Naracoorte Transport Co Pty Ltd v Butler [1956] HCA 72; (1956) 95 CLR 455 (29 October 1956)

HIGH COURT OF AUSTRALIA

NARACOORTE TRANSPORT CO. PTY. LTD. v. BUTLER [1956] HCA 72; (1956) 95 CLR 455

Constitutional Law (Cth.)

High Court of Australia
Dixon C.J.(1), McTiernan(1), Williams(1), Webb(1), Fullagar(1), Kitto(1) and Taylor(1) JJ.

CATCHWORDS

Constitutional Law (Cth.) - Freedom of inter-State trade commerce and intercourse - Wool grown in Victoria - Transported to South Australia by one carrier - Subsequent transport by another carrier from South Australia to Victoria - Whether an inter-State transaction - Transport Regulation Acts 1933-1954 (No. 4198 - No. 5848) (Vict.) s. 45 - The Constitution (63 & 64 Vict. c. 12), s. 92.

HEARING

Melbourne, 1956, October 10, 29. 29:10:1956
APPEAL from the Court of Petty Sessions at Geelong, Victoria.

DECISION

October 29.
THE COURT delivered the following written judgment: -
The appellant, a company incorporated in South Australia, was charged before against s. 45 of the Transport Regulation Acts 1933-1954 (Vict.). That section makes a person guilty of an offence if he is the owner of a commercial goods vehicle which (a) operates on any public highway, and (b) is not licensed as such or authorised by permit so to operate under Pt. II of the Acts. For such an offence s. 48 provides a penalty. The expression "commercial goods vehicle" and the word "operate" are defined in s. 5. (at p458)

2. The prosecution proved that on the day charged in the information, 6th October 1955, the appellant was the owner of an International semi-trailer which was a commercial goods vehicle within the defined meaning of that expression, and which operated, in the defined sense of the term, on a public highway in Victoria without being licensed under the Acts or authorised by permit so to operate. The appellant did not dispute that all the ingredients of an offence under s. 45 were proved. Its defence was that the operating of the vehicle which was charged as the offence was in the course and for the purposes of inter-State trade, and that accordingly it was protected from the application of s. 45 by s. 92 of the Constitution: Armstrong v. State of Victoria [1955] HCA 26; (1955) 93 CLR 264 . The magistrate who constituted the court, however, convicted the appellant and imposed a penalty. From his decision an appeal is now brought to this Court under s. 39 (2) of the Judiciary Act 1903-1955. (at p458)

3. The evidence established that the appellant conducted a carrying business from a depot in Naracoorte, a town in South Australia a few miles from the Victorian border, and that on the occasion to which the information referred the appellant's semi-trailer was being used by its servant in the conveyance of eighty-nine bales of wool, in the course of its business, from its depot at Naracoorte to wool stores at Geelong. The wool had been brought to Naracoorte by a carrying firm, Brown & Mitchell Road Transport Service, which operated from the Victorian town of Harrow, and whose only connexion with the appellant, so far as appears, was that one of its members was on the appellant's board of directors. Brown & Mitchell, as the firm may be called, had collected all eighty-nine bales from places on the Victorian side of the border for conveyance to Naracoorte, and thence, through the appellant, to Geelong; and the wool, having been brought by their vehicle to Naracoorte, was there transferred to the appellant's semi-trailer. The two carrying concerns were paid separately for their respective services, Brown & Mitchell being paid 7s. 6d. per bale for the journey from Harrow to Naracoorte, and the appellant 17s. 6d. per bale for the journey from Naracoorte to Geelong. As to the circumstances in which seventy-nine of the bales came to be despatched through Naracoorte the evidence was silent. There was some evidence concerning the remaining ten, but it established no more than that they came from a place called Miga Lake, which is in Victoria and some forty-five miles from the border, and that they belonged to a man named McDonald, who had had his sheep shorn at his brother's shearing shed at Miga Lake and had left to his brother the making of all arrangements with Brown & Mitchell for the carriage of his wool to Geelong. (at p459)

4. The magistrate gave as his reason for rejecting the defence based upon s. 92 that "the transaction", meaning apparently the arrangements made by the respective consignors for the conveyance of their wool by a route which took it first across the border to Naracoorte and then back into Victoria, was designed to give an inter-State flavour to an intra-State transaction. Taking this view, he was led away from the only question which it was material for him to consider, namely whether the operation of the appellant's vehicle in carrying its load of wool in the proved circumstances was an operation in the course and for the purposes of the appellant's inter-State trade. Clearly it was, whatever reasons or motives any of the consignors may have had for sending their wool by the appellant's service from Naracoorte rather than by some other service following a more direct route to Geelong. (at p459)

5. The appellant's conduct which the magistrate held to constitute an offence was part of a transportation of goods from a point of departure in one State to a destination in another State. As such, it was within the freedom provided by s. 92, and the conviction therefore cannot stand. (at p459)

6. The appeal should be allowed. The conviction and penalty should be set aside and the information dismissed. (at p459)

ORDER

Appeal allowed with costs. Order of Court of Petty Sessions at Geelong discharged. In lieu thereof order that the information be dismissed with 20 guineas costs.