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H. C. of A. had it the power, to alter or repeal clause 22. If it had power to repeal clause 22 in toto, it had power to repeal it in part, and, if so, it had power to alter it by excising the exception or the proviso, or both—which is unthinkable. Therefore, clause 22 stood, and in my opinion still stands, as a permanent power of the Queensland Legislature outside the express working provisions of the Constitution for the time being. This is the view taken by Griffith C.J. in Cooper's Case (1). I concurred in that opinion (2), and still think it correct.

> The words of clause 22 are certainly not narrower—and are possibly even broader—than those of sec. 5 of the Colonial Laws Validity Act 1865, and consequently would, of themselves, support the Act we are considering, and possibly would support constitutional changes outside the ambit of sec. 5 of the Colonial Laws Validity Act. On both grounds, taken separately or conjointly, I answer the second question in the affirmative.

> 3.—"Is there power to abolish the Legislative Council of Queensland by an Act passed in accordance with the provisions of the Parliamentary Bills Referendum Act of 1908?"

> For the reasons given in my answer to the second question, with the additional observation that upon its construction the Act of 1908 includes the power to pass such an Act as is described, I answer this in the affirmative.

> References were made during the argument to text-writers. Though they are not to be regarded as authorities, there is no doubt the opinions they express, and the examples they adduce, confirm the view I take independently.

> The only qualification I make as to the exercise of the power is that the conditions attached to the grant in clause 22 of the Order in Council or in sec. 5 of the Colonial Laws Validity Act 1865, respectively, must be observed according to whichever of these grants is relied on.

> 4.—"Was the referendum taken on 5th May 1917 a valid referendum?"

> Its validity so far as that depends on the State Constitution and State laws has already been dealt with.

The only other point raised was with reference to sec. 14 of the

Commonwealth Electoral (War-time) Act 1917. On this, I agree with H. C. of A. the statement made by my learned brother Barton.

5. Costs.—I agree that there should be no costs.

GAVAN DUFFY AND RICH JJ. We agree with what has been said by our brother Barton as to question 1.

We also agree with him in thinking that sec. 5 of the Colonial Gavan Duffy J. Rich J. Laws Validity Act (28 & 29 Vict. c. 63) enables us to answer questions 2 and 3 in the affirmative. It provides that a representative legislature shall, in respect of the colony under its jurisidiction, have and be deemed at all times to have had full power to make laws respecting the constitution, powers, and procedure of such legislature, provided that such laws shall have been passed in such manner and form as may from time to time be required by any Act of Parliament, letters patent, Order in Council, or colonial law for the time being in force in the said colony. In our opinion the word "constitution" in this collocation means "nature," "composition," or "make up," and the enactment enables a representative legislature to alter its constitution as it chooses, to allot to the legislature such powers as it thinks fit, and to prescribe the method in which it shall conduct its proceedings. It may perhaps be that the legislature must always remain a representative legislature as defined by the Statute, but it is unnecessary in the present case to determine whether that is so or not. This seems to us the plain meaning of the words used, but it is urged that some less extended meaning should be given to them because of the earlier words of the section which run as follows: "Every colonial legislature shall have, and be deemed at all times to have had, full power within its jurisdiction to establish Courts of judicature, and to abolish and reconstitute the same, and to alter the constitution thereof, and to make provision for the administration of justice therein." It is said that the word "abolish" is used here where it is intended to give power to put an end to a Court, and that a similar word would have been used had it been intended to give power to destroy the Legislative Council, which is an integral part of the existing legislature. Had it been intended to give to a representative legislature power to enact that there should thereafter be no legislature, the word "abolish" might well

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H. C. OF A. have been used, but the vice of the argument lies in a confusion between two distinct notions—the abolition of a legislature, and the abolition of a constituent part of such legislature. Mere alteration of the constitution of a legislature negatives the notion of the abolition of such legislature, but may entail the abolition of an integral part of it. The words of the section are properly chosen to Gavan Duffy J. express the powers sought to be conferred. It was intended that a colonial legislature should have power to constitute new Courts and to put an end to existing Courts, to determine whether specific Courts should continue to exist or should cease to exist, as well as to mould their form, prescribe their duties, and regulate their procedure, but it was not intended that a representative legislature should have power to produce anarchy by enacting that there should be no legislature; its powers are limited to determining what shall be the nature of the legislative body, what its powers of legislation, and what its methods of procedure. At the time the Legislature of Queensland passed the Parliamentary Bills Referendum Act of 1908. it was such a "representative legislature." It is said that the effect of that enactment was to provide that in certain cases laws should be made by the Legislative Assembly and the electors speaking by means of a referendum, instead of by the Legislative Assembly and the Legislative Council. We think its true effect was merely to limit the power of the Legislative Council by rendering its concurrence unnecessary in the making of laws in certain circumstances. But, however this may be, it is clear that it was a law within the competence of the then existing legislature, and that after its passage the Legislature of Queensland still remained a representative legislature within the meaning of the Colonial Laws Validity Act, and therefore competent to make laws with respect to its own constitution, powers, and procedure. It follows from what we have already said that a law to abolish the Legislative Council of Queensland would be such a law, for it would leave the Legislature of Queensland still a representative legislature within the meaning of the Colonial Laws Validity Act. Further argument was addressed to us on the construction of the Parliamentary Bills Referendum Act. It was said that an investigation of its terms showed that it was not intended to apply to such a measure as a Bill to abolish the Legislative Council.

