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G.D.L. 6-6

31, 1951

31452

IN THE PRIVY COUNCIL

No. 31 of 1951

ON APPEAL FROM THE HIGH COURT OF AUSTRALIA

B E T W E E N: THE PERPETUAL EXECUTORS TRUSTEES  
AND AGENCY COMPANY (W.A.) LIMITED  
as Executor of the Will of  
Patrick Andrew Connolly deceased  
Appellant  
(Plaintiffs)

-and -

GEORGE ALFRED MASLEN, JOHN  
ANDREW MASLEN, KENNETH GEORGE  
MASLEN and RICHARD WALLACE  
MASLEN Respondents  
(Defendants)

-and -

COMMONWEALTH OF AUSTRALIA  
Intervening  
Party

CASE FOR THE INTERVENING PARTY, COMMONWEALTH OF AUSTRALIA

1. By leave of their Lordships of the Judicial Committee of the Privy Council given on the 16th October 1951, the Commonwealth of Australia (hereinafter called "the Intervening Party") was granted special leave to intervene in this appeal.

2. The Intervening Party adopts the statements as to the facts and as to the proceedings in the Courts below as set out in the Appellants and the Respondents printed cases.

10 3. As appears from the said printed Cases, this appeal is concerned inter alia with the question of the true construction of the Wool Realisation (Distribution of Profits) Act 1948 particularly Sections 10 and 29 thereof. The Respondents, as appears from Paragraphs 24 to 27 of their Case, contend that the construction of the said Section 29 for which the Appellants contend involves the

consequence that the section renders null and void  
contracts and dispositions relating to the  
20 beneficial interest in a share in a distribution  
under the Act; therefore, the Respondents contend,  
the Parliament of the Commonwealth of Australia  
exceeded its powers in passing the Section and the  
Section is ultra vires and inoperative; according  
to the Respondents' argument, this Appeal then  
raises a question as to the limits inter se of  
the Constitutional powers of the Commonwealth and  
those of the several States. Accordingly, the  
Respondents are seeking to contend in this  
30 Appeal, as appears from the first and second  
Reasons at the end of their Case, that this  
Appeal, does not lie without a certificate of  
the High Court of Australia under Section 74 of  
the Commonwealth of Australia Constitution Act  
1900; and further or in the alternative, that the  
said Section 29 is invalid.

4. In these circumstances the Intervening Party  
is interested to contend and will seek, if and  
in so far as may be necessary, to contend :-

40 (1) That if the validity of Section 29 of the  
Wool Realisation (Distribution of Profits)  
Act 1948, or of any other enactment of the  
said Act, should come into question in the  
consideration of this Appeal, an inter se  
question will have arisen, and Section 74  
of the Commonwealth of Australia Constitution  
Act 1900 would on its true construction  
operate to exclude this Appeal from the  
jurisdiction of Their Lordships' Board in  
50 the absence of a certificate from the  
High Court of Australia, which certificate  
has not been asked for or given. The  
Intervening Party will refer to and rely on  
the judgments of their Lordships of the  
Judicial Committee in Commonwealth of  
Australia v Bank of New South Wales (1950)  
A.C. 235; Nelungaloo Pty. Limited v  
Commonwealth and others (1951) A.C. 34; and  
Grace Bros. Pty. Limited v Commonwealth of  
60 Australia and another (1951) A.C. 53

(2) That if the validity of the said Section 29  
or of any other enactment of the said Act,  
should come into question in this Appeal,  
and if, further, it should be held that the

jurisdiction of Their Lordships' Board to enquire into the validity thereof is not excluded by the said Section, and any such other enactment, upon its true construction is valid.

(Sgd) G.E. BARWICK

JOHN MEGAW

No. 31 of 1951

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ON APPEAL FROM THE HIGH COURT  
OF AUSTRALIA

Between

THE PERPETUAL EXECUTORS TRUSTEES  
AND AGENCY COMPANY (W.A.) LIMITED  
the Executor of the Will of  
Patrick Andrew Connolly deceased

- and -

GEORGE ALFRED MASLEN, JOHN  
ANDREW MASLEN, KENNETH GEORGE  
MASLEN and RICHARD WALLACE  
MASLEN

- and -

COMMONWEALTH OF AUSTRALIA

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CASE FOR THE INTERVENERS

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

Solicitors for the Interveners