Solicitors, for the appellant, *Snowball & Kaufmann.*

Solicitors, for the respondent, *Malleson, Stewart, Stawell & Nankivell.*

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B. L.

GREENWAY v. McKAY.

Cons *State Chamber of Commerce & Industry* v *Cth* 61 ALJR 459

Dist *Mutual Pools & Staff Pty Ltd* v *FCT* (1992) 22 ATR 856

Dist *Mutual Pools & Staff Pty Ltd* v *FCT* (1992) 104 ALR 545

Appl *Mutual Pools & Staff Pty Ltd* v *Comr of Taxation* (1992) 66 ALJR 222

Cons *Cormack* v *Cope* (1974) 131 CLR 432

Appl *Northern Suburbs General Cemetery Reserve Trust* v *Commonwealth* (1993) 67 ALJR 290

Appl *Northern Suburbs General Cemetery Reserve Trust* v *Commonwealth* (1993) 112 ALR 87

Appl *Northern Suburbs General Cemetery Reserve Trust* v *Commonwealth* (1993) 25 ATR 1

Appl *Northern Suburbs General Cemetery Reserve Trust* v *Commonwealth* (1993) 176 CLR 555

Foll/Appl *Cornell* v *Deputy Commissioner of Taxation (SA)* (1920) 29 CLR 39

Refd to *DPP* v *Brown* (1998) 100 LGERA 181

Cons *Marquet* v *A-G (WA)* (2002) 193 ALR 269

[HIGH COURT OF AUSTRALIA.]

OSBORNE . . . . . PLAINTIFF;

AND

THE COMMONWEALTH AND GEORGE ALEXANDER McKAY (COMMISSIONER OF LAND TAX) . . . . . DEFENDANTS.

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MELBOURNE, *May* 23, 24, 25, 26, 29, 31.

Griffith C.J. Barton, O'Connor, Isaacs and Higgins JJ.

Commonwealth legislation, validity of—Incorporation of Act not yet assented to—Form and substance of Act—Direct and indirect effect—Power of taxation—Act imposing taxation—Act dealing with more than one subject of taxation—Act dealing with matters other than taxation—Severability—The Constitution (63 & 64 *Vict., c.* 12), *secs.* 51, 55, 99, 114—*Land Tax Act* 1910 (*No.* 21 *of* 1910), *sec.* 2—*Land Tax Assessment Act* 1910 (*No.* 22 *of* 1910).

The incorporation into the *Land Tax Act* 1910 by sec. 2 of that Act of the *Land Tax Assessment Act* 1910, which was not assented to until the following day, is effectual and the *Land Tax Act* 1910 with that incorporation is in substance and in form an Act imposing taxation and not an Act to prevent the holding of large quantities of land by single persons.

Per Griffith C.J., *Barton, O'Connor* and *Isaacs* JJ.—The *Land Tax Assessment Act* 1910 is not an Act imposing taxation within the meaning of sec. 55 of the Constitution.

Per totam curiam.—The *Land Tax Act* 1910 does not deal with any other subject of taxation than land, and does not in that respect infringe sec. 55 of the Constitution.

Semble, the effect of the second clause of sec. 55 of the Constitution is to render invalid an Act imposing taxation which deals with more than one subject of taxation.

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Per Higgins J.—Sec. 55 of the Constitution permits as many objects of taxation—persons to be taxed—as Parliament chooses to tax, and allows the insertion of any provision which is fairly relevant or incidental to the imposition of a tax on one subject of taxation.

The *Land Tax Act* 1910 read with the incorporated Act does not contain any provisions which, if they are invalid as being beyond the power of the Commonwealth Parliament to enact, are not severable from the rest of the Act under the rule laid down in *Rex* v. *Commonwealth Court of Conciliation and Arbitration*; *Ex parte Whybrow & Co.*, 11 C.L.R., 1, at p. 27, and the Act as a whole is valid.

Quære per Higgins J.—Whether an Act is void if it deal with more than one subject of taxation.

SPECIAL CASE stated for the opinion of the Full Court of the High Court.

Frank Osborne having brought an action in the High Court against the Commonwealth and George Alexander McKay, Commissioner of Land Tax, the parties concurred in stating the following special case for the opinion of the Full Court:—

1. This is an action in which the plaintiff sues (1) for a declaration that the Acts of the Commonwealth Parliament, the *Land Tax Act* 1910 and the *Land Tax Assessment Act* 1910, are not within the powers of the Commonwealth Parliament, and are invalid, and (2) for a declaration that secs. 10, 11 and 12 of the *Land Tax Assessment Act* 1910 did not lawfully impose or charge any tax upon the land of the plaintiff or upon the plaintiff in respect of his ownership of such land, and (3) for an injunction to restrain the defendant McKay as such Commissioner of Land Tax under the said Acts from requiring the plaintiff to furnish the returns specified under secs. 15 and 16 of the *Land Tax Assessment Act* 1910 in respect of his said land, and from valuing the said land, and from assessing him for any tax in respect thereof.

2. The plaintiff was before and on 30th June 1910 and still is a resident of the State of New South Wales.

3. The plaintiff on and before the said 30th June was and still is entitled to land situate in the said State for an estate of freehold in possession. The said land is of the unimproved value as defined by sec. 3 of the *Land Tax Assessment Act* 1910 of

£6,525 and is not exempt from taxation under any of the provisions of the said Act.

4. The plaintiff was on the said 30th June and still is the owner within the meaning of the said *Land Tax Assessment Act* 1910 of a leasehold estate in seven allotments of land situate at Neutral Bay, North Sydney, in the said State. The leases under which the plaintiff so holds were all made in the year 1884 before the commencement of the said Act, and the unimproved value of his said estate as defined by the said Act is £306, but if calculated according to the method directed by the defendant the Commissioner of Land Tax the unimproved value would be £400 at the least.

5. The plaintiff was on the said 30th June a person in whom land situated at Bantry Bay, Middle Harbour, in the said State was vested as a trustee for certain persons named Moir who are absentees within the meaning of the said Act, and the said land is under the said Act of a taxable value of £250.

6. The plaintiff had not before 30th September 1910 sold or agreed to sell any of the lands mentioned in the three preceding paragraphs.

7. The plaintiff was on the said 30th June the holder of 500 shares in the Sydney Ferries Ltd., and also jointly with others as beneficial owners was the holder of 1,799 shares in the Sydney Ferries Ltd. and also of 1,380 shares in the North Shore Gas Ltd. Land situate in the Commonwealth in excess of the taxable value thereof under the said Acts was on the said 30th June and still is owned by each of the said companies.

3. The plaintiff was on the said 30th June and still is the holder of a policy on his own life in the Australian Mutual Provident Society and the holder of several policies on his own life in the National Mutual Life Association of Australasia, and each of the said policies on the said date had and still has a surrender value and each of the said societies owns land situate in the State of New South Wales and elsewhere in the Commonwealth in excess of the taxable value thereof under the said Acts.

9. Regulations purporting to have been made under sec. 74 of the *Land Tax Assessment Act* 1910 have been published prescribing 1st March 1911 as the date on or before which returns

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must be furnished by taxpayers under the provisions of the said Act.

10. By reason of his ownership of the lands in paragraphs 3, 4 and 5 more particularly mentioned, and the regulations mentioned in paragraph 9 hereof, the plaintiff will be compelled to furnish returns of his said lands or if he fails to do so will become liable to the penalties provided under sec. 68 of the *Land Tax Assessment Act* 1910, and the defendant Mackay as such Commissioner of Land Tax will unless restrained by the High Court exercise the powers purporting to be conferred by secs. 17 (1) and 64 of the said *Land Tax Assessment Act* 1910 and cause his officers to enter upon the plaintiff's land and property and inspect the said land and the plaintiff's books and documents.

11. The lands of the plaintiff more particularly mentioned in paragraphs 3, 4, 5 and 6, by reason of the facts in the said paragraphs mentioned and by the provisions of the *Land Tax Act* 1910 and of secs. 10, 11, 12, 51 and 56 of the *Land Tax Assessment Act* 1910, purport to be charged with the amounts to be assessed in respect thereof for land tax under the said Act and the *Land Tax Act* 1910, and their use and value to the plaintiff have been diminished by the said alleged charge, and the defendant Mackay as such Commissioner of Land Tax will unless restrained by the High Court cause such alleged charge to be registered under the provisions of such sec. 56 (2) of the said latter Act.

12. The *Land Tax Act* 1910, No. 21 of 1910, was assented to by His Excellency the Governor-General of Australia on 16th November 1910 and the *Land Tax Assessment Act* 1910, No. 22 of 1910, was assented to by His Excellency the Governor-General on 17th November 1910.

13. The plaintiff will contend that on the said 16th November 1910 when the said *Land Tax Act* 1910 came into force, the said *Land Tax Assessment Act* 1910, which by sec. 2 of the former Act purported to be incorporated therewith and to be read as one with such Act, was not in existence.

14. The plaintiff will contend that the provisions of the said *Land Tax Act* 1910 of themselves, that is, without the provisions of the *Land Tax Assessment Act* 1910 are uncertain and unin-

telligible and incapable of imposing the alleged taxes sought to be enforced against the plaintiff or any taxation.

15. The plaintiff will contend that the provisions of the said *Land Tax Act* 1910, even if capable of being read with the provisions of the *Land Tax Assessment Act* 1910, are inconsistent, uncertain and unintelligible, and incapable of imposing the taxes sought to be enforced against the plaintiff or any taxation.

16. The plaintiff will contend that the effect of the matters alleged in paragraph 12 hereof are—(1) to make the alleged taxes now sought to be enforced against the plaintiff invalid, or (2) alternatively to make the said *Land Tax Assessment Act* 1910 a law imposing taxation within the meaning of sec. 55 of the Constitution.

17. The plaintiff will contend that the *Land Tax Act* 1910 if read as one with the *Land Tax Assessment Act* 1910 is a law imposing taxation within the meaning of sec. 55 of the Constitution, and is also a law, not being a law imposing duties of Customs or Excise, dealing with more than one subject of taxation within the meaning of that section.

18. The plaintiff will contend that the *Land Tax Assessment Act* 1910 is (apart from the matters alleged in paragraphs 12, 13, and 16 hereof) a law imposing taxation within the meaning of sec. 55 of the Constitution and deals with matters other than the imposition of taxation, and is also a law, not being a law imposing duties of Customs or Excise, dealing with more than one subject matter of taxation within the meaning of that section.

19. The plaintiff will contend that the *Land Tax Act* 1910 and the *Land Tax Assessment Act* 1910 are not within the competence of the Parliament of the Commonwealth, inasmuch as they are not laws for the peace, order and good government of the Commonwealth with respect to "taxation" not otherwise within the competence of the said Parliament, but are Acts to prevent persons resident in the Commonwealth from holding and owning large areas of land, and to prevent persons not resident in the Commonwealth from holding and owning land within the Commonwealth.

20. The plaintiff will contend that the said Acts are not within the competence of the Commonwealth Parliament, inasmuch as

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they are not Acts imposing taxation nor otherwise within the competence of the said Parliament, but are Acts controlling the domestic affairs of the States, which are by the Constitution reserved to the States, by regulating the ownership of the lands of the States in respect of the areas to be held by residents of the States, and in respect of the residence of the persons who may be owners of the said land.

21. The plaintiff will contend that the said Acts are not within the competence of the Parliament of the Commonwealth because they are Acts to limit the ownership of lands within the States to persons who are residents of the Commonwealth and to persons holding areas of land not exceeding £5,000 in value, and are invalid as dealing with matters reserved to the States by the Constitution.

22. The plaintiff will contend that the said Acts are not an exercise of the power of taxation, but are Acts to regulate land ownership and are invalid.

23. The plaintiff will contend that the said Acts are laws with respect to the acquisition of land by the Commonwealth, but not in pursuance of any power possessed by the Parliament of the Commonwealth.

24. The plaintiff will contend that so much of the provisions of the said Acts as relates to taxation of land or to the taxation of interests in land of themselves discriminate between States and parts of States and given preference to States and parts of States over other States and parts thereof, and also give power to the Commissioner under sec. 17 and to the Board mentioned in sec. 66 to so discriminate and give preference, and that the said Acts are therefore not within the competence of the Parliament of the Commonwealth.

25. The plaintiff will contend that the provisions of secs. 11, 30, 38, 39, 40, 41, 48, 63, 66, 69, 70, and 71 of the *Land Tax Assessment Act* 1910 are respectively not within the competence of the Parliament of the Commonwealth, and that if any of the said provisions are held to be invalid the remainder of the Act would be substantially different from the Act intended to be enacted.

26. The plaintiff will contend that the said Acts purport to impose a tax on property belonging to the States and are invalid.

