12.Aug.201.

[HIGH COURT OF AUSTRALIA.]

GRACE BROTHERS PROPRIETARY LIMITED PLAINTIFF;

AND P.C. Appeal dismissed 82 C.L.R. 358
Refr'd To: 85 C.L.R. 568
87 C.L.R. 162
87 C.L.R. 508

THE COMMONWEALTH AND ANOTHER . DEFENDANTS.

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MELBOURNE, *Feb.* 28, *March* 1;

SYDNEY, *April* 17.

Latham C.J., Starke, Dixon, McTiernan and Williams JJ.

Constitutional Law (Cth.)—Acquisition of property—"Just terms"—Statute—Validity—Compulsory acquisition of land—Compensation—Valuation—Principal and interest—Defence—National Security—Notification of acquisition of land—"Purpose therein expressed"—"Purposes of the Commonwealth"—Regulation inconsistent with Commonwealth statute—Validity—The Constitution (63 & 64 *Vict.* c. 12), *s.* 51 (*vi.*), (*xxxi.*)—*Lands Acquisition Act* 1906-1936 (*No.* 13 *of* 1906—*No.* 60 *of* 1936), *ss.* 15, 28, 29, 40—*National Security Act* 1939-1943 (*No.* 15 *of* 1939—*No.* 38 *of* 1943), *ss.* 5, 18—*National Security* (*Supplementary*) *Regulations* (*S.R.* 1940 *No.* 126—1944 *No.* 74), *reg.* 72A.

The *Lands Acquisition Act* 1906-1936 is not invalid because of the provisions of ss. 28, 29, 40, thereof (which are within the power of the Commonwealth Parliament under s. 51 (xxxi.) of the Constitution to legislate with respect to "the acquisition of property on just terms . . . for any purpose in respect of which the Parliament has power to make laws") or because it does not appropriate moneys to pay compensation assessed under the Act.

So *held* by the whole Court, except that *Williams* J. was of opinion that par. (*a*) (and, *semble*, par. (*b*)) of sub-s. (1) of s. 29 was invalid but was severable.

It was provided by s. 15 of the *Lands Acquisition Act* 1906-1936 :—"(1) The Governor-General may direct that any land may be acquired by the Commonwealth from the owner by compulsory process. (2) The Governor-General may thereupon, by notification published in the *Gazette*, declare that the land has been acquired under this Act for the public purpose therein expressed." Regulation 72A of the *National Security* (*Supplementary*) *Regulations* provided : "Notwithstanding anything contained in section 15 of the *Lands Acquisition Act* 1906-1936, the public purpose for which any land has been acquired shall be deemed to be expressed sufficiently if the notification declares that the land has been acquired under that Act for the purposes of the Commonwealth."

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Held that the regulation was authorized by the *National Security Act* 1939-1943 and by virtue of s. 18 of that Act it had effect notwithstanding its inconsistency with s. 15 (2) of the *Lands Acquisition Act*; accordingly it rendered effective a notification stating that land specified had been acquired for "purposes of the Commonwealth" even though such a notification would not have been sufficient under s. 15 (2) itself.

DEMURRER and MOTION.

In its statement of claim in an action against the Commonwealth and the Minister for the Interior, Grace Bros. Pty. Ltd. alleged that by a notification published in the Commonwealth *Gazette* on 8th November 1945 the defendants had purported to acquire for the Commonwealth pursuant to the *Lands Acquisition Act* 1906-1936 certain land owned by the plaintiff and were proceeding to demolish a building on the land.

The published notification of acquisition stated that the land had been acquired "for the following purpose, namely: Purposes of the Commonwealth at Sydney."

The plaintiff claimed:—

(1) A declaration that the notification" is void and of no effect in that such notification does not comply with the requirements of section 15 of the *Lands Acquisition Act* 1906-1936."

(2) A declaration "that the *Lands Acquisition Act* 1906-1936 is wholly void and of no effect in that such Act is ultra vires of the Constitution of the Commonwealth of Australia section 51 placitum (xxxi.)."

(3) A declaration "(alternatively to (2)) that section 29 of the *Lands Acquisition Act* 1906-1936 is wholly void and of no effect in that the said section 29 is ultra vires of the Constitution of the Commonwealth of Australia section 51 placitum (xxxi.)."

(4) An injunction "restraining the defendants and each of them and their servants and agents from—(*a*) entering upon or in any way interfering with the said land or premises erected thereon or the user or enjoyment thereof by the plaintiff or any person or persons lawfully claiming through the plaintiff and (*b*) selling, mortgaging, alienating, charging, encumbering or otherwise dealing with the said land."

The defendants demurred to the statement of claim on the grounds that:—

"(*a*) It discloses no cause of action.

(*b*) The *Lands Acquisition Act* 1906-1936 and every part thereof is a valid exercise of the legislative power of the Parliament of the said Commonwealth pursuant to the Constitution of the Commonwealth.

(*c*) The notification referred to in . . . the statement of claim . . . and every part thereof is a valid exercise of the power conferred on the Governor-General of the said Commonwealth by the *Lands Acquisition Act* 1906-1936."

The plaintiff having obtained leave to serve short notice of motion for an interlocutory injunction, the motion was referred to the Full Court for hearing with the demurrer.

At the instance of the court counsel for the plaintiff began.

Barwick K.C. (with him *Kitto* K.C. and *Asprey*), for the plaintiff. The *Lands Acquisition Act* is not a valid exercise of the power conferred by s. 51 (xxxi.) of the Constitution to legislate for the acquisition of property on just terms. The Act provides a scheme for the assessment of compensation for land acquired on terms which are not " just terms " within the meaning of s. 51 (xxxi.) ; the terms are specifically prescribed so that there is no alternative method whereby the owner of land acquired can get just terms of compensation. Accordingly, the Act is invalid and the purported acquisition pursuant to it is void. The grounds upon which the Act is challenged as failing to provide just terms are (1) it fixes a date anterior to the date of expropriation as the date at which the valuation of the land is to take place ; (2) on its proper construction it limits the compensation to the value of the land as distinct from its value to the dispossessed owner ; (3) it fails to provide adequate interest on the moneys payable between the date of expropriation and the date when the moneys are paid ; (4) it fails to make moneys legally available to pay the compensation, i.e., there is no appropriation for that purpose. Ground 1 relates to s. 29 (1) of the Act, par. (*a*) of which appears to be relevant to the present case. Just terms necessarily involve the payment to the owner of the value of his property as at the date when it is taken from him. In fixing the value as at 1st January preceding the acquisition the section excludes any enhancement in the intervening period. This period could be as long as twelve months, and there could be a substantial change in the value of the land, as is obvious if one contemplates the possibility of new buildings being erected, or crops grown, on the land. The requirement of just terms calls for terms which are at least as favourable to the expropriated owner as those which he would get under a statute entitling him to " compensation." Under such statutes it has been held that the date of expropriation is the vital date for the ascertainment of value ; the owner must receive the value of the land to him as at the date of expropriation : See *In re Lucas and Chesterfield Gas and*

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Water Board (1); *Swift & Co.* v. *Board of Trade* (2); *Cedars Rapids Manufacturing & Power Co.* v. *Lacoste* (3); *Fraser* v. *City of Fraserville* (4); see also *Monongahela Navigation Co.* v. *United States* (5); *United States* v. *Rogers* (6); *Seaboard Air Line Railway Co.* v. *United States* (7); *Jacobs* v. *United States* (8); *Yearsley* v. *W. A. Ross Construction Co.* (9); *United States* v. *Miller* (10); *Benedict* v. *City of New York* (11); *Commonwealth* v. *Huon Transport Pty. Ltd.* (12), per *Rich* J. In arbitrarily fixing a date other than the date of acquisition s. 29 (1) (*a*) of the Commonwealth Act fails to give just terms. Ground 2 relates to s. 28 as well as to s. 29. Read together, these sections treat "the value of the land" (see s. 28 (1) (*a*)) as an abstraction without regard to any special value which the land has to the particular owner (e.g., because of its actual or potential user) at the relevant date; this is not a just basis of compensation. [He referred to *Pastoral Finance Association Ltd.* v. *The Minister* (13); *Spencer* v. *The Commonwealth* (14); *Minister of State for Home Affairs* v. *Rostron* (15); *Inland Revenue Commissioners* v. *Glasgow & South-Western Railway Co.* (16); *Minister for Home and Territories* v. *Lazarus* (17); *Smith* v. *Minister for Home and Territories* (18).] Ground 3 relates to the provision of s. 40 of the Act that compensation shall bear interest at the rate of three per cent per annum. The objection to this provision is founded on the proposition that to afford just terms provision must be made for the payment of interest from the date of acquisition until the date of payment of compensation. This proposition does not go as far as the American doctrine that interest is an essential part of the compensation itself. All that need be said here is that just terms of acquisition require that the owner should not be deprived of the benefit of income-bearing property without being compensated for loss of income in the interval before payment. This proposition has particular force in relation to land, which is always assumed to have an income value. If this is so, it follows that the Act cannot validly fix a rate of interest rigidly for all time, as this Act in effect does. No provision can be

