

until the Controller states to the Court the results of his investigation of the facts, with or without the aid of experts. The parties prefer that the application should be dismissed rather than have it adjourned for service of the notice of motion on the Australian Metal Co.

I dismiss the application.

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Higgins J.

Application dismissed.

Solicitors for the Controller, *Malleson, Stewart, Starwell & Nankivell*.
Solicitors for the Broken Hill Proprietary Co., *Moule, Hamilton & Kiddle*.

Solicitors for the Broken Hill South Silver Mining Co., *Blake & Riggall*.

Solicitors for the Sydney Municipal Council, *Lynch, McDonald & Elliott*.

B. L.

Appl <i>Ky Turner,</i> <i>Ex parte</i> <i>Marine Board</i> <i>of Hobart</i> <i>(1917) 39</i> <i>CLR 411</i>	Cons. <i>Hamington v</i> <i>Lowe (1906)</i> <i>70 ALR 495</i>	Dist <i>Kuligowski v</i> <i>Metrobus</i> <i>(2004) 208</i> <i>ALR 1</i>
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[HIGH COURT OF AUSTRALIA.]

THE NEWCASTLE AND HUNTER RIVER STEAMSHIP COMPANY LIMITED AND OTHERS	}	PLAINTIFFS ;
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AGAINST

THE ATTORNEY-GENERAL FOR THE COMMONWEALTH AND ANOTHER	}	DEFENDANTS.
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Navigation and Shipping—Extent of power of Commonwealth Parliament—Ships engaged solely in intra-State trade and commerce—Validity of Federal legislation H. C. OF A.
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—*Severability—Valid and invalid provisions included in one expression—Manning and accommodation—Navigation Act 1912-1920 (No. 4 of 1913—* SYDNEY,
No. 1 of 1921), secs. 2 (2), 7, 14, 43, 44, 135, 136, 288, 293, Schedules I. and July 25, 26,
II.—Navigation (Manning and Accommodation) Regulations 1921 (Statutory 27; Aug. 8.
Rules 1921, No. 84)—The Constitution (63 & 64 Vict. c. 12), secs. 51 (1), 98. KNOX C.J.,
Higgins,
Gavan Duffy,
Powers, Rich
and Starke JJ.
The effect of sec. 51 (1) and sec. 98 of the Constitution is to endow the Parliament, not with a substantive power to deal with navigation and shipping

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at large, but only with power to deal with that subject in so far as it is relevant to inter-State and foreign trade and commerce.

Held, therefore, that the provisions of the *Navigation Act* 1912-1920 and the Schedules thereto and of the regulations made thereunder as to the manning of, and accommodation on, ships, to the extent that they purport to prescribe rules of conduct to be observed in respect of ships engaged solely in the domestic trade and commerce of a State are beyond the power of the Commonwealth Parliament, and are to that extent invalid.

Sec. 2 (2) of the *Navigation Act* 1912-1920 provides that "This Act shall be read and construed subject to the Constitution, and so as not to exceed the legislative power of the Commonwealth, to the intent that where any enactment thereof would, but for this sub-section, have been construed as being in excess of that power, it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power."

Held, that the sub-section is a legislative declaration of the intention of Parliament that if valid and invalid provisions are found in the Act, however interwoven together, no provision within the power of Parliament shall fail merely by reason of such conjunction, but the enactment shall operate on so much of its subject matter as Parliament might lawfully have dealt with.

Held, therefore, that neither the whole Act nor secs. 14, 43, 44, 135, 136, 288 or 293 thereof was rendered invalid by reason of the fact that in those sections there were included in one collective expression objects as to some of which the particular enactment was invalid.

Owners of s.s. Kalibia v. Wilson, 11 C.L.R., 689, distinguished.

DEMURRER.

