

# In the Privy Council.

20 FEB 1957  
 INSTITUTE OF LEGAL STUDIES

## ON APPEAL

FROM THE HIGH COURT OF AUSTRALIA

IN THE MATTER of the Metropolitan and Export Abattoirs Act 1936-1952 (South Australia)

46031

and

IN THE MATTER of the Commerce (Meat Export) Regulations (Commonwealth) made under and pursuant to the Commonwealth Customs Act, 1901-1951

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AND

IN THE MATTER of a SPECIAL CASE referred by the Supreme Court of South Australia pursuant to Section 40A of the Commonwealth Judiciary Act 1903-1950.

BETWEEN

THOMAS O'SULLIVAN (Complainant) . . . *Appellant*

AND

NOARLUNGA MEAT LIMITED (Defendant) . . . *Respondent*

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THE COMMONWEALTH OF AUSTRALIA,  
THE STATE OF NEW SOUTH WALES and  
THE STATE OF TASMANIA . . . *Interveners.*

## Case

FOR THE INTERVENERS, THE COMMONWEALTH OF AUSTRALIA.

1. The Commonwealth of Australia (hereinafter called "the Intervening Party") adopts the statements as to the facts and as to the proceedings in the Courts below which are set out in the printed case of the Respondent Noarlunga Meat Limited.

2. The Intervening Party will adopt as its own the reasons set out in paragraphs 24 to 30 inclusive and paragraphs 32 to 36 inclusive and in the final paragraph of the Case for the Respondent.

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3. The Intervening Party will submit (on the grounds elaborated in sub-paragraphs (1) to (5) of paragraph 4 of this Case) that the present appeal is incompetent by reason of the absence of a certificate from the High Court of Australia under Section 74 of the Commonwealth of Australia Constitution Act 1900 (hereinafter called "the Constitution"), which certificate has been asked for and refused. If that submission be not accepted the Intervening Party will submit that the decision of the High Court is right on the further grounds contained in sub-paragraphs (6) to (9) of paragraph 4 of this Case.

4. The Intervening Party is interested to contend and will seek so far as is necessary to contend :—

- (1) THAT a decision as to the meaning of Section 109 of the Constitution, and a decision as to the application of Section 109 in the present case, each involve a question as to the limits *inter se* of the constitutional powers of the Commonwealth and the States within the meaning of Section 74 of the Constitution.
- (2) THAT a decision to what extent a Federal law is paramount and inconsistent with a State law necessarily involves the determination of the respective constitutional powers of the Commonwealth and State in relation to the matters dealt with or intended to be dealt with by the Commonwealth law. 20
- (3) THAT the principle laid down by Your Lordships' Board in the *Banking* case [1950] A.C. 235 at pp. 298 and 299, in the *Nelungaloo* case [1951] A.C. 34 at p. 53, and in *Maslen's* case [1952] A.C. 215 at p. 227, that an appellant may accept the determination of the High Court of Australia on an *inter se* question and appeal to Your Lordships' Board on other questions involved in the case which are not *inter se* questions, should not extend to cases where the legal conclusion is in fact single, although the steps in arriving at the conclusion may be capable of being stated as different logical conceptions. 30
- (4) THAT the views of the High Court of Australia upon the extent and operation of Section 51 (i) of the Constitution, and upon the meaning of Section 109 of the Constitution, and upon the operation of Section 109 in the present case, are matters so far intermingled and dependent on each other as not to furnish more than a single question for appeal ; and Section 74 of the Constitution would on its true construction exclude the appeal on that question from the jurisdiction of Your Lordships' Board in the absence of a certificate from the High Court. 40
- (5) THAT the construction of the Commerce (Meat Export) Regulations involves a question *inter se* of the constitutional powers of the Commonwealth and State.

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- (6) THAT the construction placed by the High Court of Australia on Section 109 of the Constitution is right. It is a construction which was placed by the High Court on the section in *Clyde Engineering Co. Ltd. v. Cowburn*, 37 C.L.R. 466, and it has since been followed by the High Court in a long line of cases.
  - (7) THAT the construction placed by the High Court upon the Commerce (Meat Export) Regulations is right.
  - (8) THAT there is inconsistency within the meaning of Section 109 of the Constitution between Section 52A of the Metropolitan and Export Abattoirs Act 1936–1952 of the State of South Australia and the Commerce (Meat Export) Regulations of the Commonwealth of Australia.
  - (9) THAT the Commerce (Meat Export) Regulations are a valid exercise of the powers conferred by Section 270 (1) (c) of the Customs Act 1901–1951 of the Commonwealth of Australia.

G. E. BARWICK.

JOHN BRUNYATE.

**In the Privy Council.**

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**Case**

FOR THE INTERVENERS, THE COMMONWEALTH  
OF AUSTRALIA.

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THE COMMONWEALTH OF AUSTRALIA.