(1) (1909) 1 K.B. 16.
(2) (1925) A.C. 520.
(3) (1914) A.C. 569.
(4) (1917) A.C. 187.
(5) (1893) 148 U.S. 312, at pp. 322-326 [37 Law. Ed. 463, at pp. 467, 468].
(6) (1921) 255 U.S. 163 [65 Law. Ed. 566].
(7) (1923) 261 U.S. 299, at p. 306 [67 Law. Ed. 664, at pp. 669, 670].
(8) (1933) 290 U.S. 13, at pp. 16, 17 [78 Law. Ed. 142, at pp. 143, 144].
(9) (1940) 309 U.S. 18 [84 Law. Ed. 554].
(10) (1943) 317 U.S. 336 [87 Law. Ed. 310].
(11) (1899) 98 Federal Reporter 789.
(12) (1945) 70 C.L.R. 293, at p. 306.
(13) (1914) A.C. 1083.
(14) (1907) 5 C.L.R. 418.
(15) (1914) 18 C.L.R. 634.
(16) (1887) 12 App. Cas. 315.
(17) (1919) 26 C.L.R. 159.
(18) (1920) 28 C.L.R. 513.

just unless it makes allowance for variations in the market rate of interest. [He referred to *Re Tindal*; *Perpetual Trustee Co. Ltd.* v. *Tindal* (1); *Commonwealth* v. *Huon Transport Pty. Ltd.* (2); *Marine Board of Launceston* v. *Minister of State for the Navy* (3).] Ground 4 of the challenge to the validity of the Act is that the Act does not make available funds to meet the compensation. Section 19, by excepting cases in which moneys have been appropriated, shows that cases are contemplated of acquisitions in respect of which funds have not been made available. The point is that a scheme which makes no provision for the payment of the compensation is not a scheme providing just terms; the question is not whether the expropriated owner has reason to fear that he will not be paid. Section 42 gives a right to payment, and judgment could be recovered for the amount of the compensation, but no obligation is imposed on anyone to see that it is paid. [He referred to the *Judiciary Act* 1903-1940, ss. 65, 66, and to the notes in 67 *Lawyers' Edition, United States Reports*, p. 667.] Even if the Act is valid, the purported acquisition in this case is bad because the notification of acquisition is not an adequate notification for the purposes of ss. 15 and 16 of the Act and is therefore void for non-compliance with the Act. Under s. 15 (2) the notification must specify the purpose for which the land is acquired; moreover, s. 51 (xxxi.) of the Constitution requires that the purpose be one in respect of which the Parliament has power to make laws. Merely to say, as the notification now in question does, "purposes of the Commonwealth" is not a sufficient specification. The defendants, no doubt, will seek to rely on the *National Security* (*Supplementary*) *Regulations*, reg. 72 or reg. 72A. The plaintiff desires, before dealing with that matter, to hear the defendants' argument upon it.

Mason K.C. (with him *Taylor* K.C. and *Curlewis*), for the defendants. The *Lands Acquisition Act* is a law with respect to the acquisition of property on just terms which is within the power conferred by s. 51 (xxxi.) of the Constitution. The plaintiff has not shown that the Act, in any of the matters challenged, prescribes terms which are not just. What is "just" in any given circumstances is a matter on which opinions may well differ, especially in relation to a question of compensation for loss or injury. If the validity of the Act must be determined as an abstract problem, a court cannot say that it is invalid on the ground that it provides terms which are not just unless the terms are such that no reasonable

(1) (1933) 34 S.R. (N.S.W.) 8, at p. 15; 50 W.N. 247, at p. 249.
(2) (1945) 70 C.L.R. 293.
(3) (1945) 70 C.L.R. 518.

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man could regard them as just. That, it is submitted, is the only test a court can apply. The grant of a power to legislate with respect to the acquisition of property on just terms necessarily contemplates that the legislation will, or may, prescribe *some* terms of compensation. What the terms are to be is a matter of legislative policy, subject only to the limitation that they must be such as are authorized by s. 51 (xxxi.) of the Constitution. Clearly, a court cannot test the validity of the legislation by inquiring what are ideal terms or whether it could devise more satisfactory terms: It cannot sit in review of the policy of Parliament. The plaintiff's argument seems to be based on the assumption that the only interests to be considered are those of the expropriated owner and to leave out of account the consideration that the terms must be "just" in relation also to the interests of the Commonwealth. As an alternative to the application of abstract tests of the validity of the Act, the true position in regard to the particular Act now in question and the aspects in which it has been attacked may be that it is rather the validity of Executive action in purported pursuance of the Act than the validity of the Act itself that falls to be decided. This Act does not affect anyone until Executive action is taken in pursuance of it. This takes place *qua* each particular resumption. It may be that the question then arises, as one to be determined on evidence, whether justice is done in the particular case. In this view it is important that the statement of claim in this case contains no allegation of actual or probable detriment to the plaintiff, and this may well be the real issue. However, the plaintiff's argument treats the matter in an abstract way, and it is proposed to deal in detail with the grounds of objection on that basis. On the first ground the plaintiff's challenge to the validity of the Act goes to s. 29 (1) (*a*). There is an obvious reason for assessing the value of the land as at a date prior to the date of acquisition, and it is one which shows the provision to be reasonable. It is notorious that information as to proposed resumptions leaks out before the actual acquisition and results in an inflation of values. Valuation as at the date of acquisition would, therefore, mean in many cases that the Commonwealth would have to pay a fictitious value. This would not be just in relation to the Commonwealth. Such a provision as s. 29 (1) (*a*) is calculated to achieve substantial justice between the parties; it is not capricious or unreasonable. Property might increase or decrease in value between 1st January and the date of acquisition; the provision does not necessarily operate to the disadvantage of the owner. The greatest period that can elapse between the relevant dates is twelve months. It is not contended that the legislature is at large as to the date to which it

can go back for the valuation, but annual valuations are a commonplace in connection with rates and taxes, and they afford an analogy. It is, of course, unreal to treat land values as if they changed—where there is a change—at regular intervals of twelve months, remaining static in the meantime, but it is a convenient course, which does substantial justice. Sub-section (2) of s. 29 is a kindred provision; it does not cover the same ground as sub-s. (1), but it throws some light on the purpose of sub-s. (1). The plaintiff's second ground of objection is closely related to the first; both, it is submitted, involve an erroneous assumption as to the effect of the relevant provisions of the Act. Section 29 (1) (*a*), in taking the valuation back to 1st January, does not intend that the value of improvements effected after that date is not to be taken into account; they must be taken into account, but their value is to be assessed as at the anterior date. Moreover, there is nothing in s. 28 or s. 29 to suggest that what is to be regarded as the value of the land is not the value to the person who is in fact the owner at the time of resumption, regard being had to actual and potential user at that time. All the elements which make up the true value of the land must still be taken into account. Section 29 is directed merely to eliminating something which is not an element of the true value. As to the third ground of objection, that s. 40 is unjust in fixing three per cent interest on compensation, it is a sufficient answer to say that Parliament need not have provided for any interest at all. The interest is by way of recompense, not for the taking of the land, but for delay in payment of the compensation for the taking of the land. Parliament need not have concerned itself with anything beyond compensation on just terms for the taking; the question of interest raises no question of just terms. However, the plaintiff's argument, which attempts to relate the question to just terms, amounts to this: The Act cannot validly fix any rate of interest; no rate is "just" unless it is the current rate (or more); however high the rate fixed, however favourable to the expropriated owner, it is always possible that the market rate may be higher in the future, and then the presently existing provision of the Act, if it remains in existence, will operate unjustly. Therefore, it is said in effect, a provision fixing the interest is invalid *ab initio* even though the rate fixed is higher than the market rate prevailing at the commencement of the Act. This objection has not been sustained. The rate of three per cent is not unreasonably low, and the section is a reasonable attempt to achieve certainty in the matter. The fourth objection is untenable. It should not be assumed that the Commonwealth will not honour its legal obligations. [On this point he was stopped.] If any of the provisions challenged is beyond

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power, it is severable. Section 40, the interest provision, is a minor matter; its severance would not affect the scheme of the Act. Section 28, so the plaintiff suggests, does not give the true value of the land to the owner. It has already been submitted that this is not the true construction; but the section should, if necessary, be read down so as to bring it within power. This leaves s. 29 to be considered. It is subsidiary to s. 28 (which, with ss. 15-17, 26, constitutes the substance of the scheme of resumption and compensation provided by the Act), and if it, or sub-s. (1) (*a*), were severed, the scheme would not be substantially different. If the Court concluded that s. 29 was invalid and that s. 28 was so connected with it as to be tainted by it, the Act, without those sections, would be an Act providing for the acquisition of land (s. 15) and conferring a right to compensation (s. 26), but not providing a method of assessing compensation. The substance of the legislative scheme would still remain, and the expropriated owner would have the right of recourse to the courts in respect of compensation. In that form, the Act would be within s. 51 (xxxi.) of the Constitution. If the Act stands in that form, the acquisition in the present case will not be invalidated. [On the question of severability, he referred to *Minister of State for the Army* v. *Dalziel* (1); *Pidoto* v. *Victoria* (2); *King Gee Clothing Co. Pty. Ltd.* v. *The Commonwealth* (3); *Andrews* v. *Howell* (4); *Australian Apple and Pear Marketing Board* v. *Tonking* (5).] As regards the notification of acquisition, the important provisions of the Act are ss. 15 and 16, which must be read with reg. 72A of the *National Security* (*Supplementary*) *Regulations*. It may be desirable to refer also to s. 13 of the Act from which, when it is read with the definition of "public purpose" in s. 5, it appears that the Act is limited to the acquisition of land for purposes in respect of which the Parliament has power to make laws, that is to say, for the purposes stated in s. 51 (xxxi.) of the Constitution. If the plaintiff's contention, that the notification does not comply with s. 15 (2) of the Act, is justified (which is not conceded), it is answered by the regulation mentioned. That regulation depends for its validity on the *National Security Act*, and, ultimately on the defence power in s. 51 (vi.) of the Constitution. The relation of the regulation to the defence power is found in the consideration that it is undesirable in time of war to disclose that land has been acquired for defence purposes. It was the practice in peace time to disclose the purpose of defence in the notification. During the war it was necessary to alter this

(1) (1944) 68 C.L.R. 261, particularly at p. 288.
(2) (1943) 68 C.L.R. 87.
(3) (1945) 71 C.L.R. 184.
(4) (1941) 65 C.L.R. 255.
(5) (1942) 66 C.L.R. 77.

practice, and it would not have been practicable to confine the alteration to cases of acquisition for defence purposes. If the purpose were to be specified when it was not a defence purpose and not specified when it was a defence purpose, it would be obvious that all acquisitions as to which the notification was not specific were for defence purposes, and nothing would be achieved. It was therefore necessary to bring about a situation in which no notification (whether the acquisition was for a defence purpose or otherwise) was specific. The regulation is therefore authorized by the *National Security Act*, and by reason of s. 18 of that Act, it overrides the relevant provision of the *Lands Acquisition Act*. Accordingly, s. 15 must be read, while the regulation is in force, as if it were amended in the manner defined by the regulation, and the notification complies with the section so read.

