[HIGH COURT OF AUSTRALIA.]

ASSOCIATED DOMINIONS ASSURANCE SOCIETY PROPRIETARY LIMITED . APPELLANT;
PLAINTIFF,

AND

BALMFORD RESPONDENT.

Life Assurance—Administration of Act—Investigation of affairs of company—Notice to show cause why affairs should not be investigated—Functions of officers under Act—Life Insurance Act 1945-1950 (No. 28 of 1945—No. 80 of 1950), ss. 55, 56, 58, 59.

Constitutional Law (Cth.)—Life insurance—Freedom of trade, commerce and intercourse among the States—Statute—Validity—The Constitution (63 & 64 Vict. c. 12), ss. 51 (xiv.), 92—Life Insurance Act 1945-1950 (Cth.) (No. 28 of 1945—No. 80 of 1950), ss. 55, 56.

The Life Insurance Act 1945-1950 (Cth.) provides, by s. 55:—"(1) If it appears to the Commissioner that—(a) a company is, or is likely to become, unable to meet its obligations; (b) a valuation made in pursuance of Division 5 of this Part discloses that the amount of a statutory fund of a company is less than the amount of the liabilities of the company in respect of that statutory fund; (c) a company has failed to comply with any provisions of this Act: (d) a company has not, within a period of one month as from a date upon which the Commissioner demanded from it in writing any information which the Commissioner was entitled under this Act to demand from it, furnished that information fully and satisfactorily; (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; (f) the method of apportionment of income or expenditure of a company among any classes of life insurance business or between life insurance business and any other business is inequitable; or (g) any information in the possession of the Commissioner calls for an investigation into the whole or any part of the life insurance business of the company, 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

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SYDNEY, April 18, 19, 26.

McTiernan J.

MELBOURNE,

May 15, 16; June 1.

> Dixon, Webb and Kitto JJ.

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such an investigation and report to the Commissioner the results of his investigation. (2) 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." Section 56 confers on the commissioner or the inspector powers in making an investigation to require the production of books and documents and to examine officers of the company on oath; and it makes it an offence if the company fails to comply or an officer refuses to be sworn or to give information on his examination. If the commissioner thinks proper to take any action, he may issue such directions to the company as he thinks necessary or proper to deal with the situation disclosed in his conclusions (a summary of which must be supplied to the company) and, in particular, he may direct the company to issue no further policies (s. 58); or he may apply to the High Court for an order that the business of the company or part of it be placed under judicial management or that the company or part of its business be wound up (s. 59).

The commissioner served on an insurance company a notice pursuant to s. 55 of the Act calling upon it to show cause why he should not, on the ground that the company was likely to become unable to meet its obligations, appoint an inspector to investigate the whole of its life-insurance business and report to the commissioner the results of his investigation.

Held that s. 55 did not require a greater degree of particularity in the notice than to apprise the company of the character of the ground on which the commissioner proceeded. The notice therefore conformed with the requirements of the section notwithstanding that the only statement of a ground was a mere repetition of the words of s. 55 (1) (a). Even if it was assumed that the nature of the function to be performed by the commissioner when he considered whether cause had been shown was such as to make it necessary that a company should be placed in possession of the allegations made against it, the statement contained in the notice was in the circumstances of this case sufficient to enable the company fully to appreciate what it had to meet.

Semble: In s. 55 (1) of the Act the expression "so specified" means specified in the notice.

Quaere whether the function to be performed by an investigator under ss. 55 (2) and 56 of the Act is of a semi-judicial character, although it doubtless i mposes on the investigator an obligation—at all events, to the Crown—fairly and honestly to inquire into and report upon the affairs of the company.

Per McTiernan J.: Sections 55 and 56 of the Life Insurance Act 1945-1950 are within the legislative powers of the Commonwealth under s. 51 (xiv.) of the Constitution. Assuming, without deciding, that life insurance may be an activity to which s. 92 of the Constitution applies, neither s. 55 nor s. 56 would be an unconstitutional interference with the freedom of life insurance.

Decision of McTiernan J. affirmed.

APPEAL from McTiernan J.

