[HIGH COURT OF AUSTRALIA.]

ASSOCIATED DOMINIONS ASSURANCE SOCIETY PROPRIETARY LIMITED
PLAINTIFF, } APPELLANT;

AND

BALMFORD . . . . . RESPONDENT.
DEFENDANT,

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SYDNEY, *Aug.* 8, 9, 21.

Latham C.J., Williams, Webb and Fullagar JJ.

Time—Computation—"Not less than fourteen days from the date of the notice"—"Date of the notice"—Quaere, date appearing on notice or date of service of notice — *Clear days — Statute — Construction — Parliament — Intention — Life Insurance Act* 1945 (*No.* 28 *of* 1945), *ss.* 55, 146—*Acts Interpretation Act* 1901-1947 (*No.* 2 *of* 1901—*No.* 78 *of* 1947), *ss.* 29, 36 (2), 46 (a).

Section 55 of the *Life Insurance Act* 1945 provides that, in certain circumstances, the Insurance Commissioner may serve on a life insurance company "a notice in writing calling upon it to show cause, within such period, not less than fourteen days from the date of the notice, as specified in the notice," why an investigation of the affairs of the company should not be made, and that "if the company fails, within the period specified in the notice to show cause to the satisfaction of the commissioner," the investigation may be made.

Held, by *Williams*, *Webb* and *Fullagar* JJ. (*Latham* C.J. dissenting), that the "date of the notice" is the date of the service of the notice in writing upon the company, and is not the date the document bears on its face.

On Monday 3rd May 1948, the commissioner served on a company a notice in writing, bearing a date 30th April 1948, calling upon the company "to show cause within the period of fourteen days next ensuing after the" 2nd May 1948, why an investigation of its affairs should not be made.

Held, (1) by *Williams*, *Webb* and *Fullagar* JJ. (*Latham* C.J. dissenting), that the notice was not a valid notice under s. 55 of the *Life Insurance Act* 1945; and

(2) by *Williams*, *Webb* and *Fullagar* JJ., that although the notice was an "instrument" within the meaning of s. 46 (*a*) of the *Acts Interpretation Act* 1901-1947, it was not validated by s. 36 (2) of that Act.

Decision of *McTiernan* J., reversed.

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APPEAL from *McTiernan* J.

In an action brought in the High Court by way of writ of summons by the Associated Dominions Assurance Society Pty. Ltd. against Walter Crowther Balmford for a declaration that the *Life Insurance Act* 1945, or alternatively that Division 7 of Part III. thereof, was invalid, and for a declaration and an injunction in respect of a proposal by the defendant to investigate the company's business, the amended statement of claim was substantially as follows :—

1. The plaintiff is a company duly incorporated according to the law of the State of New South Wales in that behalf and entitled to sue in and by such corporate name.

2. The defendant is an officer of the Commonwealth and at all material times has been the Insurance Commissioner duly appointed under the provisions of the *Life Insurance Act* 1945, hereinafter called the said Act.

3. The plaintiff company carries on and has for many years past carried on life insurance business within the meaning of the said Act in the State of New South Wales and other States of the Commonwealth.

4. The plaintiff company carries on business in the State of Victoria through and by means of a branch office situated at 340 Little Collins Street, Melbourne, in that State and has policy holders in every State of the Commonwealth of Australia as well as in the Territorities of the Commonwealth.

5. The policy holders throughout the Commonwealth of Australia and the Territories pay premiums in respect of policies direct to the offices of the plaintiff company in New South Wales situated at 17 Castlereagh Street, Sydney, and at 69 Hunter Street, Newcastle, or direct, in other cases, to the branch office of the plaintiff company in Melbourne.

6. The payments of premiums are made by policy holders either by postal remittances directed and forwarded to those offices or by credits created by the policy holders through their local banks in favour of the plaintiff company and made available to the company in Sydney, Newcastle or Melbourne.

7. The plaintiff company has in numerous instances through its Sydney and Melbourne offices made loans on policies to policy holders in States of the Commonwealth of Australia other than New South Wales and Victoria. Many of such loans are existing and undischarged at the present time and the plaintiff company also holds manages and controls as part of the life insurance business carried on by it other investments and assets in the States of New South Wales, Victoria, Queensland and South Australia.

8. All business transactions in the course of the life insurance business relating to the making and allowing of claims and the acceptances of proposals for policies and the acceptances of surrenders of policies including the determination of sums to be paid in respect of such surrenders are carried out by the plaintiff company at and through its Sydney office irrespective of whether the proponent or policy holder concerned is resident in the State of New South Wales or in any other State of the Commonwealth or in the Territories of the Commonwealth.

9. In respect of the policies issued by the company providing for hospital benefits which policies are held by policy holders resident in various States of the Commonwealth, the claims arising under such policies, in the event of the policy holders becoming inmates of hospitals in the States in which they are respectively resident, are received admitted and paid at and through the Sydney office of the plaintiff company.

10. The plaintiff company charges and the fact is that by reason of the facts hereinbefore alleged and by reason of the incidents and methods of its carrying on its business of life insurance throughout Australia it is engaged in trade commerce and intercourse among the several States of the Commonwealth within the meaning of s. 92 of the Constitution.

11. On 3rd May 1948 the plaintiff company received from the defendant a notice purporting to be issued by the defendant under the authority of s. 55 of the said Act which notice was in the words and figures following :—

"NOTICE

It appears to me, the Insurance Commissioner appointed under the Life Insurance Act 1945, that Associated Dominions Assurance Society Pty. Ltd. (hereinafter called the 'Company') is likely to become unable to meet its obligations and that the rate of expense of procuring, maintaining, and administering the Life Insurance business of the Company in relation to the income derived from premiums is unduly high now therefore in pursuance of the provisions of section 55 of the Life Insurance Act 1945 by this Notice I call upon the Company to show cause within the period of fourteen days next ensuing after the second day of May one thousand nine hundred and forty-eight why I should not on the ground that the Company is likely to become unable to meet its obligations and the ground that the rate of expense of procuring maintaining and administering the Life Insurance business of the Company in relation to the income derived from premiums is unduly high appoint a

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person to investigate the whole of the business of the Company and report to me the results of his investigation.

DATED the thirtieth day of April one thousand nine hundred and forty-eight.

To,

Associated Dominions Assurance Society Pty. Ltd."

12. In addition to the notice certain other correspondence relevant thereto passed between the plaintiff company and the defendants between 3rd and 16th April 1948, which correspondence is fully set forth in the schedule to this statement of claim.

