

~~PC~~
~~GDI 6.6~~

24, 1956

No. 8 of 1956

In the Privy Council

8 1950

On Appeal from the High Court of
Australia

IN THE MATTER of the Metropolitan and Export Abattoirs Act, 1936-1952 (South Australia), and in the matter of the Commerce (Meat Export) Regulations (Commonwealth) made under and pursuant to the Commonwealth Customs Act, 1901-1951,

and

IN THE MATTER of a Special Case referred by the Supreme Court of South Australia pursuant to Section 40A of the Commonwealth Judiciary Act, 1903-1950.

BETWEEN

Thomas O'Sullivan
(COMPLAINANT)
APPELLANT

AND

Noarlunga Meat Limited
(DEFENDANT)
RESPONDENT

RECORD OF PROCEEDINGS

UNIVERSITY OF LONDON
W.C.1.
20 FEB 1957
INSTITUTE OF ADVANCED
LEGAL STUDIES

INSTITUTE OF ADVANCED
LEGAL STUDIES,
25, RUSSELL SQUARE,
LONDON,
W.C.1.

In the Privy Council

UNIVERSITY OF LONDON
W.C.1
20 FEB 1957
No. INST of 195
LEG STUDIES

1957

On Appeal from the High Court of
Australia

IN THE MATTER of the Metropolitan and Export Abattoirs Act, 1936-1952 (South Australia), and in the matter of the Commerce (Meat Export) Regulations (Commonwealth) made under and pursuant to the Commonwealth Customs Act, 1901-1951,

and

IN THE MATTER of a Special Case referred by the Supreme Court of South Australia pursuant to Section 40A of the Commonwealth Judiciary Act, 1903-1950.

BETWEEN

Thomas O'Sullivan

(COMPLAINANT)

APPELLANT

AND

Noarlunga Meat Limited

(DEFENDANT)

RESPONDENT

RECORD OF PROCEEDINGS

INDEX OF DOCUMENTS.

NO.	DESCRIPTION OF DOCUMENT.	DATE.	PAGE.	
<i>IN THE COURT OF SUMMARY JURISDICTION AT ADELAIDE.</i>				
1	Complaint and Summons.....	18th March, 1954	5	
2	Order of Special Magistrate.....	29th March, 1954	5	
3	Case stated by Special Magistrate	29th March, 1954	6	
4	Statement of Agreed Facts (attached to special case)	—	7	
<i>Annexures thereto :—</i>				
	A. (i) Commerce (Meat Export) Regulations	Consolidation (30th March, 1923—18th December, 1952).	} Separately bound.	
	(ii) Amendment to A (i)—No. 36/1953	1st May, 1953		
4	B. (i) Meat Export Control (Licences) Regulations	24th June, 1936		
	(ii) Amendment to B (i)—No. 91/1936	1st July, 1936		
	(iii) Amendment to B (i)—No. 145/1936	21st October, 1936		
	(iv) Amendment to B (i)—No. 109/1949	30th November, 1949		
	(v) Amendment to B (i)—No. 74/1953	7th August, 1953		
	C. Licence to export meat issued under Meat Export Control (Licences) Regulations	29th June, 1953		9
	D. Certificate No. 767—Licence to slaughter and freeze mutton and lamb for export issued under Commerce (Meat Export) Regulations	9th September, 1953		10
	E. General agreement (Commonwealth—United Kingdom) on Meat	11th October, 1951		11
<i>IN THE HIGH COURT OF AUSTRALIA.</i>				
5	Order removing Special Case into High Court	16th June, 1954	15	
6	Reasons for judgements of their Honours	17th December, 1954	16	
	(a) His Honour the Chief Justice	—	16	
	(b) His Honour Mr. Justice McTiernan	—	16	
	(c) His Honour Mr. Justice Webb	—	22	
	(d) His Honour Mr. Justice Fullagar	—	23	
	(e) His Honour Mr. Justice Kitto	—	32	
	(f) His Honour Mr. Justice Taylor	—	32	
7	Order.....	—	37	

INDEX OF DOCUMENTS—continued.

NO.	DESCRIPTION OF DOCUMENT.	DATE.	PAGE.
<i>IN THE PRIVY COUNCIL.</i>			
8	Order in Council granting leave to appeal to Her Majesty in Council	21st June, 1955	39
<i>IN THE HIGH COURT OF AUSTRALIA.</i>			
9	Notice of Motion	15th September, 1955	42
10	Reasons for Judgements of their Honours on Notice of Motion .	2nd March, 1955	43
	(a) His Honour the Chief Justice and Their Honours Justices Williams, Webb, and Fullagar	—	43
	(b) His Honour Mr. Justice McTiernan	—	47
	(c) His Honour Mr. Justice Kitto	—	49
	(d) His Honour Mr. Justice Taylor	—	51
11	Order refusing Certificate	2nd March, 1955	53
12	Certificate of the District Registrar of the High Court of Australia verifying transcript record of proceedings	—	54

No. 1.—COMPLAINT AND SUMMONS.

ADELAIDE POLICE COURT.

Justices Act, 1921-1943.

No. 4.—COMPLAINT AND SUMMONS THEREON.

SOUTH [Royal Arms] AUSTRALIA.

(To Wit)

*In the Court
of Summary
Jurisdiction
at Adelaide.*

**No. 1
Complaint and
Summons.**

THE COMPLAINT of THOMAS O'SULLIVAN of Adelaide, Inspector of Police taken this day before the undersigned, a Justice of the Peace for the State of South Australia, who states that NOARLUNGA MEAT LIMITED
 10 a company registered under the Companies Act, 1934-1952, and having its registered offices situated at Noarlunga in the said State (hereinafter called "the defendant"), on the 27th day of November, 1953, in a part of the said State outside the Metropolitan Abattoirs Area (as defined by the Metropolitan and Export Abattoirs Act, 1936-1952) namely, Noarlunga, used certain premises owned and occupied by the said Company situated at Part 61 Hundred of Noarlunga for the purpose of slaughtering certain stock, namely, lambs, for export as fresh meat in a chilled or frozen condition: Contrary to the provisions of section 52a of the said Act.

T. O'SULLIVAN, Complainant.

20 To the Defendant abovenamed.

These are therefore to command you to be and appear on Monday the 29th day of March, 1954, at ten thirty o'clock in the forenoon, at the Police Court House, Victoria Square, Adelaide, in the said State, before such Special Magistrate or Justices of the Peace for the said State as may then be there, to answer to the abovementioned charge, and to be further dealt with according to law.

Dated the 18th day of March, 1954, at Adelaide, in the said State.

L. BURTON MARS, Justice of the Peace.

No. 2.—ORDER OF SPECIAL MAGISTRATE, 29th MARCH, 1954.

30 ORDER by consent I reserve for the consideration of the Supreme Court a question of law arising on the hearing of this complaint, and state a special case for the opinion of the State Court such question appearing in the special case to be settled by me.

Question of costs reserved.

*In the Court
of Summary
Jurisdiction
at Adelaide.*

**No. 2
Order of
Special
Magistrate,
29th March,
1954.**

*In the Court
of Summary
Jurisdiction
at Adelaide.*

**No. 3.—CASE STATED BY SPECIAL MAGISTRATE, 29th MARCH,
1954.**

SOUTH [Royal Arms] AUSTRALIA

(To Wit)

IN THE COURT OF SUMMARY JURISDICTION AT ADELAIDE.

BETWEEN

THOMAS O'SULLIVAN

AND

Complainant

NOARLUNGA MEAT LIMITED

Defendant.

10

Special case stated by the undersigned, Derek Finlay Wilson, a Special Magistrate for the State of South Australia, sitting as a Court of Summary Jurisdiction at Adelaide in the said State, reserving questions of law arising on the hearing and determination of the complaint hereinafter mentioned, for the consideration of the Supreme Court of South Australia pursuant to section 162 of the Justices Act, 1921-1943.

1. The abovenamed Complainant made a complaint against the abovenamed Defendant for that the said Defendant did on the 27th day of November, 1953, in a part of the State of South Australia outside the Metropolitan Abattoirs Area (as defined by the Metropolitan and Export Abattoirs Act, 1936-1952) 20 namely Noarlunga use certain premises owned and occupied by the said Company situated at Part 61 Hundred of Noarlunga for the purpose of slaughtering certain stock, namely, lambs, for export as fresh meat in a chilled or frozen condition, contrary to the provisions of section 52A of the said Act.

2. The said complaint was heard by me on the 29th day of March, 1954, and the result of such hearing was as follows:—

3. At the said hearing counsel for the Complainant tendered by consent a Statement of Agreed Facts now annexed hereto, which I admitted pursuant to section 34 of the Evidence Act, 1929-1949.

4. I found the facts contained in the said Statement to be proved. 30

5. On the part of the Defendant it was contended that section 52A of the Metropolitan and Export Abattoirs Act, 1936-1952, was inconsistent with a law or laws of the Commonwealth and, therefore, to the extent of the inconsistency, invalid.

6. On the part of the Complainant it was contended that there was no such inconsistency, and that the said section was valid.

7. These contentions were stated but not argued, and counsel for the Complainant and for the Defendant respectively, jointly requested me to state this case for the opinion of the Supreme Court.

8. I formed no opinion on the question of law involved except that it was a proper question to be reserved for the opinion of the Supreme Court. 40

9. The questions of law for the opinion of the Supreme Court are:—

(a) Whether section 52A of the Metropolitan and Export Abattoirs Act, 1936-1952, is a valid and operative enactment,

(b) Whether, on the above facts, the Defendant is guilty of the alleged offence.

10. For the information of the Supreme Court, a copy of the Statement of Agreed Facts tendered upon the hearing of the said complaint is attached hereto, together with the exhibits referred to therein.

Dated this 29th day of March, 1954, at Adelaide in the said State.

D. FINLAY WILSON, Special Magistrate.

*In the Court
of Summary
Jurisdiction
at Adelaide.*

No. 3
Case stated
by Special
Magistrate,
29th March,
1954, *continued.*

**No. 4.—STATEMENT OF AGREED FACTS (ATTACHED TO
SPECIAL CASE).**

O'SULLIVAN *v.* NOARLUNGA MEAT LTD.

*In the Court
of Summary
Jurisdiction
at Adelaide.*

No. 4
Statement of
agreed facts
attached to
special case.

For the purposes of this prosecution only the parties hereby agree and
10 admit the following facts and documents subject to admissibility and subject to
the rights of either party to adduce oral or documentary evidence adding to
any of the facts or documents so admitted.

1. Noarlunga Meat Limited (herein referred to as "the Company") is a
company registered under the South Australian Companies Act, 1934-1952,
having its registered office situated at Noarlunga.

2. The Company is and has for several years been the owner and occupier
of a slaughter house and abattoirs at Part Section 61 Hundred of Noarlunga
where slaughtering of stock from time to time has been carried on by the
Company.

20 3. The Company's slaughter house has at all relevant times been licensed
by the District Council of Noarlunga (in the area where the slaughter house is
situated) pursuant to Part XXVII of the Local Government Act, 1934-1952, and
pursuant to the by-laws of the Council duly made and the annual fee payable
and paid was that payable by a person who slaughters for hire.

4. The Company's premises are outside the Metropolitan Abattoirs Area
as defined in the South Australian Metropolitan and Export Abattoirs Act,
1936-1952, being about 30 miles from the Metropolitan Abattoirs at Gepp's
Cross near Adelaide.

30 5. The Metropolitan Abattoirs is established within the State for the
purpose (*inter alia*) of slaughtering sheep and lambs for export and is duly
registered under the Commerce (Meat Export) Regulations of the Common-
wealth of Australia. The only other such premises in the State so established
and so registered on the 27th November, 1953, were at Port Lincoln where there
was and is a State owned and controlled slaughter house and freezing works.
That is about 150 miles from Noarlunga by direct measurement and 400 miles
by road.

40 6. At no time has the Company been in possession of a licence from the
Minister of Agriculture of South Australia under Section 52a of the Metro-
politan and Export Abattoirs Act, 1936-1952, authorizing it to use the said
premises for the purpose of slaughtering stock for export as fresh meat in a

*In the Court
of Summary
Jurisdiction
at Adelaide.*

No. 4
Statement of
agreed facts
attached to
special case,
continued.

chilled or frozen condition. On the 31st day of January, 1953, the Company duly applied for such a licence but on the 9th day of July, 1953, the Minister of Agriculture by letter refused the said application.

7. The Commerce (Meat Export) Regulations annexed hereto and marked with the letter "A" have been made in due form under and pursuant to the Commonwealth Customs Act, 1901-1951, and all other powers of the Commonwealth of Australia thereto enabling.

8. The Commonwealth Meat Export Control (Licences) Regulations annexed hereto and marked with the letter "B" have been made in due form under to and pursuant to the Commonwealth Meat Export Act, 1935-1946, and 10 all other powers of the Commonwealth of Australia thereto enabling.

9. The Company has at all material times held licence No. 232 issued in due form pursuant to the Meat Export Control (Licences) Regulations of the Commonwealth. A copy of such licence is annexed hereto and marked with the letter "C".

10. The Company's premises at Noarlunga have at all material times been registered under the Commerce (Meat Export) Regulations in the name of the Company as proprietor as an establishment in which the operations of slaughtering and freezing of mutton and/or lamb for export may be conducted. Certificate No. 767 (a copy whereof is annexed hereto and marked with the 20 letter "D") which was issued in due form pursuant to the "Commerce (Meat Export) Regulations" refers to the Company and to the Company's premises.

1. At all material times there was in operation an agreement dated 11th October, 1951, made between the Governments of the Commonwealth of Australia and the United Kingdom, a copy of which is annexed hereto and marked with the letter "E".

12. The Australian Meat Board at all relevant times has been duly constituted under the Commonwealth Meat Export Control Act, 1935-1946, and (*inter alia*) has been, and is, the agent of the Government of the Commonwealth in implementing the said agreement. 30

13. In order to carry out the said agreement the Australian Meat Board has been willing to accept lamb carcasses which comply with the Commonwealth Regulations, which fact was well known to the Company.

14. The Australian Meat Board does not do any slaughtering in South Australia but only buys for export.

15. The process of freezing carcasses differs from chilling in two essential respects namely, in the final temperatures, and in the fact that frozen carcasses may, when stowed in a ship for export, be packed while chilled carcasses must be hung and not packed. At all relevant times only frozen carcasses were being exported. 40

16. On the 27th day of November, 1953, the Company on the said premises slaughtered and froze 152 lambs for export as fresh meat in a frozen condition.

17. The Company purchased and slaughtered the lambs and froze the carcasses for the purpose of selling them to the Australian Meat Board and of delivering them at an approved registered establishment for storage.

18. On the 27th day of November, 1953, all the conditions and provisions contained in certificate No. 767 were duly complied with by the Company. Of

the 152 lambs then slaughtered none were rejected and all the carcasses were certified by a duly authorized Commonwealth Inspector as first grade prime lamb carcasses.

*In the Court
of Summary
Jurisdiction
at Adelaide.*

19. The frozen carcasses were transferred to another approved establishment registered under the Commerce (Meat Export) Regulations and, generally, the provisions of the registration of the premises and of the Commerce (Meat Export) Regulations were complied with and the carcasses were duly sold and delivered to the Australian Meat Board and were on the 13th December, 1953, exported to the Government of the United Kingdom by the Australian Meat Board on behalf of the Government of the Commonwealth of Australia pursuant to the said agreement

No. 4
Statement of
agreed facts
attached to
special case,
continued.

ANNEXURE A.

- A. (i) Commerce (Meat Export) Regulations—Consolidation (30th March, 1923-18th December, 1952).

This appears in the separately bound volume of Acts and Regulations.

- A. (ii) Amendment to A. (i)—No. 36/1953—dated 1st May, 1953.

This appears in the separately bound volume of Acts and Regulations.

20

ANNEXURE B.

- B. (i) Meat Export Control (Licences) Regulations—dated 24th June, 1936.

This appears in the separately bound volume of Acts and Regulations.

- B. (ii) Amendment to B. (i)—No. 91/1936—dated 1st July, 1936.

This appears in the separately bound volume of Acts and Regulations.