On 28th March 1951 Walter Crowther Balmford, the Insurance Commissioner appointed under the Life Insurance Act 1945-1950 (Cth.) served on Associated Dominions Assurance Society Pty. Ltd. a notice (in terms of s. 55 (1) (a) of the Act) calling on the company to show cause within twenty-one days why he should not on the ground that the company was likely to become unable to meet its obligations appoint one Caffin to investigate the whole of the life-insurance business of the company and report to the commissioner the results of his investigation. By way of showing cause the company submitted to the commissioner a document in which it referred to various aspects of its affairs and complained that it had been placed at a serious disadvantage in showing cause because the commissioner had not disclosed to it what matters. tendencies or states of fact were material to the opinion he claimed to have formed, when the inability to meet the company's obligations was likely to arise and whether the obligations to which he referred were the whole of the financial obligations of the company and if not to what obligations or what class of obligations he referred in the notice. It also complained that, if an investigation was to be made, Caffin was not a proper person to make it; and it referred to an action pending in the Supreme Court of New South Wales by the company against Caffin, the commissioner, the Commonwealth and others claiming damages as for a conspiracy by the defendants to injure the company by, inter alia, an abuse of the powers of the commissioner under the Act.

On 18th April 1951 the company commenced against the commissioner in the High Court a suit in which it sought to restrain him from proceeding in purported pursuance of s. 55, and thereafter under s. 56, of the Act.

On the same day the company obtained ex parte from McTiernan J. an interim injunction restraining the commissioner from acting further in pursuance of the notice until an hour appointed on the following day when an application on notice might be made.

A motion on notice to the commissioner was made accordingly to *McTiernan J.* on 19th April, seeking to have the interim injunction continued until the hearing of the suit. By consent the hearing of the motion was adjourned to a date to be fixed and the interim injunction was continued in the meantime, the costs of the day's proceedings to be costs in the motion. The matter was ultimately dealt with on 26th April. On the hearing of the

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W. J. V. Windeyer K.C. and E. J. Hooke for the respondent (defendant).

Cur. adv. vult.

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McTiernan J. The applicant in this motion is a life insurance company and is subject to the Life Insurance Act 1945-1950 (Cth.). The Insurance Commissioner has power under Division 7 of the Act to make an investigation of the company's business or to cause it to be made. He intends to exercise this power. It is a preliminary condition to the exercise of the power that the commissioner should conform with s. 55 of the Act. He gave to the company notice under this section declaring that it appeared to him that the company is likely to become unable to meet its obligations and calling on it to show cause why he should not on that ground appoint Sidney William Caffin to investigate the whole of the company's life-insurance business and report to the commissioner the results of his investigations. The company within the time allowed by the notice gave to the commissioner a lengthy written communication declaring that the purpose thereof was to show cause as required by the notice. The commissioner intends to proceed in accordance with the terms of the notice on the footing that the company has failed to show cause to his satisfaction. action brought by the company against the commissioner raises the question of his right to proceed with the investigation and claims an injunction. On 18th April the company applied ex parte for an interim injunction. An order was made restraining the commissioner until a motion which the company was given leave to serve was heard. The motion sought an injunction until the hearing of the action. It was returnable on 19th April 1951. motion came on for hearing it was by consent adjourned and the interim injunction was by consent continued until the motion was heard.

One ground of the motion is that the Life Insurance Act is invalid. I think that it is only necessary to consider whether s. 55 and s. 56 are invalid. These sections are plainly within the power vested by s. 51 (xiv.) in the Parliament. Then it is said that life insurance is an activity to which s. 92 applies and the Life Insurance Act interferes with the company's inter-State transactions. It is no doubt an interesting question whether life insurance is an activity to which s. 92 applies. Even if life insurance is one of those activities (I pass no opinion on that question) the proposition that s. 92 denies to Parliament the power to provide for the investigation of the financial position of a life-insurance company is one for which the decisions on s. 92 provide no support whatever. In my opinion it is not a proposition which could be argued with any prospect of success. It is not enough for the company merely to raise the question whether this Act is invalid to secure an injunction restraining the commissioner from putting it in force until the Full Court determines that question. It is necessary that the question is at least arguable. So far as ss. 55 and 56 are concerned I am clearly of opinion that these sections are within the powers of Parliament and do not offend against s. 92, if the section applies, and I think also that the contrary view could not be advanced with any reasonable prospect of success.

