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TAYLOR v. ATTORNEY-GENERAL OF QUEENSLAND.

Solicitors for the plaintiffs, *F. J. Fitzgerald & Walsh* and *Cannan & Peterson*.

Solicitor for the defendants, *W. F. Webb*, Crown Solicitor for Queensland.

Refd to *Dagi v Broken Hill Proprietary Co Ltd (No2)* [1997] 1 VR 428

[HIGH COURT OF AUSTRALIA.]

THE COMMONWEALTH . . . . . APPELLANT;
DEFENDANT,

AND

WOODHILL . . . . . RESPONDENT.
PLAINTIFF,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

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SYDNEY, *Aug.* 24, 27; *Sept.* 5.

Barton, Isaacs and Rich JJ.

Land—Acquisition by Commonwealth—Action for compensation—Conflict of laws—Jurisdiction of Supreme Court of State—"State Court of competent jurisdiction"—Land becoming part of Federal territory—Cause of action—Local or transitory actions—Lands Acquisition Act 1906-1916 (*No.* 13 *of* 1906—*No.* 12 *of* 1916), *secs.* 37, 38, 39—*Seat of Government (Administration) Act* 1910 (*No.* 25 *of* 1910), *sec.* 11—*Seat of Government Acceptance Act* 1909 (*No.* 23 *of* 1909), *sec.* 8—*Jervis Bay Territory Acceptance Act* 1915 (*No.* 19 *of* 1915), *secs.* 4, 6—*Judiciary Act* 1903-1915 (*No.* 6 *of* 1903—*No.* 4 *of* 1915), *secs.* 39, 56.

An action to recover compensation for the compulsory acquisition of land by the Commonwealth under statutory authority is in its nature local and not transitory.

The words "any State Court of competent jurisdiction" in sec. 37 of the *Lands Acquisition Act* 1906 mean any State Court having jurisdiction competent as to locality as well as subject matter.

On 1st May 1915 the Commonwealth, pursuant to the *Lands Acquisition Act* 1906, compulsorily acquired certain land of the respondent at Jervis Bay, then in the State of New South Wales. On 25th August 1915 the respondent made a claim for compensation in respect of such acquisition. On 4th September

1915 the *Jervis Bay Territory Acceptance Act* 1915 came into operation, and the land in question thereafter was within territory acquired by the Commonwealth for the Seat of Government. On 5th May 1916 the respondent refused an offer which had been made to him in respect of his claim for compensation, and on 7th March 1917 by writ of summons instituted an action in the Supreme Court of New South Wales against the Commonwealth to recover compensation.

Held, that the cause of action arose on 5th May 1916; that the jurisdiction which the Supreme Court of New South Wales originally had in respect of the land was taken away by sec. 8 of the *Seat of Government Acceptance Act* 1909 (which is incorporated in the *Jervis Bay Territory Acceptance Act* 1915 by sec. 4 thereof); that that Court was not a "State Court of competent jurisdiction" within the meaning of sec. 37 of the *Lands Acquisition Act* 1906; and, therefore, that it had no jurisdiction to entertain the action.

Decision of the Supreme Court of New South Wales: *Woodhill* v. *Commonwealth of Australia*, 17 S.R. (N.S.W.), 224, reversed.

APPEAL from the Supreme Court of New South Wales.

An action in the Supreme Court was instituted by Charles Richings Woodhill against the Commonwealth by writ of summons issued on 7th March 1917, claiming £4,400 for debt and damages in respect of the compulsory acquisition by the Commonwealth of certain land. The Commonwealth moved, on summons, to set aside the writ on the ground that the matter was not within the jurisdiction of the Supreme Court of New South Wales. The Full Court, to whom the summons had by consent of the parties been referred, dismissed the summons: *Woodhill* v. *Commonwealth of Australia* (1).

From that decision the Commonwealth now appealed to the High Court.

Other material facts appear in the judgments hereunder.

Campbell K.C. (with him *Pike*), for the appellant. The cause of action in this case arose when the respondent refused to accept the offer made by the Commonwealth and the claim became, under sec. 35 of the *Lands Acquisition Act* 1906, a disputed claim for compensation. An action for compensation might then, under sec. 37, be instituted in the High Court or "any State Court of competent jurisdiction." The Supreme Court of New South Wales was not, when the cause of action arose, a Court of "competent jurisdiction."