- B. (iii) Amendment to B. (i)—No. 145/1936—dated 21st October, 1936.

This appears in the separately bound volume of Acts and Regulations.

30

- B. (iv) Amendment to B. (i)—No. 109/1949—dated 30th November, 1949.

This appears in the separately bound volume of Acts and Regulations.

- B. (v) Amendment to B. (i)—No. 74/1953—dated 7th August, 1953.

This appears in the separately bound volume of Acts and Regulations.

ANNEXURE C.

FORM B.

Regulation 6.

40

Licence No. 232.

COMMONWEALTH OF AUSTRALIA.

Meat Export Control Act, 1935-1946

and

Meat Export Control (Licences) Regulations.

*In the Court
of Summary
Jurisdiction
at Adelaide.*

No. 4
Statement of
agreed facts
attached to
special case,
continued.

LICENCE TO EXPORT MEAT
MEAT PRODUCTS AND EDIBLE OFFAL.

In pursuance of section 17 of the Meat Export Control Act, 1935-1946, I, James Douglas Macfarlane a person authorized by the Minister of State for Commerce and Agriculture to issue licences to export meat, meat products and edible offal hereby issued to Noarlunga Meat Ltd., c/o 20 The Grove, Lower Mitcham, South Australia, a licence to export meat, meat products and edible offal from the Commonwealth during the period commencing on the 1st day of July, 1953, and ending on the 30th day of June, 1954, upon the terms and conditions prescribed by the Meat Export Control (Licences) Regulations. 10

Dated this 29th day of June, 1953.

(SGD.) J. D. MACFARLANE.

(Signature of Minister or person
issuing Licence.)

The Minister of State for Commerce and Agriculture or "a person authorized by the Minister of State for Commerce and Agriculture to issue licences to export meat, meat products and edible offal."

N.B.—Subsections (2) and (3) of section 17 of the Meat Export Control Act, 1935-1946, read as follows:—

"(2) Any person who exports meat, meat products or edible offal 20 from the Commonwealth in contravention of the regulations made in pursuance of this section (including the prescribed conditions and restrictions) shall be guilty of an offence. Penalty: Five hundred pounds."

"(3) Where the Minister is satisfied, on report from the board, that any person, to whom a licence under this section has been granted, has contravened or failed to comply with the prescribed conditions and restrictions, the Minister may cancel the licence."

ANNEXURE D.

Certificate No. 767.

FORM B. 30

COMMONWEALTH OF AUSTRALIA.

Department of Commerce and
Agriculture, CANBERRA.

COMMERCE (MEAT EXPORT) REGULATIONS.

I HEREBY CERTIFY that subject to the conditions hereunder indicated the premises situated at Noarlunga in the State of South Australia have been registered in the name of Noarlunga Meat Limited of Noarlunga as an establishment in which the following operations may be conducted:—

Slaughtering and freezing of mutton and/or lamb for export.

Subject to the following provisions:—

(a) The frozen carcasses to be transferred to another approved registered establishment for storage. 40

(b) Slaughtering to be limited to the freezing capacity of the chamber or chambers set aside exclusively for export operations.

(c) The maintenance of satisfactory freezing temperatures in the chamber or chambers being used for the export operations.

and that the registered number of such establishment is 767.

This Certificate is granted subject to the conditions that operations will be conducted in accordance with the requirements prescribed under the Customs Act, 1901-1951, and the Commerce (Trade Descriptions) Act, 1905-1950, and that it will be liable to be withdrawn in the event of a contravention of the
10 Commerce (Meat Export) Regulations or other applicable regulations in force for the time being.

This certificate will remain in force until 31st December, 1953.

Dated this 9th day of September, 1953, at CANBERRA, A.C.T.

(SGD.) E. S. DUSTING, Assistant Secretary.

ANNEXURE E.

GENERAL AGREEMENT.

1. The agreement is between the Governments of the Commonwealth of Australia and the United Kingdom. The intention of the two Governments is to develop further the production of meat in Australia, to increase the export of
20 meat to the United Kingdom and to provide a satisfactory market in the United Kingdom for the whole of the exportable surplus of meat from Australia during the term of the agreement.

2. The agreement relates to beef and veal, mutton and lamb.

3. The agreement comes into force on the 1st July, 1952, and terminates on the 30th September, 1967.

4. (i) The Australian Government will use its best endeavours not only to maintain the present volume of exports, but to bring about steadily increasing exports of meat to the United Kingdom, and to this end will promote developmental programmes. It is recognized, however, that the carrying out
30 of such programmes will be affected by shortages of materials, equipment and manpower, etc., and by defence and other essential undertakings which the Australian Government finds it necessary to engage in. The plans for these programmes will from time to time be advised to the United Kingdom Government. The United Kingdom Government will take all practical steps to facilitate the supply of the necessary material and equipment.

(ii) It will be open to either Government at any time to suggest measures not elsewhere provided for designed to induce greater production from existing properties or from the development of new areas.

5. (i) So long as the United Kingdom Government remains the sole
40 importer of the meat covered by this Agreement the Australian Government will sell and the United Kingdom Government will buy the whole of the exportable surplus of meat from Australia subject to such reservations for other markets as may be agreed between them.

(ii) The conditions under which the Australian Government will sell and the United Kingdom Government will buy meat from Australia will be the subject of detailed agreements made from time to time during the period of this

*In the Court
of Summary
Jurisdiction
at Adelaide.*

No. 4

Statement of
agreed facts
attached to
special case,
continued.

7. The operation of the agreement will be reviewed during 1955 and thereafter annually and if in the opinion of either Government it appears that it is failing in its purposes the two Governments will consult together with a view to making such changes in the agreement or taking such other action as may be appropriate.

8. In the event of an alteration in the rate of exchange between the Australian pound and sterling either Government will have the right to call for an immediate review of the prices then current under the agreement.

*In the Court
of Summary
Jurisdiction
at Adelaide.*

No. 4

Statement of
agreed facts
attached to
special case,
continued.

DETAILED AGREEMENTS.

10

Beef and Veal.

9. (i) During the period to the 30th September, 1958, the exportable surplus of beef and veal from Australia, less the quantities which may be shipped to other countries, will be sold to the United Kingdom in general under the same terms and conditions as during 1950-51 but subject to the provisions of the general agreement and of this detailed agreement.

(ii) The quantities of beef and veal which may be shipped to other countries will be such that, together with mutton and lamb they will not exceed in any year 3 per cent of the quantity of meat shipped to the United Kingdom or such other amount as may be agreed annually between the two Governments.

20

10. A schedule of prices has been agreed for the year ending 30th September, 1952, and this will be the initial schedule for the purposes of this detailed agreement. This schedule will be reviewed annually not later than 31st July.

11. During the period of this detailed agreement in no year will the level of prices be lower than the schedule which ruled in the year 1950-51 or that schedule as modified by agreement.

30

12. At each price review the Australian Government will present to the United Kingdom Government figures compiled by the appropriate Australian Government Department showing the variation, if any, in the costs of production since the previous review. The Australian Government will explain and justify to the United Kingdom Government the data used and the methods of calculation adopted in the preparation of these figures.

13. If at any price review the figures so prepared show an increase in costs:—

(a) of any percentage up to and including 10 per cent the whole of the percentage will be added to the price schedule in fixing the schedule for the ensuing year;

(b) of more than 10 per cent but not more than 20 per cent then not less than four-fifths and not more than six-fifths of the increase will be added;

40

*In the Court
of Summary
Jurisdiction
at Adelaide.*

No. 4
Statement of
agreed facts
attached to
special case,
continued.

- (c) of more than 20 per cent but not more 30 per cent then not less than three-fourths and not more than five-fourths of the increase will be added.
- (d) of more than 30 per cent then not less than two-thirds and not more than four-thirds of the increase will be added.

Provided that in no case will the increase determined by the limits within which the percentage increase of costs falls be less than the minimum increase which would have been due had the percentage fallen within the next lower limits.

14. In negotiating the increase in prices to be made under clause 13, the two Governments will take account of:— 10

- (a) any imperfections in the method of ascertaining cost changes likely to arise in respect of cost changes of more than 10 per cent;
- (b) any known changes in costs which have occurred or will occur from the date of ascertaining cost changes up to the date at which the new price schedule will come into force;
- (c) At the end of the first period of three years any considerable change in prices paid by the United Kingdom to other suppliers of beef and veal;
- (d) any other factor which at the beginning of the negotiations the two Governments agree to be relevant 20

15. If the cost figures show a reduction in costs the price schedule will be subject to reduction in accordance with the same principles.

16. Nothing in this agreement or in the general agreement will preclude either Government from proposing such detailed variations in the arrangement of the price schedule as might seem expedient to maintain an appropriate relationship between the several kinds and qualities of meat.

Lamb.

17. The provisions of the general agreement and paragraphs 9 to 16 of the beef agreement will also be applied to lamb except that in paragraph 9 of the period will run to June, 1955, instead of September, 1958. 30

Mutton.

18. An agreement will be made for mutton under the same conditions as those laid down for lamb except that in the matter of prices the principal basis will be relationship to lamb prices. This relationship will be calculated to encourage the production of first quality mutton with an appropriate differential for lower grades. In the determination of such differentials regard will be paid to those which have ordinarily existed between the grades of mutton on a free market. In price reviews the percentage variation applied to lamb will be applied to first quality mutton.

(SGD.) MAURICE WEBB, Minister of Food. 40

(SGD.) J. McEWEN, Minister of State for
Commerce and Agriculture.

London, 11th October, 1951.

No. 5.—ORDER REMOVING SPECIAL CASE INTO HIGH COURT.

IN THE HIGH COURT OF AUSTRALIA. } 1954 No. 9.
SOUTH AUSTRALIA REGISTRY.

In the High Court of Australia.

No. 5
Order removing Special Case into High Court.

SPECIAL CASE referred by the Supreme Court of South Australia pursuant to section 40A of the Judiciary Act, 1903-1950.

BETWEEN

THOMAS O'SULLIVAN

AND

Complainant.

NOARLUNGA MEAT LIMITED

Defendant.

10

Before Their Honours the Chief Justice (Sir Owen Dixon), Mr. Justice Kitto and Mr. Justice Taylor.

Wednesday, the 16th day of June, 1954.

WHEREAS a special case stated by a Court of Summary Jurisdiction sitting at Adelaide on the 29th day of March, 1954, for the opinion of the Supreme Court of South Australia, came on for hearing before His Honour Mr Acting Justice Hannan a Judge of the said Supreme Court on the 20th day of May, 1954, AND WHEREAS His Honour Mr. Acting Justice Hannan, purporting to act under the provisions of section 40A of the Judiciary Act, 1903-1950, did not proceed further in the case: AND WHEREAS the said special case was duly transmitted to this Court NOW UPON the said special case coming on for hearing before this Court this day at Adelaide AND UPON HEARING Mr. R. R. St.C. Chamberlain, Q.C., and Mr. W. A. N. Wells of Counsel for the Complainant and for the Attorney-General for the State of South Australia and Mr. H. G. Alderman, Q.C., and Mr. E. W. Palmer of Counsel for the Defendant AND UPON MOTION made unto this Court on behalf of the Attorney-General for the State of South Australia THIS COURT DOTH ORDER that the said special case be removed into the High Court of Australia under section 40 of the Judiciary Act, 1903-1950, AND THIS COURT DOTH FURTHER ORDER that the special case be transferred from the South Australia Registry to the New South Wales Registry of this Court and be heard at the sittings of the Court appointed to commence at Sydney on Tuesday, the 17th day of August, 1954, and be placed first in the list of business for hearing on the said last mentioned day.

By the Court,

(SGD.) F. B. McBRYDE, District Registrar.

This Order was filed by Reginald Roderic St.Clair Chamberlain of 24 Flinders Street, Adelaide, Crown Solicitor and Solicitor for the Complainant.

No. 6.—JUDGMENTS.

I have had the advantage of reading the judgment of Fullagar J. and agree in it.

*In the
High Court
of Australia.*
—
No. 6
Judgments,
17th December,
1954.
—
Dixon, C.J.

*In the
High Court
of Australia.*
—
No. 6
Judgments,
17th December,
1954, *continued.*
—
McTiernan, J.

This is a case stated under the South Australian Justices Act and removed into this Court pursuant to section 40A of the Commonwealth Judiciary Act. The first question, as framed by the Magistrate, is whether section 52a of the South Australian Metropolitan and Export Abattoirs Act 1936-1952 is a valid and operative enactment. The enactment of this section is within the constitutional power of South Australia. The question to be answered is really whether the section is inconsistent within the meaning of section 109 of the Commonwealth Constitution with any law of the Commonwealth. The material laws of the Commonwealth are the Commerce (Meat Export) Regulations Part II. This part is headed "Registration of Premises and Standard Requirements Therefor". Regulation 5 is in these terms: "All establishments used for the slaughter, treatment and storage of meat, meat products or edible offal for export shall be registered". Regulation 6 prescribes the form of an application for registration. This Regulation also directs the Secretary of the Commonwealth Department of Commerce and Agriculture to issue to an approved applicant a certificate of registration specifying the operations which may be conducted in the establishment to which it refers and the conditions to be observed. The standard requirements for registered premises are dealt with by at least 37 detailed regulations. These Regulations refer to existing premises and premises to be erected. Comparatively few are prescribed for the former but there is also a general condition that such premises conform as far as practicable to the requirements prescribed for new premises seeking registration. The first relates to site. This Regulation has in view facilities for drainage and distance from possible sources of infection and from public roads. The standards pertaining to the matter of site are not concerned with suitability having regard to the neighbourhood or the effect of starting a meat works on its amenities. The remainder of the standards apply to such matters as the planning and internal arrangements of the premises including the pens in which the beasts are to be kept; chilling, freezing and cool storage; employees' accommodation; ventilation, wire fly-netting, lighting; sanitation and hygiene. Regulation 49 authorizes the Secretary of the Department to relax the prescribed standards in certain respects if "the sanitary objectives aimed at by this Part (of the Regulations) will be attained".

Part III deals with the supervision, inspection, preparation, transportation, marking and trade description of meat intended for exportation. Part IV deals with exportation. Regulation 91, which is in this Part, provides that the inspector appointed by the Secretary of the Department to inspect and pass meat, meat products or edible offal intended for export, shall issue to the exporter an export permit in all cases in which the provisions of the Commerce (Meat Export) Regulations have been complied with. It is important to notice

*In the
High Court
of Australia.*

No. 6

Judgments,
17th December,
1954, *continued.*

McTiernan, J.

Regulation 103 which provides as follows: "Where by the law of any State any goods are required to be inspected and approved by a State authority before export, and the Minister is satisfied that such inspection and approval are as efficient as inspection and markings under these Regulations, the Minister may direct that such inspection and approval shall be accepted, wholly or partly, in lieu of examination and marking under these Regulations". The whole plan effectuated by the Regulations depends substantially upon Regulation 4B for its justification under the Commonwealth Constitution. The material parts of this Regulation are: "(1) The exportation of all meat, meat products or edible offal
10 is prohibited unless—(a) the treatment and storage of the meat, meat products or edible offal has been carried out in an establishment registered in accordance with these Regulations; (b) the provisions of these Regulations have been complied with; (c) the exporter has received an export permit in respect of the goods in accordance with these Regulations, and the export permit is in force at the time of exportation of the goods".

Section 52a of the South Australian Metropolitan and Export Abattoirs Act 1936-1952 makes it an offence, punishable by a fine, to use any premises in any part of the State outside the "Metropolitan Abattoirs Area" for the purpose of slaughtering stock for export as fresh meat in a chilled or frozen
20 condition unless he is the holder of a licence from the State Minister of Agriculture authorizing him to use those premises for that purpose. The provisions of the section relating to the grant of licences are as follows: "(2) The Minister of Agriculture shall have a discretion to grant or refuse any application for a licence under this section after due consideration of the following matters—(a) whether the applicant is a fit and proper person to hold a licence under this section; and (b) whether the place where it is proposed to establish the premises to be used under the licence is a suitable place for the establishment of such premises; and (c) whether the premises are necessary to meet the requirements of the public: Provided that the Minister
30 shall not refuse an application for such a licence if the premises for which the licence is required are to be erected at least 80 miles from all premises, existing at the date of such application, and established within the State for the purpose of slaughtering stock for export as aforesaid. (3) Every licence shall be for such period and contain such restrictions, terms and conditions as the Minister thinks proper. (4) This section shall not apply to the Government Produce Department". Is this section in conflict with any provisions of the Commerce (Meat Export) Regulations? The material Regulations are, I think, Regulations 5 and 6.

