

1968-1969

THE

COMMONWEALTH LAW REPORTS

CASES DETERMINED IN THE

HIGH COURT OF AUSTRALIA

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JUSTICES OF THE HIGH COURT
OF AUSTRALIA

DURING THE CURRENCY OF THIS VOLUME

THE RIGHT HONOURABLE SIR GARFIELD EDWARD JOHN BARWICK,
G.C.M.G., CHIEF JUSTICE

THE RIGHT HONOURABLE SIR EDWARD ALOYSIUS MCTIERNAN, K.B.E.

THE RIGHT HONOURABLE SIR FRANK WALTERS KITTO, K.B.E.

THE RIGHT HONOURABLE SIR ALAN RUSSELL TAYLOR, K.B.E.

THE RIGHT HONOURABLE SIR DOUGLAS IAN MENZIES, K.B.E.

THE RIGHT HONOURABLE SIR WILLIAM JOHN VICTOR WINDEYER,
K.B.E., C.B., D.S.O.

THE RIGHT HONOURABLE SIR WILLIAM FRANCIS LANGER OWEN,
K.B.E.

THE HONOURABLE SIR CYRIL AMBROSE WALSH, K.B.E. (from 20th
September 1969).

ATTORNEY-GENERAL :

THE HONOURABLE NIGEL HUBERT BOWEN, Q.C., M.P.

THE HONOURABLE THOMAS EYRE FORREST HUGHES, Q.C., M.P.
(from 11th November 1969).

MEMORANDA

1969

- August 3— Death of THE RIGHT HONOURABLE SIR ALAN RUSSELL TAYLOR, K.B.E., a Justice of the High Court of Australia.
- September 20—Appointment of THE HONOURABLE MR. JUSTICE CYRIL AMBROSE WALSH, a Judge of Appeal of the Court of Appeal Division of the Supreme Court of New South Wales.

THE LATE SIR ALAN RUSSELL TAYLOR

On 5th August 1969 the High Court assembled in Sydney, when BARWICK C.J. said :

Mr. Attorney-General for the Commonwealth, Mr. Solicitor-General for the Commonwealth, Mr. Solicitor-General for the State of New South Wales, Mr. Vice-President of the Law Council of Australia, Mr. President of the Bar Association of New South Wales, Mr. Vice-President of the Law Society of New South Wales, members of the Bar and solicitors of this Court. Since the Court rose last Thursday our brother Justice, SIR ALAN TAYLOR, has died. At this our first sitting since his passing we wish to pay tribute to him and publicly to express our intense sorrow. Our brother Sir William Owen, who is unfortunately in hospital and unable to be present, joins us in what I have to say.

ALAN RUSSELL TAYLOR was admitted to the Bar of New South Wales on 2nd June 1926. He became in a very short time a familiar figure in the courts of New South Wales and particularly in the Supreme Court of the State, where for twenty-six years he practised extensively and most successfully both in its common law and in its equitable jurisdiction. As well, he had a considerable practice in Admiralty. He took silk in 1943 and straight away, and deservedly, became a success as a leader in all manner of cases. Early in his career he began to appear in this Court both in constitutional cases and in appeals involving a wide range of the general law. His name will be found as counsel in the more important constitutional cases over a span of more than twenty years.

Though heavily engaged in practice he maintained an active interest in the affairs of the Bar and served it as President of the Bar Association during 1948 and 1949. In 1950 he appeared before the Judicial Committee of the Privy Council in several cases and would, I am sure, have developed a large practice before that Tribunal but for his elevation to the Bench of the Supreme Court of New South Wales on 5th May 1952. His term as judge of that Court, however, was short: the width of his general knowledge and experience of the law and his mastery of constitutional principle and precedent made him the unquestioned choice to fill the vacancy on the Bench of this Court caused by the retirement of Sir John Latham and the appointment of Sir Owen Dixon as Chief Justice of the Court. SIR ALAN TAYLOR was appointed a Justice of this

Court on 2nd September 1952. In 1955 he was created a Knight Commander of the Most Excellent Order of the British Empire. On 17th January 1963 he was appointed a member of the Privy Council and on 19th February 1963 he was sworn in in the presence of Her Majesty during Her Majesty's visit to Australia in that year, and took his place at the Board accordingly.

Since he joined this Court he has consistently carried his full share of the work of the Court, travelling constantly with it from State to State during each year's annual programme of sittings. His only absences, apart from his recent illness, have been in 1960 for a period of six months for recreation and for a period of some three months in 1967 when, at the invitation of the Lord Chancellor, he sat in London as a member of the Judicial Committee of Her Majesty's Privy Council in the hearing and disposing of appeals. He thus had a long and arduous judicial career. He was a most distinguished judge, one of the ablest this country has produced. He was an indefatigable worker with a strong sense of duty, never sparing himself in the due performance of his judicial function. His capacity for felicitous and clear expression of his judicial views can be found throughout the volumes of the *Commonwealth Law Reports* which have been published during his seventeen years of service on this Bench. He was wise in conference, confident and practical in decision and gentle in dissent. He was always willing to place at the disposal of his brethren the result of his work and ever ready to have reasons which he had prepared adopted by his colleagues when of a like mind as the judgment of the Court, without insisting upon the acknowledgment of its authorship. This co-operative and self-effacing quality so frequently manifested has been much appreciated by us all over the years and adds greatly to the many reasons for which he shall be both sadly missed and dearly remembered.

This morning as we look back over the years, what is inevitably uppermost in our minds—without in the least diminishing his eminence both as a practising and as a judicial lawyer—is the warmth of his friendship, his unfailing good humour, and his ready turn of wit and phrase on all occasions, making our daily association with him pleasant and memorable both whilst we have sat with him on this Bench and during the years before when we practised with him in the several courts of the land. It is difficult for us to realize that this companionship, so much a part of our daily lives,

THE mode of citation of this volume of the COMMONWEALTH LAW REPORTS
will be as follows:—

118 C.L.R.

A TABLE
OF THE
NAMES OF THE CASES REPORTED
IN THIS VOLUME.

A.	Bishop <i>v.</i> Taylor - - - 518
	Brew <i>v.</i> Whitlock - - - 445
	———; —— <i>v.</i> - - - 445
Albert House Ltd. (in voluntary liquidation) <i>v.</i> Brisbane City Council - - - - 144	Bridge <i>v.</i> The Queen - - - 600
Allied Interstate (Qld.) Pty. Ltd. <i>v.</i> Barnes - - - - 581	Brisbane Amateur Turf Club <i>v.</i> Federal Commissioner of Taxa- tion - - - - 300
Amalgamated Engineering Union (Australian Section), <i>Exp.</i> ; Reg. <i>v.</i> Commonwealth Conciliation and Arbitration Commission - 219	Brisbane City Council; Albert House Ltd. (in voluntary liquidation) <i>v.</i> - - - 144
Australian Chilling and Freezing Co. Ltd.; Upper Hunter County District Council <i>v.</i> - - - 429	Bristol Laboratories Pty. Ltd.; Beecham Group Ltd. <i>v.</i> - - 618
	Brown; Mahony <i>v.</i> - - - 165
	———; Ready <i>v.</i> - - - 165
	Burchall <i>v.</i> Shire of Sherbrooke - 562
B.	C.
Bali Brassiere Co. Inc.'s Trade Mark, <i>Re</i> ; <i>Re</i> Berlei Ltd.'s Application - - - - 128	Canterbury Pipe Lines (Aust.) Pty. Ltd.; Gold Coast City Council <i>v.</i> - - - - 58
Barnes; Allied Interstate (Qld.) Pty. Ltd. <i>v.</i> - - - - 581	Carter; Conroy <i>v.</i> - - - 90
Barrett <i>v.</i> Federal Commissioner of Taxation - - - - 666	Club Motor Insurance Agency Pty. Ltd. <i>v.</i> Sargent - - - 658
Beecham Group Ltd. <i>v.</i> Bristol Laboratories Pty. Ltd. - - 618	Coffey <i>v.</i> The Commonwealth - 347
Berlei Ltd.'s Application, <i>Re</i> ; <i>Re</i> Bali Brassiere Co. Inc.'s Trade Mark - - - - 128	——— <i>v.</i> —— - - - 465
	Commonwealth, The; Coffey <i>v.</i> - 347
	———; —— <i>v.</i> - - - 465
	——— <i>v.</i> Hollis - - - 305

has ended. Indeed he was a companionable man—kind, loyal and generous in his friendship.