The other ground of the motion is that there is a substantial question or at least an arguable question whether it was the commissioner's duty under s. 55 to accept the reasons which the company gave him why Mr. Caffin should not be appointed to investigate its lifeinsurance business. The company sought to show the commissioner that he was incorrect in his view that the company is likely to become unable to meet its obligations, and that Mr. Caffin was not a fit and proper person to appoint. The company's claim that the commissioner should be restrained from proceeding to appoint Mr. Caffin to make an investigation raises the question of the power of the Court to control the commissioner in his administration of The Court cannot intervene unless the commissioner has failed to observe the express directions in the section or some rule which is implicit in it. He has a duty under the section to consider honestly the cause that is shown. I cannot see any ground for doubting that the commissioner discharged this duty in the present The materials whereby the company showed cause deal with the financial position of the company and its relations with Mr. The Act gives no right of appeal against the commissioner's decision that a company has failed to show cause to his satisfaction. The Court would obviously consider the case at the hearing on a narrower basis than that it has power to review the commissioner's decision. Even if the Court considered the case on the wider basis that it could examine the whole matter for itself and decide whether the company had shown cause, I think, after considering all the materials before me, that the company could not possibly succeed in establishing that the commissioner would be acting unlawfully if

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he proceeds with the investigation into the life-insurance business of the company. Section 55 gives the commissioner power to appoint a person to make an investigation. It was conceded by the commissioner for the purposes of the present motion that the company was entitled to show cause both against an investigation and the appointment of Mr. Caffin to make it. The section imposes no express limitations upon the commissioner's power to choose a person to make the investigation. If limitations exist they are implicit in the section and they would depend upon whether the section intends that the person should be a hand of the commissioner or owe duties both to him and to the company and what is the nature of those duties. The best that could be argued for the company is that the section necessarily implies that if the company shows that the person whom the commissioner appoints is affected by unlawful bias, malice or hostility against the company, the commissioner is precluded from appointing him. Indeed in the present case the company alleges that the commissioner nominated Mr. Caffin because he was an enemy of the company. If it were within the power of the Court to decide that a person whom the commissioner nominated was incapable of acting and the commissioner should have taken the same view. I think that the materials before the Court do not raise any substantial issue as to whether Mr. Caffin is a fit and proper person to investigate the life insurance business of the company. The strongest ground that is argued against the appointment of Mr. Caffin is that he is a defendant in the action which the company instituted. The writ was issued on 14th December 1949. The declaration alleges that Mr. Caffin maliciously conspired with the Commonwealth, the commissioner and two persons who have been members of the company's staff, to injure the company. It is alleged by the company that the commissioner appointed Mr. Caffin in order to get evidence to assist him and the other defendants in the action. The action has not proceeded substantially beyond the declaration. In the present proceedings the company rests upon the allegations made against Mr. Caffin and his position as defendant, to call in question the validity of his appointment to make the investigation. No proof is supplied to raise even the suspicion that Mr. Caffin maliciously The mere fact that the conspired as alleged by the company. company has joined him as a defendant is not enough to raise a doubt about the validity of his appointment, if it is within the province of the Court to override the discretion of the commissioner. It seems that on the facts before the Court the more probable hypothesis is the one put by Mr. Windeyer; the action is a counter

attack made by the company against the persons concerned in H. C. of A. applying s. 55 to the company. It seems to me after considering all the materials before the Court that the company could not contend with any prospect of success that the commissioner in any way abused his powers under s. 55.

The motion is refused with costs including any reserved costs. From this decision the company appealed to the Full Court.

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J. D. Holmes K.C. (with him Dr. F. Louat and C. I. Menhennitt), for the appellant. At the moment it is necessary to look at certain aspects of s. 55 (1) of the Life Insurance Act 1945-1950 (Cth.) in a general way. That sub-section provides that, "if it appears to the Commissioner" (the defendant, Balmford, now the respondent here) "that (a) a company . . . is likely to become, unable to meet its obligations; . . . the Commissioner may serve on the company a notice in writing calling upon it to show cause, within such period . . . 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 and appoint a person . to make such an investigation and report to the Commissioner the results of his investigation." Then certain results flow from that which need not at the moment be specified. The first ground which we take is that the notice is bad in that it does not comply with s. 55 because it does not specify a ground against which the company must show cause. This is a matter purely arising out of the construction of the section. It will be seen that what the commissioner has to do when something within s. 55 (1) (a) (or any of the other paragraphs of s. 55 (1)) appears to him is to serve on the company a notice calling on it to show cause, on the grounds "so specified", why there should not be an investigation. The word "so" means "in the notice". There is no reference back to any other way in which grounds are specified, and the only meaning that can be given to the expression "on the grounds so specified " is to read it as " on the grounds in the notice specified ". This means that, to specify a ground, the notice must state a matter with regard to which cause has to be shown. A mere statement of one or more of the matters in pars. (a)-(q) of s. 55 (1) is irrelevant because those matters are not grounds but are things from which grounds stem. This is supported, for example, by reference to s. 55 (1) (c). If it appeared to the commissioner that a company had failed to comply with some provisions of the Act, surely it would not be a sufficient specification to say: "on the grounds that the company has failed to comply 1951.

