scene, so far as laws are concerned, by the legislative activity of the Australian Parliament: that the entire legal situation of the territory, both internally and in relation to all parts of the Commonwealth, may be determined by or by the authority of Parliament. For what may or may not happen in the States with respect to a territory surely has as much to do with the way in which the territory is being governed as a territory of the Commonwealth as what may or may not happen in the territory itself.

Accordingly I am of opinion that s. 10 of the *Northern Territory (Administration) Act* validly operates in South Australia as a law of the Commonwealth. I make no attempt to discuss the matter in detail, because the ground is, to my mind, completely covered in the judgment just delivered by the Chief Justice. In that judgment I entirely agree.

TAYLOR J. I am in entire agreement with the reasons prepared by the Chief Justice and, accordingly, I am of the opinion that the questions raised by the case stated should be answered in the negative.

Question in the special case stated by the parties under O. 35 r. 1 answered No.

The complainant to pay the costs of the special case.

Solicitor for the complainant, *R. R. St. C. Chamberlain*, Crown Solicitor for the State of South Australia by *Thomas F. Mornane*, Crown Solicitor for the State of Victoria.

Solicitors for the defendant, *Stevens, Rymill, Boucaut & Jacobs.*

Solicitor for the Commonwealth of Australia, *H. E. Renfree*, Crown Solicitor for the Commonwealth of Australia.

R. D. B.