Barwick K.C., in reply. Section 16 of the *Lands Acquisition Act* is the provision which makes a notification of acquisition effective. The words " the notification " in s. 16 refer back to s. 15 so that the only notification that can have effect under s. 16 is one which conforms with s. 15 (2) in that a " public purpose " is " therein expressed." It is essential that the purpose be specifically stated by relation to a purpose in respect of which the Parliament has power to make laws. Otherwise the Act would be unworkable; s. 19, for instance, could not operate without a specific statement of the purpose. Moreover, the phrase " purposes of the Commonwealth " is open to the objection that it may include purposes other than those " in respect of which the Parliament has power to make laws." Accordingly, even if reg. 72A of the *Supplementary Regulations* is capable of the meaning (and, under s. 18 of the *National Security Act*, has the force) for which the defendants contend, it cannot operate to make the present notification effective under s. 16 of the *Lands Acquisition Act*. In any case, s. 18 of the *National Security Act* should not be construed as empowering the Executive to amend Acts of Parliament as, on the defendants' construction, reg. 72A does. The purpose of s. 18 is that, if a regulation on a subject which is within the *National Security Act* contains a provision which is inconsistent with a statute, the regulation shall be paramount; it cannot have been intended to authorize a direct amendment. [He referred to *Cooley's Constitutional Limitations*, 8th ed., vol. 1, pp. 191, 192.] The construction of the *Lands Acquisition Act* is a matter for a court of construction; the Executive, if it purports to direct the court to construe the Act in a particular way, usurps judicial power. Moreover, the defendants' construction of reg. 72A

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is wrong. When reg. 72A is read with reg. 72, it is sufficiently clear that it relates only to cases of acquisition under reg. 72, and not to the present case, in which the acquisition purports to be under the *Lands Acquisition Act*. The purported acquisition in this case is, therefore, null, and the plaintiff is entitled to the relief claimed on that basis.

Cur. adv. vult.

April 17

The following written judgments were delivered :—

LATHAM C.J. Demurrer to a statement of claim in an action in which the plaintiff claims a declaration that the *Lands Acquisition Act* 1906-1936 is void and that a notification given under the Act that certain land belonging to the plaintiff was acquired by the Commonwealth under the Act is void. The plaintiff also moved for an interlocutory injunction restraining the defendants (the Commonwealth and the Minister of State for the Interior) from altering and demolishing parts of the building upon the land to which the notification referred. The motion was referred to the Full Court.

The *Lands Acquisition Act* 1906-1936 was enacted under the power conferred upon the Federal Parliament by the Constitution, s. 51 (xxxi.), to make laws with respect to the acquisition of property on just terms from any State or person for any purpose in respect of which Parliament has power to make laws. It is contended by the plaintiff that the Act does not provide just terms for the acquisition of land and therefore is invalid (*Johnston Fear & Kingham* v. *The Commonwealth* (1)). The plaintiff also relies upon what is contended to be a failure to comply with the requirement of the Act that the notification of acquisition should specify the particular purpose for which the land has been acquired : see the Act, s. 15. The more important question is that of the validity of the Act, and I propose to deal with that question in the first place.

The Act provides that the Governor-General may direct that any land may be acquired from the owner by compulsory process (s. 15) and that when the notification referred to in s. 15 (2) is published in the *Gazette* the land, by force of the Act, is vested in the Commonwealth, freed and discharged from all trusts, obligations &c. (s. 16). Section 26 provides that the owner of land which has been acquired shall be entitled to compensation, and s. 28 provides that in determining compensation under the Act regard shall be had, subject to the Act, to, *inter alia*, " (*a*) The value of the land acquired." Section 29 (1) is in the following terms :—

(1) (1943) 67 C.L.R. 314.

"The value of any land acquired by compulsory process shall be assessed as follows:—

(*a*) In the case of land acquired for a public purpose not authorized by a Special Act, according to the value of the land on the first day of January last preceding the date of acquisition; and

(*b*) In the case of land acquired for a public purpose authorized by a Special Act, according to the value of the land on the first day of January last preceding the first day of the Parliament in which the Special Act was passed."

Section 40 provides that compensation shall bear interest at the rate of three per cent from the date of acquisition of the land, or the time when the right to compensation arose, until payment thereof is made to the claimant or until the amount thereof has been deposited in the Treasury.

It is contended for the plaintiff that the Act fails to provide just terms for the acquisition of property for four reasons. In the first place, s. 29 requires compensation to be assessed according to the value of the land on the 1st day of January last preceding the date of acquisition. It is argued that an expropriated owner must, if he is treated justly, be entitled to obtain the value of his property as at the date of acquisition.

In my opinion this argument takes too narrow a view of the powers of Parliament under s. 51 (xxxi.). Section 51 (xxxi.) empowers Parliament to enact legislation providing a method of acquiring property, and imposes upon Parliament the necessity of providing just terms for the acquisition of property. Payment of the value of the property at the time of acquisition would doubtless be a just basis of compensation in most cases, but there might be particular cases in which it could reasonably be contended that the payment of the value as at that date was not entirely just. The value of the property might have been depreciated in advance by Government action, as, for example, by the acquisition by the Government in a residential area of land near the land as to which the question of compensation arose, it being the known intention of the Government to use the land for some industrial or other purpose which had depreciated the value of the land acquired. In such a case it might be said that it would be unfair to limit the owner to receiving by way of compensation the value at the date of acquisition. Some criticism of the justice of terms of acquisition of property depending upon the circumstances of particular cases could often be advanced with some reason. I do not think that the terms of s. 51 (xxxi.) entitle the Court to declare a statute providing

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a general method for the acquisition of property invalid because in particular cases it was possible to devise a more just scheme. The Court should not, in my opinion, hold such legislation to be invalid unless it is such that a reasonable man could not regard the terms of acquisition as being just.

Justice involves consideration of the interests of the community as well as of the person whose property is acquired. In some cases the announcement of the intention of the Government to acquire land might itself put up the value of the land. It is at least not obviously unjust to make provision against the community being compelled to pay higher prices for such a reason.

Section 29 takes the 1st January in the year of acquisition as the date of valuation as being on the whole a reasonable basis for adjusting the interests of the individual and of the community. In my opinion this is a not unfair provision. I am not prepared to hold that it is so obviously unjust as to invalidate the Act.

The second ground of attack was that s. 28 (1) (*a*) limited compensation to the value of the land acquired, as distinct from the value of the land to the dispossessed owner. After 1st January in the year of acquisition a crop might have been grown upon the land, or a building might have been placed upon it. Plainly, compensation should be paid for the crop or the building. Reference was made to cases in which it was held that in determining the value of land it was proper to take into account the actual and potential uses of the land. It was therefore argued that a change in ownership or in use might affect the value of the land and that the combined effect of s. 28 and s. 29 would be in some cases to exclude any consideration of the purpose for which an owner was using his land at the date of acquisition.

The plaintiff relied upon such cases as *Inland Revenue Commissioners* v. *Glasgow & South-Western Railway Co.* (1); *In re Lucas and Chesterfield Gas & Water Board* (2), per *Fletcher Moulton* L.J.: "The owner receives for the lands he gives up their equivalent, i.e., that which they were worth to him in money"; *Cedars Rapids Manufacturing & Power Co.* v. *Lacoste* (3); *Corrie* v. *MacDermott* (4). What these cases establish is that the actual use of land by an owner, and also its potential use, are elements which should be taken into account in determining the value of the land, because any vendor of the land and any purchaser of the land would take into consideration the uses to which the land had in fact been put (that is, actual use)

(1) (1887) 12 App. Cas. 315, per *Halsbury* L.C. at p. 321.
(2) (1909) 1 K.B. 16, at p. 29.
(3) (1914) A.C. 569, at p. 576.
(4) (1914) A.C. 1056, at p. 1062.

and also the possibilities of profitable user of the land in other ways (that is, potential use).

But ss. 28 and 29 of the Act do not exclude these considerations. The assessment of value which is required by ss. 28 and 29 is an assessment of the value of the land acquired ; that is, of the land as it is when it is acquired—in its then ownership and in its then physical state, regard being had to all its actual and potential uses. Any changes in the land itself and in the possibility of using the land since the preceding 1st January are taken into account under the Act, though the value of the land so regarded is taken at an earlier date.

The third objection to the Act is that the Act does not provide adequate interest upon the compensation money from the date of expropriation to the date of payment. Section 40 provides for payment of interest at three per cent, and it is said that requirements of justice necessitate the payment of interest whenever there is delay in payment after the date of acquisition, and that interest should be paid at the market rate as it may exist from time to time.