Last May twelve months he suffered a cardiac attack which left him much impaired physically. But, undaunted, after a period of convalescence, he carried on. He had always been robust and physically active, a good sportsman enjoying the company of fellow sportsmen. It could not have been easy for him to have endured the restraints which his resultant physical condition imposed upon him. Yet when he returned to his daily duty with the Court he insisted on continuing to take his full share of its judicial work, insisting on continuing to travel and refusing to accept any special or preferred treatment in the disposal of that work. Always most willing, always cheerful, always uncomplaining, always applying himself assiduously to the task. We who over the past months have been able to observe him have admired him immensely as we have profited by his continuing counsel and assistance. This Court has lost a great judge, each of us here has lost a close friend. The Court is most pleased this morning to see so many of the profession in attendance, marking their affection and their respect for him. I am sure that I speak for all present when I say that we all mourn him, but we have been much enriched by his presence with us, for which each of us is inexpressibly grateful.

On behalf of my brethren, and on my own behalf, I would express our deep sympathy with his widow and his family in their sudden and very sad bereavement.

Commonwealth Conciliation and Arbitration Commission; Reg. v.; <i>Ex p.</i> Amalgamated Engineering Union (Australian Section) - - - - -	219	G.	Gibb v. Federal Commissioner of Taxation - - - - -	628
-----; ----- v.; <i>Ex p.</i> North Australian Workers' Union - - - - -	219		Gold Coast City Council v. Canterbury Pipe Lines (Aust.) Pty. Ltd.	58
-----; ----- v.; <i>Ex p.</i> Vehicle Builders Employees' Federation of Australia - - - - -	219		Government Insurance Office (New South Wales) v. Fredrichberg -	403
Conroy v. Carter - - - - -	90		Gray; Gundowda Pty. Ltd. v. -	339
Cope v. Keene - - - - -	1		Gundowda Pty. Ltd. v. Gray -	339
		H.		
D.		Hollinworth v. Commissioner of Land Tax - - - - -	45	
Da Costa v. The Queen - - - - -	186	Hollis; The Commonwealth v. -	305	
d'Apice; Permanent Trustee Co. of New South Wales Ltd. v. -	105	Hudson v. Venderheld - - - - -	171	
District Court of the Queensland Northern District; Reg. v.; <i>Ex p.</i> Thompson - - - - -	488	K.		
E.		Kais; Sibley v. - - - - -	424	
Elder's Trustee and Executor Co. Ltd. v. Federal Commissioner of Taxation - - - - -	331	Keene; Cope v. - - - - -	1	
Emanuel v. Federal Commissioner of Taxation - - - - -	292	Kimberly-Clark Corporation v. Vereinigte Papierwerke Schikendantz & Co. - - - - -	79	
English Scottish and Australian Bank Ltd. v. Federal Commissioner of Taxation - - - - -	651	Knezovic v. Shire of Swan-Guildford - - - - -	468	
F.		L.		
Foster v. The Queen - - - - -	117	Land Tax, Commissioner of; Hollinworth v. - - - - -	45	
Fowler Rex (N.S.W.) Pty. Ltd.; Deputy Commissioner of Taxation v. - - - - -	160	Lucas; Ogden Industries Pty. Ltd. v. (P.C.) - - - - -	32	
Fredrichberg; Government Insurance Office (New South Wales) v. -	403	M.		
		McClelland; Federal Commissioner of Taxation v. - - - - -	353	
		McCubbin; Union Carbide Australia Ltd. v. - - - - -	15	
		McKean; O'Brien v. - - - - -	540	

Mahony <i>v.</i> Brown - - -	165	R.	
Manufacturers' Mutual Insurance Ltd. <i>v.</i> Queensland Government Railways - - -	314	Ramsay <i>v.</i> Pigram - - -	271
Mildura and District Dried Fruit Growers' Hail Storm Damage Compensation Scheme <i>v.</i> Federal Commissioner of Taxation -	342	Ready <i>v.</i> Brown - - -	165
N.		Ready Mixed Concrete (Vict.) Pty. Ltd. <i>v.</i> Federal Commissioner of Taxation - - -	177
National Bank of Australasia Ltd. <i>v.</i> Federal Commissioner of Taxation - - -	529	Reg. ; Bridge <i>v.</i> - - -	600
Newberry ; Pursell <i>v.</i> - - -	381	— <i>v.</i> Commonwealth Conciliation and Arbitration Commission ; <i>Ex p.</i> Amalgamated Engineering Union (Australian Section) -	219
Niven <i>v.</i> The Queen - - -	513	— <i>v.</i> — ; <i>Ex p.</i> North Aus- tralian Workers' Union - -	219
Nominal Defendant <i>v.</i> Strang -	658	— <i>v.</i> — ; <i>Ex p.</i> Vehicle Builders Employees' Federation of Australia - - -	219
North Australian Workers' Union, <i>Ex p.</i> ; Reg. <i>v.</i> Commonwealth Conciliation and Arbitration Commission - - -	219	— ; Da Costa <i>v.</i> - - -	186
O.		— <i>v.</i> District Court of the Queensland Northern District ; <i>Ex p.</i> Thompson - - -	488
O'Brien <i>v.</i> McKean - - -	540	— ; Foster <i>v.</i> - - -	117
Ogden Industries Pty. Ltd. <i>v.</i> Lucas (P.C.) - - -	32	— ; Niven <i>v.</i> - - -	513
P.		Roadair Pty. Ltd. <i>v.</i> Williams -	644
Permanent Trustee Co. of New South Wales Ltd. <i>v.</i> d'Apice -	105	S.	
Perpetual Trustees Executors and Agency Co. of Tasmania Ltd. ; Commissioner of Taxes (Tas- mania) <i>v.</i> - - -	325	Sargent ; Club Motor Insurance Agency Pty. Ltd. <i>v.</i> - - -	658
Pigram ; Ramsay <i>v.</i> - - -	271	Sibley <i>v.</i> Kais - - -	424
Pursell <i>v.</i> Newberry - - -	381	Sherbrooke, Shire of ; Burchall <i>v.</i>	562
Q.		South Melbourne Corporation ; State Electricity Commission of Victoria <i>v.</i> - - -	504
Queensland Government Railways ; Manufacturers' Mutual Insur- ance Ltd. <i>v.</i> - - -	314	State Electricity Commission of Victoria <i>v.</i> South Melbourne Cor- poration - - -	504
		Strang ; Nominal Defendant <i>v.</i> -	658
		Swan-Guildford, Shire of ; Knezovic <i>v.</i> - - -	468