An action was brought in the High Court by the Newcastle and Hunter River Steamship Co. Ltd. and a number of other companies, firms and persons against the Attorney-General of the Commonwealth and the Minister for Trade and Customs. At the hearing of the demurrer hereinafter referred to, the State of Western Australia was added as a plaintiff, and as then amended the statement of claim was as follows:—

1. The plaintiffs are the owners of ships registered in the States where they respectively reside.

2. The said ships of the plaintiffs except two of the ships of the said State take on board passengers and/or cargo in a State to be carried to and landed or delivered at other ports in the same State, and do not travel beyond or engage in trade beyond the limits of one State.

2 (1). The said two ships of the said State take on board passengers and/or cargo at ports in the said State to be carried to and landed or delivered at other ports in the said State and also at ports in Territories under the authority of the Commonwealth and at ports in other countries.

2 (a). In the course of their voyage the said ships go upon the high seas and/or waters which are used by ships engaged in trade and commerce with other countries or among the States.

2 (b). The said ships are British ships, and upon all their voyages their first port of clearance and port of destination are in the Commonwealth.

3. The defendant, the Minister for Trade and Customs, is the Minister charged with the administration of the *Navigation Act* 1912-1920.

4. The King's approval to the said Act has been proclaimed in the Commonwealth.

5. By Proclamation made by the Governor-General on 31st March 1921 and published in the *Government Gazette* on 1st April 1921, it was proclaimed that the sections and schedules of the said Act therein mentioned should come into operation as from the dates therein specified. The said Proclamation is in the words and figures following:—"Proclamation.—By His Excellency the Governor-General of the Commonwealth of Australia.—Whereas by the *Navigation Act* 1912-1920 it is enacted that that Act shall commence on a day to be fixed by Proclamation after the King's approval thereto has been proclaimed in the Commonwealth And whereas it is further enacted by the said Act that it shall not be necessary to proclaim that the whole Act shall commence on the one date, but the several parts, divisions, sections, and schedules may be proclaimed to commence on such dates as are respectively fixed by Proclamation And whereas the King's approval to the said Act has been proclaimed in the Commonwealth: Now therefore I, Henry William, Baron Forster, the Governor-General aforesaid, acting with the advice of the Federal Executive Council, do hereby fix the first day of July, one thousand nine hundred and twenty-one, as the date upon which the following parts, sections, and schedules of the *Navigation Act* 1912-1920, namely, secs. 1, 1A, 2, 3, 6,

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 1921. 135, 136, 137, 138, 187, 204A, 259 to 265A inclusive, 269A, Part VI.
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 NEWCASTLE (namely, secs. 284 to 293 inclusive), secs. 317A, 378, 379, 380, 384,  
 AND 386, 387, 389, 391 to 396 inclusive, 399 to 405 inclusive, 407, 410A,  
 HUNTER 413, 414, 416, 418A, 422, 423, 423A, 424, 425, Schedules I., II.,  
 RIVER 413, 414, 416, 418A, 422, 423, 423A, 424, 425, Schedules I., II.,  
 STEAMSHIP IV. and V., shall commence and the first day of October, one  
 CO. LTD. thousand nine hundred and twenty-one, as the date upon which  
 v. sec. 231 of that Act shall commence. Given under my hand and  
 ATTORNEY- the seal of the Commonwealth, at Sydney, this thirty-first day of  
 GENERAL March, in the year of our Lord one thousand nine hundred and  
 FOR THE twenty-one, and in the eleventh year of His Majesty's reign—By  
 COMMON- His Excellency's Command, W. Massy Greene, Minister of State  
 WEALTH. for Trade and Customs."

6. By Statutory Rules No. 84 of 1921 the Governor-General made certain Regulations called the *Navigation (Manning and Accommodation) Regulations* 1921 to come into operation as from 1st July 1921. A copy of the said Regulations is annexed hereto and filed herewith, and this statement of claim is to be read as if such Regulations were incorporated therein.

