Trust Case. Nor would conditional sale agreements lead to any different results since these, in New South Wales, are caught by the Hire Purchase Act (subject to certain qualifications) through its definition of "hire-purchase agreement" in s. 2 as including a bailment coupled with an agreement to buy.[38]

GEORGE FORRAI, Case Editor—Third Year Student.

FREEDOM OF INTERSTATE TRADE AND JUDICIAL DISCRETION

FREIGHTLINES & CONSTRUCTION HOLDING LTD. v. *NEW SOUTH WALES*

THE PROBLEM

Twenty years ago, Dixon, C.J., commenting on the fact that not every statute which interfered with inter-State trade, commerce and intercourse was obnoxious to the "absolute freedom" guaranteed by s.92 of the Commonwealth Constitution, said:

> But there has not been worked out a logical distinction between the restrictions and burdens which may not be imposed upon inter-State commerce and the directions which may be given for the orderly and proper conduct of commerce. It is this which I think accounts more than any other consideration arising from s.92 for the widely divergent conclusions that have been reached as to the application of the provision in specific cases.[1]

The same may be said of charges levied by States as a compensation for the wear and tear to facilities provided by them and used by inter-State traders. In 1955 the High Court said that "if a charge is imposed as a real attempt to fix a reasonable recompense or compensation for the use of the highway and for a contribution to the wear and tear which the vehicle may be expected to make it will be sustained as consistent with the freedom s.92 confers upon transportation as a form of inter-State commerce".[2] Yet it is not clear how such a charge may be adjudged a real attempt to fix a recompense for wear and tear, and not "an exaction for the privilege of carrying on a transaction of inter-State trade"[3] which is invalid by reason of s.92.

In short, the above two types of law, and perhaps others *ejusdem generis* with them, are outside the prohibition of s.92, if they conform to a certain standard. But what that standard is has not been carefully scrutinized; and existing *dicta* tend to be circular and only beg the question.

THE PRESENT CASE

In *Freightlines & Construction Holding Ltd.* v. *State of New South Wales*[4] the appellants challenged the validity of the Road Maintenance (Contribution) Act, 1958-65 (N.S.W.) on the ground that it infringed s.92.

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[38] I.e., the situation in *Lee* v. *Butler supra* n.2.

[1] *Bank of N.S.W.* v. *The Commonwealth* (1948) 76 C.L.R. 1 at 389.

[2] *Hughes & Vale Pty. Ltd.* v. *State of N.S.W. (No. 2)* (1955) 93 C.L.R. 127 at 175 (*per* Dixon, C.J., McTiernan and Webb, JJ.).

[3] *Id.* at 174.

[4] (1968) A.C. 625; (1967) 116 C.L.R. 1.

Before the Privy Council it was argued that:

(1) any compulsory contribution to the cost of road maintenance imposed on inter-State traders is contrary to s.92 of the Commonwealth Constitution; or alternatively,

(2) a contribution so imposed must bear so close a relation to the actual wear and tear caused to the particular vehicles on their particular journeys that for practical purposes it would be impossible to exact it, and to hold otherwise would create an inroad into the "absolute freedom" conferred by s.92.

The New South Wales Act under challenge imposed on owners of commercial goods vehicles of a 4-ton load capacity or over a road charge at a rate pen ton per mile of public streets travelled in New South Wales, towards compensation for wear and tear to public streets caused by such travel. According to the appellants, for the reasons given, this Act could not validly apply to an owner engaged in inter-State commerce.

The respondents did not contend that the effect of the Act on inter-State commerce was merely indirect or consequential; on the facts they could scarcely do so. What was involved, then, was a State law directly affecting inter-State commerce, so that the question of how far the "freedom" conferred by s.92 extended was directly involved.

The High Court had, in two previous cases, one dealing with the same New South Wales Act[5] and other with a similar Victorian Act,[6] held that the charges so imposed were consistent with s.92. Their Lordships refused to overrule these previous cases and dismissed the appeal.