This Court has approached, but has not decided, the question whether just terms of acquisition of property necessarily require the allowance of interest in all cases where there is delay in payment of compensation. In *Commonwealth* v. *Huon Transport Pty. Ltd.* (1) it was held by a majority that no interest was allowable (as part of compensation) on moneys due by way of compensation for the temporary use of a vessel. In *Marine Board of Launceston* v. *Minister of State for the Navy* (2) the Commonwealth had acquired the property in a tug. The compensation money was not paid at once. There were proceedings before a Compensation Board and before this Court. The following question was submitted to the Full Court—" Whether the Court has any authority or jurisdiction under the Regulations " [that is the *National Security (General) Regulations*] " or at all to determine and order that interest be paid to the Marine Board on the balance of compensation from the date of acquisition of the tug to the date of payment or for any other and what period of time." The majority of the Court answered this question in the affirmative, thus holding that the Court has authority and jurisdiction to order payment of interest in such a case, but not deciding that " just terms " require either that interest shall be allowed in all cases, or that there shall be a discretion in the Court to allow interest in all cases. *Rich* J. did express an opinion to that effect. In the *Huon Transport Case* (3) he had said " Just terms

(1) (1945) 70 C.L.R. 293.
(2) (1945) 70 C.L.R. 518.
(3) (1945) 70 C.L.R., at p. 307.

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therefore involve, as a matter of elementary fairness, the payment to him " [the expropriated owner] " of interest on the money to which he is entitled for the time during which it is withheld from him," and he held that interest should be allowed " as constituting a part of the just compensation." In the *Marine Board Case* (1) his Honour adhered to the opinion expressed in the *Huon Transport Case* (2). *Dixon* J. answered the question in the affirmative in the *Marine Board Case* (1), but not on the ground that an allowance for interest was part of the compensation money. He based his decision on the ground that the Court might properly include in its order a provision for the payment of interest where interest was " independently payable under the principles of equity " (3)—as in cases where specific performance of a contract to acquire property could be decreed. *McTiernan* J. placed his decision upon the same ground. *Williams* J., who also answered the question in the affirmative, was of opinion that payment of interest was required " to make the compensation full and adequate, or in other words ' just,' and the words ' just compensation ' in the regulation are sufficient to authorize the Court to award interest "(4). His Honour was also of opinion that the Court had power to apply the equitable rule under which interest was allowed in cases of compulsory purchase of property where a court of equity could have ordered specific performance of a contract for the purchase of the property. His Honour, however, did not hold that just terms or the application of the equitable rule required the payment of interest in all cases from the date of acquisition. In *Australian Apple and Pear Marketing Board* v. *Tonking* (5) *Williams* J. allowed interest, not from the date of acquisition of the property, but from the date when the acquiring authority would, in an ordinary course of business, have been able to sell the acquired property on the market.

In my opinion there is not, up to the present time, any decision by a majority of the Court that provision for payment of interest from the date of acquisition must be made in order to render the terms of acquisition of property just. If there were such a decision the plaintiff would have a useful starting point for the development of the objection now under consideration. In the absence of any such decision, however, s. 40, limiting the rate of interest allowable to three per cent may, in my opinion, be regarded as a provision relating, not to the assessment of compensation, but as a provision which, while allowing and recognizing the obligation to pay full and just compensation, prescribes a maximum rate of interest of three per cent,

(1) (1945) 70 C.L.R. 518.
(2) (1945) 70 C.L.R. 293.
(3) (1945) 70 C.L.R., at p. 533.
(4) (1945) 70 C.L.R., at p. 537.
(5) (1942) 66 C.L.R. 77.

thus imposing a limit upon the discretion of the Court in applying the rule of equity which was held to be relevant and applicable by the majority of the Court in the *Huon Transport Case* (1) and again in the *Marine Board Case* (2). If s. 40 is so regarded, the limitation of the rate of interest to three per cent cannot be relied upon in order to show that the provisions for compensation contained in the Act are unjust.

The fourth objection to the Act is that proceedings under the Act result only in an assessment of an amount of compensation, which (s. 38 (4)) is made final and conclusive, the compensation being payable (s. 42) in the case of claims other than claims by States (as to which see s. 41) upon the claimant making out to the satisfaction of the Attorney-General a title to the land and executing such conveyance or assurance as the Attorney-General directs. It is objected that there is no appropriation of moneys by Parliament to meet the obligation to pay compensation which the Act creates, so that the assessment of compensation results only in a claim against the Commonwealth in respect of which a certificate may be given to the claimant under the *Judiciary Act* 1903-1940, s. 65, which (s. 66) the Treasurer shall satisfy " out of moneys legally available." It is contended that there cannot be a just scheme of compensation unless it includes a provision making moneys " legally available " for the satisfaction of claims. In my opinion there is no substance in this objection. The claimant is given a right to receive moneys from the Commonwealth, it being left to the Treasurer to honour the obligation of the Commonwealth which corresponds to this right. The Court should not presume that the Commonwealth will not honour its obligations, judicially declared, and I am unable to see anything unjust in this provision or in the absence of a further provision actually appropriating moneys to meet claims.

I am therefore of opinion that the objections to the Act fail.

It is further objected, however, that the procedure prescribed by the Act has not been observed by the Governor-General. Section 15 (2) of the Act provides that the Governor-General may, by notification published in the *Gazette*, declare that land has been acquired under the Act " for the public purpose therein expressed." I agree with the argument that these provisions require a particular public purpose to be expressed in the notification published in the *Gazette*. In the present case the notification of acquisition published in the *Gazette* declared that the plaintiff's land was acquired under the Act " for the following public purposes, namely purposes of the Commonwealth at Sydney, New South Wales." In my opinion it cannot be held that this notification complies with s. 15 (2).

(1) (1945) 70 C.L.R. 293. (2) (1945) 70 C.L.R. 518.

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But the provisions of the Act have been modified by regulations made under the *National Security Act* 1939-1943, s. 18 of which provides that a regulation made under the Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than the *National Security Act*. *National Security (Supplementary) Regulations*, reg. 72A is in the following terms:—

"Notwithstanding anything contained in section 15 of the *Lands Acquisition Act* 1906-1936, the public purpose for which any land has been acquired shall be deemed to be expressed sufficiently if the notification declares that the land has been acquired under that Act for the purposes of the Commonwealth."

If this regulation is valid, then the notification made in the present case that the land has been acquired under the Act "for the purposes of the Commonwealth" is sufficient and the plaintiff's objection fails. It is contended, however, that the regulation is not valid, because it has no connection of any kind with defence purposes. In my opinion this objection fails. The requirements of defence may make it desirable that there should be no publicity with respect to the acquisition of land for defence purposes, and therefore that no opportunity should be offered for distinguishing between acquisitions of land for defence and for other purposes. Accordingly, in my opinion, reg. 72A is valid, and it provides an answer to the objection which would otherwise have been fatal under the terms of the *Lands Acquisition Act* considered in themselves.

Therefore, in my opinion, all the objections of the plaintiff to the Act and to the notification fail and the demurrer should be allowed.

Under the *Rules of Court*, Order XXIV., rule 10, it is the duty of the Court to give such judgment as upon the pleadings the successful party appears to be entitled to. The objections of the plaintiff to the action of the defendants in entering into possession of the land and altering and in part demolishing the building thereon depend entirely upon the objections to the Act and to the notification which, in my opinion, cannot be supported. There is no ground for granting the injunction claimed, and the order of the Court should be that the demurrer be allowed, the motion refused with costs, and the action dismissed with costs.

STARKE J. Demurrer to a statement of claim, claiming a declaration that the *Lands Acquisition Act* 1906-1936 is void and alternatively a declaration that a notification of acquisition given pursuant to the Act is void and other ancillary relief.

The Act is attacked on the ground that it fails to provide "just terms" for the acquisition of lands as required by the Constitution, s. 51 (xxxi.). This contention was based upon the proposition that the Constitution requires that any law made by Parliament with respect to the acquisition of lands shall provide compensation to the owner of any land acquired, the value of the land to him with all its potentialities and with all the actual use of it by him. Apparently, according to this contention, the power conferred upon the Parliament is wholly for the protection and benefit of an owner (whether a State or person) without any regard to the interests of the community as a whole.

But, in my opinion, the contention is radically unsound though it finds some support in the opinions of members of this Court in the case of the *Australian Apple and Pear Marketing Board* v. *Tonking* (1), and I venture to repeat what I said in *Minister of State for the Army* v. *Dalziel* (2) :—"The constitutional power given to the Commonwealth by s. 51 (xxxi.) is a legislative power and not, as in the Fifth Amendment of the Constitution of the United States of America, a provision that private property shall not be taken for public use without just compensation. Under the Australian Constitution the terms of acquisition are, within reason, matters for legislative judgment and discretion. It does not follow that terms are unjust merely because 'the ordinary established principles of the law of compensation for the compulsory taking of property' have been altered, limited or departed from, any more than it follows that a law is unjust merely because the provisions of the law are accompanied by some qualification or some exception which some judges think ought not to be there. The law must be so unreasonable as to terms that it cannot find justification in the minds of reasonable men."

It is contended that the terms prescribed by the Act are not just because the owner is not given the value of the land to him. Subject to the special provisions of ss. 28 and 29 the ordinary rule or practice of compensation has been applied (*Spencer* v. *The Commonwealth* (3); *Minister for Home and Territories* v. *Lazarus* (4)).