Although the case is concerned with the question whether section 52a is
40 struck by section 109 of the Constitution, I think that it is necessary to consider other sections of the Act. If section 52a is considered in isolation an inadequate judgment may be formed of its operation. The Act grants to the Metropolitan and Export Abattoirs Board, a corporation existing under it, the power to erect and equip abattoirs and to construct railway sidings to serve them. The plant which the corporation may install, includes, of course, cool storage, section 68. The Act fences off an area of the State which is described as the Metropolitan Abattoirs Area. This area may be added to or reduced by proclamation, section 7. There are different provisions applying to the area and the rest of the State. While abattoirs are available under the Act for slaughtering stock, no person shall within the Metropolitan Abattoirs Area

*In the
High Court
of Australia.*

No. 6

Judgments,
17th December,
1954, *continued.*

McTiernan, J.

elsewhere than at such abattoirs slaughter or allow to be slaughtered any stock for human consumption, section 70. The Metropolitan Abattoirs Area consists of municipalities and districts which are enumerated in section 7. One of these districts is called "The Garden Suburb". The councils exercising local governmental powers in these municipalities and districts are called for the purposes of the Act "constituent councils". Section 7. The Act closes all private abattoirs within the Metropolitan Abattoirs Area except slaughter houses or abattoirs used or intended to be used "only for the purpose of slaughtering stock for meat to be tinned or canned for export, or for curing bacon and hams, or for the purpose of slaughtering stock for export otherwise than as fresh meat in a chilled or frozen condition or for the purpose of slaughtering swine for export as fresh meat in a chilled or frozen condition pursuant to a permit issued under section 50a". Section 79. This step is consequential upon the monopoly given by section 70 to the board's abattoirs. The manner in which the private abattoirs are closed is that section 79 (1) forbids any constituent council or any board of health to issue any licence for slaughtering of stock. But in the case of the slaughtering houses or abattoirs used or intended to be used for the purpose of slaughtering stock for meat for export, as mentioned above, the power of the appropriate constituent council or board of health to issue a licence is retained. Section 109 of the Act is analogous to section 79. The former section provides for the closing of private abattoirs in any area added to the Metropolitan Abattoirs Area as defined by section 7. The section forbids the appropriate constituent council or board of health from issuing any licence for slaughtering stock except in the case of slaughtering houses or abattoirs used or intended to be used for the purpose of slaughtering stock for meat for export in forms similar to those specified in section 79 (2). It will have been noticed that slaughtering of stock for meat for export in a chilled or frozen condition is excepted from the operation of either section 79 (2) or section 109 (2) of the Act. Section 50, to which section 79 (2) and section 109 (2) of the Act seem to be complementary, gives to the Board the sole right within the Metropolitan Abattoirs Area to slaughter stock for export as fresh meat in a chilled or frozen condition—and prohibits the slaughter of stock for this purpose in such area at any place other than the premises of the Board. Within the Metropolitan Abattoirs Area this monopoly is qualified by section 50a. This section says that notwithstanding the provisions of section 50 the Minister of Agriculture may grant a permit to any person to slaughter swine for export as fresh meat in a chilled or frozen condition at a slaughter house or abattoirs which is licensed by a council or board of health. The section gives to the Minister a discretion to grant or refuse any application for a permit under this section and provides that every permit shall be for such period and contain such restrictions, terms and conditions as the Minister thinks proper. Then comes section 52a which applies to the part of the State outside the Metropolitan Abattoirs Area. This section relates to the same operations as section 50, but in terms confers no monopoly upon the Board to conduct those operations. The provisions of the section have been already mentioned above.

The Commonwealth Regulations depend for their constitutional validity upon section 51 (i) of the Constitution. In effect, the Regulations prohibit the export of meat and the other commodities mentioned therein unless the premises in which the stock are slaughtered are registered in accordance with the Regulations and the standard requirements for registered establishments

are observed. It is a well established proposition that the power granted by section 51 (i) to legislate with respect to trade and commerce with other countries includes the power to prohibit exportation either absolutely or unless a given condition is fulfilled. The question whether the condition is validly imposed depends upon whether the prohibition read with the conditions is a law with respect to the subject matter of trade and commerce with other countries. There may be a semblance of inconsistency between section 52a and Regulations 5 and 6. It is argued for the State of South Australia that really there is no conflict, but, if there be conflict, section 52a does not fall because

10 these Regulations are in excess of the power vested in the Commonwealth Parliament by section 51 (i). I do not agree with the argument founded upon section 51 (i). In the first place I think that the standards required for registered establishments have a real causative relation to the fitness of the meat and other products to enter the stream of trade and commerce with other countries. That is, I think, a reasonable assumption and it leads, in my opinion, inevitably to the conclusion that Regulations 5 and 6 are valid. I think that the scheme for registering the establishments described in Regulation 5 can reasonably be regarded as an effective means for securing observance of the prescribed standards. Regulations 5 and 6 therefore are laws conducive to a

20 legitimate end of the legislative power, namely, the securing of the quality and wholesomeness of goods entering the stream of trade and commerce with other countries. The question of the validity of Regulations 5 and 6 and the following Regulations prescribing standards is not answered by pointing out that the Commonwealth Parliament has no power to make laws with respect to the industry of slaughtering stock. The Regulations prescribing the standard requirements for registered establishments have a real and substantial connection with the subject of trade and commerce in meat with other countries and this is enough to support the validity of Regulations 5 and 6 which, as I have said, are reasonable means for securing the adoption of the standards.

30 It is, therefore, necessary for me to express my opinion on the question of inconsistency.

Section 52a applies only to slaughtering for export. If the section extended to all slaughtering for human consumption without distinguishing between home consumption and the export trade it would be open to an attack upon the ground of inconsistency with the Regulations, essentially the same as that made in this case, but then the section could be attacked only to the extent of its application to slaughtering for export. Having regard to the scheme of the Act, the present attack is not really more forcible because the section relates only to slaughtering for export. Section 52a provides a means for

40 modifying the Board's monopoly of slaughtering stock for human consumption. Section 50a does the same thing, but to a lesser extent, and in the same manner, that is the grant of a licence by the Minister. Sections 79 and 109 of the Act are in this respect comparable with sections 50a and 52a. Indeed, the Commonwealth which was given leave to intervene did not claim that section 52a is inconsistent with any Commonwealth law. Evidently section 52a does not in practice interfere with or impair the operation of the Regulations. The Commonwealth was only concerned to maintain that the Regulations were valid. In the case of a Commonwealth law of the same type as these Regulations inconvenience may result from declaring the State law to be inconsistent with

50 the Commonwealth law if it deals with matters in respect of which the Commonwealth has less power to legislate than the States. However, this consideration

*In the
High Court
of Australia.*

No. 6
Judgments,
17th December,
1954, *continued.*
McTiernan, J.

would have no force if the State law were really inconsistent with the Commonwealth law.

Regulation 5 addresses itself to all establishments used at the time the Regulations commenced or thereafter to be erected, for the slaughter, treatment and storage of meat, meat products and edible offal for export. It directs that all such establishments shall be registered. This direction is not addressed to any person. The person bound by it is no doubt the person who uses or is about to use premises for the abovementioned purposes. He is bound by the direction to the extent that if he does not comply with it he may not obtain a permit to export the meat slaughtered, treated or stored in the establishment. 10
There would be no prospect of obtaining a permit to export meat or any of the other products if the slaughtering, treatment or storage were done in an unregistered establishment, except possibly in a case to which Regulation 103, quoted above, applies. (This Regulation relates to inspection under State Acts.) Accordingly there is an effective practical sanction for the direction contained in Regulation 5. Regulation 99 provides that any person committing a breach of the Regulation for which no other penalty is provided shall be liable to a penalty not exceeding £20. Regulation 5 provides no penalty for a breach. There are provisions, for example, sub-regulations 1 and 13 of Regulation 43 which are addressed to individuals. They would clearly be liable to this penalty 20
if guilty of a breach. Regulation 5 is not aptly expressed to create an offence. Many more of the Regulations are in the same form. These constitute requirements to which it is necessary to conform to obtain registration. It is not necessary, I think, to decide whether Regulation 5 merely creates a condition upon which export is permitted or whether it creates a rule of conduct, the breach of which exposes some person to punishment. Even if Regulation 5 creates the offence of failing to register establishments used for the slaughter of stock for export section 52a may nevertheless not be in conflict with it. I think that a distinction can be made. Regulation 5 applies to an establishment, in which slaughtering for export is conducted, as an instrument or agency of trade and 30
commerce with other countries. Section 52a defines the premises to which it applies, as premises used for slaughtering stock for export as fresh meat in a chilled or frozen condition. The section applies to such premises under the aspect of premises used as abattoirs or slaughter houses, and forbids the use of any premises for particular slaughtering operations without a licence from the Minister. Regulation 5 operates within the field of trade and commerce with other countries. It could not validly operate beyond that field. The field marked out by section 52a is indicated by the matters which the section says are to be taken into consideration by the Minister in exercising the discretion given to him by the section to grant or refuse a licence. The first matter is 40
whether the applicant is a fit and proper person to hold a licence under this section. The Commonwealth Regulations lay down no standards relevant to this matter. The matter which in my judgment the Minister has to consider is not whether the applicant is a fit and proper person to engage in trade and commerce with other countries. I think the matter for the Minister to consider is whether the applicant is a fit and proper person to conduct abattoirs in which the particular class of operations to be carried on is slaughtering stock for export as fresh meat in a chilled or frozen condition. The second matter which the Minister has to consider is whether the place where it is proposed to establish the premises is a suitable place for the establishment of such premises. 50

I have referred to the provisions of the Regulations prescribing the requirements to which the site of an establishment to be erected must conform in order to qualify the establishment for registration. In my opinion the criteria of the suitability of a site laid down by the Regulations are different from the criteria involved in the words "a suitable place for the establishment of such premises" which are to be found in section 52a. The third matter which the Minister has to consider is whether the premises in respect of which a licence is sought are necessary to meet the requirements of the public. The Commonwealth Regulations do not contain any express provisions as to this matter.

*In the
High Court
of Australia.*

No. 6

Judgments,
17th December,
1954, *continued.*

McTiernan, J.

10 In my opinion the Commonwealth Regulations leave it open to the States to determine who is a fit and proper person to conduct the class of slaughtering operations mentioned in section 52a; what is a suitable place for abattoirs in which such operations are to be conducted; and whether the establishment of any new abattoirs of that kind is necessary to meet the requirements of the public.

The acceptance of the argument that section 52a is inconsistent with Regulations 5 and 6 would involve the destruction of the monopoly granted by the Act to the Metropolitan and Abattoirs Board, and would lead to the conclusion that sections 50a, 79 and 109 (of the State Act) are also inconsistent and invalid to the extent of the inconsistency. It does not seem to me that the Commonwealth Regulations manifest an intention to operate so widely that these results would flow from them. I think that the language of Regulation 5 is compatible with accepting for the purposes of the Regulations determinations made by a State or a local governing body under State law, pursuant to which premises may be used for slaughtering stock and treating and storing the products thereby obtained, whether for home consumption or export. The continued acceptance or recognition of those determinations is implicit in the description which Regulation 5 contains of the establishments which are directed to be registered. The description is "all premises used for the slaughter, treatment or storage of meat, meat products or edible offal for export". The registration does not bring premises within that description: the premises are not directed to be registered unless they are within the description. The Regulations intend that the status of a registered establishment should be acquired by premises which may be lawfully used for those purposes. It is not an intended result of the Regulations that registration should give a right to use premises without the licence of a municipal council or a board of health or of a State itself if that is necessary under State law. Registration, as I have said, does not bring an establishment within the description of an establishment used for the purposes mentioned in Regulation 5. Upon the very terms of Regulation 5, an establishment is not made subject to the direction given by the Regulation unless it is an establishment used for those purposes. Whether it is lawfully used may depend upon State law. A comparable situation would arise if a Commonwealth law directed that all hotels used for the accommodation of migrants were to be registered and that no hotelkeeper would be permitted to provide accommodation for migrants unless the hotel were registered and conformed to certain standards. It would, I think, be difficult to hold that the laws of the State under which the hotels were licensed fell because of inconsistency with the Commonwealth law. In enacting section 52a the subjects upon which the State Parliament legislated are the personal qualifications of persons to conduct abattoirs, the localities in

*In the
High Court
of Australia.*

No. 6
Judgments,
17th December,
1954, *continued.*

McTiernan, J.

which they may be conducted and what number there should be. The Parliament confined this section to abattoirs in which a particular class of slaughtering is conducted, namely, the slaughtering of stock for export in a chilled or frozen condition. There are other classes of slaughtering for the export trade dealt with by the Act. Section 52a is essentially not a law with respect to trade and commerce with other countries. Regulation 5 is not a law on the same subjects as section 52a.

The sanction for this section is punishment by a fine. It is not clear that the Regulations intended that failure to register an establishment under Regulation 5 is to be punishable by a fine. If the Regulations do so, it would be hard to resist the conclusion that numerous other regulations described as standard requirements also have penal sanctions and thus the export trade in meat has become controlled by the criminal law. 10

Difference between the legislative categories to which section 52a and the Regulations may be assigned, and diversity between the sanctions for the section and Regulation 5 are important considerations in determining the question of inconsistency. I think that in the present case the decisive consideration is the intention of the Regulations. In my opinion they do not disclose the intention that the direction to register under Regulation 5 is the only law to be obeyed by any person who conducts an establishment for the slaughter, treatment and storage of meat, meat products and edible offal for export to qualify him to carry on the establishment lawfully. In my opinion, section 52a is not inconsistent with any of the Commonwealth Regulations. However, I think a reservation ought to be made about subsection 3 of this section. If upon its true construction that provision authorizes the Minister of Agriculture to prescribe a restriction, term or condition dealing with a matter covered by any of the "standard requirements" prescribed by Part II of the Regulations, a question similar to that considered in *Victoria v. The Commonwealth* (58 C.L.R. 618) would arise. 20

The second question asked by the Magistrate should, upon the facts stated by him, also be answered against the defendant company. 30

*In the
High Court
of Australia.*

No. 6
Judgments,
17th December,
1954, *continued.*

Webb, J.

For the reasons given by Taylor J., whose judgment I have had the advantage of reading, I think the question in the Special Case should be answered as his Honour proposes. But, in addition to the matters relied upon by his Honour as indicating that the Commerce (Meat Export) Regulations are not intended to occupy the field to the exclusion of State law, I rely on Regulation 103 which, in authorizing the adoption of State inspection and approval of meat for export and consequential markings of such meat, also indicates I think that those Regulations are not intended to be exhaustive and exclusive of State law. As stated by Dixon J. (as he then was) in *Ex parte McLean* (1930) 40 43 C.L.R. 472 at 483):

"The inconsistency" (that is within the meaning of section 109 of the Commonwealth Constitution) "does not lie in the mere co-existence of two laws which are susceptible of simultaneous obedience. It depends upon the intention of the paramount Legislature to express by its enactment, completely, exhaustively, or exclusively, what shall be the law governing the particular conduct or matter to which its attention is directed".

I think that Regulation 103 contemplates that the State's inspection, approval and markings, which require an extensive and costly set up, but in any event are essential features of control, shall continue to be made and given from time to time, as there is not sufficient indication anywhere in the Regulations that the State operations referred to are only those which are completed when the Regulations come into force, and therefore that the purpose of Regulation 103 is simply to enable the change from State to Commonwealth control to be brought about without a duplication of effort.

*In the
High Court
of Australia.*

No. 6
Judgments,
17th December,
1954, *continued.*

Webb, J.