The correspondence consisted of (a) a letter dated 2nd April 1948 in which the defendant informed the company that having examined the returns and accounts of the company in accordance with the said Act he considered it desirable to instruct one of his officers to conduct an investigation into those matters, and that that officer would open his inspection at 2.30 p.m. on 3rd May 1948 at the offices of the Commonwealth Sub-Treasury, Sydney. The company was informed that certain information, documents and books, set forth in detail, should be on hand at the commencement of the proceedings, and that under s. 55 of the said Act the company was entitled to show cause why the investigation should not be made; (b) a letter dated 8th April 1948 by which the company replied that the defendant's letter had caused a great deal of concern; that compliance with its requirements would entail great inconvenience; that the company had already taken steps to have its industrial tables recast and that it was considered that any actuarial liability would be rectified quickly. The defendant's right to conduct an investigation was not admitted and if the defendant still intended to go on with his investigation the company would be compelled to take steps to prevent it as it was considered that a conference between the parties would be a more satisfactory method; (c) a letter dated 12th April 1948 by which the defendant informed the company that it was proposed to make an investigation of the company's affairs and that power to make the investigation was given under s. 55 of the said Act and unless the company was able to show cause to the satisfaction of the defendant (as insurance commissioner) within fourteen days of that letter why the investigation should not be made, the matter would be proceeded with in the manner specified in the defendant's letter dated 2nd April 1948; and (d) by a letter dated 16th April 1948 to the company by which the officer referred to above noted that the attendance of the company was requested as stated above and requested that the managing director of the company be present also.

13. The plaintiff company charges, and the fact is, that the defendant had at all material times predetermined the issue of whether there should be an investigation under s. 55 of the said Act and had by reason of such predetermination disqualified himself from determining whether the plaintiff company had or had not failed to show cause why the defendant should not appoint a person to investigate the whole of the business of the plaintiff company in pursuance of the notice referred to in par 11.

The plaintiff company claimed :—

1. That the *Life Insurance Act* 1945 and in particular Divisions 7 and 8 of Part III. of the said Act be declared invalid as being in conflict with the prohibition contained in s. 92 of the Constitution against interference with freedom of inter-State trade commerce and intercourse.

2. That alternatively it be declared that the said Act and particularly Divisions 7 and 8 of Part III. thereof did not on their proper construction apply to the plaintiff company or to the conduct of the plaintiff company of its business.

3. That it be declared that the said Act and particularly Divisions 7 and 8 of Part III. of the said Act were invalid as being in excess of the legislative power conferred on the Parliament of the Commonwealth.

4. That the notice of 30th April 1948 be declared to be void and of no effect.

5. That the defendant his servants and agents be restrained by injunction from acting on the notice of 30th April 1948 and from attempting to enforce in relation to the plaintiff company any of the provisions of the said Act and in particular the provisions of Divisions 7 and 8 of Part III. of the said Act.

6. That the defendant be ordered to pay to the plaintiff company its costs of the action.

In his statement of defence the defendant pleaded that he did not know and therefore could not admit the facts and matters alleged in pars. 3 to 9 inclusive of the statement of claim ; denied the allegations contained in pars. 10 and 13 of the statement of claim ; and in further answer to the statement of claim said :—

(a) that the facts alleged in pars. 1 to 10 inclusive of the statement of claim did not disclose that the company was engaged in trade commerce or intercourse among the States within the meaning of s. 92 of the *Commonwealth of Australia Constitution Act* 1900 ;

(b) that the *Life Insurance Act* 1945 was a valid exercise of the legislative powers of the Commonwealth Parliament ;

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(c) that the facts alleged in pars. 11 to 13 inclusive of the statement of claim did not disclose that if the company was engaged in trade commerce or intercourse within the meaning of the said s. 92 such trade commerce or intercourse was being interfered with by the defendant contrary to the provisions of s. 92;

(d) that the notice set out in par. 11 of the statement of claim was a valid notice duly issued under the provisions of the said Act; and

(e) that the facts alleged in the statement of claim did not disclose any action cognizable by the Court.

By way of counterclaim the defendant stated substantially as follows:—

1. The plaintiff is a company duly incorporated according to the law of the State of New South Wales in that behalf and entitled to sue and be sued in its corporate name.

2. The defendant is an officer of the Commonwealth and at all material times has been and still is the Insurance Commissioner duly appointed under the provisions of the *Life Insurance Act* 1945 hereinafter called the said Act.

3. The plaintiff company carries on and has for many years past carried on life insurance business within the meaning of the said Act in the State of New South Wales.

4. On 30th April 1948 the defendant forwarded to the plaintiff company a notice pursuant to s. 55 of the said Act which said notice omitting formal parts is in the words and figures following:

"NOTICE

It appears to me, the Insurance Commissioner appointed under the Life Insurance Act, 1945, that Associated Dominions Assurance Society Pty. Ltd. (hereinafter called the 'Company') is likely to become unable to meet its obligations and that the rate of expense of procuring, maintaining, and administering the life insurance business of the Company in relation to the income derived from premiums is unduly high now therefore in pursuance of the provisions of Section 55 of the Life Insurance Act 1945 by this notice I call upon the Company to show cause within the period of fourteen days next ensuing after the second day of May One thousand nine hundred and forty eight why I should not on the ground that the Company is likely to become unable to meet its obligations and the ground that the rate of expense of procuring maintaining and administering the life insurance business of the Company in relation to the income derived from premiums is unduly high

appoint a person to investigate the whole of the business of the Company and report to me the results of his investigation.
Dated the thirtieth day of April One thousand nine hundred and forty eight.

Insurance Commissioner.

To : Associated Dominions Assurance Society Pty Ltd."

5. The plaintiff company duly received that notice on or about 3rd May 1948.

6. On 17th May 1948 the defendant gave to the plaintiff company notice of the appointment of an Inspector in accordance with s. 55 of the said Act which said notice omitting formal parts is in the words and figures following :—

" The General Manager,
Associated Dominions Assurance Society Pty. Ltd.,
17 Castlereagh Street, SYDNEY.

Dear Sir,

Life Insurance Act, 1945.

I refer to my letter of 30th April 1948 serving on your Society formal notice in accordance with Section 55 of the Life Insurance Act 1945, of my intention to appoint a person to investigate the whole of the business of the Society and report to me the results of his investigation.

I have now to inform you that your Society having failed to show cause within fourteen days from the date of the notice to my satisfaction why I should not appoint a person to make an investigation of the business of the Society, I, in pursuance of Section 55 of the Life Insurance Act 1945, have appointed Mr. S. W. Caffin to make such investigation and report to me the results thereof.

Yours faithfully,
W. C. BALMFORD,
Insurance Commissioner."

7. The inspector was duly appointed by the defendant as aforesaid and attended at the office of the plaintiff company situated at 17 Castlereagh Street, Sydney, on 18th and 19th May 1948 and on both occasions interviewed the General Manager of the plaintiff company who wrongfully refused to produce any books or documents of the plaintiff company and wrongfully refused to allow the inspector to make any investigation of the business of the plaintiff company.

