

**1970-1971**

THE

**COMMONWEALTH LAW  
REPORTS**

CASES DETERMINED IN THE

**HIGH COURT OF AUSTRALIA**

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**VOL. 125.**

Australia :

**THE LAW BOOK COMPANY LIMITED**

SYDNEY	-	-	301-305 KENT STREET.
MELBOURNE	-	-	389-393 LONSDALE STREET.
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0 455 03850 3 (C.L.R. series)  
0 455 05110 0 (C.L.R. Vol. 125)

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Printed in Australia for  
The Law Book Company Limited,  
by Harston, Partridge & Co. Pty. Ltd., Printers,  
461 Little Collins Street, Melbourne.

# JUSTICES OF THE HIGH COURT

## OF AUSTRALIA

DURING THE CURRENCY OF THIS VOLUME

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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.  
(retired 1st August 1970).

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 RIGHT HONOURABLE SIR CYRIL AMBROSE WALSH, K.B.E.

THE HONOURABLE SIR HARRY TALBOT GIBBS, K.B.E. (from 4th  
August 1970).

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### ATTORNEY-GENERAL :

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

SENATOR THE HONOURABLE IVOR JOHN GREENWOOD, Q.C. (from 2nd  
August 1971).



## THE LATE SIR WILLIAM OWEN

On 10th April 1972, at a sitting of the Full High Court at Sydney, BARWICK C.J. said :

Since the Court last sat our brother Justice SIR WILLIAM OWEN died. We wish this morning to express our sorrow and deep regret on his passing and to extend our sympathy to his widow and their daughter. We are pleased that the Chief Justice of New South Wales has been able to sit with us this morning ; he had a long and close association with SIR WILLIAM.

The Attorney-General of the Commonwealth has written me expressing his regret that he could not be present and the Solicitor-General of the Commonwealth is overseas on official business, but the Commonwealth Attorney has asked Mr. Harders, Secretary of his Department, to be present, and we are glad that he is. The Solicitor-General of New South Wales is present representing the Attorney-General of the State, Mr. Traill, the Secretary of the Law Council of Australia, Mr. Samuels Q.C., the President of the New South Wales Bar Association and Mr. Broadbent, the President of the Law Society of New South Wales are also present. We are pleased that these gentlemen have been able to attend. We are also pleased that members of the profession have attended this morning.

WILLIAM FRANCIS LANGER OWEN was born in Sydney on 21st November 1899. He was the only son of Langer Meade Loftus Owen, then a member of the Bar of New South Wales, and later Mr. Justice Owen of the Supreme Court of New South Wales. Mr. Justice Langer Owen was himself the son of Sir William Owen, a Judge of that Court between the years 1887 and 1908. WILLIAM FRANCIS LANGER OWEN was thus born into the most honourable tradition of the law and of public service in its administration. Throughout his professional and judicial life he carried on that family tradition of which he was justly proud and to which he added lustre. He was educated at Tudor House and at the Church of England Grammar School, North Shore. He interrupted his school days to enlist in the Australian Imperial Forces in the year 1915, and World War I thus found him at the age of sixteen serving in France. He was wounded in action and, after returning to the lines, gassed. When discharged from hospital on the last occasion he joined the newly formed Australian Flying Corps and in due course became a Lieutenant. After being discharged from the armed forces in the year 1919 and a brief period in which he considered being trained as

an engineer, SIR WILLIAM studied law. He passed the bar examinations in the year 1923 and was admitted to the Bar of New South Wales on 2nd August 1923. He soon developed a considerable practice, conducting cases at nisi prius, in equity and on appeal, as well as in advising in chambers in a wide variety of subject matter.

In 1935, after twelve years of practice, he was appointed one of His Majesty's counsel. On 1st April 1936 he was appointed an Acting Judge of the Supreme Court of New South Wales and he continued in that capacity until 25th October 1937, when, at the early age of thirty-eight, he was appointed a Judge of the Court. He served on the Bench of the Supreme Court with great distinction for twenty-five years until his appointment as a Justice of this Court on 22nd September 1961. During his term of office as a Judge of the Supreme Court, SIR WILLIAM had extensive experience in presiding over jury trials both in civil actions and in the Central Criminal Court. He also sat as a member of the Court sitting in Banco, hearing appeals in civil matters and as a member of the Court of Criminal Appeal hearing criminal appeals. He became the Senior Puisne Judge of the Court and for a considerable time presided over the sittings of the Court in Banco.

Throughout those years and, indeed, throughout all his judicial life, he exhibited those qualities which are most sought in a judge : unremitting devotion to duty, a sound grasp of legal principle, a proper sense of fairness and right, and good and sound judgment. The *New South Wales State Reports*, right from his early days as an Acting Judge, until he resigned to join this Court, contain his very many judgments of importance in many aspects of the law.

While a member of the Bench of the Supreme Court, his judicial service was interrupted on three occasions during which he served in other areas of public administration. Between the years 1942 and 1945 he was Chairman of the Central Wool Committee and in 1945 he became a member of the Australian delegation to the Imperial Wool Conference which, at the conclusion of the war, set up the joint organization to dispose of the wartime wool stocks. The Australian public, and particularly its grazing segment, profited greatly by his application to his task on this committee and in this organization and by his sound exercise of judgment in their affairs.

In 1950 he investigated the position of certain prisoners of war who had been held by the Japanese and reported to the Australian Government on what ought equitably to be done for them.

Later, in 1954, he was appointed Chairman of the Royal Commission on Espionage, sitting with Mr. Justice Philp of the Supreme Court of Queensland and Mr. Justice Ligertwood of the Supreme Court of South Australia. His conduct of the difficult work of this Commission was marked by calmness and objective impartiality—features which distinguished his judicial life.

On 22nd September 1961, he was appointed to this Bench in replacement of Sir Wilfred Fullagar, who died on 9th July 1961. SIR WILLIAM's eleven years of service in the office of a Justice of this Court have been marked by those qualities of which I have spoken. His knowledge of the law over a very wide field, his long and extensive experience in its administration and his capacity for quiet consideration and sound judgment have been of great value to this Court and to its work. Always willing to play his part, his contribution to discussion of matters both in and out of the courtroom has always been helpful and appreciated by his brethren of the Bench. He has always been a loyal and helpful companion.

SIR WILLIAM said on the occasion on which he was sworn as a Justice of this Court that he prayed that he would not fail in the task that lay ahead and that when he came to the end of his judicial life he would have retained the goodwill of his colleagues and of the profession. He did not fail ; and he did retain the goodwill of his colleagues and of the profession.

The composition of the Bench has changed a great deal during his term of office. He sat with Sir Owen Dixon, Sir Frank Kitto, Sir Alan Taylor and Sir Victor Windeyer, all of whom had ceased to be members of the Court at the time of his death. He sat with all of us who are now members of the Court. All of those of the past whom I have named, and we who are presently in office, have profited by his knowledge, his wisdom and his friendship. He has earned the goodwill and respect of all.

In 1967 he suffered a severe physical setback due to an aneurism, which after a period resulted in the amputation of his right leg. Later an operation on his other leg was necessitated, an operation in which a length of artificial artery was inserted. Since the initial setback, but more particularly since the amputation, he has suffered constant discomfort with very frequent periods of intense pain. We who have been with him daily have watched with tremendous admiration his acceptance of this ever-present discouragement and his courage in refusing to yield to it, or to allow it to prevent him from performing the duties of his office.

As the disabilities visibly increased over the last year or so and the anxiety, which quite evidently he felt that a further amputation might become necessary, deepened, for he has often spoke to me of this possible event, his courage and his continued application to the work of the Court, his continuing interest in and contribution to the solution of the cases brought before it, has amazed those of us whose fortunes have not led us into comparable suffering or pain. We have been touched by his unwavering fortitude which, indeed, like his youthful conduct, has been heroic.

That further amputation which he feared did not become necessary, but his abdominal arterial condition deteriorated recently, and perhaps in all the circumstances, fortunately, with suddenness. He sat until almost lunch-time on Wednesday, 29th March. He was very ill indeed at the time but refused to give up. Anyone reading the transcript of the argument of that case and observing his comments and questions could scarcely believe that he was then suffering the tumultuous experience—physical and mental—which in fact he was undergoing. He collapsed that evening. His condition further deteriorated and he did not survive.

He would not have wished to be so incapacitated as to be unable to attend on the Bench in performance of his office, for the law and its administration was central to his life. In all, he had practised the law for forty-nine years, was in turn Judge and Justice for a total of thirty-five years. He died in office and in the midst of performance of his duty. Could he have realized it, he would have been both proud and pleased.

As I think of him this morning, searching my mind for those characteristics which remain uppermost, I think of his courage and his sense of duty as outstanding. For him I think Whittier's lines were meaningful, for Whittier wrote :

“ There's life alone in duty done  
and rest alone in striving.”

But this did not dehumanize him. For withal, behind a certain shyness, there was a warm person with a very real and friendly sense of humour. His attractive smile was genuine. He had a deep humanity, rarely exposed, but ever present.

If I may obtrude a personal note, I may say that I practised with him as counsel—only last week he reminded me that we had each been junior to different senior counsel in the Royal Commission of Mr. Justice Halse Rogers into certain allegations concerned with the



inauguration of what came to be known as “tin-hare racing”. I often appeared before him, both at first instance and on appeal, when he was a Judge of the Supreme Court. Since April 1964 I have sat with him. I have always had his loyal co-operation and the benefit of his wise advice. Over all the years of our association we have been friends. I early found that many others who came to know him closely became his friends. Few who have not experienced it know how rigorous the life of the Judge can be if, in response to duty, he makes it so. This SIR WILLIAM did. Duty was at all times fully performed. All the impediments which might well deter other men were swept aside and overcome by supreme courage. He served his State and Australia well. Few men have served the law as long, only a very few longer. A great servant of the law, tried over such a long period of time and not found wanting has passed from us. We who have known him better than some and who have valued his time with us have lost a dear friend.