(1) 17 S.R. (N.S.W.), 224.

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When the *Jervis Bay Territory Acceptance Act* came into operation the territory within which this land was situated became part of the Territory for the Seat of Government, and was within the provisions of the *Seat of Government Acceptance Act* 1909, sec. 8 of which, pursuant to the power contained in sec. 111 of the Constitution, substituted the High Court for the Supreme Court of New South Wales to the extent to which the latter Court had theretofore had jurisdiction. By sec. 39 of the *Judiciary Act* Federal jurisdiction was conferred upon the Courts of the States "within the limits of their several jurisdictions, whether such limits are as to locality, subject matter, or otherwise," and the words "competent jurisdiction" in sec. 37 of the *Lands Acquisition Act* should be similarly construed as meaning jurisdiction competent as to locality as well as to subject matter. A claim for compensation under the latter Act is local in its nature and not transitory (*British South Africa Co.* v. *Companhia de Moçambique* (1); *Sydney Municipal Council* v. *Bull* (2); *Potter* v. *Broken Hill Proprietary Co. Ltd.* (3)).

[ISAACS J. referred to *Doulson* v. *Matthews* (4).]

Such a claim is not a mere monetary claim. The interest of the claimant in the land must be taken into consideration in the action, and the investigation of many local matters is involved. See secs. 28, 29, 30. If the view of the respondent is correct, the Supreme Court of any State would have jurisdiction, and an action for compensation in respect of land acquired in Western Australia might be brought in the Supreme Court of Queensland.

Flannery, for the respondent. An action for compensation under the *Lands Acquisition Act* is not in its nature a local action. It is a special form of action provided by the Statute for determining the amount of compensation apart altogether from the question of title. The incapacity of the Courts of the States with regard to jurisdiction in respect of trespass to foreign land is not fundamental. It is an incapacity imposed by the Courts upon themselves. They will not exercise their jurisdiction unless something more appears. The mere fact that a question as to title to foreign land may incidentally

(1) (1893) A.C., 602.
(2) (1909) 1 K.B., 7.
(3) 3 C.L.R., 479.
(4) 4 T.R., 503.

arise does not oust the jurisdiction of the Court (*Halsbury's Laws of England*, vol. VI., p. 201). The jurisdiction of the State Courts depends primarily upon the presence of the defendant. The question whether the Commonwealth can be sued in a State Court depends on whether the Commonwealth can be served in that State. In considering the meaning of the words "State Court of competent jurisdiction" in sec. 37 of the *Lands Acquisition Act*, the Court should not read in words having reference to the place where the cause of action arose, which appear in sec. 56 of the *Judiciary Act*. A provision that an action for compensation under the *Lands Acquisition Act* may be brought in the High Court or in any State Court having jurisdiction as to the subject matter is reasonable. The only restriction that would be expected is one as to jurisdiction as to the subject matter, for at the time such a claim is made the plaintiff has not the land but has only a claim against the Commonwealth in respect of its acquisition. The fact that in other sections, such as secs. 10 and 39, a reference is found to the Supreme Court as meaning, by virtue of the definition in sec. 5, the Supreme Court of the State in which the particular land is situated, tends to show that it was intended by sec. 37 that an action for compensation might be brought in the Supreme Court of any State. Where a reference is made in the Act to the Supreme Court, one reason for restricting the particular proceeding to the Supreme Court of the State in which the land is situated is that questions of title have to be determined. [Counsel also referred to *Sirdar Gurdyal Singh* v. *Rajah of Faridkote* (1).]

Campbell K.C., in reply.

Cur. adv. vult.

Sept. 5.

The following judgments were read:—

BARTON J. The appellant, which was defendant to a writ issued by the plaintiff, who is now respondent, sought to set aside that writ. The application was referred to the Full Court of New South Wales, and by them dismissed. It comes to this Court on appeal.

A notification in the *Commonwealth Gazette* dated 1st May 1915 compulsorily acquired under the Commonwealth *Lands Acquisition*

(1) (1894) A.C., 670, at p. 683.

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Act 1906 certain lands at Jervis Bay, then in the State of New South Wales, but now in Federal Territory. On 25th August 1915 the respondent made his claim for compensation. An offer made by the Minister of State for Home Affairs was refused in writing by the respondent on 5th May 1916. Under secs. 35 and 36 of the *Lands Acquisition Act* before mentioned the respondent's cause of action arose on that day, not earlier.

