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No. 7 of 1961

IN THE PRIVY COUNCIL

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

B E T W E E N :-

DENNIS HOTELS PROPRIETARY LIMITED
(Plaintiff) Appellant

and

10 THE STATE OF VICTORIA and HENRY
EDWARD BOLTE (Defendants) . . . Respondents

and

THE COMMONWEALTH OF AUSTRALIA . . . Intervener

and

THE STATE OF NEW SOUTH WALES and the
ATTORNEY-GENERAL OF NEW SOUTH WALES . . . Interveners

and

20 THE STATE OF WESTERN AUSTRALIA and
the ATTORNEY-GENERAL OF THE STATE
OF WESTERN AUSTRALIA, and the
STATE OF SOUTH AUSTRALIA and the
ATTORNEY-GENERAL OF SOUTH
AUSTRALIA and the STATE OF TASMANIA
and the ATTORNEY-GENERAL OF THE
STATE OF TASMANIA . . . Interveners

C A S E

30 FOR THE INTERVENERS, THE STATE OF WESTERN AUSTRALIA
AND THE ATTORNEY-GENERAL OF WESTERN AUSTRALIA AND THE
STATE OF SOUTH AUSTRALIA AND THE ATTORNEY-GENERAL OF
SOUTH AUSTRALIA AND THE STATE OF TASMANIA AND THE
ATTORNEY-GENERAL OF THE STATE OF TASMANIA.

These Interveners adopt and rely on paragraphs 6 to 37 inclusive of the Case for the Respondents, and submit that for the Reasons therein appearing this appeal should be dismissed.

D. M. CHAMBERS.

ROBERT GATEHOUSE.

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

UNIVERSITY OF LONDON
W.C.1.
10 FEBRUARY
INSTITUTE OF ADVANCED
LEGAL STUDIES
63510

B E T W E E N

DENNIS HOTELS PROPRIETARY LIMITED
(Plaintiff) ... Appellant

- and -

THE STATE OF VICTORIA AND HENRY
EDWARD BOLTE (Defendants) ... Respondents

10

- 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

THE STATE OF SOUTH AUSTRALIA AND THE
ATTORNEY-GENERAL OF THE STATE OF
SOUTH AUSTRALIA

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THE STATE OF WESTERN AUSTRALIA AND THE
ATTORNEY-GENERAL OF THE STATE OF
WESTERN AUSTRALIA

THE STATE OF TASMANIA AND THE ATTORNEY-
GENERAL OF THE STATE OF TASMANIA 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").

2. The High Court in this case decided that section

19(1)(a) of the Licensing Act 1928 of the State of Victoria as amended 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 that 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. 10

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 - 20

"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 the instant case, 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. 30

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 Victoria, and that the present appeal is therefore incompetent in the absence of a certificate of the High Court under section 74 of the Constitution of the Commonwealth. 40

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

(a) that the fee imposed by section 19(1)(a) 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.

G.E. BARWICK.

M.N. HELSHAM.

IN THE PRIVY COUNCIL No. 7 of 1961

O N A P P E A L

FROM THE HIGH COURT OF AUSTRALIA

B E T W E E N

DENNIS HOTELS PROPRIETARY
LIMITED (Plaintiff) Appellant

- and -

THE STATE OF VICTORIA AND
HENRY EDWARD BOITE
(DEFENDANTS) Respondents

- and -

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

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

COWARD, CHANCE & CO.,
St. Swithin's House,
Walbrook,
London, E.C.4.

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

IN THE PRIVY COUNCIL

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

BETWEEN :-

DENNIS HOTELS PROPRIETARY LIMITED
(Plaintiff) . . . Appellant

and

THE STATE OF VICTORIA and HENRY
EDWARD BOLTE (Defendants) Respondents

and

THE COMMONWEALTH OF AUSTRALIA
Intervener

and

THE STATE OF NEW SOUTH WALES and
the ATTORNEY-GENERAL OF NEW
SOUTH WALES . . . Interveners

and

THE STATE OF WESTERN AUSTRALIA and
the ATTORNEY-GENERAL OF THE STATE
OF WESTERN AUSTRALIA, and the
STATE OF SOUTH AUSTRALIA and the
ATTORNEY-GENERAL OF SOUTH
AUSTRALIA and the STATE OF
TASMANIA and the ATTORNEY-
GENERAL OF THE STATE OF TASMANIA
Interveners

C A S E

FOR THE INTERVENERS, THE STATE OF
WESTERN AUSTRALIA AND THE ATTORNEY-
GENERAL OF WESTERN AUSTRALIA AND THE
STATE OF SOUTH AUSTRALIA AND THE
ATTORNEY-GENERAL OF SOUTH AUSTRALIA
AND THE STATE OF TASMANIA AND THE
ATTORNEY-GENERAL OF THE STATE OF
TASMANIA.

FARRER & CO.,
66 Lincoln's Inn Fields,
London, W.C.2,

Solicitors for the above-named
Interveners.