My brother Justices and I extend to his widow, Lady Owen, and to their daughter Pamela, our deepest sympathy.

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

125 C.L.R.

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

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A.	D.
<p>Atwill <i>v.</i> Commissioner of Stamp Duties (N.S.W.) - - - 203</p> <p>Australian &amp; International Insur- ances Ltd. <i>v.</i> Workers' Com- pensation Commission (N.S.W.) 470</p>	<p>Downing <i>v.</i> Federal Commissioner of Taxation - - - - 185</p>
B.	E.
<p>Bagot's Executor &amp; Trustee Co. Ltd. ; Nominal Defendant <i>v.</i> - 179</p> <p>Bailey <i>v.</i> Marinoff - - - 529</p> <p>Bank of New South Wales ; J. &amp; H. Just (Holdings) Pty. Ltd. <i>v.</i> 546</p> <p>Brent <i>v.</i> Federal Commissioner of Taxation - - - - 418</p> <p>Brook ; Brown <i>v.</i> - - - 275</p> <p>Brown <i>v.</i> Brook - - - - 275</p> <p>Buckley <i>v.</i> Tutty - - - - 353</p>	<p>Edwards <i>v.</i> Noble - - - 296</p> <p>Eyeington ; Western Pastoral Co. <i>v.</i> - - - - 342</p>
C.	F.
<p>Capital T.V. and Appliances Pty. Ltd. <i>v.</i> Falconer - - - 591</p> <p>Commonwealth Industrial Court ; <i>Ex p.</i> Federated Miscellaneous Workers' Union of Australia ; The Queen <i>v.</i> - - - - 502</p> <p>Creer <i>v.</i> P. &amp; O. Lines of Australia Pty. Ltd. - - - - 84</p>	<p>F. &amp; B. Trading Co. Pty. Ltd. ; Steadfast Insurance Co. Ltd. <i>v.</i> 578</p> <p>Falconer ; Capital T.V. and Appliances Pty. Ltd. - - - 591</p> <p>Franklin's Selfserve Pty. Ltd. <i>v.</i> Federal Commissioner of Taxation - - - - 52</p>
G.	H.
<p>Gannon ; Gannon <i>v.</i> - - - 629</p>	<p>Hatchett ; Federal Commissioner of Taxation <i>v.</i> - - - - 494</p> <p>Hollyock <i>v.</i> Federal Commissioner of Taxation - - - - 647</p>

Hydro - Electric Commission ; Munnings <i>v.</i> - - - - 1	N. Noble ; Edwards <i>v.</i> - - - 296 Nominal Defendant <i>v.</i> Bagot's Executor & Trustee Co. Ltd. - 179
I.	O.
Incorporated Council of Law Reporting (Q). <i>v.</i> Federal Commissioner of Taxation - 659	O'Loughlin ; Lewis <i>v.</i> - - 320
Investment and Merchant Finance Corporation Ltd. <i>v.</i> Federal Commissioner of Taxation - 249	O'Shaughnessy <i>v.</i> Mirror News- papers Ltd. - - - - 166
J.	P.
Jones ; Commissioner of Stamp Duties (N.S.W.) <i>v.</i> - - - 511	P. & O. Lines of Australia Pty. Ltd. ; Creer <i>v.</i> - - - 84
Just (J. & H.) (Holdings) Pty. Ltd. <i>v.</i> Bank of New South Wales - 546	Peel <i>v.</i> The Queen - - - 447 Phillips ; The Queen <i>v.</i> - - 93 Public Curator of Queensland ; Yrttiaho <i>v.</i> - - - - 228 Pusey ; Mount Isa Mines Ltd. <i>v.</i> - 383
K.	Q.
Keighley <i>v.</i> Commissioner of Stamp Duties (N.S.W.) - - - - 432	Queensland Trotting Board <i>v.</i> McLean - - - - 488
L.	R.
Leslie <i>v.</i> Mirror Newspapers Ltd. - 332	Reg. <i>v.</i> Commonwealth Industrial Court ; <i>Ex p.</i> Federated Miscellaneous Workers' Union of Australia - - - - 502
Lewis <i>v.</i> O'Loughlin - - - - 320	— ; Peel <i>v.</i> - - - - 447 — <i>v.</i> Phillips - - - - 93
M.	S.
McLean ; Queensland Trotting Board <i>v.</i> - - - - 488	Simpson ; Stratton <i>v.</i> - - - 138
Marinoff ; Bailey <i>v.</i> - - - 529	Social Credit Savings and Loans Society Ltd. <i>v.</i> Federal Commis- sioner of Taxation - - - - 560
Mirror Newspapers Ltd. ; Leslie <i>v.</i> 332	
— ; O'Shaughnessy <i>v.</i> - - 166	
Mount Isa Mines Ltd. <i>v.</i> Pusey - 383	
Munnings <i>v.</i> Hydro-Electric Com- mission - - - - 1	

Stamp Duties, Commissioner of (N.S.W.) ; Atwill <i>v.</i> - - - 203	Taxation ; Federal Commissioner of ; Investment and Merchant Finance Corporation Ltd. <i>v.</i> - 249
----- <i>v.</i> Jones - - - 511	----- ; Social Credit Savings and Loans Society Ltd. <i>v.</i> - - 560
----- ; Keighley <i>v.</i> - - - 432	Trading (F. & B.) Co. Pty. Ltd. ; Steadfast Insurance Co. Ltd. <i>v.</i> 578
Steadfast Insurance Co. Ltd. <i>v.</i> F. & B. Trading Co. Pty. Ltd. - 578	Tutty ; Buckley <i>v.</i> - - - 353
Stratton <i>v.</i> Simpson - - - 138	
T.	W.
Taxation ; Federal Commissioner of ; Brent <i>v.</i> - - - 418	Western Pastoral Co. <i>v.</i> Eyeington 342
----- ; Downing <i>v.</i> - - - 185	Workers' Compensation Commis- sion (N.S.W.) ; Australian & International Insurances Ltd. <i>v.</i> 470
----- ; Franklin's Selfserve Pty. Ltd. <i>v.</i> - - - 52	
----- <i>v.</i> Hatchett - - - 494	Y.
----- ; Hollyock <i>v.</i> - - - 647	Yrttiaho <i>v.</i> Public Curator of Queensland - - - 228
----- ; Incorporated Council of Law Reporting (Q.) <i>v.</i> - - 659	

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

- Abigail v. Lapin* (1930) 44 C.L.R. 166 (High Court); [1934] A.C. 491; 51 C.L.R. 58 (Privy Council).  
Considered 125 C.L.R. 546.
- Adler v. Upper Grosvenor Street Investment Ltd.* [1957] 1 W.L.R. 227; [1957] 1 All E.R. 229.  
Approved 125 C.L.R. 84.
- Arnall v. Gray and Doneley* [1941] Q.S.R. 122, at p. 125.  
Approved 125 C.L.R. 275.
- Atwill v. Commissioner of Stamp Duties* (1970) 92 W.N. (N.S.W.) 869.  
Reversed 125 C.L.R. 203.
- Australian Iron & Steel Ltd. v. Hoogland* (1962) 108 C.L.R. 471.  
Considered and discussed 125 C.L.R. 228.
- Baker v. Prior* [1932] Q.S.R. 66.  
Approved 125 C.L.R. 275.
- Barby v. Perpetual Trustee Co. Ltd.* (1937) 58 C.L.R. 316, at pp. 320, 324 and 327.  
Considered 125 C.L.R. 185.
- Benmax v. Austin Motor Co. Ltd.* [1955] A.C. 370.  
Considered 125 C.L.R. 296.
- Brook v. Brown* [1971] Q.W.N. 25; (1971) 64 Qd. R. 18.  
Affirmed 125 C.L.R. 275.
- Buchanan v. Kiley* [1948] Q.S.R. 274.  
Approved 125 C.L.R. 275.
- Butler v. Fairclough* (1917) 23 C.L.R. 78.  
Considered 125 C.L.R. 546.
- Cameron v. Hogan* (1934) 51 C.L.R. 358.  
Considered 125 C.L.R. 353.
- Chang Jeeng v. Nuffield (Australia) Pty. Ltd.* (1959) 101 C.L.R. 629.  
Considered 125 C.L.R. 228.
- Chapman v. Hearse* (1961) 106 C.L.R. 112.  
Considered 125 C.L.R. 383.
- Da Costa v. Cockburn Salvage & Trading Co. Pty. Ltd.* (1970) 124 C.L.R. 192.  
Considered 125 C.L.R. 296.
- Dickson v. Pharmaceutical Society of Great Britain* [1970] A.C. 403.  
Applied 125 C.L.R. 353.
- Eastham v. Newcastle United Football Club Ltd.* [1964] Ch. 413.  
Applied 125 C.L.R. 353.
- Elford v. Buckley* (1969) 90 W.N. (Pt 1) (N.S.W.) 756.  
Overruled 125 C.L.R. 353.
- Elgar, In re, deceased* [1957] N.Z.L.R. 556.  
Considered 125 C.L.R. 185.
- English and Scottish Joint Co-operative Wholesale Society Ltd. v. Commissioner of Agricultural Income-Tax, Assam* [1948] A.C. 405.  
Applied 125 C.L.R. 560.
- Equitable Fire and Accident Office Ltd. v. The Ching Wo Hong* [1907] A.C. 96.  
Applied 125 C.L.R. 578.
- Eyeington v. Western Pastoral Co.* [1971] 1 N.S.W.L.R. 483.  
Affirmed 125 C.L.R. 342.
- F. & B. Trading Co. Pty. Ltd. v. Steadfast Insurance Co. Ltd.* (1970) 91 W.N. (N.S.W.) 878.  
Affirmed 125 C.L.R. 878.
- Good, In re* [1905] 2 Ch. 60.  
Not followed 125 C.L.R. 185.
- Goodwin v. Southern Tablelands Finance Co. Pty. Ltd.* (1968) 42 A.L.J.R. 309.  
Followed 125 C.L.R. 529.
- Gray, In re* [1925] Ch. 362.  
Not followed 125 C.L.R. 185.
- Home Insurance Co. of New York v. Gavel* [1927] 3 D.L.R. 929.  
Followed 125 C.L.R. 578.
- Hydro-Electric Commission v. Munnings* (1970) 25 L.G.R.A. 82.  
Reversed 125 C.L.R. 1.
- Inland Revenue Commissioners v. Olive Mill Ltd. (in liquidation)* [1963] 1 W.L.R. 712; [1963] 2 All E.R. 130.  
Considered 125 C.L.R. 52.
- Investment and Merchant Finance Corporation Ltd. v. Federal Commissioner of Taxation* (1970) 120 C.L.R. 177.  
Reversed 125 C.L.R. 249.
- J. B. Witts Pty. Ltd. v. Wholesalers (Australia) Pty. Ltd.* (1963) 109 C.L.R. 322, at pp. 327, 328, 334 and 335.  
Followed 125 C.L.R. 275.
- J. & H. Just (Holdings) Pty. Ltd. v. Bank of New South Wales* (1970) 92 W.N. (N.S.W.) 803.  
Affirmed 125 C.L.R. 546.
- Keighley v. Commissioner of Stamp Duties* [1971] 1 N.S.W.L.R. 229.  
Reversed 125 C.L.R. 432.
- King, Re* [1971] S.A.S.R. 147  
Reversed 125 C.L.R. 320.