27. The defendant will contend that the *Land Tax Act* 1910 and the *Land Tax Assessment Act* 1910 are within the competence of the Federal Parliament and are valid and effectual to impose taxation and to provide for its assessment and collection.

28. The defendant will contend that each of the sections of the *Land Tax Assessment Act* 1910 referred to in paragraph 25 above is within the competence of the Federal Parliament and is valid, and alternatively that if any of the sections are invalid they and each of them are severable from the rest of the Act, and their invalidity, if invalid, does not affect the validity of the rest of the Act.

29. The parties to this cause agree that the Court shall give its decision upon the questions arising hereunder, and shall, if it decide in favour of the plaintiff, give him relief by injunction or otherwise, and in any event make such order respecting the claim of the plaintiff and the costs of this cause and special case as to the Court may seem fit.

Mitchell K.C. and *Knox* K.C. (with them *Blacket*), for the plaintiff. The *Land Tax Assessment Act* 1910 not being in force when the *Land Tax Act* 1910 was assented to and the latter Act by sec. 2 incorporating the former, the former was unintelligible and imposed no taxation, and the *Land Tax Assessment Act* on being assented to was an Act imposing taxation. The Schedules to the *Land Tax Act* show clearly that it would be unworkable without the *Land Tax Assessment Act.*

The impost which this legislation seeks to impose is not taxation at all. Taxation implies placing an impost upon some class of persons, and to select an individual and put an impost upon him is not taxation. This principle applies here for, a certain class having been selected, power is given by sec. 66 of the *Land Tax Assessment Act* to except individuals in case of hardship. The tax must be universal on the specific class, and if there is power to except individuals there is power to tax named individuals: *Cooley on Taxation*, 3rd ed., vol. I., p. 4.

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[ISAACS J. referred to *Delaware Railroad Tax* (1)].

For the purpose of taxation the Commonwealth can select for taxation any existing classes of individuals or things, but cannot create artificial entities which do not exist under the State law: *Licence Tax Cases* (2); *McCray* v. *United States* (3). The implied restrictions on legislation apply with special force to State lands because land has always been recognized as peculiarly a subject from which the States may raise revenue, because land has always been regarded as outside the interference of other Governments, and because it is implied from the Constitution that the power of the Commonwealth to deal with or control land is limited to certain modes and purposes. See secs. 51 (XXXI.), 52 (I.), 111, 114 and 123 of the Constitution. The true nature and character of the Act within the principal laid down in *The King* v. *Barger* (4) is not to impose taxation, but to control matters which are by the Constitution essentially left to the States, namely, the mode of disposing of Crown lands, the aggregation of large estates, and the holding of land by absentees. See *Cooley on Taxation*, 7th ed., p. 169 (*n*); *Russell* v. *The Queen* (5); *Prentice and Egan* on the Commerce Clause, p. 129; *Attorney-General for Quebec* v. *Queen Insurance Co.* (6).

The legislation cannot be described as land tax legislation, but it imposes a tax on persons in respect of various matters, *e.g.*, ownership of land, ownership of shares in a company, ownership of a policy of life assurance, &c.

If the *Land Tax Assessment Act* can be read into the *Land Tax Act* so that the latter imposes taxation, or if the *Land Tax Assessment Act* alone can be regarded as imposing taxation, the legislation in either case is contrary to the second clause of sec. 55 of the Constitution, and is invalid, for it deals with more than one subject of taxation. The effect of that second clause is that an Act which infringes the provision is invalid. That is borne out by the change of language from that used in secs. 53 and 54.

[ISAACS J. referred to *Cooley on Taxation*, 7th ed., p. 211; *Sutherland's Statutory Construction*, p. 121.]

(1) 18 Wall., 206.
(2) 5 Wall., 462.
(3) 195 U.S., 27.
(4) 6 C.L.R., 41.
(5) 7 App. Cas., 829, at p. 839.
(6) 3 App. Cas., 1090.

If an Act infringes that clause it is not an Act within the power conferred by sec. 51 of the Constitution. [They referred to *Sutherland's Statutory Construction*, 2nd ed., p. 187; *Dorsey's Appeal* (1); *Commonwealth* v. *Martin* (2); *La Plume Borough* v. *Gardner* (3).] Taking these Acts as being intended to impose a land tax, what is meant by a land tax? A land tax is either a tax on the ownership of land or of some interest therein known to the law of the place where the tax is to operate, or it is a tax to be paid by the owner of land or by some person having such an interest therein. If in these Acts there is found a tax imposed which cannot with reasonable accuracy be called a land tax as so defined, the Acts offend against the prohibition of the second clause of sec. 55 of the Constitution. Taking the plain meaning of the words used, secs. 36, 39, 40 and 41 seek to impose taxes which cannot be called land taxes as so defined: *Pacific Co-operative Steam Coal Co.* v. *Railway Commissioners of New South Wales* (4); *Bank of New South Wales* v. *Piper* (5). By sec. 36 a husband becomes liable in respect of his wife's land for a tax at an increased rate on his own and his wife's land. Sec. 39 purports to tax shareholders resident out of the jurisdiction of the Commonwealth, and the Commonwealth Parliament has no power to do this. The only authority is to tax persons, property, or businesses within the jurisdiction of the Commonwealth: *Louisville and Jeffersonville Ferry Co.* v. *Kentucky* (6); *Case of State Tax on Foreign-Held Bonds* (7); *Van Allen* v. *The Assessors* (8); *Woodruff* v. *Attorney-General for Ontario* (9); *Gloucester Ferry Co.* v. *Pennsylvania* (10). The shareholders of a company are not the owners of land of the company, and have no interest in it.

[ISAACS J. referred to *Birch* v. *Cropper*; *In re Bridgewater Navigation Co. Ltd.* (11).]

A company is a distinct legal entity and the whole of the rights of the shareholders are governed by Statute, behind which you cannot go to look at the substance of the matter: *Salomon*

(1) 72 Penn. St. R., 192.
(2) 107 Penn. St. R., 185.
(3) 148 Penn. St. R., 192.
(4) (1904) A.C., 795.
(5) (1897) A.C., 383.
(6) 188 U.S., 385.
(7) 15 Wall., 300.
(8) 3 Wall., 573.
(9) (1908) A.C., 508.
(10) 114 U.S., 196, at p. 208.
(11) 14 App. Cas., 525, at p. 543.

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v. *Salomon & Co. Ltd.* (1). In *Birch* v. *Cropper* (2) the question under discussion was whether in a distribution of the assets of a company in liquidation holders of shares partly paid up were entitled to be paid the same amounts as holders of shares fully paid up. The statement there that shareholders are interested in the property of the company in proportion to their shares must be taken having regard to the circumstances of the case. The rights, liabilities and status of shareholders may be different in a liquidation from what it is when the company is a going concern. Sec. 40 also seeks to impose a tax upon persons who are not the owners of any interest in the particular land. It seeks to impose a tax upon a shareholder of one company in respect of land belonging to another company. Sec. 41 is open to the same objection. The policy holders of a mutual life assurance society cannot be said to have any interest in the lands of the society.

If the *Land Tax Assessment Act* either by itself or as incorporated in the *Land Tax Act* be an Act imposing taxation, then by virtue of the first paragraph of sec. 55 of the Constitution all the sections in it which deal with anything else than the imposition of taxation are invalid. Thus, sec. 30 seeks to render invalid certain covenants in leases and sec. 63 to make void contracts to alter the incidence of the tax. These sections are so bound up with the rest of the Act as to render the whole Act invalid: *The King* v. *Barger* (3); *Quick & Garran's Australian Constitution*, p. 675. Other sections, which are invalid for various reasons apart from sec. 55 of the Constitution, are also so bound up with the rest of the Act as to render the whole invalid. Thus sec. 25 is by reason of the proviso invalid under sec. 99 of the Constitution as giving a preference to States where the classes of estates there mentioned exist. Secs. 26, 27, 28 and 29 purport to impose a tax on Crown lands contrary to sec. 114 of the Constitution: *D'Emden* v. *Pedder* (4). This is emphasized by sec. 56 which makes the tax a first charge on the land. Until the Crown has passed the grant of the fee simple the land is not taxable: *Railway Co.* v. *Prescott* (5); *Railway Co.* v. *McShane* (6);

(1) (1897) A.C., 22, at pp. 30, 51.
(2) 14 App. Cas., 525.
(3) 6 C.L.R., 41, at p. 77.
(4) 1 C.L.R., 91.
(5) 16 Wall., 603, at p. 608.
(6) 22 Wall., 444.

Wisconsin Central Railroad Co. v. *Price County* (1); *Municipal Council of Sydney* v. *Commonwealth* (2); *Judson on Taxation*, p. 26: *Stearns* v. *Minnesota* (3); *Cooley on Taxation*, 7th ed., p. 135.

[ISAACS J. referred to *Northern Pacific Railroad Co.* v. *Traill County* (4); *Buford* v. *Houtz* (5); *Colorado Co.* v. *Commissioners* (6); *Northern Pacific Railroad Co.* v. *Patterson* (7).

HIGGINS J. referred to *Forbes* v. *Gracey* (8).]

Those sections if valid would practically give the Parliament of the Commonwealth direct control over the disposition of land by the States. Secs. 48, 69, 70 and 71 are invalid as enabling the Commonwealth to acquire land in a way not authorized and impliedly forbidden by the Constitution. If these sections be invalid, the Act without them would be quite a different Act: *Pollock* v. *Farmers' Loan and Trust Co.* (9); *Owners of S.S. Kalibia* v. *Wilson* (10).

[They also referred to *Campbell* v. *Hall* (11); *Stephens* v. *Abrahams* (12); *Sutherland's Statutory Construction*, 2nd ed., vol. I., p. 250.]

Duffy K.C. and *Piddington* (with them *Armstrong*), for the defendants. It cannot be said as to these Acts, as the Court found that it could say in *The King* v. *Barger* (13), that they are not really Acts to impose taxation, but are solely Acts to deal with matters over which the States have the sole control. The effect of the second clause of sec. 55 of the Constitution is not to invalidate an Act which deals with more than one subject of taxation. According to English parliamentary practice it would be proper for the House of Commons to send up to the House of Lords a taxation Bill dealing with two subjects of taxation, but it would not be proper to send up a Bill dealing with taxation and some other subject matter which had nothing to do with taxation. The latter position is dealt with in the

(1) 133 U.S., 496, at p. 504.
(2) 1 C.L.R., 208.
(3) 179 U.S., 223, at p. 251.
(4) 115 U.S., 600, at p. 608.
(5) 133 U.S., 320, at p. 332.
(6) 95 U.S., 259, at p. 265.
(7) 154 U.S., 130, at p. 132.
(8) 94 U.S., 762.
(9) 158 U.S., 601.
(10) 11 C.L.R., 689.
(11) 1 Cowp., 204, at p. 213.
(12) 29 V.L.R., 229, at pp. 242, 248; 24 A.L.T., 216.
(13) 6 C.L.R., 41.

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first part of sec. 55, and the penalty is that the provisions dealing with the other subject matter shall be void, and it cannot have been intended that in dealing with the former position, which presents the lesser offence, the penalty should be more severe, namely, the invalidity of the whole Act. [They referred to *Howard* v. *Bodington* (1)]. Even if such an Act is rendered invalid, there is no inclusion of more than one subject of taxation in the *Land Tax Act*, which is the Act that imposes taxation. Without sec. 2 that Act would have imposed a tax on the ownership of land, but there might be some difficulty in carrying it out, but with sec. 2 it is to have operation when something comes into existence which will make it quite plain, namely, the *Land Tax Assessment Act*. Even if the latter Act is to be read with the *Land Tax Act*, the whole is an attempt to impose a land tax and no other tax. But the *Land Tax Act* is the Act which imposes the land tax, and the *Land Tax Assessment Act* provides the machinery for carrying the former Act into effect and contains nothing which makes it a law imposing taxation. Secs. 26 to 29 follow out sec. 14 (*b*). The word "land" in them means an interest in land: *Acts Interpretation Act* 1901, sec. 22. Sec. 26 provides for the taxation of persons having certain interests in Crown lands, and sec. 29 makes provision exempting certain leasehold estates which would be inconsistent with sec. 26 but for the exception in it. The effect of sec. 56 as applied to secs. 26 to 29 is to make the tax a first charge on the interest of the person sought to be taxed. Those secs. do not purport to tax land of the Crown. Even if they did they are severable from the rest of the Act. Sec. 30 is clearly severable, and, in addition, is a proper exercise of the power to impose a land tax, being ancillary to that power. Although the divisions of interests in land may be different in different States, the Commonwealth Parliament may make its own estimate of who are interested in land apart altogether from the laws of the different States. Sec. 37 is an attempt to tax the owner of land where there has been a sale. As to secs. 39 and 41, it is essential in imposing taxation to see that no change of appearance shall have the effect of destroying a man's real interest in land. A shareholder of a

(1) 2 P.D., 203.

company has a real interest in the land of the company in the same way as he has in interests in the contracts of the company: *Todd* v. *Robinson* (1). He is in substance one of several partners owning land. Secs. 36 and 40 also seek to impose a land tax. They seek to tax the real interest of the taxpayer. Sec. 37 merely provides a rule for finding out who is the owner. Sec. 41 has the object of putting a mutual life assurance society in the position of a trustee for the purpose of taxing the policy holders, instead of in the position of a company. It seeks to impose a land tax, and in any view is severable from the rest of the Act. Even if secs. 30 and 63 are not severable they are clearly ancillary to the power of land taxation: *Addyston Pipe and Steel Co.* v. *United States* (2); *Federated Amalgamated Government Railway and Tramway Service Association* v. *New South Wales Railway Traffic Employés Association* (3); *Pacific Insurance Co.* v. *Soule* (4); *Grand Trunk Railway Co. of Canada* v. *Attorney-General of Canada* (5). Sec. 48 and the other penal sections 69, 70 and 71 are clearly severable. They merely do what is done in every Customs Act, and are ancillary to the power of taxation. [They also referred to *Sutherland's Statutory Construction*, 2nd ed., p. 192.]