How, it was asked, could it have been intended to apply the pro- H. C. of A. visions of the Referendum Act to a measure which itself would render the Referendum Act valueless, if it did not impliedly repeal it? We see no reason why the provisions of the Referendum Act should not be applied even in the case of a Bill designed to repeal the Referendum Act itself. On this point we entirely agree with the view taken in the Supreme Court of Queensland. Lukin J., in Gavan Duffy J. delivering the judgment of the Court, said: "We know of no reason why an Act should not be brought into existence which may be applicable to many purposes, and amongst those many purposes to one that will make its further application for any purpose from its very nature impossible" (Taylor v. Attorney-General (1)).

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Finally, it was said that sec. 10 of the Referendum Act of 1908 provides that the Bill shall be presented to the Governor for His Majesty's assent, and that these words are not appropriate to a Bill which in course of law should be reserved for His Majesty's assent. We think that the words of the section are applicable to the case of a Bill which is presented to the Governor for the purpose of being reserved by him for His Majesty's assent as well as to that of a Bill to which the Governor assents on behalf of His Majesty. The argument on the construction of the Referendum Act therefore fails.

We agree with the rest of the Court in thinking that it is unnecessary to answer question 4, and that there should be no order as to costs.

Powers J. The questions for the opinion of the Court are set out in the judgments just delivered. My learned brothers have dealt so fully with the reasons why this Court should answer the questions in the way agreed upon by all members of the Court, that I propose to refer very briefly to some of the reasons for my concurrence in the proposed answers to the questions submitted.

I agree that the answer to question 1 should be in the affirmative. Counsel for the appellants did not, in the end, press for any other answer.

The answer to question 2, I hold, depends principally on the meaning and effect of sec. 5 of the Colonial Laws Validity Act 1865,

(1) (1917) S.R. (Qd.), at p. 243.

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H. C. of A. passed two years before the Queensland Constitution Act of 1867. Under the Colonial Laws Validity Act 1865 (an Imperial Act which is still in force) the Queensland Legislature as a "representative legislature" has had, at all times since the passing of the Act. power to make laws respecting the constitution, powers, and procedure of its legislature, "provided that such laws shall have been passed in such manner and form as may from time to time be required by any Act of Parliament, letters patent, Order in Council, or colonial law for the time being in force" in Queensland. The Queensland Constitution Act of 1867 has been amended by the Queensland Legislature from time to time. The Act mentioned, in my opinion. authorized such amendments.

> The Queensland Constitution Act Amendment Act of 1908 was, I assume, passed under the authority of the Imperial Act, and it is not now contended that that is not a valid and effective Act of Parliament.

> The Parliamentary Bills Referendum Act of 1908 was passed by both Houses of Parliament, and assented to by His Majesty the King. It was a law respecting the powers and procedure of the Legislature, and was passed as an amendment of the Constitution in the manner and form required by the colonial law for the time being in force. (See sec. 5 of the Colonial Laws Validity Act 1865.) I therefore hold that it was a law which the Queensland Legislature had power under sec. 5 of the Colonial Laws Validity Act 1865 to pass, and that it is a valid and effective Act of Parliament.

> The third question is: "Is there power to abolish the Legislative Council of Queensland by an Act passed in accordance with the provisions of the Parliamentary Bills Referendum Act of 1908?" The question this Court is really asked to decide is whether the "Legislative Council" of Queensland—as one part of the Legislature—can be abolished by an Act amending the Constitution Act passed in accordance with the provisions of a valid Act.

> Any Act abolishing the Legislative Council by an amendment of the Constitution passed in accordance with the Act mentioned would be a law respecting the Constitution passed in the manner and form required by the colonial law (the Queensland Constitution Act) for the time being in force (sec. 5 of the Colonial Laws Validity Act

1865), and in my opinion would be a valid and effective law passed under the powers granted by the Imperial Act.

The answer to question 3 should, therefore, be in the affirmative. I have read the judgment of my brother Isaacs, and I agree with the reasons so clearly stated by him for holding that, if there were no other authority to support the Parliamentary Bills Referendum Act of 1908 than the Colonial Laws Validity Act 1865, the Act of 1908 was a valid exercise of the power of the Queensland Legislature. And I agree also with him, for the reasons mentioned by him, when he says (1):- "When power is given to a colonial legislature to alter the constitution of the legislature, that must be read subject to the fundamental conception that, consistently with the very nature of our constitution as an Empire, the Crown is not included in the ambit of such a power. I read the words 'constitution of such legislature' as including the change from a unicameral to a bicameral system, or the reverse. Probably the 'representative' character of the legislature is a basic condition of the power relied on, and is preserved by the word 'such,' but, that being maintained, I can see no reason for cutting down the plain natural meaning of the words in question so as to exclude the power of a self-governing community to say that for State purposes one House is sufficient as its organ of legislation. Some strong reason must be shown for cutting down the primary meaning of the words themselves applied to such a subject matter."