- Leahy v. Attorney-General (N.S.W.)* [1959] A.C. 459 ; (1959) 101 C.L.R. 611.  
Considered 125 C.L.R. 185.
- Lloyd-Jones v. Commissioner of Stamp Duties* [1971] 1 N.S.W.L.R. 106.  
Affirmed 125 C.L.R. 511.
- McEllistram v. Ballymacelligott Co-operative Agricultural and Dairy Society Ltd.* [1919] A.C. 548.  
Applied 125 C.L.R. 353.
- Marinoff v. Bailey* (1970) 92 W.N. (N.S.W.) 281.  
Reversed 125 C.L.R. 529.
- Maxwell v. Murphy* (1957) 96 C.L.R. 261.  
Considered 125 C.L.R. 228.
- Nagle v. Feilden* [1966] 2 Q.B. 633.  
Approved 125 C.L.R. 353.
- Noble v. Edwards* (1971) 1 S.A.S.R. 155, at p. 158.  
Reversed 125 C.L.R. 296.
- Nominal Defendant v. Bagot's Executor & Trustee Co. Ltd.* [1971] S.A.S.R. 346, at p. 357.  
Reversed 125 C.L.R. 179.
- O'Shaughnessy v. Mirror Newspapers Ltd.* (1970) 91 W.N. (N.S.W.) 738.  
Reversed 125 C.L.R. 166.
- Overseas Tankship (U.K.) Ltd. v. Morts Dock & Engineering Co. Ltd. (The "Wagon Mound" [No. 1])* [1961] A.C. 388.  
Considered 125 C.L.R. 383.
- Overseas Tankship (U.K.) Ltd. v. Miller Steamship Co. Pty. Ltd.* [1967] A.C. 617.  
Considered 125 C.L.R. 383.
- Paterson v. Paterson* (1953) 89 C.L.R. 212.  
Considered 125 C.L.R. 296.
- Pusey v. Mount Isa Mines Ltd.* [1970] Qd. R. 1.  
Affirmed 125 C.L.R. 383.
- R. v. Bernasconi* (1915) 19 C.L.R. 692.  
Considered and explained 125 C.L.R. 591.
- R. v. Williams* (1934) 34 S.R. (N.S.W.) 143 ; 51 W.N. 24.  
Considered 125 C.L.R. 447.
- Reg. v. Peel* [1971] 1 N.S.W.L.R. 247.  
Affirmed 125 C.L.R. 447.
- Reg. v. Spicer ; Ex p. Foster* (1958) 100 C.L.R. 163.  
Applied 125 C.L.R. 502.
- Railways, Commissioner of (N.S.W.) v. Quinlan* [1964] A.C. 1054.  
Considered and distinguished 125 C.L.R. 1.
- Revesby Credit Union Co-operative Ltd. v. Federal Commissioner of Taxation* (1965) 112 C.L.R. 564.  
Considered 125 C.L.R. 560.
- Seaegg v. The King* (1932) 48 C.L.R. 251.  
Considered 125 C.L.R. 447.
- Smith v. Thiess Peabody Coal Pty. Ltd.* [1965] Q.W.N. 38.  
Approved 125 C.L.R. 228.
- Special Purposes of Income Tax, Commissioner for v. Pemsel* [1891] A.C. 531.  
Discussed 125 C.L.R. 659.
- Spratt v. Hermes* (1965) 114 C.L.R. 226.  
Considered and explained 125 C.L.R. 591.
- Stratton, Re* [1970] W.A.R. 143.  
Affirmed 125 C.L.R. 138.
- Taxation, Deputy Federal Commissioner of v. Purcell* (1921) 29 C.L.R. 464.  
Distinguished 125 C.L.R. 647.
- Taxation, Federal Commissioner of v. Finn* (1961) 106 C.L.R. 60.  
Discussed 125 C.L.R. 494.
- The Ydun* [1899] P. 236.  
Considered 125 C.L.R. 228.
- Thompson v. Bankstown Corporation* (1953) 87 C.L.R. 619.  
Applied 125 C.L.R. 1.
- Thomson v. Commissioner of Stamp Duties (N.S.W.)* [1929] A.C. 450  
Distinguished 125 C.L.R. 432.
- Tutty v. Buckley* (1970) 92 W.N. (N.S.W.) 329.  
Affirmed 125 C.L.R. 353.
- Verge v. Somerville* [1924] A.C. 496.  
Considered 125 C.L.R. 185.
- Wayne v. Commissioner of Stamp Duties (N.S.W.)* (1966) 85 W.N. (Pt 1) (N.S.W.) 301 ; [1966] 2 N.S.W.R. 309.  
Approved 125 C.L.R. 511.
- William Crosby & Co. Pty. Ltd. v. The Commonwealth* (1963) 109 C.L.R. 490.  
Considered 125 C.L.R. 228.
- Williams v. The King* [No. 1] (1933) 50 C.L.R. 536.  
Considered 125 C.L.R. 447.  
— [No. 2] (1934) 50 C.L.R. 551.  
Considered 125 C.L.R. 447.
- Worthing v. Rowell and Muston Pty. Ltd.* (1970) 123 C.L.R. 89.  
Considered 125 C.L.R. 93.
- Yrttiaho v. Copely* [1971] Qd. R. 37.  
Affirmed 125 C.L.R. 228.

## STATUTES JUDICIALLY CONSIDERED.

## IMPERIAL

**Constitution, The (63 & 64 Vict. c. 12), s. 52 (i).** *Reg. v. Phillips* - - - 93

— **ss. 71, 73, 122.** *Capital T.V. and Appliances Pty. Ltd. v. Falconer* - 591

— **s. 109.** *Australian & International Insurances Ltd. v. Workers' Compensation Commission (N.S.W.)* - 470

## COMMONWEALTH

**Australian Capital Territory Supreme Court Act 1933-1968.** *Capital T.V. and Appliances Pty. Ltd. v. Falconer* - 591

**Conciliation and Arbitration Act 1904-1970, ss. 141 (1), 170.** *Reg. v. Commonwealth Industrial Court, Ex p. Federated Miscellaneous Workers' Union of Australia* - - - 502

**Estate Duty Assessment Act 1914-1970, s. 8 (5).** *Downing v. Federal Commissioner of Taxation* - - - 185

**Income Tax and Social Services Contribution Assessment Act 1936-1962, s. 26 (e).** *Incorporated Council of Law Reporting (Q.) v. Federal Commissioner of Taxation* - - - 659

**Income Tax Assessment Act 1936-1965, ss. 6, 25, 26 (a), 28, 29, 31, 46, 51, 52.** *Investment and Merchant Finance Corporation Ltd. v. Federal Commissioner of Taxation* - - - 249

— **s. 260.** *Hollyock v. Federal Commissioner of Taxation* - - - 647

— **1936-1967, ss. 51 (1), 63, 80, 80A, 80B (5), 80D, 260.** *Franklin's Self-serve Pty. Ltd. v. Federal Commissioner of Taxation* - - - 52

— **s. 51 (1).** *Federal Commissioner of Taxation v. Hatchett* - - - 494

— **1936-1968, s. 117.** *Social Credit Savings and Loans Society Ltd. v. Federal Commissioner of Taxation* - 560

— **1936-1970, ss. 19, 25.** *Brent v. Federal Commissioner of Taxation* - 418

**Insurance Act 1932-1966, s. 7.** *Australian & International Insurances Ltd. v. Workers' Compensation Commission (N.S.W.)* - - - 470

— **1903-1969, s. 40A.** *Reg. v. Phillips* - - - 93

**Judiciary Act 1903-1969, s. 68 (2).** *Peel v. The Queen* - - - 447

## NEW SOUTH WALES

**Conveyancing Act, 1919-1969, s. 133B (1).** *Creer v. P. & O. Lines of Australia Pty. Ltd.* - - - 84

**Criminal Appeal Act, 1912, s. 5D.** *Peel v. The Queen* - - - 447

**Defamation Act, 1958, ss. 2, 15 (f) and (g).** *O'Shaughnessy v. Mirror Newspapers Ltd.* - - - 166

— **s. 14 (1) (d).** *Leslie v. Mirror Newspapers Ltd.* - - - 332

**Motor Vehicles (Third Party Insurance) Act, 1942-1963, s. 32 (1).** *Nominal Defendant v. Bago's Executor & Trustee Co. Ltd.* - - - 179