The *Jervis Bay Territory Acceptance Act* (No. 19 of 1915) was assented to on 12th July 1915, and commenced on the date fixed by Proclamation (see sec. 2), namely, 4th September 1915. Consequently, under sec. 4, sub-secs. 1 and 2, of the Jervis Bay Act the land acquired by the Commonwealth was within territory acquired by the Commonwealth for the Seat of Government, "to the intent that all laws ordinances and regulations (whether made before or after the commencement of this Act) which are from time to time in force in the Territory for the Seat of Government" should so far as applicable also apply to and be in force in the accepted territory. As the cause of action arose in territory added to the area acquired for the Seat of Government, and deemed part of that area, with respect to a piece of land in that territory, the question arises whether the Supreme Court of New South Wales has jurisdiction to entertain an action for compensation in respect of that piece of land.

The *Seat of Government Acceptance Act* of 1909, sec. 8, gives the High Court, until the Parliament otherwise provides, the jurisdiction, within the area surrendered to and accepted by the Commonwealth, which immediately before the proclaimed day (1st January 1911) belonged to the Supreme Court of the State and the Justices thereof. Sec. 10 must be read with and subject to sec. 8. That jurisdiction, then, was from January 1911 in the High Court, and not in the Supreme Court, at any rate in respect of actions local in their nature. The strength of sec. 8 is increased by the fact that by sec. 11 of the *Seat of Government (Administration) Act* of 1910 the inferior Courts of New South Wales are to continue to have for the enforcement of all laws in the Territory and the administration of justice therein the jurisdiction therein which they had before the Administration Act. The superior Courts of that State are not given any similar jurisdiction. Upon

the surrender and acceptance of the Seat of Government Territory, of which the Jervis Bay annexe must be deemed to be part, the whole of the Territory, original and additional, became subject to the exclusive jurisdiction of the Commonwealth (Australian Constitution, sec. 111). Hence it has not been, since the surrender and acceptance, any part of a State. Before the material date the State of New South Wales had ceased to have any territorial right over it, legislative or judicial, or any forensic jurisdiction over cases arising therein, except perhaps so far as such jurisdiction could be claimed in cases of a transitory nature.

Sec. 37 of the *Lands Acquisition Act* 1906 allows an action for land compensation to be instituted by the claimant against the Commonwealth in the High Court or in any State Court *of competent jurisdiction*. That such an action is in its nature local appears to me to be shown not only by its general character but by the combined effect of secs. 12, 28, sub-sec. 1, pars. (*b*) and (*c*), 29, 30, 42, and 45, sub-secs. 2 and 3. The matter involved in such an action is in substance the failure to give a sufficient price for the land, including in certain cases damages for severance and for depreciation. It was therefore a local matter arising outside the State of New South Wales, in which the Courts of that State are without jurisdiction, so that the term "competent jurisdiction" does not apply to them in local actions. See *British South Africa Co.* v. *Companhia de Moçambique* (1); *Doulson* v. *Matthews* (2); also *Potter* v. *Broken Hill Proprietary Co. Ltd.* (3). At the time of the passage of this Act there was no actually defined Seat of Government area. But whatever jurisdiction the Supreme Court of New South Wales had in local actions before the passing of the *Seat of Government Acceptance Act* of 1909, I am of opinion that sec. 8 of that Statute took away, as the Federal Parliament had power to take away, from the Supreme Court the jurisdiction which it previously had in such cases within the Territory, and left it with the High Court alone, and that the *Jervis Bay Territory Acceptance Act* of 1915 had the effect of dealing similarly with the territory validly added by that Act to the Seat of Government

(1) (1893) A.C., 602.

(2) 4 T.R., 503.

(3) 3 C.L.R., 479.