I do not think it necessary, holding the view I do about sec. 5 of the Imperial Act, to decide whether clause 22 of the Order in Council of 1859 operates in any way which could affect the matter. I certainly think that, if the clause does so operate, the power given would be wide enough to authorize the Queensland Legislature to amend the Constitution by abolishing the Legislative Council.

Question 4.—I agree that it is unnecessary to answer this question. Question 5.—I agree that costs should not be allowed.

Questions 1, 2 and 3 answered in the affirmative. Question 4 not answered. As to question 5, no costs awarded.

(1) Ante, p. 474.

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

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

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[HIGH COURT OF AUSTRALIA.]

APPELLANT;

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, Isaaes 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 H. C. of A. 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.

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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."

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H. C. of A. 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 Mocambique (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.

^{(3) 3} C.L.R., 479. (4) 4 T.R., 503.

^{(2) (1909) 1} K.B., 7.

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).]

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Campbell K.C., in reply.

Cur. adv. vult.

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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H. C. OF A. 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, H. C. of A. 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

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H. C. of A. Territory, so that after 4th September 1915 sec. 8 equally applied to the Jervis Bay Territory as a law "in force in the Territory for the Seat of Government." It is true that the Judiciary Act of 1903 in sec. 56 allowed a person making a claim against the WOODHILL. Commonwealth in contract or tort to bring a suit against the Commonwealth in the High Court or in the Supreme Court of the State in which the claim arose. In that section "making any claim" clearly means having any cause of action, but the cause of action in this case, I repeat a local one, did not arise until a time at which the land in question was not in New South Wales, so that the claim did not arise in that State. Of course it is not necessary to decide whether the present claim is "in contract or in tort," and I assume that it is in one or other of those categories, merely for the purpose of dealing with the argument which the respondent's counsel raised upon that section.

> Reference was made to a passage in the judgment of Lord Selborne in the case of Sirdar Gurdyal Singh v. Rajah of Faridkote (1). There his Lordship speaks of the general rule "that the plaintiff must sue in the Court to which the defendant is subject at the time of suit . . . ; which is rightly stated by Sir Robert Phillimore . . . to 'lie at the root of all international, and of most domestic, jurisprudence on this matter." His Lordship goes on to say: "All jurisdiction is properly territorial, and extra territorium jus dicenti, impune non paretur." Since the land in question was not territorially within New South Wales at the time when the cause of action arose, the passage seems to be much more against than in favour of the respondent. Looking once more at sec. 37 of the Lands Acquisition Act of 1906, it is as well to mention the result which the argument of the respondent on that section would have if carried to its logical conclusion. When the land ceased to be within the territorial jurisdiction of New South Wales, the Supreme Court of that State ceased to be a Court " of competent jurisdiction" within the meaning of that section (see Judiciary Act, sec. 39, sub-sec. 2), or it did not so cease. If it ceased, the argument for the respondent fails. But if it did not cease, if the cause of action was, as the respondent contends, transitory and not local, that

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

must have been because the Supreme Court had some "competent jurisdiction" apart from its territorial jurisdiction. If that were the case, it could have no more jurisdiction conveyed by the term "competent" than the Supreme Court of any other State, and to suppose that the Federal Parliament intended to empower the Supreme Court, for instance, of Western Australia, to determine the value of land at Jervis Bay after the Seat of Government Acts and the Jervis Bay Acts became of force, is rather beyond serious consideration.

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I am of opinion that at the time this cause of action arose the Supreme Court of New South Wales had ceased to have jurisdiction to entertain it; that within that territory, as within the whole of the bounds assigned to the jurisdiction of the Seat of Government, no claim for land compensation could be brought in any superior Court other than the High Court; and that the appeal must be allowed with costs and the writ set aside with costs.

ISAACS J. I agree that this appeal should be allowed. The only material fact, in my opinion, is that at the time the writ was issued the land acquired was no longer in the State of New South Wales.

The learned Judges of the Supreme Court, though agreeing that the Court had jurisdiction, reached their conclusion by different roads. Pring J. rested solely on the interpretation of sec. 37 of the Lands Acquisition Act 1906, and thought that wheresoever resumption took place under the Act, the action for compensation could be brought in the Supreme Court of any State, because every such Court has jurisdiction to try that class of action when arising in the State. Sly J. and Ferguson J. decided that on the facts the jurisdiction of the Supreme Court had attached when the resumption took place, the land then being within New South Wales, and that nothing has taken away that accrued jurisdiction. They expressly avoided deciding the larger ground taken by Pring J. A third view was put forward in argument on behalf of the respondent. It was that which Pring J. did not decide, but which his Honor said would in any case be overcome by the words of the section. The view was that such an action is transitory, and for this reason-namely, to assist the common law conception-the

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H. C. of A. words in sec. 37 "State Court of competent jurisdiction" should be held to apply to the Supreme Court of any State, as well as for the reason given by Pring J. that they may, if necessary, be read as overcoming the common law conception. None of these three views can, in my opinion, be maintained.

Isaacs J.