Mitchell K.C., in reply.

Cur. adv. vult.

May 31.

GRIFFITH C.J. The substantial relief claimed in this action is a declaration that Act No. 21 of 1910, which is entitled "An Act to impose a Progressive Land Tax on Unimproved Values," and was assented to on 16th November 1910, and Act No. 22 of 1910 which is entitled "An Act relating to the Imposition, Assessment and Collection of a Land Tax upon Unimproved Values," and assented to on the following day, are invalid. The short title of Act No. 22 is the *Land Tax Assessment Act* 1910. Act No. 21, the short title of which is the *Land Tax Act* 1910, merely provides that the *Land Tax Assessment Act* 1910 shall be incorporated and read as one with the *Land Tax Act* (sec. 2), that

(1) 14 Q.B.D., 739, at p. 744.
(2) 175 U.S., 211.
(3) 4 C.L.R., 488, at p. 541.
(4) 7 Wall., 433.
(5) (1907) A.C., 65.

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land tax is imposed at the rates declared in the Act and Schedules (secs. 3 and 4), and that it shall be levied and imposed in and for the financial year beginning 1st July 1910 and each year thereafter (sec. 5). Under the Schedules higher rates of tax are imposed upon absentees than upon non-absentees. The nature of Act No. 22 is sufficiently expressed in its title which I have read.

Various grounds of objection were taken to these Acts, which may be thus summarized:—(1) That as the *Land Tax Assessment Act* referred to in sec. 2 of Act No. 21 was not in existence as a law on 16th November, the reference to it in the Act passed on that day is meaningless:

(2) That the Acts are not in substance an exercise of the taxing powers of the Commonwealth, but an attempt to regulate the holding of land in the Commonwealth, which, it is contended, is *extra vires* the Parliament:

(3) That the Acts either together or separately are in contravention of sec. 55 of the Constitution:

(4) That several provisions of Act No. 22 are invalid for various reasons, and that the invalid parts are so closely bound up with the remainder that the whole Act must be held invalid, in accordance with the rule laid down in the *Bootmakers' Case* (1) and applied in *Owners of S.S. Kalibia* v. *Wilson* (2) at the end of last year.

The first point, that the attempt to incorporate an Act which was not in existence is meaningless and ineffectual, was not very seriously pressed, and indeed could not be. In construing any Act the duty of the Court is to ascertain what the legislature meant. Now what did they mean when they spoke of the *Land Tax Assessment Act* 1910? As a matter of common sense they meant to refer to an Act of that name which was then in process of enactment. As soon as it became law the Act, although before ineffective, became effective. So that there is nothing in the objection.

In support of the second objection—that is, that the Acts are not in substance an exercise of the power of taxation—it is contended that the real purpose of the so-called taxation is not so

(1) 11 C.L.R., 1. (2) 11 C.L.R., 689.

much to raise revenue as to prevent the holding of large quantities of land by a single person. There is no doubt that that may be the consequence of the imposition of a progressive land tax, and it may well be that that indirect consequence was contemplated and desired by the legislature. But, as was pointed out by this Court in *R.* v. *Barger* (1), although it is a frequent result of taxation to bring about indirect consequences which could not practicably, or could not so easily, be brought about by other means, yet the circumstance that taxation has such a result is irrelevant to the question of the competence to impose the tax. In my opinion these Acts are in substance as well as in form Acts imposing taxation, although there may be some provisions which may be open to objection upon other grounds. That objection therefore fails.

The objection founded upon sec. 55 of the Constitution takes two forms. That section contains two provisions :—" Laws imposing taxation shall deal only with the imposition of taxation, and any provision therein dealing with any other matter, shall be of no effect."

" Laws imposing taxation, except laws imposing duties of Customs or of Excise, shall deal with one subject of taxation only; but laws imposing duties of Customs shall deal with duties of Customs only, and laws imposing duties of Excise shall deal with Excise only."

The objection based on the first paragraph goes only to some parts of the Act; that based on the second paragraph goes to the whole Act. I will deal with the second branch first.

The contention is that the Acts in question deal with more than one subject of taxation, and are therefore wholly invalid. An interesting argument was addressed to the Court as to the effect of a violation of that provision, and a subsidiary argument whether the *Land Tax Assessment Act* is a law imposing taxation within the meaning of sec. 55. In the view I take of another branch of the case it is not necessary to express a concluded opinion on this point, but I think it right to say a few words about it. Some confusion was introduced into the argument, I think, by the tacit assumption that a law dealing with

(1) 6 C.L.R., 41.

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taxation is necessarily a law imposing taxation. But that is not so. The terms are not synonymous. An Act imposing taxation may, like the English annual Finance Acts, both impose taxes and contain a complete scheme for their collection. Or the Act may impose taxation *eo nomine*, leaving its collection to be regulated by other laws. Now, Act 22, when examined, does not on its face purport to impose taxation at all. Sec. 10, which is the foundation of the whole structure, provides that—"(1) Subject to the provisions of this Act, land tax shall be levied and paid upon the unimproved value of all lands within the Commonwealth which are owned by taxpayers, and which are not exempt from taxation under this Act." The term "land tax" is defined in sec. 3 as meaning "the land tax imposed as such by any Act, as assessed under this Act." Now if you substitute the words given in the interpretation clause for the words, "land tax" in sec. 10, you get this:—"Land tax imposed as such by any Act shall be levied and paid" &c. The Act then goes on to make provision for assessing and levying the tax, which it assumes to have been imposed by another Act. That, however, does not dispose of the objection, for, if Act No. 22 itself deals with more than one subject of taxation, though under a single name, Act 21 by incorporating it is guilty of the same offence and is obnoxious to sec. 55 of the Constitution. So that point must be examined.

On the question whether a transgression of the provisions of the second paragraph of that section is fatal to the validity of the Act, I would remark that the change of language in sec. 55 from that in secs. 53 and 54 primarily imports a change of intention. Secs. 53 and 54 deal with "proposed laws"—that is, Bills or projects of law still under consideration and not assented to—and they lay down rules to be observed with respect to proposed laws at that stage. Whatever obligations are imposed by these sections are directed to the Houses of Parliament whose conduct of their internal affairs is not subject to review by a Court of law. Sec. 55, on the other hand, deals with proposals which have received the Royal assent, and which can be reviewed by Courts of law, if they offend against constitutional provisions. I should hestitate very much before holding that a

provision such as that, which in form is prohibitory, is a mere counsel of perfection. On the other hand, Courts of law would lean rather to support than to deny the validity of an Act in case of a mere technical or incidental transgression of the injunction not affecting the substance of the legislation, and, if the provision objected to were capable of two constructions, would if possible adopt that which would not invalidate the law. I think it right to say so much, but I do not think it necessary to say more.

I proceed now to refer to the provisions which are relied upon as infringing the rule laid down by sec. 55 of the Constitution.

I will take, first, sec. 39 of Act No. 22, which is the best illustration. That section provides that:—"All land owned by a company shall be deemed (though not to the exclusion of the liability of the company or of any other persons) to be owned by the shareholders of the company as joint owners, in the proportions of their interests in the paid-up capital of the company.

"(2) The provisions of sec. 38 of this Act shall apply accordingly (but so that the assessment and liability of the company shall be in lieu of the joint assessment and liability under sub-sec. 2 of that section), and the shareholders shall be separately assessed and liable, and entitled to deductions, in accordance with that section."

Sec. 38 provides that where there are joint owners, "The joint owners shall be jointly assessed and liable in respect of the land as if it were owned by a single person," but that "each joint owner of land shall in addition be separately assessed and liable in respect of—

"(*a*) his individual interest in the land . . . . . together with

"(*b*) any other land owned by him in severalty, and

"(*c*) his individual interests in any other land,"

with provisions for avoiding double taxation, &c.

In sec. 39 Parliament has clearly proceeded upon the assumption that the members of a joint stock company which owns land are in substance the beneficial owners of that land in proportion to their interests in the paid-up capital of the company. In support of that view the words of Lord *Macnaghten* in *Birch* v. *Crop-*

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per; *In re Bridgewater Navigation Co. Ltd.* (1), were referred to:—"Every person who becomes a member of a company limited by shares of equal amount becomes entitled to a proportionate part in the capital of the company, and, unless it be otherwise provided by the regulations of the company, entitled, as a necessary consequence, to the same proportionate part in all the property of the company, including its uncalled capital." The learned Lord in that case was speaking of the rights of members of a company when all its objects are completed and it is simply a question of distributing its assets, but as a proposition of law it cannot be assailed. The contention is that this is an erroneous view, and that members have in the eyes of the law no interest in the land. If the case is considered apart from the positive law relating to the juridical relations *inter se* of joint stock companies and their members, the assumption is in accordance with the actual facts. It is true that members have no legal estate in the land, but why should not Parliament act on the basis of their substantial beneficial interest in the land? The only ground for saying that Parliament cannot do so is that it is *extra vires* as interfering with a matter pertaining exclusively to the States. Reduced to its naked form the objection is that Parliament has attempted to make persons who are not owners of land liable to pay land tax in respect of it. Suppose they have. The subject of taxation is still land, but an attempt is made to make persons pay tax in respect of it who have no connection with the land. It is, therefore, not necessary to express any opinion as to the validity of the provision, which is an attempt to make persons liable to land tax who are not formally the legal owners of land, but I do not encourage anyone to act upon the assumption that it is invalid.

I will deal next with sec. 41, which provides that:—"Land owned by a Mutual Life Assurance Society (not being land of which the society is mortgagee in possession, or which the society has acquired under or by virtue of a mortgage) shall be deemed to be owned by the society as trustee for the several Australian policy-holders as beneficial owners in severalty in proportion to the surrender values of their policies as determined according to

(1) 14 App. Cas., 525, at p. 543.

a method to be prescribed." Reference is made implicitly to secs. 33 and 62. Sec. 33 provides that:—"Any person in whom land is vested as a trustee shall be assessed and liable in respect of land tax as if he were beneficially entitled to the land:

"Provided that where he is the owner of different lands in severalty, in trust for different beneficial owners who are not for any reason liable to be jointly assessed, the tax so payable by him shall be separately assessed in respect of each of those lands," &c. The result of that is that each policy holder is deemed to be the holder of a separate piece of land of a value proportionate to the surrender value of his policy, and that the society is to be deemed to be a trustee for him of that piece of land in severalty. It follows that if the land is taxable as property of the policy holder, that is, if the value is such that, with or without other land of which he is the owner, it is liable to the tax, the society is responsible for the tax, but in one event only, namely, if it has property of the policy holder in its hands and disposes of it without providing for the tax, but not otherwise. That is the effect of sec. 62 (*f*). If for any reason the land is not taxable as property of the policy holder, no question arises. If it is, he must pay the tax. The general funds of the society are not liable in respect of the tax except by way of penalty. Whether the policy holders can be made liable in this way is substantially the same question as that which I have discussed under sec. 39 and must be resolved in the same way. It may be that the provision may be ineffectual to reach the policy holders or some of them, for instance, holders of non-participating policies, but in any view the subject matter of taxation is land and nothing else.

Secs. 36 and 40, the other sections relied upon, raise substantially the same question. Sec. 36 provides that if a husband transfers land to his wife or a wife to her husband, in certain events they are to be deemed to be joint owners of the whole of the land owned by either. Sec. 40 provides that two or more companies which consist substantially of the same shareholders are to be deemed to be a single company and shall be assessed and liable accordingly, and that two companies are to be deemed to consist of substantially the same shareholders if not less than three-fourths of the paid up capital of each is held by or on behalf

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of shareholders of the other. In the case of each of those sections the provision, if valid, may render a person liable, directly or indirectly, for land tax upon land in which he has no estate legal or equitable. But whether that provision is valid or not, the subject matter of taxation is still land. The utmost effect is that an ineffectual attempt is made to strike a man who cannot be struck.