8. The plaintiff company has wrongfully refused and still wrongfully refuses to allow the defendant or any person authorized by him to make any investigation of the business of the plaintiff

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company and threatens and intends to continue to prevent the defendant or any person authorized by him from inspecting any of the books records or documents of the plaintiff company or from making any investigation of the business of the plaintiff company or from otherwise exercising his powers under the said Act.

9. The defendant fears that unless the plaintiff company is restrained by the order and injunction of the Court from preventing the defendant or any person authorized by him from inspecting the books records or documents of the plaintiff company and from making an investigation of the business of the plaintiff company pursuant to the said Act and from otherwise exercising his powers under the said Act the assets of the plaintiff company may be diminished and the rights and interests of the policy holders in the plaintiff company may be irreparably damaged.

The defendant claimed :—

1. That the plaintiff company its officers servants and agents be restrained by the order and injunction of the Court from preventing the defendant or any person authorized by him from inspecting any of the books records or documents of the plaintiff company in the exercise of his powers under the said Act.

2. That the plaintiff company its officers servants and agents be restrained by the order and injunction of the Court from preventing the defendant or any person authorized by him from making an investigation of the business of the plaintiff company in the exercise of his powers under the said Act.

3. That the plaintiff company its officers servants and agents be restrained by the order and injunction of the Court from preventing the defendant or any person authorized by him from otherwise exercising his powers under the said Act.

4. That the plaintiff company be ordered to pay to the defendant the costs of this counter claim.

5. That the defendant have such further or other relief as the nature of the case may require.

The plaintiff joined issue on the defence and demurred to the counterclaim on, *inter alia*, the following grounds :—

(i) that the counterclaim disclosed no interest in the subject matter thereof in the defendant of a nature which would attract the jurisdiction of the Court to grant the relief claimed ;

(ii) that the counterclaim was a claim by way of remedy for alleged breaches of the *Life Insurance Act* 1945 and that Act provided exclusively for remedies for breaches thereof,

which remedies were to be had and taken under and by virtue of the Act and not in any other manner;

(iii) that it appeared from the counterclaim that the grant of an injunction would be a remedy in the nature of specific performance involving the supervision of personal conduct by the Court;

(iv) that a mandatory injunction as claimed would not direct the doing of any specific act or acts;

(v) that the Attorney-General for the Commonwealth was not a party to the counterclaim;

(vi) that the counterclaim did not allege any facts or disclose any interest in the defendant which attracted the jurisdiction of the Court or entitled the defendant to the relief claimed; and

(vii) that the counterclaim did not disclose any cause of action.

The plaintiff admitted the matters and facts alleged in pars. 1 to 6 inclusive of the counterclaim; denied the matters and facts alleged in pars. 7 and 8, and did not admit that the defendant entertained the fear alleged in par 9 of the counterclaim.

The defendant replied that the counterclaim was good in substance and joined issue.

After certain interlocutory proceedings the Full Court directed issues of fact to be tried by a single Judge. Thereafter the plaintiff, without prejudice, abandoned par. 13 of the Statement of Claim and the defendant admitted the allegations in pars. 3 to 9 inclusive of the Statement of Claim except the words " within the meaning of s. 92 of the Constitution " and that the notice referred to in par. 11 of the Statement of Claim and par. 4 of the counterclaim was " served personally " upon the plaintiff on 3rd May 1948. Before the action came on to be heard before a single Judge the plaintiff applied by summons under reg. 3 of Order XXX. of the High Court Rules for judgment on admissions made by the defendant on pleadings, the basis of such application being that having regard to the true construction of s. 55 of the said Act, the notice referred to above was invalid and inoperative as claimed in Prayer 4 of the Statement of Claim and that therefore there was no defence to the suit.

This summons and the referred hearing of the action came on together before *McTiernan* J. who, after argument, dismissed the summons and then heard counsel for the plaintiff on the constitutional points raised on the Statement of Claim. No evidence was called by either side on this aspect. *McTiernan* J. at the close of argument on behalf of the plaintiff then, by consent, and pursuant to s. 18 of the *Judiciary Act* referred the action for argument before

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the Full Court upon the pleadings and the above-mentioned admissions.

The plaintiff appealed to the Full Court against the order of *McTiernan* J. dismissing the summons, and consequently such appeal, and the reference to *McTiernan* J. by the Full Court for argument on the constitutional questions in the action proper, came on to be heard before the Full Court together. The Full Court decided to hear argument on the appeal arising out of the summons in the first place.

G. Wallace K.C. and *G. E. Barwick* K.C. (with them *Dr. Louat* and *C. I. Menhennitt*), for the appellant.

G. Wallace K.C. The allegations made by the appellant in the statement of claim relating to the receipt of a notice was not denied, either specificially or by necessary implication, by the respondent in his statement of defence, therefore, under r. 10 of Order XVII. of the High Court Rules, it must be taken to have been admitted. Having regard to the obvious intention of s. 55 of the *Life Insurance Act* 1945, the time commenced to run from the date the document became in fact a notice, namely, from the day it was served or communicated. An intimation or document becomes a notice only when received or communicated. The legislature intended that there should be a period of not less than fourteen days within which the company should have the right to review the position and show cause. If service of the document were not an essential feature it could follow that little or no time might be allowed to the company and the intention of the legislature completely frustrated. The Court will interpret s. 55 in such a way as will avoid frustration of the legislature's intention. The words "from the date of the notice" in s. 55 mean from the date the document became effective as a notice by communication or service.

G. E. Barwick K.C. The question is one of construction to ascertain what the evident purpose was. In a broad way the purpose was to limit a time within which the notified person shall do something; so that the period to be specified in the notice must be a prospective period so far as the notified person is concerned. A company cannot "fail," within the meaning of s. 55 (2), to do something within a period of which it was, or was possibly, unaware. A notice can never be something uncommunicated; the element of communication is involved in its very essence.

The word " notice " itself involves communication. The " date " referred to in s. 55 is the date from which the writing became a notice upon communication. The notice is not only a condition precedent to the pursuit of the investigation, but it must be a condition precedent to the powers of the investigator to administer an oath, to require strangers to the proceedings to produce documents and submit to interrogation, and, apparently, under s. 59, it is a condition precedent to the source of a court's jurisdiction to order that a company be wound up.