The special provisions in s. 28 provide that enhancement or depreciation in value of other land shall be set off against or added to the amount of the value and damage specified in the section whilst those in s. 29 provide that the value of the land shall be assessed without reference to any increase in value arising from the proposal

(1) (1942) 66 C.L.R. 77, at pp. 84, 85, 106.
(2) (1944) 68 C.L.R. 261, at p. 291.
(3) (1907) 5 C.L.R. 418.
(4) (1919) 26 C.L.R. 159.

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to carry out the public purpose for which the land is acquired. But such provisions are usual and certainly not unreasonable. But s. 29 also provides that "The value of any land acquired by compulsory process shall be assessed as follows :—

(*a*) In the case of land acquired for a public purpose not authorized by a Special Act, according to the value of the land on the first day of January last preceding the date of acquisition ; and

(*b*) In the case of land acquired for a public purpose authorized by a Special Act, according to the value of the land on the first day of January last preceding the first day of the Parliament in which the Special Act was passed."

The latter provision (par. (*b*)) is common enough and its object, I apprehend, is to ascertain the true value of the land before the exercise of the compulsory powers. And the provision in par. (*a*) has much the same object. Once it is known or rumoured that a Government Department is buying or acquiring land a rise in value may be expected. The true value of the land is thus ascertained about the time of a compulsory acquisition. These provisions are reasonable in themselves and in my opinion well within the authority of Parliament. It by no means follows from anything I have said that Parliament has authority to fix any date it thinks proper for the assessment of compensation. But it is for those attacking legislation to establish its invalidity. However, if the Parliament were to fix a date for the assessment of compensation so remote from the date of acquisition of land that it afforded no reasonable or substantial basis for ascertaining the value of the land to the owner at and about that time, then the Courts might well conclude that the enactment was beyond power and invalid.

Other objections to the validity of the *Lands Acquisition Act* were that the rate of interest on compensation provided in s. 40 was unreasonably low and that no moneys were appropriated for the payment of compensation. Both objections I regard as frivolous particularly the latter (*R.* v. *Fisher* (1)). In my opinion, the *Lands Acquisition Act* 1906-1936, which has been acted upon for many years, is a valid law.

The contention that the notification of acquisition is bad depends upon the construction of s. 15 (2) of the *Lands Acquisition Act* 1906-1936 and reg. 72 of the *National Security (Supplementary) Regulations* as amended by Statutory Rules 1944 No. 74. It is provided by s. 15 (2) that "the Governor-General may . . . by

(1) (1903) A.C. 158, at p. 167.

notification published in the *Gazette*, declare that the land has been acquired under this Act for the public purpose therein expressed."

The notification declares that the land mentioned therein " has been acquired under the *Lands Acquisition Act* 1906-1936 for the following public purpose namely : purposes of the Commonwealth at Sydney, New South Wales."

The Act does not allow the compulsory acquisition of land but for the particular purpose declared in the notification. And the notification in this case does not declare the particular purpose but for the purposes of the Commonwealth generally which by the definition of the words " public purpose " in s. 5 of the Act means, so far as material, any purpose in respect of which the Parliament has power to make laws.

In my opinion, the notification does not comply with the Act and would be bad.

But the provisions of Statutory Rules 1944 No. 74 are relied upon. That Rule provides, clause 2 : " 72A. Notwithstanding anything contained in Section 15 of the *Lands Acquisition Act* 1906-1936, the public purpose for which any land has been acquired shall be deemed to be expressed sufficiently if the notification declares that the land has been acquired under that Act for the purposes of the Commonwealth."

It is contended, however, that this rule is unauthorized by the *National Security Act* 1939-1943 under which it purports to have been made. Under that Act the Governor-General may make regulations for securing the public safety and the defence of the Commonwealth and in particular for a number of purposes set forth in the Act including regulations for authorizing the acquisition, on behalf of the Commonwealth, of any property other than land. But specifying particular purposes does not limit the operation or effect of the general words conferring upon the Governor-General power to make regulations for securing the public safety and the defence of the Commonwealth. The particular authorities put beyond question the inclusion of those authorities within the general power.

Next it was said that the regulation, Statutory Rules 1944 No. 74, was not an amendment of s. 15 of the *Lands Acquisition Act* but merely an interpretation section which was not inconsistent with the Act. The *National Security Act* contemplates regulations affecting existing legislation and s. 18 provides that a regulation made under the Act shall have effect notwithstanding anything inconsistent therewith in any enactment other than the *National Security Act*. But there is nothing in the Act which precludes the Governor-General from re-writing definitions in the legislation of the Commonwealth if the regulation be for securing the public safety and

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defence of the Commonwealth whether it be called an amendment or a mere interpretation clause. If the regulation is for the public safety and defence of the Commonwealth it is to have effect whether it be or be not inconsistent with existing legislation. The real question is whether the regulation affords some reasonable and substantial basis for the conclusion that the regulation is one for the public security and defence of the Commonwealth. That conclusion is, I think, clear enough in this case (Cf. reg. 72 (2)); indeed the regulation has a much closer connection with defence than many of the regulations that have been upheld in this Court.

Lastly it was said that reg. 72A was connected with reg. 72 and applied only to cases within that regulation. But, in my opinion, reg. 72A is a substantive and independent provision. The provision of the regulation, its context and language, all, I think, support this conclusion.

The result is that the demurrer should be upheld.

DIXON J. The question upon which this demurrer and notice of motion depend is whether a purported acquisition by the Commonwealth on 8th November 1945 of the plaintiffs' land and buildings is valid. The first point taken against its validity is that there was a failure to give the kind of notification required by s. 15 (2) of the *Lands Acquisition Act* 1906-1936. A notification was published in the *Gazette*, but it contented itself with declaring that the land had been acquired for the purposes of the Commonwealth at Sydney, whereas s. 15 (2) calls for a declaration that the land has been acquired under the Act for the public purpose therein expressed, that is, expressed in the notification or declaration.

The answer made by the Commonwealth is that the failure to state the particular public purpose is justified by reg. 72A of the *National Security* (*Supplementary*) *Regulations*. That regulation, which was adopted on 3rd May 1944 by Statutory Rules 1944 No. 74, provides that, notwithstanding anything contained in s. 15 of the *Lands Acquisition Act* 1906-1936, the public purpose for which any land has been acquired shall be deemed to be expressed sufficiently if the notification declares that the land has been acquired under that Act for the purposes of the Commonwealth.

Unless reg. 72A is *ultra vires*, there can be no question that it does justify the form of the notification or declaration. The attack upon the validity of the regulation is put upon the grounds that it is not restricted to acquisitions for purposes connected with the war, and that, even if it were, the state of the war in May 1944 provided no support for such a measure.

I think that we must sustain the regulation. It is not hard to understand that during hostilities the publication of the particular purpose for which any land is required may prove useful to the enemy and that a general rule should be adopted whether the purpose is connected with the war or not, so as to avoid the giving of inferential information by declaring purposes when non-military and suppressing them if military. The fact that the regulation was not passed until so late a stage in the war may bring the authors within the class of *seri studiorum* but cannot invalidate the provision.

Passing from this not very elevated ground of attack upon the acquisition of their land the plaintiffs next proceed to impugn the validity of the *Lands Acquisition Act* 1906-1936 itself.

Time does not run in favour of the validity of legislation. If it is *ultra vires*, it cannot gain legal strength from long failure on the part of lawyers to perceive and set up its invalidity. At best, lateness in an attack upon the constitutionality of a statute is but a reason for exercising special caution in examining the arguments by which the attack is supported. In the present instance it is said that the *Lands Acquisition Act*, although forty years old and frequently invoked, is not truly a law with respect to the acquisition of property on just terms from any State or person; it is not truly such a law because there is an inadequacy of justice in certain of the provisions it makes for compensating the expropriated owners. The assignments of injustice are four. First, s. 29 (1) of the Act requires that the land shall be valued as at a date anterior to the actual acquisition. Secondly, s. 28 (1) (*a*) gives, not the value of the land to the owner, but the value of the land *simpliciter*. Thirdly, s. 40 gives interest at the rate of only three per cent per annum. Fourthly, there is no provision making moneys legally available to pay compensation, and so the actual payment to the owner is left dependent on parliamentary appropriation.

The argument invoking these grounds appears to me to proceed from the assumption that s. 51 (xxxi.) of the Australian Constitution has the same effect as the last paragraph of the Fifth Amendment of the American Constitution, and that the case law upon that and upon analogous constitutional provisions of the American States should be applied in Australia.

I am not able to assent to such an assumption. The material part of the Fifth Amendment says "nor shall private property be taken for public use, without just compensation." It follows the due process clause, repeated in reference to the States in the Fourteenth Amendment, which has been construed as producing the same effect in protecting the proprietary interests of the citizen when the power

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of eminent domain is exerted. The clause of the Fifth Amendment concerning just compensation cannot be dissociated from the due process clause nor, indeed, from the general principles of American constitutional law animating what is called the Bill of Rights. The framers of the Australian Constitution preferred to leave those principles, in the main, to constitutional convention and tradition, as they have been left in England, rather than to follow the American course of expressing them in the paramount law.

In s. 51 (xxxi.) the phrase " on just terms " is, of course, reminiscent of the Fifth Amendment. But that paragraph of the Australian Constitution is an express grant of specific power and the phrase forms part of the definition of the power. Indeed, the plaintiffs rely on this fact for the argument that if the terms provided in the statute are not just, the whole Act falls, including the power of acquisition. In the United States the opposite result might be reached, namely, a result by which the power of acquisition would remain but the compensation would be settled under or moulded by the Fifth Amendment.