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operation connected with or incidental to the loading of the ship. To Mr. *Shelton's* objection it was answered that if the words "any such industrial operation" meant the "discharge, loading, coaling or despatch of shipping," that would be tautology; that is to say, to be engaged in the discharge, &c., of shipping is the same thing as to be engaged in the industrial operation of the discharge, &c., of shipping. *Primâ facie* one looks for a meaning of the words which does not put the Legislature in the position of having unnecessarily said the same thing twice in two successive phrases. There is, perhaps, some plausibility in the contention, but I do not think it takes the whole matter into its view. What does "the performance of any such industrial operation" mean? You find the words "industrial operation" in the preceding clause and nowhere else in the regulation. If you wish, as one necessarily wishes, not to involve Parliament in tautology, there is a clear-cut phrase to which the word "such" refers. It was, indeed, argued that the word "such" meant "the like" or "similar." Of course it does mean that in common parlance, but in Acts of Parliament the word "such" generally refers to a preceding thing, and if there is a preceding thing called by the same name that is the thing to which the word "such" refers. In this case the preceding thing called by the same name is an industrial operation connected with or incidental to the discharge, &c., of shipping. It is perfectly clear, as was contended, that the two clauses may be regarded as two separate enactments, but it is also clear that they must be regarded together for the purpose of interpretation. I find then, in the preceding context, a phrase repeated in clause (*b*) preceded by the word "such," and I cannot help thinking the two refer to the same thing. If they do, then if the Magistrate when he comes to consider this evidence believes it, it becomes perfectly clear that de Morton was engaged in the performance of an industrial operation connected with and incidental to both the loading and the despatching of shipping, and that Lewis dissuaded him from continuing to be so engaged.

As to the amendment of the regulation of 22nd August, to which I have referred, I cannot think that the addition of those words alters the meaning of the preceding part of the regulation so far

as the present offence is concerned. The "production, manufacture, or transport of munitions, &c., is not the same as the "discharge, loading," &c., "of shipping." The word "transport" has been referred to as being an industrial operation connected with or incidental to the discharge, &c., of shipping. It may or may not be so. But the transport of munitions, &c., may be and is conducted for many purposes which have nothing to do with the discharge, &c., of shipping. It would be straining the language to say that the whole meaning of clause (*b*) as previously indicated has been altered.

There was, indeed, an argument that the charge of attempting to dissuade a person from continuing to be engaged in an industrial operation refers to the contract which that person had entered into, and not to the mere manner in which he was occupied at the time. It is quite possible to construe the regulation in that way, but I find the words "engaged in" earlier in clause (*b*) in the phrase "interferes with or impedes any person or body of persons engaged in." Reading that with the phrase "from becoming, or continuing to be, engaged in," as one must do, it seems to me that the words "engaged in" refer to the occupation in which the person was "engaged," not in the sense of a contract but in the sense of the operation. In the earlier phrase the words "engaged in" must clearly refer to the act of discharging, loading, &c., and, being used in that sense in the earlier part of the sub-clause, there is no reason alleged or feasible why they are not used in the same sense in the later phrase. Taking the whole regulation together it seems plain that the first part, clause (*a*), was enacted to prevent and discourage interference of one kind or another with the actual operations in which persons were engaged, in the sense of action of some kind upon the operation itself, and that clause (*b*) refers to interference or impediment thrown in the way of persons who are occupied in similar operations. The scope of the two sub-clauses is similar if not identical, but clause (*a*) is directed to the case where it is found not that any particular person has been dealt with, but that certain things have been dealt with (for instance, that cargo has been pushed into the water), while clause (*b*) is directed to interference with persons while engaged in certain work. The distinction between acts which are punishable on the one ground or on the other may not, in practice, be always

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very plain, but it is obvious that the intention of the regulation was to catch the real offence however committed. That, at any rate, is my view of the two clauses.

On the whole, the attempt to show either that the offence is not within the regulation, or that the case breaks down with reference to the information or the consent, is in my opinion unsuccessful, and it follows that the appeal must be allowed. The case should be remitted to the Court of Petty Sessions with an intimation of the opinion of this Court that the construction of the regulation is such as to cover the offence charged, and that the evidence, if believed, is sufficient for a conviction.

ISAACS J. I agree that the appeal should be allowed. With one qualification I agree with what my brother *Barton* has said. That qualification is that in clause (*b*) of reg. 40c the word " engaged " is not limited to the progress of the operations described. I think the regulation certainly includes a prohibition against dissuading any person from undertaking employment with that object.