**Real Property Act, 1900-1970.** *J. & H. Just (Holdings) Pty. Ltd. v. Bank of New South Wales* - - - 546

— **1920-1964, s. 102 (2) (a).** *Atwill v. Commissioner of Stamp Duties for the State of New South Wales* - 203

**Stamp Duties Act, s. 102 (2) (h).** *Stamp Duties, Commissioner of (N.S.W.) v. Jones* - - - 511

— **1920-1970, s. 102 (1) (a).** *Keighley v. Commissioner of Stamp Duties (N.S.W.)* - - - 432

**Workers' Compensation Act, 1926, as amended, ss. 7 (1) (a), 53 (1).** *Western Pastoral Co. v. Eyeington* - 342

— **ss. 18 (1), 27 (1), 29 (1), 41.** *Australian & International Insurances Ltd. v. Workers' Compensation Commission (N.S.W.)* - - - 470

## VICTORIA

**Property Law Act 1958, s. 131.** *Downing v. Federal Commissioner of Taxation* - 185

<b>QUEENSLAND</b>			
<b>Acts Interpretation Acts, 1954 to 1962,</b>		<b>Workers' Compensation Acts, 1916 to</b>	
<b>s. 20 (i).</b> <i>Yrttiah v. Public Curator</i>		<b>1965, s. 9A.</b> <i>Gannon v. Gannon</i>	629
<i>of Queensland</i>	228		
		<b>WESTERN AUSTRALIA</b>	
<b>Money Lenders Act 1916-1969, ss. 3</b>		<b>Administration Act, 1903-1965, s. 134 (1).</b>	
<b>"Money lender", 6 (1).</b> <i>Brown v.</i>		<i>Stratton v. Simpson</i>	138
<i>Brook</i>	275		
<b>Racing and Betting Acts Amendment Act,</b>		<b>Criminal Code Act, 1913.</b> <i>Reg. v.</i>	
<b>1967.</b> <i>Queensland Trotting Board v.</i>		<i>Phillips</i>	93
<i>McLean</i>	488		
		<b>Trustees Act, 1962, s. 102.</b> <i>Stratton v.</i>	
		<i>Simpson</i>	138

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

**QUEENSLAND**

<b>Rules of the Supreme Court of Queens-</b>	
<b>land, O. 90, r. 9.</b> <i>Yrttiah v. Public</i>	
<i>Curator of Queensland</i>	228



## 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.			
Abbey Malvern Wells Ltd. v. Ministry of Local Government and Planning (1951) — — — — —	147 (1)	Australasian Catholic Assurance Co. Ltd. v. Federal Commissioner of Taxation (1959) — — — — —	264 (1)
Abigail v. Lapin (1934) — — — — —	553 (1), 554 (1), 554 (6), 554 (7), 555 (2), 557 (2), 558 (2)	Australian Iron & Steel Ltd. v. Hoogland (1962) — — — — —	242 (4)
Adler v. Upper Grosvenor Street Investment Ltd. (1957) — — — — —	86 (1), 88 (1), 89 (2), 90 (1), 91 (1)	Australian Machinery and Investment Co. Ltd. v. Deputy Federal Commissioner of Taxation (1946) — — — — —	258 (1), 270 (1)
Aga Khan v. Times Publishing Co. (1924) — — — — —	174 (1)	Avon Downs Pty. Ltd. v. Federal Commissioner of Taxation (1949) — — — — —	71 (2)
Ah Yick v. Lehmert (1905) — — — — —	606 (2)		
Amalgamated Society of Engineers v. Adelaide Steamship Co. Ltd. (1920)	127 (2)	B.	
Anderson v. Eric Anderson Radio & T.V. Pty. Ltd. (1965) — — — — —	622 (3)	Baker v. E. Longhurst & Sons Ltd. (1933) — — — — —	303 (1)
— v. Liddy (1949) — — — — —	408 (2)	— v. Pryor (1932) — — — — —	285 (1), 289 (2), 290 (1), 291 (2), 293 (1)
Andrews v. Williams (1967) — — — — —	407 (1)	Ballarat Trustees Executors and Agency Co. Ltd. v. Federal Commissioner of Taxation (1950) — — — — —	194 (1)
Anglo-Overseas Agencies Ltd. v. Green (1961) — — — — —	149 (1)	Bamberger v. Mirror Newspapers Ltd. (1969) — — — — —	177 (5)
Antonatos v. Dunlop, Allsopp and Transport and General Insurance Co. Ltd. (1968) — — — — —	402 (7)	Barby v. Perpetual Trustee Co. Ltd. (1937) — — — — —	200 (4)
Arapajolu v. McMenamin (1952) — — — — —	131 (5)	Barclays Bank Ltd. v. Attorney-General (1944) — — — — —	517 (1), 519 (1), 520 (2), 527 (1)
Arlington Hotel Company v. Fant (1929) — — — — —	136 (3)	Baxter v. Commissioner of Taxation (N.S.W.) (1907) — — — — —	621 (3)
Armenian General Benevolent Union v. Union Trustee Co. of Australia Ltd. (1952) — — — — —	201 (1)	Bell v. Federal Commissioner of Taxation (1953) — — — — —	655 (4)
Arnall v. Gray and Doneley (1941) — — — — —	278 (1), 284 (1), 289 (4), 290 (3)	Benmax v. Austin Motor Co. Ltd. (1955) — — — — —	303 (7), 305 (2), 306 (6), 312 (2), 313 (1), 314 (1), 317 (3), 318 (1)
Arnett v. Holloway (1960) — — — — —	539 (7)	Bishop (Inspector of Taxes) v. Finsbury Securities Ltd. (1966) — — — — —	258 (2), 262 (2)
A. & S. Ruffy Pty. Ltd. v. Federal Commissioner of Taxation (1958) — — — — —	567 (1)	Blyth v. Birmingham Waterworks Co. (1856) — — — — —	21 (1), 397 (2)
Associated Artists Ltd. v. Inland Revenue Commissioners (1956) — — — — —	150 (2)	Bolton v. Stone (1951) — — — — —	399 (2)
Athlunney, <i>In re</i> ; <i>Ex p.</i> Wilson (1898)	246 (7)	Booth v. Booth (1935) — — — — —	135 (2)
Attorney-General (Cth) v. Adelaide Steamship Co. Ltd. (1913) — — — — —	380 (1)	Bourhill v. Young (1943) — — — — —	30 (5), 36 (2), 395 (4), 396 (1), 398 (1), 402 (2), 402 (6), 405 (1), 408 (1), 411 (1), 411 (3), 414 (5), 415 (4)
— v. Jesus College, Oxford (1861)	q60 (5)	Buchanan v. Kiley (1948) — — — — —	285 (2), 289 (3), 290 (2), 291 (3), 293 (2)
— v. Marchant (1866) — — — — —	672 (2)	— v. The Commonwealth (1913) — — — — —	100 (1), 111 (2), 125 (1), 135 (1)
— v. National Provincial and Union Bank of England (1924) — — — — —	667 (3)	Buckland v. Guildford Gas Light and Coke Co. (1949) — — — — —	23 (3), 48 (3)
— v. The Queen (1957) — — — — —	625 (5)	Bunyan v. Jordan (1937) — — — — —	395 (1), 398 (3), 415 (7)
Attorney-General (N.S.W.) v. Adams (1908) — — — — —	194 (4)		
— v. Donnelly (1958) — — — — —	157 (3), 162 (3), 163 (1), 196 (2)		
— v. Perpetual Trustee Co. Ltd. (1952) — — — — —	538 (2)		
Attorney-General (Ontario) v. National Trust Co. Ltd. (1931) — — — — —	213 (2)		