The legislative power given by s. 51 (xxxi.) is to make laws with respect to a compound conception, namely, " acquisition-on-just-terms." " Just terms " doubtless forms a part of the definition of the subject matter, and in that sense amounts to a condition which the law must satisfy. But the question for the Court when validity is in issue is whether the legislation answers the description of a law with respect to acquisition upon just terms. In considering such a matter much assistance may be derived from American judicial decisions and juridical writings dealing with analogous difficulties, but they must be used with care and, in my opinion, cannot be applied directly to s. 51 (xxxi.). Under that paragraph the validity of any general law cannot, I think, be tested by inquiring whether it will be certain to operate in every individual case to place the owner in a situation in which in all respects he will be as well off as if the acquisition had not taken place. The inquiry rather must be whether the law amounts to a true attempt to provide fair and just standards of compensating or rehabilitating the individual considered as an owner of property, fair and just as between him and the government of the country. I say " the individual " because what is just as between the Commonwealth and a State, two Governments, may depend on special considerations not applicable to an individual.

The power conferred by s. 51 (xxxi.) is express, and it was introduced as a specific power, not, like the Fifth Amendment, for the purpose of protecting the subject or citizen, but primarily to make certain that the Commonwealth possessed a power compulsorily to

acquire property, particularly from the States. The condition " on just terms " was included to prevent arbitrary exercises of the power at the expense of a State or the subject.

In deciding whether any given law is within the power the Court must, of course, examine the justice of the terms provided. But it is a legislative function to provide the terms, and the Constitution does not mean to deprive the legislature of all discretion in determining what is just. Nor does justice to the subject or to the State demand a disregard of the interests of the public or of the Commonwealth.

In the United States the question usually is whether in a particular case there has been a taking without due process or just compensation, as the case may be. Even there it has been said that to bring about a taking without due process of law by force of a judgment not devoid of error, the error must be gross and obvious, coming close to the boundary of arbitrary action: *Roberts* v. *New York* (1), per *Cardozo* J., whose discussion of the matter shows that it is one of degree not susceptible of definition. Under s. 51 (xxxi.) perhaps the test may be whether the provisions made might reasonably be regarded as just. It will therefore be of some help, when the justice of the terms provided by Commonwealth legislation is in question, to see how other British legislatures have regarded the same matter. This, I think, applies to the first point made against the *Lands Acquisition Act*. That point depends upon s. 29 (1), which directs in effect that where the acquisition is not authorized by a special Act the value of the land should be assessed as at the first of January preceding the taking, and, where there is a special Act, as at the first of January preceding the first day of the Parliament in which the special Act was passed.

This provision appears to have been directed to obtaining a value uninfluenced by the prospect of the Commonwealth's acquiring the land, a thing for which sub-s. (2) of s. 29 attempts again to provide. It is said, however, to be unjust to fix an anterior date arbitrarily because (1) values may have greatly changed, and (2) the property may have been improved. The second complaint is not, I think, in accordance with the meaning of the provision, which appears to me to relate only to values prevailing and not to the state of the property.

The first complaint depends upon the conception of a value as at the exact date of the acquisition. In conditions of great economic instability, when the measurement of values in money fluctuated violently and rapidly, it perhaps might be that just terms would

(1) (1935) 295 U.S. 264, at p. 277 [79 Law. Ed. 1429, at p. 1435].

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require not only valuation, but payment, almost as at the date of acquisition. Further, a statute which fixed some anterior date for the ascertainment of value because values were known generally to be lower might be open to attack. Here, however, we are not confronted with any such question. The contention is based simply on the view that justice requires the legislature to accept a date at or about the time of acquisition.

It is true that under the *Lands Clauses Consolidation Act* 1845 (Imp.), the notice to treat was looked upon as fixing the date as at which the value of the property acquired should be assessed. But that is not a course uniformly adopted under other legislation. For instance, s. 28 of Act No. 1288 of 1893 of the State of Victoria (*Railways Lands Acquisition Act*) provided that the purchase money should not exceed the value of the land taken at the commencement of the session of Parliament in which the authorizing Act was passed. Section 12 (2) of the *Compulsory Acquisition of Land Act* 1925 of the State of South Australia takes a period of twelve months prior to the taking of land or, where land is not taken, the execution of works, and directs that the value of the land at the beginning of the period shall be taken to be its value together with that of bona-fide improvements made in the meantime. Section 35 (1) of the *Lands Resumption Act* 1910 (No. 11) of Tasmania makes a provision almost the same as that of the Commonwealth Act now in question. The *Railway Act* of the Dominion of Canada makes the date of the deposit of plans that with reference to which compensation shall be ascertained, provided that the lands are actually acquired within one year of the deposit: See *Toronto Suburban Railway Co.* v. *Everson* (1).

Are we to say that these statutes are based on unjust conceptions? They are different ways of meeting the same difficulty as the Commonwealth Parliament had in mind in enacting s. 29 (1). It appears to me that we cannot say that it was not fairly open to the Parliament to regard that provision as a just expedient. Its logic, efficacy or wisdom is not the matter in question. Nor do I think that we are required to test its validity by imagining conditions in which its operation might cease to be just: cf. *Australian Textiles Pty. Ltd.* v. *The Commonwealth* (2).

The second ground for impeaching the validity of the Act is that it does not contemplate recompensing the owner by assessing the value of the land to him. I do not propose to go into the considerations which are involved in the phrase "value to the owner" in compensation for compulsory acquisition. For, on the statute itself,

(1) (1917) 54 S.C.R. (Can.) 395, at p. 407.

(2) (1945) 71 C.L.R. 161, at pp. 179, 180.

the contention seems to me to lose its foundation, because of the rule adopted in this Court for administering the provisions of the Act. It is enough to cite the following passage from the judgment of *Isaacs* and *Rich* JJ. in *Minister for Home and Territories* v. *Lazarus* (1): "The ordinary rule has been repeatedly enunciated, and is thus stated in the latest case dealing with the matter—*Fraser* v. *City of Fraserville* (2). There Lord *Buckmaster*, for the Judicial Committee, said: 'The value to be ascertained is the value to the seller of the property in its actual condition at the time of expropriation with all its existing advantages and with all its possibilities, excluding any advantage due to the carrying out of the scheme for which the property is compulsorily acquired, the question of what is the scheme' for which the property is compulsorily acquired 'being a question of fact for the arbitrator in each case.' That is the rule which applies under the *Lands Acquisition Act* 1906, subject to s. 29 of the Act."

The third ground of attack on the justice of the terms of the Act is that s. 40 provides that compensation shall bear interest from the date of the acquisition, or the time when the right to compensation arose, until payment at three per cent per annum It is said that the rate is so low as to be unjust, and that the only just course is to fix the rate prevailing for the time being.

The question of interest appears to me to be eminently a matter for the legislature to decide. It was laying down a general rule for an indefinite period. It was providing for a period occasioned by the time occupied, whether necessarily or unnecessarily, in assessing compensation, and at the same time conferring a right on the owner to have it assessed and, subject to parliamentary appropriation, paid. The Parliament chose to lay down a general rule, a thing to my mind not unreasonable, and to give interest limited to three per cent per annum.

The difficulties which courts of equity have experienced in adopting and varying a rate of interest for the different purposes of that jurisdiction are not unfamiliar. See, for instance, the discussion by *Russell* J. in *In re Baker*; *Baker* v. *Public Trustee* (3), by *Eve* J. in *In re Beech*; *Saint* v. *Beech* (4), by *Long Innes* J. in *Nixon* v. *Furphy* (5), and by *Harvey* C.J. in Eq. in *Skinner* v. *James Syphonic Visible Measures Ltd.* (6), and also *In re Tennant*; *Mortlock* v. *Hawker* (7).

(1) (1919) 26 C.L.R. 159, at p. 165.
(2) (1917) A.C. 187, at p. 194.
(3) (1924) 2 Ch. 271, at pp. 273-275.
(4) (1920) 1 Ch. 40, at pp. 42-45.
(5) (1926) 26 S.R. (N.S.W.) 409; 43 W.N. 108.
(6) (1927) 28 S.R. (N.S.W.) 20; 44 W.N. 156.
(7) (1942) 65 C.L.R. 473, at pp. 507, 508.

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It is not easy to see why the judgment of the legislature on this matter should be considered outside the limits of what might reasonably be thought just.

As to the fourth ground for denying that the terms given by the *Lands Acquisition Act* are just, it is enough to say that s. 42 confers on the claimant, who makes title and executes an appropriate assurance, a right to receive payment of compensation. There is thus a debt due by the Commonwealth. In *New South Wales* v. *Bardolph* (1) we explained the relation of parliamentary appropriation to contractual liability on the part of the Crown under such fiscal provisions of a constitution as ss. 81-83 of the Commonwealth Constitution and such procedural provisions as ss. 64-66 of the *Judiciary Act*.

I can see no reason why an exceptional rule should apply to liability for compensation for property acquired, or why such a general constitutional rule should be condemned as unjust. The compensation becomes a debt like other debts of the Crown and that appears to me to be certainly enough.

There is in the United States authority for the position that under the Fifth Amendment possession cannot be lawfully taken of property under the power of eminent domain if the statute, though otherwise constitutional, fails to give adequate assurances of the ascertainment and payment of compensation (see notes 67 *Lawyers Edition, United States Reports*, p. 667, col. 1). But these rest on considerations which in my opinion should not be imported into s. 51 (xxxi.).

I think that the demurrer should be allowed and judgment in demurrer should be given for the defendants. The motion for an injunction should be refused with costs.

