the defendant Theodore because he is one of those who ordered the trespass to be committed, and the defendant Balfour because he is one of those who actually committed it.

The defendants, who joined in their defence, relied principally on the validity of the two Proclamations, and in any event claimed that they are protected by sec. 7 of the *Sugar Acquisition Act.*

The *Meat Supply for Imperial Uses Act of* 1914 is also stated as a component part of their defence, but I do not think it was strongly relied on in the argument before this Court; nor if either of the Proclamations under the Sugar Act is invalid would the Meat Act in my opinion help the defendants in this action. In any aspect this was an attempt to acquire the cattle under an authority supposed to be derived from the Sugar Act. Sec. 6 (1) of the Meat Act declared that all stock and meat as defined in that Act should become subject to that Act, and should be held for the purposes of and should be kept for the disposal of His Majesty's Imperial Government in aid of the supplies for His Majesty's armies in the present war. The definition of "meat" may be disregarded. The statutory meaning of "stock" is "cattle . . . the meat whereof is intended for export or may be made available for export." This definition might cover the fat bullocks, but did not cover the remainder of the cattle, nor is it seriously contended that it did. The sub-section quoted did not divest the plaintiffs of their possession or of the property in any of the cattle. For that purpose an order under sec. 6 (2) in writing under the hand of the Chief Secretary or his Under Secretary would have been necessary, and it was not forthcoming. Had such an order been made, it would have affected the 600 fat bullocks only. Sec. 6 (1) by itself did not in any sense authorize seizure, nor do I see how it can be called in aid of the validity of Proclamations issued avowedly in pursuance of another Act. The operation of the Meat Act was not extended under sec. 12 thereof to "live-stock" generally.

The action was tried by the learned Chief Justice of this State with a jury. Certain questions were answered by the jury in favour of the plaintiffs, and they assessed the damages at £2,900, for which sum, with the declarations sought, the learned Chief Justice gave judgment for the plaintiffs. This was set aside by the Supreme Court

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on appeal, *Lukin* J. dissenting, and judgment was entered for the defendants. This is an appeal from that judgment.

In my view the result of this case depends on a consideration of the Sugar Act and the Proclamations of 12th November 1915 and 1st June 1916, and on the question whether the defendants or any of them were protected by sec. 7 of that Act.

First, I take the *Sugar Acquisition Act* itself.

That Act was primarily necessitated by a Proclamation of the Deputy Governor in Council issued on 30th June 1915. There was no antecedent law to authorize this Proclamation, which was issued, according to its recital, in contemplation of ratification, if necessary, by Statute. Its operative part, if it may be so termed, was contained in its first paragraph, as follows: "1. All raw sugar, the product of the 1915 crop of sugar-cane, now in existence at any mill, factory, refinery, or other place whatsoever in Queensland, or hereafter during the year 1915 to be manufactured within Queensland, is and has become and shall remain and be held for the purposes and shall be kept for the disposal of His Majesty's Government of the State of Queensland by all persons in whose possession the same is or hereafter during the said year shall be for the time being, and all the title and property of the existing owners thereof or of the owners thereof for the time being, as the case may be, are and shall be divested from such owners, and are and shall be vested in His Majesty's said Government absolutely freed from any mortgage, charge, lien, or other encumbrance thereon whatsoever, and all the title and property of such owners are and shall be changed into a right to receive payment of the value thereof in the manner and to the extent to be hereafter determined and declared by a further Proclamation or Proclamations, and all such owners and all and every such owners, their agents, managers, attorneys, servants, and workmen shall without any delay, hindrance, obstruction, claim, demand, or objection whatsoever give immediate and peaceable possession to the Chief Secretary of Queensland, or to such person authorized by him to demand and take delivery and possession of the same." That is the part of the Proclamation material to present purposes.

The *Sugar Acquisition Act* was assented to on 4th August 1915.

By sec. 5 (1) it "ratified and confirmed" this Proclamation, which was set forth in the Schedule, as from its date, and the Proclamation was declared to have been, on that date and since, and to be thereafter, valid and binding. By sub-sec. 2 any person who after the date mentioned (*a*) refused or obstructed the delivery of raw sugar "mentioned or claimed to be mentioned" in any demand or authority under the Proclamation, was made liable to a penalty. Par. (*b*) need not be quoted. The title included among its purposes "the compulsory acquisition by the Government of other commodities." But sub-sec. 3 of sec. 5 prescribed that "in the event of this Act being extended to any other commodity" the provisions of sub-sec. 2 should, upon the making of the Proclamation by which "any such commodity" had been acquired, be applicable to every person.