If I am right as to the intention of Regulation 103, it is an important
10 provision for the co-operation of Commonwealth and State in securing and
maintaining the standard of meat for export. After all, the States are at least
as much concerned as is the Commonwealth in securing and maintaining those
standards. The Commonwealth has no greater interest than the States in that
matter. Indeed, where a State is very largely dependent upon its export trade
in a certain commodity, as South Australia is in the lamb export trade and
Tasmania in the fruit export trade, the State may have the greater interest.
However, there seems to be no doubt that the Commonwealth has the power in
all cases to exclude the State law. But I think the correct view of these Regula-
20 tions is that the State is permitted to remain in the field so that advantage of
its services may be taken from time to time if that appears desirable to the
authorities administering the Regulations, who, of course, have no power to bind
their successors as regards future exports. I can see no Regulation, not even
Regulations 5 and 10, that points as clearly to the exclusion of the State law as
Regulation 103 points to its continuance.

This case comes before the Court on a special case stated for the Supreme
Court of South Australia by a special magistrate. It was removed into this
Court by order under section 40 of the Judiciary Act.

*In the
High Court
of Australia.*

No. 6
Judgments.
17th December,
1954, *continued.*

Fullagar, J.

The case arises under the Metropolitan and Export Abattoirs Act 1936-
1948 of the State of South Australia. This Act provides for the establishment
30 of a board to be called the Metropolitan and Export Abattoirs Board, which is
made a body corporate. It is necessary to refer only to two sections of the Act.
Section 50 relates to the slaughter of stock for export *within* the Metropolitan
Abattoirs Area, which is defined by section 3. It provides: "(1) Except as
provided by section 50a the board shall have the sole right within the metro-
politan abattoirs area to slaughter stock for export as fresh meat in a chilled
or frozen condition. (2) Nothing in this Act shall operate so as to allow any
person other than the board to slaughter stock within the metropolitan
abattoirs area for export as fresh meat in a chilled or frozen condition, or any
40 place within the said area other than premises of the board to be used for that
purpose. (3) The board shall not slaughter any stock for export except for and
on account of and in the manner directed by the manager of the Government
Produce Department. (4) The manager of the Government Produce Depart-
ment shall not procure the slaughter of any stock for export except upon
condition that he is appointed by the owner of the stock as agent to arrange
for the slaughter, freezing, and shipment thereof, and, where required, to
market the meat and by-products, and, that he is to be paid an inclusive fee for
all these services". The exception provided by section 50a is immaterial for
the purposes of the present case. The other relevant section is section 52a,
which relates to the slaughter of stock for export *outside* the Metropolitan
50 Abattoirs Area. It provides: "(1) No person shall in any part of the State

*In the
High Court
of Australia.*

No. 6

Judgments,
17th December,
1954, *continued.*

Fullagar, J.

outside the Metropolitan Abattoirs Area use any premises for the purpose of slaughtering stock for export as fresh meat in a chilled or frozen condition unless he is the holder of a licence from the Minister of Agriculture authorizing him to use those premises for that purpose. Any person who contravenes this subsection shall be guilty of an offence and liable to a fine not exceeding one hundred pounds and in the case of a continuing offence to an additional fine not exceeding twenty pounds for every day on which the offence continues. (2) The Minister of Agriculture shall have a discretion to grant or refuse any application for a licence under this section after due consideration of the following matters:—(a) whether the applicant is a fit and proper person to hold a licence under this section; and (b) whether the place where it is proposed to establish the premises to be used under the licence is a suitable place for the establishment of such premises; and (c) whether the premises are necessary to meet the requirements of the public: Provided that the Minister shall not refuse an application for such a licence if the premises for which the licence is required are to be erected at least 80 miles from all premises, existing at the date of such application, and established within the State for the purpose of slaughtering stock for export as aforesaid. (3) Every licence shall be for such period and contain such restrictions, terms and conditions as the Minister thinks proper. (4) This section shall not apply to the Government Produce Department”.

The defendant company was charged with a breach of section 52a (1) in that it did on 27th November 1953 in a part of the State outside the Metropolitan Abattoirs Area use certain premises owned and occupied by it for the purpose of slaughtering certain stock, viz., lambs, for export as fresh meat in a chilled or frozen condition. Such a breach is made an offence against the Act by section 115. The case states that the allegations of fact contained in the charge are true. The company’s premises, however, are registered under the Commerce (Meat Export) Regulations of the Commonwealth, and the defence raised by the company is that section 52a of the South Australian Act is inconsistent with those Commonwealth Regulations and is therefore invalid by virtue of section 109 of the Constitution of the Commonwealth. The prosecution denies that any such inconsistency exists, and says, further, that, if the inconsistency does exist, the Commonwealth Regulations are not authorized by the statutes under which they purport to be made and could not lawfully be so authorized, because the making of them involves an excess of the constitutional powers of the Commonwealth. Two questions are thus raised. The first is whether there is an inconsistency within the meaning of section 109. The second (which need not be considered unless the first question is answered in the affirmative) is whether the Commonwealth Regulations are valid. The latter question is, on the view which I take, a question of “limits *inter se*”. The former is not such a question.

The Regulations, so far as they refer to registration of premises for the slaughter of stock for export, are badly drawn and are not co-ordinated into a consistent whole. Some are expressed as conditions of registration; some are not so expressed but must probably be taken to be so intended; some are neither so expressed nor so intended but prescribe conditions which are to be observed in and about the actual slaughter of stock and subsequent operations.

It is not necessary to set out the material regulations in full, but it is necessary to examine closely their nature and content. By regulation 4B, which

was introduced into Part I of the Regulations on 7th May 1953, it is provided that the exportation of all meat, meat products or edible offal, is prohibited unless (a) the treatment and storage of the meat, etc., has been carried out in an establishment registered in accordance with the Regulations; (b) the provisions of the Regulations have been complied with; and (c) the exporter has received an export permit in respect of the goods in accordance with the Regulations. Regulation 5 provides that all establishments used for the slaughter, treatment and storage of meat, meat products or edible offal, for export shall be registered. This regulation is cast in a form which is generally
10 considered objectionable, since it is impersonal and does not in terms cast any direct duty on any person. Such cases, however, are familiar enough, and I would think it clear that regulation 5 must be construed as forbidding any person to use any establishment for any of the purposes mentioned unless the establishment is registered. The use of premises for that purpose without registration will therefore be a breach of the regulations, for which section 99 provides a penalty not exceeding £20.

Regulation 6 provides that application for registration shall be in accordance with Form A. The form requires the nature of the proposed operations to be stated, and it is to be accompanied by plans and specifications
20 of the premises. Regulation 6 also provides that there shall be issued to an "approved applicant" a certificate of registration in accordance with Form B, which shall specify (*inter alia*) all operations which may be conducted in the establishment to which it refers. In the present case the certificate of registration issued to the defendant company states that its premises are registered as "an establishment in which the following operations may be conducted:—slaughtering and freezing of mutton and/or lamb for export". Certain conditions are stated which are not material for present purposes. By regulation 7 an application for registration must be accompanied by (*inter alia*) complete plans and specifications of the establishment and a clear photograph
30 of the site, showing its relation to the land or other property adjoining the establishment. Regulation 9 provides that, where after the commencement of the Regulations (they commenced on 30th March 1923) it is intended to erect premises to be registered, registration shall not be granted unless the Secretary approves of the site prior to the erection of the premises.

Regulation 12 provides that no premises or buildings shall be registered unless they conform to such prescribed requirements as are applicable. Regulation 13 prescribes requirements with respect to places appointed by the Secretary for the inspection of meat for export. Regulation 14 provides that no establishment shall be registered unless the site is such as to admit of ready
40 and efficient drainage. It also prescribes distances which must separate buildings, yards and pens from any human habitation or any noxious trade establishment, and that the site is to be such as to allow an interval of at least 20yds. between the main building and the nearest public road. Regulation 15 deals with the floor area of killing, dressing and hanging rooms. It prescribes certain areas for floors and heights for walls, and it provides that the hanging room shall have not less than 9 sq. ft. for each carcase hung. The hanging rails are to be not less than 3ft. apart. Regulation 16 provides that, if meat is slaughtered for export, the establishment shall contain chilling, freezing or cold storage accommodation commensurate with its killing capacity.
50 Regulations 17 to 21 inclusive contain other provisions which must be complied

*In the
High Court
of Australia.*

No. 6

Judgments,
17th December,
1954, *continued.*

Fullagar, J.

with if the operations to be carried on include chilling or freezing. Regulation 23 provides that the height of killing and dressing rooms shall be 16ft. in the case of cattle, and 10ft. in the case of sheep. The walls are to be of a height of not less than 4ft., and solidly constructed of brick, masonry or concrete. Other matters of detail are provided for. Regulation 24 provides that the height of hanging rooms for cattle shall be not less than 16ft. and for sheep not less than 10ft. Regulation 25 provides that chilling, freezing and cold storage rooms shall be constructed of concrete, brick or wood, and that the hanging rails in chilling rooms for cattle shall be not less than 3ft. apart and in the case of sheep not less than 14in. apart. By regulation 26 the rooms in which edible offal and edible fats are prepared are to be constructed of material similar to that prescribed for killing and dressing rooms. Regulation 27 requires ramps over which offal is conveyed to be constructed with a hard impervious surface of concrete or other suitable material. Regulation 28 contains detailed provisions with regard to sorting houses for offal and regulation 29 with regard to casing houses. Regulation 30 contains provisions with relation to the accommodation of employees engaged at the establishment. Regulation 31 provides that plant for the treatment of inedible offal shall be at least 90ft. distant from any building in which edible offal is prepared or stored for export. The buildings are to be constructed of materials similar to those prescribed for killing and dressing rooms. By regulation 32 the wall and floors of the killing and dressing rooms are to be rendered impervious and washable by means of cement rendering. Regulation 33 contains detailed requirements with regard to ventilation. Regulation 34 provides that wire fly netting shall, if the Secretary so directs, be provided over all openings and walls. By Regulation 35 benches, tables and similar articles are to be so constructed as to be easily drained, removed and cleansed. Regulation 36 contains detailed provisions with regard to lighting. Regulation 37 provides that there must be to the satisfaction of the Secretary air disconnection between compartments used for slaughter and preparation and storage of meat and those used for purposes of dressing rooms, etc. Regulation 38 provides certain special sanitary and other requirements relating to premises where meat is preserved for export. These requirements are set out in great detail. Regulations 40 and 41 contain detailed provisions with regard to drainage and the handling and disposal of blood, etc. Regulation 42 contains certain requirements with regard to water supply and fittings. Regulation 44 provides that yards, lairs and pens shall be provided, and the manner and materials of their construction are prescribed. Regulation 45 provides that ramps shall be constructed with a hard impervious surface of concrete or other suitable material and provided with raised kerbing. Regulation 46 provides that a suitable race or yard shall be provided for the inspection of stock before killing. Regulation 47 provides that the area of yards and holding pens shall be such as to allow of at least 20 sq. ft. of floor space per head for cattle and 6 sq. ft. per head for sheep. The floor area of pens is to be constructed of materials similar to those prescribed for the floors of killing and dressing rooms. There are also certain requirements with regard to drainage. Regulation 48 contains certain requirements with regard to the construction of partitions separating pens and ramps and the gates or doors leading from pens.

Part III of the Regulations deals with "Supervision, Inspection, Preparation, Transportation, Marketing and Trade Description of Meat intended for Export", and contains regulation 91, which provides that an export permit in

accordance with Form E shall be issued by the inspector to the exporter in all cases in which the provisions of the regulations have been complied with and a note to that effect signed by an inspector has been made upon the face of the notice of intention to export which is required to be given.

*In the
High Court
of Australia.*

No. 6

Judgments,
17th December,
1954, *continued.*

Fullagar, J.

The above summary, which gives only in bare outline the effect of a large number of regulations, is sufficient to show that they constitute an extremely elaborate and detailed set of requirements which must be complied with before registration can be obtained of premises to be used for the slaughter of stock for export. They relate to site, materials of construction, arrangement, dimensions and many other matters. It is an offence to use premises for the slaughter of meat for export unless the premises are registered. Registration cannot be obtained except upon compliance with all these detailed provisions, and in addition the applicant must be "approved". But, if all those provisions are complied with, an approved applicant is entitled to a certificate specifying the operations which may be conducted on the premises. In my opinion a State statute which has the effect of prohibiting the use of premises registered under the Commonwealth Regulations for the very purpose for which they have been registered under those regulations is plainly inconsistent with those regulations.

It is, of course, possible to obey both laws. It is possible to refrain altogether from using premises outside the Metropolitan Abattoirs Area in South Australia for slaughtering stock for export as chilled or frozen meat. It is equally possible to comply with all the detailed requirements of the regulations and obtain registration thereunder, and then, after failing to obtain a licence under section 52a of the South Australian Act, to use the premises for storing apples or not to use the premises at all. But it is now well settled that there may be inconsistency within the meaning of section 109 between two laws, although it is quite possible to obey both. The test of inconsistency which is now generally applied was laid down in *Clyde Engineering Co. v. Cowburn*, (1926) 37 C.L.R. 466. It has been applied in a number of later cases: see especially *H. V. McKay Pty. Ltd. v. Hunt* (1926) 38 C.L.R. 308; *Hume v. Palmer* (1926) 38 C.L.R. 441; *Ex parte McLean* (1930) 43 C.L.R. 472; *Colvin v. Bradley Bros. Ltd.*, (1943) 68 C.L.R. 151; and *Wenn v. Attorney-General for Victoria* (1948) 77 C.L.R. 84. In *Clyde Engineering Co. v. Cowburn*, (1926) 37 C.L.R. at p. 489, Isaacs J. said, "If a competent Legislature expressly or impliedly evinces its intention to cover the whole field, that is a conclusive test of inconsistency where another Legislature assumes to enter to any extent upon the same field". The test was analysed and fully stated by Dixon J. in *Ex parte McLean*, (1930) 43 C.L.R. at p. 483, in a passage which is often cited. His Honour said: "When the Parliament of the Commonwealth and the Parliament of a State each legislate upon the same subject and prescribe what the rule of conduct shall be, they make laws which are inconsistent, notwithstanding that the rule of conduct is identical which each prescribes, and section 109 applies. That this is so is settled, at least when the sanctions they impose are diverse (*Hume v. Palmer* (1926) 38 C.L.R. 441). But the reason is that, by prescribing the rule to be observed, the Federal statute shows an intention to cover the subject matter and provide what the law upon it shall be. If it appeared that the Federal law was intended to be supplementary to or cumulative upon State law, then no inconsistency would be exhibited in imposing the same duties or in inflicting different penalties. The inconsistency does not lie in the mere co-existence of two laws which are susceptible of

*In the
High Court
of Australia.*

No. 6

Judgments,
17th December,
1954, *continued.*

Fullagar, J.

simultaneous obedience. It depends upon the intention of the paramount Legislature to express by its enactment, completely, exhaustively, or exclusively, what shall be the law governing the particular conduct or matter to which its attention is directed. When a Federal statute discloses such an intention, it is inconsistent with it for the law of a State to govern the same conduct or matter”.

Applying this test, it appears to me impossible to deny that the regulations evince an intention to express completely and exhaustively the requirements of the law with respect to the use of premises for the slaughter of stock for export. The extremely elaborate and detailed character of the regulations seems to me to be itself sufficient to compel this conclusion. Almost every requirement which occurs to one as a relevant requirement is prescribed. But this is not the only feature of the regulations which appears to me to compel the conclusion that there is inconsistency in section 52a of the South Australian Act. It is true that the regulations do not in express terms provide that it shall be lawful for any person who has obtained the registration of premises to slaughter stock for export on those premises. But Regulation 6 (2) requires the Secretary to issue to an approved applicant a certificate of registration, and that certificate must specify the operations which may be conducted in the establishment to which it refers. According to the certificate held by the defendant company the operations which it may conduct on the premises are, as has been said, the slaughtering and freezing of mutton and/or lamb for export. It is clearly contemplated that, when registration has been obtained, the operations referred to in the certificate may be lawfully conducted on the registered premises. Section 52a of the South Australian Act is a clear denial of any such permission. The case indeed, is seen, I think, closely to resemble the case of *Colvin v. Bradley Bros. Ltd.*, (1943) 68 C.L.R. 151. In that case an order which had been made under section 41 of the Factories and Shops Act 1912-1936 (N.S.W.) prohibited the employment of females on a milling machine. By an award of the Commonwealth Court of Conciliation and Arbitration the employment of females on certain classes of work, which included work on a milling machine, was permitted unless such work had been declared by a Board of Reference to be unsuitable. There had been no such declaration by any Board of Reference. It was held by this Court that the order in its application to persons covered by the award was inconsistent with that award and therefore, by virtue of section 109, invalid.