McTIERNAN J. I agree that the demurrer should be allowed, the motion for an injunction dismissed and that there should be judgment for the defendant.

In the action the plaintiff claims that the acquisition of land on the terms contained in certain provisions of the *Lands Acquisition Act* is not acquisition of the land " on just terms " and for that reason that each of these provisions is invalid. It also claims that all of those provisions are not severable and that the whole Act is therefore invalid.

The words " just terms " are part of the composition of the power contained in s. 51 (xxxi.). It is a specific legislative power to make laws for " the acquisition of property on just terms " from owners

(1) (1934) 52 C.L.R. 455.

of the two classes and for the purposes to which s. 51 (xxxi.) refers. It follows that Parliament has a discretion not only to provide for the acquisition of any property but also to enact the just terms which it thinks fit to be part of any law which it makes in pursuance of this power. In my opinion, if the terms enacted by Parliament might reasonably be regarded as just terms, there is no ground for holding that the law is not a law with respect to the acquisition of property on just terms. The question whether the terms enacted by Parliament might reasonably be regarded as just terms is for the Court to decide. If the Court decides that the terms might reasonably be regarded as just it will not declare the terms unjust and in excess of the power, even if the Court entertained an opinion that other terms would appear to be fairer. The words " just terms " imply that the terms of acquisition should be just as between the owner of the acquired property and the Commonwealth.

The plaintiff claims that acquisition upon the terms that in determining compensation regard shall be had, as s. 28 (1) requires, to " the value of the land acquired " is not acquisition on just terms. It is contended that it is not just to determine compensation otherwise than upon the basis of the value of the land acquired to its owner. This contention is met by the passage which my brother *Dixon* cites from *Minister for Home and Territories* v. *Lazarus* (1). In this passage the elements of value which are to be taken into account in assessing compensation are set forth.

The next provision of the Act which was impugned on the ground that it does not contain just terms is s. 29 (1). Hypothetical cases were put in argument in which, under the rule in the sub-section, the owner of land compulsorily taken would receive less compensation than if the compensation was based on the value of the land at acquisition. But there is nothing to show to what extent the rule would work that way in practice. Indeed, the Chief Justice puts a hypothetical case on the other side of the line in which the rule would be advantageous to the owner of the resumed land.

In my opinion a presumption that the sub-section does not provide just terms of acquisition cannot be held to arise merely because the sub-section requires the value of the land to be assessed at a date anterior to the date of acquisition. The reasons why it may be presumed that Parliament enacted the sub-section now in question are gone into by the Chief Justice and my brother *Dixon* and I adopt those reasons. It is, I think, within the discretion of Parliament under s. 51 (xxxi.) to enact a provision requiring value to be assessed for purposes of compensation as at a date anterior to acquisition.

(1) (1919) 26 C.L.R. 159, at p. 165.

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It does not seem to me that in fixing the date specified in the sub-section Parliament exceeded its discretion under this placitum. The sub-section is not open to attack on the ground that its effect would be to deprive the owner of the value of improvements made between the date fixed by the sub-section and the date of acquisition. According to its proper interpretation the sub-section requires the compensation to be assessed according to its value at the fixed date, but not according to its then physical state.

Section 40 was also attacked on the ground that it does not provide just terms. It does not seem to me that it is unfair or inequitable to lay down as a general rule applicable to any person whose land is acquired under the Act that he should receive interest at the rate of three per cent per annum on the compensation for the period specified in the section. I think that it would be driving the conception of just terms too far to hold that it requires that the rate of interest should vary with any fluctuation of interest rates.

I agree that there is no substance in the contention that the terms on which the Act provides for the acquisition of property are not just because the right of the owner to receive compensation is dependent on appropriation of money by Parliament to pay the compensation. This contention depends upon the supposition which was put on behalf of the plaintiff that moneys may not be made available by Parliament to meet a just claim against the Commonwealth or to satisfy a judgment against the Commonwealth. I do not think that the Court should entertain this supposition in considering whether this Act authorizes the acquisition of land on just terms.

As to the objection taken to the notification of acquisition published in the *Gazette*, I agree that it is justified by reg. 72A of the *National Security* (*Supplementary*) *Regulations* and that this regulation is within the powers conferred upon the Governor-General in Council by the *National Security Act*.

WILLIAMS J. By notification published in the Government *Gazette* on 8th November 1945 purporting to be made under the *Lands Acquisition Act* 1906-1936 H.R.H. the Governor-General acting with the advice of the Federal Executive Council notified and declared that certain land owned by the plaintiff in fee simple situate at the corner of York, King and Clarence Streets, Sydney, on which there is erected a building consisting of a basement, ground and eleven upper floors, had been acquired by the Commonwealth under this Act " for the following public purposes namely, purposes of the Commonwealth at Sydney, N.S.W." Thereupon the Commonwealth, which was already in temporary possession of the premises pursuant

to the *National Security* (*General*) *Regulations*, commenced to make substantial alterations to the building. The plaintiff then commenced this action claiming that the acquisition of 8th November was void on several grounds and obtained leave to serve short notice of motion for an interlocutory injunction restraining the defendants from selling, disposing, leasing, further altering, demolishing or otherwise dealing with the land and the buildings thereon.

Pending the hearing of the notice of motion the defendants demurred to the statement of claim. The notice of motion raised the same points of law as the demurrer so that for convenience an order was made under s. 18 of the *Judiciary Act* 1903-1940 directing that the notice of motion should be referred to the Full Court and heard at the same time as the demurrer.

These points of law are (1) that the notice of acquisition is invalid because it does not comply with s. 15 (2) of the *Lands Acquisition Act*; (2) that ss. 29 (1) and 40 of this Act are invalid because they do not contain just terms for the acquisition of property within the meaning of s. 51 (xxxi.) of the Constitution and the invalidity of either of these sections avoids the whole Act because they are not severable under s. 15A of the *Acts Interpretation Act* 1901-1941; (3) that the *Lands Acquisition Act* is also invalid within the meaning of s. 51 (xxxi.) of the Constitution because it does not provide for the appropriation of the necessary funds to satisfy claims for compensation under this Act.

As to (1), s. 5 of the *Lands Acquisition Act* defines "public purpose" to mean "any purpose in respect of which the Parliament has power to make laws, but shall not include the acquisition of territory for the Seat of Government of the Commonwealth under the Constitution." Section 13 provides that the Commonwealth may acquire any land for public purposes (*a*) by agreement with the owner; or (*b*) by compulsory process. Section 14 deals with the acquisition of land by agreement, while s. 15 (1) deals with the acquisition by compulsory process. Neither of these provisions confines an acquisition of land to a purpose in respect of which the Parliament has power to make laws but this had already been done by s. 13. Section 15 (2) provides that the Governor-General may by notification published in the *Gazette* declare that the land has been acquired under this Act for the public purpose therein expressed. Where land is acquired under s. 14, therefore, it is not necessary that the agreement should state the public purpose for which the land has been acquired provided that it has in fact been acquired for a public purpose within the meaning of the Act. But where land is acquired by compulsory process the notification must express, that is to say it must specify,

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the public purpose or purposes for which it is acquired. The question is whether the statement that land has been acquired "for the public purposes of the Commonwealth at Sydney" is a sufficient statement of the public purposes to satisfy s. 15 (2). In my opinion the sub-section means that the particular public purpose or purposes must be specifically stated in the notification. Indeed it is necessary to place this meaning on the sub-section if s. 19 is to have an effective operation. This section authorizes either House of the Parliament, except in certain cases, within a specified time, to pass a resolution that a notification under s. 15 shall be void and of no effect, and provides that thereupon the land shall be deemed not to have been vested in the Commonwealth. Unless the particular purpose is stated in the notification it would be impossible for either House to know whether or not the acquisition fell within the exceptions. Thus it would not know whether or not it had power to pass a resolution under this section. The notification of 8th November does not, therefore, comply with s. 15 (2). But the matter does not rest there because on 3rd May 1944 reg. 72A was added to the *National Security (Supplementary) Regulations*. It provides that notwithstanding anything contained in s. 15 of the *Lands Acquisition Act* 1906-1936 the public purpose for which any land has been acquired shall be deemed to be expressed sufficiently if the notification declares that the land has been acquired under that Act for the purposes of the Commonwealth. It was not contended that the notification of 8th November does not comply with this regulation, so that if the regulation is valid the notification was effective because s. 18 of the *National Security Act* provides that a regulation made under this Act shall have effect notwithstanding anything inconsistent therewith contained in any other Act. The *National Security Act* delegates to the Executive authority to legislate under s. 51 (vi.) of the Constitution for the purposes stated in the Act. Mr. *Mason* said that the object of the regulation was to prevent information reaching the enemy that land had been acquired for some purpose of defence, and that, unless the regulation was made to apply to every acquisition instead of being restricted to cases where land was acquired for some purpose of defence, the fact that a notification did not state a particular purpose would in itself indicate that the land had been acquired for the latter purpose. This object does not constitute to my mind a very marked connection with defence particularly having regard to the date on which the regulation was made, but it is clear that in wartime a wide latitude of discretion must be accorded to the Executive to determine what legislation is required to protect the safety of the nation. It is not a regulation which affects the rights

of the subject to any material degree. He loses his land whatever the lawful purpose for which it is acquired and the Commonwealth can subsequently use it for another lawful purpose. The only material effect of the regulation is to affect the rights of either House under s. 19, and either House could have disallowed it under s. 48 of the *Acts Interpretation Act*. In all these circumstances it would not be proper, I think, to hold that the regulation was not justified as an exercise of the defence power.

