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Opinion: No. 264

Subject: *BOUNTIES  
WHETHER REBATES BY STATE OF PILOTAGE DUES TO SHIPS BUNKERING WITH COAL  
PRODUCED IN THAT STATE AMOUNT TO : WHETHER SUCH REBATES VIOLATE  
FREEDOM OF INTERSTATE TRADE : WHETHER COMMONWEALTH HAS POWER TO  
RESTORE EQUAL TREATMENT*

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Key Legislation: *CONSTITUTION, ss. 90.92 : THE NAVIGATION ACT OF 1876 (QLD). s. 4*

Date: 06 October 1906

Client: *The Prime Minister*

Related Opinion: --

Opinion text: Further particulars (see my opinion of 9 July 1906<sup>(1)</sup>) are now furnished as to the rebates of pilotage dues allowed by the Queensland Government to shippers of Queensland coal-with reference to which I was asked to advise whether they were not equal to a bonus and whether they did not conflict with the Federal Constitution.

It appears that pilotage dues are payable by *The Navigation Act of 1876 (Q.)*, as amended by *The Port Dues Revision Act of 1882*, which is to be read with the Act of 1876. Section 4 of the Act of 1876 provides that:

The Treasurer if he deem it just so to do may remit the payment of all or any part of any dues or charges payable under this Act.

The following notification, issued from the State Treasury, was gazetted on 3 February 1906:

It is hereby notified, for general information, that all vessels loading 500 tons or over of Queensland Coal for bunker purposes at any port in Queensland will be allowed a rebate of pilotage or tonnage dues not exceeding 9d per ton on the quantity of Queensland Coal so shipped. Such rebate shall in no case exceed the amount of pilotage or tonnage dues payable in Queensland on account of that voyage of the vessel.

The State Treasury has, in answer to queries, stated that the rebate applies to coastal as well as oversea steamers.

By virtue of section 90 of the Constitution, the Commonwealth Parliament has now exclusive power to 'grant bounties on the production or export of goods', and all State laws 'offering bounties on the production or export of goods' have ceased to have effect.

I am unable to see that the action of the Queensland Government, or the legislation upon which it is based, is in any way affected by this section.

As to whether the rebates conflict with any other provision of the Constitution, the only question appears to be whether they are a violation of section 92, which requires trade, commerce and intercourse between the States to be absolutely free.

That provision has not yet been the subject of judicial determination; but I cannot, as at present advised, see that freedom of interstate commerce is interfered with.

I should add that, although the above-mentioned rebate is not, in my opinion, per se, an infringement of the Constitution, it is open to the Federal Parliament by legislation to counteract it

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and restore the equality of treatment which is naturally looked for.

[Vol. 5, p. 398]

[\(1\)](#) Opinion No. 252.

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