Sec. 6 (1) is as follows: "In any Proclamation under this Act, the prices of raw sugar or other commodity acquired under and for the purposes of this Act may be different for the same commodity, having regard to different qualities or to market conditions, or to localities of delivery, or to circumstances or conditions of production or manufacture, or to any other fact or circumstance which the Governor in Council thinks it proper to take into consideration; and the prices so fixed and no other prices shall be payable to the late owners respectively concerned." Sec. 7 will be quoted presently.

Sec. 10 is as follows: "The operation of this Act may at any time and from time to time be extended by the Governor in Council, by Proclamation published in the *Gazette*, so as to authorize the acquisition by His Majesty of raw sugar to be manufactured in any future year, or of any foodstuffs, commodities, goods, chattels, live-stock, or things whatsoever (in this Act referred to as commodities) in such Proclamation mentioned. Thereupon any such commodity may be acquired by a Proclamation containing provisions similar to those of the Proclamation set forth in the Schedule to this Act, with such modifications as may be deemed necessary, and this Act shall extend and apply to the commodity mentioned in such Proclamation to the same extent and in the same manner as if such commodity were expressly mentioned in this Act."

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Sec. 13 is as follows: "(1) The Governor in Council may from time to time make and publish in the *Gazette* all such Proclamations as he thinks fit for giving full effect to this Act, and may in any such Proclamation impose a penalty not exceeding one hundred pounds for any contravention thereof. (2) Every Proclamation made under this Act shall be read as one with this Act and construed as being of equal validity, and shall be judicially noticed."

The commodity acquired by par. 1 of the ratified Proclamation was really such raw sugar as was then already, or should during 1915 be, made out of the 1915 crop of cane.

It will have been seen that sec. 10 provided for two Proclamations as to the future operation of the Act: the first was to authorize the acquisition by His Majesty (that is, by a further Proclamation) of raw sugar to be manufactured in any future year, or of any other of the commodities described in the section; "thereupon" (and this word seems to point to action at least speedy, if not immediate) "any such commodity" might be acquired by a Proclamation containing provisions similar to those of the scheduled Proclamation, with such modifications as might be deemed necessary, &c. But the authority was only to be for the acquisition of "any such commodity," not merely any part of such commodity, and it was the provisions subsidiary to the acquisition that were to be "similar," and to be subject to modification.

The Act is strangely phrased, but it is necessary to give it the fairest and most reasonable meaning possible, always remembering that provisions compulsorily acquiring or authorizing the compulsory acquisition of any property of the subject must be restricted carefully to the meaning expressed or necessarily implied.

The Proclamation of 12th November 1915 assumed to extend the operation of the *Sugar Acquisition Act* "so as to authorize the acquisition by His Majesty of cattle now or hereafter to come within the State of Queensland." The Proclamation of 1st June 1916 appropriated to the Crown only the plaintiffs' 1,700 cattle, including the 600 fat bullocks, "wheresoever the same" might be "in the State of Queensland."

The two Proclamations for which sec. 10 provides before compulsory acquisition are intended to effect together all that was done by the

scheduled Proclamation singly, when ratified. The latter Proclamation was, of course, not in pursuance of any "extension," but the intention of the Act was to provide by extension for any future acquisition. Hence the provision for (1) an extension Proclamation and (2) an acquisition Proclamation. Now the scheduled Proclamation did not purport to acquire all raw sugar, but only the raw sugar made or to be made in that year out of that year's crop of cane. It appeared to the learned Chief Justice at the trial, and to *Real* J., *Chubb* J. and *Shand* J. in the Full Court, that the extension Proclamation must necessarily, in order to be valid, apply to the whole of a particular commodity, and that the acquiring Proclamation must be coextensive with it. With all respect, I doubt the first of these propositions; but with the second I agree. If the first Proclamation extends to the whole of a commodity then *in esse* — I say nothing about its extension to things *in futuro*—then I think the second Proclamation is of no effect unless it extends equally far. If, on the other hand, the first Proclamation extends the Act only to part of a commodity, then the second Proclamation, which of course cannot acquire more, must not acquire less. When the second paragraph of sec. 10 allows the acquisition of "any such commodity," it means the very commodity to which the Act has been extended by the first Proclamation, neither more nor less. If the Governor in Council does not contemplate the acquisition of the whole of a commodity, it is not intended that he should extend the Act to the whole. The power of extension may be exercised "at any time and from time to time." If the extension of the Act to any "commodity" mentioned in the first paragraph by Proclamation means that the first Proclamation may authorize the acquisition of only a part thereof, then "commodity" has the same meaning in the second paragraph. The Act does not furnish any reason why the meanings of the word in the first and in the second paragraphs should be different. I do not think, construing the words according to reason, that it is intended that the community should be harassed by a threat of the acquisition of the whole stock of a particular class of goods or animals when all that is meant is to take some fraction of that stock. I think the words mean that before the Executive acts it is to make up its mind what it is going to do, and act accordingly. If it finds that its first

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extension is insufficient, it is allowable to proclaim another extension, and therefore there is no reason why its first Proclamation should apply to more than it intends to take. As the two Proclamations combined are obviously intended to have the same effect as the scheduled Proclamation when ratified, one sees a very good reason for the use of the word " thereupon " at the beginning of the second paragraph. I do not think wholesale extension in the first place, and piecemeal and prolonged acquisition in the second, can be the more reasonable construction if there is an ambiguity ; but I do not think the ambiguity exists.

