

1970-1971

THE

**COMMONWEALTH LAW
REPORTS**

CASES DETERMINED IN THE

HIGH COURT OF AUSTRALIA

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The date on which THE HONOURABLE CYRIL AMBROSE WALSH was appointed a Knight Commander of the Most Excellent Order of the British Empire, noted in volume 121 of the Commonwealth Law Reports as 29th September 1969, should be correctly recorded as 30th October 1969.

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

123 C.L.R.

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

A.	D.
Aberdare County Council ; Lake Macquarie Shire Council <i>v.</i> - 327	David Jones (Canberra) Pty. Ltd. <i>v.</i> Stone - - - - - 185
Allen Commercial Constructions Pty. Ltd. <i>v.</i> North Sydney Municipal Council - - - 490	F.
Alpha Minerals N.L. ; Ashburton Minerals N.L. <i>v.</i> - - - 614	F. Hoffman-La Roche & Co. A.G. <i>v.</i> Commissioner of Patents - 529
Amalgamated Television Services Pty. Ltd. <i>v.</i> Television Cor- poration Ltd. - - - 648	F.C. Lovelock Pty. Ltd. ; Carmody <i>v.</i> - - - - 1
Ashburton Oil N.L. <i>v.</i> Alpha Minerals N.L. - - - 614	F. G. Strang Pty. Ltd. ; Foufoulas <i>v.</i> - - - - - 168
Australian Iron & Steel Pty. Ltd. <i>v.</i> Luna - - - - - 305	Fairway Estates Pty. Ltd. <i>v.</i> Federal Commissioner of Taxa- tion - - - - - 153
B.	Finch ; Sutherland Shire Council <i>v.</i> - - - - - 657
Bray <i>v.</i> Federal Commissioner of Taxation [No. 2] - - - 348	Foufoulas <i>v.</i> F. G. Strang Pty. Ltd. - - - - - 168
Brisbane Stevedoring Pty. Ltd. ; State Government Insurance Office (Q.) <i>v.</i> - - - - 228	Franki ; Pitfield <i>v.</i> - - - 448
C.	Freehold Land Investments Ltd. <i>v.</i> Queensland Estates Pty. Ltd. 418
Cable (1956) Ltd. <i>v.</i> Hutcherson Bros. Pty. Ltd. - - - 143	G.
Carmody <i>v.</i> F. C. Lovelock Pty. Ltd. - - - - - 1	Gee <i>v.</i> Schmutter - - - - 503
Corfield ; Palling <i>v.</i> - - - 52	General Motors Holden's Pty. Ltd. ; Staska <i>v.</i> (P.C.) - - 673
	Gregory <i>v.</i> Federal Commissioner of Taxation - - - - - 547

H.	N.
Herald-Sun T.V. Pty. Ltd. v. Television Corporation Ltd. - 648	N. A. Kratzmann Pty. Ltd. v. Tucker [No. 1] - - - 257
Hoffman-La Roche (F.) & Co. A.G. v. Commissioner of Patents - 529	—— v. —— [No. 2] - - - 295
Hooker-Rex Pty. Ltd. v. Federal Commissioner of Taxation - 71	North Sydney Municipal Council; Allen Commercial Constructions Pty. Ltd. v. - - - 490
Hutcherson Bros. Pty. Ltd.; Cable (1956) Ltd. v. - - - 143	——; Storey v. - - - 574
	P.
	Palling v. Corfield - - - 52
	Patents, Commissioner of; F. Hoffman-La Roche & Co. A.G. v. - - - - - 529
	Pitfield v. Franki - - - 448
I.	
Inter-Continental Pharmaceuticals (Australia) Pty. Ltd.; Smith Kline & French Laboratories Ltd. v. - - - - - 514	
K.	Q.
Kratzmann Hardware Pty. Ltd. v. Tucker - - - - 257	Queensland Estates Pty. Ltd.; Freehold Land Investments Ltd. v. - - - - - 418
Kratzmann (N.A.) Pty. Ltd. v. Tucker [No. 1] - - - - 257	
—— v. —— [No. 2] - - - 295	R.
L.	Railways, Commissioner for (N.S.W.); Sadler v. - - - 216
Lake Macquarie Shire Council v. Aberdare County Council - 327	Reg. v. Trade Practices Tribunal; <i>Ex p.</i> Tasmanian Breweries Pty. Ltd. - - - - - 361
Lovelock (F.C.) Pty. Ltd.; Carmody v. - - - - - 1	—— v. Turnbull; <i>Ex p.</i> Taylor - 28
Luna; Australian Iron & Steel Pty. Ltd. v. - - - - - 305	——; Wilson v. - - - - - 334
	Renowden v. McMullin - - - 584
	Rowell & Muston Pty. Ltd.; Worthing v. - - - - - 89
M.	S.
McMullin; Renowden v. - - - 584	Sadler v. Commissioner for Railways (N.S.W.) - - - - 216
Mercantile Credits Ltd. v. Federal Commissioner of Taxation - 476	Schmutter; Gee v. - - - - 503

Smith Kline & French Laboratories Ltd. v. Inter-Continental Pharmaceuticals (Australia) Pty. Ltd.	514	Taxation, Federal Commissioner of; Gregory v.	- - - 547
Staska v. General Motors Holden's Pty. Ltd. (P.C.)	- - - 673	—; Hooker-Rex Pty. Ltd. v.	71
State Government Insurance Office (Q.) v. Brisbane Stevedoring Pty. Ltd.	- - - 228	—; Mercantile Credits Ltd. v.	476
Stone; David Jones (Canberra) Pty. Ltd. v.	- - - 185	Taylor v. Deputy Federal Commissioner of Taxation	- - - 206
Storey v. North Sydney Municipal Council	- - - 574	—, <i>Ex p.</i> ; Reg. v. Turnbull	- 28
Strang (F.G.) Pty. Ltd.; Foufoulas v.	- - - 168	Television Corporation Ltd.; Amalgamated Television Services Pty. Ltd. v.	- - - 648
Sutherland Shire Council v. Finch	657	—; Herald-Sun T.V. Pty. Ltd. v.	- - - 648
T.		Trade Practices Tribunal; Reg. v.; <i>Ex p.</i> Tasmanian Breweries Pty. Ltd.	- - - 361
Tasmanian Breweries Pty. Ltd., <i>Ex p.</i> ; Reg. v. Trade Practices Tribunal	- - - 361	Tucker; Kratzmann Hardware Pty. Ltd. v.	- - - 257
Taxation, Deputy Federal Commissioner of; Taylor v.	- - - 206	—; N. A. Kratzmann Pty. Ltd. v. [No. 1]	- - - 257
Taxation, Federal Commissioner of; Bray v. [No. 2]	- - - 348	—; — v. [No. 2]	- 295
—; Fairway Estates Pty. Ltd. v.	- - - 153	Turnbull; Reg. v.; <i>Ex p.</i> Taylor	28
W.			
		Wilson v. The Queen	- - - 334
		Worthing v. Rowell & Muston Pty. Ltd.	- - - 89