In a judgment which relied preponderantly on the two *Hughes & Vale Cases*,[7] as well as the two decisions of the High Court directly on the issue, the Board began its discussion of the law with the pronouncement: "It has long been established that the words 'absolutely free', strong as they are, cannot be read without any qualification."[8] What, then, are the limitations to this "freedom"? Their Lordships analysed the problem by citing long passages from the *Hughes & Vale Cases*, from *Armstrong* v. *Victoria* and from *Commonwealth Freighters Pty. Ltd.* v. *Sneddon*.[9] Eventually their Lordships formulated the principle thus:

> . . . there is admittedly a framework within which the freedom operates, a framework which one may describe in the apt words of Kitto J. in *Breen* v. *Sneddon*[10] "as circumscribing an individual's latitude of conduct in the interests of fitting him into a neighbourhood — a society, membership of which entails, because of its nature, acts and forbearances on the part of each by which room is allowed for the reasonable enjoyment by each other of his own position in the same society." This framework partly consists of rules (and charges therefor) of strictly regulatory nature, and partly consists of charges for facilities (e.g., railways and wharves). One may ask why the framework should not also consist of a duty to contribute directly to the cost of that which the trader, while using the highway as of right, consumes by the wear and tear which he inflicts on it. *The framework within which the trader's freedom operates is nowhere indicated with any precision or at all. Its extent is a matter of inference and common sense.*"[11] (Italics added.)

This effectively disposed of the appellants' first submission. To the second

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[5] *Commonwealth Freighters Pty. Ltd.* v. *Sneddon* (1959) 102 C.L.R. 280.
[6] *Armstrong* v. *State of Victoria (No. 2)* (1957) 99 C.L.R. 28.
[7] *Hughes & Vale Pty. Ltd.* v. *N.S.W. (No. 1)* (1954) 93 C.L.R. 1; *Hughes & Vale Pty. Ltd.* v. *N.S.W. (No. 2)*, *supra* n.2.
[8] (1968) A.C. at 667; (1967) 116 C.L.R. at 4.
[9] For citations see *supra* nn.5-7.
[10] (1961) 106 C.L.R. 406 at 415.
[11] (1968) A.C. at 683; (1967) 116 C.L.R. at 20.

submission their Lordships replied with the words of the High Court that the New South Wales Act amounted to a "real attempt to fix a reasonable recompense or compensation for the use of the highway and for contribution to the wear and tear which the vehicle may be expected to make".[12]

Thus the Board's judgment amounted to a summary of the High Court's views as expressed in the more recent transport cases. But it is interesting to note that their Lordships added a criterion of their own: "inference and common sense" — though only after an admission that the "framework" could not be delimited in precise terms. The origin of the concept of "common sense" no doubt lay with Fullagar, J.'s own admission in *McCarter* v. *Brodie*[13] that no precise limitation of the "freedom" in s.92 could be found. There his Honour said: "It would not be possible a priori to draw a dividing line between that which would really be a charge for a facility provided and that which would really be a deterrent to trade. . . ."[14] But he did not doubt that "common sense" would suggest a "fairly clear and satisfactory answer".[15]

Apart from providing us with a criterion for the first time — the efficacy of this criterion will be examined later — the Privy Council has finally entrenched a legal concept which had its origin in a dissenting judgment of Dixon, J. (as he then was) in *Willard* v. *Rawson*,[16] and was developed in a long line of cases, culminating in the trilogy of *Hughes & Vale (No. 2)*, *Armstrong* v. *Victoria* and *Commonwealth Freighters Pty. Ltd.* v. *Sneddon*.[17] This legal concept, it is submitted, is a departure from the traditional literalistic and legalistic approach of the High Court as well as the Privy Council, as far as the interpretation of the Constitution is concerned. This is best shown by an examination of previous decisions of the High Court and the Privy Council.

THE INTERPRETATION OF THE CONSTITUTION GENERALLY

Ever since the decision in the *Engineers' Case*,[18] the High Court has been inclined to a literal interpretation of the Constitution in general, and s.92 in particular. In that case their Honours, citing the Privy Council,[19] said:

> In the interpretation of a completely self-governing Constitution founded upon a written organic instrument . . . *if the text is explicit the text is conclusive, alike in what it directs and what it forbids.* (Italics added.)

With perhaps the anomaly of the decision in *Melbourne Corporation* v. *The Commonwealth*,[20] the High Court has been generally faithful to the pronouncements in the *Engineers' Case*.[21] Thus it has defined "taxation" in positive terms,[22] carefully distinguishing it from other categories of charges such as fees for services rendered, the imposition of the latter not being, as far as the Commonwealth Parliament is concerned, justifiable under s.51 (ii) *per se*.[23] Section 51 (xxxv) has been subjected to the same legalistic analysis, so that the Commonwealth can reconcile particular disputes extending beyond the limit of any one state but cannot legislate for industries in general.[24]

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[12] (1968) A.C. at 672; (1967) 116 C.L.R. at 9-10, citing *Hughes & Vale (No. 2)*, *supra* n.2 at 175.