It was said that the purpose and object of section 52a was different from the purpose and object of the Commonwealth Regulations. It was said that section 52a was not concerned with the purity and quality of meat intended for export but was concerned with such matters as the suitability of the proprietor of the premises, the suitability of the site and similar matters of local concern. As to this there are two things to be said. In the first place the suitability of the applicant and the suitability of the site are plainly matters with which the Regulations are concerned. In the second place, the discretion given to the Minister by section 52a is absolute. It is true that he is required to consider the matters specified in subsection (2) of section 52a, but subject to the proviso to subsection (2)—and, of course, to the requirement of good faith—the Minister of Agriculture may refuse a licence for any reason whatever which seems good to him. In particular, he could refuse a licence because he thought that a Commonwealth requirement, which had been complied with, was not

sufficiently drastic. It should perhaps be added that the subject-matter of the Act here is the same as the subject-matter of the Regulations—the use of premises for slaughtering stock for export. It is therefore unnecessary to consider whether the statement of Latham C.J. in *Colvin v. Bradley Bros. Ltd.*, (1943) 68 C.L.R. at p. 159, that “the classification of statutes according to their true nature is a matter that is irrelevant to any application of section 109” is not expressed somewhat too widely.

*In the
High Court
of Australia.*
—
No. 6
Judgments,
17th December,
1954, *continued.*

It was argued that regulation 103 indicated an intention on the part of the Commonwealth that State legislation on the subject-matter of the Regulations could exist alongside the Commonwealth law. Regulation 103 provides that “where, by the law of any State, any goods are required to be inspected and approved by a State authority before export, and the Minister is satisfied that such inspection and approval are as efficient as inspection and marking under these regulations, the Minister may direct that such inspection and approval shall be accepted wholly or partly in lieu of examination and marking under these regulations”. No such conclusion as is suggested can, in my opinion, be drawn from regulation 103. In the first place, it is very limited in its scope and relates only to inspection and marking. In the second place, it is incapable to my mind of carrying the implication suggested. Indeed, I am not at all sure that it does not indicate a contrary intention, because it applies only where the Minister is satisfied with regard to State inspection and approval, and the intention seems to be that, in the absence of satisfaction and direction on the part of the Minister, the Commonwealth system is to supersede any State system. But all that regulation 103 really means is that, if satisfactory machinery happens to exist at any port, the Minister, in the interests of economy, may use it. It is impossible to imply an intention that the export of goods which have received a Commonwealth export permit may be prohibited by a State.

Fullagar, J.

The conclusion that there is inconsistency, within the meaning of section 109, between section 52a of the South Australian Act and the Commonwealth Regulations makes it necessary to consider the second question, which relates to the validity of the Regulations. The Regulations purport to be made under the Customs Act and the Commerce (Trade Descriptions) Act. Only Part II of the Regulations is directly relevant in the present case, and Part II is, in my opinion, within the power conferred in terms by section 270 (1) (c) of the Customs Act. That provision, so far as material, authorizes the Governor-General to make regulations not inconsistent with the Act for prescribing “the conditions of preparation or manufacture for export of any articles used for food or drink by man”. The power given by section 270, however, must be regarded as limited by the Constitution. The question therefore resolves itself into whether the Regulations are within the constitutional power of the Commonwealth. If Parliament had enacted them directly, would they be valid? The only power invoked, and, so far as I can see, the only relevant power is that given by section 51 (i) of the Constitution to make laws with respect to trade and commerce with other countries.

Before considering the constitutional question it will be well to look again for a moment at the Regulations and to see what is their general scheme and what they really do. In this connection it becomes necessary to look also at certain other regulations, viz., the Meat Export Control (Licences) Regulations made under section 18 of the Meat Export Control Act 1935.

*In the
High Court
of Australia.*

No. 6

Judgments,
17th December,
1954, *continued.*

Fullagar, J.

What may be called the keystone of the Commerce (Meat Export) Regulations seems to be found in regulation 4B, which prohibits the export of meat, etc., unless (a) treatment and storage has been carried out in a registered establishment; (b) the provisions of those regulations have been complied with; and (c) the exporter has received an export permit. "Treatment and storage" do not include slaughter, but, since regulation 5 in effect prohibits slaughter for export in an unregistered establishment, the regulations will not have been complied with if slaughter has taken place in an unregistered establishment. It is to be noted, in addition, that regulation 4 of the Meat Export Control (Licences) Regulations prohibits the export of meat except by persons who hold licences, and regulation 7 of those regulations requires a licensee to comply with the Commerce (Meat Export) Regulations. The licence under the Meat Export Control (Licences) Regulations is in general terms, but an "export permit" is also required before any particular consignment may be lawfully exported. The issue of an export permit is provided for by regulation 91 of the Commerce (Meat Export) Regulations which, as has been noted, says that a permit shall issue if the regulations have been complied with. 10

So far the general structure, though somewhat complex and very elaborate in detail, seems clear enough. The export of meat is prohibited unless it was slaughtered in a registered establishment, and an establishment cannot be registered unless it complies with the prescribed conditions. The export of meat is also prohibited unless certain other prescribed conditions as to treatment, storage and so on, are complied with. And so far no ground for attack on the validity of the Commerce (Meat Export) Regulations appears. There is no suggestion of any ulterior objective behind the regulations: no such question as that which arose in *R. v. Barger*, (1908) 6 C.L.R. 41, or that which arose in *Commissioner of Taxation v. W. R. Moran Pty. Ltd.*, (1939) 61 C.L.R. 735, arises here. The Commonwealth is legislating to ensure that only meat of a certain grade and quality shall be exported, and the law is clearly a law with respect to trade and commerce with other countries. The power given by section 51 (i) extends to authorizing the total prohibition of the export of any commodity, and *a fortiori* it includes a power to prohibit the export of any commodity except upon compliance with prescribed conditions. 20 30

But the regulations go further than this, and, indeed, if they did not go further, it might be less clear that they were inconsistent with section 52a of the South Australian Act. Regulation 5 prohibits the use of any premises for the slaughter of meat for export unless those premises are registered, and a penalty is imposed by regulation 99 on any use of premises which is in breach of regulation 5. In fact, although the regulations were originally enacted in 1923, it was not until 1953 that regulation 4B was introduced, which expressly prohibits the export of meat, etc., unless (*inter alia*) it was slaughtered in a registered establishment. It is true that regulation 91 (which provides for export permits) has been in force from the beginning, and regulation 4 of the Meat Export Control (Licences) Regulations has been in force since 1936. But the position originally was, and still is, that regulation 5 prohibits the use of premises for slaughter for export unless the premises are registered, and they cannot be registered unless they comply with a large number of prescribed conditions which descend to meticulous detail. The question which emerges is whether the Commonwealth power with respect to trade and commerce with other countries extends to authorizing legislation regulating and controlling the slaughter of meat for export. In my opinion it does so extend. 40 50

*In the
High Court
of Australia.*

No. 6

Judgments,
17th December,
1954, *continued.*

Fullagar, J.

The question obviously tends to open up a wide field of speculation as to the extent of the power in question. But it will be wise, I think, to avoid that field, and to concentrate attention on the particular case before us and the particular commodity with which that case is concerned. It will be wise also, I think, to begin by obtaining as clear a conception as possible of what is meant by the expression "slaughter for export". It would perhaps have been better if we had had some evidence before us as to Australia's export trade in meat, and as to the processes involved in the killing and preparation of meat for export and for home consumption respectively. But it seems to me safe to say

10 that Sir Garfield Barwick was entirely right when he said that the expression "slaughter for export" is used in the relevant legislation as a composite expression which would be understood objectively in the trade. Whether "slaughter for export" is taking place is not, from the point of view of the legislator, a question which depends entirely on some intention in the mind of the owner or slaughterer of a beast—an intention which may change from time to time as operations proceed. The whole process from killing to packing will be conditioned in certain respects by the pre-determined destination of the meat, and "slaughter for export" is, in the mind of the legislator, a definite objective conception distinct from slaughter for home consumption. It does not, of

20 course, follow that any corresponding position exists with regard to any commodity other than meat. It may very well be, for example, that such an expression as "mining metals for export" or "sowing wheat for export" is meaningless except by reference to some subjective element.

Probably 50 years ago in the United States such legislation as that contained in the Commerce (Meat Export) Regulations would have been held to lie outside the federal commerce power. A sharp distinction seems to have been drawn between manufacture or production on the one hand and commerce, conceived essentially as the movement of goods, on the other hand: see, *e.g.* *Kidd v. Pearson*, (1888) 128 U.S. 1 at pp. 20-21. Today, however, it seems most

30 probable that such legislation would be held within the power to regulate commerce with foreign nations. It is possible indeed that the killing and treatment of stock for export might be regarded as themselves part of the course of commerce with foreign nations, but in any case I think they would be held to be matters within the commerce power. See, *e.g.*, *Stafford v. Wallace*, (1922) 258 U.S. 495; *National Labour Relations Board v. Laughlin Steel Corporation*, (1936) 301 U.S. 1, and *United States v. Darby*, (1940) 312 U.S. 100. It was argued that the regulations in question here are a direct regulation of the very subject matter of the power, that they control steps taken in the actual course of trade and commerce with other countries. But, even if counsel for the State

40 of South Australia be right in saying that the course of commerce with other countries does not begin until a later stage, I am of opinion that the regulations must be held valid on the broad general principle of constitutional interpretation adopted in the earliest days of this Court. In *D'Emden v. Pedder*, (1904) 1 C.L.R. 91, the Court accepted the famous enunciation of the principle by Marshall C.J. in *McCulloch v. Maryland*, (1819) 4 Wheat. 316, at pp. 321-3, as "a most welcome aid and assistance", and (at p. 109) said: "Where any power or control is expressly granted, there is included in the grant, to the full extent of the capacity of the grantor and without special mention, every power and every control the denial of which would render the grant itself

50 ineffective".

*In the
High Court
of Australia.*

No. 6
Judgments,
17th December,
1954, *continued.*

Fullagar, J.

It is true that the Commonwealth possesses no specific power with respect to slaughter houses. But it is undeniable that the power with respect to trade and commerce with other countries includes a power to make provision for the condition and quality of meat or of any other commodity to be exported. Nor can the power, in my opinion, be held to stop there. By virtue of that power all matters which may affect beneficially or adversely the export trade of Australia in any commodity produced or manufactured in Australia must be the legitimate concern of the Commonwealth. Such matters include not only grade and quality of goods but packing, get-up, description, labelling, handling, and anything at all that may reasonably be considered likely to affect an export market by developing it or impairing it. It seems clear enough that the objectives for which the power is conferred may be impossible of achievement by means of a mere prescription of standards for export and the institution of a system of inspection at the point of export. It may very reasonably be thought necessary to go further back, and even to enter the factory or the field or the mine. How far back the Commonwealth may constitutionally go is a question which need not now be considered, and which must in any case depend on the particular circumstances attending the production or manufacture of particular commodities. But I would think it safe to say that the power of the Commonwealth extended to the supervision and control of all acts or processes which can be identified as being done or carried out for export. The "slaughter for export" of stock is such an act or process, and, in my opinion, the Commerce (Meat Export) Regulations are within the legislative power conferred upon the Commonwealth by section 51 (*i*).

The questions submitted to this Court should, in my opinion, be answered—

1. No.
2. No.

*In the
High Court
of Australia.*

No. 6
Judgments,
17th December,
1954, *continued.*

Kitto, J.

I entirely agree with the judgment of my brother Fullagar and have nothing to add.

*In the
High Court
of Australia.*

No. 6
Judgments,
17th December,
1954, *continued.*

Taylor, J.

The questions for decision in this case are whether section 52a of the Metropolitan and Export Abattoirs Act 1936-1948 of the State of South Australia is inconsistent with any of the provisions of the Commerce (Meat Export) Regulations made pursuant to the Customs Act 1901-1951 and the Commerce (Trade Descriptions) Act 1905-1952 and, if so, whether the conflicting Commonwealth provisions are within statutory and constitutional power.

The defendant company, which owns and operates an abattoirs in South Australia outside the Metropolitan Abattoirs Area as defined by the first-mentioned Act, is the holder of a licence issued by a local governing authority pursuant to Part XXVII of the Local Government Act 1934-1952. This is the

general condition upon which it is lawful to slaughter cattle, sheep, or swine within the local government area in which the defendant company's establishment is situated. Such licences may be issued in respect of premises which the authority is of the opinion "are suitable for the purpose, are situated in a convenient situation and conform to any by-laws in force in the area and to the provisions of the Health Act 1935". Licences so issued remain in force until the 30th June next after the grant thereof. There is nothing in the Local Government Act to restrict the purposes for which slaughtering operations may be carried on pursuant to such a licence and if it were not for the provisions of

10 section 52a of the Metropolitan and Export Abattoirs Act the defendant company at its establishment might, apart from the effect of the relevant Commonwealth legislation, have lawfully slaughtered and prepared meat for export. It was, however, the holder also of a certificate issued pursuant to the Commerce (Meat Export) Regulations which certified that the company's premises "have been registered in the name of Noarlunga Meat Limited of Noarlunga as an establishment in which the following operations may be conducted:

"Slaughtering and freezing of mutton and/or lamb for export".

It is unnecessary to specify the several conditions subject to which the

20 certificate was granted.

Before considering the operation and effect of the last-mentioned regulations and the certificate issued thereunder it is necessary to make reference to some of the provisions of the Metropolitan and Export Abattoirs Act. By part IV of the Act the Metropolitan and Export Abattoirs Board is empowered to erect and establish abattoirs and to execute certain incidental works and there is conferred upon the Board the exclusive right of conducting slaughtering operations in the metropolitan area (sections 82 and 70). But in spite of the provisions of section 6, which stipulate that the provisions of the Act shall apply within the metropolitan abattoirs area, the Act makes express provision

30 for the control of some slaughtering activities outside that area. Section 50 provides that "except as provided by section 50a" the board shall have the sole right within the Metropolitan Abattoirs Area to slaughter stock for export as fresh meat in a chilled or frozen condition, whilst section 52a provides that no person shall in any part of the State outside that area use any premises for the purposes of slaughtering stock for export as fresh meat in a chilled or frozen condition unless he is the holder of a licence from the Minister of Agriculture authorizing him to use those premises for that purpose. The Minister is given a discretion to grant or refuse any application for a licence

40 under this section after due consideration of a number of matters which are specified in subsection (2). It is the prohibition in the latter section which, it is said, the company failed to observe and which is said to be in conflict with the relevant Commonwealth legislation.