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

- Abrahams v. Federal Commissioner of Taxation* (1944) 70 C.L.R. 23.
Dicta distinguished 123 C.L.R. 547.
- Amalgamated Television Services Pty. Ltd. v. Television Corporation Ltd.* [1969] 1 N.S.W.R. 65.
Reversed 123 C.L.R. 648.
- Anning v. Anning* (1907) 4 C.L.R. 1049.
Applied 123 C.L.R. 206.
- Australian Insurance Staffs' Federation v. Accident Underwriters' Association* (1923) 33 C.L.R. 517.
Considered 123 C.L.R. 448.
- Beecham Group Ltd. v. Bristol Laboratories Pty. Ltd.* (1968) 118 C.L.R. 618.
Applied 123 C.L.R. 614.
- Brunker v. Perpetual Trustee Co. (Ltd.)* (1937) 57 C.L.R. 555.
Applied 123 C.L.R. 206.
- Callaghan v. Fred Kidd & Son (Engineers) Ltd.* [1944] 1 K.B. 560.
Considered 123 C.L.R. 305.
- Cargill v. Bower* (1878) 10 Ch. D. 502.
Considered 123 C.L.R. 584.
- Cecil Bros. Pty. Ltd. v. Federal Commissioner of Taxation* (1964) 111 C.L.R. 430, at p. 438.
Explained 123 C.L.R. 71.
- Cellular Clothing Co. Ltd. v. G. White & Co. Ltd.* (1952) 70 R.P.C. 9.
Considered 123 C.L.R. 584.
- Commonwealth, The v. New South Wales* (1923) 33 C.L.R. 1.
Considered 123 C.L.R. 89.
- Edwards v. Culcairn Shire Council* (1963) 64 S.R. (N.S.W.) 62, at p. 67; 9 L.G.R.A. 316, at p. 321.
Disapproved 123 C.L.R. 657.
- Federated Municipal and Shire Council Employees' Union of Australia v. Melbourne Corporation* (1919) 26 C.L.R. 508.
Considered 123 C.L.R. 448.
- Federated State School Teachers' Association of Australia v. Victoria* (1929) 41 C.L.R. 569.
Considered 123 C.L.R. 448.
- Fraser Henleins Pty. Ltd. v. Cody* (1945) 70 C.L.R. 100.
Applied 123 C.L.R. 52.
- Gardiner v. Admiralty Commissioners* [1964] 1 W.L.R. 590.
Considered 123 C.L.R. 305.
- General Motors Holden's Pty. Ltd. v. Stusku* (1969) 119 C.L.R. 301.
Affirmed 123 C.L.R. 673.
- Golden Acres Ltd. v. Queensland Estates Pty. Ltd.* [1969] Qd. R. 378.
Affirmed on different grounds 123 C.L.R. 418.
- Hall v. Meyrick* [1957] 2 Q.B. 455.
Considered 123 C.L.R. 584.
- Harries v. Ashford* [1950] 1 All E.R. 427.
Considered 123 C.L.R. 584.
- Hoddinott v. Newton, Chambers & Co. Ltd.* [1901] A.C. 49.
Considered 123 C.L.R. 305.
- Holden, In re; Ex parte Official Receiver* (1887) 20 Q.B.D. 43.
Applied by Kitto J. 123 C.L.R. 257.
- Hopman v. Commissioner of Patents* (1960) 103 C.L.R. 24, at p. 25.
Applied 123 C.L.R. 529.
- Hopwood v. Rolls Royce Ltd.* (1947) 176 L.T. 514.
Considered 123 C.L.R. 305.
- Horton v. Jones* [No. 2] (1939) 39 S.R. (N.S.W.) 305.
Considered 123 C.L.R. 584.
- Imperial Chemical Industries Ltd.'s Application* [1960] R.P.C. 223, at p. 228.
Applied 123 C.L.R. 529.
- Indermaur v. Dames* (1866) L.R. 1 C.P. 274.
Considered 123 C.L.R. 185.
- Investment and Merchant Finance Corporation Ltd. v. Federal Commissioner of Taxation* (1970) 120 C.L.R. 177.
Distinguished 123 C.L.R. 477.
- Judiciary and Navigation Acts, In re* (1921) 29 C.L.R. 257.
Considered 123 C.L.R. 361.
- Keighery (W.P.) Pty. Ltd. v. Federal Commissioner of Taxation* (1957) 100 C.L.R. 66, at pp. 92, 93.
Explained 123 C.L.R. 71.
- Kent v. Federal Commissioner of Taxation (Martin's Case)* (1945) Williams J. (unreported).
Dicta not followed 123 C.L.R. 547.
- Kingsford Smith Air Services Ltd. v. Garrison* (1938) 55 W.N. (N.S.W.) 122.
Considered 123 C.L.R. 89.

- Lake Macquarie Shire Council v. Aberdare County Council* (1969) 18 L.G.R.A. 158; 91 W.N. (N.S.W.) 482.
Affirmed 123 C.L.R. 327.
- Lewis v. Durnford* (1907) 24 T.L.R. 64.
Considered 123 C.L.R. 584.
- McDonald v. Deputy Commissioner of Land Tax* (N.S.W.) (1915) 20 C.L.R. 231.
Distinguished 123 C.L.R. 547.
- Martin's Case* (*Kent v. Federal Commissioner of Taxation*) (1945) Williams J. (unreported).
Dicta not followed 123 C.L.R. 89.
- Milroy v. Lord* (1862) 4 De G. F. & J. 264 [45 E.R. 1185].
Applied 123 C.L.R. 206.
- Minnesota Mining and Manufacturing Co.'s Application, Re* (1961) 108 C.L.R. 651, at pp. 655-656.
Applied 123 C.L.R. 529.
- Mond Nickel Co. Ltd.'s Application* [1956] R.P.C. 189, at p. 194.
Applied 123 C.L.R. 529.
- Newton v. Federal Commissioner of Taxation* [1958] A.C. 450; (1958) 98 C.L.R. 1.
Applied 123 C.L.R. 71.
- North Sydney Municipal Council v. Allen Commercial Constructions Pty. Ltd.* (1969) 71 S.R. (N.S.W.) 1; 90 W.N. (Pt 2) 181; 18 L.G.R.A. 1.
Affirmed 123 C.L.R. 490.
- *v. Storey* (1970) 18 L.G.R.A. 302; 90 W.N. (Pt 1) (N.S.W.) 630.
Reversed 123 C.L.R. 574.
- O'Grady v. Botany Wools (Australia)* (1964) 64 S.R. (N.S.W.) 359.
Considered 123 C.L.R. 584.
- Patrick (James) & Co. Pty. Ltd. v. Minister of State for the Navy* (1944) 50 A.L.R. 254; (1945) 51 A.L.R. (C.N.) 501.
Distinguished 123 C.L.R. 547.
- Professional Engineers' Association, Ex parte* (1959) 107 C.L.R. 208.
Considered 123 C.L.R. 448.
- R. v. Bamford* (1901) 1 S.R. (N.S.W.) 337.
Considered 123 C.L.R. 89.
- *v. Bond* [1906] 2 K.B. 389, at pp. 397, 398.
Observations in, approved 123 C.L.R. 334.
- *v. Davison* (1954) 90 C.L.R. 353.
Considered 123 C.L.R. 361.
- *v. Kirby; Ex parte Boilermakers' Society of Australia* (1956) 94 C.L.R. 254.
Considered 123 C.L.R. 361.
- *v. Spicer; Ex parte Australian Builders' Labourers' Federation* (1957) 100 C.L.R. 227.
Considered 123 C.L.R. 361.
- *v. —; Ex parte Waterside Workers' Federation of Australia* (1957) 100 C.L.R. 312.
Considered 123 C.L.R. 361.
- Randwick Corporation v. Rutledge* (1959) 102 C.L.R. 54, at p. 88; 5 L.G.R.A. 127, at p. 172.
Applied 123 C.L.R. 574.
- Renowden v. McMullin and Heale* [1969] V.R. 744.
Affirmed 123 C.L.R. 584.
- Rolland v. United Glass Bottle Manufacturing Co. Ltd.* [1959] S.L.T. (Notes) 10.
Considered 123 C.L.R. 305.
- Sadler v. Commissioner for Railways (N.S.W.)* (1968) 70 S.R. (N.S.W.) 104; 88 W.N. (Pt 2) 241.
Reversed 123 C.L.R. 216.
- Schleimer v. Brisbane Stevedoring Pty. Ltd.* [1969] Qd. R. 46.
Affirmed 123 C.L.R. 228.
- Sims, In re: Ex parte Sheffield v. Prince* (1896) 3 Mans. 340; 45 W.R. 189.
Applied by Kitto J. 123 C.L.R. 257.
- Spratt v. Hermes* (1965) 114 C.L.R. 226, at pp. 258, 262-263.
Considered 123 C.L.R. 89.
- Strang (F.G.) Pty. Ltd. v. Foufoulas* [1970] V.R. 652.
Affirmed 123 C.L.R. 168.
- Succession Duties, Commissioner of (S.A.) v. Executor Trustee and Agency Co. of South Australia* (1947) 74 C.L.R. 358.
Considered 123 C.L.R. 547.
- Sutherland Shire Council v. Finch* (1970) 91 W.N. (N.S.W.) 396; 20 L.G.R.A. 332.
Affirmed on a different ground 123 C.L.R. 657.
- Taxation, Deputy Commissioner of v. Taylor* (1968) 12 F.L.R. 173; 88 W.N. (Pt 1) (N.S.W.) 429.
Reversed 123 C.L.R. 206.
- Taxation, Deputy Commissioner of v. Taylor* (1968) 12 F.L.R. 173; 88 W.N. (Pt 1) (N.S.W.) 429.
Reversed 123 C.L.R. 206.
- Taxation, Federal Commissioner of v. Newton* (1957) 96 C.L.R. 578, at p. 630.
Explained 123 C.L.R. 71.
- Wattle Gully Mines v. Clementi* (1956) 94 C.L.R. 353.
Distinguished 123 C.L.R. 673.
- Webb v. Neal* (1887) 19 Q.B.D. 394.
Considered 123 C.L.R. 584.
- Welsbach Incandescent Gas Lighting Co. v. New Sunlight Incandescent Co.* [1900] 2 Ch. 1.
Considered 123 C.L.R. 515.
- Yagerphone Ltd., In re* [1935] 1 Ch. 392.
Considered 123 C.L.R. 295.