[13] (1950) 80 C.L.R. 432 at 495 — a dissenting judgment which has become acceptable after *Hughes & Vale (No. 1)*, *supra* n.7 at 23ff.

[14] (1950) 80 C.L.R. at 497.

[15] *Id.* at 496.

[16] (1933) 48 C.L.R. 316, esp. at 334.

[17] For citations see *supra* nn.5-7.

[18] *Amalgamated Society of Engineers* v. *Adelaide Steamship Co. Ltd.* (1920) 28 C.L.R. 129.

[19] *A.-G. for Ontario* v. *A.-G. for Canada* (1912) A.C. 571 at 583.

[20] (1947) 74 C.L.R. 31.

[21] *Supra* n.18.

[22] *Matthews* v. *Chicory Marketing Board* (1938) 60 C.L.R. 263 at 276.

[23] See generally *Re Dymond* (1959) 101 C.L.R. 11.

[24] *R.* v. *Kelly, ex p. Victoria* (1950) 81 C.L.R. 64.

THE INTERPRETATION OF S.92

It is no surprise therefore to read that as far as s.92 is concerned, a contention that "absolutely" is subject to limitations has been branded as "an aspersion on the English language".[25] The dictionary is the correct guide, and "the dictionary might be ransacked in vain to find an expression more emphatically clear than 'absolutely free' ".[26]

Yet despite such radical assertions it has always been clear that some laws are permissible even if they do interfere with trade and commerce inter-State. There are two discernible approaches in upholding these types of laws.

(a) *The Classification Approach*

This approach may be illustrated by *Ex parte Nelson (No. 1)*.[27] There the Court was dealing with a New South Wales Act barring the importation into the State of stock that were reasonably believed to be infected with disease. It was in this context that Isaacs, J. made the uncompromising remarks just quoted. Yet the judges who disagreed with him (the Court was evenly divided so that the decision that the Act did not infringe s.92 was affirmed) did so only on the ground that:

> The Stock Act of New South Wales is not itself a regulation of inter-State commerce, though it controls in some degree the conduct and liability of those engaged in commerce . . . . In truth, the object and scope of the provisions are to protect the large flocks and herds of New South Wales against contagious and infectious diseases, . . . looked at in their true light, they are aids to and not restrictions upon the freedom of inter-State commerce.[28]

Thus the essence of this approach was to classify the impugned Act by discovering its "object and scope". If its object is "in truth" not a restriction upon the freedom of inter-State trade, then it does not infringe s.92.

Similarly, the Privy Council said in *James* v. *Cowan*:

> If the real object of arming the Minister with the power of acquisition is to enable him to place restrictions on inter-State commerce, as opposed to a real object of taking preventive measures against famines or disease and the like, the legislation is invalid.[29]

Hartley v. *Walsh*[30] presents another example of this approach. There a Victorian regulation provided that no person should buy or sell any dried fruits unless they had been packed in a shed registered under the Act. Such a shed must adhere to certain requirements of ventilation, lighting and cleansing. The defendants grew dried fruits in Victoria and without packing them in a registered shed sold some to the famous Mr. James of South Australia. The Court upheld the conviction under the Victorian law on substantially the same grounds as in *Ex parte Nelson (No. 1)*. Rich, J. pointed out that "the purpose of the regulation is not to check transactions in dried fruits with other States . . . (but) to secure quality and propriety in that trade".[31] Evatt, J. said: "For the appellants it was said that the present regulations prohibit inter-State trade in unpacked and unprocessed dried fruits. But such a generalization takes no account whatever of the purpose of the packing and processing" which was to improve its "purity, quality, condition. . . ."[32]

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[25] *Ex p. Nelson (No. 1)* (1928) 42 C.L.R. 209 at 229.
[26] *Id.* at 229.
[27] *Supra* n.25.
[28] *Id.* at 219.
[29] (1932) 47 C.L.R. 386 at 396.
[30] (1937) 57 C.L.R. 372.
[31] *Id.* at 394.
[32] *Id.* at 386.