From the brief references to the State legislation which I have made it is apparent that, with some immaterial exceptions, slaughtering operations in South Australia may not be carried on within the Metropolitan Abattoirs Area by any person other than the Board and that, outside that area, they may not be carried on by any person unless he is the holder of a licence under the Local Government Act (or certain other legislation to which it is unnecessary to refer) or, in the case of slaughtering for export, he is the holder of a licence

50 under section 52a of the Metropolitan and Export Abattoirs Act. Since the

*In the
High Court
of Australia.*

No. 6

Judgments,
17th December,
1954, *continued.*

Taylor, J.

defendant company's operations were carried on outside the last-mentioned area and it was the holder of an appropriate licence under the Local Government Act, it was entitled lawfully to engage in slaughtering operations but, as it did not hold a licence under section 52a of the Metropolitan and Export Abattoirs Act, it was subject to the prohibition erected by that section. This at least was the submission of the complainant. But the defendant contended that being the holder of a certificate issued under the Commonwealth regulations it needed no further lawful authority to engage in the operation of slaughtering and treating meat for export. The effect of the issue of that certificate was, it was contended, to confer upon the defendant company lawful authority to conduct the operations therein specified one of which is, of course, the operation the subject of the present charge. If this contention is sound and the relevant regulations are within power then the charge against the defendant company is not well founded and must be dismissed. 10

It may be contended that, in terms at least, the certificate purports to confer a licence to conduct the operation of slaughtering and freezing mutton and lamb for export. This, however, by no means disposes of the difficulty in the case, for the extent to which the certificate can operate as a licence to perform this operation can be ascertained only by a consideration of the provisions upon which its efficacy as a licence depends. Regulation 5 provides that all establishments used for the slaughter, treatment and storage of meat, meat products or edible offal for export shall be registered. Provision is made by regulation 6 for the making of applications for registration and for the issue of certificates of registration. The form in which such certificates should issue is prescribed and the certificate issued to the defendant company is in that form. Divisions 2, 3 and 4 of Part II prescribe in considerable detail standard specifications with respect to the construction, ventilation, sanitation and methods of operation of registered establishments, whilst Part III contains extensive provision with respect to supervision, inspection, preparation, transportation and the marking of meat intended for export. It is unnecessary to refer to these provisions in detail and it is sufficient to say that the conditions prescribed and the provision made for supervision and inspection are of a most comprehensive and exhaustive character. Regulation 91 makes provision for the issue of export permits to exporters in all cases "in which the provision of these regulations have been complied with", though until May 1953 the regulations themselves do not appear expressly to have placed any direct embargo or prohibition on the export of meat. In that month, however, regulation 4B (1) was promulgated. That regulation is in the following terms:— 20 30

"The exportation of all meat, meat products or edible offal is prohibited unless— 40

- (a) the treatment and storage of the meat, meat products or edible offal has been carried out in an establishment registered in accordance with these Regulations;
- (b) the provisions of these Regulations have been complied with;
- (c) the exporter has received an export permit in respect of the goods in accordance with these Regulations, and the export permit is in force at the time of exportation of the goods; . . ."

But prior to the promulgation of this regulation the Meat Export Control (Licences) Regulations were in operation and regulation 4 of those regulations prohibited the export of meat except by persons who held licences. These regulations came into force in June 1926 and, apparently, are still in force. We have not been told, nor have I been able to discover, whether prior to that date the exportation of meat without a licence was forbidden by proclamation pursuant to section 112 of the Customs Act before its amendment in 1934, but upon the view which I have formed of the operation and effect of the Commerce (Meat Export) Regulations this is of little consequence.

*In the
High Court
of Australia.*

—
No. 6
Judgments,
17th December,
1954, *continued.*

—
Taylor, J.

- 10 The contention that the issue of a certificate of registration issued pursuant to the regulations operated to confer upon the defendant company lawful authority to conduct the operations therein specified asserts, in effect, that the regulations evidence an intention on the part of the Commonwealth to assume the supervision and control of all establishments for the slaughtering of stock and the preparation of meat for export. To this end, it is said, the regulations exhaustively define the standard requirements for such establishments and have provided for the issue of licences to approved applicants. In one sense much of this may be conceded without damage to the complainant's case, for a great deal depends upon what is meant by the assumption of "supervision and
- 20 control" of such establishments. If this means that the Commonwealth intended to constitute itself the sole licensing authority for such establishments, and if the effect of the regulations is to carry this intention into operation, then it may be assumed that the issue of a licence would have the effect contended for on behalf of the defendant. In those circumstances there would be a clear conflict between the relevant regulations and section 52a of the Metropolitan and Export Abattoirs Act. But it does not necessarily follow that if this view be rejected there is no such conflict. It is sufficient for the defendant to establish either that the issue of a certificate has such an effect or,
- 30 alternatively, that the effect of the regulations is to prohibit the use of establishments which are not registered thereunder for the purpose of slaughtering stock and the preparation of meat for export. In the latter case they would also clearly conflict with the provisions of section 52a which purport to empower the Minister to issue licences authorizing the use of premises for that purpose.

- In considering the problem it is not without significance to observe that the regulations do not contain any provision which purports expressly either to confer upon the holder of a certificate authority to slaughter or treat meat for export or to prohibit the use of establishments for those activities. Regulation 5 merely provides that all establishments used for the slaughtering,
- 40 treatment and storage of meat, meat products or edible offal for export shall be registered, whilst regulation 6 provides machinery for the issue of certificates of registration. A perusal of the regulations discloses that almost invariably they are not couched in the language of command but rather in the form of specifications, some of which appear to be designed as conditions precedent to the registration of an establishment and others as conditions precedent to the right to obtain an export permit under regulation 91 in respect of meat processed in a registered establishment. In other words, the regulations, in the main, present themselves not as rules of conduct with which the regulations imperatively require compliance, but as the antecedent specification
- 50 of conditions the fulfilment of which will entitle an applicant to the issue of

*In the
High Court
of Australia.*

No. 6

Judgments,
17th December,
1954, *continued.*

Taylor, J.

an export permit at the appropriate time. A few individual regulations, and notably regulation 10, are not couched in language which is appropriate to such an understanding of them, but they are not in question in this case and they are insufficient, I think, to require modification of the general view which I have expressed. The object which the regulations appear to be designed to achieve might have been achieved in other ways. It might have been brought about by a simple prohibition of export except in cases where the commodity had been processed under specified conditions designed to ensure appropriate export standards and this, of course, might have been done without any provision for the registration of slaughtering establishments. But I see very little, if any, 10
difference between such a plan and that which is carried into effect by the regulations. In the main the regulations merely prescribe conditions designed to secure standards of purity, quality and condition at the point of export and these are the conditions which, if observed, will entitle an applicant to an export permit. Again, in the main, the only sanction for the observance of these conditions, including that of registration, is that failure to observe them will or may result in the refusal of such a permit. If this be the correct view of the effect of the regulations then it is quite clear that their provisions were not intended to supersede, *pro tanto*, all other existing requirements for the establishment of slaughter houses. Indeed, it clearly appears that when the 20
regulations came into operation there was in existence in South Australia, and no doubt in the other States, legislation providing for the licensing and supervision of abattoirs generally and it should not, in the absence of a clear indication, be inferred that it was the intention of the Commonwealth to override this legislation so far as the slaughtering of stock for export was concerned. If such a result was intended I should have expected the regulations expressly to provide that the holder of a certificate of registration might lawfully engage in that operation. The meaning of regulation 5 is, of course, a critical matter in the case and I am unwilling to recognize it as the corner stone of a licensing scheme intended to supersede the legislation of the State. 30

In these circumstances the form of the certificate of registration adds nothing to the defendant's arguments. It is merely a certificate which evidences the fact that for the purposes of the regulations the defendant company's establishment is a registered establishment.

On the view which I have formed it is, I think, quite immaterial that section 52a deals exclusively with the slaughtering of meat for export or that the grant of a licence thereunder is in the discretion of the Minister.

For the reasons which I have given I am of the opinion that there is no conflict between the relevant State and Commonwealth legislation and it becomes unnecessary to consider whether the provisions of the Commerce (Meat 40
Export) Regulations or any of them are invalid. Accordingly I am of the opinion that the first question raised by the special case should be answered in the affirmative, and, since there is no dispute on the facts of the case, the second question should also be answered in the affirmative.

No. 7.—ORDER.

IN THE HIGH COURT OF AUSTRALIA. } 1954 No. 9.
SOUTH AUSTRALIA. REGISTRY.

*In the High
Court of
Australia.*

—
No. 7
Order.
—

SPECIAL CASE removed from the Supreme Court of South Australia under section 40 of the Judiciary Act, 1903-1950.

BETWEEN

THOMAS O'SULLIVAN

AND

Complainant.

NOARLUNGA MEAT LIMITED

Defendant.

10

Before Their Honours the Chief Justice (Sir Owen Dixon), Mr. Justice McTiernan, Mr. Justice Webb, Mr. Justice Fullager, Mr. Justice Kitto, and Mr. Justice Taylor.

Friday, the 17th day of December, 1954.

WHEREAS a special case stated by a Court of Summary Jurisdiction sitting at Adelaide in the State of South Australia on the 29th day of March, 1954 for the opinion of the Supreme Court of South Australia came on for hearing before His Honour Mr. Acting Justice Hannan an Acting Judge of the said Supreme Court on the 20th day of May 1954 AND WHEREAS His Honour
20 Mr. Acting Justice Hannan acting under the provisions of section 40A of the Judiciary Act 1903-1950 did not proceed further in the said special case AND WHEREAS the said special case was duly transmitted to this Court AND WHEREAS upon motion made unto this Court on behalf of the Attorney-General for the State of South Australia on the 16th day of June 1954 this Court did order that the said special case be removed into this Court under section 40 of the Judiciary Act 1903-1950 WHEREUPON and upon the said special case coming on for hearing before the Court on the 17th, 18th and 19th days of August 1954 at Sydney the Court did grant leave unto the State of Tasmania, the State of New South Wales and the Commonwealth of Australia
30 to intervene and UPON HEARING Mr. R. R. St.C. Chamberlain, Q.C., and Mr. W. A. N. Wells of Counsel for the complainant, Mr. H. E. Zelling of Counsel for the State of Tasmania, Dr. F. Louat, Q.C., and Mr. K. S. Jacobs of Counsel for the State of New South Wales, Mr. H. G. Alderman, Q.C., and Mr. E. W. Palmer of Counsel for the Defendant and Sir Garfield Barwick, Q.C., and Mr. R. Else-Mitchell of Counsel for the Commonwealth of Australia the Court did reserve judgment and the same standing for judgment this day at Sydney THIS COURT DOTH DETERMINE AND ANSWER the questions stated in the special case as follows:—

40 Question (a)—Whether section 52A of the Metropolitan and Export Abattoirs Act 1936-1952 is a valid and operative enactment.

Answer—No.

Question (b)—Whether on the facts stated in the special case the Defendant is guilty of the alleged offence.

Answer—No.

*In the
High Court
of Australia.*

No. 7
Order,
continued.

And this Court DOTH ORDER that the Special Case be remitted with these answers to the Special Magistrate of the Court of Summary Jurisdiction at Adelaide aforesaid.

And this Court DOTH FURTHER ORDER that the Complainant pay to the Defendant his costs of the Special Case to be taxed.

By the Court,

F. B. McBRYDE, District Registrar.

THIS ORDER was filed by WALLMAN & PALMER of 24 Waymouth Street Adelaide in the State of South Australia, Solicitors for the Defendant.

**No. 8.—ORDER IN COUNCIL GRANTING LEAVE TO APPEAL TO
HER MAJESTY IN COUNCIL.**

*In the Privy
Council.*

AT THE COURT AT BUCKINGHAM PALACE.

The 21st day of June, 1955.

Present:

THE QUEEN'S MOST EXCELLENT MAJESTY.

LORD PRESIDENT.

MR. LOW.

MR. SECRETARY LLOYD-GEORGE.

MR NUTTING.

MR. SANDYS.

MR. BROOKE.

10

SIR WALTER MONCKTON.

MR. TURTON.

No. 8
Order in
Council
granting leave
to appeal to
Her Majesty
in Council,
21st June, 1955.

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 13th day of June 1955 in the words following, viz.:—

20

“WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Thomas O'Sullivan in the matter of an Appeal from the High Court of Australia in the matter of The Metropolitan and Export Abattoirs Act, 1936-1952 (South Australia) and in the matter of the Commerce (Meat Export) Regulations (Commonwealth) made under and pursuant to the Commonwealth Customs Act, 1901-1951 and in the matter of a Special Case referred by the Supreme Court of South Australia pursuant to Section 40A of the Commonwealth Judiciary Act, 1903-1950 between Thomas O'Sullivan (Complainant) Petitioner and Noarlunga Meat Limited (Defendant) Respondent the Commonwealth of Australia the State of New South Wales and the State of Tasmania Interveners setting forth (amongst other matters) that the Respondent a company registered under the Companies Act, 1934-1952 (S.A.) was charged on the complaint of the Petitioner Inspector of Police of the State of South Australia with having on the 27th November 1953 in a part of the said State outside the Metropolitan Abattoirs Area namely Noarlunga used certain premises for the purposes of slaughtering lambs for export as fresh meat in a chilled or frozen condition contrary to the provisions of Section 52a of the said Act: that on the 29th March 1954 the complaint came on for hearing before a Special Magistrate in the Court of Summary Jurisdiction at Adelaide the defendant company pleaded “not guilty” and the complainant tendered by consent a Statement of Agreed Facts which was admitted and the facts therein found to be proved: that the Court reserved certain questions of law for the opinion of the Supreme Court of South Australia by way of a Special Case: that the Special Case came on for hearing in the said Supreme Court before a single Judge and on the 20th May 1954 the Court purporting to act under Section 40A of the Commonwealth Judiciary Act 1903-1950 proceeded no further in the case and the Special Case was duly transmitted to the High Court of Australia South Australia Registry: that on the 16th June 1954 the case came on for hearing before the High Court and upon motion made on behalf of the Attorney-General for the State of South Australia the

30

40

*In the Privy
Council.*

No. 8
Order in
Council
granting leave
to appeal to
Her Majesty
in Council,
21st June, 1955,
continued.

Court ordered that the said Special Case be removed into the High Court of Australia under Section 40 of the aforesaid Judiciary Act and transferred from the South Australia Registry to the New South Wales Registry to be heard at the next sittings at Sydney: that the said Special Case was heard before the Full High Court on the 17th 18th and 19th August 1954 and leave to intervene was granted to the Commonwealth of Australia the State of New South Wales and the State of Tasmania all of which were represented by and presented argument through counsel: that on the 17th December 1954 Judgment (and an Order drawn up accordingly on the same day) was delivered and (a) on the *inter se* question Sir Owen Dixon C.J. McTiernan Fullagar and Kitto J.J. held that the Regulations were not outside the legislative power of the Commonwealth conferred by Section 51 (i) of the Constitution and Webb and Taylor J.J. expressed no opinion (b) the Chief Justice Fullagar and Kitto J.J. held that the Regulations were within the regulation making power conferred by the Customs Act, 1901-1951 and the other three members of the Court did not express any conclusion and (c) on the question whether there was "inconsistency" within the meaning of Section 109 of the Commonwealth Constitution between the Regulations and Section 52a of the Act the Court was equally divided the Chief Justice Fullagar and Kitto J.J. holding that there was inconsistency McTiernan Webb and Taylor J.J. that there was not and the opinion of the Chief Justice prevailed pursuant to Section 23 of the Commonwealth Judiciary Act 1903-1950: And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal from the Order of the High Court dated the 17th day of December 1954 in so far as such order decides that Section 52a of the South Australia Metropolitan and Export Abattoirs Act 1936-1952 is inconsistent with the Commonwealth Commerce (Meat Export) Regulations and is by virtue of Section 109 of the Constitution invalid and that the said Regulations are within the regulation-making power conferred by any Act or Acts of the Parliament of the Commonwealth and for further or other relief:

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto and no-one appearing at the Bar on behalf of the State of New South Wales and the State of Tasmania Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Order of the High Court of Australia dated the 17th day of December 1954 save as to any question as to the limits *inter se* of the Constitutional powers of the Commonwealth and the State and on the condition that the Petitioner shall not in any event ask the Respondent to pay his costs:

"And Their Lordships do further report to Your Majesty that the proper officer of the said High Court ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same."

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor or Officer administering the Government of the Commonwealth of Australia for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

W. G. AGNEW.

*In the Privy
Council.*

—
No. 8

Order in
Council
granting leave
to appeal to
Her Majesty
in Council,
21st June, 1955,
continued.

*In the High
Court of
Australia.*

No. 9
Notice of
Motion, 15th
September,
1955.

No. 9.—NOTICE OF MOTION.

IN THE HIGH COURT OF AUSTRALIA. } 1954 No. 9.
VICTORIA REGISTRY

SPECIAL CASE referred by the Supreme Court of South Australia pursuant to section 40A of the Judiciary Act, 1903-1950.

BETWEEN

THOMAS O'SULLIVAN

AND

NOARLUNGA MEAT LIMITED

Complainant.

