Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Colonial Sugar Refining Company, Limited v. *Irving, from the Supreme Court of Queensland; delivered the 28th March* 1906.

Present at the Hearing:

EARL OF HALSBURY.
LORD MACNAGHTEN.
LORD DAVEY.
LORD ROBERTSON.
LORD ATKINSON.
SIR ARTHUR WILSON.

[*Delivered by Lord Davey.*]

This is an Appeal from a Judgment of the Supreme Court of Queensland, dated the 4th September 1903, on a special case which was stated in an action brought by the Appellants against the Respondent claiming the return of certain excise duties levied between 8th October 1901 and 26th July 1902 on sugar, the property of the Appellants. The Appellants base their demand for return of the duties on two grounds—

(1.) That no excise duties could be lawfully imposed by the Parliament of the Commonwealth of Australia until the actual imposition of uniform customs duties by the same Parliament, which did not take place until after the passing of the Excise Tariff, by which the duties in question were made exigible.

(2.) That the duties were imposed in a manner which discriminated between States, or gave a preference to one State over another, in violation of the provisions of the Constitution.

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The Commonwealth of Australia Constitution Act 1900 (63 & 64 Vict., c. 12), came into force on the 1st January 1901. The following sections of the Constitution thereby established are material for the present purpose :—

"51. The Parliament shall, subject to this Constitution, "have power to make laws for the peace, order, and good "government of the Commonwealth with respect to" (amongst other things).

"(ii.) Taxation; but so as not to discriminate between "States or parts of States.

"86. On the establishment of the Commonwealth, the "collection and control of duties of customs and excise . . . . "shall pass to the Executive Government of the Common- "wealth.

"88. Uniform duties of customs shall be imposed within "two years after the establishment of the Commonwealth.

"90. On the imposition of uniform duties of customs the "power of the Parliament to impose duties of customs and of "excise . . . shall become exclusive, and" on the same event "all laws of the several States imposing duties of customs "and excise . . . . shall cease to have effect.

"99. The Commonwealth shall not, by any law or regulation "of trade, commerce, or revenue, give preference to one State "or any part thereof over another State or any part thereof."

On the 8th October 1901 the Minister for Trade and Customs moved a Resolution in Committee of Ways and Means of the House of Representatives that duties of customs and of excise should be imposed according to a tariff which included an excise duty on manufactured sugar, the produce of Australia, of three shillings per hundredweight. On the 26th July 1902 the Excise Tariff 1902 (No. 11 of 1902) founded on the Resolution of the 8th October 1901 was assented to, and on the 16th September 1902 the Customs Tariff 1902 (No. 14 of 1902) was assented to. The Excise Tariff contains the following sections :—

"4. The time of the imposition of uniform duties of "excise is the eighth day of October one thousand nine "hundred and one at four o'clock in the afternoon reckoned "according to the standard time in force in the State of "Victoria, and this Act shall be deemed to have come into "operation at that time.

"6. All duties of excise collected pursuant to any tariff or "tariff alteration shall be deemed to have been lawfully

" imposed and collected, and no additional duty shall be " payable on any goods on which duty was so collected merely " by reason that the rate at which the duty was so collected " is less than the rate of duty specified in this Act, and no " duty shall be payable in respect of goods delivered for home " consumption free of duty pursuant to any tariff or tariff " alteration."

By Section 5 of the Act all goods dutiable under the Schedule which were manufactured or produced in Australia before the time when such duties are deemed to have been imposed and were at the time subject to the control of the Customs or Excise supervision, or in stock, and on which no duty of customs or excise had been paid before that time, are made liable to the scheduled duties.

Between the 8th October 1901 and the 26th July 1902 the Respondent demanded from the Appellants, in respect of 6,700 tons of sugar produced in Queensland, sums amounting in the aggregate to 20,100*l*., as duty imposed on manufactured sugar, in accordance with the Resolution. The Appellants disputed their liability and deposited the amount in accordance with statutory provisions for that purpose. It is unnecessary now to discuss whether the payment of the duty could have been enforced before the passing of the Excise Tariff, 1902, and it is not now disputed that the Appellants are liable for the duty if the Act imposing the duty as from the 8th October 1901, was within the powers of the Parliament. It should be added that no duty has been paid or was payable on the sugar under the law of Queensland.

It is a little difficult to understand the first point taken by the Appellants. The Parliament had undoubted power to impose taxation under the express words of Section 51 of the Constitution, and it is not now disputed that the Parliament could, if it thought fit, make the Act retroactive, and impose the duties from the

date of the Resolution. That practice is (it is believed) universally followed in the Imperial Parliament, and (their Lordships were told) is common in the Colonial Legislatures in Acts of this description, and for obvious reasons it is convenient and almost necessary. There was nothing therefore in either the subject-matter of the Act, or in the mode of dealing with it which was beyond the power of the Parliament. But it is said that by Section 90 of the Constitution the Parliament was prohibited (for it must come to that) from imposing duties of excise until uniform duties of customs had been imposed. The section referred to does not contain any such prohibition. It is only enacted that on the given event the power to impose excise duties shall become exclusive. And their Lordships cannot find any implication, necessary or otherwise, of such prohibition in that section or any other part of the Constitution. There is no inconsistency in the co-existence of excise duties imposed by the Commonwealth and similar duties imposed by the States. All that can be said is, that if some of the States had imposed such duties in the interval between the Resolution and the passing of the Customs Act, which must have been collected by the Commonwealth officers, it might have given rise to some complications, and occasioned some administrative difficulty. It was further argued that the continued existence of the power of the States to impose excise duties would defeat the avowed object of the Act to impose uniform excise duties throughout the Commonwealth from the date of the Resolution, and the Act therefore to that extent failed of its purpose and attempted to do something which it could not do. Their Lordships do not find in any of these considerations sufficient reason for holding the Act to be *ultra vires* so far, at any rate, as

it imposed the duty in question as from the date of the Resolution. And with regard to the last point they observe that on the passing of the Customs Tariff, 1902, if not earlier, the provision for uniform duties of excise became operative by Section 90 of the Constitution. It is a plausible conjecture that it was contemplated by the authors of the Constitution that the Customs Tariff would precede the Excise Tariff, but either from an oversight or for some reason which does not appear, the Parliament thought fit to pass the Excise Tariff first. Their Lordships cannot say that it exceeded its powers by so doing.

The second point of the Appellants appears to their Lordships to be equally wanting in substance. The argument is to this effect. The effect of Section 5 of the Excise Tariff is to exempt from the duties thereby imposed goods on which customs or excise duties had been paid under State legislation, but inasmuch as the scale of duties differed in the several States, and in Queensland, for example, no excise duty was imposed on sugar, the exemption operated unequally on the traders and manufacturers of the several States. The grant of such an exemption was therefore said to be a discrimination between the States within the meaning of the Constitution, and it was added that whatever might be said about the excise duties, to grant an exemption for previous payment of customs duties was arbitrary and indefensible. Their Lordships cannot accede to this argument. The substance of the enactment in question is that goods which have already paid customs or excise duties shall not pay over again, and some such provision is obviously necessary in the transition from the old order to the new. The rule laid down by the Act is a general one, applicable to all the States alike, and the fact

that it operates unequally in the several States arises not from anything done by the Parliament, but from the inequality of the duties imposed by the States themselves. The exemption from the new excise duties on the ground of previous payment of customs duties seems justifiable and right in establishing a system based on the absolute freedom of trade among the States, and the substitution of a uniform excise for all inter-State duties on goods as well as what are strictly excise duties.

Their Lordships will therefore humbly advise His Majesty that this Appeal be dismissed, and the Appellants will pay the costs of it.