I do not think it necessary to refer in detail to two or three other sections which it is contended are open to the same objection. The result is that the Act as a whole is not invalid on this ground.

The objection based on the first paragraph of sec. 55 of the Constitution is not material. The only effect is that, if the Act is a law imposing taxation, any provisions which do not deal with the imposition of taxation are of no effect, but the rest of the Act remains in force. The sections mainly relied on under this objection are secs. 30 and 63, which purport to render invalid certain agreements relating to the incidence of land tax, and it is contended that that is a matter within the exclusive competence of the State legislatures. I express no opinion upon the validity of the objection, which may some day fall to be decided in some concrete case.

I now turn to the sections which are objected to as being *ultra vires* upon grounds other than those based on sec. 55 of the Constitution, and which are said to be so intimately bound up with the rest that if they go the whole Act must fall. The first is sec. 26, which provides that:—"The holder of land under a purchase or a right of purchase from the Crown upon conditions, under the laws of a State relating to the alienation of Crown lands, shall be deemed to be the owner of the land if all the conditions other than the payment of purchase money have been fulfilled, but not otherwise." Sec 29 provides that:—"Notwithstanding anything in the last two preceding sections, the owner of a leasehold estate under the laws of a State relating to the alienation or occupation of Crown lands or relating to mining (not being a perpetual lease without revaluation, or a lease with a right of purchase) shall not be liable to assessment in respect of the estate." It is suggested that these sections impose a tax

upon Crown lands, which, of course, is prohibited by sec. 112 of the Constitution. Sec. 26 deals with the holders of land with a right of purchase from the Crown, a form of tenure well known in Australia, and particularly in New South Wales. A person who holds a certificate of fulfilment of the conditions has a marketable title practically equivalent to a grant in fee, subject to payment of the balance of the purchase money. He is substantially the owner, and sec. 26 says that he is to be deemed to be the owner for the purpose of the Act, just as is a mortgagor. Secs. 27 and 28 deal with leasehold estates, and sec. 29 provides that notwithstanding the provisions of those sections, the owner of a leasehold estate under the laws of a State relating to the alienation or occupation of Crown lands shall not be liable to assessment or taxation with two exceptions mentioned. Now, the holder of a perpetual lease is to all intents and purposes the holder of an estate in fee, and "a lease with a right of purchase" refers to the right of purchase mentioned in sec. 26. If the provision in sec. 29 were not introduced there would or might be an apparent repugnancy between the two sections. Then the plaintiff relies upon sec. 56, which provides that land tax shall be a first charge upon the land taxed, as showing that the land is charged in the hands of the Crown. If sec. 56 should be so construed it would be *pro tanto* invalid under sec. 112 of the Constitution. But I do not think that that is the true construction, and, if it were, the only consequence would be that the provision would *pro tanto* be inoperative. Another section referred to is sec. 48, which contains a provision for the acquisition of land by the Commonwealth by way of penalty upon persons who make under-valuations of their land. Considering that the subject matter of the tax is land, it is contended that the wholesale acquisition of land by the Commonwealth to be held free from State taxation and not applied to Commonwealth purposes is not only not authorized by the Constitution, but is impliedly forbidden. I regard the question as one of some difficulty, but the provision stands quite apart from the taxing provisions of the Act. Similar arguments were used as to secs. 69 to 71, which purport to impose forfeiture of land as a penalty for fraud. The same answer may be made—that it has nothing to

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do with the taxation of land, but merely with the enforcement of a duty. It is not necessary to express any opinion on this objection, and I refrain from doing so.

Even if the sections as to the validity of which I have not expressed any opinion are invalid as being *extra vires* the Parliament, they are clearly severable from the rest of the Act, since the Act with these sections would, to adopt my own words in the *Bootmaker's Case* (1), not be "substantially a different law as to the subject matter dealt with by what remains from what it would be with" those sections forming part of it.

I have only one other observation to make. When an Act creates a debt payable by A., and also attempts to enforce payment of A.'s debt by B., I think that the law, so far as regards the relations between A. and his creditor, is substantially the same whether the attempt to enforce the debt as against B. is or is not effectual. For these reasons I think all the objections fail, and that there should be judgment for the defendants.

BARTON J. read the following judgment:—The facts and contentions are set out in the special case. The question for decision is whether, by reason of any of these facts and the contentions founded upon them, the *Land Tax Act*, No. 21 of 1910, and the *Land Tax Assessment Act*, No. 22 of 1910, are, or either of them is, invalid. It is the legislation as a whole, or each Act as an entire unit of legislation, that is attacked. Unless therefore an attack on any part or parts is successful to the extent of invalidating the whole, it may be disregarded for the purpose in hand.

The *Land Tax Act* provides in its second section that the *Land Tax Assessment Act* "shall be incorporated and read as one with" the *Tax Act*. The Royal assent was given to the *Tax Act* on 16th November 1910, and to the *Assessment Act* on the next day. A contention was raised for the plaintiff that the *Assessment Act* could not be incorporated and read as one with the *Tax Act* on 16th November, as the reference was to something in the shape of a law which had not then become a law; that the reference did not become effective when the *Assess-*

(1) 11 C.L.R., 1, at p. 27.

ment Act received assent on 17th November; and that without such effect the *Tax Act* could not and did not become operative, but was unworkable and, indeed, unintelligible, and therefore that for the imposition of taxation reliance must be placed on the *Assessment Act* alone, with the result that it became inconsistent with the provisions of the 55th section of the Constitution. The alleged consequences as to sec. 55 need not be discussed in this connection, for naturally the objection was not persevered with, and it could not in any event be seriously regarded. It is immaterial whether Act No. 21 was workable on 16th November or not. It was made applicable to its purpose on and after the 17th, for it was the clear intention of Parliament that the other measure, which the dates show to have completed or nearly completed its passage through both Houses by the 16th, should, when assented to, be read with No. 21. The first Act may be compared to an engine, which, though finished and good on the date of its completion, cannot be worked until its necessary adjunct, a boiler, is added to it. The second Act performs that function here.

It was further contended that the reference section in the *Tax Act*, if effective, constituted the two Acts one piece of legislation. So it did, but only for purposes of interpretation. The section could not make either Act valid or invalid, save so far as it helped to elucidate the meaning of either.

The next objection is that the *Tax Act*, as explained by the *Assessment Act*, is not truly an exercise of the power conferred by the Constitution in the second clause of sec. 51, but is an attempt to regulate the holding of land, a subject within the exclusive competence of the States. The power is one to make laws, subject to the Constitution, "for the peace, order and good government of the Commonwealth with respect to . . . . taxation; but so as not to discriminate between States or parts of States." Apart from any such discrimination the power is unlimited. If that which purports to be an exercise of it is in reality a tax, it cannot be successfully challenged in this Court as a breach of clause 2 unless it discriminates in the manner forbidden. If, on the other hand, it is only a tax in name, then the fact that it designates itself by that name will not make it valid,

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and it must fail unless it can be supported as an exercise of some other law-making power. If it is really an attempt to exercise a power reserved exclusively to each State, such, for instance, as the control of its lands, its domestic trade or its industrial affairs, then it is not a law at all, decked though it may be in the garb of a tax; for styling an Act a tax does not make it one, if the substance shows it to be something else. That this matter of clear sense is the law of the Constitution was declared by the case of *The King* v. *Barger* (1). The Judicial Committee of the Privy Council had already applied the same principle in the Canadian case of *Attorney-General for Quebec* v. *Queen Insurance Co.* (2). The plaintiff relies mainly on these decisions to support his contention that what is intended is not in substance taxation. But he must show that the terms of the legislation entitle him to rely on them. This, I think, he has not done.

A law must be construed by its terms, and by these alone. It is only when it plainly appears from them, of course including any clear inference from them, to be in substance an attempt to deal with a matter outside the ambit of the power conferred that the Court is entitled to declare it invalid on that ground. Conceding this, the argument for the plaintiff is that it is apparent on the face of the Acts that the object is to exercise powers reserved to the States. One proof of this, he says, is that the land tax is and is designated a "progressive" one—that is, a graduated one; since the increase of the sum payable is not merely in proportion to the value assessed but by grades of rate progressing with grades of value. This, he says, indicates that the object is, in effect, to make the burden of large estates intolerable to the holder, and thus "to prevent persons resident in the Commonwealth from holding and owning large areas of land." The plaintiff further argues that the exemption from taxation of land of an unimproved value of £5,000 when owned by a resident of Australia, an exemption not granted where the land is owned by an absentee, not only goes to emphasize the purpose stated, but to show that the legislation is also designed to prevent landholders from residing out of Australia or to prevent others than residents from owning lands within the Commonwealth. Now,

(1) 6 C.L.R., 41.

(2) 3 App. Cas., 1090.

this legislation has nothing in its terms which dictates who shall hold land and who shall not, or how much land any person shall hold. Assuming that the taxation which it imposes is drastic, as it is alleged to be, still it is not the function of the Court to say that drastic taxation on landed interests will prevent residents from owning large areas, or prevent landholders from residing out of Australia, or prevent absentees from holding land within the Commonwealth. Nor is it our function to say what degree of inducement to abstain from doing these things amounts to a prevention of the doing of them. The alleged objects are not to be collected from the terms of this legislation. Even assuming that such designs existed, they would not alter the construction of an Act or make it less an exercise of the taxing power. They may be the motive or even the ultimate object. We have not to do with either of these things. The arguments, in effect, predict certain results as consequences of the oppressive operation of the tax. These predictions are not for us to examine, because they are not relevant to the question of lawful authority. Conceding, for example, that in some cases a heavy tax may when administered operate, by the pressure of its severity, to destroy an industry which a State alone has power to control, or to force holders of large landed estates to sell them, or to remain in this country when they would rather live elsewhere, these are questions of the policy or wisdom of the tax, and belong to the people, directly or through their representatives, and not to the Court. And this is true even if the tax is so heavy and so carefully adjusted as to appear intended to produce the results foreboded. Questions of the abuse of power are for the people and Parliament. We can only determine whether the power exists, and if so, whether Parliament has in fact and in substance acted within it. It is of the essence of the taxing power that when exercised to the full it may destroy the interest or the industry taxed. But even so, interference would involve the Court in the political function of deciding in what degree Parliament is justified in using a power on the exercise of which the Constitution itself places no limit. As was said by the majority of this Court in *The King* v. *Barger* (1):—"The

(1) 6 C.L.R., 41, at p. 67.

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circumstance that an indirect effect may be produced by the exercise of admitted power is irrelevant to the question whether the legislature is competent to prescribe the same result by a direct law. . . . The motive which actuates the legislature, and the ultimate end desired to be attained, are equally irrelevant. A Statute is only a means to an end, and its validity depends upon whether the legislature is or is not authorized to enact the particular provisions in question, entirely without regard to their ultimate indirect consequences." The reasoning of the Supreme Court of the United States in *McCray* v. *United States* (1) is cogent upon this subject, and the case itself is very much in point. The conclusion drawn is thus expressed, in words which I venture to adopt (2):—" The often quoted statement of Chief Justice *Marshall* in *M'Culloch* v. *Maryland* (3), that the power to tax is the power to destroy, affords no support whatever to the proposition that where there is a lawful power to impose a tax its imposition may be treated as without the power because of the destructive effect of the exertion of the authority."

Other objections are taken by the plaintiff to the legislation as a whole on the ground of its usurpation of State powers. So far as these involve the scope and purpose of both or either of the Acts, I am of opinion that they are covered by what I have already said.

Of the remaining grounds of attack I will take next that which alleges that certain sections are invalid on grounds apart from the effect of sec. 55 of the Constitution, to be considered presently, and are so interwoven with the rest of the legislation that they cannot be severed without results fatal to the whole of it.