T.	
Taxation, Deputy Commissioner of <i>v. Fowler Rex (N.S.W.) Pty. Ltd.</i> - - - - - 160	Thompson, <i>Ex p.</i> ; <i>Reg. v. District Court of the Queensland North- ern District</i> - - - - 488
Taxation, Federal Commissioner of; <i>Barrett v.</i> - - - - 666	U.
—; <i>Brisbane Amateur Turf Club v.</i> - - - - 300	<i>Union Carbide Australia Ltd. v. McCubbin</i> - - - - 15
—; <i>Elder's Trustee and Executor Co. Ltd. v.</i> - - 331	<i>Upper Hunter County District Council v. Australian Chilling and Freezing Co. Ltd.</i> - - 429
—; <i>Emanuel v.</i> - - - 292	V.
—; <i>English Scottish and Australian Bank Ltd. v.</i> - - 651	<i>Vehicle Builders Employees' Federation of Australia, Ex p.</i> ; <i>Reg. v. Commonwealth Concilia- tion and Arbitration Commission</i> 219
—; <i>Gibb v.</i> - - - - 628	<i>Venderheld; Hudson v.</i> - - 171
— <i>v. McClelland</i> - - - 353	<i>Vereinigte Papierwerke Schikedanz & Co.; Kimberly-Clark Cor- poration v.</i> - - - - 79
—; <i>Mildura and District Dried Fruit Growers' Hail Storm Dam- age Compensation Scheme v.</i> - 342	W.
—; <i>National Bank of Austral- asia Ltd. v.</i> - - - - 529	<i>Whitlock v. Brew</i> - - - - 445
—; <i>Ready Mixed Concrete (Vict.) Pty. Ltd. v.</i> - - - 177	—; — <i>v.</i> - - - - 445
Taxes, Commissioner of (Tasmania) <i>v. Perpetual Trustees Executors and Agency Co. of Tasmania Ltd.</i> 325	<i>Williams; Roadair Pty. Ltd. v.</i> - 644
<i>Taylor; Bishop v.</i> - - - 518	
<i>Tilney v. Tilney</i> - - - 526	

TABLE OF CASES AFFIRMED, REVERSED, OVERRULED,
APPLIED OR JUDICIALLY COMMENTED ON IN
CASES REPORTED IN THIS VOLUME.

- Adcock v. The Commonwealth* (1960), 103 C.L.R. 194.
Applied 118 C.L.R. 305.
- Anchor Products Ltd. v. Hedges* (1966), 115 C.L.R. 493.
Referred to and discussed 118 C.L.R. 403.
- Bataillard v. The King* (1907), 4 C.L.R. 1282.
Considered 118 C.L.R. 600.
- Beach v. Wagner* (1959), 101 C.L.R. 604.
Applied 118 C.L.R. 644.
- Bishop v. Taylor*, [1968] Qd. R. 281.
Affirmed 118 C.L.R. 518.
- Brew v. Whitlock* [No. 2], [1967] V.R. 803.
Affirmed 118 C.L.R. 445.
- Brew v. Whitlock* [No. 3], [1968] V.R. 504.
Affirmed 118 C.L.R. 445.
- Brown v. Mahony*, [1967] Qd. R. 592.
Affirmed 118 C.L.R. 165.
- Cann's Pty. Ltd. v. The Commonwealth* (1946), 71 C.L.R. 210.
Distinguished 118 C.L.R. 429.
- Clement v. D. Davis & Sons Ltd.*, [1927] A.C. 126.
Considered 118 C.L.R. 32.
- Coffey v. The Commonwealth* (1968), 118 C.L.R. 347.
Affirmed 118 C.L.R. 465.
- Davis v. Bunn* (1936), 56 C.L.R. 246.
Referred to and discussed 118 C.L.R. 403.
- Dodd v. City of Keilor* (1965), 12 L.G.R.A. 341 ;
[1966] V.R. 214.
Approved 118 C.L.R. 562.
- Duggan v. Barnes*, [1923] V.L.R. 27.
Applied 118 C.L.R. 445.
- Fire Commissioners (N.S.W.), Board of v. Ardouin* (1961), 109 C.L.R. 105.
Applied 118 C.L.R. 171.
- Fitzpatrick v. Walter E. Cooper Pty. Ltd.* (1935), 54 C.L.R. 200.
Referred to and discussed 118 C.L.R. 403.
- Fredrichberg v. Government Insurance Office of N.S.W.* (1967), 87 W.N. (Pt 1) (N.S.W.) 122.
Reversed 118 C.L.R. 403.
- Gartner v. Kidman* (1962), 108 C.L.R. 12.
Considered 118 C.L.R. 468.
- Gough v. Gough* (1956), 95 C.L.R. 369.
Distinguished 118 C.L.R. 526.
- Gray v. Gundowda Pty. Ltd.* (1968), 69 S.R. (N.S.W.) 300 ; 87 W.N. (Pt 2) 285.
Affirmed 118 C.L.R. 339.
- Hollinworth v. Commissioner of Land Tax* (1968), 70 S.R. (N.S.W.) 188 ; 88 W.N. (Pt 2) 33.
Reversed 118 C.L.R. 45.
- Holmes v. Director of Public Prosecutions*, [1946] A.C. 588.
Applied 118 C.L.R. 186.
- Hudson v. Vanderheld (sic)* (1967), 67 S.R. (N.S.W.) 332 ; 85 W.N. (Pt 2) 104 ; 14 L.G.R.A. 64.
Reversed 118 C.L.R. 171.
- Imperial Tobacco Co.'s Trade Marks*, [1918] 2 Ch. 207, at pp. 224, 229.
Referred to 118 C.L.R. 79.
- Jackson v. The King* (1918), 25 C.L.R. 113.
Considered 118 C.L.R. 600.
- Keene, Re* (1967), 86 W.N. (Pt 1) (N.S.W.) 317.
Affirmed 118 C.L.R. 1.
- King Gee Clothing Co. Pty. Ltd. v. The Commonwealth* (1945), 71 C.L.R. 184.
Distinguished 118 C.L.R. 429.
- Knezovic v. Shire of Swan-Guildford*, [1967] W.A.R. 129 ; (Sub nom. *Shire of Swan-Guildford v. Knezovic*) (1967), 18 L.G.R.A. 357.
Reversed 118 C.L.R. 468.
- Lee Chun-Chuen v. The Queen*, [1963] A.C. 220.
Applied 118 C.L.R. 186.
- McCubbin v. Union Carbide Australia Ltd.* (1967), 68 S.R. (N.S.W.) 169 ; 87 W.N. (Pt 2) 1.
Reversed 118 C.L.R. 15.
- Maddison v. Chapman* (1858), 4 K. & J. 706 [70 E.R. 294] ; aff. (1859) 3 De G. & J. 536 [44 E.R. 1375].
Applied 118 C.L.R. 105.
- Manufacturers' Mutual Insurance Ltd. v. Queensland Government Railways*, [1968] Q.W.N. 12.
Reversed 118 C.L.R. 314.
- Marshall v. Blackpool Corporation*, [1935] A.C. 16.
Distinguished 118 C.L.R. 562.
- Moakes v. Blackwell Colliery Co. Ltd.*, [1925] 2 K.B. 64.
Considered 118 C.L.R. 32.
- Mummery v. Irvings Pty. Ltd.* (1956), 96 C.L.R. 99.
Referred to and discussed 118 C.L.R. 403.