If my reasoning is correct, the Proclamation of 12th November 1915 is bad for extending further than the intended taking, or the Proclamation of 1st June 1916 is bad as falling short. But as the transaction is practically one, though divided into two stages, it is necessary that both stages should be good and valid ; and as they are not both so, I think the whole transaction is bad. Of course, other constructions are possible ; but no construction offered during argument seems to me to accord alike with the terms of the Act and with the reason of the thing so fairly as that which I have adopted.

But a further difficulty in the way of the plaintiffs was raised with regard to sec. 13 of the same Act, which I have already quoted. By sub-sec. 1 the Proclamations authorized are to be such as the Governor in Council thinks fit " for giving full effect to this Act." That can only mean Proclamations within the powers conferred by the Act. It cannot mean Proclamations assuming to operate outside those powers. If it did, the Proclamations might extend to anything and everything, and such a construction of the power is quite unthinkable. Sub-sec. 2 of the same section does not carry the matter any further in the direction desired by the plaintiffs. It refers to " every Proclamation made under this Act." If made under it, they are to be read as one with the Act and " construed as being of equal validity." That is a perfectly just provision, but it refers only to Proclamations valid in the sense of consistence with the provisions of the Act. The second sub-section includes the Proclamations authorized by the first sub-section, but I think it also includes those authorized by sec. 10. Any of them, to be valid,

must be made "under this Act," *i.e.*, the provisions to be found in the Act. The Proclamations impeached are not validated by sec. 13, but remain invalid.

The defence is not helped by the case of *Institute of Patent Agents* v. *Lockwood* (1). There the rules of the Board of Trade, made under the *Patents &c. Act* 1883, were to be made as they thought expedient "subject to the provisions of this Act," and a provision of the Act required the rules so made to be laid before both Houses of Parliament, and either House could annul them or any of them within forty days thereafter. As they had been so laid before Parliament and had not been annulled, the House of Lords sustained them. That was because the matter had been left, to quote Lord *Herschell* L.C. (2), "completely in the control of Parliament," and Parliament's assent to the rules was gathered from the fact that they lay on the table for forty days and were not annulled. That case does not seem to me to be on all fours with the present or even very like it.

It follows that the entry and seizure were without warrant in law, and the cattle, so far as they are undisposed of, remain the property of the plaintiffs.

Various interesting arguments were addressed to us as to whether the Sugar Act prevails over the Meat Act. It is enough to say that the latter, so far as it has been acted upon, leaves the property in the plaintiffs, and as it remains restricted to "stock" within the definition in that Act, it cannot apply to the cattle undisposed of, which are not contended to be within that definition.

The ninth finding of the jury, as to the absence of good faith in the issue of the Proclamation of 1st June 1916 and in the doing of the acts complained of with an indirect object and for some ulterior purpose, was also ably discussed by counsel on each side. As I have held both the entry and the taking to have been illegal and actionable by reason of invalidity in one or both of the Proclamations, it becomes unnecessary to consider this finding for the sustaining of the action, and so far as it affects the damages it is now outside consideration in view of the agreement of the parties on that subject. Anything I could say in this regard would now be *obiter dictum*, but I may go so far as to say that I gravely doubt whether the existence of the facts

(1) (1894) A.C., 347. (2) (1894) A.C., at p. 357.

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found affects a valid Proclamation, and this branch of the case was argued on the assumption of such validity. If the Proclamations were good the acts done under them were good, if bad—otherwise.