The logical limit to this approach was illustrated by *Tasmania* v. *Victoria*.[33] Since the Victorian regulation in that case did not discriminate between good potatoes and bad potatoes, it was an absolute prohibition which the Court refused to classify as a law the purpose of which was to prevent the introduction of infected potatoes, so that it suffered fatally under s.92.

This approach, however, did not go unchallenged. There was a detectable uneasiness among some judges. Latham, C.J. for example objected vigorously: "It is not material to ask whether the law can be described as a law upon crime or bankruptcy or health. . . . If the law does in fact interfere with the freedom protected by s.92 it must be invalid. . . ."[34] And Dixon, J. (as he then was) dissented in *Hartley* v. *Walsh* because "the true purpose or policy inspiring the regulation appears to me to be beside the question. For it operates entirely to forbid inter-State trade between growers and packers in unpacked dried fruit".[35] But the "classification approach" had the virtue of avoiding doing injustice to the literal terms of s.92. It is at least logically appealing to say that an Act does not infringe s.92 because it has as its object, not inter-State trade or commerce, but health, safety or crime.

Two subsequent decisions, however, dealt a crippling blow to this method of avoiding s.92. The *Bank Nationalization Case*[36] held that the object or purpose of an Act challenged as contrary to s.92 is to be ascertained from what is enacted and consists in the necessary legal effect of the law. The logical conclusion is that if the necessary legal effect of the law is to interfere with inter-State trade and commerce, at least where a prohibition absolute or discretionary is the direct legal effect, the law must infringe s.92: *Hughes & Vale (No. 1)*.[37]

It was perhaps with these two cases in mind that in 1961 Dixon, C.J. dismissed the decision in *Hartley* v. *Walsh* as resting "substantially upon principles which have not been regarded as acceptable in recent years".[38] The most important effect of *Hughes & Vale (No. 1)* was to overrule several High Court cases[39] where licensing and registration laws had been held valid by an approach which was a logical application of the classification method — the impugned Acts in those High Court cases being usually classified as safety laws, although they laid down absolute prohibitions subject to discretionary permission through licensing and registration.[40]

Before considering how much is left of the classification method where the relevant Act imposes no prohibition, it is convenient to trace the development of the new method of upholding laws which directly affect inter-State trade and commerce, despite s.92.

(b) *The "Framework" Theory*

The first glimpse of the theory appeared in Dixon, J.'s dissenting opinion in *Willard* v. *Rawson*. There he suggested:

> If a statute fixes a charge for a convenience or service provided by the State . . . and imposes it upon those who choose to avail themselves of

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[33] (1935) 52 C.L.R. 157.
[34] *Supra* n.13 at 455.
[35] *Supra* n.30 at 389.
[36] *Commonwealth* v. *Bank of N.S.W.* (1949) 79 C.L.R. 497 (P.C.), affirming the High Court decision, *supra* n.1.
[37] *Supra* n.7.
[38] *Bierton* v. *Higgins* (1961) 106 C.L.R. 127 at 135.
[39] Including *R.* v. *Vizzard* (1933) 50 C.L.R. 30; *Duncan & Green Star Trading Co.* v. *Vizzard* (1935) 53 C.L.R. 493; *O. Gilpin Ltd.* v. *Commr. for Road Transport & Tramways* (1935) 52 C.L.R. 189; *Riverina Transport Pty. Ltd.* v. *Victoria* (1937) 57 C.L.R. 327; *McCarter* v. *Brodie, supra* n.13.
[40] See, e.g., *Bessell* v. *Dayman* (1935) 52 C.L.R. 215; and see now *Hughes & Vale (No. 1)*, *supra* n.7 at 19-20.

> the service or convenience, the freedom of commerce may well be considered unimpaired, although liability to the charge is incurred in inter-State as well as intra-State transactions.[41]

But surely this is inconsistent with the literal interpretation of "absolute freedom".[42] Thus Kitto, J. very frankly spoke in a later case[43] of "the class of law which though placing restrictions or other burdens upon individuals engaged in inter-State trade, commerce or intercourse, yet do not detract from the freedom of the individual's inter-State trade, commerce or intercourse itself. . . ." What is the justification, then, for such an interpretation of s.92?