J. B. Tait K.C. (with him *E. J. Hooke*), for the respondent. The words in s. 55 are clear and plain and do not admit of any ambiguity. The word " notice " should be given a uniform construction. As used in the phrase " from the date of the notice " it is clearly used in the same sense as it is used in the phrases " a notice in writing " and " specified in the notice." It is used to refer to a document. The date referred to is the date on the document. The legislature deliberately used words which made the minimum of fourteen days commence from the date of the notice, and it intended to give the company as much time as would be left after the notice would be served in the ordinary course after it became dated. When the legislature does not refer the limit of time to the date of the document but to the receipt of the communication it so provides: see *Life Insurance Act* 1945, s. 18; *Re-establishment and Employment Act* 1945, s. 129; *Banking Act* 1945, s. 23 (1). The same principle is found in the Rules of Court; see Order XX., r. 6. In the statute under consideration the legislature deliberately changed the language so as to provide for the time to run from the date of the notice. Effect must be given to that change. There is not any way, as a matter of construction of language, of reading the word " notice " as meaning anything else but the document that was to be served. The Court is being asked to correct a mistake of the legislature. The " giving " of notice doubtless involves communication, but here the requirement is to " serve " a notice in writing, which can only mean a document. The date was the date when it became effective as a document. The words " as specified in the notice " mean a specification in the document. The legislature doubtless assumed that the commissioner would effect service within a very short time after he had dated, signed and issued the document in which a period was specified. There is not any difference, in this connotation, between " the date on " and " the date of," because upon its being that the word " notice " means a document,

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the date of the document means the date on the document. The use of the word " notice " is illustrated in s. 146 of the said Act.

Alternatively, Sunday is a *dies non* to the extent provided for in the *Acts Interpretation Act* 1901-1947, ss. 36, 46, and, accordingly, the fourteen days that the notice gave from 2nd May, which was a Sunday, in fact gave the company until Monday 17th May, which was fourteen days from the date of service. The document was served on Monday 3rd May, and fourteen days from then, not clear days, extended up to and included Monday 17th May. Under the *Acts Interpretation Act* 2nd May should not be included in the calculation of the fourteen days—it was the first day from which the period was to run. That means that the company was informed by the notice that it had fourteen days, the first of which was Monday 3rd May, so that the notice meant that the company must show cause within fourteen days the first of those days being Monday 3rd May. That would mean, if the *Acts Interpretation Act* as to Sunday being a *dies non* is to operate, it would take the company without that—the first of the fourteen days being 3rd May—to Sunday 16th May, which would be the last of the fourteen days, and would give the company until Monday 17th May. Assuming that " notice " means communicated notice and the date thereof was 3rd May, the said Act requires that the cause must be shown within a period being not less than fourteen days from 3rd May, excluding again 3rd May itself, the first of the fourteen days was Tuesday 4th May and fourteen days, the first of which was Tuesday 4th May, took the company until Monday 17th May, which was the last of the fourteen days. The fourteen days should be calculated, as to clear or otherwise, in the same way in the notice as in the said Act. Under the words of that Act they are not clear days. Computation of time was dealt with in *In re Railway Sleepers Supply Co.* (1) and *Lazarus* v. *Stutchbury* (2). The matter of clear days was referred to in *Armstrong* v. *Great Southern Gold Mining Co.* (3).

[WILLIAMS J. referred to *Ex parte McCance*; *Re Hobbs* (4).]

There is a clear distinction between the two classes of cases. A prohibition against doing something in a period is entirely different from a requirement that something shall be done within a period. The operative provision in s. 55 is in the words " within such period." The words " not less than fourteen days " are to prescribe the minimum of a period that can be allowed and can be fitted in

(1) (1885) 29 Ch. D. 204, at pp. 206, 207.
(2) (1886) 7 L.R. (N.S.W.) 328, at p. 331; 3 W.N. 23.
(3) (1911) 12 C.L.R. 382, at p. 388.
(4) (1926) 27 S.R. (N.S.W.) 35; 44 W.N. 43.

as being such period. A period allowed by s. 55 was specified in the notice. The notice, in any view of s. 55 of the date of the notice, does not give less than fourteen days from the date specified. The notice was an " instrument " within the meaning of s. 46 of the *Acts Interpretation Act*. The use of the article " the " before the word " notice " is inapt to describe the service. Under s. 146 notification or communication may be made although the company may never actually get any knowledge of it; service is effected whether or not the company received it and s. 29 of the *Acts Interpretation Act* would not apply to enable the company to say that it did not receive it.

G. Wallace K.C., in reply. Nothing submitted on behalf of the respondent can neutralize the importance in s. 55 of the words " not less than," and also the clear purpose revealed in that section. The appellant's construction of the section gives effect to the obvious purpose of the legislature and should be preferred to the construction put forward on behalf of the respondent, which does not achieve that effect. The date of the notice must be the date when it was first revealed to be a notice: *Federal Commissioner of Taxation* v. *Australian Tesselated Tile Co. Pty. Ltd.* (1). The word " notice " is used in different senses in s. 146. There must be an attempt at communication. Section 146 should not be construed as going to the actual time when notice was deemed to be effected; it deals only with the manner in which service was to be or could be effected. The word " sent " as there used connotes the conception of receiving. It is in contrast to the word " posting." " Sending " connotes receipt after the operation of posting has taken place: see *Acts Interpretation Act* 1901-1947, s. 29. That section does give a time or date to the notice. A notice to a company must, in the absence of statutory provisions otherwise, be a communication to that company. The document could only become a notice at the moment it was received by the company. The period " specified in the notice " by the respondent was, by operation of the Act, binding and conclusive on all parties, but subject to the requirement that the period must contain fourteen full or clear days before the last day of the period. Service was effected on the first day of that period, that is, at about 10.15 o'clock a.m. on 3rd May. That service was too late having regard to the form of the notice and was incapable of being cured by statute. Section 36 of the *Acts Interpretation Act* does not aid the construction of a document but merely goes to show it operates in certain circum-

(1) (1925) 36 C.L.R. 119.

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stances. The subject notice was bad on its face. The period was not adequately specified. The Act excluded 3rd May whereas the notice included it because it said the day after 2nd May.

LATHAM C.J. The appeal is, by a majority of the Court, allowed with costs and judgment is given for the plaintiff in the action for (1) a declaration that the notice of 30th April 1948 referred to in the statement of claim is void and of no effect; and (2) an injunction restraining the defendant, his servants and agents from acting on the said notice of 30th April 1948. The reasons of the members of the Court will be given at a later date.

Cur. adv. vult.

Aug. 21.

The following written judgments were delivered :—

LATHAM C.J. This is an appeal from an order of *McTiernan* J. dismissing a motion by the plaintiff for judgment upon an admission made in the pleadings in the action: *Rules of High Court,* Order XXX., r. 3.