I come now to the defence raised under sec. 7, which reads as follows: "No action, claim, or demand whatsoever shall lie, or be made or allowed by or in favour of any person whomsoever, against His Majesty or the Treasurer, or any officer or person acting in the execution of the Proclamation hereby ratified and confirmed, or any other Proclamation made under this Act, or of this Act, for or in respect of any damage or loss or injury sustained or alleged to be sustained by reason of the making of the said or any such Proclamation or the passing of this Act, or of the operation thereof, or of anything done or purporting to be done thereunder, save only for or in respect of the value as ascertained under this Act of any raw sugar (or other commodity) acquired by His Majesty thereunder." The protection is given to "any officer or person acting in execution" of any Proclamation "made under this Act," &c. The Proclamations relied on were not made under the Act, that is, under the authority of the Act, and the following words of the same section refer to "any *such* Proclamation," that is, again, any Proclamation made under the authority of the Act, and where "anything done or purporting to be done thereunder" is protected, the protection extends only to things done or purporting to be done, of course mistakenly, under "such," *i.e.*, a valid, Proclamation. The basis of the authority is a Proclamation which, if valid, undoubtedly has the force of law, and things done under such a Proclamation, even if done mistakenly, are if honestly done protected. An illustration is to be found in the case of *Selmes* v. *Judge* (1). The things there mistakenly done were done in the assumed execution of a valid Act, but in the process of enforcing that Act steps were taken by the defendants, who were surveyors of highways, which deviated from that valid authority, in form, inasmuch as they appeared to have been taken under an earlier and repealed Statute. Acting mistakenly in this way, but intending to act in the performance of the duties of their office, the defendants were held entitled to notice of action pursuant to the Statute under which they had made a mistaken

(1) L.R. 6 Q.B., 724.

assessment. In that case there was the foundation of an Act of Parliament, of course valid, just as in this case mistakes honestly made in the execution of a valid Proclamation might have been protected. As *Lush* J. put it (1), "the question was, whether the defendants in making the rate intended to do what they were authorized to do. It is clear that they *bonâ fide* believed they were doing what the law allowed, and that is all that is needed to entitle them to the protection of the Statute." That case might be quoted as an authority for the defendants if, acting in the execution of a Statute or of a valid Proclamation under a Statute, they had incidentally committed illegalities. But the trouble is that without a valid Proclamation there was *ab initio* no authority in law for their acts, which lacked the root of any law. The *Sugar Acquisition Act* did not of itself authorize any of the things done. A valid extension and a valid authority to acquire were both necessary, and none of the defendants had any such warrant for their action. Similar remarks apply to the case of *Spooner* v. *Juddow* (2). There Lord *Campbell* said (3): "There can be no rule more firmly established, than that if parties *bonâ fide* and not absurdly believe that they are acting in pursuance of Statutes, and according to law, they are entitled to the special protection which the Legislature intended for them, although they have done an illegal act." There the Statute was the pre-requisite, and it existed; but here the valid Proclamation was the pre-requisite, and it did not exist. It is not necessary to carry citation further except for one passage which I will cite from the judgment of *Griffith* C.J. in *Hazelton* v. *Potter* (4):—"In the present case there was no law in force in New South Wales which authorized the High Commissioner's Court to address a warrant to a keeper of a prison in that State or which authorized a keeper of a prison to detain of his own authority a person in course of removal to Suva. The mistake of the respondent was neither as to a matter of fact nor as to the construction of a law of New South Wales, but as to the existence of such a law." Just previously the learned Chief Justice had reviewed several authorities, including *Selmes* v. *Judge* (5), and

(1) L.R. 6 Q.B., at p. 728.
(2) 6 Moo. P.C.C., 257.
(3) 6 Moo. P.C.C., at p. 283.
(4) 5 C.L.R., 445, at p. 460.
(5) L.R. 6 Q.B., 724.

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had added these words :—" There must be some Statute in force under which the act complained of could under some circumstances have been lawful. A mistake by the defendant as to the existence of a law cannot be brought within these principles." For the words " some Statute," used by his Honor read here " some valid Proclamation duly authorized by a Statute so as to have the force of law." The question there was as to notice of action, but the principles apply equally to this case.

Thus holding that the acts done by the defendants were unwarranted by law and that the 7th section does not protect them, and the damages having been assessed by agreement, I am of opinion that this appeal must be allowed with costs.

ISAACS AND POWERS JJ. By arrangement, in order to avoid complicated questions as to amount, the damages payable by the respondents to the appellants, in the event of the latter succeeding, have been fixed at £2,000. In the view taken by the majority of this Court, the Government of Queensland are held liable to pay that sum for an attempt to carry out, for the benefit of the whole community, what they believed to be the law. If the law does not warrant their action or protect them in their attempt, of course they ought to pay. But the difficulty of the position in which the Government stood, and, perhaps, still stand, could not be more strikingly evidenced than by the differences of judicial opinion that have been manifested. For instance, various opinions still exist as to the lawful contents of the Proclamations, even among the Judges who decide for present validity; and, as to the effect of sec. 7 of the *Sugar Acquisition Act*, six Judges out of ten think it protects the Government, and four think it does not, and the latter view prevails.