In the *Bootmakers' Case* (4) this question of severability was dealt with exhaustively in argument, and the judgments laid down lines which should serve as a test in the present and in future cases. The criterion, in the opinion of the learned Chief Justice, was whether, supposing the invalidity of some part or parts of an Act to be established, the Statute with the invalid portions omitted would be substantially a different law, as to

(1) 195 U S., 27,
(2) 195 U.S., 27, at p. 56.
(3) 4 Wheat., 316.
(4) 11 C.L.R., 1.

the subject matter dealt with by what remains, from what it would be with the omitted portions forming part of it. My learned brothers, *O'Connor* and *Isaacs*, agreed with this proposition, the latter adding (1), a quotation from the judgment of *Shaw* C.J. in *Warren* v. *Mayor of Charlestown* (2), in which the view is taken that the whole Act fails where the connection with each other and the mutual dependence of the valid and the invalid provisions, as conditions, considerations, or compensations for each other, are such that the elimination of the bad would leave the good a different law in effect. Agreeing in substance with the test put by the Chief Justice, which differs from that put in some of the leading American cases on the subject, I came to the following conclusion as to the Act then in question (3):—"If the sections challenged be left out of consideration, there remains a law which is not radically different. . . . . That law, ... is armed with machinery adapted to its purpose, and not maimed as to that purpose by the severance. In that sense it is a workable measure, consistent in its parts and adapted to the end it has in view, without the necessity of expanding or restricting its sense with regard to its proper subject matter." Holding that view as to the Act without the provisions objected to, I came to the conclusion that it was a valid exercise of power. That passage, I think, states in sufficiently strict terms the test to which such legislation as we are now considering should answer, and I think it does answer such a test even if all the provisions challenged are left out of consideration. I do not decide that any one of them is invalid, but in my judgment there is not one of them which cannot be left out of consideration without so maiming the measure as to leave it a substantially different law, and not one "dealing effectively, even if not comprehensively, with so much of the subject matter as is within the legislative power."

Section 26 appears to refer to such holders as the conditional purchaser in New South Wales and the lessee with an accrued and present right of purchase in Victoria, in either case with all his conditions fulfilled except payment of the balance of his

(1) 11 C.L.R., 1, at p. 55. (2) 2 Gray, 84, at p. 99.
(3) 11 C.L.R., 1, at p. 39.

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purchase money. Either of them may have his grant on payment of his balance, and meanwhile he has a right to hold even against the Crown; subject to payment, if a time is prescribed therefor, and where no time is prescribed, subject to the payment of interest. He is in as good a position as a mortgagor, if not in a better position, and may lawfully sell and transfer. It is his interest, and not any interest of the Crown as representing the State, that the section is framed to reach with the land tax. Such lands are in substance no longer owned by the Crown.

The whole tenour of secs. 27 and 28 shows that the tax is payable only on the interest of the taxpayer, who cannot as contended be the State. Indeed sec. 29 removes any doubt on this head, if any serious doubt could have subsisted without it. But there are two exceptions to sec. 29. One of them prevents any possible inconsistency with sec. 26, by excluding from the exemption a lease from the Crown with a right of purchase; the other excludes from that exemption a perpetual lease from the Crown without revaluation, which is at least as secure a title and practically, though not technically, as large an estate as any estate dealt with by sec. 26.

In respect of this group of sections the contention that they interfere with the exclusive right of the State to regulate the disposal of Crown land, or that they amount to a tax on property of the State (The Constitution, sec. 114) seems to me to fail entirely.

But it was argued that the Crown lands of the State are affected unconstitutionally by sec. 56, which makes the tax a first charge on the land taxed. Before this section however could be held to be invalid even in part, it must be clear that it applies to Crown lands. It is not only not clear, but there is reason to think that by virtue of sec. 13 (*a*) it cannot so apply.

Under this head of objection the plaintiff impeaches Part VI., *i.e.*, sec. 48, which empowers the Commonwealth to acquire land in certain cases of undervaluation, and also secs. 69 to 71, authorizing forfeiture for fraudulent undervaluation and for wilful or fraudulent evasion or attempted evasion of assessment or taxation. There is room for argument on both sides as to these sections, and since, like other doubtful ones, they may

hereafter come before us in some proceeding necessarily involving their validity, I do not think it meet to pronounce an opinion on them in a case like the present, in which their severability renders it unnecessary to do so.

I turn now to the objection founded on sec. 55 of the Constitution.

The provisions which are challenged, not as dealing with subjects of taxation other than land, but as dealing with something which is not the imposition of taxation, must be considered in relation to the first part or branch of sec. 55. If the *Assessment Act* is a law imposing taxation, that part prohibits it from dealing with matters other than the imposition of taxation. But the consequence of the failure of the law so to confine itself is not its invalidity. The offending provisions are to be of no effect. The Act apart from them survives and is in force. As this suit is brought to obtain a declaration of the total invalidity of the legislation, it is obvious that these sections cannot form any foundation for such a declaration. Their alleged invalidity may however be put forward in future proceedings as ground of complaint or defence. This, therefore, is not the time to pronounce on that subject.

The provisions which as I thought sustained the brunt of the plaintiff's attack were those which were said to violate the second part of sec. 55, which enacts that "laws imposing taxation, except laws imposing duties of Customs or of Excise, shall deal with one subject of taxation only," &c. The consequence of such a violation, if only in one instance, was declared by the plaintiff and denied by the defendants to be the total invalidity of the legislation. The *Assessment Act*, it was contended, was a law imposing taxation. It is not every Statute dealing with the imposition of taxation that is a taxing law. In terms the *Assessment Act* does not purport to be such a law. It certainly is "An Act relating to," that is, it "deals with," "the Imposition, Assessment, and Collection of a Land Tax." That does not make it a law imposing taxation. The tax for which it provides machinery is expressly defined to be "the land tax imposed as such by any Act, as assessed under" the *Assessment Act*, No. 22 (see sec. 3). Until other provision is made by Parliament the reference is to

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the tax imposed by the Act No. 21. It is the tax already so imposed, therefore, which the *Assessment Act* (sec. 10) says shall be "levied and paid" upon the unimproved value of lands not exempted, and that tax is to be "at such rates as are declared by the Parliament"—*i.e.*, by No. 21 or by any subsequent enactment taking its place, and not by this *Assessment Act*. The provisions for assessment and collection are therefore proper to an Act not imposing taxation. Still, provisions may have been inserted in the *Assessment Act* which "deal with" a subject or subjects of taxation other than land, and the incorporation of that measure by the *Tax Act* would in that event cause the last named law to deal with more than one subject of taxation. That might bring the *Tax Act* into conflict with the second branch of sec. 55. I shall say something presently on the construction of that part of it. But if the *Assessment Act* does not include any provision dealing with any subject of taxation other than land, the objection fails, whichever of the interpretations placed on the constitutional provision be the correct one. Let us see then how this matter stands.

The provisions most relevant in this connection are, in order, secs. 36, 39, 40 and 41. As to all of these I am of opinion that they deal only with the same subject matter as that on which the Act No. 21 imposes a tax. They may be effective or ineffective, valid or invalid. But if the subject matter of the whole legislation is one and the same, there is no violation of sec. 55. It is said that sec. 39 imposes a tax on shareholders in companies in respect of their shares; and this must be so, it is urged, because their shares are not in law interests in real property. I do not think the section attempts to tax shares. It is an endeavour, whether it succeeds or not, to treat the shareholders as joint owners in respect of the taxable lands vested in the company. Their holding in shares is merely made the measure of the proportions in which they are assessable. Clearly the subject matter is land taxation, whether the section is valid or not. Sec. 41 proceeds on the principle of assessing the Australian policy holders in mutual life assurance societies as holders of beneficial interests in the taxable lands vested in the society. It treats them as equitable owners in severalty of the lands so

vested. The measure in which they are to be assessed as such is proportioned to the surrender values of their policies. It cannot, I think, be said that this is taxation of life policies, any more than that sec. 39 is taxation of shares in companies. Though the lands are legally vested in the company or the society, it is only the shareholders in the one case and the policy holders in the other who benefit by their use and management. The profits yielded by the land are, it may be at short intervals, it may be at long last, divisible among them. The principle of these and other sections appears to be to ensure the assessment of those who are in substance the owners of land or of an interest therein, or who derive pecuniary benefit from the use of land—whether they be freeholders or leaseholders, conditional purchasers, lessees with right of purchase, perpetual lessees without re-valuation, mortgagors, shareholders in companies that own land, or policy holders in life assurance societies that own it. The principle may be faulty, or may in some instances fail in its application. Still the provisions deal only with land as the subject matter of taxation.

Secs. 36 and 40 are condemned on grounds rather similar to those urged against 39 and 41, as attempts to treat people as owners of land in which they have no interest whatever, and this seems to me to be true of secs. 36 and 40 to a material extent. And in these cases there is not the justification of ownership in substance to the extent of the liability. Yet that is an objection which, while it may be argued to affect the validity of the provisions, does not go to the subject matter. That is still land, and only land.

I am of opinion therefore that the Acts are not, nor is either of them, invalid as dealing with more subjects of taxation than one.

I will conclude with some observations on the able arguments addressed to us upon the meaning of the second branch of sec. 55 of the Constitution. It was strongly urged that this provision was obligatory, so that any intrusion of a provision dealing with a second subject matter of taxation into a taxing law would render the Act into which it entered invalid.

It is very plain that secs. 53, 54, 55 and 56 show a sharp distinction between "proposed laws" and "laws." So do all the

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remaining sections of Part V. No lawyer, still less one who has any acquaintance with the practice of Parliaments, can doubt that in legislation a "proposed law" is what is known as a Bill, and a "law" is what is known as an Act or Statute. The one is a *projet de loi*, not necessarily passed even by one House of Parliament, the other an actual law made effective by passage through both Houses, and by the Royal assent. Up to the moment of that assent there is only a proposed law or Bill. This was not contested at the Bar. But it was contended by the plaintiff that while secs. 53 and 54 relate, as is clear, only to the order of business between the two Houses in dealing with the progress of Bills, and are therefore, and from the necessity of the thing, merely directory, sec. 55 depends on quite different considerations. It is then the completed Act that is put to the test, and while the first part of the section uses clear terms to show that a violation of it can only be attended by the annulment of the offending provisions, no such qualification is imparted to the second part. But for the concluding words of the first branch, it was pointed out, that provision, evidently addressed to the Court, since there was no other authority which after the Royal assent could interpret or enforce it, must have been regarded as obligatory, and it was still more evident from the qualification of the first part, that the second, which stood unqualified, was obligatory on the Court. On the other hand, the defendants strenuously contended that as secs. 53 and 54 were admittedly only directory, the change in designation from "proposed law" to "law" in sec. 55 was not enough to give any part of that section a more stringent character, especially as its first branch was expressly made only directory; and that there was no reason why the character of the provision should be held to have changed as it passed into its second branch.

As at present advised I am impressed with the view of this question put forth for the plaintiff. But an opinion expressed on it would be merely *obiter*, and in no sense decisive, since even on the plaintiff's construction of the second part of sec. 55 the Acts do not in my view violate the Constitution.

I may say, however, that it would take strong argument to convince me that the second part is not obligatory, since that

construction would remove all effective check on that which the section is on its face designed to prevent, namely, the tacking together of tax Bills of different kinds and unlimited number in one measure. This would be to annihilate the intended powers of the Senate, who, favouring some and dissenting from the rest, would find themselves forced either to pass the entire agglomeration, perhaps including much that they considered an outrage on the interests of the States they represented; or to reject all, and thus perhaps cripple the finances of the Commonwealth. This consideration is the graver when it is remembered that the sections dealing with the powers of the two Houses *inter se*, viz. 53 and 54, contain no provisions whatever against the "tacking" of tax Bills, and only one against the tacking of extraneous matter to an appropriation Bill, and that, the ordinary annual one. We cannot fail to remember that the Constitution designed the Senate to be a House of greater power than any ordinary second chamber. Not only by its express powers, but by the equality of its representation of the States, the Senate was intended to be able to protect the States from aggression. And from no source could aggression be more dangerous than from measures of finance when unjustly bound together.

It seems probable, though I repeat that I do not offer a decisive opinion on the matter, that the omission of such provisions as to mere Bills and their inclusion with reference to Acts, was to render obligatory that which, in relation to the position of the States under the Constitution, was regarded as vital.

It may be added, as a further reason why the second paragraph of sec. 55 should be held to be obligatory, that where the tax Bill deals with more subjects than one, there is ordinarily no means, as there is in respect of Bills within the first paragraph, of casting out that which offends against the Constitution, as there is no means of knowing which subject of taxation represents more than the other or others the will of Parliament.

As this last reason will not exist in the case of the incidental or casual intrusion of some unimportant provision which might be held in strictness to introduce a second subject matter, there may be, as the Chief Justice has suggested, good reason why

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the Court should where possible place a benignant interpretation on such a provision, where two constructions are open, "that the matter may rather avail than perish."

Again I say, however, that I do not attempt to decide conclusively a question that has not become essential to the determination of this case.

In the result I am of opinion that judgment ought to pass for the defendants.