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H. C. OF A. with provisions of the Act ". As a specification of a ground it is reasonable to think that something more must be required. All that the commissioner has done is to state the matters or things which have activitated him—things which have led to the statement by him of grounds; but they are the mere repetition of the formula in the Act—they do not give us the matters on which the formula in the Act is based. It is submitted that the power of the commissioner, though administrative, must be exercised in a judicial manner (a) when he gives the notice in writing; (b) while cause is being shown; and (c) when he formulates his view of whether the company has failed to show cause to his satisfaction. As to item (a), the argument already put as to the construction of s. 55 (1) overlaps the present argument, but the latter puts the matter in a different aspect. The proceedings being proceedings to show cause, the commissioner's function is not one which he can exercise arbitrarily or subjectively. The case differs from cases such as Liversidge v. Anderson (1) and other cases in which the words in question related to having "reasonable cause to believe" or some kindred expression. [He referred to Nakkuda v. Javaratze (2); R. v. Connell; Ex parte The Hetton Bellbird Collieries Ltd. (3); Arthur Yates and Co. Pty. Ltd. v. Vegetable Seeds Committee (4).] It may be that in the first instance there is something subjective in the question whether a notice should issue, but when it comes to the actual form of notice the commissioner is embarking on a course which must be objective—he must act in a judicial manner. The position here is not dissimilar from that of the issue of a magistrate's summons on an information which is inadequate in that it does not tell the defendant what he is called upon to answer. It is implicit in the present Act, it is submitted, that the notice must be one that is reasonably capable of being understood and dealt with by the company to which it is addressed. The sections following s. 55 are relied on in this connection as showing the serious consequences which may ensue upon a failure to show cause. We rely on our letter of reply to the notice in a way which is independent of our first argument as to the validity of the actual notice. Even if we cannot say as a general proposition that the notice must contain what may be called particulars, nevertheless cause is shown where the company establishes that it does not know what case it has to meet and the commissioner persists in failing to tell the company what it has

^{(1) (1942)} A.C. 206, at p. 221.(2) (1951) A.C. 66, at pp. 76, 77.

^{(3) (1944) 69} C.L.R. 407, at pp. 430, 431, 436, 450, 455. (4) (1945) 72 C.L.R. 37.

to meet. It would be a simple matter for the commissioner to H. C. of A. withdraw the notice and serve a new one. Thus, his powers are by no means frustrated by our attitude in the matter. Either cause has been shown or the company should be given an opportunity of a hearing—using that word in a broad sense to cover an oral hearing or a showing of cause in writing after the requisite information has been supplied. [He referred to R. v. City of Westminster Assessment Committee: Ex parte Grosvenor House (Park Lane) Ltd. (1).]

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[DIXON J. referred to R. v. Milk Board; Ex parte Tompkins (2).] [Counsel referred to Associated Dominions Assurance Society Pty. Ltd. v. Balmford (3); West Midlands Joint Electricity Authority v. Pitt (4).] If the commissioner was obliged to act judicially in respect of any of the items (a), (b) and (c) already mentioned, it is submitted that he failed to do so in that he denied to the company fundamental rights of natural justice; he denied it a hearing (in the sense which has been indicated). Moreover, he was biased himself and proposed—as appears from the notice—to appoint a biased person (Caffin) to conduct the investigation: and he was capricious and arbitrary in the exercise of his powers. At this stage it is appropriate to refer to the action for conspiracy by the company against Caffin, the commissioner (Balmford), the Commonwealth and others which is pending in the Supreme Court of New South Wales. It seems clear (certainly clear enough to make the case a proper one for an interlocutory injunction) that the commissioner (himself a biased person by reason of his being a defendant in that action) is attempting to use his powers under the Act to enable his co-defendant, Caffin, to conduct a "fishing excursion" into the affairs of the company, to obtain information which could not be obtained by the ordinary processes of discovery and interrogatories in the action. [He referred to Dickason v. Edwards (5), per Isaacs J.; R. v. Sussex Justices (6); R. v. Essex Justices; Ex parte Perkins (7); Franklin v. Minister of Town & Country Planning (8); Colonial Sugar Refining Co. Ltd. v. Attorney-General for the Commonwealth (9), per Barton J.; Halsbury's Laws of England, 2nd ed., vol. 26, pp. 286, 287.]