Under the *Life Insurance Act* 1945, s. 55, the Insurance Commissioner may serve a notice on an insurance company calling upon it to show cause why he should not investigate the business of the company. The commissioner, who is the defendant in the action, served a notice upon the plaintiff company. The company sued for declarations that the *Life Insurance Act* 1945 or, alternatively, certain parts of it, including s. 55, were invalid, and also for a declaration that the notice was void and of no effect. Section 55 (1), so far as material, is in the following terms :—" If it appears to the commissioner that—(*a*) a company is, or is likely to become, unable to meet its obligations; . . . or . . . (*e*) the rate of expense of procuring, maintaining and administering any life insurance business of a company in relation to the income derived from premiums is unduly high; . . . the commissioner may serve on the company a notice in writing calling upon it to show cause, within such period, not less than fourteen days from the date of the notice, as is specified in the notice, why he should not, on the grounds so specified, investigate the whole or any part of the business of the company or appoint a person (in this Division referred to as 'the Inspector') to make such an investigation and report to the commissioner the results of his investigations."

Section 55 (2) provides that :—" If the company fails, within the period specified in the notice, to show cause to the satisfaction

of the commissioner, the commissioner may make the investigation or may cause it to be made by the Inspector."

The statement of claim in the action contained the following allegation :—" On the third day of May 1948 the plaintiff company received from the defendant a Notice purporting to be issued by the defendant under the authority of section 55 of the said Act which said notice was in the words and figures following :—

NOTICE.

It appears to me, the Insurance Commissioner appointed under the *Life Insurance Act* 1945, that Associated Dominions Assurance Society Pty. Ltd. (hereinafter called the 'Company') is likely to become unable to meet its obligations and that the rate of expense of procuring, maintaining, and administering the life insurance business of the company in relation to the income derived from premiums is unduly high now therefore in pursuance of the provisions of section 55 of the *Life Insurance Act* 1945 by this Notice I call upon the company to show cause within the period of fourteen days next ensuing after the second day of May one thousand nine hundred and forty-eight why I should not on the ground that the company is likely to become unable to meet its obligations and the ground that the rate of expense of procuring maintaining and administering the life insurance business of the company in relation to the income derived from premiums is unduly high appoint a person to investigate the whole of the business of the company and report to me the results of his investigation.

DATED the thirtieth day of April one thousand nine hundred and forty-eight.

To,

Associated Dominions Assurance Society Pty. Ltd."

This allegation was not denied in the defence and accordingly must be taken to be admitted : *Rules of High Court*, Order XVII. r. 10.

The date of the notice was 30th April 1948. The notice specified as a period within which the company might show cause a period of " fourteen days next ensuing after the second day of May one thousand nine hundred and forty-eight." The notice was served on 3rd May. The period of fourteen days next ensuing after 2nd May expired at the end of 16th May, which was a Sunday. The period from the date of the notice (30th April) to the expiry of the said period, namely 16th May, was more than a period of fourteen days from the date of the notice. But it was less than a period of fourteen days from the service of the notice, which did not take place till 3rd May. It is contended for the plaintiff that

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the words " from the date of the notice " mean from the date when the notice in writing was received by the company, that is from the date of the service of the notice, and that therefore the notice is out of time. The defendant makes two answers to this argument. In the first place, the defendant contends that the words " from the date of the notice " refer to the date of the notice in writing and not to the date of service of the notice, and, secondly, that even if " the date of the notice " is, contrary to the last-mentioned contention, taken to be the date of service, s. 36 (2) of the *Acts Interpretation Act* 1901-1947 provides that when a period prescribed or allowed for the doing of an act expires on a Sunday the act may be done on the following day, and that this provision is by s. 46 of the *Acts Interpretation Act* applied to instruments made or issued under Acts, so that the notice specified a period ending on Monday 17th May—which is a period of fourteen days from 3rd May. The plaintiff replies to the second argument of the defendant that, even if the *Acts Interpretation Act* does apply so as to entitle the defendant company to show cause on Monday 17th May, nevertheless a period ending on that day is not " specified " in the notice, and that for this reason, therefore, the notice is bad and is not saved by the *Acts Interpretation Act.*

I find it necessary to consider only the first question, namely whether the notice satisfies the provisions of s. 55 independently of any provisions of the *Acts Interpretation Act.*

In order that a notice should be effective under s. 55—(1) there must be a notice in writing; (2) that notice in writing must be served on the company; (3) the notice in writing must call upon the company to show cause within a period which is specified in the notice in writing; (4) that period must be a period " not less than fourteen days from the date of the notice." The plaintiff does not deny that " a notice in writing" means a written document or that the requirement that a period should be specified " in the notice " means that a period should be specified in a written document, but denies that the words " from the date of the notice " refer to the date of the notice and contends that they should be interpreted as meaning from the date of service of the notice in writing upon the company. It is argued that the object of the section is to give the company time, namely a period of not less than fourteen days, for the purpose of considering whether or not it should show cause against an investigation being made. It is argued, and rightly, that the result of interpreting the section according to its literal terms may be that if there is delay in serving the notice, and a short time is fixed in the notice (as in the present

case) the company may not have fourteen days in which to consider and prepare its case. Upon these considerations it is contended that the words " from the date of the notice " should be read as if they were " from the date of notice to the company "— or " from the date of service of the notice upon the company."

The argument for the plaintiff was that " notice " meant the communication of knowledge, so that there was no notice until the notice was served, so that the date of the notice was the date of service. There is nothing in s. 55 to the effect that the company must become aware of the contents of the notice so as to have knowledge thereof. The service of a document only gives opportunity of knowledge, not knowledge itself. But, further, the very statement of the proposition that there is no notice until " the notice " is served shows that the notice which is to be served and which must specify a period, and which, I add, must also have a date, is a notice within the meaning of the section before it is served. The notice which s. 55 requires is plainly a document in writing which must have certain contents and which must be served on a company to have any effect under the section.

The word " notice " may, it is true, mean either a document or a notification to a person in the sense of bringing a matter to his knowledge or giving him means of knowledge thereof. Section 146 of the Act provides an example of the use of the word in these two senses. In my opinion it is not possible, consistently with the terms of s. 55, to construe the word " notice " in the phrase " the date of the notice " as meaning the date of service of the notice in writing upon the company. The section provides that the commissioner may serve on the company " a notice in writing." There must be a period specified " in the notice." The notice there mentioned must be the notice in writing. That period must be a period of not less than fourteen days from " the date of *the* notice," which must also refer to the before-mentioned notice in writing. Unless there is a date of that notice this requirement of the section cannot be satisfied. In my opinion there is no justification for in effect altering the words of the section by what is described as construction so as to give to the words " date of the notice " the meaning " date of service of the notice."

