

APPENDIX IB.

Wellington, 6th April, 1935.

GENERAL DECISION OF THE TRANSPORT CO-ORDINATION BOARD IN THE MATTER OF APPEALS LODGED BY GOODS-SERVICE OPERATORS AGAINST DECISIONS OF THE NO. 2 DISTRICT TRANSPORT LICENSING AUTHORITY.

BEFORE proceeding to the consideration of individual appeals, it is necessary for this Board to deal with certain principles enunciated by No. 2 Licensing Authority on which its decision is founded.

We think it would be appropriate to set out in some detail our conception of the principles of this Act in so far as they relate to the licensing and control of commercial road goods-services.

The governing title of this Act declares that it is an "Act to make better provision for the licensing and control of commercial road transport services other than tramways."

It is essentially a remedial statute, and as such must be given a generous interpretation. It has long been settled law that "the governing title of an Act is part of the Act itself, and it is legitimate to use it for the purpose of interpreting the Act as a whole and ascertaining its scope." *Lord Moulton Vacher and Sons v. London Society of Compositors* ([1913] A.C. 107).

Section 5, subsection (j), of the Acts Interpretation Act, 1924, provides that "every Act and every provision or enactment thereof shall be deemed remedial . . . and shall accordingly receive such fair large and liberal construction and interpretation as will best ensure the attainment of the object of the Act and of such provision or enactment according to its true intent meaning and spirit."

In *River Wear Commissioners v. Adamson* ([1877] 47 L.J. Q.B. 193) Lord Blackburn made the following observations:—

"As long ago as 1584 Lord Coke said in *Heydon's* case that for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered.

"First: What was the common law before the making of the Act?

"Second: What was the mischief and defect for which the common law did not provide?

"Third: What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth; and

"Fourth: The true reason of the remedy.

And then the office of all the Judges is always to make such construction as shall suppress the mischief and advance the remedy. But it is to be borne in mind that the office of the Judges is not to legislate, but to declare the expressed intention of the Legislature even if that intention appears to the Court injudicious."

The answers to the propositions suggested in *Heydon's* case are not, we think, difficult to find in relation to the present transport legislation. No one will deny that the development of unrestricted transportation had created a condition of chaos and that some form of licensing and control was necessary. What then is the broad intention of the Legislature as expressed by an Act intitled "an Act for the licensing and control of commercial road services"? Does this Act in its broad sense intend to legislate beyond two cardinal principles—

(a) In respect of existing services, to place them under control and regulation:

(b) In respect of new services, to prevent their establishment except under license and after proof of necessity or desirability?

As to the extent to which regulation may go, we respectfully adopt the observations of Mr. Justice Smith in his judgment in *Kerridge v. Girling Butcher* ([1933] N.Z.L.R. at page 690). The learned Judge made the following observation: "No doubt a certain power of prohibition is implied in the power to regulate and control: that depends upon what is to be regulated"; and he then proceeded to quote with approval a passage from the judgment of Mr. Justice Isaacs in *President, &c., of the Shire of Tungamah v. Merritt* ([1912] 15 C.L.R. 423) in which the latter learned Judge observed that—"Regulation of subject-matter involved the continued existence of that subject-matter but is not inconsistent with an entire prohibition of some of its occasional incidents."

We think that these principles are properly applicable to the consideration of the renewal of licenses of established services. There may be instances where control and regulation require entire prohibition, but these cases are exceptional and must be closely examined before such a decision is arrived at.

With this conception of the underlying intention of the Legislature we pass on to the consideration of section 26 of the Act, bearing in mind that it is entitled to a "fair, large, and liberal construction and interpretation." The judgment of No. 2 Licensing Authority proceeded to deal with the matter in general terms as follows:—

"It is necessary to refer to the provisions of the Act, section 26, which requires us to have regard to—

"(a) The extent to which the proposed service is necessary or desirable in the public interest:

"(b) The needs of the district as a whole in relation to goods transport.

"This provision is clear, and it requires the applicant first to satisfy us that the service is necessary or desirable in the public interest. . . . If, however, we cannot be satisfied that a proposed service is *reasonably necessary* in the public interest we must refuse a license, and it is not necessary for us to give any further consideration to the application."