STATUTES JUDICIALLY CONSIDERED.

IMPERIAL

Constitution, The (63 & 64 Vict. c. 12), ss. 51 (i.), 71, 72. <i>Reg. v. Trade Practices Tribunal; Ex p. Tasmanian Breweries Pty. Ltd.</i>	361
— s. 52 (i). <i>Worthing v. Rowell and Muston Pty. Ltd.</i>	89
— ss. 55, 90. <i>Carmody v. F. C. Lovelock Pty. Ltd.</i>	1
— s. 71. <i>Palling v. Corfield</i>	52
— s. 120. <i>Reg. v. Turnbull; Ex p. Taylor</i>	28

COMMONWEALTH

Australian Capital Territory Supreme Court Act 1933-1966, ss. 11, 34, 36, 37. <i>Reg. v. Turnbull; Ex p. Taylor</i>	28
Bankruptcy Act 1924-1959, s. 95. <i>N. A. Kratzmann Pty. Ltd. (In Liq.) v. Tucker [No. 2]</i>	295
— 1924-1960, s. 95. <i>N. A. Kratzmann Pty. Ltd. (In Liq.) v. Tucker [No. 1]</i>	257
— 1966, ss. 187 (1), 213 (1). <i>Gee v. Schmutter</i>	503
Conciliation and Arbitration Act 1904-1969, ss. 4 "Industry", 132. <i>Pitfield v. Franki</i>	448
Customs Act 1901-1960, ss. 4, 30, 153. <i>Carmody v. F. C. Lovelock Pty. Ltd.</i>	1
Customs Tariff (Dumping and Subsidies) Act 1961, ss. 7, 16. <i>Carmody v. F. C. Lovelock Pty. Ltd.</i>	1
Estate Duty Assessment Act 1914-1957, s. 16A. <i>Gregory v. Federal Commissioner of Taxation</i>	547
Gift Duty Assessment Act 1941-1963, ss. 4 (1), 18 (1). <i>Bray v. Federal Commissioner of Taxation</i>	348
Income Tax and Social Services Contribution Assessment Act 1936-1961, s. 216. <i>Taylor v. Deputy Federal Commissioner of Taxation</i>	206
— s. 260. <i>Hooker-Rex Pty. Ltd. v. Federal Commissioner of Taxation</i>	71
— 1936-1964, s. 63 (1) (b). <i>Fairway Estates Pty. Ltd. v. Federal Commissioner of Taxation</i>	153

Income Tax Assessment Act 1936-1967, ss. 26 (a), 46, 51, 52, 190, 199. <i>Mercantile Credits Ltd. v. Federal Commissioner of Taxation</i>	476
Judiciary Act 1903-1965, s. 40A. <i>Worthing v. Rowell and Muston Pty. Ltd.</i>	89
— 1903-1969, s. 40. <i>Palling v. Corfield</i>	52
— s. 40A. <i>Carmody v. F. C. Lovelock Pty. Ltd.</i>	1
National Service Act 1951-1968, s. 49. <i>Palling v. Corfield</i>	52
Patents Act 1952-1962, ss. 49, 141, 142. <i>F. Hoffman-La Roche & Co. A.-G. v. Commissioner of Patents</i>	529
Removal of Prisoners (Territories) Act 1923-1962, ss. 2A, 3, 4, 5. <i>Reg. v. Turnbull; Ex p. Taylor</i>	28
Trade Practices Act 1965-1968, ss. 47, 49, 50, 52. <i>Reg. v. Trade Practices Tribunal; Ex p. Tasmanian Breweries Pty. Ltd.</i>	361

NEW SOUTH WALES

Crimes Act, 1900. <i>Reg. v. Turnbull; Ex p. Taylor</i>	28
Factories, Shops and Industries Act, 1962, s. 40. <i>Australian Iron & Steel Pty. Ltd. v. Luna</i>	305
Local Government Act, 1919-1965, s. 4. <i>Storey v. North Sydney Municipal Council</i>	574
— 1919-1965, s. 99. <i>Sutherland Shire Council v. Finch</i>	657
— 1919-1968, s. 342G (2), (3) (i). <i>Allen Commercial Constructions Pty. Ltd. v. North Sydney Municipal Council</i>	490
— 1919-1969, ss. 418 (1) (b), (1), 572B. <i>Lake Macquarie Shire Council v. Aberdare County Council</i>	327
Prisons Act, 1899. <i>Reg. v. Turnbull; Ex p. Taylor</i>	28
Scaffolding and Lifts Act, 1912. <i>Worthing v. Rowell and Muston Pty. Ltd.</i>	89

Wills, Probate and Administration Act, 1898-1954, ss. 46, 46E. *Taylor v. Deputy Commissioner of Taxation* - 206

Workers' Compensation Act, 1926-1965, s. 16. *Sadler v. Commissioner for Railways (N.S.W.)* - - - 216

QUEENSLAND

The Auctioneers, Real Estate Agents, Debt Collectors and Motor Dealers Acts, 1922 to 1961, ss. 4, 23 (1). *Freehold Land Investments Ltd. v. Queensland Estates Pty. Ltd.* - - 418

The Companies Act of 1961, s. 293. *N. A. Kratzmann Pty. Ltd. (In Liq.) v. Tucker [No. 1]* - - - 257

— s. 293. *N. A. Kratzmann Pty. Ltd. (In Liq.) v. Tucker [No. 2]* - - 295

The Contractors' and Workmen's Lien Acts, 1906 to 1921. *N. A. Kratzmann Pty. Ltd. (In Liq.) v. Tucker [No. 1]* - 257

The Law Reform (Tortfeasors Contribution, Contributory Negligence, and Division of Chattels) Act of 1952, s. 5 (c). *State Government Office (Q.) v. Brisbane Stevedoring Pty. Ltd.* - 228

The Motor Vehicles Insurance Acts, 1936 to 1961, ss. 2, 3. *State Government Insurance Office (Q.) v. Brisbane Stevedoring Pty. Ltd.* - - - 228

The Real Property Acts, 1861 to 1963, ss. 44, 126. *N. A. Kratzmann Pty. Ltd. (In Liq.) v. Tucker [No. 1]* - 257

The Workers' Compensation Acts, 1916 to 1965, s. 8. *State Government Insurance Office (Q.) v. Brisbane Stevedoring Pty. Ltd.* - - - 228

SOUTH AUSTRALIA

Workmen's Compensation Act, 1932-1966, ss. 18, 28, 28a. *Staska v. General Motors Holden's Pty. Ltd.* - 673

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

COMMONWEALTH

High Court Rules, O. 32, rr. 2, 4 (2). *Smith Kline & French Laboratories Ltd. v. Inter-Continental Pharmaceuticals (Australia) Pty. Ltd.* - - 514

NEW SOUTH WALES

North Sydney Planning Scheme Ordinance, cl. 36, 40 (1), 46 (f). *Allen Commercial Constructions Pty. Ltd. v. North Sydney Municipal Council* - 490

VICTORIA

Rules of the Supreme Court, O. 3, r. 1 ; O. 20, r. 2. *Renouwen v. McMullin* - 584

AUSTRALIAN CAPITAL TERRITORY

Removal of Prisoners Ordinance 1933-1938, s. 2. *Reg. v. Turnbull ; Ex p. Taylor* - - - - - 28