7. The plaintiffs submit that all the provisions and schedules of the said Act mentioned in the said Proclamation and all the said Regulations are beyond the powers of the Parliament of the Commonwealth of Australia and of the Governor-General respectively so far as they purport to apply to the ships of the plaintiffs trading as described in par. 2 and par. 2 (1) hereof.

8. Alternatively the plaintiffs submit that the following sections and schedules of the said Act, namely, secs. 14, 43, 44, 135, 136, 288, 293 and Schedules I. and II. and all the said Regulations are beyond the powers of the Parliament of the Commonwealth of Australia and of the Governor-General respectively so far as they purport to apply to ships of the plaintiffs trading as described in par. 2 and par. 2 (1) hereof.

9. In order to comply with the accommodation and equipment provisions of the said Act and Regulations the plaintiffs and each of them will have to carry out extensive structural alterations to their said ships, which said alterations will involve the expenditure of large sums of money, and to comply with the manning provisions



of the said Act and Regulations the plaintiffs and each of them will have to engage large numbers of officers and seamen in excess of the numbers at present employed on their said ships, whereby their working expenses will be greatly increased and their business will be seriously hampered and impeded.

10. The plaintiffs have requested the Minister for Trade and Customs not to enforce the before mentioned provisions and schedules of the said Act and Regulations or any of them against the plaintiffs in respect of their said ships trading as described in par. 2 and par. 2 (1) hereof, but the said Minister has refused to agree to the said request of the plaintiffs and has required the plaintiffs to take all necessary steps to obtain licences for their said ships by 1st July next.

11. The defendants threaten and intend to enforce all the before mentioned provisions of the said Act and Regulations against the plaintiffs in respect of their said ships, and threaten and intend to refuse to allow the plaintiffs' said ships to trade in the manner and to the extent described in par. 2 and par. 2 (1) hereof unless the plaintiffs apply for and obtain a licence under sec. 288 of the said Act and according to the form provided in the Regulations and unless the plaintiffs otherwise comply with the provisions of the said Act and Regulations.

12. The plaintiffs desire and intend to carry on their said trading operations in the said ships as described in par. 2 and par. 2 (1) hereof without obtaining such licence and without complying with the provisions of the said Act or Regulations, but fear that they will be unable to do so by reason of the threats and intentions of the defendants as aforesaid, and the plaintiffs fear that by reason of the premises their businesses will be brought to a standstill and that they and their agents and servants will be exposed to a multiplicity of prosecutions.

The plaintiffs therefore claim as follows :—

- (1) That it may be declared that all the provisions and schedules of the *Navigation Act* 1912-1920 set out in the said Proclamation and all the said Regulations are invalid so far as they purport to apply to the plaintiffs' ships trading as mentioned in par. 2 hereof;
- (2) Alternatively, that it may be declared that the provisions and

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schedules of the said Act mentioned in par. 8 hereof and all the said Regulations are invalid so far as they purport to apply to ships of the plaintiffs trading as mentioned in par. 2 hereof;

(3) That the defendant the Minister for Trade and Customs be restrained by the order or injunction of this Honourable Court from enforcing or attempting to enforce the said provisions of the said Act or any of them or the said Regulations against the plaintiffs in respect of their said ships trading as described in par. 2 hereof;

(4) That the defendants may be ordered to pay the plaintiffs' costs of this suit;

(5) That the plaintiffs may have such further or other relief as the nature of the case may require;

(6) The plaintiff the said State of Western Australia also claims the relief asked in the 1st, 2nd, 3rd, 4th and 5th prayers in respect of its ships trading as described in par. 2 (1) hereof.

By demurrer to the amended statement of claim the defendants said :—

(1) All the sections of the Act and all the Regulations referred to in the statement of claim are valid and the statement of claim therefore discloses no cause of action.

(2) This pleading is a demurrer to the whole of the claim of the plaintiffs.

The demurrer now came on for argument before the Full Court of the High Court.