After disposing of the damages, there are four questions left—namely, the meaning of sec. 10 of that Act, the effect of sec. 2 on the *Meat Supply for Imperial Uses Act*, the scope of sec. 7, and the question of *bona fides*.

1. *Sec.* 10 *of the Sugar Acquisition Act.*—Three views of this section have been presented. The first and main contention of the appellants was that the view taken by the Supreme Court was correct. That is, that the only power conferred by the Sugar

Act is to take the whole of a commodity present and future; and that, consequently, though the first Proclamation was valid, the second was not, because it took less than the whole commodity present and future, necessarily including the property of private individuals not trading in the commodity. A second view was adopted by the appellants, on judicial suggestion. But though it is inconsistent with the only substantial reason urged by the appellants to support their first ground, it includes a feature common to both which, in the present instance, would, if sound, support their case. The view is that the Government may elect to take any quantity of the commodity, either all cattle or butter now or hereafter existing in Queensland, or may elect to take even one head of cattle, or one pound of butter, but both Proclamations must, as in the first contention, cover the same ground. The third view is that put forward by the Crown. It is that by the first Proclamation the operation of the Act may be declared to extend to authorize the acquisition of any "commodity" which is "mentioned," that is, specified; that that operates as a standing power as if expressly enacted, by the particular commodity being "mentioned" in the Act instead of being included by it in a larger term, and that thereupon the Government may at any time and from time to time determine, according to circumstances, how much, if any, of that commodity is needful to be taken for the public welfare.

In our opinion the last-mentioned view is correct. Not only is it consonant with the very words of the Act, but it is the only meaning which is practically workable if the needs of the community and even the advantage of the individual are to be considered.

Sec. 10 is, we think, sufficiently explicit in itself. But every section of an Act must, of course, be construed by reference not merely to its own language but also having regard to the whole instrument. For instance, in the Proclamation scheduled to the Act, which is a model, subject to modifications, for the second Proclamation in sec. 10—that is, the final Proclamation of acquisition—it is seen that not only existing but also future sugar is taken, and the distinction is marked by the words "the property of the existing owners thereof or of the owners thereof for the time being, as the case may be, *are* and *shall be* divested from such owners, and

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are and *shall be* vested in His Majesty's said Government," &c. It is evident that one modification might be to take only the existing sugar, or only the future sugar, but in order to acquire a future article from its future owner, you have, by the decrees of nature, to wait until the article comes into being and until the ownership of the person referred to arises, and then the words "shall be divested," &c., operate. Again, sec. 13 is an important section. It enacts that the Governor in Council may from time to time make all such Proclamations as he thinks fit for giving full effect to this Act. The language as a whole indicates that the Legislature was careful to make it clear that the fullest discretion was given to the Crown as to the way in which the powers of Proclamation granted by the Act were to be exercised, that times and quantities were to be chosen by those having the administration of the Act, according to circumstances as they arose.

Sec. 10, then, in our opinion means as follows:—The Act, having already, by sec. 5, ratified the Proclamation as to the 1915 raw sugar, as a step justified by the abnormal circumstances of the time, recognized that, in the future, circumstances might again call for similar action in respect of sugar or any other commodity. It did not, except as to raw sugar, at once and in advance define the specific subjects of the power, because Parliament could not, or would not, exhaustively define the commodities that possibly might have to be dealt with, or foresee whether circumstances might or might not call for the extension of the Act to any of them. It left to the Government of the day the duty of determining whether at any future time the circumstances of the country made it necessary to provide the power of taking any particular commodity, by "mentioning" it in a Proclamation, and then to say whether any, and, if any, how much, of that commodity it was necessary or desirable in the public interest to take, according to the nature and extent of the emergency and with a due regard for all the varied interests of this vast and diversified State.

The first part of sec. 10 says: "The operation of this Act may at any time and from time to time be extended by the Governor in Council by Proclamation" so as to authorize the acquisition of what

the section itself, in the most general terms, declares to be "commodities." It is to be noted that it is the Act itself, and not the Proclamation, that constitutes these things "commodities." The first Proclamation itself only declares to which among these statutory "commodities" the operation of the Act shall extend so far as power to acquire is concerned. Up to that point, the commodity selected or designated by the Proclamation is not affected by the Act as a whole. There is power so to affect it, but so far it is free from all governmental control or interference. Sec. 11, however, provides means of obtaining information regarding it. Circumstances, we must assume, have convinced the Crown's advisers up to that point that it is desirable to have the *power* to affect the commodity, but the very existence of the power so proclaimed may operate to render further action unnecessary, and in any case the Proclamation enables the Crown to inquire further. The first Proclamation is not, as was suggested, a declaration of *intention* to take any of the commodity. It is, as the Act says, merely an authority to acquire—that is, a power; and it may under sec. 11 contain an order for information.