Defendant. 10

TAKE NOTICE that this Honourable Court will be moved on Thursday, the 13th day of October, 1955, at 10.30 o'clock in the forenoon or so soon thereafter as Counsel can be heard by Counsel on behalf of the abovenamed Complainant—

1. For a certificate under section 74 of the Commonwealth of Australia Constitution that the question as to the limits *inter se* of the Constitutional powers of the Commonwealth and the States arising in this cause, namely, whether the power of the Parliament of the Commonwealth to make laws with respect to trade and commerce with other countries extends to authorizing legislation which expresses completely and exhaustively the requirements of the law with respect to premises for the slaughtering of stock for export and their use and, more particularly, whether section 270 of the Customs Act is, to the extent to which it authorizes the making of the Commerce (Meat Export) Regulations, a law which the Parliament of the Commonwealth has power to make, is a question which ought to be determined by Her Majesty in Council. 20

2. For a certificate under section 74 of the Commonwealth of Australia Constitution that all other questions as to the limits *inter se* of the Constitutional powers of the Commonwealth and the States arising in this cause are questions which ought to be determined by Her Majesty in Council. 30

3. For such further or other order as may seem just.

DATED the day of September, 1955.

R. R. ST C. CHAMBERLAIN,

Crown Solicitor for the State of South Australia and Solicitor for the Complainant.

To the abovenamed Defendant.

And to Wallman & Palmer, its Solicitors.

This Notice of Motion is filed by Reginald Roderic St. Clair Chamberlain, of 24 Flinders Street, Adelaide, Crown Solicitor for the State of South Australia and Solicitor for the abovenamed Complainant by his Victorian Agent—Thomas F. Mornane, Crown Solicitor, 461 Lonsdale Street, Melbourne, Victoria. 40

No. 10.—JUDGMENTS ON NOTICE OF MOTION.

*In the High
Court of
Australia.*

No. 10
Judgments on
Notice of
Motion, 2nd
March, 1956,

Dixon, C.J.
Williams, J.
Webb, J.
Fullagar, J.

This is an application for a certificate under section 74 of the Constitution certifying that the questions as to the limits *inter se* of the powers of the Commonwealth and the States involved in the decision of this Court in the case are questions which ought to be determined by the Queen-in-Council. The certificate or certificates sought are described by the notice of motion in two paragraphs. They are not perhaps very happily expressed, but together they cover all questions within section 74 which arise in the case.

10 On 21st June last an Order in Council was made granting the complainant leave to appeal against the order of this Court "save as to any question as to the limits *inter se* of the constitutional powers of the Commonwealth and the State," *scil.* of South Australia. The order of this Court was made in a proceeding which stood removed from the Supreme Court of South Australia under section 39A and section 40A of the Judiciary Act 1903-1955 as involving a question or questions within section 74. This Court, however, also made an order under section 40.

20 The proceeding was a special case for the opinion of the Supreme Court stated by a Magistrate sitting in a court of summary jurisdiction. The proceeding before the court of summary jurisdiction was a complaint for an offence by the defendant against section 52a of the Metropolitan and Export Abattoirs Act 1936-1948. That section provides that no person shall, outside a certain metropolitan area, use any premises for the purpose of slaughtering stock for export as fresh meat in a chilled or frozen condition unless he holds a licence for the purpose from the Minister of Agriculture. The section goes on to deal with the discretion of the Minister to grant a licence. The special case sought the opinion of the Court upon the question whether the section is a valid and operative enactment and added a question whether on the facts stated the defendant was guilty of the offence. This Court made an order answering both questions No. It is from that order that special leave to appeal has been given,
30 subject to the qualification excepting any question as to the limits *inter se* of federal and State powers.

40 The ground upon which the Court answered the questions in the negative was that the section was inconsistent with a valid law of the Commonwealth, namely the Commerce (Meat Export) Regulations deriving their authority, so far as material, from section 270 (1) (c) of the Customs Act 1901-1950. The steps by which the conclusion expressed in this ground was reached in this Court were first that section 51 (i) of the Constitution authorized a law of the Commonwealth prescribing, completely or exhaustively, what shall be the requirements with respect to the use of premises for the purposes of slaughtering stock for export, secondly that the Regulations operating under section 270 (1) of the Customs Act amounted to such a law and thirdly that because section 52a was directed to and dealt with that subject, that is the use of premises for the purposes of slaughtering stock for export, it was inconsistent with the law of the Commonwealth and therefore void.

50 These are steps which, of course, are notionally distinct and no difficulty exists in stating them as different logical conceptions. Accordingly at first sight they might seem to be susceptible of critical consideration in isolation one from another. But experience of such questions shows that this is not really so. One's conception of the scope and operation of both federal legislative power and of a particular power with respect to a specific subject matter can seldom

*In the High
Court of
Australia.*

No. 10

Judgments on
Notice of
Motion, 2nd
March, 1956,
continued.

Dixon, C.J.
Williams, J.
Webb, J.
Fullagar, J.

be dissociated from one's view either of the purpose or of the effect of a given exercise of the power; and one's conception of the place which section 109 of the Constitution and perhaps of section 5 of the covering clauses take in the federal system must affect, if not control, the conclusion.

The application for a certificate was based to no small extent on this ground. As the Judicial Committee had decided that special leave to appeal should be granted, it was said that we ought to certify under section 74 so that the matter might be before their Lordships as a whole; that to compel a decision on one question without taking the other into account would be to treat that under consideration in artificial isolation. The argument holds implications as to the policy or object of section 74 which are hardly consistent with the conception by which this Court has hitherto been guided in performing its duty under the provision; but that is a matter concerning our discretion and may be deferred for the moment. What matters at this point is to see to what extent the operation of section 74 affects this case and what kind of certificate the complainant would or might require. The view which he presents is that the question whether the State enactment conflicts with the federal statutory provisions is quite independent of the question whether the federal provisions are valid and does not involve or touch any question within section 74. Treating them as independent questions the complainant begins with the assumption that an appeal against the order of this Court is competent so long as the grounds are limited to the question arising under section 109. He regards the case as falling in principle if not in form under a class mentioned in a passage in the judgment of the Privy Council in *The Commonwealth v. Bank of New South Wales*, 1949 79 C.L.R. 497 at pp. 628-9: 1950 A.C. 235 at pp. 298-9. The passage is this: "Finally, mention should be made of one class of case which requires special treatment. If, for example, a party to a suit contends (1) that the facts of his case do not bring him within the operation of a statute and (2) that, even if they do, the statute is invalid on some *inter se* ground, and both pleas are decided against him, there appears to be no reason why he should not accept the decision of the High Court on the *inter se* question but present a petition to His Majesty in Council for special leave to appeal on the other question. In such a case, if leave were granted, the Board would, on the hearing of the appeal, have no concern with any *inter se* question, and in harmony with the formula already stated the appellant could obtain the relief he claimed without the determination by the Board of any such question. The example given is not exhaustive of this class of case. The plea other than the *inter se* plea might be founded not on fact but on some other ground of invalidity, in which case the same principle would apply." In *Perpetual Trustees and Agency Co. (W.A.) v. Maslen*, 1952 A.C. 215, a respondent to an appeal from a decision of this Court based upon Commonwealth statute sought to put in question before their Lordships the validity of one of the provisions of the statute. The attack upon its validity seems to have been quite untenable and it had not been made in Australia, but nevertheless, unless put aside as frivolous, it involved a question under section 74. The appellants placed no reliance before the Privy Council upon the impugned provision and the objection on the part of the respondent that the case fell under section 74 was disposed of by their Lordships in these words: ". . . the Board are not prepared to carry their decision in the Nelungaloo case further and to say that if a point which may involve an *inter se* question has been raised at any time in the case, or even if it appears in the case presented by the appellants, they are precluded from considering the matter.

As was said in the Nelungaloo case (1951 A.C. 34, 53): 'The appellant may accept the determination of the High Court on the *inter se* question.'—1952 A.C. at p. 227. It is of course for the Privy Council and not for this Court to say how far it was intended that the reservation which was made in the passage quoted from the Banking case and thus acted upon in Maslen's case should go. But there may well be a difference between, on the one hand, a case where the two issues are quite unconnected and, on the other hand, a case where the legal conclusion is in truth single but in reaching it steps in reasoning are employed which, when they are dissected out, are seen to contain an element or elements that may be notionally distinguished from the *inter se* question. As will appear later the Commonwealth maintains that a question as to the meaning and operation of section 109 falls within section 74. Let it be supposed that it is so: on that footing a conclusion that two laws are inconsistent within the meaning of section 109 may perhaps provide an example of a single legal conclusion which when dissected is seen to comprise notionally distinguishable steps in legal reasoning only some or one of which would, considered alone, involve a question within section 74. For it is a possible view that an attempt to distinguish between the meaning to be assigned to section 109 and the application of that meaning to a given case of supposed conflict between State and federal laws cannot succeed in dividing the question of the operation of section 109 upon the case into two completely independent questions.

It is of course evident that in so far as any element in the decision of this case is affected by the interpretation of section 51 (i) it falls within section 74. Needless to say, our decision that it was competent for a law of the Commonwealth to prescribe completely or exhaustively the requirements that are to be imposed for the use of premises for the purpose of slaughtering stock for export was based upon an interpretation of section 51 (i). It may be observed that in support of the application for a certificate an exaggerated view of the application of the decision was presented to us. Indeed it was even suggested that as a necessary consequence the commerce power would extend over all production, whenever the goods were intended to go into the flow of interstate or overseas commerce. As to this it is enough to refer to the express limitation which Fullagar J. made in the concluding paragraph of his judgment. In the same way an attempt was made to give to the application made in this case of the principles of federal supremacy a wider significance than in fact it possesses. This is in truth a very ordinary case relating to a particular application of the long settled doctrine of this Court with reference to the operation of State and federal laws on the same subject. The difference of opinion among the judges was probably traceable rather to the necessity of what may be called "characterising" the regulations than to any want of unanimity as to the scope and operation of the principle or rule. But of course, when minds experience a difficulty in agreeing about subsuming an objective thing under a category, it is never certain how far the difficulty is occasioned by varying appreciations of the category and how far by varying apprehensions of the characteristics possessed by the thing. There was, however, no question about the principle established finally in this Court in *Clyde Engineering v. Cowburn*, 1926 37 C.L.R. 466, and explained, particularly in its relation to industrial awards, in *Ex parte McLean*, 1930 43 C.L.R. 472, and repeatedly applied since. Given that principle, the present case relates to a narrow problem. It is narrow because the South Australian provision went specifically to the very field (use of premises for slaughtering for export) which formed the basis of the exercise of federal

*In the High
Court of
Australia.*

No. 10

Judgments on
Notice of
Motion, 2nd
March, 1956,
continued.

Dixon, C.J.
Williams, J.
Webb, J.
Fullagar, J.

*In the High
Court of
Australia.*

No. 10
Judgments on
Notice of
Motion, 2nd
March, 1956,
continued.

Dixon, C.J.
Williams, J.
Webb, J.
Fullagar, J.

power constituted by the Regulations. The question remained whether, in the jargon the use of which upon this subject has been found convenient both here and in the United States, the Regulations "occupied the field".

Once the constitutional principle is accepted, we have never regarded the application of it in deciding whether a given State law gave way to a given federal law as amounting in itself to a question as to the limits *inter se*. In this Court it has always been regarded as a question, not between powers, but between laws made under powers. But if the question is to be raised whether that general principle forms part of Australian federalism, that is quite another matter. In American federalism it has been worked out under the Sixth Article of the Constitution which is the source of the material part of section 5 of the covering clauses of our own Constitution. There is not in the United States Constitution an express provision like section 109. Surprising as it would have been if section 109 had been interpreted so that the principle of federal supremacy had less strength here than under the United States Constitution, it must be remembered that not always did sound doctrine obtain in this Court. If this case means that there is to be a challenge to what at length became the accepted principle, then of course this case assumes an entirely different significance. Indeed it would be impossible to underrate its importance. No doubt, because the Commonwealth has realized that, in measuring the actual effectiveness of its legislative powers, so much depends upon the maintenance of the principle which this Court has so long applied in administering section 109, the Commonwealth as an intervener has put forward a contention that the principle in question defines the limits of all the legislative powers of the Commonwealth and the legislative powers of the States. It is the first time, so far as is known, that this argument has been advanced. What is said is that the meaning and general operation assigned to section 109 determines the extent to which all legislative powers exercisable by the Commonwealth are paramount over the legislative powers of the States. Correspondingly it determines the extent to which a concurrent legislative power of the States is subordinate and liable to be defeated by an exercise of Commonwealth power. This means that the doctrine explained in *Ex parte Nelson No. 2*, 1929 42 C.L.R. 258, at pp. 270-2, and in *Nelungaloo Pty. Ltd. v. Commonwealth*, 1952 85 C.L.R. at pp. 562-4, is given a new application, a general application to all paramount concurrent powers of the Commonwealth alike. It means that a question as to the meaning and operation of section 109 is a question within section 74.

In disposing of the present application it is not necessary to decide the question. It is enough to note it and understand that, if we were to give a certificate the contention would make it incumbent upon us, from a practical point of view, to attempt to find some means, if there are any, of excluding the interpretation of section 109 from the operation of the certificate or else, if we thought it was a proper course, of including it within the certificate. But the case is clearly not one in which we ought to give a certificate. At bottom the policy of section 74 is to confine the decision of essentially federal questions to this Court, but at the same time to confide to the Court a discretion which will make it possible to obtain the decision of the Privy Council in a case the features of which make it desirable to do so for some special reason. The provision may be regarded as recognizing that federalism is a form of Government the nature of which is seldom adequately understood in all its bearings by those whose fortune it is to live under a unitary system. The problems of federalism and the considerations governing their solution assume a different aspect to those

whose lives are spent under the operation of a federal Constitution, particularly if by education, practice and study they have been brought to think about the constitutional conceptions and modes of reasoning which belong to federalism as commonplace and familiar ideas. A unitary system presents no analogies and indeed, on the contrary, it forms a background against which many of the conceptions and distinctions inherent in federalism must strike the mind as strange and exotic refinements. It is also doubtless true that those responsible for the provision which took the shape of section 74 hoped that an Australian Court might find it possible to work out by judicial decision in the course of interpreting the Constitution a body of constitutional law which would give strength and stability to the system.

It seems almost evident that the present case falls completely within the principle which this Court has consistently regarded section 74 as embodying.

The foregoing discussion of the nature of the case and of the constitutional elements which must and those which conceivably may enter into its determination show clearly enough that it is a typical product of federalism. It presents no feature which could afford a special reason to be set against the strong presumption in favour of confining the decision of such a case to Australia.

The application should be dismissed.

20 I agree that this motion should be dismissed.

The motion relates to the Order of the High Court determining a Special Case to which the applicant and the respondent were parties: *O'Sullivan v. Noarlunga Meat Limited*, 1955 A.L.R. 82. In order to determine the Special Case it was necessary for the Court to answer two questions therein stated. The first question was whether section 52a of the Metropolitan and Export Abattoirs Act 1936-1948 of South Australia is invalid. The second question is not directly material to this application. The Order of the Court answered "No" to both questions and contained consequential orders.

30 The applicant in the present motion was by Order-in-Council given leave to appeal to the Privy Council against the Order "save as to any question as to the limits *inter se* of the constitutional powers of the Commonwealth and the State" (of South Australia). The principal matter upon which the applicant desires to appeal to the Privy Council is the decision of this Court that section 52a of the Act of South Australia in question is invalid. The ultimate question raised by the attack upon this provision was whether it is inconsistent, within the meaning of section 109 of the Constitution, with the Commerce (Meat Export) Regulations of the Commonwealth. The test of inconsistency applied was that laid down in *Clyde Engineering Co. v. Cowburn*, 37 C.L.R. at p. 489, as explained in *Ex parte McLean*, 43 C.L.R. at p. 483. The "majority" of the
40 Court held that, according to that test, section 52a is inconsistent with the Regulations because it enters a field which the Regulations evince an intention completely and exhaustively to cover, the field being the requirements of the law with respect to the use of premises for the slaughter of stock for export. But the Regulations by force of section 109 could not prevail in that field, nor could section 52a be rendered invalid unless the Regulations were a valid law of the Commonwealth. Consequently, the applicant, then the informant, attacked their validity before this Court. The question whether section 52a, a validly enacted State provision, is invalid for inconsistency with a law of the Common-

In the High Court of Australia.