O'CONNOR J. read the following judgment:—The taxation legislation, which is the subject of this special case, is contained in two Statutes which, for the purpose of administration, must be read together. The Act first assented to, which I shall describe as the *Tax Act*, is restricted to declaring the imposition of the tax and fixing the rate. The other Act, assented to on the day after, I shall refer to as the *Assessment Act*. Without its provisions no tax could be collected under the *Tax Act*, but of itself it imposes no tax. Although by sec. 10 it enacts that, subject to the provisions of the Act, land tax shall be levied and paid, that section must be read with the interpretation of the word "land tax" in sec. 3. So read, it is plain that the imposition of the tax is effected by the first Act, and that sec. 10 and the other provisions of the second Act are directed merely to assessing the amount to be paid, and making it payable according to the assessment. The plaintiff's first objection is founded on sec. 55 of the Constitution which, quoting only the part material in this case, is as follows:—"Laws imposing taxation, except laws imposing duties of Customs or of Excise, shall deal with one subject of taxation only."

The *Tox Act* which, as I have pointed out, deals only with the imposition of taxation, plainly deals with only one subject of taxation—land. The *Assessment Act* is not in itself a law imposing taxation, and could not, if read alone, come within the words I have quoted. To make the objection at all arguable, it is necessary to embody the provisions of the *Tax Act* in the *Assessment Act*, and to read them as one enactment. The plaintiff so reading the *Tax Act* into the *Assessment Act* contends that the latter is a law imposing land tax, and that it deals with

other subjects of taxation as well as land. There are two answers to the objection. First, that the *Assessment Act* is not a law imposing taxation within the meaning of sec. 55. Secondly, that if it is, there is no section of it dealing with any subject of taxation other than land.

In inquiring whether a law imposes taxation within the meaning of sec. 55, each Act must be judged separately. No doubt, in making such an inquiry we must read each Act in accordance with its legal operation, that is, in connection with existing laws. But it does not follow that every section of an existing Act (so read with the Act under inquiry) is to be regarded as part of it for the purposes of sec. 55. The distinction drawn in that section between "imposing taxation" and "dealing with one subject of taxation" must be always kept in view. The object of sec. 55 of the Constitution is to secure that each enactment imposing taxation shall be framed in a certain form. The frame of the enactment is important only for reasons of parliamentary procedure. The section is in the middle of a group of sections dealing with the legislative powers of the Senate and House of Representatives, and with the Governor's assent to proposed laws, their reservation and disallowance. Every section of the group relating to parliamentary procedure is directed to preserving the privileges of the House of Representatives with respect to appropriating moneys and imposing taxation, and to safeguarding the Senate from abuse of those privileges by the House of Representatives. To that end it provides that proposed laws which the Senate are forbidden to amend shall be framed in the manner prescribed. This Court can have no cognizance of proposed laws, nor can it in any way interfere in questions of parliamentary procedure. Its jurisdiction arises only when the proposed law becomes a law. In enacting sec. 55, the framers of the Constitution have given the Court jurisdiction to examine the frame of a law, obviously with the object of giving a sanction to the directions of the Constitution for the framing of legislation dealing with taxation and the appropriation of money in accordance with the provisions of sec. 53 and the sections immediately following. From no other point of view can the form in which an Act is

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framed be of any moment. Sec. 55 may therefore be applied to each piece of legislation as it becomes law, just as either House would apply the provisions of secs. 53 and 54 of the Constitution to proposed laws as they came before them. Immediately a proposed law becomes a law, it is subject to examination in the light of sec. 55. If it is framed in accordance with that section, it is valid, and cannot afterwards be made to contravene it by the operation of subsequent legislation. Judged separately on these principles neither the *Tax Act* nor the *Assessment Act* is open to the objections taken. The former, which is a law imposing taxation, clearly deals with one subject of taxation only—that is land—the latter, though dealing with taxation, does not, as I have pointed out, impose taxation, and is therefore not within the section. Considering both Acts together, to ascertain the intention of the legislature, it is quite clear that Parliament intended to impose taxation by the *Tax Act* and not by the *Assessment Act*, and that it framed the latter expressly in the form which did not impose taxation so that it might be open to amendment by the Senate. Assume, however, that the Acts may be read together, as the plaintiff contends, and that the *Assessment Act* is a law imposing taxation, the objection must still fail on another ground, namely, that in none of its provisions does the Act deal with any other subject of taxation than land. I propose to refer only to the sections on which Mr. *Mitchell* principally relied. It was contended that, in fixing the special rate on absentees, a new subject of taxation was introduced. It is however quite clear that, when the provisions of the Act referring to assessing the lands of absentees are examined, land is the only subject of the tax. The fact of absence from Australia places a taxpayer in a separate class from taxpayers resident in Australia. In respect of the former class the taxable amount begins earlier and the rate is heavier, but the subject of taxation is still the taxpayer's land. As to sec. 30, it is plain that one subject of taxation only is dealt with. The policy of the Act is to place liability directly on the owner. The section is directed to preventing that liability from being transferred to the lessee. The same answer may be made to a similar objection raised to sec. 32. I was at first disposed to think that there was

something in Mr. *Mitchell's* contention that in sec. 39 the subject of taxation was shares, not land. But an examination of the section makes it clear that it is the shareholder's interest in the land of the company, not his shares in the company, which is the subject of taxation.

Technically, no doubt, the holder of shares in a company has no interest in the lands of the company. But, looking at the substance of the matter, every owner of a share is interested in the land of a company proportionately to the number of his shares, just as a partner is interested in the lands of a partnership. The legislature, disregarding the provisions of company law, imposes the tax according to the real interest of the shareholder taking the number of his shares as the measure of his interest. It may be that the section is open to objection on the ground that it is not a valid exercise of the power of taxation. But whether the legislature could or could not carry out its intention validly, it is quite clear, from the language of the section, that it intended to tax land and nothing else. Similarly, on reading secs. 40, 41 and the other sections to which Mr. *Mitchell* directed his arguments, it is apparent on the face of them, whatever objections may be raised to them on other grounds, that the only subject of taxation with which they deal is land. That, indeed, may be said of all the sections against which this objection has been urged. After a careful examination of their provisions, I am of opinion that none of them are open to the criticism that they deal with subjects of taxation other than land.

For these reasons, therefore, I am of opinion that the Acts under consideration, whether taken separately or together, deal with no subject of taxation other than land, and therefore do not contravene the directions of sec. 55 of the Constitution. Holding that view, it is unnecessary to consider the very important question, raised during the argument, as to whether an Act contravening the provisions of sec. 55 of the Constitution was thereby rendered absolutely void. Upon that section I reserve my opinion until an occasion arises when it becomes necessary to determine the matter.

I turn now to another ground on which the validity of both

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Acts was questioned. It was argued by Mr. *Mitchell* that, when the real nature and substance of the legislation is looked at, it is not an exercise of the power of taxation, but an attempt to restrict and regulate the holding of land, to force the holders of large estates to divide and sell their land under the compulsion of the graduated tax. In support of that contention he relied upon the principles laid down in *The King* v. *Barger* (1).

The Statute under consideration in that case, whatever may have been its form, was not in its nature and substance an Act imposing taxation. But in the Acts now before us I can see nothing to suggest that they are not taxing Acts. Their whole plan, the object of all their provisions, is plainly directed to the imposition of a graduated tax on the unimproved value of land. The principles to be applied in considering such a ground of invalidity are laid down in *Barger's Case* (1); it is unnecessary to repeat them here. It is sufficient, I think, to say that the effect and consequences of an Act, even the motives of the legislature in passing it, are immaterial, if the Act itself, according to the fair construction of its provisions, is an exercise of the power conferred. The grounds of objection going to the validity of the whole of both Acts being thus, in my opinion, untenable, I shall refer shortly to the plaintiff's contention, raised as to several sections of the *Assessment Act*, that they went beyond the power of taxation conferred on the Parliament of the Commonwealth. In the case of some sections attacked it is plain that the contention must fail. For instance, taking secs. 26, 29 and 56 together, I can see no ground for the contention that State lands are taxed contrary to sec. 114 of the Constitution. The objections raised to sec. 48 relating to the acquisition of lands of taxpayers who understate the values of their lands are of an entirely different kind, as also are those raised to secs. 36, 39, 40 and 41, objections that they exceed the powers of Commonwealth legislation in disregarding the State laws of property and contracts in attributing ownership of lands for purposes of taxation to persons who, under the State laws, could have no interest in the lands. With regard to all these sections different

(1) 6 C.L.R., 41.

questions of wide general importance respecting the taxation power of the Commonwealth are raised for the first time.

It would, of course, be necessary to determine them in this case if the sections alleged to be invalid were not separable from the rest of the Act. The principle upon which the separability of the invalid from the valid portions of an enactment are to be determined was laid down in the *Bootmakers' Case* (1), and has been applied in subsequent cases, the latest of which is the "*Kalibia*" *Case* (2), decided at the end of last year. The learned Chief Justice in the *Bootmakers' Case* (3), after referring to the American authorities, puts the matter thus:—"I venture to think that a safer test is whether the Statute with the invalid portions omitted would be substantially a different law as to the subject matter dealt with by what remains from what it would be with the omitted portions forming part of it."

With respect to each of the sections attacked, assume them to be invalid, and apply the test. Is the Statute with those sections omitted substantially a different law as to the subject matter dealt with by what remains from what it would be if the omitted portions formed part of it? Clearly it is not. Assume, for instance, that the Commonwealth has no right as provided in sec. 48 to acquire the land of the taxpayer who makes a return undervaluing his land. Omit the section and the Act remains the same as before with regard to other taxpayers. Again, assume that the Commonwealth cannot legislate to make the husband liable to pay land tax on his wife's lands, under the circumstances mentioned in sec. 36. Omit the section as invalid, and the operation of the Act upon other taxpayers is unaffected by the omission. The same test may be applied to all the other sections to which I have referred, and with the same result. Under these circumstances it is unnecessary for the Court to express any opinion on the difficult and important questions raised with regard to the sections to which I have been referring. With regard to them I do not think it necessary to say more than this, that, if the objections were upheld, and the sections declared void, they are all so clearly

(1) 11 C.L.R., 1.
(2) 11 C.L.R., 689.
(3) 11 C.L.R., 1, at p. 27.

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separable from the rest of the Act that its operation, and therefore its validity, remains undisturbed by their omission.

For these reasons I am of opinion that all the plaintiff's objections fail, and judgment on the special case must be entered for the defendants.

ISAACS J. read the following judgment:—The legislation effected by the two Acts Nos. 21 and 22 of 1910, read in conjunction, is impeached in various ways.

First, it is contended that the enactments are totally invalid, and this contention is rested on two separate grounds. One is that they are not in substance an exercise of the taxing power at all, and therefore—as no other granted power can be suggested to support them—they are outside sec. 51 of the Constitution altogether. The basis of this position is that, when the Acts are looked at as a whole, and particularly in the light of certain provisions, such as the exemption of £5,000 and the inclusion of mortgages, a legislative purpose of controlling the ownership of land can be perceived behind the mere words and their primary effect.

As a result, it is said, the Court should pass by the mere legal nature and operation of the taxing sections as they appear upon ordinary principles of construction, and, regarding only the true character of the legislation as governed by the discovered purpose, should declare it to be merely a disguised attempt to invade State powers by regulating the ownership of land.

As to this, I apply the test I have applied in earlier cases. Lord *Selborne* for the Privy Council in *The Queen* v. *Burah* (1) laid down the golden rule of constitutional interpretation in these terms:—"If what has been done is legislation, within the general scope of the affirmative words which give the power, and if it violates no express condition or restriction by which that power is limited . . . it is not for any Court of Justice to inquire further, or to enlarge constructively those conditions and restrictions." That was not merely a specific instance of the ordinary rules of statutory interpretation, but was also an authoritative canon of construction specially applied by His Majesty in Council

(1) 3 App. Cas., 889, at p. 905.

to Imperial grants of Constitutions to Dependencies, and as such must be taken to have guided the Imperial Parliament in passing our own Constitution.

On the face of the legislation itself, construing it according to recognized principles and methods and giving to it the full effect to which such construction naturally leads, it imposes a tax on land and provides means for its effectual enforcement. That is necessarily a taxation measure, and within the grant of sec. 51 (ii.), comprised in the one simple and comprehensive word "taxation."

The purpose for which the measure is enacted, that is for which the power is exercised, is exclusively a matter for the legislative mind, and is not open to review by a Court of law.

The judiciary concerns itself only with the existence and extent of the power, not with the occasion or purpose which may call for its exertion. And its existence and extent do not depend upon the fact that its exercise may or does incidentally interfere with circumstances which standing by themselves are controllable only by some other authority, or even with the operation or results of other powers, distinct in nature, possessed by other legislatures.