No time is fixed by the Act within which a second Proclamation, should there be one, is to be made. Since no obligation to issue one is imposed, it is clear the right to do so is discretionary.

But suppose a second one is to be issued, then the words of the second part of sec. 10 apply: "Thereupon any such commodity may be acquired," &c., and this Act shall *extend* and apply "to the commodity *mentioned* in such Proclamation to the same extent and in the same manner as if such commodity were expressly *mentioned* in this Act." "Thereupon" means "after power so taken."

It is said for the appellants that these words show the whole commodity must be taken, and that is the only way to prevent differential or unjust treatment of the individuals from whom it is acquired. A brief examination of the matter shows that this view is incapable of support, even independently of sec. 6.

What is the whole commodity? Is it the whole commodity as it exists in the hands of every individual in Queensland and at the very moment the first Proclamation is issued? That would exclude every portion or every article of that commodity

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coming into existence the next day, and from day to day thereafter. Is it the whole of the commodity during the year; and, if so, when is the year to commence? Is it to be the whole of the year 1916, or 1917, and so on, or any period of twelve months; or how otherwise? Again (and this is a consideration that strikes at both views of the appellants), if both Proclamations must refer to the same "commodity" in the sense that identically the same articles—neither more nor less—must be covered by both, then every second Proclamation may be, and probably would be, invalid, unless issued the instant after the first, that is, in substance, simultaneously. For instance, if butter or coal is the subject of the first Proclamation, a few hours would render the second Proclamation a nullity.

The Legislature must have had some sound and substantial reason for providing for two Proclamations, one creating the power and the other for the exercise of that power. Some effect must be given to that provision. They must have contemplated some opportunity to the Executive for considering whether the power should be put in force or not. No other reason can be suggested. To require both to be issued simultaneously, at the peril of invalidity otherwise, is to us unthinkable. Sec. 11 could not be so advantageously used, and the Government would probably be committing the Treasury in the dark. If any time at all is intended to be given for consideration, nothing but the most intractable words ought to compel the Court to conclude that the second Proclamation must cover the whole area of the first. Consideration might show that to exert the power to the fullest extent would do great and unnecessary injury to one half of Queensland for the sake of great and necessary benefit to the other half. One object of affording time between the two Proclamations is, no doubt, this: that the mere public announcement of the power to affect the whole of a given commodity may, in itself, avoid public inconvenience and injury, and either wholly or partially reduce the necessity of drawing on the Public Treasury for the purpose of safe-guarding and securing public supplies. That may be a very practical, though indirect, result. And one direct object clearly was to enable the Government to put sec. 11 in force, by which, when issuing the Proclamation taking power to acquire any given commodity, returns might be

required in order to judge of the necessity and the extent and the cost of future action. What is there in the language of the section which forces one to a different conclusion? The words "any such commodity may be acquired by a Proclamation" do not compel such a construction. By the *Acts Shortening Act of* 1867, sec. 11, the words "a Proclamation" include the plural, because the contrary is not expressly provided. That would be sufficient in itself to dispose of the suggestion that every Proclamation of acquisition must cover the whole ground of the first. But, in addition, we do not see any necessity to construe "any such commodity" as covering the whole of the commodity mentioned in the first Proclamation. *Omne majus continet in se minus.* Observe that in the first Proclamation, according to the section, the commodity is only to be "mentioned"—not particularized as to quantity or locality or ownership, or otherwise. "Mentioned" there manifestly means specifically mentioned, as distinguished from mere inclusion in the general terms used in the section. We apprehend that if power is given to acquire a "mentioned" commodity the power may, by virtue of sec. 18 of the *Acts Shortening Act*, be exerted from time to time—a position strengthened by sec. 13 of the Sugar Act. And the power to acquire is expressly stated to be "to the same extent and in the same manner as if such commodity were expressly mentioned in this Act." Now, the test afforded by the Act itself seems to be this. If in the first part of sec. 10 "butter," for instance, were expressly mentioned instead of being wrapped up in the general term "food-stuffs" or "commodities," in other words, if all food-stuffs or all "commodities" were enumerated and "butter" among them, or if all live-stock were separately enumerated, as "horned cattle, sheep, pigs," &c., instead of being collectively described as they are by the generic name "live-stock," then how could the power of acquisition under the second part of sec. 10 be exercised? Take the same words "any such commodity may be acquired" in relation to a commodity expressly mentioned, as "butter" or "horned cattle," could it be argued that all butter or all horned cattle must be taken if any be taken, and, in particular, must be taken at once by the one Proclamation? And as the Act itself says the proclaimed commodity may be taken as if expressly

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"mentioned," the objection now dealt with appears to us to be answered. It bears a strong analogy to the *Lands Acquisition Acts*.