Dixon, J. (as he then was) elaborated this theory in the *Bank Nationalization Case*. "The freedom . . . which s.92 assures" he said "supposes an ordered society where the mutual relations of man and man and man and government are regulated by law."[44]

This theory was accepted by the Privy Council.[45] In *Hughes & Vale (No. 1)*[46] their Lordships cited at length the dissenting judgment of Fullagar, J. in *McCarter* v. *Brodie*[47] which further elaborated the theory. In *Hughes & Vale (No. 2)* Dixon, C.J., McTiernan and Webb, JJ. summed it up thus:

> The distinction is clear between laws interfering with the freedom to effect the very transactions or to carry out the very activity which constitutes interstate trade, commerce or intercourse and laws imposing upon those engaged in such transactions or activities rules of proper conduct or other restraints so that it is done in a due and orderly manner without invading the rights or prejudicing the interests of others and where a use is made of services or privileges enjoyed as of common right, without abusing them or disregarding the just claims of the public as represented by the State to any recompense or reparation that ought in fairness to be made.[48]

This, then, was the principle — the "legal concept", as their Lordships called it in the *Freightlines Case* — acted upon in *Armstrong* v. *State of Victoria (No. 2)* and *Commonwealth Freighters Pty. Ltd.* v. *Sneddon*; *Boland* v. *Sneddon*;[49] and this was what their Lordships were referring to in the *Freightlines Case* when they spoke of the "framework" within which the freedom protected by s.92 must operate. It is submitted that in order to justify this concept as a literal construction of s.92 one has to go all the way with the High Court when, referring to the permitted class of charges, it said:[50] "Those who pay them are not unfree, they merely pay the price of freedom." The vital question now is: what is the limit to this "price of freedom"?

THE BEARING OF THE FREIGHTLINES CASE ON PERMISSIBLE INTERFERENCES WITH S.92 FREEDOM

The *Freightlines Case* merely affirmed the new "framework" approach of the High Court to s.92. It is understandable that the actual decision amounted to no more than the Board's approval of lengthy passages from the High Court "trilogy" of *Hughes & Vale (No. 2)*, *Sneddon's Case* and *Armstrong's Case*. But in addition it did advance "inference and common sense" as a criterion of what the "framework" limiting s.92 freedom consists in.

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[41] *Supra* n.16 at 334.
[42] See *Ex p. Nelson (No. 1)*, *supra* n.25 at 229.
[43] *Breen* v. *Sneddon*, *supra* n.10 at 416.
[44] *Supra* n.1 at 389.
[45] *Commonwealth* v. *Bank of N.S.W.*, *supra* n.36.
[46] *Supra* n.7.
[47] Cited *supra* n.13.
[48] (1955) 93 C.L.R. at 177.
[49] *Supra* nn.5-6.
[50] *Hughes & Vale (No. 2)*, *supra* n.2 at 172.

The first reaction to this statement is perhaps one of surprise. The Board had found the appellants' arguments "formidable", and only after "careful consideration" had concluded that such arguments "do not invalidate the legal concept" contained in the "trilogy" of cases.[51] We would then expect a legal demarcation to this "legal concept". Yet the demarcation to this "legal concept" turns out to be mere common sense.

The second reaction is, surely, to ask whether such a criterion is of much help in drawing the distinction between what Dixon, C.J. called "restrictions and burdens which may not be imposed upon inter-State commerce"[52] on the one hand, and laws which belong properly to the "framework" within which s.92 must operate on the other. The *Freightlines Case* dealt with a road charge; but the "framework" theory was clearly intended to be a general qualification on the "absolute freedom" protected by s.92. But how helpful is it in helping to solve the problem posed at the beginning of this note?

To test their Lordships' criterion of "common sense", the examples given by Fullagar, J. in his dissent in *McCarter* v. *Brodie*[53] (now vindicated by the Privy Council) may be used. Incidentally, it appears to have been in this judgment that the word "framework" first appeared in relation to s.92 law.

Take the New South Wales law that limited the load which an inter-State vehicle may carry. His Honour assumed that this would be a valid regulation of trade and commerce. But to what extent may such a limitation go? One would not suppose that "inference and common sense" are of much use here; unless one says with cynicism that "inference and common sense" mean no more than inference and common sense as understood by the Court.