It is common ground that as the right to compensation arises under a law made by the Parliament, the jurisdiction to determine it is within the judicial power of the Commonwealth (sec. 76 of the Constitution). It is also common ground that unless by virtue of some law conferring the right to proceed against the Commonwealth in such a matter, the plaintiff cannot maintain his suit (sec. 78). His right to do so must, then, depend on the true construction of the various Commonwealth Acts relating to the resumption of land, and ultimately the question comes down to what Pring J. dealt with, namely, the construction of sec. 37 of the Lands Acquisition Act of 1906. Put concretely the question, from all standpoints, must be: "Is the Supreme Court of New South Wales a 'State Court of competent jurisdiction' within the meaning of that section, in relation to a claim for resumption of land which at the time of writ issued is not within New South Wales?" If the wide view taken by Pring J. is correct, it is. But then, too, the Supreme Court of every other State in the Commonwealth would by virtue of the same reasoning have equal jurisdiction in relation to the same resumption.

In interpreting the Lands Acquisition Act, the fundamental conception to be borne in mind is that the acquisition of land which it permits is an exercise of high sovereign power. It is the exercise of legislative power in respect of a constitutional right to acquire proprietorship, which is entirely distinct from the ordinary legislative control of the conduct of individuals in the exercise of their own rights. But being a sovereign act, not in any way dependent upon the law of any other jurisdiction, that act itself, and its conditions and attendant consequences involving all the relations between the sovereign and the former owner, including the mode of compensating him and the tribunal for ascertaining the amount of compensation, must - subject to the provision as to "just terms" in placitum xxxI. of sec. 51 of the Constitution—be within the discretion of the Commonwealth Parliament. The circumstances of such a transaction are not H. C. of A. severable so as to be transitory as a contractual right is transitory. It is inherently wrong to attribute to the relations so created a quality which would enable the Courts of any other jurisdictionsay, France—to determine the obligations arising from such an acquisition as between the Commonwealth and the individual owner. or between the Commonwealth and a State if the land were Crown lands of a State. It is equally true, if we substitute another Australian State for France. And the same considerations would apply to a State resumption. For instance, a New South Wales resumption is not justiciable in Victoria. Therefore, the widest of all the three propositions—namely, that advanced at the Bar in aid of the other two-is fundamentally unsound.

Then comes the view of Pring J. which, for the purpose of argument, concedes that unsoundness, but rests on the permission of the Parliament. This involves an examination of the structure of the Statute, which will apply to both the remaining views. No doubt the general locality of a Commonwealth acquisition is the whole of Australia, if we regard the matter from the standpoint of Commonwealth jurisdiction. But the Parliament has, in framing its enactment, so distinctly recognized the principle of State locality that the larger view cannot be maintained. The Act, when read as a whole, is found to be in effect a code dealing specially with the matter and to be framed upon the principle that, except where the High Court is invoked, the Courts of the jurisdiction where the title to the land arises shall determine all questions in connection with the matter.

The scheme of the Act, so far as now material, is as follows:-It enables the Commonwealth to acquire lands compulsorily from a State or an individual (as well as by agreement), and, if compulsorily, by notification. Sec. 17, on which the majority in the Supreme Court evidently based their opinion, says that upon publication of the notification "the title of the State to any Crown land specified in the notification shall be taken to have been converted into a claim for compensation." Observe first, that a State is placed in precisely the same position as an individual, and also that the words "claim for compensation" mean "property" not a demand. Ownership in land is converted into personalty, namely, what is there called a

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tion. That is then the former owner's transformed right. This is borne out with particularity in secs. 26 and 27. Division 2. commencing with sec. 32, deals with the mode of asserting and enforcing that right. Sec. 32 says: "Any State or person claiming to be entitled to compensation under this Act may make a claim for compensation." It must be in writing, and served on the Minister. and is then deemed to be "made." A claim may or may not be "made." If a claim is made, the Minister may agree with the claimant-individual or State. The Minister has up to one hundred and twenty days to examine the claim and notify that he agrees, or that he disputes the claim. If he agrees, then no resort to a Court is necessary or possible to determine the compensation. If the parties do not agree. the "claim," that is, the written claim, becomes a "disputed claim for compensation." Then, and then only, is curial determination possible. The claimant (State or individual) may by sec. 37 institute an action for compensation against the Commonwealth in the High Court or-and here come the important words-" in any State Court of competent jurisdiction," subject to certain provisions in the same section mentioned, which I shall presently refer to. If, for any reason, no proceeding is instituted by the claimant within six months —and the dispute is not otherwise settled—the Minister by sec. 38 may apply to have it determined either by the High Court or by "a State Court in which an action for compensation might be instituted." In other words, the Courts are to be the same, whether the claimant sues or the Minister applies. Consequently, if sec. 37 means that the Court of any State whatever can be invoked by a claimant State (for instance), the Minister may equally have the claim (say) of New South Wales determined by the Supreme Court of Tasmania, or by any Local Court in Tasmania, according to the amount claimed. And by sec. 38 (4) the decision is final and conclusive and without appeal.

Before accepting that construction, let us look further at the Act. It may be that the claimant has not within six months made a claim for compensation, and has not applied for further time to do so. In that case there is no "disputed claim," and secs. 37 and 38 do not apply. Sec. 39 then operates. The Minister may

apply to a Court to have the matter determined. But to what H. C. OF A. Court? No claim being made, there is so far nothing to guide one as to amount, and therefore no one can say whether any inferior Court would ordinarily have jurisdiction. So the section provides that the Minister may apply to the High Court or the Supreme Court, if the Minister considers the compensation awarded will be more than £500. But if he considers it will not amount to more than £500, he shall apply to a County, District or Local Court—that is, the highest inferior Court in the several States. Sec. 39, dealing with circumstances which do not themselves indicate which Court is one of "competent jurisdiction," itself fixes a guide.