It is often said that it is the duty of a court in interpreting a statute to give effect to the intention of Parliament. There is one way, and one way only, to ascertain the intention of Parliament, and that is to give careful attention to the precise words which Parliament has thought proper to use. In my opinion a court should not distort or " mould " the words of a statute which are

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clear in themselves in order to bring about a result which in the mind of the court is more conformable to what the court considers to be the object or the policy of an Act than the result which ensues upon a literal reading in their natural sense of the words which Parliament has used. It would be conceded that it is not the function of a court to amend or correct or improve statutes enacted by Parliament. This principle should not be obscured by making the actual words of the legislature servient to what the court assumes to have been the policy of Parliament. A parliament can make mistakes and may fail to make its enactments completely fair and considerate to the interests concerned. But a court must take statutes as it finds them. Consideration of the object of a statute as appearing from its terms and the circumstances to which it is applied may be useful in interpretation where a provision is ambiguous, but there is no justification whatever, under the guise of interpretation, for applying this principle when there is no ambiguity. As Lord *Herschell* L.C. said in *Arrow Shipping Co. Ltd.* v. *Tyne Improvement Commissioners* (1) :—" . . . a sense of the possible injustice of legislation ought not to induce your Lordships to do violence to well-settled rules of construction, though it may properly lead to the selection of one rather than the other of two possible interpretations of the enactment. In the present case, however, I am unable to see that there are two alternative constructions."

His Lordship proceeded to say that he had approached the consideration of the terms of the statute in question with no indisposition to arrive at a conclusion which appeared to be more fair than that reached by a consideration of the precise words of the Act, but he found that he was unable to do so. I find myself in exactly the same position in this case. The words of the statute appear to me to be quite clear. A notice under the section would be bad if it were not in writing; it would be bad if it did not specify a period within which cause might be shown, and it also would be bad if there were not a " date of the notice," that is, if the notice were undated. Parliament perhaps presumed that a notice would be promptly served and that ample time would be allowed to a company. Parliament could have provided quite simply that the specified period should be a period of not less than fourteen days from the date of service of the notice. But Parliament most expressly provided that the relevant date should be the date of the notice itself—i.e. of the notice in writing. The meaning of the date of a document is quite clear. It is the

(1) (1894) A.C. 508, at pp. 516-517.

date which the document bears. If it bears no date, it is undated. There is no ambiguity in the words "the date of the notice."

For the reasons which I have given I am of opinion that the notice was a good notice under s. 55. It is unnecessary for me therefore to consider the questions arising upon the *Acts Interpretation Act*. In my opinion the appeal should be dismissed.

WILLIAMS J. On the morning of 3rd May 1948 the respondent, the defendant in the action, handed to an officer of the appellant, the plaintiff in the action, at its registered office, the following notice in writing: "It appears to me, the Insurance Commissioner appointed under the *Life Insurance Act* 1945, that Associated Dominions Assurance Society Pty. Ltd. (hereinafter called the 'Company') is likely to become unable to meet its obligations and that the rate of expense of procuring, maintaining, and administering the life insurance business of the company in relation to the income derived from premiums is unduly high now therefore in pursuance of the provisions of section 55 of the *Life Insurance Act* 1945 by this Notice I call upon the Company to show cause within the period of fourteen days next ensuing after the second day of May one thousand nine hundred and forty-eight why I should not on the ground that the company is likely to become unable to meet its obligations and the ground that the rate of expense of procuring maintaining and administering the life insurance business of the company in relation to the income derived from premiums is unduly high appoint a person to investigate the whole of the business of the company and report to me the results of his investigation. Dated the thirtieth day of April one thousand nine hundred and forty-eight."

Section 55 of the *Life Insurance Act* 1945 requires that a notice shall specify a period not less than fourteen days from the date of the notice within which a company may show cause to the satisfaction of the commissioner why he should not investigate the whole or any part of the business of the company or appoint a person to make such an investigation and report to the commissioner the results of his investigation. The two short questions that arise on the appeal are (1) whether the above notice is a valid notice under this section; and (2) whether, if this notice would otherwise be invalid, it is saved by ss. 36 (2) and 46 (*a*) of the *Acts Interpretation Act* 1901-1947 (the Interpretation Act in force at the relevant time).

Question (1). The notice bears date 30th April 1948 but was not served until 3rd May 1948. The minimum period which

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must be allowed to a company to show cause is a period of not less than fourteen days from the date of the notice, so that if the words "the date of the notice" in s. 55 refer to the date of the document, the notice does satisfy the requisite period, whereas if they refer to the date of service the notice does not do so. A notice to a person in the ordinary use of language cannot be a notice until it is communicated to him. Communication may be made in different forms, and it is not unusual for a statute to prescribe a particular form and manner of communication. Section 55 does this for it requires that a company shall receive a notice in the form of a notice in writing, and that it shall be communicated by being served on the company. It is also not unusual for statutes to provide that a person shall be deemed to have received a communication although he may not in fact have done so. Accordingly s. 146 of the *Life Insurance Act* provides that a notice in writing may be served upon a person personally or be posted addressed to him at his usual or last known place of abode or business, and that any notice so addressed and sent shall be deemed to be notice to that person. Section 29 of the *Acts Interpretation Act* provides that unless the contrary is proved service by post shall be deemed to be effected at the time at which the letter would be delivered in the ordinary course of post.

The present notice was handed to the company so that the meaning of these sections is not in question and they do not appear to throw any light upon the meaning of the words "the date of the notice" in s. 55.

Section 55 does not require that there should be any date on the notice. It refers to the date of the notice. It is the duty of the Court to construe an Act so as to give effect to the intent of Parliament and, in enacting s. 55, Parliament obviously intended that a company should have a period of at least fourteen days after it had received notice that the commissioner intended to investigate its affairs within which to show cause why such an investigation should not be made. It appears to me that the date of the notice must be the date on which it becomes an effective notice under the section—that is the date when the notice is actually served on the company or if sent by post is deemed to be served in accordance with s. 146 of the *Life Insurance Act* and s. 29 of the *Acts Interpretation Act*. As service of the present notice was effected on Monday 3rd May, that is the date of the notice. To comply with s. 55, the period specified in the notice had to be a period of not less than fourteen days from 3rd May.

It was contended that the fourteen days had to be fourteen clear days but it is not necessary to determine this point because the notice had at the least to specify a period which did not expire until Monday 17th May. The notice in fact specified a period of fourteen days next ensuing after 2nd May. This period commenced on Monday 3rd May and ended on Sunday 16th May. The notice did not therefore specify a proper period under the section.