The first two objections have already been dealt with, and I have nothing to add with regard to them. The main objection to the appeal is that the words " the performance of any such industrial operation " do not refer to " any industrial operation connected with or incidental to the discharge, loading, coaling or despatch of shipping," but to the main operations themselves or some similar operations. No doubt the severity, and the necessary severity, of the penalties which are possible under the *War Precautions Act* makes a Court very careful to see whether a case falls within the regulation which is said to have been broken. But after most careful consideration of this regulation I cannot see any reasonable alternative meaning of the crucial words in clause (*b*) other than that insisted on by the Crown. That is the only possible reasonable meaning to be given to those words. For that reason I agree that the appeal should be allowed. I agree in the order which has been proposed.

GAVAN DUFFY J. read the following judgment :—It is objected that the information in this case does not set out any offence under reg. 40c (*b*). It states that the defendant attempted

to dissuade one George Henry de Morton from continuing to be engaged in the performance of an industrial operation, to wit—the carriage of goods to the Melbourne wharves for shipment there, and such an industrial operation is, in my opinion, an operation connected with or incidental to the loading or despatch of shipping within the meaning of reg. 40c (*a*). It seems clear to me that the words " performance of any such industrial operation " in clause (*b*) have relation to the words " the performance of any industrial operation connected therewith or incidental thereto " in clause (*a*). I therefore think that the information discloses an offence under clause (*b*). I also think that if the Magistrate believed the evidence for the prosecution he should have convicted the defendant of this offence. The appeal should be allowed, and the order made absolute.

Appeal allowed. The parties consenting, the defendant convicted and fined £10, *and ordered to pay* £10 *for costs in both Courts.*

Solicitor for the appellant, *Gordon H. Castle*, Crown Solicitor for the Commonwealth.

Solicitor for the respondent, *H. H. Hoare.*

B. L.

[HIGH COURT OF AUSTRALIA.]

McCANN . . . . . APPELLANT;
INFORMANT,

AND

BUTCHER . . . . . RESPONDENT.
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF VICTORIA.

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MELBOURNE, *Sept.* 17, 18.

Barton, Gavan Duffy and Powers JJ.

Gaming and Wagering—Street betting—"Street"—"Enclosed or unenclosed land" in city or town—Police Offences Act 1915 (*Vict.*) (*No.* 2708), *secs.* 104, 106.

Sec. 104 of the *Police Offences Act* 1915 (Vict.) provides (*inter alia*) that any person being in any street for the purpose of money being received by him as the consideration for an undertaking by him to pay thereafter money on any sporting contingency, shall be liable to a penalty. Sec. 106 provides that the word "'street' includes and applies to every road street thoroughfare highway lane footway or footpath on any public or private property, and also extends and applies to any enclosed or unenclosed land (not including houses and race-courses) within any municipal district which on the sixth day of March one thousand eight hundred and ninety-six was a city or town."

Held, that the meaning of the words "enclosed or unenclosed land" in sec. 106 is not limited by the context, and, therefore, that a person who, for the purpose mentioned in sec. 104, was in enclosed land within a city, which land was used for foot-races and for admission to which a charge was made, was liable to the penalty thereby prescribed.

Decision of the Supreme Court of Victoria (*Cussen* J.): *McCann* v. *Butcher*, (1917) V.L.R., 214; 38 A.L.T., 171, reversed.

APPEAL from the Supreme Court of Victoria.

At the Court of Petty Sessions at Flemington an information was heard whereby John McCann, the informant, charged that on 26th January 1917 Alfred Butcher was in a certain street, to wit certain enclosed land known as Gurney's Running Ground, situate at the rear of Gurney's Hotel, Mount Alexander Road, within the municipal district of the City of Melbourne, for the purpose of money

being received by him as the consideration for an undertaking by him to pay thereafter money on certain sporting contingencies, to wit foot-races to be run on the said ground. The evidence showed that Gurney's Running Ground was enclosed by a fence and was licensed under sec. 33 of the *Police Offences Act* 1915 as a running ground; that on 26th January 1917 foot-races were being run there on a prepared track in the presence of a large number of persons, a charge being made for admission to the ground; and that the defendant was there making bets upon the foot-races. The information was dismissed, the Police Magistrate being of opinion that the definition of "street" in sec. 106 of the *Police Offences Act* 1915 was not intended to apply to a place such as Gurney's Running Ground. An order *nisi* to review this decision was obtained by the informant on the ground that the Police Magistrate was wrong in holding that Gurney's Running Ground was not a street within the meaning of the *Police Offences Act* 1915. On the return of the order *nisi*, *Cussen* J. discharged it, holding that the words "any enclosed or unenclosed land" in sec. 106 should be limited to places to which the public had practically unrestricted access whether as of right or not: *McCann* v. *Butcher* (1).