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.	C.
Abrahams <i>v.</i> Federal Commissioner of Taxation (1944) — 557 (1), 558 (1), 560 (1), 556 (1), 568 (3), 569 (2), 572 (2)	Callaghan <i>v.</i> Fred Kidd & Son (Engineers) Ltd. (1944) — — — 315 (6)
Albert Gregory Ltd. <i>v.</i> C. Nicol Ltd. (1916) — — — — — 301 (4)	Camfield <i>v.</i> United States (1897) — — — 117 (2)
Aleyn <i>v.</i> Belchier (1758) — — — — — 628 (1)	Cargill <i>v.</i> Bower (1878) 592 (1), 603 (2), 609 (2)
Amalgamated Society of Engineers <i>v.</i> Adelaide Steamship Co. Ltd. (1920) 457 (6)	Carr <i>v.</i> Mercantile Produce Co. Ltd. (1949) — — — — — 322 (1)
Anderson's Pty. Ltd. <i>v.</i> Victoria (1964) 27 (1)	Carter <i>v.</i> White (1883) — — — — — 293 (3)
Anning <i>v.</i> Anning (1907) — — — — — 213 (2)	Cavanagh <i>v.</i> Ulster Weaving Co. Ltd. (1960) — — — — — 177 (1), 180 (2)
Atkins & Durbrow Ltd. <i>v.</i> Bell and Mainland Foundry Co. Ltd. (1958) — 645 (2)	Cave <i>v.</i> Crew (1893) — — — 594 (2), 595 (3), 601 (3), 602 (1)
Attenborough <i>v.</i> Solomon (1913) — — — 215 (2)	Cecil Bros. Pty. Ltd. <i>v.</i> Federal Commissioner of Taxation (1964) — — — 86 (3)
Attorney-General (Aust.) <i>v.</i> The Queen and The Boilermakers' Society of Australia (1957) — — — — — 391 (1)	Cellular Clothing <i>v.</i> White (1952) — — — 592 (4)
— (Cth) <i>v.</i> The Queen; <i>Ex p.</i> Boilermakers' Society of Australia (1957) — — — — — 53 (4)	— Co. Ltd. <i>v.</i> G. White & Co. Ltd. (1952) — — — — — 603 (4), 609 (5)
— (N.S.W.) <i>v.</i> Brewery Employees' Union (N.S.W.) (1908) — — — 96 (2)	Chappell <i>v.</i> United States (1895) — — — 99 (5)
Australian Insurance Staffs' Federation <i>v.</i> Accident Underwriters' Association (1923) — — — 455 (2), 456 (1), 470 (3)	Chemists' Federation Agreement (No. 2), <i>Re</i> (1958) — — — — — 375 (1)
— National Airways Pty. Ltd. <i>v.</i> The Commonwealth (1945) — — — 114 (1)	Clarke <i>v.</i> Federal Commissioner of Taxation (1932) — — — — — 86 (1)
— Workers' Union; <i>Ex p.</i> Killen (1915) — — — — — 460 (2)	Clement <i>v.</i> D. Davis and Sons Ltd. (1927) — — — — — 676 (4), 677 (1)
B.	Cochran <i>v.</i> Moore (1890) — — — — — 213 (5)
B.P. Australia Ltd. <i>v.</i> Federal Commissioner of Taxation (1965) — — — 483 (1)	Cohens <i>v.</i> Virginia (1821) — — — — — 101 (1)
Bagnall <i>v.</i> Levinstein Ltd. (1907) — — — 321 (3)	Collins <i>v.</i> Yosemite Park and Curry Co. (1938) — — — — — 125 (3)
Bank of New South Wales <i>v.</i> The Commonwealth (1948) — — — 96 (3), 107 (2)	Colonial Sugar Refining Co. <i>v.</i> Irving (1905) — — — — — — — 6 (2)
Bates <i>v.</i> Stone Parish Council (1954) — 201 (4)	Commonwealth, The <i>v.</i> Anderson (1960) 125 (1)
Battle <i>v.</i> United States (1907) — — — — — 97 (1)	— <i>v.</i> New South Wales (1923) — — — 105 (1), 116 (1), 119 (2), 126 (1), 128 (2), 129 (1)
Beecham Group Ltd. <i>v.</i> Bristol Laboratories Pty. Ltd. (1968) — — — 627 (1), 641 (1), 642 (2)	— <i>v.</i> Rhind (1966) — — — — — 125 (2), 128 (4)
Bell <i>v.</i> Lever Bros. Ltd. (1932) — — — — — 522 (1)	— and Commonwealth Oil Refineries Ltd. <i>v.</i> South Australia (1926) — — — — — — — 26 (3)
Bowley's Estate, <i>Re</i> (1871) — — — — — 211 (13)	Cooper, <i>Ex p.</i> ; <i>Re</i> Zucco (1875) — — — — — 229 (5), 301 (5)
Blakeley W. H. & Co. Pty. Ltd. <i>v.</i> The Commonwealth (1953) — — — — — 127 (1)	Coorey, <i>Ex p.</i> (1944) 53 (6), 62 (2), 69 (1)
Blockey <i>v.</i> Federal Commissioner of Taxation (1923) — — — — — 164 (6)	Cornell <i>v.</i> Deputy Federal Commissioner of Taxation (S.A.) — — — 400 (2)
Boag <i>v.</i> Standard Marine Insurance Co. Ltd. (1937) — — — — — 241 (4), 247 (4)	Cowan & Sons <i>v.</i> Lockyer (1904) — — — — — 6 (5)
Bray <i>v.</i> Federal Commissioner of Taxation (1968) — — — — — — — 353 (1)	D.
Brunker <i>v.</i> Perpetual Trustee Co. Ltd. (1937) — — — — — — — 213 (3)	Da Costa <i>v.</i> The Queen (1968) — — — — — 320 (4)
Burdett <i>v.</i> Hay (1864) — — — — — — — 645 (1)	Darling Island Stevedoring and Lighterage Co. Ltd. <i>v.</i> Hankinson (1967) 222 (3)
	David Jones (Adelaide) Ltd. <i>v.</i> Roupas (1966) — — — 188 (1), 194 (1), 197 (1), 203 (1)
	Davies <i>v.</i> Ryan (1934) — — — — — — — 114 (2)
	Dennis Hotels Pty. Ltd. <i>v.</i> Victoria (1962) — — — 10 (1), 19 (1), 26 (5), 27 (2)

- Dent *v.* Federal Commissioner of Taxation - - - - - 571 (1)
 Donohoe *v.* Britz (1904) - - - - - 6 (1)
 Dorman, Long & Co., Ltd. *v.* Hillier (1951) - 311 (3), 312 (3), 313 (3), 314 (2)
 Downs Distributing Co. Pty. *v.* Associated Blue Star Stores Pty. Ltd. (1948) - - - - - 162 (1)
- E.
- Eclipse Sleep Products Inc. *v.* Registrar of Trade Marks (1957) - - - - - 543 (1)
 Edwards *v.* Culcairn Shire Council (1963) - - - - - 670 (1)
 ——— (Inspector of Taxes) *v.* Bairstow (1956) - - - - - 321 (5), 322 (2)
 Elmiger *v.* Inland Revenue Commissioner (N.Z.) (1966) - - - - - 86 (4)
 Engineers' Case (1920) - - - - - 457 (6)
- F.
- Faber Coe & Gregg *v.* United States (1938) - - - - - 6 (9)
 Fadden *v.* Federal Commissioner of Taxation (1945) - 356 (2), 359 (1), 360 (1)
 Farmer (Surveyor of Taxes) *v.* Cotton's Trustees (1915) - - - - - 399 (1)
 Farnham, *Re* (a Lunatic) (1895) - 302 (3)
 Fawcett Properties Ltd. *v.* Buckingham County Council (1961) - - - - - 500 (1)
 Federal Capital Commission *v.* Laristan Building and Investment Co. Pty. Ltd. (1929) - - - - - 113 (1)
 ——— Palace Hotel Ltd. *v.* Federated Liquor and Allied Trades Employees' Union of Australasia (1918) - - - - - 460 (3)
 Federated Engine-Drivers and Firemen's Association of Australasia *v.* Broken Hill Proprietary Co. Ltd. (1911) - - - - - 460 (1)
 ——— Municipal and Shire Council Employees' Union *v.* Melbourne Corporation (1919) 455 (1), 457 (5), 458 (3), 471 (2)
 ——— State School Teachers' Association of Australia *v.* Victoria (1929) - 456 (3), 458 (2), 459 (1), 461 (4), 470 (2)
 Felix *v.* General Dental Council (1960) 320 (3)
 Fisher *v.* Hebburn Ltd. (1960) - - - - - 676 (9)
 Fort Leavenworth Railroad Co. *v.* Lowe (1885) - - - - - 99 (1)
 Fraser *v.* Whalley (1864) - - - - - 642 (1)
 Fraser Henleins Pty. Ltd. *v.* Cody (1945) - - 53 (7), 54 (1), 59 (1), 64 (1), 67 (1), 69 (2), 666 (1)
- G.
- Gabb *v.* Loan & Deposit Co. Ltd. (1923) 164 (8)
 Galvin, *Re* (1952) - - - - - 510 (1)
 Gammage *v.* Metropolitan Meat Industry Commissioner (1947) - - - - - 676 (7)
- Gardiner *v.* Admiralty Commissioners (1964) - - - - - 311 (4)
 General Cleaning Contractors Ltd. *v.* Christmas (1953) - - - - - 172 (1), 180 (3)
 ——— *v.* ——— (1970) - - - - - 181 (1)
 Gerard & Co. Pty. Ltd., *Ex p.* (1944) - 61 (1)
 Girls' Public Day School Trust *v.* Ereaut (1931) - - - - - 581 (1)
 Glegg *v.* Bromley (1912) - - - - - 289 (3)
 Goding *v.* Queensland Newspapers Pty. Ltd. (1965) - - - - - 518 (2), 524 (2)
 Golden Acres Ltd. *v.* Queensland Estates Pty. Ltd. - - - - - 422 (1)
 Gorton *v.* Federal Commissioner of Taxation (1965) - - - - - 358 (1)
 Governor and Company of the Chelsea Waterworks *v.* Cowper (1795) - 211 (6)
 Graff Brothers Estates Ltd. *v.* Rimrose Brook Joint Sewerage Board (1953) 601 (1), 606 (1)
 Grant A. F. Pty. Ltd. *v.* MacDonald (1960) - - - - - 73 (1)
 Great Western Railway Co. *v.* Bater (1922) - - - - - 321 (4)
 Griffin, *Re*; *Ex p.* The Board of Trade (1890) - - - - - 165 (1)
- H.
- Hall *v.* Metropolitan Abattoirs Board (1945) - - - - - 676 (10)
 ——— *v.* Meyrick (1957) - 592 (5), 604 (3), 611 (2)
 Hardwick *v.* Wright (1865) - - - - - 293 (1)
 Harlowe's Nominees Pty. Ltd. *v.* Woodside (Lakes Entrance) Oil Co. N.L. (1968) - - - - - 640 (5)
 Harries *v.* Ashford (1950) - 592 (3), 609 (1), 610 (1)
 Hayes *v.* Federal Commissioner of Taxation (1956) - - - - - 320 (7)
 Herald and Weekly Times Ltd. *v.* The Commonwealth (1966) - - - - - 137 (3)
 Hill *v.* Gomme (1839) - - - - - 211 (10)
 ——— *v.* Luton Corporation (1951) - 595 (1), 596 (4)
 Hillen and Pettigrew *v.* I.C.I. (Alkali) Ltd. (1936) - - - - - 196 (5)
 Hoddinott *v.* Newton, Chambers & Co. Ltd. (1901) - - - - - 320 (2), 321 (1)
 Hoffman-La Roche & Co. A.G. *v.* Sieczko (1968) - - - - - 524 (1)
 Holden, *Re*; *Ex p.* Official Receiver (1887) - - - - - 288 (2)
 Hopwood *v.* Rolls Royce Ltd. (1947) - 309 (1), 311 (1), 312 (2), 313 (2), 317 (1), 323 (2), 325 (1)
 Horse, Carriage and General Insurance Co. Ltd. *v.* Petch (1916) 214 (3), 247 (3)
 Horton *v.* Jones [No. 2] (1939) - - - - - 612 (5)
 Huddart, Parker & Co. Pty. Ltd. *v.* Moorehead (1909) - 53 (1), 374 (3), 386 (2), 394 (3)

