

William George Pirrie - - - - - *Appellant*
v.
Thomas McFarlane - - - - - *Respondent*
AND
The Attorney-General of Australia - - - - - *Intervener*

FROM

THE SUPREME COURT OF THE STATE OF VICTORIA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL. DELIVERED THE 17TH DECEMBER, 1925.

Present at the Hearing :

THE LORD CHANCELLOR.
LORD DUNEDIN.
LORD SHAW.
LORD PHILLIMORE.
LORD BLANESBURGH.

[*Delivered by* THE LORD CHANCELLOR.]

This case has taken an unusual course. The appellant is a police constable in the employ of the State of Victoria, and the respondent was a motor car driver employed by the Defence Department of the Commonwealth of Australia. On the 5th December, 1924, the appellant laid an information against the respondent in Melbourne, charging him with driving a motor car on a public highway in Melbourne without being licensed for that purpose, in breach of the Victoria Motor Car Act of 1915. The Police Magistrate before whom the information was brought dismissed the information, holding that the Motor Car Act did not apply to servants of the Crown controlled by the Defence Department, and that, if it did so apply, it would be a fettering of the executive powers of the Commonwealth. An appeal was taken to the Supreme Court of Victoria, and that Court took the view that

the case involved a question as to the limits *inter se* of the constitutional powers of the State of Victoria and the Commonwealth of Australia ; and accordingly, acting under the Commonwealth Judiciary Act, the Court declined to proceed further with the case and left it to be disposed of by the High Court of Australia. The appellant then petitioned for special leave to appeal to this Board, and, after argument, leave to appeal was given, mainly in order that it might be considered whether any question did arise as to the limits *inter se* of the constitutional powers of the State of Victoria and the Commonwealth of Australia, and whether there was, in fact, any law or statute of the Commonwealth with which the Victorian Act in question was in conflict ; but also in order that the appellant might be at liberty to argue the question whether the Victoria Motor Car Act applied to the appellant, this latter question being a question only of the law of the State of Victoria. Since that leave was given the matter has been considered by the High Court of Australia ; and in hearing the case the High Court not only acted with entire courtesy to the Board, but acted in accordance with a wish expressed by the Board when leave was given, that the High Court should consider the case and give the Board the assistance of the opinion of the High Court. The appellant did not appear before the High Court, but the High Court, having heard the respondent, decided that the Victoria Motor Car Act was not in conflict with any statutory or other law of the Commonwealth, and imposed a fine upon the respondent. Thus the substantial question which was raised by the appellant has been determined in his favour, and he has obtained from the highest Court in Australia a decision that the Victorian statute is valid and effective, and a conviction of the person against whom the information was laid. That being so, the basis of the appeal has disappeared, and the other questions which are raised upon it, interesting as they might prove to be, have become academic so far as this case is concerned. Nevertheless the appellant, by his Counsel, asks the Board to proceed with the appeal and to hear arguments upon those questions. The Board does not sit to hear arguments, or to give advice to His Majesty, upon abstract questions of that kind. If the appellant succeeded to the full extent, the result must be in substance the same as that which has already been obtained—that is to say, that the respondent would have to be convicted, and some penalty imposed upon him.

In those circumstances their Lordships do not feel disposed to proceed with the hearing of the appeal, and they will humbly advise His Majesty that no relief should be granted upon the appeal and no order made as to costs.

In the Privy Council.

WILLIAM GEORGE PIRRIE

v.

THOMAS MCFARLANE
AND
THE ATTORNEY-GENERAL OF AUSTRALIA.

DELIVERED BY THE LORD CHANCELLOR.

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