- Nominal Defendant v. Haslbauer* (1967), 117 C.L.R. 448.
Referred to and discussed 118 C.L.R. 403.
- Ogden Industries Pty. Ltd. v. Lucas* (1967), 116 C.L.R. 537.
Affirmed 118 C.L.R. 32.
- Piening v. Wanless* (1968), 117 C.L.R. 498.
Referred to and discussed 118 C.L.R. 403.
- Pigram v. Ramsay* (1966), 68 S.R. (N.S.W.) 141; 86 W.N. (Pt 2) 61.
Affirmed 118 C.L.R. 271.
- Pursell v. Newberry* (1967), 67 S.R. (N.S.W.) 415; 86 W.N. (Pt 2) 274.
Reversed 118 C.L.R. 381.
- R. v. Ellis* (1925), 37 C.L.R. 147.
Considered 118 C.L.R. 600.
- Sherbrooke, Shire of v. Burchall*, [1968] V.R. 671.
Affirmed 118 C.L.R. 562.
- Shuckburgh's Settlement, In re; Robertson v. Shuckburgh*, [1901] 2 Ch. 794.
Referred to 118 C.L.R. 105.
- South Melbourne, City of v. State Electricity Commission of Victoria* (1967), 15 L.G.R.A. 283; [1968] V.R. 684.
Affirmed 118 C.L.R. 504.
- Stanton v. Federal Commissioner of Taxation* (1955), 92 C.L.R. 630.
Referred to 118 C.L.R. 666.
- State Government Insurance Office (Q.) v. Crittenden* (1966), 117 C.L.R. 412.
Applied 118 C.L.R. 658.
- Taxation, Federal Commissioner of v. W. E. Fuller Pty. Ltd.* (1959), 101 C.L.R. 403.
Not followed 118 C.L.R. 628.
- Thompson v. Andrews*, [1968] 1 W.L.R. 777; [1968] 2 All E.R. 419.
Referred to 118 C.L.R. 403.
- Vardon v. The Commonwealth* (1943), 67 C.L.R. 434.
Distinguished 118 C.L.R. 429.

STATUTES JUDICIALLY CONSIDERED.

IMPERIAL

Constitution, The (63 & 64 Vict. c. 12), s. 51 (ii.). <i>Conroy v. Carter</i> - - -	90
— s. 92. <i>Roadair Pty. Ltd. v. Williams</i> - - -	644
Income Tax Act, 1952, s. 132. <i>Emanuel v. Federal Commissioner of Taxation</i> - - -	292

COMMONWEALTH

Acts Interpretation Act 1901-1966, s. 4. <i>Conroy v. Carter</i> - - -	90
Commonwealth Employees' Compensation Act 1930-1967, s. 9A. <i>The Commonwealth v. Hollis</i> - - -	305
Conciliation and Arbitration Act 1904-1966, s. 33. <i>Reg. v. Commonwealth Conciliation and Arbitration Commission; Ex p. Amalgamated Engineering Union (Australian Section)</i> - - -	219
Estate Duty Assessment Act 1914-1965, ss. 3, 8, (4) (c). <i>Elder's Trustee and Executor Co. Ltd. v. Federal Commissioner of Taxation</i> - - -	331
Income Tax and Social Services Contribution Assessment Act 1936-1954, ss. 25 (1) (a), 26 (f). <i>Barrett v. Federal Commissioner of Taxation</i> - - -	666
— 1936-1961, ss. 6 "dividend", 44, 47 (1). <i>Gibb v. Federal Commissioner of Taxation</i> - - -	628
— 1936-1962, s. 121. <i>Mildura and District Dried Fruit Growers' Hail Storm Damage Compensation Scheme v. Federal Commissioner of Taxation</i> - - -	342
— 1936-1963, s. 26 (a). <i>Federal Commissioner of Taxation v. McClelland</i> - - -	353
— s. 26 (a). <i>National Bank of Australasia Ltd. v. Federal Commissioner of Taxation</i> - - -	529
— 1936-1964, ss. 128B, 128D. <i>Emanuel v. Federal Commissioner of Taxation</i> - - -	292
— 1936-1966, s. 62AA (2), (3), (5). <i>Ready Mixed Concrete (Victoria) Pty. Ltd. v. Federal Commissioner of Taxation</i> - - -	177
— 1936-1968, ss. 6, 25, 26 (g). <i>Brisbane Amateur Turf Club v. Federal Commissioner of Taxation</i> - - -	300

Income Tax and Social Services Contribution (Non-residents Dividends) Act 1959. <i>Emanuel v. Federal Commissioner of Taxation</i> - - -	292
Income Tax (International Agreements) Act 1953-1963, First Schedule. <i>Emanuel v. Federal Commissioner of Taxation</i> - - -	292
— 1953-1966, s. 5; Sch. I, Art. VI (2). <i>English Scottish and Australian Bank Ltd. v. Federal Commissioner of Taxation</i> - - -	651
Judiciary Act 1903-1965, s. 35 (1). <i>Gundowda Pty. Ltd. v. Gray</i> - - -	339
Matrimonial Causes Act 1959-1966, s. 28 (d). <i>Tilney v. Tilney</i> - - -	526
National Service Act 1951-1965, s. 29A (1). <i>Reg. v. The District Court of the Queensland Northern District; Ex p. Thompson</i> - - -	488
Northern Territory Supreme Court Act 1961, s. 47 (1) (c). <i>Da Costa v. The Queen</i> - - -	186
Poultry Industry Levy Collection Act 1965-1966, ss. 5, 6 (1). <i>Conroy v. Carter</i> - - -	90
Public Service Act 1920-1966, ss. 55, 97. <i>Coffey v. The Commonwealth</i> - - -	347, 465
Sales Tax (Exemptions and Classifications) Act 1935-1962, s. 5 (1), 1st Sch., items 113A, 113C. <i>Deputy Commissioner of Taxation v. Fowler Rex (N.S.W.) Pty. Ltd.</i> - - -	160
Trade Marks Act 1955-1958, ss. 6 (3), 22 (1) (b), 24, 28, 33 (1), 61. <i>Re Bali Brassiere Co. Inc.'s Registered Trade Mark and Berlei Ltd.'s Application</i> - - -	128
— ss. 28 (a) (d), 33 (1). <i>Kimberly-Clark Corporation v. Vereinigte Papierwerke Schikedanz & Co.</i> - - -	79

NEW SOUTH WALES

Crimes Act 1900, ss. 118, 189A. <i>Foster v. The Queen</i> - - -	117
— ss. 405, 407. <i>Bridge v. The Queen</i> - - -	600
Dividing Fences Act, 1951, s. 7. <i>Pursell v. Newberry</i> - - -	381
Land Tax Management Act, 1956-1965, s. 47. <i>Hollinworth v. Commissioner of Land Tax</i> - - -	45