Now sec. 39 helps materially to interpret secs. 37 and 38—these dealing with the alternative case. Sec. 39 uses the words "the Supreme Court." By the interpretation section, "the Supreme Court" is defined in the absence of contrary intention (and here there is none) to mean "the Supreme Court of the State in which the land . . . is situated "; consequently no application could be made under that section to the Supreme Court of another State. The Act, however, does not so define County Court or District Court or Local Court. And so, if the view presented by the appellant supporting the opinion of Pring J. be applied to sec. 39, an application respecting a matter not exceeding £500 could be made to the County Court of Victoria as to land in Western Australia, though, if over £500, the Supreme Court of Victoria, by reason of the definition, could not entertain it. Reading sec. 39, then, with the interpretation of "Supreme Court" and all that it implies, and reverting to secs. 37 and 38, and reading sec. 37 right through, it seems plain that the expression "State Court of competent jurisdiction" means a State Court of the State where the land is situated, and having jurisdiction up to the amount claimed. Sub-sec. (c) of sec. 37 directs the Supreme Court to have regard to the fact that the action might have been brought in "a lower Court." That must mean a lower Court of that State. If the respondent's view were right, it is difficult to imagine why the Legislature, so careful as to costs in a lower Court, said nothing about the extra costs of bringing the other party into the Supreme Court of a distant

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H. C. OF A. State, to which all the witnesses might have to travel thousands of miles.

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The second view contended for is, therefore, also unsustainable. Lastly, we come to the narrower ground accepted by Sly and Ferquson JJ. The jurisdiction of a Court may be understood in more senses than one. We may speak of a Court's jurisdiction in a general sense, as when we say the Supreme Court of a State is a Court of general jurisdiction. But if the word is used in relation to a specific cause, the Court has jurisdiction only if seised of it. The Supreme Court of New South Wales was not seised of this matter before the writ was issued, which was on 7th March 1917. On 4th September 1915 the land had ceased to be part of New South Wales, and, after that, there was no Court of a State that had jurisdiction under sec. 37 of the Lands Acquisition Act. It needed some other provision of the Commonwealth Parliament to confer such a jurisdiction. But admittedly there is no such provision. The Jervis Bay Territory Acceptance Act 1915 (No. 19 of 1915) applies the provisions of the Lands Acquisition Act 1906 to land acquisition within the territory from private persons. It also, by sec. 4 (3), incorporates (inter alia) sec. 8 of the Seat of Government Acceptance Act 1909 (No. 23 of 1909), which within the territory transfers to the High Court the jurisdiction which the Supreme Court of the State theretofore had.

As to jurisdiction inferior to that of the Supreme Court, by sec. 11 of the Seat of Government (Administration) Act 1910 (No. 25 of 1910) it is vested (sub modo) in the inferior State Courts of New South Wales. Therefore the Supreme Court of New South Wales is eliminated entirely as to the territory.

The result is, then: (1) the claim is not transitory; (2) sec. 37 does not confer jurisdiction, irrespective of situation of the land, on every Supreme Court and on every inferior Court all over Australia provided the "amount" claimed is within its ordinary jurisdiction; (3) the jurisdiction in this particular case did not attach to the Supreme Court of New South Wales before 4th September 1915, and could not attach then or afterwards.

The appeal should therefore be allowed.

H. C. of A. I am authorized by my learned brother Rich to say that he agrees 1917. in this judgment.

> THE COM-Appeal allowed. Order appealed from discharged Monwealth with costs and writ set aside. Respondent WOODHILL. to pay costs of appeal.

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

Solicitor for the respondent, R. J. Jacobs.





B. L.

[HIGH COURT OF AUSTRALIA.]

THE KING APPELLANT; PLAINTIFF.

THE NEW QUEENSLAND COPPER COM-PANY LIMITED AND ANOTHER DEFENDANTS.

ON APPEAL FROM THE SUPREME COURT OF QUEENSLAND.

Contract—Construction—Mining company—Loan by Government—Agreement for H. C. of A. repayment out of profits-Compulsory liquidation of company-Right of Crown 1917. to repayment.

In an agreement by which the Government of Queensland agreed to advance certain moneys to a mining company to aid in developing its mines, it was provided that such moneys were to be "repaid out of the profits which shall hereafter be derived by or accrue to the company from the working of the said mines." After the advance was made the venture failed, and the company was compulsorily wound up.

BRISBANE, July 30, 31.

Barton, Isaacs, Gavan Duffy, Powers and Rich JJ.

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Held, on the construction of the agreement and in the surrounding circumstances, that the moneys advanced were repayable out of the profits only, and not out of the company's assets generally.

Decision of the Supreme Court of Queensland (Lukin J.): The King v. New Queensland Copper Co. Ltd., (1917) S.R. (Qd.), 194, affirmed.

APPEAL from the Supreme Court of Queensland.