From that decision the informant now, by special leave, appealed to the High Court.

Mann, for the appellant. On the plain meaning of the definition of "street" in sec. 106 of the *Police Offences Act* 1915, the place in question here is within it. The case of *Sheahan* v. *Jackman* (2) dealt solely with the meaning of "thoroughfare," and was not concerned with the meaning of "any enclosed or unenclosed land." The fact that the result of giving to those words their plain meaning would be to cause an overlap is not a sufficient reason for cutting down that meaning.

Starke (with him *Cussen*), for the respondent. The words "any enclosed or unenclosed land" in sec. 106 should be restricted to land upon which there is a way over which people, whether as of right or not, pass. Otherwise the whole of the previous words of the definition are unnecessary. The dominant word in the definition is

(1) (1917) V.L.R., 214; 38 A.L.T., 171. (2) 19 A.L.T., 184.

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"street" and the words "any enclosed or unenclosed land" should be limited to land which is used in the same way as a street or over which people commonly pass. Division 7 of Part IV. of the Act contemplates that betting on sports grounds is lawful, but on the wide interpretation of sec. 106 it would be unlawful.

BARTON J. In this case an information was laid, following the terms of sec. 104 of the *Police Offences Act* 1915, alleging that the defendant "was in a certain street, to wit certain enclosed land known as Gurney's Running Ground . . . within the municipal district of the City of Melbourne, for the purpose of money being received by him as the consideration for an undertaking by him the said defendant to pay thereafter money on certain sporting contingencies." By sec. 106 the word "street" used in this information "includes and applies to every road street thoroughfare highway lane footway or footpath on any public or private property, and also extends and applies to any enclosed or unenclosed land (not including houses and race-courses) within any municipal district which on the sixth day of March one thousand eight hundred and ninety-six was a city or town." The locality on which the offence is alleged to have been committed is what is called Gurney's Running Ground, and is shown to be within the municipal district alleged. The question really is whether such a place as Gurney's Running Ground is within the second branch of the definition so as to be within the meaning of the Act a "street." Now, it is very plain that fixing an artificial name for the description of a thing which in common parlance does not answer to that name is a thing very commonly done, especially in Statutes. Cases are numerous in which appellations are given to things, persons and circumstances which they could not in ordinary conversation bear or be supposed to bear. Therefore the fact that the word "street" is used to cover a multitude of things which do not ordinarily answer to the description of a street is a thing very much to be expected, according to the common practice of definition. Is this ground enclosed land, not being a house or race-course, within the City of Melbourne? That is the short question. If it is, it is a "street" unless the meaning of the words of the definition has been entirely altered by a

context which, to use the words of *Jessel* M.R., is stronger or at least equally strong. Various other sections have been pointed out by Mr. *Starke*, and with great force, no doubt. This is a consolidating Act, and is a collection of enactments passed from time to time to answer various purposes, and it may very well be that Mr. *Starke* is right in saying that, if the language of sec. 106 is construed strictly, some things which it covers, or in some cases offences such as that now charged, are efficiently provided for in other parts of the Act. To my mind that is not a circumstance which should outweigh the unambiguous language of this Act. The words "enclosed or unenclosed land (not including houses and race-courses) within any municipal district which on the sixth day of March one thousand eight hundred and ninety-six was a city or town" are so clear as to be unmistakable, and it would take an extraordinarily strong context to show that they do not mean what they say. The circumstance that a consolidating Statute like this affords instances in which a thing which would be the result of a literal interpretation of this definition might also be made subject to prosecution by utilizing another part of the Act, cannot, to my mind, countervail the clear language of the section.

I am therefore of opinion that the information was erroneously dismissed, and that the appeal should be allowed.

I am at liberty to say that my brothers *Gavan Duffy* and *Powers* concur in this judgment.

Appeal allowed. Order appealed from discharged. Respondent convicted of the offence charged and fined £20, *in default distress. Appellant to pay the costs of this appeal and of the proceedings below.*

Solicitor for the appellant, *E. J. D. Guinness*, Crown Solicitor for Victoria.

Solicitors for the respondent, *Nolan & Nolan.*

B. L.