Law Reform (Miscellaneous Provisions) Act, 1946, s. 5. <i>Ramsay v. Pigram</i> -	271	State Electricity Commission Act 1958, ss. 12, 21, 23, 24, 108 (3). <i>State Electricity Commission of Victoria v. South Melbourne Corporation</i> -	504
Local Government Act, 1919, s. 580 (1), (6). <i>Hudson v. Venderheld</i> -	171	Supreme Court Act 1958, s. 78 (1) (as amended by Supreme Court (Interest on Judgments) Act 1962, s. 2). <i>Whitlock v. Brew</i> -	445
Motor Vehicles (Third Party Insurance) Act, 1942-1951, s. 16. <i>Ramsay v. Pigram</i> -	271	Workers' Compensation Act 1958 (as amended by Workers' Compensation (Amendment) Act 1965), ss. 5 (1), 9 (1). <i>Ogden Industries Pty. Ltd. v. Lucas</i> -	32
Prickly-pear Act, 1924-1964, s. 12. <i>Gundowda Pty. Ltd. v. Gray</i> -	339	QUEENSLAND	
Testator's Family Maintenance and Guardianship of Infants Act, 1916-1954. <i>Cope v. Keene</i> -	1	The City of Brisbane Town Planning Act of 1964, ss. 13, 15, 16 (2), 23 (1). <i>Albert House Ltd. (in voluntary liq.) v. Brisbane City Council</i> -	144
Wills, Probate and Administration Act, 1898-1954, ss. 44, 46. <i>Cope v. Keene</i> -	1	WESTERN AUSTRALIA	
Workers' Compensation Act, 1926, as amended, s. 6 (1) "injury", s. 8. <i>Union Carbide Australia Ltd. v. McCubbin</i> -	15	Local Government Act, 1960-1965, ss. 300, 301. <i>Knezovic v. Shire of Swan-Guildford</i> -	468
— 1926-1964, s. 6 (1) "Worker", (3A), (5) (a). <i>Pursell v. Newberry</i> -	381	Rights in Water and Irrigation Act, 1914-1964, s. 2. <i>Knezovic v. Shire of Swan-Guildford</i> -	468
VICTORIA		TASMANIA	
Acts Interpretation Act 1958, s. 7 (2). <i>Ogden Industries Pty. Ltd. v. Lucas</i> -	32	Deceased Persons' Estates Duties Act 1931, s. 16A (1) (c). <i>Commissioner of Taxes (Tas.) v. Perpetual Trustees Executors and Agency Co. of Tasmania Ltd.</i> -	325
Commercial Goods Vehicles Act 1958, s. 22. <i>Roadair Pty. Ltd. v. Williams</i> -	644	Evidence Act 1910, s. 98. <i>Niven v. The Queen</i> -	513
Local Government Act 1958, s. 251 (1) (a). <i>State Electricity Commission of Victoria v. South Melbourne Corporation</i> -	504		
— s. 578 (2) (b). <i>Burchall v. Shire of Sherbrooke</i> -	562		

RULES, REGULATIONS, ORDINANCES AND ORDERS IN COUNCIL JUDICIALLY CONSIDERED.

COMMONWEALTH		TASMANIA	
Poultry Industry Levy Collection Regulations, reg. 4. <i>Conroy v. Carter</i> -	90	Criminal Code, s. 371 (i). <i>Niven v. The Queen</i> -	513
Public Service Regulations, regs. 13, 14. <i>Coffey v. The Commonwealth</i> -	347, 465	AUSTRALIAN CAPITAL TERRITORY	
Sales Tax Regulations. <i>Deputy Commissioner of Taxation v. Fowler Rex (N.S.W.) Pty. Ltd.</i> -	160	Crimes Ordinance 1951, s. 9. <i>Foster v. The Queen</i> -	117
WESTERN AUSTRALIA		Motor Traffic Ordinance 1936-1962, cl. 41A0 (1), 41A0 (1). <i>Club Motor Insurance Agency Pty. Ltd. v. Sargent</i> -	658
Road Traffic Code, 1965, regs. 601, 602. <i>Sibley v. Kais</i> -	424		

TABLE OF CASES CITED IN JUDGMENTS.

NOTE.—The page numbers are those of the pages where the case is cited in each report. The numbers in brackets show the first footnote on each page containing the references to the cases.

A.		
Absalom (F. R.) Ltd. v. Great Western (London) Garden Village Society Ltd. (1933) - - - - -	74 (1)	Briggs v. Thomas Dryden & Sons (1925) - - - - -
Adamson v. California (1947) - - - - -	614 (2)	Brinsmead v. Harrison (1872) 285 (3), 286 (3)
Adecock v. The Commonwealth (1960) - 306 (1), 307 (1), 308 (1), 309 (1), 310 (1), 312 (2)		British Broken Hill Proprietary Co. Ltd. v. Simmons (1921) - - - - -
Admiralty Commissioners v. S.S. Susquehanna (1926) - - - - -	557 (1)	British Transport Commission v. Gourley (1956) - - - - -
Aktiebolaget Legis v. V. Berg & Sons Ltd. (1964) - - - - -	67 (2)	Brown v. Mahony (1967) - - - - -
Anchor Products Ltd. v. Hedges (1966) 408 (2), 413 (4)		— v. Wootton (1605) - - - - -
Anning v. Anning (1907) - - - - -	6 (2)	Brulhart v. Jarman (1964) - - - - -
Apley Estates Co. Ltd. v. De Bernales (1947) - - - - -	286 (7)	Brunker v. Perpetual Trustee Co. Ltd. (1937) - - - - -
Aristoc Ltd. v. Rysta Ltd. (1945) - - - - -	137 (1)	Bruno v. United States (1939) - - - - -
Arthur Robinson (Grafton) Pty. Ltd. v. Carter (1968) - - - - -	546 (1)	Burden, <i>In re</i> ; Mitchell v. Trustees of St. Luke's Hostel (1948) - - - - -
Asiatic Petroleum Co. Ltd. v. Lennard's Carrying Co. Ltd. (1914) - - - - -	322 (1)	
Attorney-General v. Wigan Corporation (1854) - - - - -	622 (8)	C.
— (N.S.W.) v. Perpetual Trustee Co. Ltd. (1955) - - - - -	289 (2)	Cameron v. Deputy Federal Commissioner of Taxation (Tas.) (1923) - - - - -
Australasian Catholic Assurance Co. Ltd. v. Federal Commissioner of Taxation (1959) - - - - -	537 (3)	Cann's Pty. Ltd. v. The Commonwealth (1946) - - - - -
Australian Iron & Steel Ltd. v. Coal Mines Insurance Pty. Ltd. (1951) - - - - -	42 (1)	Cardigan (Earl) v. Armitage (1823) - - - - -
Australian Workers' Union v. Commonwealth Railways Commissioner (1933) - - - - -	250 (1)	Carl-Zeiss-Stiftung v. Rayner & Keeler Ltd. (1967) - - - - -
		Challender v. Royle (1887) - - - - -
B.		Champsey Bhara & Co. v. Jivraj Balloo Spinning and Weaving Co. (1923) - - - - -
Bailey and Hart, <i>In re</i> (1883) - - - - -	68 (2)	Chan Kau v. The Queen (1955) - - - - -
"Bali" Trade Mark (1966) - - - - -	131 (1)	Cheers v. Porter (1931) - - - - -
Bass, Ratcliff and Gretton Ltd. v. Nicholson & Sons Ltd. (1932) - - - - -	142 (1)	Clement v. Davis & Sons Ltd. (1927) - 40 (5), 41 (2), 42 (8)
Bataillard v. The King (1907) 603 (1), 604 (1), 608 (1), 610 (5), 611 (1), 614 (1), 617 (2)		Clyne v. Yardley (1959) - - - - -
Beach v. Wagner (1959) - - - - -	647 (1), 650 (1)	Cochrane v. Moore (1890) - - - - -
Behrendorff v. Soblusky (1957) - - - - -	282 (2)	Cocke v. Jennor (1614) - - - - -
Berlei v. Bali Case (1967) - - - - -	133 (1), 140 (1)	Colbert v. Tocumwal Trading Co. Pty. Ltd. (1964) - - - - -
Betts v. Willmott (1871) - - - - -	622 (4)	Collett v. Loane (1966) - - - - -
Blaiber & Co. Ltd. v. Leopold Newbourne (London) Ltd. (1953) - - - - -	64 (3)	Colonial Mutual Life Assurance Society Ltd. v. Federal Commissioner of Taxation (1946) - - - - -
Blatch v. Archer (1774) - - - - -	591 (1)	Comberbach, <i>Re</i> ; Saunderson v. Jackson (1929) - - - - -
Bonnella v. Espir (1926) - - - - -	623 (4)	Commonwealth, <i>The v. Quince</i> (1944) 497 (1)
Boots Pure Drug Co.'s Trade Mark, <i>In re</i> (the Livron Case) (1938) - - - - -	141 (1)	— v. Wright (1956) - - - - -
Boulton v. Crowther (1824) - - - - -	580 (1)	Cooper Engineering Co. Pty. Ltd. v. Sigmund Pumps Ltd. (1952) - - - - -
		Currie v. Commissioners of Inland Revenue (1921) - - - - -
		D.
		Daff v. Midland Colliery Owners' Mutual Indemnity Co. Ltd. (1913) - - - - -