The lines of human affairs from their inherent complexity cross each other at innumerable points, and it is impossible to frame an arbitrary classification, such as that contained in sec. 51 of the Constitution, which will completely segregate the transactions of life. Consequently it is impossible to deny the existence of a stated power along a given line merely because another line not included in the list is affected at the intersection. *Russell* v. *The Queen* (1) is explicit. There the Privy Council with reference to public order and safety, for which in the present instance land taxation may be substituted, said :—"That is the primary matter dealt with, and though incidentally the free use of things in which men may have property is interfered with, that incidental interference does not alter the character of the law."

In the more recent *Attorney-General of Manitoba* v. *Manitoba Licence Holders' Association* (2) a provincial Act was upheld as valid although, as the Privy Council said, it must interfere with

(1) 7 App. Cas., 829, at p. 839. (2) (1902) A.C., 73.

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Dominion revenue, with trades licensed under Dominion law, and indirectly at least with business operations beyond the limits of the Province. This decision is very much to the point because in Canada the residual power is in the Dominion, and yet the provincial Act was held valid. The same principle obtains in America. The words of Chief Justice *Fuller* in *In re Kollock* (1) are :—" The Act before us is on its face an Act for levying taxes, and although it may operate in so doing to prevent deception in the sale of oleomargarine as and for butter, its primary object must be assumed to be the raising of revenue."

The Act there was avowedly passed for the purpose of preventing public deception in the sale of the article, but as it imposed a tax for the purpose, the Court was bound by what the legislature did, and was not entitled to regard the purpose of the legislative action. This ruling in *Kollock's Case* (2) was followed and re-affirmed in *McCray's Case* (3).

And still more recently, 1908, the present Chief Justice of the United States in *Hammond Packing Co.* v. *Arkansas* (4), speaking of a State Statute impeached on the ground of its real purpose, said : " the mere incident or purpose for which the lawful power was exerted affords no ground to deny its existence."

In my opinion, therefore, the Court is entitled only to apply the ordinary principles of construction to a legislative Act, and after thus ascertaining its true legal effect, is bound to say, irrespective altogether of any collateral purpose, whether it falls within or beyond the scope of the asserted power. For the Court to go further as it has been invited to do would be to set itself up as a censor of Parliament, and not the interpreter of the law.

Then another reason was advanced also for total invalidity. The Acts, it is said, have dealt with more than one subject of taxation, in violation of the second part of sec. 55 of the Constitution. The strongest provisions in favour of this contention are contained in secs. 39 and 41 of the *Assessment Act* No. 22.

In view of the conclusions I arrive at as to the effect of the

(1) 165 U.S., 526, at p. 536.
(2) 165 U.S., 526.
(3) 195 U.S., 27, at p. 59.
(4) 212 U.S., 322, at p. 348.

challenged sections themselves, it is not necessary to come to any final decision respecting the effect of a violation of the constitutional provision. But I am not prepared to assent to a proposition that a violation is immaterial.

The power of Parliament to pass laws, even within the admitted range of the specified subject matters, is given with the express restriction "subject to this Constitution"; and in sec. 55 we find the very distinct provision referred to. It is not a matter which relates to intermediate procedure, nor the order of events between the Houses, nor a matter which requires to be established by extraneous evidence. If there be a contravention of the fundamental law, there it stands apparent on the face of the enactment, manifest to the Court on mere production. Is such a law valid or not? At first sight, at all events, it appears to be struck by the words of Lord *Selborne* already quoted.

One object of the express restriction undoubtedly was to secure to the people of the Commonwealth a consideration of every tax imposed on them, free from the disturbing influence caused by the presence of any other tax in the same measure—Customs items and Excise items being respectively considered as appertaining to one species of tax. That is a most important consideration enforced not by mandate, which could not be made the subject of judicial interposition, but by restriction on power which can, and as at present advised, I am not disposed to consider that a public safeguard of this nature, directed to both Houses of Parliament alike, could be always deliberately ignored without consequences. So far as light can be obtained from American precedent, it tells in favour of insisting on legislative compliance with such a restriction. Various State authorities were referred to during the argument, and prominently *State* v. *Lancaster Co.* (1). These at present need not be closely examined, more particularly as there has been a pronouncement on the subject by the Supreme Court of the United States in the case of *Montclair* v. *Ramsdell* (2). That case arose under the New Jersey Constitution which requires that "every law shall embrace but one object, and that shall be expressed in the 'title.'" The two requirements are distinct. From the judgment of *Harlan*

(1) 7 Neb., 87.

(2) 107 U.S., 147.

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J. delivering the opinion of the Court it is to be seen that that tribunal in no way doubted that a clear contravention of the State Constitution would create a conflict between it and the Statute which would involve invalidity, but the learned Judge added the qualifying words (1):—"The objections should be grave, and the conflict between the Statute and the Constitution palpable, before the judiciary should disregard a legislative enactment upon the sole ground that it embraced more than one object."

Assuming, therefore, though without deciding, that a distinct violation of the constitutional provision in question would nullify a law, it is plain that the Court must be extremely cautious before it concludes that a violation exists. The legislature is presumed to know its powers and their limits, and not to intend transgression. If, therefore, any other construction of its language is reasonably open, that should be adopted. That would be so even if the sections objected to were originally contained in the *Land Tax Act* No. 21 itself. No doubt as that Act by sec. 2 incorporates the provisions of the *Assessment Act* (No. 22) it follows that No. 21 must be read as if every word of No. 22 were written into it as one Act. See *per* Lord *Selborne* L.C. in *Canada Southern Railway Co.* v. *International Bridge Co.* (2), and *In re Wood's Estate, per Lord Esher* M.R. (3). And if secs. 39 and 41 of the *Assessment Act* were obnoxious to the criticism of imposing a tax upon a subject other than land, the question of the effect of sec. 55 of the Constitution would arise, so far as No. 21 is concerned.

The *Assessment Act* is certainly an independent Statute and stands *proprio vigore*, ready to aid and enforce any valid *Land Tax Act*.

But as the argument that secs. 39 and 41 impose taxation on another subject than land and thereby constitute a fatal violation of sec. 55 of the Constitution, if good at all, would destroy Act No. 21, the *Assessment Act* would of itself be admittedly impotent to impose the tax, in which case the plaintiff would succeed, and therefore I do not pursue it further. But I guard myself

(1) 107 U.S., 147, at p. 155.
(2) 8 App. Cas., 723, at p. 727.
(3) 31 Ch. D., 607, at p. 615.

against offering any opinion as to whether any distinction can be drawn between laws imposing taxation and laws dealing with the imposition of taxation, or whether imposition of taxation includes the collection of the tax. When that question becomes necessary to determine reference may be usefully made, not only to secs. 53 to 56, but also to sec. 86 and following sections. This branch of the case, however, depends on whether secs. 39 and 41 have the effect contended for.

I entertain no doubt they are free from that objection.

Each of these sections, it is said, imposes a tax on what I may term the intangible interest which the taxpayers hold in the respective corporations mentioned, and not upon the land. As a matter of simple construction sec. 39, for instance, purports to tax nothing whatever, not even land. It assumes the land is already taxed by some other Act, its effective provisions relate to assessment and the personal liability of the shareholders for a land tax *aliunde* imposed.

The argument that, as shareholders have no interest recognized by law in the land itself, such a construction is not legitimate, is wanting in substance. I referred during the argument to the words of Lord *Macnaghten* in *Birch* v. *Cropper* (1) where he said: "Every person who becomes a member of a company limited by shares of equal amount becomes entitled to a proportionate part in the capital of the company, and, unless it be otherwise provided by the regulations of the company, entitled, as a necessary consequence, to the same proportionate part in all the property of the company." The learned Lord was stating as one step in the reasoning a fact representing the real substance of the matter. Mr. *Knox* urged that the statement referred to had no application beyond the circumstances or nature of the case. But that is not so. The incorporation of a company is not a fiction of course; it is a statutory fact, but while it remains a fact for all the purposes for which it was designed, it does not annihilate, but on the contrary is in aid of, the ultimate truth which underlies the matter, namely, the beneficial ownership of those who for the moment compose the company. Incorporation gives a special character and status to the partnership, and

(1) 14 App. Cas., 525, at p. 543.

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surrounds it with certain legal attributes and conditions, but it does not destroy it. Lord *Macnaghten's* words only state very tersely what other learned Judges have said on the subject. The important nature of the objection—one going to the power of Parliament—and the strenuous reliance placed upon it, induce me to refer to two of those judicial utterances. In *Smith* v. *Anderson* (1) *James* L.J. in 1880 said: "A company or association (which I take to be synonymous terms) is the result of an arrangement by which parties intend to form a partnership which is constantly changing, a partnership to-day consisting of certain members and to-morrow consisting of some only of those members along with others who have come in, so that there will be a constant shifting of the partnership, a determination of the old and a creation of a new partnership, and with the intention that, so far as the parties can by agreement between themselves bring about such a result, the new partnership shall succeed to the assets and liabilities of the old partnership. This object as regards liabilities could not in point of law be attained by any arrangement between the persons themselves, unless the persons contracting with them authorised the change by a novation, or unless by special provisions in Acts of Parliament sanction was given to such arrangements."

And in *Randt Gold Mining Co.* v. *New Balkis Eersteling Ltd.* (2) Lord *Halsbury* L.C. said:—"I think that the confusion which has arisen in some of the cases is due to not sufficiently observing what is meant by what we call 'the share' and the 'sale of the share,' and by not recognizing that the share makes the holder of it a member of a trading partnership, and, as such, subject to all those liabilities of the partnership which the legislature has imposed upon it by what I may call the statutory deed of partnership."

The essence of the matter is the partnership, or in other words the co-partnership of property and enterprise by the persons forming the partnership.

The shareholders then—subject to liabilities and to securities for creditors provided by Statute—are the real and only masters of the property under the general law of the land, and the

(1) 15 Ch. D., 247, at p. 273.

(2) (1903) 1 K.B., 461, at p. 465.

Commonwealth legislature may properly lay hold of this essential concept, and disregarding circumstances that though not fictitious are certainly factitious, make it the foundation or the guarantee of the tax imposed by it upon the property itself.

No legal reason therefore exists which renders either impossible or improbable the primary import of the words of sec. 39.

The same reasoning applies to sec. 41. There may be difficulties of construction so far as concerns the application and effect of its provisions in a given case, but none whatever as to the point now under consideration. The contention as to total unconstitutionality consequently fails.

Then partial invalidity was insisted on. Various sections were pointed to as exceeding the power of Parliament for various reasons.

Apart from merely getting rid of these sections for their own sake, it was urged that their excision was fatal to the whole legislation. The Crown contends for their validity, but says that in any case they are separable, and when separated leave the residue substantially the same enactment. If "substantially," used in that connection, means identical in effect, I agree with it; but if it means "approximately," I am not able to adopt the expression. Parliament cannot make a valid law contrary to the Constitution, but nothing is a law unless made by Parliament. To be a law, it must be precisely, not approximately, what Parliament has declared, and whether the departure from that declaration be great or small, to that extent it is not law at all; and unless the excess is itself separable, so as to leave the remainder just what Parliament has directed and not a fraction more, the whole must fall, because unauthorized by the organic law. If the unavoidable consequence of eliminating an invalid portion of an Act were to increase a number of taxpayers, or the burden on any of them, beyond the intention of Parliament as apparent on the face of the Act as framed, in whatever proportion the additional taxpayers stood to those intended, and even if the additional tax were as small as that against which Hampden fought, it is not the identical law passed by Parliament, and none other is authorized by the Constitution. A man not taxed by Parliament at all, or as much, cannot be taxed or further

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taxed by the Court, by eliminating a provision which, though unauthorized, was intended to prevent or limit his liability. There cannot be any *cy près* doctrine, as I understand the matter. And the test must, as it appears to me, come to that which I have stated in the *Bootmakers' Case* (1) and the "*Kalibia*" *Case* (2).

The latest American recognition of that view is in *International Text-book Co.* v. *Pigg* (3). There *Harlan* J., speaking for the majority said:—"The several parts of the section are not capable of separation if effect be given to the legislative intent. It is well settled that if a Statute is in part unconstitutional the whole Statute must be deemed invalid, if the parts not held to be invalid are so connected with the general scope of the Statute that they cannot be separately enforced, or, if so enforced, will not effectuate the manifest intent of the legislature."

If the Court were, for instance, constrained to reject sec. 41, I should require further time to consider whether a burden was not placed on the society and some of its shareholders different from and more serious than that intended by the legislature.

I deal now with the particular sections complained of. Sec. 26 was challenged as affecting Crown land, and therefore contrary to sec. 114 of the Constitution. But the expression "land" is elastic, adapting itself to the context by virtue of the *Acts Interpretation Act*, sec. 22, defining "land" and "estate," and it includes the equitable interest of a purchaser.