*Sir Edward Mitchell* K.C. (with him *E. M. Mitchell*), for the plaintiffs other than the State of Western Australia. The Commonwealth Parliament has no power to legislate as to shipping which is purely intra-State. The arguments to the contrary were dealt with in *Owners of s.s. Kalibia v. Wilson* (1). It was there held that neither under sec. 98 nor under sec. 76 (III.) of the Constitution had the Commonwealth Parliament such power.

*Broomfield* K.C. (with him *Milner Stephen*), for the State of Western Australia. The same case is an authority for saying that the whole Act is invalid.

(1) 11 C.L.R., 689.

*Brissenden* K.C. (with him *Street*), for the defendants. So much of the judgments in that case as deals with the validity of the *Seamen's Compensation Act* 1909 was unnecessary to the decision of the case, and it was practically admitted that the Act could not be justified under the trade and commerce power in sec. 51 (1.) of the Constitution. But that power was intended to be used in its widest sense, and sec. 98 was only inserted to prevent any doubt as to its having been used in that sense. If the words "trade and commerce" in sec. 51 (1.) were used in a narrower sense, then sec. 98 was intended to extend the power to navigation and shipping generally, and not only to include in it navigation and shipping in relation to trade and commerce. Thus the testing of chains and anchors and the regulation of the building of ships are within the navigation and shipping power, although they cannot be said to have anything to do with trade and commerce. The history of sec. 98 in the Federal Convention supports this view. The navigation and shipping power was at one time a separate placitum in sec. 52 of the Bill (now sec. 51 of the Constitution), and it was removed from that place by the drafting committee and inserted in sec. 98 as a matter of form only and not with any intention of limiting the power. (See *Official Record of the Debates of the Australasian Federal Convention*, Third Session, Melbourne, 1898, vol. II., pp. 1856, 2449.) The history of the provision may be used as an argument as to its meaning (*Amalgamated Society of Engineers v. Adelaide Steamship Co.* (1); *Attorney-General for the Commonwealth v. Colonial Sugar Refining Co.* (2); *Baxter v. Commissioners of Taxation (N.S.W.)* (3); *Deakin v. Webb* (4); *Municipal Council of Sydney v. The Commonwealth* (5)). The power as to navigation and shipping is unlimited except so far as the power of the Commonwealth is limited territorially and by sec. V. of the *Constitution Act*. The words navigation and shipping include all matters which are ordinarily included in legislation as to navigation and shipping. If the power is limited it was intended to enact the body of law which in the United States was held to be included in the power as to navigation and shipping,

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(1) 28 C.L.R., 129, at p. 146.

(2) 17 C.L.R., 644, at p. 651.

(3) 4 C.L.R., 1087, at p. 1115.

(4) 1 C.L.R., 585, at p. 626.

(5) 1 C.L.R., 208, at p. 213.

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which latter power was implied from the power as to trade and commerce. That included the power to control the highways of inter-State and foreign commerce, and authorized the making of general laws as to those highways, including laws for the licensing of ships in waters used for inter-State and foreign commerce (see *Gibbons v. Ogden* (1); *Lord v. Steamship Co.* (2); *In re Debs* (3); *The Daniel Ball* (4); *Ex parte Garnett* (5); *State Tonnage Tax Cases* (6)).

[KNOX C.J. referred to *Employers' Liability Cases* (7); *Second Employers' Liability Cases* (8).]

If a general regulation of ships is capable of furthering inter-State commerce it is for the Federal Parliament to say whether it is calculated to produce that result or not (*Farey v. Burvett* (9)). If the sections so far as they relate to intra-State ships are invalid the invalid portions are severable under the decisions of this Court, and by reason of sec. 2 (2) of the *Navigation Act* (see *Owners of s.s. Kalibia v. Wilson* (10).)

[GAVAN DUFFY J. referred to *Waterside Workers' Federation of Australia v. J. W. Alexander Ltd.* (11), citing *Warren v. Charleston Corporation* (12).]