Darling Island Stevedoring and
Lighterage Co. Ltd. *v.* Long (1957) 277 (10),
278 (6), 285 (1)
Davie *v.* Magistrates of Edinburgh
(1953) - - - - - 19 (1)
Davis *v.* Bunn (1936) - - - - - 413 (2)
Day *v.* Hunter (1964) - - - - - 586 (6)
De Tastet *v.* Shaw (1818) - - - - - 394 (1)
Dennis *v.* Watt (1942) - - - - - 194 (4)
Dickson *v.* Federal Commissioner of
Taxation (1940) - - - - - 632 (2), 633 (1)
Dodd *v.* City of Keilor (1965) 567 (1), 569 (1),
570 (1), 571 (1), 572 (1), 573 (1), 579 (2)
Duck *v.* Mayeu (1892) - - - - - 286 (6)
Dudgeon *v.* Thomson (1874) - - - - - 624 (3)
Duggan *v.* Barnes (1923) - - - - - 462 (3)
Dwyer *v.* Broken Hill South Ltd. (1928) 39 (1)

E.

East Fremantle Corporation *v.* Annois
(1902) - - - - - 580 (2)
Edwards *v.* Joyce (1954) - - - - - 277 (3), 278 (2)
- - - *v.* Metropolitan Water Board
(1922) - - - - - 176 (1)
Elder's Trustee and Executor Co. Ltd.
v. Commissioner of Succession Duty
(1945) - - - - - 336 (3)
Ellis *v.* Kerr (1910) - - - - - 394 (2)
Enever *v.* The King (1906) - - - - - 289 (1)
Eno *v.* Dunn (1890) - - - - - 137 (3)

F.

Felix *v.* General Dental Council (1960) 196 (1)
Fire Commissioners, Board of (N.S.W.)
v. Ardouin (1961) - - - - - 175 (2), 176 (2)
Fisher *v.* Hebburn Ltd. (1960) - - - - - 42 (3)
Fitzgerald *v.* Masters (1956) - - - - - 461 (2)
Fitzpatrick *v.* Walter E. Cooper Pty.
Ltd. (1935) - - - - - 413 (1)
Fletcher *v.* Autocar and Transporters
Ltd. (1968) - - - - - 544 (2), 553 (2), 559 (1)
Florida *v.* Mellon (1927) - - - - - 101 (2)
Foley *v.* Classique Coaches Ltd. (1934) 438 (1),
455 (1)
Foreman & Sons Pty. Ltd., *In re*;
Uther *v.* Federal Commissioner of
Taxation (1947) - - - - - 495 (1)
Fox's Case [Official Receiver *v.* Federal
Commissioner of Taxation] (1956) - 377 (2)
Freeland, *In re*; Jackson *v.* Rodgers
(1952) - - - - - 8 (7), 14 (3)

G.

Gartner *v.* Kidman (1962) 475 (1), 476 (1),
477 (1), 486 (1)
Genders *v.* Government Insurance
Office of N.S.W. (1959) - - - - - 664 (1)
General Motors-Holden's Pty. Ltd. *v.*
Moularas (1964) - - - - - 555 (2)

George Wimpey & Co. Ltd. *v.* British
Overseas Airways Corporation
(1955) - - - - - 286 (4)
Giacomo Costa Fu Andrea *v.* British
Italian Trading Co. Ltd. (1963) - 64 (2),
67 (1), 76 (1)
Glasgow Corporation *v.* Kelly (1951) - 545 (2)
Glenville Pastoral Co. Pty. Ltd. *v.*
Federal Commissioner of Taxation
(1963) - - - - - 637 (1)
Gold Coast City Council *v.* Canterbury
Pipe Lines (Aust.) Pty. Ltd. (1968) - 320 (2)
Golden *v.* Hotchkiss (1959) - - - - - 649 (1)
Gottlieb *v.* White (1934) - - - - - 101 (3)
Gough *v.* Gough (1956) - - - - - 527 (3)
Grain Elevators Board (Vict.) *v.*
Dunmunkle Corporation (1946) - 511 (1)

H.

Hargrave *v.* Goldman (1963) - - - - - 277 (8)
Hart *v.* Griffiths-Jones (1948) - - - - - 545 (3)
Harvester Judgment [*Ex p.* McKay]
(1907) - - - - - 265 (1)
Hatrick *v.* Commissioner of Inland
Revenue (1963) - - - - - 328 (2)
Henderson *v.* Commissioner of Rail-
ways (W.A.) (1937) - - - - - 310 (3)
Hillas & Co. Ltd. *v.* Arcos Ltd. (1932) 437 (1),
456 (1)
Hoddinott *v.* Newton, Chambers & Co.
Ltd. (1901) - - - - - 195 (2)
Hodgkinson *v.* Fernie (1857) 63 (1), 72 (2)
Holmes *v.* Director of Public Pro-
secutions (1946) - - - - - 202 (2), 214 (1)
Horne *v.* Perry (1965) - - - - - 586 (3)
- - - *v.* Tweed River Transport Pty.
Ltd.; *Ex p.* Horne (1967) 586 (1), 591 (5)
Howard Auto-Cultivators Ltd. *v.* Webb
Industries Pty. Ltd. (1946) - - - - - 85 (1)
Hudson *v.* Vanderheld (*sic*) (1967) - 175 (1)
Huxtable *v.* Williamson (1946) - - - - - 428 (2)
- - - *v.* - - - (1947) - - - - - 428 (3)

I.

Ibrahim *v.* The King (1914) - - - - - 197 (1)
Imperial Tobacco Co.'s Trade Marks,
In re (1918) - - - - - 84 (1)
India, The President of *v.* The Moor
Line Ltd. [No. 2] (1958) - - - - - 439 (1)
Inland Revenue, Commissioner of *v.*
Walker (1963) - - - - - 194 (1)
Inland Revenue, Commissioners of *v.*
Lysaght (1928) - - - - - 195 (1)
Innes, *In re*; Innes *v.* Innes (1910) - 14 (1)
Iswera *v.* Commissioner of Inland
Revenue (1965) - - - - - 377 (1)

J.

Jackson *v.* Goldsmith (1950) 277 (2), 278 (1),
283 (1), 290 (1)
- - - *v.* The King (1918) 603 (3), 608 (2),
617 (1)

Jafferjee v. Scarlett (1937)	- -	137 (4)
James, <i>In re</i> ; James v. James (1935)	- -	8 (5)
Jones v. South-West Lancashire Coal Owners' Association (1927)	- -	345 (2)

K.