The New Queensland Copper Co. Ltd. was the owner of certain copper mines in the Mount Perry District, which, during the years 1900 to 1911, had been fairly successful, and had led to the settlement in the district of several thousand people. Owing, however, to the low prices obtainable for copper, the operations had fallen off, and the population became reduced to less than a thousand, and on 31st July 1911 the mines were closed down. On 16th August of the same year the directors opened negotiations with the Government for financial assistance to enable them to resume working, on the ground that it was in the interest of the State as well as of the Company that the working should continue. On 20th September the State Mining Engineer recommended the grant of assistance, and on 12th October this recommendation was approved of and embodied in an Executive minute. A draft agreement was drawn up, and, after consideration of various suggested alterations, an agreement was executed on 23rd March 1912, which provided for a loan by the Government to the Company of £1 for every £1 expended by the Company up to £3,000, and for the supplying by the Company to the Minister of "a copy of the annual statement of accounts, assets and liabilities, profits and losses," &c. Clause 6 provided that "the amount so advanced as aforesaid shall be repaid to the Government out of the profits which shall hereafter be derived by or accrue to the Company from the working of the said mines and subject to the terms of this agreement there shall not be divided amongst or paid to members or shareholders of the Company any profits or dividends or bonuses or any returns of any kind until the Company has repaid the advance to the Government." Under this agreement the Company received £3,000. On 12th November 1912 a further sum of £1,000 was advanced on the same terms as those set out in the original agreement with respect to the £3,000. Notwithstanding this assistance, the works did not prosper, and on 16th

February 1914 the Company was compulsorily wound up by order H. C. of A. of the Supreme Court under the Companies Acts 1863-1909.

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On these facts an action was brought by information in the name of the Attorney-General for Queensland, for and on behalf of The King against the Company and the liquidator of the Company, QUEENSLAND claiming repayment of the £4,000 advanced to the Company; or, alternatively, declarations that the Crown was entitled to prove in the winding-up of the Company for that sum and to be paid in priority to all other creditors, and (inter alia) an account of the profits made by the Company since 23rd March 1912. The action was heard by Lukin J., who held that the Crown was entitled to be paid out of the profits (if any), and out of such profits only, and that under the terms of clause 6 the Company had been and still was bound to supply proper statements of accounts, which he would order unless the Company should satisfy him that no profits had accrued; further consideration was reserved, with liberty to apply: The King v. New Queensland Copper Co. Ltd. (1).

From this decision the Crown, by leave, now appealed to the High Court.

Further facts and the arguments are indicated in the judgments hereunder.

Ryan A.-G. for Qd. and Graham, for the appellant, referred to the following cases: Lowe v. Dorling & Son (2); Mathew v. Blackmore (3); Watling v. Lewis (4).

Stumm K.C. and Wassell, for the respondents, were not called on.

Cur. adv. vult.

Barton J. read the following judgment:—There are two questions in this appeal. The first is whether, under an agreement made between the Secretary for Mines on behalf of the Government of Queensland and the respondent Company, certain sums advanced by the Minister to assist in further developing the mines

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^{(1) (1917)} S.R. (Qd)., 194. (2) (1906) 2 K.B., 772, at p. 784.

^{(3) 1} H. & N., 762.

^{(4) (1911) 1} Ch., 414.

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are repayable only out of the profits to be derived from the working of the mines, or whether they constitute a debt recoverable out of the Company's assets generally. (The Company is now in compulsory liquidation.) The second question is whether the Company. QUEENSLAND in the event of the second of these propositions being held to express the meaning of the agreement as it stands, is entitled to have the agreement rectified so as to express the first of the propositions, which the respondent Company contends to have been established by evidence as the intention of the parties.

> We invited counsel for the appellant to address themselves in the first instance to the first question only, and after hearing their arguments I am of opinion that the Company's contention as to the meaning of the agreement is the right one—that is to say, that the advance is expressed to be repayable out of profits only. If this opinion is correct the second question does not arise, as the claim for rectification is not set up by the appellant, but is part of the defendant Company's counterclaim.

> The original agreement, dated 23rd March 1912, relates to the sum of £3,000. Later in the same year there was an agreement between the same parties for a further advance of £1,000, by which it was agreed that all the terms of the original agreement relating to the payment of advances to the Company, and for the security and repayment to the Government of the total amount advanced, should apply to the additional sum of £1,000, the subject of the second agreement. Both sums have been advanced to the Company, and the appellant claims payment of the whole £4,000 or alternative relief, including an account of profits.

> The treatment of the whole advance of £4,000 thus depends on the construction of the agreement of 23rd March 1912.

> Under that agreement the advance (called in the recitals a "loan or subsidy") was to be paid at the rate of one pound for every pound provided by the Company.

> The portion of the agreement on which the question of its meaning principally turns is contained in the first seven lines of clause 6, and is as follows: "The amount so advanced as aforesaid shall be repaid to the Government out of the profits which shall hereafter be derived by or accrue to the Company from the working of the said mines

and subject to the terms of this agreement there shall not be divided H. C. of A. amongst or paid to members or shareholders of the Company any profits or dividends or bonuses or any returns of any kind until the Company has repaid the advance to the Government." There is not, either in this clause or in the rest of the agreement, any provision QUEENSLAND for the repayment of the moneys otherwise than out of the profits except that by clause 8, under circumstances which are not contended to have arisen, the Minister is empowered to cause or require the Company to let the mines and plant on tribute on terms approved by him up to a certain point, and to receive half of the moneys obtained from the tributors towards repayment of the advance, the other half to be retained by the Company. This, which is clearly intended as an alternative or rather subsidiary source, is the only source or method of repayment save that specified in clause 6 as quoted, and I think it strengthens the contention of the respondents, for it helps to exclude the implication of sources of repayment other than those expressed in the agreement, to one only of which the appellant is now, in my opinion, entitled to have recourse.

