HIGH COURT OF AUSTRALIA

Pioneer Tourist Coaches Pty. Ltd.

Vs.

The State Of South Australia

(Dixon C.J.(1), McTiernan(1), Williams(2), Webb(1), Fullagar(3), Kitto(4) and Taylor(5) JJ.)

9 June 1955

CATCHWORDS

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

HEARING

Melbourne, 1955, May 10, 11, 12; June 9. 9:6:1955

DEMURRERS.

DECISION

June 9.

The following written judgments were delivered: -

DIXON C.J., McTIERNAN (See addendum (1955) 93 CLR, at p 183) AND WEBB JJ. purpose of the suit, like that of Nilson v. State of South Australia [1955] HCA 31; (1955) 93 CLR 292 is to obtain declarations of right which would relieve the plaintiff from the operation upon vehicles registered in other States and employed by the plaintiff in inter-State transportation, of those provisions of the Road Traffic Act 1934-1954 (S.A.) which require registration in South Australia and payment of a periodical tax in the form of a fee or charge. Apart from the form of the proceeding, the difference between the two cases lies in the fact that here the plaintiff company, which sues on its own behalf only, carries on a business of carrying passengers, not goods. Its

vehicles do not fall within the definition of "commercial motor vehicle" contained in s. 4 (1) of the Act. The facts alleged in the statement of claim are that the plaintiff carries on the business of a carrier of passengers by road; that it owns and operates certain road motor vehicles, twenty-eight in number, carrying passengers for reward on inter-State journeys between South Australia and various places in Victoria and New South Wales and that in the course of operating the vehicles the plaintiff causes them to be driven on roads in South Australia. All the vehicles, so it is alleged, are registered and insured under the laws of Victoria or of New South Wales; such vehicles are used exclusively in the carriage of passengers on inter-State journeys between various places in South Australia and the other two States and are not used for the carriage of passengers on any intra-State journey within South Australia. The pleading states that the annual fee which the plaintiff is required under the legislation to pay for each vehicle amounts to about 129 pounds. The six-monthly fee is about 68 pounds. It is alleged that the weight of each vehicle exceeds two and a half tons. Under the amendment made on 23rd December 1954 to reg. 42 of the Road Traffic Act Regulations 1951 inter-State vehicles over that weight have no exemption. While the defendants demur to the statement of claim, they also plead to it. In their defence they deny that any road motor vehicles owned or operated by the plaintiff carry passengers on journeys between South Australia and any place outside South Australia and that any of the vehicles is operated in South Australia, exclusively on inter-State journeys or otherwise. The defence denies too that the vehicles are registered in New South Wales or Victoria and that they are of a greater weight than two and a half tons. With the issues thus taken by the defence outstanding we probably would not have consented to determine the demurrer had it not been that in effect the same questions arose in Nilson v. State of South Australia (1955) 93 CLR 292 . The two cases were argued together. (at p314)

2. Because the vehicles are not commercial motor vehicles the scale of fees or charges applicable is that set out in sub-s. (5) of s.9 of the Road Traffic Act. Otherwise the registration of the vehicles and the exaction of the fee are governed by the same provisions of the Act and regulations as are considered in Nilson v. State of South Australia [1955] HCA 31; (1955) 93 CLR 292 . No relevant distinction can be taken between the two cases. It is therefore enough to say that the reasons given in that case, incorporating as they do the judgment in Hughes & Vale Pty. Ltd. v. State of New South Wales (No. 2) [1955] HCA 28; (1955) 93 CLR 127 apply and that the demurrer must therefore fail. (at p314)

3. The defence pleads by pars. 15, 16, 17, 18, 19, 20 and 21 a number of facts relating to the description and condition of the roads of South Australia, to the burden upon them and to the financing of the construction and maintenance of such roads. These facts were pleaded no doubt on the footing that they supply considerations material to the question whether the tax constituted by the fees prescribed by s. 9 (5) can be levied on vehicles exclusively engaged in inter-State trade. To the paragraphs the plaintiff demurs, on the ground that they afford no defence and form no part of a defence. It is necessary to say no more about the matters stated in the paragraphs than that they could not possibly lead to this particular tax being supported as a valid exaction from inter-State commerce. The plaintiff's demurrer must succeed. The defendants' demurrer to the statement of claim should be overruled; the plaintiff's demurrer to pars. 15 to 21 of the defence should be allowed. (at p314)

WILLIAMS J. The principles applicable in this case must be the same as those applicable in Nilson v. State of South Australia [1955] HCA 31; (1955) 93 CLR 292 . The two cases are indistinguishable in substance. I agree with the order proposed by his Honour the Chief Justice. (at p315)

FULLAGAR J. I agree with the order proposed. I think the case is covered by the reasons which I gave in Hughes & Vale Pty. Ltd. v. State of New South Wales (No. 2) [1955] HCA 28; (1955) 93 CLR 127 in relation to the Motor Vehicles Taxation Management Act 1949-1951 (N.S.W.) and the Motor Vehicles (Taxation) Act 1951 (N.S.W.). (at p315)

KITTO J. I adhere to the opinion I have expressed as to charges in the case of Hughes & Vale Pty. v. State of New South Wales (No. 2) [1955] HCA 28; (1955) 93 CLR 127 but otherwise I agree with the judgment which the Chief Justice has delivered. (at p315)

TAYLOR J. In this matter questions were raised by demurrer concerning the validity of the Road Traffic Act 1934-1954 (S.A.) and as to whether that Act, or certain provisions thereof, could lawfully apply to vehicles driven on the public roads of the State of South Australia in the course of journeys undertaken exclusively for the commercial carriage of passengers to and from that State from and to other States of the Commonwealth. (at p315)

2. The operation of the Act in relation to such vehicles is not dissimilar to that of the Motor Vehicles (Taxation) Act 1951 (N.S.W.) and the Motor Vehicles Taxation Management Act 1949-1951 (N.S.W.) which were under review in Hughes & Vale Pty. Ltd. v. State of New South Wales (No. 2) [1955] HCA 28; (1955) 93 CLR 127 . Indeed, I am quite unable to perceive any feature of the South Australian legislation which, for the purpose of dealing with the questions which are raised, could be regarded as a distinguishing feature. Nor, I should add, am I able to understand how the matters of fact asserted by the defendants in their statement of defence are relevant in considering the validity of an Act in this form or the extent to which it may lawfully operate. For the reasons expressed in the case referred to I am of the opinion that the provisions of the challenged legislation cannot validly apply to vehicles engaged exclusively in trade or commerce among the States. (at p315)

3. In view of the provisions of s.22 (a) of the Acts Interpretation Act 1915-1949 (S.A.) the licensing provisions of the Act should be construed so as not to apply to vehicles which are driven on the roads in South Australia exclusively on inter-State journeys for the carriage of passengers for reward. In the result, therefore, the defendants' demurrer to the plaintiff's statement of claim should be overruled and the plaintiff's demurrer to the paragraphs of the statement of defence by which the matters of fact above referred to were asserted should be allowed. (at p316)

ORDER

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

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