Question (2). It was contended that the notice was, within the meaning of s. 46 (*a*) of the *Acts Interpretation Act*, an instrument issued under the *Life Insurance Act* and that, since the last day for showing cause in the period specified in the notice was a Sunday, s. 36 (2) of the *Acts Interpretation Act* extended the last day until Monday 17th May and that, with the assistance of the *Acts Interpretation Act*, the notice did specify a period of at least fourteen days from the date of service of the notice. I am of opinion that the notice is such an instrument, but I do not think that the respondent can obtain any assistance from s. 36 (2). If a period complying with s. 55 of the *Life Insurance Act* had been specified which ended on a Sunday, s. 36 (2) of the *Acts Interpretation Act* would have enlarged the period until the following Monday. But the last day of a period of at least fourteen days from the day of the service of the notice would have expired on a Monday and not on a Sunday, and s. 36 (2) would not have come into operation. I am of opinion that s. 36 (2) could only operate upon an effective notice under s. 55 of the *Life Insurance Act* and could not convert a notice which is invalid because it does not specify a period of at least fourteen days from the date of the notice into a valid notice under the latter section.

For these reasons I would allow the appeal.

WEBB J. I agree with the judgment of *Williams* J.

If, as the respondent submits, any actual notice, however short, would comply with s. 55 of the *Life Insurance Act* 1945, provided the notice specified a period of not less than fourteen days from the date appearing in the notice, then this express provision of a minimum period was a waste of words, as actually it achieved nothing. But that result is reached only if we insist on reading " date of the notice " in s. 55 as referring to the date specified in the document, and not to the date of actual notice, i.e. of service of the notice. The latter meaning is, I think, open and should be taken to be that intended by Parliament. The article " the " before " notice " in s. 55 could, I think, refer to actual notice as well as to the document. But if this meaning is accepted, then the notice was

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drawn in contravention of s. 55 and invalid. Section 36 of the *Acts Interpretation Act* does not make it valid; the purpose of s. 36 is to provide for the construction of instruments otherwise valid.

I would allow the appeal.

FULLAGAR J. Section 55 of the *Life Insurance Act* 1945 provides that, in certain circumstances, the Insurance Commissioner may serve on a life insurance company "notice in writing calling upon it to show cause, within such period, not less than fourteen days from the date of the notice, as is specified in the notice," why an investigation of the affairs of the company should not be made. It is then provided that, "if the company fails, within the period specified in the notice, to show cause to the satisfaction of the commissioner," the investigation may be made. The succeeding sections deal with the conduct and consequences of the investigation.

On 3rd May 1948 the commissioner, who is the respondent on this appeal, served on the appellant company a notice in writing calling upon it "to show cause within the period of fourteen days next ensuing after the second day of May One thousand nine hundred and forty-eight" why an investigation of its affairs should not be made. At the end of the document appear the words "Dated the thirtieth day of April One thousand nine hundred and forty-eight."

It was conceded that the serving of a notice complying in all respects with the requirements of s. 55 was a condition precedent to the power of the commissioner to make an investigation, and, the legislation being framed as it is, I would think the concession inevitable. It was then argued for the appellant company that the notice served did not comply with s. 55 in that the time which it allowed for showing cause was less than the time which s. 55 requires to be allowed.

Some argument took place as to the minimum number of days which must, if s. 55 is complied with, be allowed after "the date of the notice" (whatever that may mean) for showing cause. It was common ground that the date of the notice itself must be excluded in calculating the time (see *Acts Interpretation Act* 1901-1947, s. 36 (1)). But it was argued on the one hand that the time to be allowed expired at the end of the fourteenth day after the date of the notice, so that the commissioner could commence an investigation on the fifteenth day. It was argued on the other hand that the Act required that fourteen clear days should elapse between the date of the notice and the first day on which the

commissioner could commence an investigation. On this view the period would not expire until the end of the fifteenth day after the date of the notice, and the first day on which the investigation could commence would be the sixteenth day after that date. In the view which I take of the case the question does not really arise, but I may say that, in my opinion, the former view is clearly the correct view. There is some authority for saying that the use, in a statute prescribing a time limit, of such expressions as " at least " and " not less than " indicate an intention that the specified number of " clear days " must elapse between two acts or events (see *R.* v. *Justices of Shropshire* (1); *Young* v. *Higgon* (2); *Chambers* v. *Smith* (3); *In re Railway Sleepers Supply Co.* (4) and *Ex parte McCance*; *Re Hobbs* (5)). But it is clear, I think, that significance is attached to such expressions as " at least " or " not less than " only in cases where the immediate purpose of the prescription of a time is to define a period on the expiration of which an act may be done, and not in cases where the immediate purpose is to define a period within which an act must be done. In the former class of case the prescribed number of days must elapse between two acts or events. In the latter class of case the act must (unless a contrary intention appears) be done before the expiration of the last of the prescribed number of days (see, e.g. *Radcliffe* v. *Bartholomew* (6) and *Armstrong* v. *Great Southern Gold Mining Co.* (7)). In the latter case *Griffith* C.J. said :—" When you talk of doing a thing within a period of a certain number of days, it is quite clear that the end of the last day is the furthest limit. It is impossible to say that a thing required to be done within seven days is done within seven days if done on the eighth day, and it is impossible to make any alteration of the limit by adding the word ' clear ' " (8). In the case of s. 55 of the *Life Insurance Act* it is plain that the immediate purpose of the prescription of a period is to fix a time *within which* cause must be shown. It follows that the last day on which cause may be shown is the fourteenth day after the date of the notice.

In the present case the document served allowed " the period of fourteen days next ensuing after the second day of May " 1948. That period would expire at midnight on 16th May 1948. The document purports to be " dated " 30th April, but it was served

(1) (1838) 8 Ad. & E. 173 [112 E.R. 803].
(2) (1840) 6 M. & W. 49 [151 E.R. 317].
(3) (1843) 12 M. & W. 2 [152 E.R. 1085].
(4) (1885) 29 Ch. D. 204.
(5) (1926) 27 S.R. (N.S.W.) 35; 44 W.N. 43.
(6) (1892) 1 Q.B. 161.
(7) (1911) 12 C.L.R. 382.
(8) (1911) 12 C.L.R., at p. 388.

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on 3rd May. A period of fourteen days from 30th April would expire at midnight on 14th May, but a period of fourteen days from 3rd May would not expire until midnight on 17th May. If, therefore, the words " date of the notice " in the Act mean the date which the document bears on its face, the minimum period which the Act requires to be allowed ran from 30th April and expired at midnight on 14th May, and the notice complies with the Act, because it allows up to midnight on 16th May. In effect two more days are allowed than is necessary. If, on the other hand, the words " date of the notice " in the Act mean the date when notice was given by means of the service of the document, the minimum period which the Act requires to be allowed ran from 3rd May and expired at midnight on 17th May, and the notice does not comply with the Act, because it allows only up to midnight on 16th May. One day too little is allowed. The former construction of the Act is put by the respondent, the latter by the appellant company.