Kannangara Dharmasena v. The King (1951)	- - -	201 (3)
Kell v. Harris (1915)	- - -	522 (2)
Kent v. Elstob (1802)	64 (4), 72 (4), 73 (1), 76 (2)	
Kerr v. The Queen (1953)	- - -	616 (1)
Ketley v. Roulstone (1961)	- - -	560 (1)
Kimberly-Clark Corporation v. Vereinigte Papierwerke Schikedanz (1967)	- - -	140 (4)
King v. Port of London Authority (1920)	- - -	37 (1)
King Gee Clothing Co. Pty. Ltd. v. The Commonwealth (1945)	- - -	436 (2)
Knowlton v. Moore (1900)	- - -	100 (5)
Kops's Case [Kops v. The Queen] (1894)	602 (3), 613 (2)	
Kraljevich v. Lake View & Star Ltd. (1945)	- - -	42 (6)
Krygger v. Williams (1912)	- - -	492 (1)

L.

Lace v. Chantler (1944)	- - -	523 (1)
Launceston Corporation v. The Hydro-Electric Commission (1959)	- - -	510 (1)
Leadbeater v. Cross (1876)	- - -	111 (2)
Lee Chun-Chuen v. The Queen (1963)	213 (2)	
Lejzor Teper v. The Queen (1952)	- - -	197 (3)
Life Insurance Co. of Australia Ltd. v. Phillips (1925)	- - -	461 (1)
Linfield Linen Pty. Ltd. v. Nejoin (1951)	- - -	622 (9)
Lopresto v. Golding (1957)	- - -	427 (3)
Lucas v. Ogden Industries Pty. Ltd. (1967)	- - -	34 (1)

M.

McAsey v. Lobban (1938)	- - -	428 (1)
M'Donald v. Shire of Coburg (1887)	- - -	568 (1)
McKay, <i>Ex p.</i> [Harvester Judgment] (1907)	- - -	265 (1)
McNamee v. Partridge (1959)	- - -	391 (1)
Macrea, <i>Ex p.</i> (1893)	- - -	197 (2)
Maddison v. Chapman (1858)	- - -	110 (1)
Madsen v. Tweed River Transport Pty. Ltd.; <i>Ex p.</i> Madsen (1965)	- - -	586 (4)
——— v. Western Interstate Pty. Ltd. (1963)	- - -	586 (2)
Mancini v. Director of Public Prosecutions (1942)	- - 213 (1), 214 (5), 215 (2)	
Marginson v. Blackburn Borough Council (1939)	- - -	277 (5), 278 (3)
Marshall v. Blackpool Corporation (1935)	- - -	572 (2), 573 (2), 579 (1)

Marshall and the Lace Web Spring Co. Ltd. v. Crown Bedding Co. Ltd. (1929)	- - -	624 (2)
Matthews v. Matthews (1913)	- - -	8 (2)
Melbourne Harbour Trust Commissioners v. Hancock (1927)	64 (1), 67 (3)	
Milroy v. Lord (1862)	11 (1), 12 (2), 13 (3)	
Miraflores, The, and The Abadesa (1967)	- - -	322 (3)
Moakes v. Blackwell Colliery Co. (1925)	40 (3), 41 (1), 42 (9)	
Montgomery v. Beeby (1930)	- - -	521 (1)
Morgan v. Babcock & Wilcox Ltd. (1929)	- - -	591 (2)
Morris's Arbitration, <i>In re</i> (1856)	- - -	78 (2)
Moses v. Moses (1920)	- - -	528 (1)
Mulholland, <i>In re</i> (1916)	- - -	8 (3)
Muller v. Dalgety & Co. Ltd. (1909)	- - -	637 (3)
Mummery v. Irvings Pty. Ltd. (1956)	- - -	408 (4), 413 (3)

N.

Nance v. British Columbia Electric Railway Co. Ltd. (1951)	277 (6), 278 (5)	
Napier v. Williams (1911)	- - -	395 (1)
New Brunswick Railway Co. v. British & French Trust Corporation Ltd. (1938)	- - -	277 (1)
New York Life Insurance Co. v. Styles (1889)	- - -	345 (1)
New Zealand Insurance Co. Ltd. v. Commissioner of Inland Revenue (1956)	- - -	328 (1)
Nicolene Ltd. v. Simmonds (1953)	- - -	461 (3)
Noall v. Middleton (1961)	- - -	277 (4)
Nominal Defendant v. Haslbauer (1967)	408 (5), 413 (5)	
Norman v. Federal Commissioner of Taxation (1963)	- - -	13 (2)

O.

Official Receiver v. Federal Commissioner of Taxation [Fox's Case] (1956)	- - -	377 (2)
Ogden Industries Pty. Ltd. v. Lucas (1967)	- - -	34 (2)
Overseers of the Poor of Walsall v. London and North Western Railway Co. (1878)	- - 77 (1), 496 (1), 502 (1)	

P.

Packett v. The King (1937)	- - -	192 (1)
Pamment v. Pawelski (1949)	- - -	545 (4)
Pan Press Publications' Applications (1948)	- - -	135 (1)
Parente v. Bell (1967)	542 (1), 554 (1), 555 (1), 557 (2), 560 (3)	
Parker v. The Commonwealth (1965)	- - -	289 (3)
——— v. The Queen (1963)	- - -	201 (4)
Parsons, <i>In re</i> ; Stockley v. Parsons (1890)	- - -	37 (2)

Pearce v. Watts (1875) - - -	462 (1)
Pearsall v. Simpson (1808) - - -	109 (2), 110 (2)
Phillips v. Ward (1863) - - -	287 (1)
Pianotist Co.'s Application, <i>Re</i> (1906)	140 (2)
Piening v. Wanless (1968) - - -	408 (3), 413 (6)
Pink, <i>In re</i> ; Pink v. Pink (1912) - - -	14 (2)
Pioneer Express Pty. Ltd. v. Hotchkiss (1958) - - -	591 (3)
Plimmer v. Commissioner of Inland Revenue (1957) - - -	376 (1)
Plimpton v. Spiller (1876) - - -	623 (1), 625 (1)
Powell's Trade Mark Case [Powell v. Birmingham Vinegar Brewery Co.] (1894) - - -	136 (1)
Premier Automatic Ticket Issuers Ltd. v. Federal Commissioner of Taxation (1933) - - -	359 (1)
Preston v. Luck (1884) - - -	622 (6)
Price v. Jones (1828) - - -	64 (5)
Priest v. Arcos Enterprises Pty. Ltd. (1964) - - -	408 (1)
Punjab Co-operative Bank Ltd., Amritsar v. Income Tax Commissioner, Lahore (1940) - - -	537 (1)

R.

