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UNIVERSITY OF LONDON
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10 FEB 1962
INSTITUTE OF ADVANCED
LEGAL STUDIES

IN THE PRIVY COUNCIL

No. 3 of 1961

10 FEB 1962

O N A P P E A L
FROM THE HIGH COURT OF AUSTRALIA

68586

B E T W E E N :

CHARLES MACDONALD WHITEHOUSE
(Plaintiff) Appellant

- and -

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THE STATE OF QUEENSLAND, THOMAS
ALFRED HILEY AND ALAN WHITESIDE
MUNRO (Defendants) Respondents

- and -

THE ATTORNEY-GENERAL OF THE
COMMONWEALTH OF AUSTRALIA,
THE STATE OF NEW SOUTH WALES AND
THE ATTORNEY-GENERAL OF THE STATE
OF NEW SOUTH WALES Interveners

CASE FOR THE INTERVENER, THE ATTORNEY
GENERAL OF THE COMMONWEALTH OF AUSTRALIA

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1. The nature of the case, the history of the litigation and the principal relevant authorities concerned in its resolution are sufficiently set forth in the Case of the respondents, which in these respects is adopted by the Attorney-General of the Commonwealth of Australia (hereinafter called "the Intervener").

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2. The High Court in this case decided that section 18 (1) of the Liquor Acts, 1912 to 1958 of the State of Queensland was a valid exercise of the legislative power of the State.

3. The validity of that section was impugned

upon the ground that the legislative power to impose such a fee as the licensed victuallers licence fee imposed by the section resided solely in the Parliament of the Commonwealth.

4. The High Court decided that the power of the Parliament of the Commonwealth to impose taxation did not extend so far as to exclude the power of the State to impose the fee.

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5. The question whether or not the legislative power of the Commonwealth did so extend as to diminish State power was a question as to the distribution of constitutional powers as between the Commonwealth and the State.

6. The question turned upon the construction of section 90 of the Constitution of the Commonwealth, which so far as material is in the following terms -

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"90. On the imposition of uniform duties of customs the power of the Parliament to impose duties of customs and of excise, and to grant bounties on the production or export of goods, shall become exclusive".

The Intervener respectfully adopts the view of the Chief Justice of Australia, expressed in Dennis Hotels Pty. Ltd. v. State of Victoria 1960 Argus L.R. 129 at p.136, that section 90 "is wholly concerned with the demarcation of authority between Commonwealth and State to tax commodities". It is the limit of the Commonwealth's power which fixes the limit of the State's power.

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7. The Intervener respectfully submits that the decision of the High Court in this case was a decision upon a question as to the limits inter se of the constitutional powers of the Commonwealth and those of the State of Queensland, and that the present appeal is therefore incompetent in the absence of a certificate

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of the High Court under section 74 of the Constitution of the Commonwealth.

8. If this submission is not accepted, the Intervener wishes to submit -

- (a) that the licensed victuallers licence fee imposed by section 18 (1) of the State Act is not a tax on goods at all; and
- (b) that the fee is not a duty of excise within the meaning of section 90 of the Constitution of the Commonwealth.

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G. E. BARWICK

M. N. HELSHAM

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THE ATTORNEY-GENERAL OF
THE COMMONWEALTH OF
AUSTRALIA AND OTHERS
Interveners

CASE FOR THE INTERVENER, THE
ATTORNEY-GENERAL OF THE
COMMONWEALTH OF AUSTRALIA

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Solicitors for the Intervener
The Attorney-General of the
Commonwealth of Australia.