*Sir Edward Mitchell* K.C. All or most of the American cases referred to were based on the maritime power and not on the commerce power. (See also *Lehigh Valley Railroad Co. v. Pennsylvania* (13).) The Commonwealth Parliament has only power to regulate ships engaged in inter-State and foreign trade, but it may be that in order to prevent those regulations being nugatory the Parliament may limit the movements of intra-State ships. But provisions as to manning and accommodation cannot be brought within such a principle.

*Broomfield* K.C. and *Milner Stephen*. The test of severability to be applied here is that laid down in *R. v. Commonwealth Court of Conciliation and Arbitration*; *Ex parte Whybrow & Co.* (14), and *Owners*

(1) 9 Wheat., 1.

(2) 102 U.S., 541.

(3) 158 U.S., 564, at p. 589.

(4) 10 Wall., 557.

(5) 141 U.S., 1.

(6) 12 Wall., 204, at p. 214.

(7) 207 U.S., 463.

(8) 223 U.S., 1.

(9) 21 C.L.R., 433.

(10) 11 C.L.R., at p. 698.

(11) 25 C.L.R., 434, at p. 470.

(12) 2 Gray, 84, at p. 99.

(13) 145 U.S., 192.

(14) 11 C.L.R., 1, at p. 54.



of *s.s. Kalibia v. Wilson* (1), namely, "if good and bad provisions are wrapped up in the same . . . expression, the whole must fall." Applying that test, the whole Act is invalid. Sec. 2 (2) of the *Navigation Act* does not alter that test; it adds no new criterion of severability. The section is merely declaratory and expresses the law as to severability which had been laid down by this Court. It has no application until it has first been determined whether the enactment is severable or not.

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*Keating*, for the State of Tasmania intervening. If, apart from sec. 2 (2) a provision is wholly invalid because it is not severable, that section does not make it severable. [Counsel referred to *In re Initiative and Referendum Act* (2).]

*Brissenden K.C.*, in reply. The precedent for sec. 2 (2) of the *Navigation Act* is found in the *Colonial Laws Validity Act* 1865 (28 & 29 Vict. c. 63), sec. 2. The object of each is the same, namely, to preserve what is good and to cut off what is bad. There is no authority for the contention that the Commonwealth has no power to enact such a provision. It is valid under sec. 51 (xxxix.) of the Constitution. It is incident to the legislative power to be able to limit legislation in any manner the Parliament thinks fit, and the Parliament has, in sec. 2 (2), clearly expressed its intention to limit the Act by the extent of the commerce power.

*Cur. adv. vult.*

THE COURT delivered the following written judgment:—

This action was brought by various shipping companies against the Attorney-General and the Minister of Trade and Customs of the Commonwealth seeking declarations that various sections of the *Navigation Act* 1912-1920 and schedules, and regulations made under it, were invalid in so far as they purport to apply to the plaintiffs' ships mentioned in par. 2 of the statement of claim. As the statement of claim was originally framed it was alleged that these ships of the plaintiffs took on board passengers and/or cargo in a State

Aug. 8.

(1) 11 C.L.R., at p. 713.

(2) (1919) A.C., 935.

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to be carried to, landed or delivered at other ports in the same State and do not travel beyond or *engage* in trade beyond the limits of one State. At the hearing before us, the State of Western Australia applied to intervene for the purpose of arguing that the whole Act was invalid if the parts challenged by the plaintiffs were beyond the legislative powers of the Commonwealth. It was suggested from the Bench that the interest of the plaintiffs originally before the Court, and the allegations made in plaintiffs' statement of claim, did not warrant so extensive a field of argument. The parties then arranged, with the sanction of the Court, that the State of Western Australia should be joined as a plaintiff and that the position of some of its ships should be set forth so as to raise the ground which that State wished to argue. The statement of claim was then amended, and an allegation made that two ships of the State take on board passengers and/or cargo at ports in the said State to be carried to landed or delivered at other ports in that State and also at ports in Territories under the authority of the Commonwealth, and at ports in other countries, but the only relief claimed in respect of this allegation was the same relief as the other plaintiffs claimed in respect of their ships. In other words, the State of Western Australia said that if the Act was invalid as to ships in the position of the plaintiffs' ships then the whole of the attacked provisions of the Act were infected and totally failed. The argument on the demurrer was conducted on this basis only.

