Act which operates on the commodity—both on general principles (*Powell* v. *Apollo Candle Co.* (1)), and by its own words (sec. 10, second paragraph). As already shown, the first Proclamation does not extend and apply the Act to the "commodity," but, by authorizing its acquisition, paves the way for the second Proclamation, which does. But when the second Proclamation is made, then by the very words of the section its effect is to "extend and apply the Act to the commodity." It is, therefore, clear that "operation thereof," in relation to a supposed injury directly affecting a commodity, means the operation of the Act itself.

Then the word "thereunder," which occurs twice, corresponds to "thereof," and applies solely to the Act. In the earlier part of the section we find the expression "under this Act" in relation to a Proclamation. And in other parts of the Act, where acquisition is spoken of, we find a distinction is drawn between the Proclamation and the Act. For instance, in sub-sec. 3 of sec. 5 it is said that the acquisition is "by" the Proclamation, which is exactly true. And so in the second part of sec. 10. But in sub-sec. 1, and again in sub-sec. 2, of sec. 6 the Act speaks of a commodity acquired "under . . . this Act." Further, it would be impossible upon any reasonable interpretation to say that a commodity was acquired "under" a Proclamation. The first Proclamation does not touch any particular thing. The second, if it is lawful, constitutes the very act of acquisition; but there is no acquisition "under" it. These considerations seem to us to place beyond reasonable doubt the conclusion that "thereof" and "thereunder" mean "of the Act" and "under the Act." The legal effect of sec. 7, looked at in the whole, appears to us to be that it prevents any litigation arising out of the honest administration of the Act, except for the statutory value of the property taken. Assuming good faith, the words of the section indicate that, in view of the urgency of the time, the Legislature, while giving its general directions to the Executive, provided a ratification in advance of any possible slip, and secured to the people of Queensland, on the one hand, the commodities they were found to require, and to the owners, on the other, the fair value ascertained according to statutory directions, of the

(1) 10 App. Cas., 282, at p. 291.

H. C. OF A. 1917.

DUNCAN v. THEODORE.

Isaacs J. Powers J.

commodities in fact acquired from them as under the provisions of the Act. The ratification by sec. 7 of acts assumedly illegal corresponds exactly to the ratification by sec. 5 of the illegal Proclamation of 30th June, and is based on similar considerations.

It is now necessary to refer to one argument much relied on by the appellants. They urged that, in order to come within the protection, Balfour, the constable, at all events, would have to show the Proclamation of 1st June 1916 was valid by reason of the words "Proclamation made under this Act," and that no honest belief on his part that it was valid would avail. In other words, the Legislature, it was said, intentionally threw upon all officers of the Government, however bound to obey the orders of their superiors—as Balfour admittedly was—the responsibility of maintaining the validity of the royal Proclamation. In an analogous case (*Pedley* v. *Davis* (1)) *Erle* C.J. said of a Court officer who executed an invalid warrant: "He is bound to obey the command in the warrant; and although he might resign his office and avoid receiving a warrant, he is not the less acting under legal compulsion if he is in office and receives the warrant." And the point was made for the appellants here that the only thing that would protect the officer was a *bonâ fide* mistake as to the "facts"—not as to the law.

We entirely dissent from that last proposition, but the test of its accuracy is wrapped up in the general considerations which the Courts have applied to this class of case. In applying provisions of that nature a distinction has arisen between two classes of cases which it is all-important to bear in mind. The distinction is between defendants who act in an official position, and those who do not. The appellants' argument fails to preserve this distinction. It is well shown in Lord *Halsbury's Laws of England* (vol. XXIII., at pp. 343-344), under the heading "Public Authorities and Public Officers," par. 695, where the rule and the authorities are to be found. In *Jones* v. *Gooday* (2) Lord *Abinger* C.B. thought a commissioner would be protected "if he entertained a *bonâ fide* supposition that he was acting in pursuance of the Act of Parliament, and that he had due authority" (3). *Parke* B. said (4): "Clauses of this nature were

(1) 30 L.J.C.P., 374, at p. 380.
(2) 9 M. & W., 736.
(3) 9 M. & W., at p. 741.
(4) 9 M. & W., at p. 743.

meant for the protection of honest persons, who *bonâ fide* meant to discharge their duty." *Alderson* B. (1) quoted with approval the words of Lord *Ellenborough* and *Bayley* J., in an earlier case, to the effect that an officer was protected if he acted with a *bonâ fide* intention to carry out the Act of Parliament. In such cases, the duty of discharging the functions of the office renders any other state of facts unnecessary. If there is no official duty, then the defendant is not protected unless the facts as he *bonâ fide* believes them to be are such as would give him the same right to act as an official personage called upon to act by his public duty as he understands it.

This enables us to put aside the argument that the *bonâ fide* belief on the part of the defendants that the Proclamations were lawful is immaterial, inasmuch as their legality is a matter of law, and not of fact.

A decisive instance of this is the well-known case of *Greenway* v. *Hurd* (2), cited in *Selmes* v. *Judge* (3). In that case the illegality arose through the circumstance that the Act of Parliament under which the defendant claimed to act had been repealed about two months previously. He had apparently overlooked that circumstance. It was argued that therefore "there was no Statute in existence under colour of which the defendant could pretend to act." Nevertheless, Lord *Kenyon* C.J. held against the objection, and said (4) that the notice required by the Statute was "only required for the purpose of protecting them in those cases where they intended to act within" the strict line of their duty, "but by mistake exceeded it." Necessarily the "mistake" referred to by the Lord Chief Justice included a mistake as to the existence of a particular law. This case was approved in *Waterhouse* v. *Keen* (5), and by Lord *Atkinson* in the *Bradford Corporation Case* (6).

Selmes v. *Judge* (3) was a very distinct illustration of the same doctrine, and appears to be in close analogy to the present case. Surveyors of highways illegally demanded rates of the plaintiff. They were empowered by law to assess his property provided they first made a lawful rate—just as here the defendants had power

(1) 9 M. & W., at p. 745.
(2) 4 T.R., 553.
(3) L.R. 6 Q.B., 724.
(4) 4 T.R., at p. 555.
(5) 4 B. & C., 200, at pp. 211-213.
(6) (1916) 1 A.C., at p. 258.