Sec. 26 contemplates the assessment of persons who have fulfilled every condition properly so called, and who therefore stand in the situation of absolute purchasers, payment and conveyance being concurrent and reciprocal rights and obligations. Speaking of the words "conditional purchaser" under the Acts of New South Wales, the Privy Council recently said (*Chippendall* v. *William Laidley & Co. Ltd.* (4)):—"The payment of the stamp and the deed fee and the application for the conveyance cannot be treated as conditions, inasmuch as these are things which a purchaser is obliged to do under the most absolute form of contract of purchase." And so is payment in exchange for conveyance.

(1) 11 C.L.R., 1, at p. 54.
(2) 11 C.L.R., 689.
(3) 217 U.S., 91, at p. 113.
(4) (1909) A.C., 199, at p. 209.

Once the purchase becomes absolute, the doctrine of *Shaw* v. *Foster* (1) applies to establish the purchaser's interest. There Lord *Cairns* said: "I apprehend there cannot be the slightest doubt of the relation subsisting in the eye of a Court of Equity between the vendor and the purchaser. The vendor was a trustee of the property for the purchaser; the purchaser was the real beneficial owner in the eye of a Court of Equity of the property," and subject of course to the vendor's right to protect his own interest. Reading sec. 26 in this way, and confirming this interpretation by reference to sec. 13 expressly exempting all land owned by a State, there appears to be no objection to the enactment.

Secs. 27 and 28 affect Crown lands only to the extent of the interest of a perpetual lessee without re-valuation, which is substantially a fee simple for the purposes of enjoyment, and the interest of a lessee with a right of purchase, which means an absolute right of purchase bringing the case within the reason of sec. 26.

Secs. 30 and 63 were said to offend as an invasion of the State power to control general contracts. But if the Commonwealth Parliament has the right to say that the lessor shall bear the burden of the tax, it has the right to insist on its will being obeyed, and its insistence may take the form of prohibiting any contractual device for shifting the burden to the lessee, who, it determined, should go free. Lord Chancellor *Selborne*, in *Small* v. *Smith* (2), laid down the rule in these terms:—"When you have got a main purpose expressed, and ample authority given to effectuate that main purpose, things which are incidental to it, and which may reasonably and properly be done and against which no express prohibition is found, may and ought, *primâ facie*, to follow from the authority for effectuating the main purpose by proper and general means."

Story in his work on the Constitution says (par. 1248):—"To employ the means, necessary to an end, is generally understood, as employing any means calculated to produce the end, and not as being confined to those single means without which the end would be entirely unattainable."

(1) L.R. 5 H.L., 321, at p. 338. (2) 10 App. Cas., 119, at p. 129.

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Then in par. 1252 he says :—"It is no valid objection to this doctrine" (that is the doctrine of liberal latitude in the selection of means) "to say, that it is calculated to extend the powers of the Government throughout the entire sphere of State legislation. The same thing may be said, and has been said, in regard to every exercise of power by implication and construction. There is always some chance of error, or abuse of every power; but this furnishes us ground of objection against the power; and certainly no reason for an adherence to the most rigid construction of its terms, which would at once arrest the whole movements of the Government." In par. 1253 he adverts to the meaning of the word "proper" apparently in the sense in which Lord *Selborne* used it. Judged then by this standard, sec. 30 is obviously *intra vires*. Sec. 63 expressly limits the avoidance to the purposes necessary to protect the legislation, and is equally clear of objection.

Sec. 36 is said to be invalid as taxing a person in respect of land in which he has no interest. But it is not a tax primarily considered. It is a penalty for doing what is intended to evade the Act, because, if the parties can satisfy the Commissioner there was no such intention, the section has no application. Sec. 37 holds in certain circumstances both legal and equitable owners of land which has been sold, but only partially paid for, responsible for the tax, but providing for equitable adjustment. Sec. 39 is attacked on the further ground that the Commonwealth Parliament is bound by a territorial restriction and cannot tax non-resident shareholders in foreign companies which own land in Australia.

The answer given to the earlier constitutional objection to the same section applies with equal force to this. And so with respect to sec. 41.

The intermediate sec. 40 is a precautionary measure, to prevent, among other things, a company owning land launching one or more offshoots with slightly different shareholders, transferring portions of its land to nominally different but practically identical owners, and so evading the progressive nature of the tax. It is not to be overlooked that Parliament has provided for the indemnity of those not really concerned in the others' land.

Sec. 48 is another section devised to secure as far as possible an honest and careful valuation by the owner in his return. If the discrepancy between the true value and the returned value is as much as one-fourth the former, the owner may have the burden of satisfying a Justice of the honesty of his purpose. The method and means he employed and the care he bestowed in framing his return are peculiarly within his knowledge, and ought to be easy to establish. If he fails to support an honest purpose he has to forfeit his property, but gets a value he cannot complain of. He is taken at his word with respect to unimproved value, but gets full value of improvements, with 10 per cent. added, for compulsory taking. The Commonwealth acquires the land, not as a primary or main power, but as ancillary to the taxation power and by way of forfeiture only, and it either hands it over to the State without profit, retains for required public purposes, or disposes of it. Those are the only possible uses. To allow the use of the word "acquisition" to dominate the manifest and declared purpose of the section would be to bow to mere verbal tyranny.

Sec. 71, an ordinary forfeiture clause for fraud, stands in the same position. As to secs. 48 and 71, the case of *Taylor* v. *United States* (1) may with advantage be perused. Both sections are valid.

Discrimination was mentioned but not pressed. The objection is obviously untenable, and is met by *Colonial Sugar Refining Co.* v. *Attorney-General for Victoria* (2).

In the result the plaintiff's case entirely fails.

HIGGINS J. read the following judgment:—I concur in the opinion that this action should be dismissed. The course of a great part of the argument for the plaintiff must seem to any outsider rather grotesque. Learned counsel have taken the two Acts and have examined every nook and cranny with microscopic care, in order to find, if possible, some provision which has transgressed the Constitution in any particular, even the most insignificant, and then they have applied great industry and ingenuity to demonstrate that if such and such a provision be treated as invalid, the remainder of the Acts would be "substan-

(1) 3 How., 197. (2) (1901) A.C., 544.

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tially different" from what Parliament intended, and must be invalid also. It is not pretended that the impugned provisions affect the plaintiff; but if the plaintiff can show that the whole of the legislation is bad because of some provision which does not concern him, he will be free from obligation to pay the tax. Into such barren intellectual gymnastics we are forced in this case, and probably in cases to come.

In this case, however, I am glad to find that, whatever our individual opinions may be as to the proper principles of severability, all the members of the Court agree in the view that either no invalidity has been shown, or that, if there is any invalidity, the invalid provision can be severed from the rest of the Acts which remain valid. Substantially, I agree with the results at which my learned brothers have arrived on this subject; and it is unnecessary for me to refer to the several provisions in detail.

But there is one argument to which I should like to refer in particular to avoid any misapprehension. It is urged that the *Assessment Act*—Act No. 22—is, either alone or in conjunction with the Act No. 21, a "law imposing taxation"; that it deals with more than one subject of taxation; and that it is therefore altogether void by virtue of sec. 55 of the Constitution (second clause). The plaintiff has to establish the three propositions in order to succeed. Personally, I am inclined to agree with the plaintiff as to the first; for Act No. 21 does not impose taxation without the aid of Act No. 22. Act No. 21 prescribes what rates of taxation shall be payable; but it does not prescribe who is to pay. Even assuming it to be possible to have a tax without a taxpayer—a person under a direct obligation to pay—it is clear that in this case there was to be a taxpayer, and the taxpayer is fixed by Act No. 22. This essential part of the imposition of the tax was left for the Act No. 22. But, as to the second proposition, I concur with what has been said, that there is not from first to last, in either of the Acts, anything dealing with any subject of taxation except that subject of taxation which is indicated in the title of one Act as "a Progressive Land Tax upon Unimproved Values," and in the other as "a Land Tax upon Unimproved Values." The prohibition contained in the second

clause of sec. 55 applies only to a law containing two or more *subjects* of taxation. There may be as many *objects* of taxation —persons to be taxed—as Parliament pleases. Here, the only subject of taxation throughout is land, or rather land values. The tax is based on the value of the land. There is no tax apart from the value of the land; although the classes of persons selected as liable to pay the tax, primarily or secondarily, seem, in some instances, to be rather artificial and arbitrary. It is unnecessary for me to discuss the provisions of the Acts further after what has been said by my colleagues. But, in my opinion, sec. 55, in both its clauses, allows Parliament much more freedom of action than the plaintiff is disposed to concede. The provision is not that laws imposing taxation shall only impose taxation, but that they shall *deal only with* the imposition of taxation. The provision is not that laws imposing taxation shall only tax one subject of taxation, but that they shall *deal with* one subject of taxation only. The words seem to allow the insertion of any provision which is fairly relevant or incidental to the imposition of a tax on one subject of taxation.

As for the third proposition, I am not at all prepared to accept the assumption of the plaintiff that if an Act imposing taxation deals with more than one subject of taxation it is void. There are no words in the Constitution expressly making the Act void; and I cannot find that it is void by necessary implication. True, it is reasonable to infer from the change of language in sec. 55—"law," instead of "proposed law," or Bill—that there is to be a change of result; but what is the change? Why are we to infer that invalidity of the whole Act is the necessary result? Under sec. 51 Parliament has power, "subject to this Constitution," to make laws; but the provisions for making "proposed laws" are quite as much part of the Constitution as the provisions for "laws"; and yet it is admitted that an infraction of the provisions for "proposed laws" does not make the Act invalid. Nor can it be maintained that the secs. 53, 54, 56, &c., dealing with "proposed laws," deal only with directions to the Houses or directions as to the mode of handling Bills; for sec. 54 prescribes that "proposed laws" appropriating moneys for the ordinary annual services "shall deal only with such appropriation. Why is

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an Appropriation Act not invalid by reason of its substance if a taxation Act is invalid by reason of its substance? Ordinarily, if the first part of a section prescribe a prohibition and a penalty, and the second part prescribe a prohibition only, we should say that the second provision carries no penalty; and why does that principle not apply here? The penalty of partial invalidity contained in the first clause of sec. 55 is in the form of an addition to the prohibition, not in the form of a reduction of penalty. The fact that there is no remedy specified for non-compliance with sec. 55 (2) does not show that the clause is imperative (*Maxwell on Statutes*, 4th ed., p. 567); nor the fact that the words are negative in substance (*Craies on Statute Law*, p. 233); and no doubt the word "only" implies a negative. Perhaps it was thought that, if the Senate were coerced by circumstances into accepting two taxes in one Bill, the power of the King could be invoked under sec. 59, and the Bill would cease to have a position from the date of disallowance. At the worst, however, the prohibition can be treated as merely directory. The theory that the whole Act was to be invalidated rests really on mere conjecture. Where are the words making the law (and a "law" means a valid law) invalid? However, the point is, fortunately, not necessary for our decision.

It was also urged by the plaintiff that the Acts, in their true nature and character, are not taxation Acts at all—that they were not passed for the purpose of raising revenue, but in order to control matters which are essentially within the reserved powers of the States—the holding of land, the holding by absentees, the holding of land of great value, &c. For this purpose reference was made to matters of internal evidence in the Acts themselves, which show an intention to dictate an economic policy as to lands—a policy which it is for the State to dictate. I admit that, if I were able to accept the view of the majority of the Court in *Barger's Case* (1), I should find much more difficulty in answering this argument. But as I am sitting now in Full Court, I need only say that as these Acts create an obligation to pay taxes they are taxation Acts, whatever conditions they impose, whatever State subject they affect.

(1) 6 C.L.R., 41.

I can find no discrimination between States or parts of States. I concur in the opinion that this action should be dismissed, and with costs.

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Judgment for the defendants, with costs.

Solicitors, for the plaintiff, *Norton Smith & Co.*

Solicitor, for the defendants, *C. Powers*, Crown Solicitor for the Commonwealth.

B. L.

[HIGH COURT OF AUSTRALIA.]

CHAPLIN . . . . . APPELLANT;
DEFENDANT,

AND

COMMISSIONER OF TAXES FOR SOUTH AUSTRALIA . . . . . } RESPONDENT,
PLAINTIFF,

ON APPEAL FROM THE LOCAL COURT OF ADELAIDE.

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ADELAIDE, *May* 18.

Griffith C.J., Barton and O'Connor JJ.

Legislative powers of States—Taxation of salary of Commonwealth officer—Grant by Commonwealth Parliament to State of authority to tax—Commonwealth Salaries Act 1907 (*No.* 7 *of* 1907), *sec.* 2.

The Commonwealth Parliament may make its grants of salaries to Commonwealth officers subject to taxation by the States.

The *Commonwealth Salaries Act* 1907 is an effective grant to the States of authority to impose upon Commonwealth officers taxation in respect of their salaries, subject to the conditions stated in that Act.

APPEAL by way of special case.