Another consideration must be borne in mind. The word "commodity" is used in no undeviating sense. For instance, in the title of the Act the term "commodities" is used in the generic sense as possibly embracing the whole of a given class; in sec. 3 the word "commodity" necessarily means an undefined portion of that class; in sec. 6 it is used in both senses, the first in sub-sec. 1 and the other in sub-sec. 2 and sub-sec. 4; in sec. 7 it is used in the limited sense of so much of the commodity as belonged to one owner; in sec. 9 (*b*) it is used in the limited sense of so much of the commodity as is the subject of the particular document. And, then, why in sec. 10 cannot the word "commodity" be read so as to conform to the reasonable use of the power conferred?

In addition to those considerations, the extremely wide language of sec. 13 materially helps to the conclusion that discretion is entrusted to the Crown to acquire a given commodity in proportion to what it conceives to be the needs of the community.

On the whole, we are clearly of opinion that the two Proclamations were valid, and that the view advanced on behalf of the State of Queensland is the correct one.

2. *The Meat Supply for Imperial Uses Act.*—The next question in order is as to whether the Meat Act, by virtue of its own operation as a legislative declaration, excludes from the operation of the Sugar Act the 600 cattle, part of the 1,700 cattle the subject of this action. If it did, we should regard the second Proclamation in this case as divisible and good as to the balance. But that is not the important point. In our opinion sec. 2 clearly eliminates from all competition with the Sugar Act every prior Queensland Act, including the Meat Act.

Both Acts owe their force to the will of the Queensland Legislature. What it creates it can destroy. In the Meat Act it declared the supremacy of that Act over all other then existing Acts and transactions, and up to that time the Meat Act was the final expression of the legislative will. But when, a year later, and under new circumstances, the same Legislature passed the Sugar Act, it declared that *that* Act should be supreme over every other existing Act. Since

then, no other Act, including the Meat Act, can, in our opinion, be allowed to stand in the way of the Sugar Act. The very first principles of statutory construction demand the recognition of this supremacy, because the words which enact it are unqualified, and to introduce them by implication, would be legislation and not interpretation.

The Crown in Parliament, in making a law whereby the Crown itself has, in the public interest and to provide for urgent necessities of the people of Queensland, been given great and important powers with respect to commodities of daily life, enacted that all former Acts of the Crown in Parliament should henceforth have to yield, if required, to the law newly made; and to our mind that enactment connotes that Parliament meant exactly what it said, and included the Meat Act. The rights of the Crown, whatever they may be, under the Meat Act, are not prerogative rights, but are the creation of an Act of the same Legislature. We do not think that the maxim appealed to, as to where the Crown is not bound, has any application here. Sec. 2 of the Sugar Act, in our opinion, requires unquestioning obedience according to its plain terms.

If anything had been done under the Meat Act to create title in the Crown—if, for instance, an order of appropriation had been made—the matter would be different. For then, even if the Meat Act were repealed, the effect of the order made while it was in force, changing ownership, would stand independently. It would be an exercise of power which would remain after the power to do such acts in the future had ceased. But, so far as any right to control the ownership of another exists by virtue only of the standing direction of the Act itself—a self-executing power—it is a right that must disappear if the Act were repealed, just as a title disappears if the grant itself is validly revoked.

In face, then, of sec. 2 of the Sugar Act, which declares the pre-eminence of that Act over all other Acts for the purpose of giving the Sugar Act full effect, it appears to us to be clear beyond controversy that it would be a direct contravention and reversal of the declaration of Parliament if we were to restrict the operation of the later Act, or to cut down the natural meaning of the terms it contains, by the terms of the former Act.

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We treat the Meat Act not as repealed but as subordinate in its operation to the Sugar Act, should the Government determine to exercise the powers of the latter Act.

3. *Sec. 7 of the Sugar Acquisition Act.*—Four of the Judges of the Supreme Court considered that the defendants were in any event protected by sec. 7. We respectfully agree with them. That section is of a type that has been well known to the British Parliament for several hundred years, and has been judicially passed upon, and has been copied with suitable modifications by many colonial legislatures. It is of extreme importance in relation to the performance of many executive functions. Its office may be shortly stated to be that the Legislature thereby protects, in the general interest, the honest, though mistaken, endeavour by the Executive to carry out the Legislature's own directions. Parliament recognizes that there are cases where its own words are not unreasonably susceptible of misconstruction, and where the Executive may honestly misunderstand the circumstances of a given case, and by such a clause it frees the Executive from the hampering apprehension that an honest slip in the performance of its duty to advance the general welfare may lead to unlimited public injury and litigation. Of course, every such provision must be construed for itself, but the type is so well known that the language of such a clause is invariably interpreted by reference to the manifest object of such an enactment. That principle has passed into a canon of construction.