- Burke *v.* Rooney (1879) - - - 540 (10)  
 Butler *v.* Fairclough (1917) 554 (5), 557 (1),  
 558 (1)
- C.
- Cain, *In re* (1950) - - - 157 (6)  
 Cain *v.* Malone (1942) - - - 537 (3)  
 Calvin's Case (1608) - - - 111 (1)  
 Cameron *v.* Hogan (1934) 373 (3), 374 (1),  
 374 (5)
- Campbell *v.* United Pacific Transport  
 Pty. Ltd. (1966) - - - 247 (1)  
 Carapark Holdings Ltd. *v.* Federal  
 Commissioner of Taxation (1967) - 515 (1)  
 Carlisle and Silloth Golf Club *v.* Smith  
 (1913) - - - 571 (3)  
 Carmarthenshire County Council *v.*  
 Lewis (1955) - - - 314 (2), 399 (3)  
 Carter *v.* Stubbs (1880) - - - 540 (11)  
 Cecil Bros. Pty. Ltd. *v.* Federal Com-  
 missioner of Taxation (1964) - - 74 (4)  
 Chadwick *v.* British Railways Board  
 (1967) - - - 403 (3), 405 (2), 405 (3)  
 Chang Jeeng *v.* Nuffield (Australia)  
 Pty. Ltd. (1959) - - - 241 (2), 242 (3)  
 Chapman *v.* Hearse (1961) 390 (1), 398 (4),  
 402 (4), 414 (2)  
 Chester *v.* Waverley Corporation (1939) 391 (1),  
 415 (3), 416 (5)
- Chesterman *v.* Federal Commissioner of  
 Taxation (1925) - 666 (1), 667 (6), 671 (3)  
 Chicago, Rock Island and Pacific  
 Railway Co. *v.* McGlinn (1885) - 136 (1)  
 Chichester Diocesan Fund and Board  
 of Finance (Incorporated) *v.* Simpson  
 (1944) - - - 157 (1)  
 Christian Enterprises Ltd. *v.* Commis-  
 sioner of Land Tax (1968) - - - 145 (3)  
 Citizens Insurance Co. of Canada *v.*  
 Parsons (1881) - - - 586 (2)  
 Clarke *v.* Clarke (1899) - - - 640 (1)  
 Cloverdell Lumber Co. Pty. Ltd. *v.*  
 Abbott (1924) - - - 283 (1)  
 Cody & Willis Pty. Ltd. *v.* Truman  
 (1967) - - - 281 (3)  
 Coghlan *v.* Cumberland (1898) - - 306 (2)  
 Colonial Mutual Life Assurance Society  
 Ltd. *v.* Federal Commissioner of  
 Taxation (1946) - - - 571 (1)  
 Colvin *v.* Bradley Brothers Pty. Ltd.  
 (1943) - - - 127 (3)  
 Commonwealth, The *v.* New South  
 Wales (1923) - 101 (1), 114 (2), 129 (2),  
 132 (3)  
 Commonwealth Life Assurance Society  
 Ltd. *v.* Smith (1938) - - - 463 (2)  
 Congregational Union of New South  
 Wales *v.* Thistlethwayte (1952) - 150 (6),  
 151 (1), 157 (4), 160 (1)  
 Cornelius *v.* Phillips (1918) - - - 280 (1)  
 Coulthurst, *In re*, deceased; Coutts  
 and Co. *v.* Coulthurst (1951) - - 194 (2)
- Craddock *v.* Zevo Finance Co. Ltd.  
 (1946) - - - 269 (1)  
 Crosby (William) & Co. Pty. Ltd. *v.*  
 The Commonwealth (1963) - - - 240 (4)  
 Crystal Palace Trustees *v.* Minister of  
 Town and Country Planning (1951) 150 (1)
- D.
- Da Costa *v.* Cockburn Salvage &  
 Trading Pty. Ltd. (1970) 303 (3), 312 (3),  
 317 (4)  
 Dalgety Downs Pastoral Company Pty.  
 Ltd. *v.* Federal Commissioner of  
 Taxation (1952) - - - 71 (1)  
 Damjanovic & Sons Pty. Ltd. *v.* The  
 Commonwealth (1968) - - - 114 (4)  
 Davey *v.* The London and South  
 Western Railway Co. (1883) - - - 644 (1)  
 Davie *v.* New Merton Board Mills Ltd.  
 (1959) - - - 633 (1)  
 Davies *v.* Ryan (1933) - - - 627 (6)  
 D'Emden *v.* Pedder (1904) - - - 116 (1)  
 Dean *v.* City of Edmonton (1965) - 50 (1)  
 Defendant *v.* Hook (1962) - - - 646 (1)  
 Delegal *v.* Highley (1837) - - - 341 (2)  
 Dennis Hotels Pty. Ltd. *v.* Victoria  
 (1962) - - - 129 (6)  
 Dickson *v.* Pharmaceutical Society of  
 Great Britain (1970) - 375 (2), 377 (2),  
 380 (4)  
 Dilworth *v.* Commissioner of Stamps  
 (1899) - - - 282 (3)  
 D. & J. Fowler (Australia) Ltd. *v.*  
 Bence (1963) - - - 281 (2)  
 Donoghue *v.* Allied Newspapers Ltd.  
 (1938) - - - 424 (1)  
 - *v.* Stevenson (1932) 31 (2), 39 (2),  
 46 (2), 411 (2)  
 Dooley *v.* Cammell Laird & Co. Ltd.  
 (1951) - - - 403 (2), 406 (2), 408 (5)  
 Dorset Yacht Co. *v.* Home Office (1970) 31 (1)  
 Douglas, *In re*; Obert *v.* Barrow  
 (1887) - - - 146 (3), 146 (4)  
 Douran *v.* Whisker (1946) - - - 625 (7)
- E.
- Eastham *v.* Newcastle United Football  
 Club Ltd. (1964) 372 (4), 373 (1), 381 (2)  
 Edie Creek Pty. Ltd. *v.* Symes (1929) - 625 (2)  
 Electric Telegraph Co. *v.* Overseers of  
 Salford (1855) - - - 22 (4)  
 Elgar, *In re* (deceased) (1957) - - - 200 (2)  
 Ellers Motors (Sales) Pty. Ltd. *v.*  
 Federal Commissioner of Taxation  
 (1969) - - - 74 (8)  
 Elmiger *v.* Inland Revenue Commis-  
 sioner (N.Z.) (1966) - - - 74 (5)  
 Employers' Mutual Indemnity Associa-  
 tion Ltd. *v.* Federal Commissioner of  
 Taxation (1943) - - - 567 (3)

- English and Scottish Joint Co-operative Wholesale Society Ltd. v. Commissioner of Agricultural Income-Tax, Assam (1946) - 571 (2), 572 (1), 574 (1), 575 (1), 577 (2)
- Equitable Fire and Accident Office Ltd. v. The Ching Wo Hong (1907) 581 (1), 588 (2)
- Esso Petroleum Co. Ltd. v. Harper's Garage (Stourport) Ltd. (1968) - 376 (3), 380 (2)
- Evans Medical Supplies Ltd. v. Moriarty (H.M. Inspector of Taxes) (1957) - - - - 425 (3)
- Excelsior Wire Rope Co. Ltd. v. Callan (1930) - - - - 16 (2), 40 (2)
- F.
- Farmer v. Hyde (1937) - - - - 341 (3)
- Farmer & Co. Ltd. v. Griffiths (Farmer's Case) (1940) - - - - 537 (4)
- Farrow's Bank Ltd., *In re* (1921) - 70 (2)
- Faulconbridge (H.M. Inspector of Taxes) v. National Employers' Mutual General Insurance Association Ltd. (1952) - - - - 572 (3)
- Federal Broom Co. Pty. Ltd. v. Semlitch (1964) - - - - 395 (3)
- Federal Capital Commission v. Laristan Building and Investment Co. Pty. Ltd. (1929) - - - - 617 (1)
- Fischer v. Hebburn Ltd. (1960) - - 352 (2)
- Fort Leavenworth Railroad Co. v. Lowe (1885) - - - - 131 (6)
- G.
- Gale v. Federal Commissioner of Taxations (1960) - 208 (2), 217 (1), 224 (4)
- Gardiner v. John Fairfax & Sons Pty. Ltd. (1942) - - - - 173 (1)
- Gardner v. Della Santa (1968) - - - 301 (3)
- Gillespie, *In re* (1949) - - - - 225 (5)
- Gillespie, *Re* (deceased) (1965) 194 (6), 201 (3)
- Glasgow Corporation v. Taylor (1922) - 29 (1), 48 (4)
- Gleeson v. Brock (1969) - - - - 247 (5)
- Gompers v. United States (1914) - 115 (1)
- Good, *In re*; Harington v. Watts (1905) - - - - 198 (4), 199 (1)
- Goodwin v. Southern Tablelands Finance Co. Pty. Ltd. (1968) 530 (6), 533 (1), 536 (1), 537 (2), 538 (3), 542 (5)
- Gould v. Curtis (1913) - - - - 524 (1)
- Gray, *In re* (1925) - - - - 198 (5), 199 (2)
- ; Todd v. Taylor (1925) - - 198 (2)
- Gray v. Dalgety & Co. Ltd. (1916) - 537 (5)
- Great Central Railway Co. v. Bates (1921) - - - - - 24 (3)
- Green v. Perry (1955) - - - - 400 (1)
- Greenhalgh v. British Railways Board (1969) - - - - - 27 (2)
- Griffiths v. Griffiths (1926) - - - 163 (2)
- (Inspector of Taxes) v. J. P. Harrison (Watford) Ltd. (1963) - 262 (1), 263 (1), 263 (2)
- Gunmakers' Co. v. Fell (1742) - - - 376 (7)
- H.
- Hancock v. Federal Commissioner of Taxation (1961) - 74 (2), 655 (6), 656 (2), 657 (3)
- Hardey v. Tory (1923) - - - - 163 (9)
- Harpur's Will Trusts, *In re* (1962) - 151 (2), 152 (3), 153 (1), 160 (3), 161 (1), 162 (1), 163 (11), 165 (1)
- Hawick v. Flegg (1958) - - - - 375 (1)
- Hazell v. British Transport Commission (1958) - - - - 27 (3)
- Henderson v. Federal Commissioner of Taxation (1970) - - - - 429 (1)
- Henwood v. Municipal Tramways Trust (S.A.) (1938) - - - - 23 (2)
- Hepworth Manufacturing Co. v. Ryott (1920) - - - - - 371 (1)
- Heron v. Port Huon Fruitgrowers' Co-operative Association Ltd. (1922) - 376 (10)
- Herrington v. British Railways Board (1971) - - - - 26 (1), 26 (3)
- Hinz v. Berry (1970) - - - - 394 (1), 403 (1)
- Hobbs v. Hussey (1942) - - - - 425 (7)
- Hocking v. Bell (1945) - - - - 337 (1)
- Hollis v. Burton (1892) - - - - 643 (2)
- Home Insurance Co. of New York v. Gavel (1927) - 581 (2), 582 (3), 588 (5)
- Hood, *In re*; Public Trustee v. Hood (1931) - - - - - 147 (3)
- Hooker-Rex Pty. Ltd. v. Federal Commissioner of Taxation (1970) - - 74 (7)
- Hope v. Sir W. C. Leng and Co. (Sheffield Telegraph) Ltd. (1907) - 341 (1)
- Hopkins' Will Trusts, *In re* (1965) - 671 (4)
- Housden (Inspector of Taxes) v. Marshall (1959) - - - - 426 (2)
- Hughes v. Lord Advocate (1963) - 402 (5), 414 (1)
- v. West Australian Newspapers Ltd. (1940) - - - - 341 (4)
- Hunter v. Attorney-General (1899) - 146 (1), 160 (4)
- Hyde v. Sullivan (1956) - - - - 291 (1)
- I.
- I.A.C. (Finance) Pty. Ltd. v. Courtenay (1963) - - - - - 556 (1)
- Incorporated Council of Law Reporting for England and Wales v. Attorney-General (1971) - - - - 668 (1)
- Incorporated Council of Law Reporting (Q.) v. Federal Commissioner of Taxation (1924) - - 665 (2), 671 (2)
- Ings v. London and South Western Railway Co. (1868) - - - - 246 (6)