- I.
- Indermaur v. Dames* (1866) 188 (3), 189 (2), 195 (1)
- Inland Revenue Commissioners *v.* *Baddeley* (1935) - - - - 581 (4)
- Investment and Merchant Finance Corporation Ltd. *v.* Federal Commissioner of Taxation (1970) - - 487 (1)
- J.
- James Patrick and Co. Pty. Ltd. v. Minister of State for the Navy* (1944) 562 (2)
- Jaques v. Federal Commissioner of Taxation* (1924) - - 84 (3), 86 (5)
- Johnstone v. Sutton* (1786) - - 320 (1)
- Jones v. The Commonwealth* (1963) - 127 (2)
- Joseph Bancroft & Sons Co. v. Registrar of Trade Marks* (1957) - - 543 (2)
- Jumbunna Coal Mine N.L. v. Victorian Coal Miners' Association* (1908) - 96 (1), 454 (2), 455 (3)
- K.
- Keighery W.P. Pty. Ltd. v. Federal Commissioner of Taxation* (1957) - 85 (3)
- Kent v. Federal Commissioner of Taxation* (1945) - - - - 561 (1)
- Kimpton v. Steel Co. of Wales Ltd.* (1960) - - - - 319 (2)
- King v. Clerk* (1697) - - - 36 (3)
- King v. Port of London Authority* (1920) - - - - 676 (2)
- Kingsford Smith Air Services Ltd. v. Garrison* (1938) - - - 116 (3)
- Kirkwood v. Gadd* (1910) - - - 164 (1)
- Knatchbull v. Fearnhead* (1827) - 211 (9)
- Kraljevich v. Lake View and Star Ltd.* (1945) - - - - 676 (8)
- Kratzmann N. A. Pty. Ltd. (in Liquidation) v. Tucker* [No. 1] (1966) - 298 (3)
- Kohl v. United States* (1875) - - 99 (3)
- L.
- Labour Relations Board of Saskatchewan *v. John East Iron Works Ltd* (1949) - - 373 (1), 374 (1), 395 (1)
- Lamshed v. Lake* (1958) - - - 38 (1)
- Lapin v. Abigail* (1930) - - - 164 (5)
- Lapin v. Heavener* (1929) - - - 164 (4)
- Large v. Large* (1877) 594 (1), 602 (2), 603 (1)
- Lewis v. Durnford* (1907) - 592 (2), 603 (3), 609 (3)
- Lipman v. Clendinnen* (1932) - - 198 (2)
- Little Company of Mary (S.A.) Inc. v. The Commonwealth* (1942) - - 581 (2)
- Livanage v. The Queen* (1967) - - 53 (8)
- Llanelly Railway and Dock Co. *v.* London and North-Western Railway Co. (1873) - - - - 654 (1)
- London Graving Dock Co. Ltd. v. Horton* (1951) - - - - 200 (3)
- M.
- McCathie v. Federal Commissioner of Taxation* (1944) - 356 (1), 564 (1), 566 (5)
- McDonald v. Deputy Federal Commissioner of Land Tax (N.S.W.)* (1915) 562 (1)
- McGain v. Federal Commissioner of Taxation* (1966) - - 353 (2), 354 (1)
- McGregor & Co. v. Quartz Reef Point Sluicing Co.* (1909) - - - 287 (1)
- McPhee v. S. Bennett Ltd.* (1934) - 320 (6)
- Magennis P. J. Pty. Ltd. v. The Commonwealth* (1949) - - - 137 (2)
- Makin v. Attorney-General (N.S.W.)* (1894) - - - - 341 (1)
- Managers of Newcastle Banking Co. v. Hymers* (1856) - - - - 211 (11)
- Marks v. Feldman* (1870) - - - 298 (2)
- Marshall v. London Passenger Transport Board* (1936) 597 (3), 602 (4), 604 (2)
- Martin-Baker Aircraft Co. Ltd. v. Canadian Flight Equipment Ltd.* (1955) - - - - 654 (3)
- Martin's Case* (1945) - - - 561 (1)
- May & Baker Ltd. v. Boots Pure Drug Co. Ltd.* (1948) - - - 533 (1), 540 (1)
- Melbourne Corporation v. The Commonwealth* (1947) - - - 137 (1)
- Melbourne and Metropolitan Tramways Board v. Municipal Officers' Association of Australia* (1944) - 454 (1), 461 (1), 471 (4)
- Menzies v. Australian Iron & Steel Ltd.* (1952) - - - - 122 (1)
- Mercer v. The Commissioner for Road Transport and Tramways (N.S.W.)* (1936) - - - - 180 (5)
- Metropolitan Railway Company v. Wright* (1886) - - - - 180 (4)
- Meyer Heine Pty. Ltd. v. The China Navigation Co. Ltd.* (1966) - - 425 (1)
- Mills v. Mills* (1938) - - 627 (2), 640 (3)
- Milroy v. Lord* (1862) - - - 213 (1)
- Moakes v. Blackwell Colliery Co. Ltd.* (1925) - - - - 676 (3)
- Monongahela Navigation Co. v. United States* (1892) - - - - 99 (4)
- Moore v. Alwill* (1881) 595 (5), 596 (1), 597 (1), 601 (2), 602 (3)
- Morris v. West Hartlepool Steam Navigation Co. Ltd.* (1956) - - 180 (1)
- Muskrat v. United States* (1911) - 394 (2)
- Myer v. Commissioner of Taxes* (1937) 570 (3)
- N.
- National Broadcasting Co. Inc. v. United States* (1943) - - - 402 (2)

Nelungaloo Pty. Ltd. v. The Commonwealth (1952) - - - -	6 (8)
New South Wales v. The Commonwealth (1915) - - - -	372 (4), 390 (4)
Newberry v. Joseph Westwood & Co. Ltd. (1960) - - - -	313 (5)
Newton v. Commissioner of Taxation (1958) - - - -	81 (1), 84 (1)
— v. Pyke (1908) - - - -	164 (7)
Ngurli Ltd. v. McCann (1953) - - - -	640 (4)
Noell v. Robinson (1683) - - - -	215 (1)
Norman v. Baldry (1834) - - - -	211 (7)
— v. Great Western Railway (1914) - - - -	196 (1)
Nott Bros. & Co. Ltd. v. Barkley (1925)	26 (1)

O.