Maxwell on Statutes (5th ed., p. 378) refers to this class of enactment as one where the words " under " and " by virtue of " and " in pursuance of " do not mean what the words in their plain and unequivocal sense convey, and that they must be modified to carry out the object of the enactment. Belief of the defendant is required, the learned author says, " in the existence of such (1) *facts*, or (2) *state of things* as would, if really existing, have justified his conduct." (We have numbered and italicized the two expressions " facts " and " state of things.") It will be seen that " state of things " includes the existence of a law or a valid regulation under a law. *Wilberforce on Statutes*, speaking of things " done in pursuance of the Act " within the meaning of such enactments, says at p. 87 : " The meaning which has been put upon these words is not the literal meaning

and the protection given by such clauses is extended to all who in discharging a public duty imposed upon them act in the honest belief that they are doing what is authorized by the Statute."

In *Spooner* v. *Juddow* (1) Lord *Campbell*, for the Judicial Committee, after referring to the argument that the jurisdiction of the Supreme Court of Bombay was, according to the strict words of the Letters Patent, taken away in revenue matters only where the law was strictly complied with, proceeded to say: "Our books actually swarm with decisions putting a contrary construction upon such enactments, and there can be no rule more firmly established, than that if parties *bonâ fide* and not absurdly believe that they are acting in pursuance of Statutes, and according to law, they are entitled to the special protection which the Legislature intended for them, although they have done an illegal act." The succeeding words are important, but we forebear to do more than refer to them. There are many English cases, less authoritative for us, which similarly recognize the method of construction to be applied to protective clauses of this nature. For instance, in *Hazeldine* v. *Grove* (2) Lord *Denman* C.J. referred to what he called "the principle which has always been applied to the construction of the analogous clauses in the Statutes of James I. and George II. . . . and other similar provisions in various Statutes."

Cases on the construction of Statutes are valuable only for the principles they enforce, but as this is a principle of construction the decided cases are not only valuable, but are absolutely necessary to observe.

Applying this "principle" to sec. 7, it supplies the true interpretation to the following expressions among others: (1) "*officer or person acting in the execution*" of a Proclamation or the Act; (2) "*Proclamation made under this Act*," and (3) "acquired by His Majesty thereunder." That interpretation will clearly appear from the authorities to be cited.

First, it is desirable to analyze the section, because the appellants' argument is an instance where it takes longer to dissipate a fallacy than to raise it.

The section provides that, with the exception mentioned in the

(1) 6 Moo. P.C.C., at p. 283.

(2) 3 Q.B., 997, at pp. 1006-1007.

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section itself, no action, claim, or demand whatsoever shall be permitted as against certain persons in respect of damage, loss, or injury occasioned by certain events. The *persons* protected are (1) His Majesty, (2) the Treasurer, and (3) any officer or person acting in the execution of a Proclamation or the Act. The *events* out of which those matters are to arise are (1) the making of the scheduled Proclamation or any other Proclamation made under the Act, (2) the passing of the Act, (3) the operation of the Act, and (4) anything done or purporting to be done under the Act.

The *exception* mentioned in the section is an action for the value ascertained under the Act of a commodity "acquired" under the Act. As to the persons protected, the words "acting in the execution" &c. are not properly applicable to the King or the Treasurer, and must therefore be confined to the words "officer or person," for whom they are apt and necessary.

Then as to the events causing the damage, &c., sustained:— It was recently observed by Viscount *Haldane*, in *Bradford Corporation* v. *Myers* (1), that "it is one thing to say that it is the duty of a Court of construction to endeavour to give a meaning to every word used in the document, and quite another to say that this can always be done, or that a clear principle or purpose can always be determined by exegesis." In that case the House of Lords had to construe the *Public Authorities Protection Act* 1893, and found themselves compelled to depart from its strict words by reason not only of the indication given by its introductory words, but also of the principle of interpretation applied to what the Lord Chancellor called (2) "similar, though not identical, conditions contained in other Acts of Parliament." And it may here be observed that as to the same Act the Court of Appeal, under the presidency of Lord *Lindley*, relied greatly on the title to the Act (*Fielding* v. *Morley Corporation* (3)).

Bearing all relevant considerations in mind, it appears to us clear that the words "the operation thereof" refer to the operation of the Act, and not of a Proclamation. *Dwarris on Statutes* says (p. 39): "A royal Proclamation never properly possessed any efficacy to create but only to promulgate or enforce a law." It is the

(1) (1916) 1 A.C., 242, at p. 250. (2) (1916) 1 A.C., at p. 248.
(3) (1899) 1 Ch., 1.

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

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

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