In dealing with the case, as we are, on demurrer, we must take the facts alleged in the statement of claim and the precise relief that is sought. There is no allegation that the intra-State ships are engaged or used for the purpose of inter-State or foreign trade. An intra-State vessel may be used for the purpose of inter-State or foreign trade, although it may carry goods only between ports in the same State. For instance, goods sold in Sydney for delivery in Queensland may be sent by an intra-State vessel to Byron Bay and then sent to Queensland by railroad. We cannot deal with such a case on the pleadings as they now stand.

The provisions, the validity of which are challenged, are secs. 14, 43, 44, 135, 136, 288 and 293 and Schedules I. and II. of the Act

and the whole of the *Navigation (Manning and Accommodation) Regulations* 1921 (Statutory Rules 1921, No. 84).

The provisions of secs. 14 (1), 43, 44 and 136 in terms applied to every ship registered in Australia or engaged in the coasting trade, of sec. 135 to every steamship so registered or engaged, of secs. 288 and 293 to every ship engaged in the coasting trade, of Schedule I. to every British ship registered in Australia or engaged in the coasting trade and of Schedule II. to every British steamship registered in Australia or engaged in the coasting trade (other than a limited coast trade or river and bay ship of less than 15 tons gross registered tonnage). Speaking generally, these enactments and the regulations prescribe certain scales of manning and standards of accommodation for the ships to which they relate, prohibit any ship from engaging in the coasting trade without a licence, and impose penalties on the master or owner of any such ship for breaches of the Act or regulations.

Sec. 7 of the Act provides that "A ship shall be deemed to be engaged in the coasting trade, within the meaning of this Act, if she takes on board passengers or cargo at any port in a State, or a Territory under the authority of the Commonwealth, to be carried to, and landed or delivered at, any other port in the same State or Territory or in any other State or other such Territory." This definition is subject to provisos which have no bearing on the question to be decided.

The ground on which the validity of the Act and Regulations is challenged is that their provisions, so far as they relate to ships not engaged in trade or commerce with other countries or among the States, are beyond the powers of the Commonwealth Parliament; or, in other words, that the Commonwealth Parliament has no power to prescribe conditions of manning and accommodation with respect to ships engaged solely in intra-State trade, or to require the owners of such ships to obtain a licence to engage in such trade. It was further argued by the States of Western Australia and Tasmania that the provisions were so interwoven together that if they were invalid as to ships engaged solely in intra-State trade they were wholly invalid.

It was not denied that the provisions attacked were intended to

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and, if valid, did affect ships engaged in trade wholly within the boundaries of a single State and not in any way engaged in trade or commerce with other countries or among the States. Dr. *Brissenden*, for the Commonwealth, contended that authority to make these enactments was to be found in sec. 51 (1.) of the Constitution, "The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to trade and commerce with other countries, and among the States," read with sec. 98 of the Constitution, which provides that "The power of the Parliament to make laws with respect to trade and commerce extends to navigation and shipping, and to railways the property of any State." No other provision of the Constitution was relied on for this purpose, and the plaintiffs did not deny that Parliament intended by some of the provisions of the Act to exercise this power. The defendants did not contend that the relief sought could not be given if the plaintiffs' view of the Constitution and of the Act is right, and we do not propose in this case to debate a point that the parties did not argue; and the matter must be considered open if ever again it arises. The Constitution does not endow Parliament with a substantive power to deal with navigation and shipping at large. It only empowers it to deal with that subject in so far as it is relevant to inter-State and foreign trade and commerce. As was said by *Gavan Duffy* and *Rich JJ.* in *Australian Steamships Ltd. v. Malcolm* (1), the effect of sec. 98 is to include in the power to make laws with respect to trade and commerce a power to make laws with respect to navigation and shipping ancillary or relevant to such trade and commerce. The facts stated on the record do not suggest that provisions relating to the manning of, and the accommodation on, ships engaged solely in intra-State trade are relevant or ancillary to trade and commerce with other countries or among the States. It is not enough merely to say that the intra-State ships go upon the high seas or in waters used by inter-State or foreign ships. They are not engaged in any act of inter-State or foreign trade.