R. v. Austin and Davies (1916) - - -	200 (6)
- v. Barger (1908) - - -	99 (1), 100 (2)
- v. Blackburn; <i>Ex p.</i> Transport Workers' Union of Australia (1952) - - -	261 (1)
- v. Commonwealth Conciliation and Arbitration Commission; <i>Ex p.</i> Metal Trades Employers' Association (1966) - - -	228 (1)
- v. Commonwealth Court of Conciliation and Arbitration; <i>Ex p.</i> Ozone Theatres (Aust.) Ltd. (1949) 244 (1), 266 (1) - - -	605 (1)
- v. Corbett (1931) - - -	610 (8)
- v. Dallard (1957) - - -	609 (2)
- v. Earsman (1936) - - -	602 (1), 607 (1), 607 (2), 609 (1)
- v. Ellis (1925) - - -	200 (2)
- v. Fulton (1937) - - -	253 (1), 259 (1)
- v. Hickman; <i>Ex p.</i> Fox and Clinton (1945) - - -	191 (1)
- v. Howe (1958) - - -	122 (2)
- v. Johnson (1867) - - -	610 (2)
- v. Kelly (1946) - - -	612 (1), 613 (5), 614 (3)
- v. Kops (1893) - - -	604 (2)
- v. Macfarlane (1907) - - -	610 (3)
- v. McKenna (1951) - - -	253 (2)
- v. Metal Trades Employers' Association; <i>Ex p.</i> Amalgamated Engineering Union, Australian Section (1951) - - -	610 (7)
- v. Moir (1912) - - -	200 (5)
- v. Moore (1892) - - -	496 (2)
- v. Nat Bell Liquors Ltd. (1922) - - -	77 (2)
- v. Northumberland Compensation Appeal Tribunal; <i>Ex p.</i> Shaw (1952) - - -	199 (1)
- v. Paddy (1876) - - -	216 (1)
- v. Paul (1890) - - -	121 (1)
- v. Phetheon (1840) - - -	

R. v. Rhodes (1899) - - -	613 (3)
- v. Riley (1940) - - -	610 (1)
- v. Smith (1906) - - -	200 (4)
- v. Southern (1930) - - -	200 (3)
- v. Surgenor (1940) - - -	200 (7)
- v. The District Court; <i>Ex p.</i> White (1966) - - -	490 (1), 493 (1), 496 (3)
- v. Trebilcock (1858) - - -	122 (1)
- v. Turner (1816) - - -	594 (1)
- v. Vassiliev (1967) - - -	202 (1)
- v. Wilton (1946) - - -	200 (1)
- v. Wooldridge (1957) - - -	610 (4)
Randolph v. Tuck (1962) - - -	290 (2)
Reid v. Comaleco Aluminium Bell Bay Pty. Ltd. (1967) - - -	544 (4)
Renouf v. Attorney-General for Jersey (1936) - - -	201 (2)
Resch v. Federal Commissioner of Taxation (1942) - - -	639 (1)
Ridland v. Dyson (1959) - - -	586 (7)
Robertson v. Federal Commissioner of Taxation (1937) - - -	297 (1)
Rosenthal v. Rosenthal (1910) - - -	336 (1)
Royal Exchange Assurance v. Kingsley Navigation Co. (1923) - - -	322 (2)
Rysta Ltd.'s Application, <i>Re</i> (1943) - - -	136 (2)

S.

Saccharin Corporation v. Reitmeyer & Co. (1900) - - -	622 (2)
- v. Anglo-Continental Chemical Works Ltd. (1900) - - -	622 (1)
Sands v. Devan (1945) - - -	545 (1)
Scammell (G.) & Nephew Ltd. v. Ouston (1941) - - -	437 (2)
Shanahan v. Scott (1957) - - -	351 (1)
Shaw v. The Queen (1952) - - -	517 (1)
Shepperd v. Ryde Corporation (1952) - - -	148 (1)
Shuckburgh's Settlement, <i>In re</i> ; Robertson v. Shuckburgh (1901) - - -	110 (3), 115 (1)
Skelton v. Collins (1966) - - -	559 (3)
Smith v. Grigg Ltd. (1924) - - -	623 (2), 624 (1)
Smith Hayden & Co. Ltd.'s Application, <i>In re</i> (1946) - - -	86 (1)
South Australian Ambulance Transport Incorporated v. Wahlheim (1948) - - -	427 (2)
South Eastern Railway Co. v. Associated Portland Cement Manufacturers (1900) Ltd. (1916) - - -	462 (2)
Southern Cross Refrigerating Co.'s Case [Southern Cross Refrigerating Co. v. Toowoomba Foundry Pty. Ltd.] (1954) - - -	88 (1)
Stamp Duties, Commissioner of (N.S.W.) v. Pearse (1951) - - -	329 (1)
- (N.S.W.) v. Thomson (1927) - - -	336 (2)
- (Q.) v. Livingston (1964) - - -	365 (1)
Stanton v. Federal Commissioner of Taxation (1955) - - -	671 (1)
State Government Insurance Office (Q.) v. Crittenden (1966) - - -	661 (1), 664 (2)

Stevens v. Railway Commissioners for N.S.W. (1930) - - - - -	42 (5)	Trickett v. Queensland Insurance Co. (1936) - - - - -	320 (1)
Stirland v. Director of Public Prosecutions (1944) - - - - -	515 (1)	Tromp v. Liddle (1941) - - - - -	428 (4)
Stone v. Phillipps (1837) - - - - -	78 (1)	Tuckiar v. The King (1934) - - - - -	217 (1), 615 (2)
Storke v. De Smeth (1737) - - - - -	68 (1)	Twine v. Bean's Express Ltd. (1946) - - - - -	277 (9)
Strong v. Bird (1874) 6 (1), 8 (1), 9 (1), 12 (1), 13 (5),		Tzouvelis v. Victorian Railways Commissioners (1968) - 544 (1), 547 (1), 549 (1), 553 (1), 560 (2)	
Stuart v. The Queen (1959) - - - - -	610 (9)		
		U.	
		United Collieries Ltd. v. Simpson (1909)	40 (1)
		United States v. Snyder (1893)	99 (7), 100 (3)
		V.	
		Van Kooten v. Haslington (1964)	42 (2)
		Vardon v. The Commonwealth (1943)	436 (1)
		W.	
		Waugh v. The King (1950) - - - - -	613 (4)
		— v. Waugh (1950) - - - - -	285 (2)
		Webb v. Hearing (1617) - - - - -	109 (1)
		White v. Federal Commissioner of Taxation (1968) - - - - -	371 (1)
		— v. White (1931) - - - - -	528 (2)
		Whitlock v. Brew (1968) - - - - -	522 (1)
		Wilderman v. F. W. Berk & Co. Ltd. (1924) - - - - -	622 (3)
		Wilson Syndicate Conveyance, Re; Wilson v. Shorrocks (1938) - - - - -	672 (2)
		Woolmington's Case [Woolmington v. Director of Public Prosecutions] (1935) - - - - -	192 (2)
		Wragg, <i>In re</i> ; Hollingsworth v. Wragg (1959) - 110 (5), 111 (1), 115 (2)	
		Y.	
		Yelland's Case (1867) - - - - -	556 (1)
		York Air Conditioning and Refrigeration (A/asia) Pty. Ltd. v. The Commonwealth (1949) - - - - -	437 (3)

CORRIGENDA.

- 117 C.L.R. page 656, line 4: After "*Interpretation Act*", read "1897" not "1899" as printed.
- 118 C.L.R. page 45, headnote, second last line: insert after "(1968)", the reference "70 S.R. (N.S.W.) 188".
- page 105, headnote, third last paragraph, second last line: for "*In re Shuckburgh's Settlement*; *Robertson v. Schuckburgh*" read "*In re Shuckburgh's Settlement*; *Robertson v. Schuckburgh*".
- page 131, footnote (1): the decision in the case reported at [1966] R.P.C. 387 (and at [1966] F.S.R. 8.), "*Bali*" Trade Mark, was reversed by the Court of Appeal: see *Bali Trade Mark*, [1968] R.P.C. 426; [1968] F.S.R. 1.
- page 133, footnote (1): } "Unreported" should now read: "[1968] R.P.C.
page 140, footnote (1): } 426; [1968] F.S.R. 1."
- page 649, line 4: for "embrace" read "embraces".
second last line: for "of s. 4" read "or s. 4".
- page 650, line 10: insert after "s. 22" the words "of the Act".