- Inland Revenue Commissioners *v.*  
 Boddeley (1955) - - - - 667 (8)  
 — *v.* City of Glasgow Police  
 Athletic Association (1953) - - 198 (3)  
 — *v.* Educational Grants Associa-  
 tion Ltd. (1967) - - - - 147 (2)  
 — *v.* Olive Mill Ltd. (in liquida-  
 tion (1963) - - 69 (1), 70 (3), 76 (1)  
 — *v.* Yorkshire Agricultural  
 Society (1928) - - - - 669 (1)  
 Ipswich Tailors' Case (1614) - - 376 (6)  
 Ivanhoe Gold Corporation Ltd. *v.*  
 Symonds (1906) - - - - 539 (5)
- J.
- James *v.* Dravo Contracting Co. (1937) 113 (2)  
 James Stewart & Co. *v.* Sadrakula  
 (1939) - - - - 113 (4), 136 (2)  
 J. B. Witts Pty. Ltd. *v.* Wholesalers  
 (Australia) Pty. Ltd. (1963) 279 (3), 285 (3),  
 289 (1), 291 (8), 291 (9), 292 (1),  
 292 (2)  
 Jeffrey (H.M. Inspector of Taxes) *v.*  
 Rolls-Royce Ltd. (1962) - - - 425 (4)  
 John Fairfax & Sons Pty. Ltd. *v.*  
 Federal Commissioner of Taxation  
 (1959) - - - - 497 (1)  
 John Summers & Sons Ltd. *v.* Frost  
 (1955) - - - - 634 (2)  
 Johnson *v.* J. S. Jewitt (Inspector of  
 Taxes) (1961) - - - - 263 (3)  
 Johnson & Co. Ltd. *v.* Clifford (1904) - 540 (12)  
 Jones *v.* Capaldi (1956) - - - 311 (1)  
 — *v.* Skelton (1963) - 174 (4), 177 (4),  
 178 (1)  
 — *v.* South-West Lancashire Coal  
 Owners' Association Ltd. (1927) - 572 (4),  
 573 (7)  
 Joseph Evans & Co. Ltd. *v.* Heathcote  
 (1918) - - - - 379 (7)  
 J. Rowe and Son Pty. Ltd. *v.* Federal  
 Commissioner of Taxation (1971) - 429 (2)  
 Judiciary and Navigation Acts, *In re*  
 (1921) - - - - 607 (2)
- K.
- Kaats *v.* Caelers (1966) - - - 247 (2)  
 "Kalibia", Owners of the S.S. *v.*  
 Wilson (1910) - - - - 540 (3)  
 Kemsley *v.* Foot (1952) - - - 177 (2)  
 Kenny *v.* Electricity Supply Board  
 (1932) - - - - 49 (4)  
 Kent *v.* Commissioner of Stamp Duties  
 (N.S.W.) (1961) - 217 (3), 226 (3), 438 (4),  
 442 (1)  
 Keren Kayemeth Le Jisroel Ltd. *v.*  
 Inland Revenue Commissioners  
 (1932) - - - - 150 (8)  
 Kidman, *In re* (deceased); Kidman  
*v.* Clover (1953) - - - 325 (2), 329 (3)  
 Kimber *v.* The Press Association Ltd.  
 (1893) - - - - 339 (1)
- King *v.* Davenport (1879) - 532 (5), 540 (8)  
 — *v.* Phillips (1953) - 395 (5), 401 (3),  
 414 (4)  
 Kingsford Smith Air Services Ltd. *v.*  
 Garrisson (1938) - - - - 114 (3)  
 Kraljevich *v.* Lake View and Star Ltd.  
 (1945) - - - - 352 (1)  
 Kytherian Association of Queensland *v.*  
 Sklavos (1958) - - - - 201 (2)
- L.
- Laidlaw, *In re*; Whitelaw *v.* Attorney-  
 General (Vict.) (1960) - 192 (1), 195 (1)  
 Lamshed *v.* Lake (1958) - 605 (1), 621 (2)  
 Lancashire Telephone Co. *v.* Overseers  
 of Manchester (1884) - - - 22 (5)  
 Lawrie *v.* Lees (1881) - - - 539 (8)  
 Leahy *v.* Attorney-General (N.S.W.)  
 (1959) - 162 (2), 163 (5), 165 (2), 196 (1),  
 197 (1)  
 Lee Transport Co. Ltd. *v.* Watson  
 (1940) - - - - 315 (1)  
 Lever Bros. and Unilever Ltd. *v.* Inland  
 Revenue Commissioners (1945) - 519 (3)  
 Lindner *v.* Murdock's Garage (1950) - 379 (3)  
 Liverpool Corn Trade Association Ltd.  
*v.* Monks (H.M. Inspector of Taxes)  
 (1926) - - - - 574 (6), 577 (1)  
 London, City of Case (1610) - - 376 (5)  
 London Graving Dock Co. Ltd. *v.*  
 Horton (1951) - - - - 34 (1)  
 Lord Sudeley *v.* Attorney-General  
 (1897) - - - - 328 (1)  
 Lorenzo *v.* Carey (1921) - - - 622 (2)  
 Lucas *v.* Grimley (1968) - - - 247 (3)  
 Lynch *v.* Nurdin (1841) - - - 35 (3)
- M.
- MacCarthy *v.* Agard (1933) 539 (6), 540 (14)  
 McCaughey *v.* Commissioner of Stamp  
 Duties (N.S.W.) (1945) - - - 329 (1)  
 McDermott's Case (Commissioner for  
 Railways *v.* McDermott) (1967) - 25 (2)  
 McEllistrim *v.* Ballymacelligott Co-  
 operative Agricultural and Dairy  
 Society Ltd. (1919) 375 (3), 376 (11), 379 (2),  
 380 (3)  
 McEwen *v.* Canadian National Rail-  
 ways and Imperial Oil Ltd. (1961) - 36 (1)  
 McGarvie Smith Institute *v.* Campbell-  
 town Municipal Council (1965) - 145 (1)  
 McLaughlin *v.* Antrim Electricity  
 Supply Company (1941) - - - 50 (2)  
 Macdougall *v.* Knight (1886) 339 (2), 339 (4),  
 340 (1)  
 Macduff, *In re*; Macduff *v.* Macduff  
 (1896) - - - - 667 (2)  
 Mainka *v.* Custodian of Expropriated  
 Property (1924) - - - - 625 (6)  
 Manchester Corporation *v.* McAdam  
 (1896) - - - - 665 (1)