O'Connor v. British Transport Commission (1958) - - - -	200 (2)
O'Grady v. Botany Wools (Australia) (1964) - - - -	613 (2)
O'Neill v. O'Connell (1946) - - - -	19 (2)
Oppenheim v. Tobacco Securities Trust Co. Ltd. (1951) - - - -	581 (6)
Osborne v. The Commonwealth (1911)	6 (7), 27 (3)
Overseas Tankship (U.K.) Ltd. v. The Miller Steamship Co. Pty. (1967)	199 (3)
Owens v. Collector of Customs (1940)	6 (6)

P.

Paris v. Stepney Borough Council (1951) - - - -	176 (2)
Patterson v. Federal Commissioner of Taxation (1936) - - - -	211 (3)
— v. Richards (1963) - - - -	597 (4), 600 (2)
Payne v. Weldless Steel Tube Co. Ltd. (1956) - - - -	322 (3)
Perpetual Trustees Co. (Ltd.) v. Federal Commissioner of Taxation (1942)	571 (2)
Phipps v. Rochester Corporation (1955)	201 (1)
Phoenix Insurance Co. v. Erie and Western Transportation Co. (1885)	248 (2)
Phoenix Assurance Co. v. Spooner (1905) - - - -	241 (2), 247 (2)
Piercy v. S. Mills & Co. Ltd. (1920)	640 (2)
Pioneer Express Pty. Ltd. v. Hotchess (1958) - - - -	107 (1)
Platt v. Sheriffs of London (1550)	33 (1), 46 (1)
Player, <i>Re</i> ; <i>Ex p.</i> Harvey (1885)	293 (4)
Polak v. Everett (1876) - - - -	293 (2)
Pontin v. Wood (1962) 595 (2), 596 (3), 597 (2), 599 (1), 600 (3), 606 (2)	
Potter's Sulphide Ore Treatment Ltd. v. Sulphide Corporation Ltd. (1911)	518 (1)
Powell v. Kempton Park Racecourse Co. Ltd. (1899) - - - -	324 (2)
Prentis v. Atlantic Coast Line Co. (1908) - - - -	396 (4)

Prince v. Carrier Engineering Co. Ltd. and Vauxhall Motors Ltd. (1955)	313 (4)
Professional Engineers' Association, <i>Ex p.</i> (1959) - - - -	456 (4), 457 (2), 470 (1)
Proprietors of the Daily News Ltd. v. Australian Journalists' Association (1920) - - - -	457 (1)
Punt v. Symons & Co. Ltd. (1903)	627 (3), 640 (1)
Purkess v. Crittenden (1965) - - - -	222 (2)

R.

R. v. Antrobus (1835) - - - -	45 (2)
— v. Australian Stevedoring Industry Board; <i>Ex p.</i> Melbourne Stevedoring Co. Pty. Ltd. (1953) - - - -	415 (1)
— v. Ball (1911) - - - -	339 (1)
— v. Bamford (1901) 94 (1), 112 (1), 115 (1), 116 (2), 118 (2), 119 (1), 128 (1), 129 (2), 133 (1)	
— v. Barbour (1939) 337 (3), 338 (3), 339 (2)	
— v. Beddingfield (1879) - - - -	340 (1)
— v. Bond (1906) - - - -	338 (1), 343 (1)
— v. Bourdon (1847) - - - -	45 (4)
— v. Connell; <i>Ex p.</i> Hetton Bellbird Collieries Ltd. (1944) - - - -	415 (2), 463 (3)
— v. Corporation of Dublin (1879)	413 (6)
— v. Davison (1954) 373 (2), 374 (2), 386 (4), 387 (1), 392 (1), 394 (1), 395 (3), 408 (2), 413 (3), 414 (1)	
— v. District Court of Northern District of Queensland; <i>Ex p.</i> Thompson (1969) - - - -	463 (1)
— v. Hagan (1873) - - - -	343 (2)
— v. Hibble; <i>Ex p.</i> Broken Hill Proprietary Co. Ltd. (1920) - - - -	463 (2)
— v. Hodgkinson (1954) - - - -	36 (2), 45 (1)
— v. Jagger (1847) - - - -	5 (3)
— v. Kirby; <i>Ex p.</i> Boilermakers' Society of Australia (1957) - - - -	390 (1)
— v. Local Government Board of Ireland (1902) - - - -	375 (2), 386 (1), 413 (1)
— v. Lydford (1914) - - - -	36 (4), 40 (1), 51 (2)
— v. Lyon (1906) - - - -	22 (1), 22 (3)
— v. Munn (1930) - - - -	337 (1)
— v. Spicer; <i>Ex p.</i> Australian Builders' Labourers' Federation (1957) - - - -	400 (1)
— v. Spicer; <i>Ex p.</i> Waterside Workers' Federation of Australia (1957) - - - -	377 (1)
— v. Tsingopoulos (1964) - - - -	337 (2), 339 (4)
— v. White; <i>Ex p.</i> Byrnes (1963) - - - -	53 (5)
Rabone v. Deane (1915) - - - -	164 (2)
Railways, Commissioner for (N.S.W.) v. Anderson (1961) 188 (2), 195 (2), 199 (2)	
— v. Cardy (1960) - - - -	199 (1)
— v. McDermott (1967) - - - -	198 (1)
Ralston v. Smith (1865) - - - -	540 (3)
Randwick Corporation v. Rutledge (1959) - - - -	577 (1), 579 (1), 580 (4), 582 (1)

Robbie N. W. & Co. Ltd. v. Witney Warehouse Co. Ltd. (1963)	-	-	301 (3)
Rola Co. (Aust.) Pty. Ltd. v. The Commonwealth (1944)	-	-	386 (3)
Rolland v. United Glass Bottle Manufacturing Co. Ltd. (1959)	312 (1),	313 (1),	317 (2), 326 (1)
Rowdell Pty. Ltd. v. Federal Commissioner of Taxation (1963)	-	-	488 (1)

S.

Sanguinetti v. Stuckey's Baling Co. (1995)	-	-	289 (1), 302 (2)
Sargood Bros v. The Commonwealth (1910)	-	-	6 (3)
Schneider v. Dawson (1960)	-	-	5 (2)
Schnelle v. Dent (1925)	-	-	164 (3)
Shell Co. of Australia Ltd. v. Federal Commissioner of Taxation (1931)	395 (1),	408 (1)	
Sims, <i>Re</i> ; <i>Ex p.</i> Sheffield v. Prince (1896)	-	-	288 (1)
Simms v. Registrar of Probates (1900)	-	-	85 (1)
<i>v.</i> Simms (1899)	-	-	98 (1)
Smith v. Day (1837)	-	-	211 (8)
Smyth v. Revenue Commissioners (1931)	-	-	566 (6)
Societe Des Usines Chimiques Rhone-Poulenc v. Commissioner of Patents (1958)	-	-	539 (1)
South Australia v. The Commonwealth (1942)	-	-	101 (1)
<i>v.</i> Victoria (1911)	-	-	372 (2)
South Behar Railway Co. Ltd. v. Commissioners of Inland Revenue (1925)	-	-	164 (9)
Spensorborough Urban District Council's Agreement, <i>Re</i> ; Spensorborough Corporation v. Cooke Sons & Co. (1968)	654 (4)		
Spratt v. Hermes (1965)	108 (1),	111 (2),	114 (3), 124 (1), 131 (1), 134 (1), 141 (1)
Stapleton v. F. T. S. O'Donnell, Griffin & Co. (Q.) Pty. Ltd. (1961)	274 (1),		275 (1)
<i>v.</i> Federal Commissioner of Taxation (1955)	-	-	211 (1)
Stevens v. Railway Commissioners (N.S.W.) (1930)	-	-	676 (6)
Stewart & Co. v. Sadrakula (1940)	-	-	128 (3)
Stone J. & F. Lighting & Radio Ltd. v. Haygarth (1968)	-	-	323 (1)
Succession Duties; Commissioner of (S.A.) v. Executor Trustee and Agency Co. of South Australia Ltd. (1947)	565 (1),	572 (1)	
Sunshine Anthracite Coal v. Adkins, Collector of Internal Revenue (1940)	402 (1)		
Sunshine Porcelain Potteries Pty. Ltd. v. Nash (1961)	-	-	676 (5)
Swan and Swan v. Canadian Railway and Swan (1959)	189 (1),	191 (1),	200 (1), 202 (3)

T.