As to (2), I have already indicated shortly in *Dalziel's Case* (1) my own opinion of the proper approach to the determination of the question whether an Act which provides for the acquisition of property contains just terms within the meaning of s. 51 (xxxi.) of the Constitution. In *Commonwealth* v. *Huon Transport Pty. Ltd.* (2) and *Marine Board of Launceston* v. *Minister of State for the Navy* (3) I expressed the opinion that in the case of income producing property it is a necessary incident of such terms that interest should be paid to the person dispossessed between the date of acquisition and the date of payment of the compensation. Section 40 of the *Lands Acquisition Act* provides, so far as material, that the compensation shall bear interest at the rate of three per cent per annum from the date of acquisition of the land until payment. There is a proviso to the section that where the compensation awarded in an action is not more than the amount offered by the Minister in satisfaction of the claim the compensation shall only bear interest to the date when the offer of the Minister is communicated to the claimant. But a claimant in an action for compensation who obtained an award of a court which was not immediately paid could enter the award as a judgment of the court, which would carry the same rate of interest as any other judgment, and he could do so even when not awarded more than the amount offered by the Minister because there could be no reason why interest should not be payable upon such an amount awarded where it is not paid immediately after the award. Thus the direction for payment of interest at three per cent is a direction which need only operate during the period required to ascertain the amount of the compensation. Division 2 of Part IV. prescribes the preliminary steps that must be taken before a claim becomes a disputed claim for compensation. No time is provided within which the Minister must take the step required by s. 34 (2) but he would have to act within a reasonable time. There is nothing to prevent a claimant abridging the full time allowed for taking the requisite steps on his

(1) (1944) 68 C.L.R. 261, at pp. 306, 308.
(2) (1945) 70 C.L.R. 293, at pp. 333-338.
(3) (1945) 70 C.L.R. 518, at pp. 537, 538.

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part in which case a relatively brief period need elapse before a claim is settled by agreement or becomes a disputed claim for compensation which can be determined by an award of a court. Mr. *Barwick* contended that in an Act of indefinite duration like the *Lands Acquisition Act*, it is requisite that a rate of interest should be provided which would be adequate in all reasonably conceivable circumstances, or in other words, that the rate must be fixed by some standard which varies as interest rates vary from time to time, as for instance a provision that the rate should be the same as the rate for the time being payable on government loans. But the power of Parliament under s. 51 (xxxi.) of the Constitution is not in my opinion circumscribed to this extent. The rate of interest prescribed by s. 40 is, as I have said, intended to cover a strictly limited period. The rates of interest upon government loans have varied above and below the rate of three per cent. The rate of interest usually allowed by the courts is four per cent per annum but this rate has also varied with prevailing interest rates. The rate of three per cent is, I think, on the low side, but it is substantial and is not in all the circumstances so low as to be unjust within the meaning of the placitum.

As to s. 29 (1), s. 17 converts the estate and interest of the owner of the land into a claim for compensation. Division 1 of Part IV. deals with the right to compensation. Section 26 provides that the owner of the land shall, if deprived of the land in whole or in part, "be entitled to compensation under this Act." Section 28 (1) provides that in determining compensation under this Act regard shall be had (subject to this Act) to (*a*) the value of the land acquired, (*b*) the damage caused by the severance of the land acquired from other land of the person entitled to compensation, (*c*) the enhancement or depreciation in the value of other land adjoining the land taken or severed therefrom of the person entitled to compensation by reason of the carrying out of the public purpose for which the land was acquired; (2) that the enhancement or depreciation in value shall be set off against or added to the amount of the value and damage specified in sub-s. (1) (*a*) and (*b*).

Section 29 (1) provides that the value of any land acquired by compulsory process shall be assessed as follows: (*a*) in the case of land acquired for a public purpose not authorized by a Special Act, according to the value of the land on the first day of January last preceding the date of acquisition; and (*b*) in the case of land acquired for a public purpose authorized by a Special Act, according to the value of the land on the first day of January last preceding the first day of the Parliament in which the Special Act was passed.

Apart from these sub-sections the value of the land would be determined as at the date upon which the owner's rights to the land were converted into a claim for compensation. In the present case that would be upon the date of the publication of the notification in the *Gazette* on 8th November 1945. The effect of s. 29 (1) is to require this value to be assessed as at 1st January 1945. There was a good deal of argument as to the meaning of this sub-section. In my opinion it means that the property is to be valued on its actual physical condition at the date of expropriation with all its existing advantages and all its possibilities, but this value is to be assessed at a sum which a reasonably willing vendor would have been agreeable to accept and a reasonably willing purchaser would have been agreeable to pay rather than fail to obtain the property in a friendly negotiation which took place on the previous 1st January.

It was contended for the defendants that the antecedent dates were fixed because land values are apt to rise as soon as it is known that it is proposed to pass legislation to acquire land in that neighbourhood for some public purpose, and that these dates were chosen to ensure that the price paid for the land was not enhanced in this way. But this danger is guarded against by s. 29 (2) which provides that the value of the land shall be assessed without reference to any increase in value arising from the proposal to carry out the public purpose. It is clear in my opinion that to substitute an arbitrary date for the actual date of acquisition is liable to work injustice in many cases. In *Spencer* v. *The Commonwealth* (1) *Isaacs* J. said, in reference to a similar section in the *Property for Public Purposes Acquisition Act* 1901, that "Prosperity unexpected, or depression which no man would ever have anticipated, if happening after the date named, must be alike disregarded." His Honour was there dealing with suburban land, and in the case of such land all kinds of improvements might take place between the arbitrary date and the date of notification due to causes which have nothing to do with the proposal to carry out the public purpose for which the land is to be resumed such as the construction of roads or pavements by the local council, or of water and sewerage works by the local water and sewerage board. Country land might be subject to a severe drought on the arbitrary date but might be enjoying a bountiful season on the date of the notification. Examples might be multiplied almost indefinitely of how the values on the two dates might differ materially quite irrespective of the carrying out of the public purpose for which the land was resumed. Mr. *Mason* pointed out that the difference in values might be in favour of or against the dispossessed owner but

(1) (1907) 5 C.L.R. 418, at p. 440.

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this is to my mind immaterial. It is no satisfaction to an owner who has not received a fair equivalent in money for property of which he has been dispossessed to know that another owner has received more than the real value of his land. It is only if the value is assessed at the date of acquisition that an owner will in every instance be fairly and justly compensated for the loss of his property. In my opinion, therefore, s. 29 (1) (*a*) (and it would appear to follow s. 29 (1) (*b*)) is not authorized by s. 51 (xxxi.) of the Constitution and is invalid. The question then arises whether the sub-section is severable under the provisions of s. 15A of the *Acts Interpretation Act*. The main purpose of the *Lands Acquisition Act* to be gathered from its terms is to confer upon the Commonwealth power to acquire land compulsorily for the legislative purposes enumerated in s. 51 of the Constitution. In order that the acquisition may be lawful the Act must provide for compensation which will be just within the meaning of s. 51 (xxxi.) of the Constitution. The owner's right to his land is converted by s. 17 into a right to receive its equivalent value in money. Various directions are then given by subsequent sections as to the manner in which this equivalent in money is to be assessed. These sections can only restrict the application of the ordinary principles of assessment to the extent to which they are valid. Section 29 (1) is one of the attempted restrictions. If it is struck out of the Act it still leaves intact the principal direction that the owner of the land is to receive full compensation, and the purpose for which the sub-section was inserted is still safeguarded by s. 29 (2). The provisions which are within power are independent and severable and will continue in every substantial sense to operate in the same manner as they would have done if the Act as a whole had been valid. I am therefore of the opinion that s. 29 (1) is severable and that its invalidity does not avoid the whole Act.

As to (3), s. 17 converts the estate and interest of every person entitled to the land into a claim for compensation. Part IV. provides for the assessment of compensation. Division 5 of this Part provides for the payment of compensation. Section 42 provides that upon taking the steps therein mentioned the person to be compensated shall be entitled to receive payment. Sections 37 (*d*) and 38 (3) place costs in the discretion of the Court in the case of disputed claims for compensation. Section 61 requires the Commonwealth to pay the costs, charges and expenses of all conveyances and assurances of the land and of the other documents therein mentioned. The Act therefore imposes an absolute obligation upon the Commonwealth to pay the compensation moneys and such costs as it is ordered or becomes liable to pay under the Act. This liability is absolute and

not conditional upon the appropriation of moneys to make the payments. It is true that the obligation could not be discharged until Parliament appropriated the necessary funds and that under s. 65 of the *Judiciary Act* the person dispossessed could not issue execution or attachment against the property or revenues of the Commonwealth. But such a person could enter judgment under s. 66, and the absolute obligation already mentioned implies, and s. 66 expressly provides, that on receipt of the certificate of judgment against the Commonwealth the Treasurer of the Commonwealth shall satisfy the judgment out of moneys legally available. A suggestion that Parliament would not consider itself bound in these circumstances readily and promptly to make the necessary moneys legally available should not, as the Chief Justice intimated during the argument, be entertained for a moment by the Court.

For these reasons I would dismiss the motion for injunction but overrule the demurrer; and, on the application of the plaintiff, declare that s. 29 (1) (*a*) of the *Lands Acquisition Act* is invalid.

Demurrer allowed. Motion dismissed with costs including all reserved costs. Action dismissed with costs.

Solicitors for the plaintiff, *Laurence & Laurence*, Sydney, by *Stewart & Dimelow*.

Solicitor for the defendants, *H. F. E. Whitlam*, Crown Solicitor for the Commonwealth.

E. F. H.