- Mangin *v.* Inland Revenue Commissioner (N.Z.) (1971) — 655 (5), 656 (10)
- Matheson *v.* Attorney-General (N.Z.) (1956) — — — — 35 (5)
- Maxwell *v.* Murphy (1957) 239 (2), 241 (1), 242 (2), 242 (5), 346 (1), 351 (1)
- Mayfair Trading Co. Pty. Ltd. *v.* Dreyer (1960) — 279 (2), 280 (3), 283 (2), 286 (1), 291 (4)
- Mayor etc. of Manchester *v.* McAdam (1896) — — — — 158 (1)
- Meier *v.* Meier (1948) 532 (7), 535 (1), 541 (2), 542 (4)
- Mersey Docks and Harbour Board *v.* Procter (1923) — — — — 306 (1), 306 (5)
- Meyers, *In re*; London Life Association *v.* St. George's Hospital (1951) — 198 (1)
- Milissich *v.* Lloyds (1877) — — — — 337 (3)
- Millard *v.* Commissioner of Taxation (1962) — — — — 658 (2)
- Milner's Safe Co. Ltd. *v.* Great Northern and City Railway Co. (1907) — — 27 (1)
- Mitchel *v.* Reynolds (1711) — — — — 376 (2)
- Mitchell *v.* Barker (1918) — — — — 625 (8)
- *v.* North British Rubber Co. (1945) — — — — 634 (1)
- Modern Permanent Building and Investment Society (in liquidation) *v.* Federal Commissioner of Taxation (1958) — — — — 269 (2)
- Mogul Steamship Co. Ltd. *v.* McGregor Gow & Co. (1892) — — — — 379 (4)
- Montgomerie & Co. Ltd. *v.* Wallace-James (1904) — — — — 306 (3), 314 (5)
- Moon *v.* Durden (1848) — — — — 246 (3), 246 (8)
- Morice *v.* Bishop of Durham (1805) — 667 (7)
- Morris *v.* West Hartlepool Steam Navigation Co. Ltd. (1956) — — 314 (3)
- Mount Isa Mines Ltd. *v.* Pusey (1970) — 643 (1)
- Muir *v.* The Open Brethren (1956) — 194 (5)
- Municipal Mutual Insurance Ltd. *v.* Hills (H.M. Inspector of Taxes) (1932) — — — — 571 (4), 572 (2), 574 (5)
- Murray *v.* Joe Gerrick & Co. (1934) — 136 (4)
- Musker (H.M. Inspector of Taxes) *v.* English Electric Co. Ltd. (1964) — 425 (5)
- N.
- Nagle *v.* Feilden (1966) — — — — 381 (4)
- Napier *v.* Ryan (1954) — — — — 35 (1)
- National Association of Local Government Officers *v.* Watkins (H.M. Inspector of Taxes) (1934) 571 (5), 573 (3), 576 (3)
- National Benzole Co. Ltd. *v.* Gooch (1961) — — — — 535 (7), 537 (1)
- National Mutual Life Association of Australasia Ltd. *v.* Federal Commissioner of Taxation (1959) 524 (2), 524 (3)
- National Revenue, Minister of *v.* Trusts and Guarantee Co. Ltd. (1940) — 145 (4), 154 (1), 158 (2),
- New South Wales *v.* The Commonwealth (1915) — 607 (1), 613 (1), 623 (3), 627 (1)
- Newton *v.* Federal Commissioner of Taxation (1958) — 73 (1), 74 (1), 654 (6), 655 (3), 655 (8), 656 (8), 656 (11), 657 (2)
- New York Life Insurance Co. *v.* Styles (1889) — — — — 572 (6), 574 (3)
- New York, New Haven & Hartford Railroad Co. *v.* Fruchter (1922) — 50 (3)
- Nicholas, In the Estate of (deceased) (1955) — — — — 437 (2)
- Nicholson *v.* Southern Star Fire Insurance Co. Ltd. (1927) — — — — 586 (1)
- Nixon *v.* W. Phelan & Sons Pty. Ltd. (1960) — — — — 540 (13)
- Nordenfelt *v.* Maxim Nordenfelt Guns and Ammunition Co. Ltd. (1894) — 376 (9), 379 (5)
- North of England Zoological Society *v.* Chester Rural District Council (1959) — — — — 150 (3)
- O.
- Ogden Industries Pty. Ltd. *v.* Lucas (1970) — — — — 352 (3)
- Oriental Inland Steam Navigation Co., *Re*; *Ex parte* Scinde Railway Co. (1874) — — — — 69 (2), 70 (6)
- Overseas Tankship (U.K.) Ltd. *v.* Miller Steamship Co. Pty. Ltd. (The "Wagon Mound" Case [No. 1]) (1961) — 389 (1), 397 (1), 397 (4), 402 (3), 410 (1), 413 (1), 413 (3), 414 (3), 414 (6), 414 (7), 415 (5)
- [No. 2] (1967) 393 (1), 393 (2), 399 (1), 399 (4), 413 (2), 634 (3)
- Oxford Group *v.* Inland Revenue Commissioners (1949) — 149 (2), 151 (4), 152 (1), 160 (2)
- P.
- Parker *v.* The Commonwealth (1965) — 401 (1)
- Parkins *v.* Warwick (1943) — — — — 654 (1)
- Pearlman (Veneers) S.A. (Pty.) Ltd. *v.* Bernhard Bartels (1954) 532 (2), 539 (10)
- Peate *v.* Federal Commissioner of Taxation (1964) 74 (3), 653 (1), 654 (2), 655 (7), 656 (9), 658 (1), 658 (3)
- Permanent Trustee Co. of New South Wales Ltd. *v.* Commissioner of Taxation (1940) — — — — 430 (1)
- Perpetual Executors and Trustees Association of Australia Ltd. *v.* Federal Commissioner of Taxation (Thomas' Case) (1949) — — — — 538 (1)
- Pirrie *v.* McFarlane (1925) 101 (2), 102 (1), 110 (1)
- Pleasants, *Re* (1923) — — — — 669 (2)
- Point *v.* Federal Commissioner of Taxation (1970) — — — — 68 (1)

- Polemis and Furness, Withy & Co.  
Ltd., *In re* (1921) - - - 397 (5), 401 (2)
- Porter *v.* The King ; *Ex p.* Yee (1926) 599 (2),  
602 (1), 604 (3), 607 (3), 616 (1),  
622 (1), 623 (1), 623 (2), 625 (1),  
626 (4), 627 (2)
- Powell *v.* Streatham Manor Nursing  
Home (1935) - - - 303 (6), 304 (1)
- Prentice *v.* Assets Co. Ltd. (1890) - 24 (1)
- Prestney *v.* Corporation of Colchester  
(1883) - - - - - 540 (5)
- Preston Banking Co. *v.* William Allsup  
& Sons (1895) - - - 539 (3), 540 (4)
- Pritchard *v.* M.H. Builders (Wilmslow)  
Ltd. (1969) - - - - 70 (4)
- R.
- R. v.* Bamford (1901) 99 (1), 114 (1), 132 (1)
- *v.* Bernasconi (1915) 598 (2), 598 (3), 605 (5),  
606 (1), 615 (3), 620 (3), 621 (1),  
622 (4), 628 (1)
- *v.* Brisbane Licensing Court ; *Ex*  
*p.* Daniell (1920) - - - - 127 (1)
- *v.* Commonwealth Court of Concilia-  
tion and Arbitration ; *Ex p.*  
Barrett ; Barrett *v.* Opitz (1945) - 505 (1),  
507 (1), 508 (1)
- *v.* Commonwealth Court of Concilia-  
tion and Arbitration and the Presi-  
dent thereof and the Australian  
Tramway Employees Association,  
*Ex p.* Brisbane Tramways Co. Ltd.,  
*Ex p.* Municipal Tramways Trust,  
Adelaide [No. 1] (1914) - - - 537 (6)
- *v.* Justices of Cambridgeshire (1838) 285 (4)
- *v.* Kirby *Ex p.* Boilermakers'  
Society of Australia (1956) 603 (2), 604 (4),  
607 (4), 615 (1), 620 (2), 625 (4),  
627 (4)
- *v.* Leeds and Bradford Railway Co.  
(1852) - - - - - 246 (4)
- *v.* Mullins ; *Ex p.* Stenhouse (1971) 490 (1)
- *v.* Phillips (1970) - - - - 616 (5)
- *v.* Reynhoudt (1962) - - - - 286 (2)
- *v.* Spicer ; *Ex p.* Foster (1958) - 505 (2)
- *v.* Williams ; *R. v.* Somme (1934) - 457 (3),  
461 (2), 462 (2), 466 (6), 468 (3)
- Rabett *v.* Commissioner of Stamp  
Duties (N.S.W.) (1929) - 225 (1), 225 (3),  
438 (1)
- Rae *v.* Broken Hill Pty. Co. Ltd. (1957) 398 (2)
- Railways, Commissioner for (N.S.W.)  
*v.* Cardy (1960) - 15 (1), 28 (2), 35 (2),  
36 (4), 37 (4), 51 (1)
- *v.* O'Brien (1958) - - - - 400 (2)
- *v.* Quinlan (1964) - 7 (1), 8 (1),  
10 (2), 13 (4), 15 (2), 17 (1),  
17 (3), 24 (4), 25 (1), 26 (2),  
27 (4), 29 (4), 30 (2), 36 (3),  
37 (2), 38 (3), 38 (5), 39 (1),  
39 (3), 45 (3), 46 (6), 46 (7),  
47 (1), 47 (5), 49 (3)
- Rashleigh, *Ex p.* ; *In re* Dalzell (1875) 246 (5)
- Paterson *v.* Paterson (1953) 308 (1), 312 (1),  
317 (2)
- Republic of Costa Rica *v.* Erlanger  
(1876) - - - - - 240 (1)
- Revesby Credit Union Co-operative  
Ltd. *v.* Federal Commissioner of  
Taxation (1965) - 567 (2), 569 (1), 571 (6),  
571 (8), 573 (1), 576 (1)
- Rhondda Urban District Council *v.* Taff  
Vale Railway Co. (1909) 91 (2), 221 (1)
- Rice *v.* Rice (1854) - - - - 554 (2)
- Riekmann *v.* Thierry (1896) - - - 305 (4)
- Robert Addie and Sons (Collieries)  
Ltd. *v.* Dumbreck (1929) 10 (3), 37 (1),  
38 (2), 45 (4)
- Roles *v.* Pascall & Sons (1911) - - - 349 (2)
- Rosenthal *v.* Rosenthal (1910) 437 (4), 438 (3),  
438 (6), 441 (1)
- Rowdell Pty. Ltd. *v.* Federal Commis-  
sioner of Taxation (1963) - - - 259 (2)
- Royal Australasian College of  
Surgeons *v.* Federal Commissioner of  
Taxation (1943) - - - - 150 (4)
- Royal College of Surgeons of Eng-  
land *v.* National Provincial Bank  
Ltd. (1952) - - - - - 150 (7)
- Rudewa Estates Ltd. *v.* Stamp Duties  
Commissioner (1966) - - - - 70 (5)
- S.
- Salvation Army (Victoria) Property  
Trust *v.* Shire of Fern Tree Gully  
(1952) - - - - - 150 (5)
- Sammut *v.* Strickland (1938) - - - 100 (2)
- Scala *v.* Mammolitti (1965) 407 (2), 408 (4)
- Schuck, *Ex parte* (1902) - - - - 127 (4)
- Script Phonography Co. Ltd. *v.* Gregg  
(1890) - - - - 532 (6), 540 (9), 544 (2)
- Scaegg *v.* The King (1932) 451 (1), 454 (1),  
455 (1), 455 (3), 461 (3), 464 (1),  
465 (1), 465 (2), 466 (3), 468 (1)
- Shepherd *v.* Felt and Textiles of  
Australia Ltd. (1931) - - - - 337 (2)
- Shropshire Union Railways and Canal  
Co. *v.* The Queen (1875) - - - - 555 (1)
- Silk Bros. Pty. Ltd. *v.* State Electricity  
Commission (Vict.) (1943) 608 (1), 613 (2),  
623 (4), 627 (3)
- Sinnett *v.* Herbert (1872) - - - - 146 (2)
- Sioux City and Pacific Railroad Co. *v.*  
Stout (1874) - - - - - 35 (4)
- Smee *v.* Tibbetts (1953) - - - - 408 (3)
- Smith *v.* Kerr (1902) - - - - 672 (1)
- *v.* Leech Brain & Co. Ltd.  
(1962) - - - - - 406 (1)
- *v.* Thiess Peabody Coal Pty.  
Ltd. (1965) - - - - - 245 (1)
- *v.* West Australian Trustee  
Executor Agency Co. Ltd. (1950) - 145 (2),  
163 (10)
- Smith's Lease, *In re* ; Smith *v.*  
Richards (1951) - - - - - 89 (1)