The view that the words " date of the notice " refer to the date of a document is, at first sight, supported by a formal consideration which is not without weight. The word " notice " occurs four times in s. 55. On the first, third and fourth occasions, it is clearly used as referring to a document. One would naturally expect it to bear the same meaning on the second occasion of its use, which is the critical occasion for the purposes of this case. One may, therefore, perhaps say that the prima facie and natural construction is to treat the word " notice " in the expression " date of the notice " as referring to a document. But, even if this be conceded, there are, in my opinion, considerations which far outweigh it, and which compel the construction for which the appellant company contends.

The first point to observe is, I think, that the word " notice " is clearly capable of meaning " notification " or " intimation." Indeed, that is its primary meaning, and it is only in a secondary and transferred sense that it is used to describe a document, which is the means by which " notice " is given or conveyed. In the second place, the argument that the word should be given the same meaning in all four places in which it occurs in s. 55 is greatly weakened, if not indeed destroyed, when one looks at s. 146, in which also the word " notice " occurs four times. In s. 146 it is used somewhat loosely, but certainly not in the same sense on all four occasions. Section 146 provides for service of a " notice " either personally or by post, and it concludes : " and any notice so addressed and sent " (i.e. by post) " shall be deemed to be notice

to that person." Here it is clear that the word "notice" first refers to a document and is immediately afterwards used as meaning "notification" or the giving or serving of "notice."

The above considerations are negative, but they serve to remove any difficulty in the way of giving effect to a strong affirmative reason for construing the words in question as referring to the date of notification or of giving or serving the document. That reason is that to construe the words as referring to the date which appears on the document could lead to unjust, and indeed absurd, consequences, and could defeat the whole object of the provision for notice. That object obviously is that the company shall have fourteen days in which to show cause, but, if that construction be correct, a document "dated" 1st May and allowing fourteen days from 1st May could be served on the company on 15th May. The section would be complied with, although the company might be left with only a few hours in which to show cause. There is abundant authority for construing a statute so as to avoid such consequences if the language leaves it possible to do so. It is sufficient to quote the words of *Barton* J. in *Bowtell* v. *Goldsbrough Mort & Co. Ltd.* (1). That learned judge said: "If there are two possible constructions, one working a manifest injustice and the other not, then I think the latter construction is the one which should be adopted." It is undeniable, to my mind, that the construction contended for by the company is open on the language used, and, in my opinion, it should be adopted.

But there is, I think, another reason for adopting that construction. That construction really does resolve all ambiguity: it makes the position clear and intelligible. The other construction leaves a serious ambiguity in the section and could give rise to serious difficulties. For, if we say that the word "notice" refers to a document, what is meant by "the date of the notice"? So far I have been assuming that that expression means the date which the document bears or the date stated in the document. But does it mean this? If it does, can the commissioner or his agent insert any date he likes in the document? This does not seem likely: a date (say, 1st May) arbitrarily inserted in a document which did not come into existence until (say) 14th May would hardly, one would think, be what the legislature meant by the expression "date of the notice." Or does the expression mean the date on which the document is signed? But there appears to be nothing in s. 55 which requires the document to be signed at all: for all that appears, it could be couched in the third person. Then

(1) (1905) 3 C.L.R. 444, at p. 456.

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does it mean the date on which it is drafted or typed or printed, or the date on which the commissioner decides to use it ? It seems to me that these questions really do arise, if the respondent's construction is adopted, and they are not disposed of by saying that prima facie the date of an instrument is the date stated in it. If we adopt the other construction, the words used mean the date on which the document becomes effective as a "notice" by being served, and all the difficulties disappear.

For the above reasons I am of opinion that, on the construction of s. 55 alone, the notice was defective, and the appellant succeeds. The respondent, however, submitted a further argument based on the *Acts Interpretation Act* 1901-1947. (The Act of 1948 did not come into force until after the material date.) The 16th May 1948, the date on which the notice given to the company expired, was a Sunday, and s. 36 (2) of the Act provides that :—"Where the last day of any period prescribed or allowed by an Act for the doing of anything falls on a Sunday, or on any day which is a public or a bank holiday throughout the Commonwealth, or throughout the State or part of the Commonwealth in which the thing is to be or may be done, the thing may be done on the first day following which is not a Sunday or such public or bank holiday." And s. 46 provides :—"Where an Act confers upon any authority power to make, grant or issue any instrument (including rules, regulations or by-laws), then—(*a*) unless the contrary intention appears, expressions used in any instrument so made, granted or issued shall have the same meanings as in the Act conferring the power, and this Act shall apply to any instrument so made, granted or issued as if it were an Act and as if each such rule, regulation or by-law were a section of an Act."

I should think that the document served in this case was an "instrument" within the meaning of s. 46, and the argument was that, because the time allowed by the notice expired on a Sunday (16th), s. 36 (2) extended the time until midnight on the 17th. The notice having been served on the 3rd, the time which s. 55 required to be allowed expired at midnight on the 17th. The company, it was said, was entitled to have until that time to show cause. It did have until that time. Therefore, it was said, the notice was a good and valid notice.

I would agree that the combined effect of the notice and of s. 36 (2) of the *Acts Interpretation Act* is that the company may "show cause" at any time up to midnight on 17th May. The last day of the period prescribed or allowed by the instrument for the doing of the thing falls on a Sunday. The "thing," therefore, may be

done on the following day, which is a Monday. In my opinion, however, it does not follow that the notice was a good and valid notice. Section 36 (2) of the *Acts Interpretation Act* does not say that the notice shall be construed as if the period specified in it expired on Monday the 17th, instead of Sunday the 16th. And s. 55 of the *Life Insurance Act* does say that the notice shall "specify" a period not less than fourteen days from service of the notice. The notice actually served did not "specify" such a period: it "specified" a period which was too short by one day, and the *Acts Interpretation Act* does not affect this position. The two statutory provisions, read together, mean simply this: the notice must *specify* a period not less than fourteen days from service of the notice within which the thing must be done, *and*, if the last day of the period so specified falls on a Sunday, the thing may be done on the following Monday. The notice simply did not specify such a period, and it is, therefore, bad.

In my opinion, the appeal should be allowed, and there should be judgment in the action for the plaintiff in the form of a declaration that the notice is invalid and void, and an injunction to restrain the respondent from instituting an investigation into the affairs of the company.

Appeal allowed with costs. Judgment for the plaintiff with costs (including costs of motion for judgment and of reference to the Full Court and reserved costs) for (1) *a declaration that the notice of the thirtieth day of April* 1948 *referred to in the statement of claim is void and of no effect, and* (2) *an injunction restraining the defendant his servants and agents from acting on the said notice.*

Solicitors for the appellant, *W. H. Hill & Weir.*

Solicitor for the defendant, *K. C. Waugh*, Crown Solicitor for the Commonwealth.

J. B.