No. 10
Judgments on
Notice of
Motion, 2nd
March, 1956,
continued.

Dixon, C.J.
Williams, J.
Webb, J.
Fullagar, J.

In the High Court of Australia.

No. 10
Judgments on
Notice of
Motion, 2nd
March, 1956,
continued.

McTiernan, J.

*In the High
Court of
Australia.*

No. 10

Judgments on
Notice of
Motion, 2nd
March, 1956,
continued.

McTiernan, J.

wealth could not therefore be determined by this Court without deciding whether the Regulations were valid. The informant said that the Regulations exceeded the statutory powers pursuant to which they were made. That point was not upheld. It is not now directly material. The informant then said that the Regulations were not wholly within the legislative powers vested in the Parliament by *placitum* (i) of section 51 of the Constitution, which is their only constitutional foundation. This contention raised a question as to the limits *inter se* of the constitutional powers of the Commonwealth and the State of South Australia. The Court decided it adversely to the informant. Its decision was a necessary step leading to the answer "No" given by the Order of the Court to the first question. 10

In this motion, the applicant asks the Court to certify pursuant to section 74 of the Constitution that a question that ought to be determined by Her Majesty in Council is "whether the power of the Parliament of the Commonwealth to make laws with respect to trade and commerce with other countries extends to authorizing legislation which expressed completely and exhaustively the requirements of the law with respect to premises for the slaughtering of stock for export and their use and, more particularly, whether section 270 of the Customs Act is, to the extent to which it authorizes the making of the Commerce (Meat Export) Regulations, a law which the Parliament of the Commonwealth has power to make". The argument in support of the motion is based upon the relationship of such a question to the decision of this Court that section 52a is not a valid and operative enactment, from which relationship it follows, so the argument runs, the applicant will not be able to uphold the validity of section 52a, upon all grounds needed to support it, unless he is permitted to argue that, with the scope attributed to the Regulations by the decision of the majority of this Court, those Regulations are *ultra vires placitum* (i) of section 51 of the Constitution. The question which the Court has to decide is whether these considerations constitute a "special reason" within the contemplation of section 74 of the Constitution for this Court to certify that the question defined in the notice of motion ought to be determined by Her Majesty in Council. Guided by the high policy which section 74 embodies and by the decisions given by this Court on applications made under the section I cannot agree that "any special reason" is made out by the applicant. I think that he is in no stronger position to apply for a certificate than if the Order-in-Council giving him leave to appeal had not been made. The applicant would carry a very heavy onus if the only matter about which the Court had to be satisfied were that the ends of the Constitution would be served by foregoing its constitutional authority to interpret the nature and extent of *placitum* (i) of section 51 of the Constitution. But when the applicant asks, as he does, that the Court should grant a certificate in respect of a question as to the nature and extent of that power in order to enable him to advance all the arguments before the Privy Council which might possibly contribute to the success of his appeal on another and different question, I think that the application must necessarily fail. 20 30 40

In the view which I take of this application I find it unnecessary to give any decision or make any observations on the point whether a question arising under section 109 is essentially a question as to the limits *inter se* of the constitutional powers of the Commonwealth and those of any State or States.

The central theme of the argument presented in support of this application was that if we should decide to grant a certificate under section 74 of the Constitution with respect to the question whether a law in the terms of the Commerce (Meat Export) Regulations is within the powers of the Commonwealth Parliament under section 51 (i) of the Constitution the result would be that the Privy Council would be thereby enabled to consider the case as a whole, having already granted special leave to appeal save as to any question as to the limits *inter se* of the constitutional powers of the Commonwealth and the States.

*In the High
Court of
Australia.*

No. 10
Judgments on
Notice of
Motion, 2nd
March, 1956,
continued.

10 We were invited to accept the hypothesis that no question in the case was an *inter se* question except that which related to the scope of the legislative power conferred by section 51 (i). The hypothesis was challenged by counsel for the Commonwealth to whom leave to intervene was granted. The argument they submitted was that the applicant's avowed intention was to contest in the Privy Council the meaning which has long been given in this Court to section 109 of the Constitution, and that a question as to the meaning of that section is itself an *inter se* question. It was said, in effect, that to grant a certificate would mean either that, because or in spite of the terms of the certificate, that *inter se* question as well as the other would go before the Privy Council for determination—and it was submitted that we should not be in favour of its doing so—
20 or that the entire case would not after all be before the Privy Council, the words of exception in the grant of special leave having the effect of excluding from the appeal the point mainly relied upon in the application for special leave.

Kitto, J.

It is conceded that the applicant does desire to argue before their Lordships the interpretation of the word "inconsistent" in section 109. That means that the appeal which is contemplated is an "appeal from a decision of the High Court upon a question" as to the meaning of section 109, in the sense which the words quoted have been authoritatively held to bear in section 74, and none the less so because in this Court the question was treated as covered by long-standing authority and was therefore neither debated nor pronounced upon.
30 This is so because the effect of the line of decisions comprising *Commonwealth v. Bank of New South Wales* (1950) A.C. 235, *Nelungaloo Pty. Ltd. v. Commonwealth* (1951) A.C. 34, *Grace Brothers Pty. Ltd. v. Commonwealth* (1951) A.C. 53, and *Perpetual Executors Trustees and Agency Co. (W.A.) Ltd. v. Maslen* (1952) A.C. 215 is that, in section 74, "upon any question" means involving any question, and, *prima facie* preferable though it may be to attach the phrase "upon any question as to the limits *inter se*" etc., to the word "question", the effect of the section is that which may be obtained by reading the phrase as qualifying the word "appeal". "If, then, an argument involving an *inter se* point is persisted in before their Lordships' Board, even as an alternative to
40 an argument which does not raise an *inter se* question, the appeal is beyond their Lordships' jurisdiction": (1952) A.C. at p. 226.

The Commonwealth's contention that a question as to the meaning of section 109 is an *inter se* question appears to me to be well-founded.

The point of commencement for any examination of the question must be the established view of section 74, namely that a question as to the limits *inter se* etc., so far as legislative powers are concerned, is a question concerning the lines of demarcation between, on the one hand, the powers of the Commonwealth to make laws which by reason of section 109 will override State laws inconsistent with them and, on the other hand, the powers of the States to make laws which

*In the High
Court of
Australia.*

No. 10
Judgments on
Notice of
Motion, 2nd
March, 1956,
continued.

Kitto, J.

cannot be overridden by Commonwealth laws. In a case, such as in *Ex parte McLean* (1930) 43 C.L.R. 472, where it is taken for granted, as it was in the earlier proceedings in this Court in the present case, that the meaning of "inconsistent" in section 109 is so firmly settled as to admit of no dispute, it is clear that a question whether a State law is to any extent invalid for inconsistency with an admittedly valid Commonwealth law is not an *inter se* question. Indeed it is not a constitutional question at all, for in order to answer it the Court has only to construe the two laws and apply the accepted test of inconsistency, whatever that test may be.

It is equally clear, however, that the antecedent question, whether the Commonwealth law is within power, is an *inter se* question. A decision that the Commonwealth law is *ultra vires* means that the power of the Commonwealth to override State legislation does not extend to doing so by enacting a law in the terms of that which is the subject of the decision. On the other hand, a decision that the Commonwealth law is valid establishes as a consequence that by reason of section 109 the powers of the States are subject to the qualification that any law they may make which is inconsistent (whatever that may mean) with a Commonwealth law in the terms of that which is upheld is invalid to the extent of the inconsistency. 10

Inter se questions comprise all questions *as to* the constitutional limits *inter se* of the constitutional powers of the Commonwealth and those of any State or States. Usually an *inter se* question is such for the reason I have indicated in relation to questions of the validity of Commonwealth laws, namely that the answer will determine whether a State law inconsistent with a particular existing Commonwealth law is (or if it existed would be) on one side or the other of the dividing line between the State's absolute power and the Commonwealth's power to override State legislation. That is a question to be answered by applying whatever is considered to be the correct test of inconsistency. But when a court is called upon to decide what is the correct test of inconsistency, the answer given must have a direct bearing upon every case relating to the location of the boundary between State absolute power and Commonwealth overriding power. Why is not the question in such a case, equally with the question in the more common type of case, a question "as to" the limits *inter se* of Commonwealth and State powers? Consider the two main tests which formerly used to compete for acceptance. One was that which prevailed in *Clyde Engineering Co. Ltd. v. Cowburn* (1926) 37 C.L.R. 466—does the Commonwealth law intend to occupy exclusively a field which the State law affects to enter—and the other was that which Higgins J. described at p. 503 by confining inconsistency to cases of "actual collision, as when one Legislature say 'do' and the other says 'don't'". A decision that the first is the true test means that the qualification which section 109 imposes upon State legislative power is more extensive than it would be if the second were held to be the true test. Indeed the present case provides an illustration in point. Acceptance of the first test of inconsistency led a majority of the Court to deny that the legislative power of the State of South Australia extends to making a law in the terms of section 52a of the Metropolitan and Export Abattoirs Act 1936-1952 (S.A.) which will have any validity while a Commonwealth law in the terms of the Commerce (Meat Export) Regulations is in force; but if the second test had been accepted instead of the first the admitted possibility of obeying both laws simultaneously must necessarily have led to the conclusion that the legislative power of South 40
Australia was not so restricted. 50

Being of opinion for these reasons that if the entire case were to be placed within their Lordships' jurisdiction it would involve two *inter se* questions and not only one, I have felt obliged to consider, with respect to each of those questions, whether it is, in the language of section 74, "one which ought to be determined by Her Majesty in Council." In my opinion we should not hold that either ought to be so determined. As regards the question concerning the extent of Commonwealth legislative power under section 51 (i), I have nothing to add to what the Chief Justice and Williams and Fullagar J.J. have already said. As regards the question concerning section 109, I would only say that is a question which, so far as this Court is concerned, was set at rest a generation ago, and that I can see no possible justification for our treating it now as a question which it would be right for us to resuscitate.

In my opinion there is no feature of the case which provides any reason for granting a certificate.

The applicant has not, in my opinion, advanced any ground of substance for the grant of a certificate under section 74 of the Constitution and I agree that this application should be dismissed.

The main ground advanced in support of the application was that the Judicial Committee of the Privy Council has granted limited leave to appeal and that the applicant will be hampered in the presentation of its arguments upon that appeal unless it should be at liberty to make submissions upon all of the matters which were argued before this Court, including the *inter se* question, which arose upon the submission that the power of the Commonwealth Parliament to make laws with respect to trade and commerce with other countries does not extend to authorise the making of the Commerce (Meat Export) Regulations. Additionally, it was said, the decision of this Court upon that question was of such far-reaching significance that a certificate should be granted under section 74.

I am unable to see that the applicant will suffer any substantial prejudice in presenting its arguments on a limited appeal as the result of inability on its part to contest the decision of this Court on the *inter se* question referred to and, equally, I fail to recognise that the decision on this question carries with it the implications suggested in argument. But even if the grounds of the application, as stated, were soundly based they would not justify the grant of a certificate. It is by no means unusual to find an *inter se* question closely linked in the course of argument with a question of construction concerning some legislative exercise of power or with a question under section 109 of the Constitution. Essentially, however, they are separate questions and although an appellant may suffer some tactical disadvantage in not being permitted to present an appeal as a whole this is no reason for the exercise of this Court's discretion under section 74. To accede to the applicant's submission on this point would, in effect, destroy the operation of that section. I should perhaps add that the applicant does not, in the ultimate analysis of the arguments presented on its behalf, suggest anything more than the possibility of a tactical disadvantage if a certificate be not granted.

I feel that I should add that I am not able to see in the reasons of their Lordships in *The Commonwealth of Australia v. Bank of New South Wales* (1950 A.C. 235) any grounds for thinking that an appeal limited to the issue

*Court of
In the High
Australia.*

No. 10
Judgments on
Notice of
Motion, 2nd
March, 1956,
continued.

Kitto, J.

*In the High
Court of
Australia.*

No. 10
Judgments on
Notice of
Motion, 2nd
March, 1956,
continued.

Taylor, J.

*In the High
Court of
Australia.*

No. 10

Judgments on
Notice of
Motion, 2nd
March, 1956,
continued.

Taylor, J.

which arises under section 109 of the Constitution may not be decided without pronouncing upon the *inter se* question decided by this Court. But there may be some force in the contention that the question of the meaning of that section itself raises an *inter se* question. On this latter point, however, I desire to reserve my views until such time as it arises directly for decision in this Court and the matter has been fully argued.

No. 11.—ORDER REFUSING CERTIFICATE.

IN THE HIGH COURT OF AUSTRALIA. } 1954 No. 9.
SOUTH AUSTRALIA REGISTRY

*In the High
Court of
Australia.*

SPECIAL CASE removed from the Supreme Court of South Australia under section 40 of the Judiciary Act, 1903-1950.

No. 11
Order
Refusing
Certificate.

BETWEEN

THOMAS O'SULLIVAN

AND

Complainant.

NOARLUNGA MEAT LIMITED

Defendant.

10

Before Their Honours the Chief Justice (Sir Owen Dixon), Mr. Justice McTiernan, Mr. Justice Williams, Mr. Justice Webb, Mr. Justice Fullagar, Mr. Justice Kitto, and Mr. Justice Taylor.

Friday, the 2nd day of March, 1956.

20

UPON MOTION on Thursday the 13th day of October 1955 made unto this Court by Counsel for the Complainant for a Certificate under section 74 of the Commonwealth of Australia Constitution that the question as to the limits *inter se* of the Constitutional Powers of the Commonwealth and the States arising in this cause is a question which ought to be determined by Her Majesty the Queen in Council and UPON HEARING Mr. D. I. Menzies Q.C., Mr. R. R. St. C. Chamberlain Q.C. and Mr. W. A. N. Wells of Counsel for the Complainant, Mr. R. R. St. C. Chamberlain and Mr. W. A. N. Wells of Counsel for the States of South Australia and for the States of West Australia and Tasmania intervening, Mr. H. G. Alderman Q.C. and Mr. E. W. Palmer of Counsel for the Defendant, Dr. E. G. Koppel Q.C. and Mr. K. A. Aickin of Counsel for the Commonwealth of Australia intervening and Mr. J. D. Holmes Q.C. and Mr. D. A. Staff of Counsel for the States of New South Wales and Queensland intervening and UPON READING the Affidavit of WILLIAM ANDREW NOYE WELLS filed herein on the 15th day of September 1955

30

THE COURT DID RESERVE JUDGMENT and the same standing for Judgment this day at Melbourne THIS COURT DOTH ORDER that the Application be refused AND DOTH FURTHER ORDER that the Complainant pay to the Defendant its costs of Motion to be taxed.

By the Court,

K. H. KIRKMAN, Deputy District Registrar.

THIS ORDER was filed by WALLMAN PALMER HUTTON & DUFFY of 24 Waymouth Street, Adelaide in the State of South Australia, Solicitors for the Defendant.

*In the High
Court of
Australia.*

**No. 12.—CERTIFICATE OF THE DISTRICT REGISTRAR OF THE
HIGH COURT OF AUSTRALIA VERIFYING TRANSCRIPT
RECORD OF PROCEEDINGS.**

Certificate of
District
Registrar of
the High
Court of
Australia.

I, FREDERICK BALFOUR McBRYDE, District Registrar of the High Court of Australia, DO HEREBY CERTIFY as follows:—

THAT this transcript Record contains a true copy of all the evidence proceedings and judgments in the cause in which Thomas O'Sullivan is the (Complainant) Appellant and Noarlunga Meat Limited is the (Defendant) Respondent so far as the same have relation to the matters of this appeal and a copy of the reasons for the respective judgments pronounced in the course of the proceedings out of which the appeal arises. 10

THAT the Respondent herein has received notice of the Order of Her Majesty in Council giving the Appellant Special Leave to Appeal to Her Majesty in Council AND has also received notice of the despatch of this transcript Record to the Registrar of the Privy Council.

DATED at Adelaide in the State of South Australia this
day of , 1956.

*District Registrar of the High Court
of Australia.*