Or take the collection of a toll for the use of a bridge. Fullagar, J. recognised that such a charge may easily be prohibitive and infringe s.92. Yet he admitted that "it would not be possible *a priori* to draw a dividing line".[54] It is no comfort to hear his Honour assert that "the distinction, if it ever had to be drawn, would be real and clear, and nobody need worry about it in advance",[55] for the huge volume of cases on s.92 and the numerous dissenting judgments in them would seem to point the other way. Applying the test of common sense, one would think that the financial position of the person whose common sense is to prevail is relevant. In the last analysis it is undoubtedly the Court whose inference and common sense will prevail.

Returning to the actual problem involved in the *Freightlines Case*, we may discern two further criteria for a valid road charge:

(1) it must be a real attempt to extract recompense for wear and tear; and

(2) it must have a definite relationship to the use of roads.

But (2) is perhaps no more than an elaboration of (1); and at best, when one has said both (1) and (2), one has said very little. In the end it is a question of value judgment by the Court.

A RECONCILIATION OF THE TWO APPROACHES?

The criterion of "inference and common sense" is no more than a formula. It has no inherent superiority over the old approach of the High Court when the formula was the "substance or object" of the impugned Act. It enables decisions to be made without an appearance of arbitrariness, but it seldom, if at all, enables accurate prediction of what the decision in each case will be, where there had been no previous decision on the point.

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[51] (1968) A.C. at 682; (1967) 116 C.L.R. at 20.
[52] *Bank of N.S.W.* v. *The Commonwealth*, *supra* n.1 at 389.
[53] *Supra* n.13.
[54] *Id.* at 497.
[55] *Ibid.*

Perhaps the best that can be hoped for is that in future "inference and common sense" will be defined with greater certainty. In this respect the old approach of classifying the challenged Acts may not be completely obsolete. There is nothing, for example, to prevent the Court from holding that an Act relating to matters of health, providing that it does not amount to a prohibition whether absolutely or subject to discretion,[56] does not infringe s.92 because such a law is part of the framework within which the prohibition of s.92 operates. The *nature* of the particular Act then and not the direct legal effect is the important consideration.

> Such a view, indeed, was contemplated by Kitto, J. in *Breen* v. *Sneddon*: . . . the class of law which, though placing restrictions or other burdens upon individuals engaged in inter-State trade, commerce or intercourse, yet do not detract from the freedom of the individual's interstate trade, commerce or intercourse itself, is distinguished not by the lightness of the burdens imposed but by *the nature of the laws that impose them* . . . . (Italics added.)[57]

Of course such an approach proposes no more than a different formula but it at least has the virtue of being more certain than the plain criterion of "inference and common sense". Within the formula, as in other formulae so far advanced by the Court, a considerable discretion may be exercised by the Court in the process of classification.[58] This is inevitable. "The problem to be solved will often be not so much legal as political, social or economic. Yet it must be solved by a Court of law."[59]

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CROWN PRIVILEGE OF DOCUMENTS

CONWAY v. *RIMMER*

EX PARTE ATTORNEY GENERAL; RE COOK

> The privilege is a narrow one, most sparingly to be exercised. "The principle of the rule . . . is concern for public interest, and the rule will accordingly be applied no further than the attainment of that object requires."[1]

This statement has been the object of much judicial discussion in later cases on Crown privilege, and although it has become a rather hallowed text in administrative law there is, to say the least, a dichotomy of views defining the limits and extent of the rule. It is in this atmosphere of doubt that the recent House of Lords decision, *Conway* v. *Rimmer*,[2] generates a light in the darkness and a clear authority on degree and scope, if not on principle.

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[56] It seems that such laws cannot now be held valid on any view: see *Hughes & Vale (No. 1)*, *supra* n.7, esp. at 26.

[57] *Supra* n.10 at 416.

[58] See P. H. Lane, "Judicial Review or Government by the High Court" (1966) 5 *Sydney L.R.* 203 at 214-16.

[59] Per Lord Porter in *Commonwealth* v. *Bank of N.S.W.*, *supra* n.36 at 639.

[1] *Per* Lord Blanesburgh in *Robinson* v. *South Australia* (No. 2) (1931) A.C. 704 at 714. The quotation is from 1 *Taylor on Evidence* (12 ed. by R. P. Croom-Johnson and G. F. Bridgman, 1931) §939.

[2] *Conway* v. *Rimmer* (1968) 2 W.L.R. 998; (1968) 1 All E.R. 874.