Consequently, we are of opinion that the provisions of the Act and Regulations specified above, to the extent to which they

(1) 19 C.L.R., 298, at p. 335.



purport to prescribe rules of conduct to be observed in respect of ships engaged solely in the domestic trade of a State, are beyond the power of the Commonwealth Parliament.

It was argued for the plaintiffs that if these provisions were so far invalid they were invalid for all purposes, and in support of this contention reliance was placed on the decision of this Court in *Owners of s.s. Kalibia v. Wilson* (1); but the *Navigation Act* contains a provision, sec. 2 (2), which had no counterpart in the Act which was the subject of that decision. This section is as follows: "This Act shall be read and construed subject to the Constitution, and so as not to exceed the legislative power of the Commonwealth, to the intent that where any enactment thereof would, but for this sub-section, have been construed as being in excess of that power, it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power." We think this provision is a legislative declaration of the intention of Parliament that, if valid and invalid provisions are found in the Act of Parliament, however interwoven together, no provision within the power of Parliament shall fail by reason of such conjunction, but the enactment shall operate on so much of its subject matter as Parliament might lawfully have dealt with. The intention and effect of the section may be illustrated by reference to sec. 135 of the Act. In terms the provisions of that section apply to the owner of every steamship registered in Australia or engaged in the coasting trade. This class of ships includes: (1) every ship registered in Australia engaged in inter-State or foreign trade; (2) every ship so registered engaged solely in intra-State trade; (3) every ship not so registered engaged in inter-State trade; (4) every ship not so registered engaged solely in intra-State trade. With respect to the ships comprised in classes 1 and 3, the Parliament has power to enact the provisions of sec. 135; with respect to those comprised in classes 2 and 4, it has no such power. The decision in the *Kalibia Case* proceeded on the footing that the inclusion in one collective expression in an Act of Parliament of objects as to some of which the enactment was invalid, operated to invalidate the whole enactment because it did not appear that

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(1) 11 C.L.R., 689.

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Parliament would have imposed the rule as to some only of the class if the whole class could not be affected. The whole enactment was declared invalid in that case because it was impossible to ascertain an intention that some only of the class designated by the collective expression should be affected if the others were not. But in the present case sec. 2 (2), though its verbal expression may be open to criticism, sufficiently discloses the intention of Parliament that if all four classes of ships could not be brought under the provisions of sec. 135 those provisions should operate in respect of all ships to which they might lawfully be applied.

There is, in our opinion, nothing to prevent Parliament from legislating in this way in order to make its intention clear. Consequently, we hold that the demurrer should be overruled.

Although the statement of claim impugns the validity of the Act as a whole, it does so only on the view which we have just declared to be untenable because of sec. 2 (2), and we must not be taken as expressing any opinion on any provisions of the Act other than those which we have specifically dealt with.

*Demurrer overruled. Declaration in accordance with the reasons given by the Court. Defendants to pay costs of the plaintiffs. The plaintiff shipping Companies to have only one set of costs.*

Solicitors for the plaintiffs, *H. de Y. Scroggie*; *F. L. Stow*, Crown Solicitor for Western Australia.

Solicitor for the defendants, *Gordon H. Castle*, Crown Solicitor for the Commonwealth.

Solicitor for the intervener, *A. Banks-Smith*, Crown Solicitor for Tasmania.

B. L.