Sneddon *v.* Lord Advocate (1954) - 208 (1),  
215 (2), 217 (2)  
Special Purposes of the Income Tax,  
Commissioners for *v.* Pemsel (1891) 197 (2),  
666 (2), 667 (1)  
Spratt *v.* Hermes (1965) - 598 (1), 599 (1),  
600 (1), 607 (5), 610 (1), 611 (2),  
612 (2), 614 (1), 615 (2), 616 (2),  
616 (3), 620 (1), 623 (5), 625 (3),  
626 (1), 626 (3), 626 (5)  
S.S. Hontestroom (Owners) *v.* S.S.  
Sagaporack (Owners) (1927) - 307 (3)  
Stamp Duties, Commissioner of  
(N.S.W.) *v.* Gale (1958) - 215 (3), 222 (1),  
224 (3), 521 (2)  
— *v.* Perpetual Trustee Co. Ltd.  
(Watt's Case) (1926) 215 (5), 218 (1), 221 (2),  
223 (2), 521 (1)  
— *v.* Thomson (1927) - 443 (3)  
— *v.* Way (Gillespie's Case) (1949) 215 (1)  
Stamp Duties, Commissioner of (Q.) *v.*  
Livingston (1965) - 70 (1), 325 (3), 329 (2),  
330 (1)  
Standard Oil Co. of New Jersey *v.*  
United States (1951) - 376 (4)  
Storm *v.* Geeves (1965) - 396 (2), 415 (1),  
415 (6), 416 (6)  
Strakosch, *In re* (deceased);  
Temperley *v.* Attorney-General  
(1948) - 667 (5)  
Stratton *v.* Simpson (1970) 196 (3), 671 (1)  
Suffield and Watts, *In re*; *Ex p.*  
Brown (1888) - 539 (1)  
Sutherland *v.* Stopes (1925) - 174 (2)  
Swaine *v.* Wilson (1889) - 376 (8), 377 (1),  
379 (1)  
Sweezy *v.* New Hampshire (1957) - 115 (2)  
Swinton *v.* The China M.S.N. Co. Ltd.  
(1951) - 16 (1)  
Swire, *In re*; Mellor *v.* Swire (1885) - 539 (2)

## T.

Tate *v.* McLeod (1969) - 247 (4)  
Tatham *v.* Huxtable (1950) - 157 (2)  
Taxation, Deputy Federal Commis-  
sioner of *v.* Purcell (1921) 654 (3), 655 (2)  
Taxation, Federal Commissioner of *v.*  
Finn (1961) - 498 (1), 499 (1)  
— *v.* Maddalena (1971) 372 (2), 372 (3)  
— *v.* United Aircraft Corporation  
(1943) - 425 (1), 425 (2), 426 (3)  
Taxes, Commissioner of (S.A.) *v.*  
Executor, Trustee and Agency Co.  
of South Australia Ltd. (Carden's  
Case) (1938) - 428 (1)  
Terrell *v.* Secretary of State for the  
Colonies (1953) - 612 (1)  
The Bohemians Club *v.* Acting Federal  
Commissioner of Taxation (1918) - 571 (7)  
The Julia (1860) - 307 (2)  
The Ydun (1899) - 242 (1)

Thomas *v.* Bradbury, Agnew & Co. Ltd.  
(1906) - 173 (2)  
— (Inspector of Taxes) *v.* Richard  
Evans and Co. Ltd. (1927) - 573 (6)  
Thompson *v.* Bankstown Corporation  
(1953) - 10 (1), 11 (1), 13 (1), 17 (2),  
17 (4), 18 (1), 28 (1), 29 (3),  
30 (1), 39 (5), 39 (6), 40 (1),  
41 (2), 47 (3), 48 (7), 49 (1),  
49 (2)  
— *v.* Federal Commissioner of  
Taxation (1959) - 159 (1)  
— *v.* New South Wales Branch of  
the British Medical Association  
(1924) - 379 (6)  
Thomson *v.* Commissioner of Stamp  
Duties (N.S.W.) (1927) - 436 (1), 436 (2),  
437 (1), 438 (2), 442 (4), 443 (2),  
444 (1), 445 (1)  
— *v.* Richardson (1928) - 557 (3)  
Thureau, *In re*; Mitchell *v.* Holland  
(1948) - 163 (3)  
Thynne *v.* Thynne (1955) - 532 (1), 535 (2),  
539 (9), 540 (1), 541 (1), 542 (3)  
Towler *v.* Chatterton (1829) - 246 (1)  
Tozer Kemsley & Millbourn (A/asia)  
Pty. Ltd. *v.* Point (1960) - 280 (4)  
Trustees of Earl Haig *v.* Commissioners  
of Inland Revenue (1939) - 425 (6)  
Turner *v.* Metro-Goldwyn Mayer  
Pictures Ltd. (1950) - 174 (3)

## U.

Union Trustee Co. of Australia Ltd. *v.*  
Federal Commissioner of Taxation  
(1962) - 193 (1)  
United Collieries Ltd. *v.* Simpson (1909) 351 (2)  
United States *v.* Simms (1803) - 113 (3)  
— *v.* Sprague (1931) - 117 (1)

## V.

Verge *v.* Somerville (1924) 199 (3), 200 (8)  
Vicars *v.* Commissioner of Stamp Duties  
(N.S.W.) (1945) - 224 (2)  
Victorian Railways Commissioners *v.*  
Coultas (1888) - 395 (2), 415 (2)  
— *v.* Seal (1966) - 38 (4)  
Videan *v.* British Transport Commis-  
sion (1963) - 24 (2)  
Vine *v.* National Dock Labour Board  
(1957) - 491 (1), 492 (1)  
Voli *v.* Inglewood Shire Council (1963) 25 (3)

## W.

Walker *v.* Bletchley Flettons Ltd.  
(1937) - 634 (4)  
— *v.* Crystal Palace Football Club  
Ltd. (1910) - 372 (1)  
Wall *v.* The King; *Ex p.* King Won  
and Wah On [No. 1] (1927) 622 (5), 627 (5)

Wallis <i>v.</i> Hepburn (1878) -	532 (4), 540 (7)	Williams <i>v.</i> The King [No. 2] (1934) -	451 (3),
Ward, <i>Re</i> (1941) -	- - - 153 (2)		452 (1), 455 (2), 456 (1), 458 (2),
Waters <i>v.</i> The Commonwealth (1951) -	598 (4)		461 (1), 462 (1), 463 (1), 463 (3),
Waterside Workers' Federation of			464 (2), 466 (5), 467 (1), 467 (2)
Australia <i>v.</i> J. W. Alexander Ltd.			468 (2), 468 (1), 469 (2)
(1918) -	603 (1), 611 (1), 618 (1), 625 (9)	Williams' Trustees <i>v.</i> Inland Revenue	
Watts <i>v.</i> Watts (1908) -	- - - 116 (2)	Commissioners (1947)	197 (3), 667 (4)
Watt's Case (In the Estate of W. O.		Winke <i>v.</i> Cardiff Rural District Council	
Watt (deceased)) (1925)	223 (1), 224 (1)	(1950) -	- - - 633 (2)
Way <i>v.</i> Commissioner of Stamp Duties		Wisheart <i>v.</i> Commissioner of Inland	
(N.S.W.) (1949) -	- - - 225 (6), 226 (1)	Revenue (1969)	- - - 74 (6)
Wayne <i>v.</i> Commissioner of Stamp		Wollaston's Case ( <i>Re</i> Income Tax Acts	
Duties (N.S.W.) (1966) -	517 (2), 518 (3),	[No. 4] (1902)	- - - 132 (2)
	519 (2), 520 (1), 521 (3), 527 (2)	Woods <i>v.</i> Sheriff of Queensland (1895)	539 (4),
Weld-Blundell <i>v.</i> Stephens (1920) -	397 (3)		540 (2)
Wheat <i>v.</i> E. Lacon & Co. Ltd. (1966) -	22 (1),	Worthing <i>v.</i> Rowell and Muston Pty.	
	23 (1)	Ltd. (1970)	97 (1), 99 (2), 105 (1), 107 (1),
Whistler <i>v.</i> Hancock (1878)	532 (3), 540 (6),		110 (2), 111 (3), 113 (1), 116 (3),
	544 (1)		119 (1), 120 (1), 121 (1), 122 (1),
White <i>v.</i> Pacific Acceptance Cor-			127 (5), 129 (1), 129 (5), 130 (3),
poration Ltd. (1961) -	- - - 281 (1)		132 (4), 616 (4)
Whiteley Muir and Zwanenberg Ltd.		Wright <i>v.</i> Hale (1860)	- - - 246 (2)
<i>v.</i> Kerr (1966) -	303 (2), 305 (1), 306 (4)	Wykes, <i>In re</i> deceased (1961)	- - - 152 (2)
Whiting <i>v.</i> McGinnis (1909) -	- - - 437 (3)		
Wightwick's Will Trusts, <i>In re</i> (1950)	157 (5)		
William Crosby & Co. Pty. Ltd. <i>v.</i> The			
Commonwealth (1963) -	- - - 240 (4)		
Williams <i>v.</i> The King [No. 1] (1933) -	451 (2),		
	460 (3), 461 (4), 466 (4)		

Y.

Y.Z. Finance Co. Pty. Ltd. *v.*  
Cummings (1964) - - - 282 (1)

## CORRIGENDA

124 C.L.R. page 475 : line 11 insert " not " before " invalid ".

124 C.L.R. page 529 : for line 6 of headnote substitute " which prohibited substances have been added, bought by him from a ".