Taxation; Deputy Commissioner of v. Brown (1958)	-	-	211 (2)
<i>v.</i> Purcell (1921)	-	-	85 (2)
<i>;</i> Federal Commissioner of v. Munro (1926)	-	-	371 (1), 661 (3)
<i>v.</i> Sagar (1946)	568 (4),	569 (1),	570 (1)
Taxes; Commissioner of (Tas.) v. Perpetual Trustees Executors and Agency Co. of Tasmania Ltd. (1969)	568 (5)		
Tate v. Swan, Hunter & Wigham Richardson Ltd. (1958)	-	-	319 (1)
<i>& Sons v.</i> Hyslop (1885)	-	-	248 (1)
Taylor v. Brighton Borough Council (1947)	-	-	499 (1)
<i>v.</i> Coalite Oils & Chemicals Ltd. (1967)	-	-	324 (1)
<i>v.</i> R. & H. Green and Silley Weir Ltd. (1951)	-	-	313 (6)
<i>v.</i> Taylor (1870)	-	-	211 (12)
<i>v.</i> White (1964)	-	-	290 (1)
Thompson v. Federal Commissioner of Taxation (1959)	-	-	581 (3)

U.

Ulster Farmers' Mart Co. Ltd. v. Scottish Co-operative Wholesale Society Ltd. (1958)	-	-	180 (6)
United Collieries Ltd. v. Simpson (1909)	676 (1)		
United Engineering Workers' Union v. Devanayagam (1968)	-	-	396 (1)
United States v. Bevans (1818)	-	-	98 (2)
<i>v.</i> Burr (1895)	-	-	5 (4)
<i>v.</i> Cornell (1820)	-	-	98 (3)
<i>v.</i> Gettysburg Electric Railway Co. (1895)	-	-	99 (2)
<i>v.</i> Sharpnack (1957)	-	-	118 (1)
United Telephone Co. v. Tasker (1888)	595 (4)		

V.

Vacuum Oil Co. Pty. Ltd. v. Queensland (1934)	-	-	26 (4)
Victorian Stevedoring and General Contracting Co. Pty. Ltd. and Meakes v. Dignan (1931)	-	-	402 (3)

W.

"Wagon Mound", The [No. 2] (1967)	199 (3)		
Wallace & Co., <i>Ex p.</i> (1892)	-	-	6 (4)
War Assets Pty. Ltd. v. Federal Commissioner of Taxation (1954)	-	-	86 (2)
Ward, <i>Re</i> ; Thomas v. L. G. Abbott & Co. Ltd. (1950)	-	-	298 (1)

Waterside Workers' Federation of Australia v. J. W. Alexander Ltd. (1918) - - - - - 378 (1)	Willmott v. London Celluloid Co. (1886) 229 (6), 301 (6)
- - - v. Gilchrist, Watt & Sanderson Ltd. (1924) - - - - - 53 (2)	Wilson & Clyde Coal Co. Ltd. v. English (1938) - - - - - 179 (1)
Wattle Gully Mines v. Clementi (1956) 671 (1)	Wilson v. Tyneside Window Cleaning Co. (1958) - - - - - 179 (2)
Watts v. Rake (1960) - - - - - 222 (1)	Wing On & Co. Ltd. v. Collector of Customs (N.S.W.) (1938) - 5 (1), 22 (3), 23 (1)
Webber, <i>Re</i> (1954) - - - - - 581 (5)	Winter v. Cardiff Rural District Council (1950) - - - - - 176 (1)
Weldon v. Neal (1887) - - 593 (1), 596 (2), 600 (1), 608 (1), 613 (1)	Winter Garden Theatre (London) Ltd. v. Millennium Productions Ltd. (1948) - - - - - 654 (2)
Welsbach Incandescent Gas Lighting Co. v. New Sunlight Incandescent Co. (1900) - - - - - 520 (1), 521 (1)	Wise v. Whitburn (1924) - - - - - 215 (3)
West v. Gwyne (1911) - - - - - 675 (1)	Withers v. Perry Chain Co. Ltd. (1961) 173 (1)
West of England Fire Insurance Co. v. Isaacs (1897) - - - - - 241 (1), 247 (1)	Witts J. B. Pty. Ltd. v. Wholesalers (Aust.) Pty. Ltd. (1963) - - - 421 (1)
Wigan v. English and Scottish Law Life Assurance Association (1909) - 289 (2)	Wollaston's Case (<i>Re</i> Income Tax Acts [No. 4]) (1902) - - - - - 116 (4)
Williams v. Lloyd (1934) - - - - - 293 (5)	
Williamson v. Inspector-General of Penal Establishments (1958) 36 (1), 40 (2), 45 (5), 51 (1)	

IN THE PRIVY COUNCIL

Present in the Council Chamber on 16th July 1970 :

LORD DONOVAN, LORD MACDERMOTT, VISCOUNT DILHORNE,
LORD WILBERFORCE AND LORD PEARSON.

R. J. ELLICOTT Q.C. (Solicitor-General for the Commonwealth) :
“ As your Lordships probably know the Commonwealth of Australia has terminated appeals to the Judicial Committee of the Privy Council as from 1st September 1968. As far as we know this is probably the last appeal in which the Commonwealth will appear as a party. When I heard George sing out this morning, ‘ Counsel please ’, it made me feel a little sad that this is probably be the last time when counsel on behalf of the Commonwealth will hear that call.

I have been asked by the Attorney-General of the Commonwealth to take the opportunity on this appeal to make a public statement to express the gratitude, both of the Commonwealth government and the people of the Commonwealth, for the tremendous contribution that the Judicial Committee of the Privy Council has made to our law and to our practitioners since the inception of the Commonwealth.

It may be, my Lords, that some other appeal will filter through, but at least we shall have taken the opportunity of having said this publicly. We shall endeavour to say it from time to time in other ways, but I am sure your Lordships, looking back into history, will realize that there are embedded in our law reports decisions of this Board which will affect our constitutional life not just for years but for centuries to come. They affect the daily life of our people and they affect the transactions that go on in trade. For instance, one can go back to the *Banking Case* (1) ; one can go back to cases like *James v. The Commonwealth* (2) ; and one can go back to cases such as the transport cases. All these cases in their own way affect the daily transactions which go on in our country, and it would be very remiss if we did not say publicly a very sincere thank-you to the Judicial Committee of the Privy Council.

I should be grateful if your Lordships would pass on to the Lord Chancellor and also to Her Majesty our heartfelt gratitude for the effort that has been put in not only by your Lordships but by all those who have gone before you.”

(1) (1949) 76 C.L.R. 1 ; [1950] A.C. 227. (2) (1936) 55 C.L.R. 1 ; [1936] A.C. 578.

LORD DONOVAN : " I am sure I speak on behalf of all of my colleagues here, and those not here, when I say that we are very moved by the expression of appreciation which you have just tendered to us. These remarks, of course, have been taken down and we will do our best to see they receive the publicity they deserve.

We shall miss you and your colleagues, even though it is an income tax case which brings you here. I am quite sure that in years to come your laws will, as you say, be moulded by decisions we have given in the past, including *Leeming v. Jones* (1).

I repeat that we are very grateful for all the assistance which Australian counsel have always given us and we are proud to have played our part in the development of your jurisdiction. Thank you very much. "

(1) [1930] A.C. 415 (H.L.).

MEMORANDA

RESPECTING

APPEALS, AND APPLICATIONS FOR SPECIAL LEAVE TO APPEAL, FROM
THE HIGH COURT OF AUSTRALIA TO THE PRIVY COUNCIL.