Other parts of clause 6 were adduced by Mr. Graham as tending to show that that clause let in the implication of a general and unrestricted liability. I am unable to accept these contentions, for I think that every passage adduced is perfectly consistent with, I might perhaps have said assistant to, the primâ facie meaning of the passage quoted, which seems to me to be unambiguous in itself, and to be absolute in the absence of any expression inconsistent with its primâ facie purport.

In the part of his judgment dealing with the interpretation of the agreement as it stands, Lukin J. cited the case of Mathew v. Blackmore (1), where the observations of Pollock C.B., at p. 772, and the decision founded thereon are very much in point on the question of the exclusion in certain cases of the implication of a general obligation to pay. The implication claimed is not one that necessarily arises, in the sense given to the term in the oft-quoted case of Hamlyn & Co. v. Wood & Co. (2). It is impossible, I think, as Lukin J. points out, that "the parties must have intended the

(1) 1 H. & N., 762.

(2) (1891) 2 Q.B., 488.

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H. C. of A. suggested stipulation of repayment independently of the question of profits." Not any of the cases cited for the appellant appear to support his contention that a general and unrestricted liability exists where a particular source of repayment is specified in terms QUEENSLAND which plainly suggest, as these terms do, restriction to that source.

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Though it is not necessary, it may as well be pointed out that by clause 2 the Minister has apparently sought to secure himself and the Government against an implication which his participation in the risk of loss might otherwise be argued to convey.

I am therefore of opinion that the appeal must be dismissed, and the case must proceed on the lines laid down by the learned Justice at the trial.

Isaacs J. read the following judgment:—The first question is whether the contention set up on behalf of the Crown in par. 9 of the statement of claim is well founded. If it is not, then, subject to a well established principle of law which I shall presently mention, there is an end of the Crown's case.

In par. 9 it is contended that, upon the true construction of the agreements sued on, the Government of Queensland is entitled to payment of the moneys advanced whether the Company has made any profits or not. The written document that was executed as the final and complete expression of the bargain which the parties made is, so long as it stands unaltered, conclusive evidence of their respective obligations. And it must never be forgotten that the proper construction of a contract, as Lord Atkinson recently said in Boyd & Forrest v. Glasgow and South-Western Railway Co. (1) "must in this as in every other case where a written document has to be construed depend upon the intention of the contracting parties as disclosed in the document itself." This, as I took occasion to emphasize in Gordon v. Macgregor (2), where the judgment of Lord Blackburn in the leading case of Inglis v. Buttery (3) was cited, excludes from our consideration in interpreting the contract all the prior negotiations. I shall quote only a few words of Lord Blackburn, in which he points out that, consistently with that,

^{(2) 8} C.L.R., 316, at p. 323. (1) (1915) S.C. (H.L.), 20, at p. 27. (3) 3 App. Cas., 552, at p. 577.

you may look at "surrounding circumstances." He said :- "You H. C. of A. see what is the intention expressed in the words, used as they were with regard to the particular circumstances and facts with regard to which they were used. The intention will then be got at by looking at what the words mean in that way, and doing that is perfectly QUEENSLAND legitimate."

Now, when on behalf of the Government it is said that notwithstanding the expressed provision in clause 6 that the amount advanced should be repaid to the Government out of the profits made by the Company in working the mines, and notwithstanding the absence of any words in the agreement which expressly give the Crown the right of demanding repayment of the sums advanced whether profits are made or not, yet such a right is to be implied, then I look at the circumstances to see whether the agreement, read as a whole by the light of those circumstances, is one where the law does make such an implication.

The authority to lend the money is contained in two annual Appropriation Acts (Act of 1911-1912, No. 4, and Act of 1912-1913, No. 4). In the first a sum of £10,000 was voted to the Department of Mines for "loans in aid of deep sinking in mines"; and in the second a sum of £27,000 was voted to the same Department "in aid of mining." In other words, Parliament sanctioned, as a matter of public policy and for the general welfare of Queensland, the lending of money in aid of mining in order to benefit the community by unearthing the mineral wealth of the State, and to win the gold and other metals which lay yet untouched and reserved and belonging to the Crown, but which private enterprise was by mining laws invited to obtain.

Private persons risk their own money in a very hazardous venture which, if successful, means profit to themselves and benefit to the community, and which, if unsuccessful, means loss to them but not necessarily loss to the rest of the public. It is plain that, when the Minister of Mines proceeds to carry out such a policy, he is not to be regarded as a mere money-lender having no interest whatever in the transaction but that of getting his money back again. There is no reason, therefore, for regarding the contract which was reduced to writing as raising any implication that the Minister was to have the

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H. C. of A. money back, whether the enterprise resulted in loss or gain. I read the contract as in effect saying, apart from tributing, that provided the Company had sufficient confidence in the venture as to risk its own money the Crown as representing the general community QUEENSLAND would aid the venture with an equal amount up to the limit stated: that if the venture failed, so much the worse for all, if it succeeded the Crown should first have its money back and then the profits were to go as if the Crown had never assisted. The position is so plain on general principles that it does not need the authority of Mathew v. Blackmore (1), cited by Lukin J., a case, however, which is strongly against the Crown's contention.