During the period from 1st January 1963 to 31st December 1971
the Privy Council granted special leave to appeal from the High
Court in the following cases :

- ABEL *v.* RATHBORNE (38 A.L.J.R. 293)—1965, 1st April.
Appeal withdrawn.
- AUSTRALIAN CONSOLIDATED PRESS LTD. *v.* UREN (117 C.L.R.,
185)—1966, 20th July.
Judgment : 1967, 24th July (117 C.L.R. 221 ; [1969]
1 A.C. 590).
- B.P. AUSTRALIA LTD. *v.* FEDERAL COMMISSIONER OF TAXATION
(110 C.L.R. 387)—1964, 23rd June.
Judgment : 1965, 27th July (112 C.L.R. 386 ; [1966]
A.C. 224).
- CAR OWNERS' MUTUAL INSURANCE CO. LTD. *v.* FEDERAL
TREASURER (117 C.L.R. 301—*sub nom.* THE QUEEN *v.* COMMON-
WEALTH TREASURER ; *Ex p.* CAR OWNERS' MUTUAL INSURANCE
Co. LTD.)—1968, 12th July.
Judgment : 1969, 17th March (117 C.L.R. 320 ; [1970]
A.C. 527).
- COLONIAL SUGAR REFINING CO. LTD. *v.* DILLEY ; BLUE METAL
INDUSTRIES LTD. *v.* DILLEY (116 C.L.R. 445)—1968, 22nd
January.
Judgment : 1969, 5th May (117 C.L.R. 651 ; [1970]
A.C. 827).
- CONTINENTAL LIQUEURS PTY. LTD. *v.* G. F. HEUBLEIN & BRO.
INC. (109 C.L.R. 153)—1963, 1st July.
Appeal dismissed for want of prosecution.
- FAZEL DEEN *v.* THOMAS BROWN & SONS LTD. (108 C.L.R. 391)—
1963, 4th July.
Appeal withdrawn.

FREIGHTLINES & CONSTRUCTION HOLDING LTD. *v.* NEW SOUTH WALES (noted 118 C.L.R. 681)—1966, 20th July.

Judgment : 1967, 10th April (116 C.L.R. 1 ; [1968] A.C. 625).

GOLDMAN *v.* HARGRAVE (110 C.L.R. 40)—1964, 28th July.

Judgment : 1966, 13th June (115 C.L.R. 458 ; [1968] 1 A.C. 645).

MCLELLAND *v.* FEDERAL COMMISSIONER OF TAXATION (118 C.L.R. 353)—1969, 24th November.

Judgment : 1970, 2nd November (120 C.L.R. 487).

MOBIL OIL AUSTRALIA LTD. *v.* FEDERAL COMMISSIONER OF TAXATION (113 C.L.R. 475)—1964, 23rd June.

Judgment : 1965, 27th July (112 C.L.R. 407 ; [1966] A.C. 275).

MUTUAL LIFE AND CITIZENS' ASSURANCE Co. LTD. *v.* EVATT (112 C.L.R. 556)—1969, 15th July.

Judgment : 1970, 16th November (122 C.L.R. 628 ; [1971] A.C. 793).

OGDEN INDUSTRIES PTY. LTD. *v.* LUCAS (116 C.L.R. 537)—1968, 23rd January.

Judgment : 1968, 25th November (118 C.L.R. 32 ; [1970] A.C. 113).

PACIFIC MOTOR AUCTIONS PTY. LTD. *v.* MOTOR CREDITS (HIRE FINANCE) LTD. (109 C.L.R. 87)—1964, 14th January.

Judgment : 1965, 3rd March (112 C.L.R. 192 ; [1965] A.C. 867).

PEATE *v.* FEDERAL COMMISSIONER OF TAXATION (111 C.L.R. 443)—1965, 19th January.

Judgment : 1966, 17th May (116 C.L.R. 38 ; [1967] 1 A.C. 308).

STAMP DUTIES, COMMISSIONER OF (Q.) *v.* LIVINGSTON (107 C.L.R. 411)—1962, 16th July (noted in Memoranda in 108 C.L.R.).

Judgment : 1964, 7th October (112 C.L.R. 12 ; [1965] A.C. 694).

STASKA *v.* GENERAL MOTORS-HOLDEN'S PTY. LTD. (119 C.L.R. 301)—1970, 26th January.
Judgment : 1972, 28th March (123 C.L.R. 673).

During the same period the Privy Council refused special leave to appeal from the High Court in the following cases :

ACQUILINA *v.* DAIRY FARMERS CO-OPERATIVE MILK CO. LTD. (109 C.L.R. 458)—1965, 12th January.

AIRLINES OF NEW SOUTH WALES PTY. LTD. *v.* NEW SOUTH WALES (113 C.L.R. 1)—1964, 14th July.

ATKINSON *v.* CUSTOM CREDIT CORPORATION LTD. (noted 112 C.L.R. 667)—1965, 26th July.

BANK OF NEW SOUTH WALES SAVINGS BANK LTD. *v.* FEDERAL COMMISSIONER OF TAXATION (108 C.L.R. 514)—1963, 23rd May.

BLACKLEY *v.* DEVONDALE CREAM (VICT.) PTY. LTD. (117 C.L.R. 253)—1968, 26th November.

BRINNAND *v.* McLAUGHLIN & Co. PTY. LTD. (noted 114 C.L.R. 668)—1966, 31st January.

BROKEN HILL PTY. CO. LTD. *v.* FEDERAL COMMISSIONER OF TAXATION (120 C.L.R. 240)—1969, 14th July.

CABANAS PTY. LTD. *v.* WHITE (42 A.L.J.R. 111)—1969, 15th January.

ELDER TRUSTEE & EXECUTOR CO. LTD. *v.* FEDERAL COMMISSIONER OF TAXATION (118 C.L.R. 331)—1967, 21st November.

EVANS *v.* THE QUEEN (noted 114 C.L.R. 666)—1966, 21st July.

FRAHER *v.* WUNDERLICH LTD. (110 C.L.R. 466)—1964, 15th July.

GLEESON *v.* JONES (39 A.L.J.R. 258 ; noted 114 C.L.R. 667)—1966, 21st June.

GOODWIN *v.* SOUTHERN TABLELANDS FINANCE PTY. LTD. (noted 118 C.L.R. 682)—1969, 30th June.

- GURFINKEL *v.* BENTLEY PTY. LTD. (116 C.L.R. 98)—1967, 3rd July.
- HAQUE *v.* HAQUE (114 C.L.R. 98)—1966, 28th April.
- HARPER *v.* VICTORIA (114 C.L.R. 361)—1967, 25th January.
- HARROWELL *v.* FEDERAL COMMISSIONER OF TAXATION (116 C.L.R. 607)—1968, 1st July].
- HORNE *v.* JACKSON (114 C.L.R. 82)—1966, 24th March.
- INGLEWOOD SHIRE COUNCIL *v.* VOLI (110 C.L.R. 74)—1963, 12th November.
- INSURANCE COMMISSIONER OF STATE MOTOR CAR INSURANCE OFFICE *v.* DENNING (120 C.L.R. 437)—1967, 20th November.
- IPEC-AIR PTY. LTD. *v.* ANDERSON (113 C.L.R. 177)—1966, 19th January.
- JOHNSTON *v.* JOHNSTON (113 C.L.R. 572)—1965, 11th October.
- KAY'S LEASING CORPORATION PTY. LTD. *v.* FLETCHER (116 C.L.R. 124)—1965, 30th June.
- KORMAN *v.* MURPHY (noted 112 C.L.R. 670)—1965, 12th October.
- KRAZMANN *v.* REES (114 C.L.R. 63)—1966, 19th January.
- LAMSON PARAGON LTD. *v.* EDWARDS (41 A.L.J.R. 325 ; noted 118 C.L.R. 686)—1968, 22nd October.
- MARRICKVILLE MARGARINE PTY. LTD. *v.* BEAL (114 C.L.R. 283)—1966, 18th July.
- MAUGER *v.* MAUGER (noted 118 C.L.R. 688)—1967, 3rd July.
- MEANI *v.* SUNGRAVURE PTY. LTD. (110 C.L.R. 24)—1965, 12th January.
- NEW SOUTH WALES MINING CO. PTY. LTD. AND DAY *v.* ATTORNEY-GENERAL (N.S.W.) (noted 118 C.L.R. 689)—1967, 11th May.

RAILWAYS, COMMISSIONER FOR *v.* MANUFACTURERS & MUTUAL INSURANCE LTD. (118 C.L.R. 314)—1969, 22nd April.

RENOUF *v.* CARTER (111 C.L.R. 140)—1963, 30th April.

RYAN (ROBERT PATRICK) *v.* THE QUEEN (121 C.L.R. 205)—1967, 26th July.

RYAN (RONALD JOSEPH) *v.* THE QUEEN (noted 118 C.L.R. 692)—1967, 23rd January.

STEIN *v.* LAW (121 C.L.R. 529—*sub nom.* STEIN *v.* SAYWELL)—1969, 7th October.

TSIGOS *v.* THE QUEEN (noted 114 C.L.R. 671)—1967, 25th July.

UNION FIDELITY TRUSTEE CO. OF AUSTRALIA LTD. *v.* D'APICE (118 C.L.R. 105—*sub nom.* PERMANENT TRUSTEE CO. OF NEW SOUTH WALES LTD. *v.* D'APICE)—1969, 14th January.

[The references in brackets immediately following the case names are those of the reports or notes of the decisions of the High Court of Australia. The dates following are those of the decisions of the Privy Council regarding the applications.]