> I therefore reject the contention made, and now refer to the only outstanding consideration which I think relevant.

> It appears that the Company has been compulsorily sequestrated and that the official trustee, acting under the sanction and direction of the Court, has let the mine on tribute to other persons.

> If the Company itself after receiving the advance had voluntarily let its mine on tribute without the Crown's consent, then I should have been strongly disposed to apply the principle to which I referred, and which is contained in the case of Burchell v. Gowrie and Blockhouse Collieries Ltd. (2). There Lord Atkinson, speaking for the Privy Council, adverted with approval to the rule of law laid down by Willes J. in Inchbald v. Western Neilgherry Coffee &c. Co. (3), in these words (4): "I apprehend that wherever money is to be paid by one man to another upon a given event, the party upon whom is cast the obligation to pay is liable to the party who is to receive the money, if he does any act which prevents or makes it less probable that he should receive it."

But as this cannot, in the circumstances, be said of the Company in the present case, the matter is left to the bare consideration of the primary obligation created by the contract, and, as that leaves the Crown right dependent on the existence and extent of the profits · made, the judgment of Lukin J. should be affirmed, and this appeal dismissed.

^{(1) 1} H. & N., 762. (2) (1910) A.C., 614.

^{(3) 17} C.B. (N.S.), 733, at p. 741. (4) (1910) A.C., at p. 626.

GAVAN DUFFY J. read the following judgment:—For the reasons H. C. of A. which have just been stated, I agree with the other members of the Court in thinking that the moneys advanced by the Crown are The King repayable only in the circumstances expressed in the agreement.

This disposes of the case, for the Crown has failed in its attempt to COPPER COPPER CO. LTD. agreement and has prevented it from having the benefit of every-Gavan Duffy J. thing to which it was entitled thereunder.

Powers J. I agree.

RICH J. I agree.

Appeal dismissed with costs.

Solicitor for the appellant, J. S. Hutcheon, Crown Solicitor for Queensland.

Solicitors for the respondents, Morris & Fletcher for Hamilton & Nielson, Bundaberg.

[HIGH COURT OF AUSTRALIA.]

PANKHURST DEFENDANT,							APPELLANT;
AND							
PORTER . Informant,							RESPONDENT.
SUTER . DEFENDANT,							APPELLANT;
			AND				
PORTER . Informant,							RESPONDENT.
BAINES . DEFENDANT,							Appellant;
			AND				
PORTER . Informant,							RESPONDENT.
ON APPEAL FROM A COURT OF PETTY SESSIONS							

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OF VICTORIA.

Melbourne, War Precautions—Regulations—Offence—Unlawful meeting—"Pretext," meaning of -War Precautions (Supplementary) Regulations 1916, reg. 27 (Statutory Rules Oct. 2. 1917, No. 182).

Barton, Isaacs, Higgins, Gavan Duffy, Powers and Rich JJ.

By reg. 27 of the War Precautions (Supplementary) Regulations 1916 it is provided that "(1) It shall not be lawful for any number of persons exceeding twenty to meet in the open air in any part of the proclaimed place for any H. C. of A. unlawful purpose or for the purpose or on the pretext of making known their grievances," &c.

Held, that the word "pretext" in the regulation means a pretended, as distinguished from the true, purpose.

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PANKHURST. SUTER, AND BAINES v. PORTER.

APPEALS from a Court of Petty Sessions of Victoria.

At the Court of Petty Sessions at Melbourne three informations were heard whereby the informant Richard John Porter, a constable of police, charged that Adela Constantia Mary Pankhurst, Alice Suter and Jennie Baines respectively did, contrary to the War Precautions (Supplementary) Regulations 1916 made under the War Precautions Act 1914-1916, "take part in a meeting of a number of persons exceeding twenty in the open air in a proclaimed place (as defined by clause 6 of reg. 27 of the above Regulations) on a pretext of making known their grievances." Each of the defendants was convicted, and each appealed to the High Court by way of order to review on the grounds (inter alia): (1) (as amended on the hearing of the appeals) that the War Precautions Act 1914-1916 and Regulations thereunder were ultra vires and invalid, and (2) that there was no evidence that any number of persons exceeding twenty met in the open air on the pretext of making known their grievances.

The three appeals were heard together.

The second ground was argued, and as the appeal was determined upon it, the first ground was not discussed.

The material facts are stated in the judgment of Barton J. hereunder.

Starke (with him Foster), for the appellants. The word "pretext" in reg. 27 means a pretended purpose as opposed to the real purpose, and there is no evidence that the purpose put forward was not the real purpose.

Mann (with him Macindoe), for the respondent. This objection is one of form merely. If taken in the Court of Petty Sessions the information could have been amended, and this Court should now amend it, as it has power to do under the Justices Act 1915 (Vict.).