^{(1) (1941) 1} K.B. 53, particularly at pp. 67 et seq. (2) (1944) V.L.R. 187.

^{(3) (1950) 81} C.L.R. 161, at p. 182.

^{(4) (1932) 2} K.B. 1, at p. 28.

^{(5) (1910) 10} C.L.R. 243, at pp. 258, 259.

^{(6) (1924) 1} K.B. 256, at p. 258.

^{(7) (1927) 2} K.B. 475.

^{(8) (1948)} A.C. 87.

^{(9) (1912) 15} C.L.R. 182, at p. 202.

H. C. OF A. [DIXON J. referred to R. v. London County Council; Ex parte 1951. Akkersdyk; Ex parte Fermenia (1).]

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W. J. V. Windeyer K.C. (with him E. J. Hooke), for the respondent. It is clear even on the figures supplied by the appellant itself that it is insolvent and must at some future date actually be unable to meet its obligations. A balance sheet for an insurance company is concerned on both the liabilities and assets sides with matters which will arise in the future and which, therefore, have to be, by the use of some rates of interest, discounted and brought to the present. It is submitted on the facts that the commissioner is entirely reasonable in assuming that default will take place at some time before 1960. It might be said that it is the only reasonable assumption that can be made on the evidence. However, it is certainly one which an honest and reasonable man could make, and it is a sufficient basis for asking for an investigation. The case is not one in which a person lacks expert knowledge necessary to an understanding of a notice received by him. appellant, as an insurance company, would have understood quite well what was meant by the notice; and, even if there might be cases under s. 55 in which something in the nature of particulars would be necessary, this is not one of them. The facts themselves are, it is submitted, sufficient to refute any suggestion of mala fides on the part of the commissioner. The suggestion, however, of the appellant appears to be that the commissioner is disqualified under rules of law relating to bias on the part of persons exercising quasi-judicial functions. It is suggested that the commissioner exercises quasi-judicial functions at various stages. It may be doubted whether it is necessary in this case to determine whether his functions are quasi-judicial or administrative. If it is necessary, it is submitted that, in issuing the notice, the function is purely administrative; it may be quasi-judicial in the second phase, when the showing of the cause is being considered; if so, it becomes administrative again when an actual appointment is being made. [He referred to B. Johnson & Co. (Builders) Ltd. v. Minister for Health (2); Liversidge v. Anderson (3).] The main basis for the suggestion of bias against the commissioner seems to be his proposal to appoint Caffin as investigator. This is founded on the fact that Caffin is a defendant in the conspiracy action, plus particular allegations of impropriety on his part, some of which, the appellant's letter says, are to be found in a case of Associated Dominion Assurance

^{(1) (1892) 1} Q.B. 190, at p. 197.

^{(3) (1942)} A.C. 206, at p. 254.

^{(2) (1947) 2} All E.R. 395, at p. 398.

Society Pty. Ltd. v. Andrew & Haraldson (1), to which the letter gives an incorrect reference. That case is far from supporting the appellant's suggestions against Caffin. In any event Caffin is not a person to whom the rules about absence of bias in the performance of judicial or quasi-judicial functions would apply. He would make no decision binding the appellant; he would merely make a report to the commissioner. There is no evidence that Caffin is in fact biased unless the mere fact that he is a defendant in the conspiracy action is sufficient: and the same applies to the commissioner. It would be a curious position if the commissioner's hand could be staved merely by the issue of a writ against him: that would mean that he could never exercise his functions at all. It may be added that the long delay of the appellant in taking steps to bring its conspiracy action to trial suggests strongly that the action is not bona fide. There is no sufficient basis for the suggestion that Caffin or the commissioner is likely to be biased merely because he is a defendant in the action.

[Dixon J. referred to R. v. London County Council; Re The Empire Theatres (2).]

In so far as the suggestion is that cause has been shown under s. 55 as to the appointment of Caffin, the answer to it is that the commissioner is the person who has to be satisfied—honestly satisfied, of course. He may quite honestly have come to the conclusion that the conspiracy action was not brought in good faith and that there was in fact no bias on Caffin's part. It is desired to add that the actual decision in the case referred to by Dixon J., R. v. Milk Board (3), does not govern the present case. If, as we submit, the commissioner was justified in thinking that there were reasonable grounds for the investigation, he was justified in appointing an investigator and in choosing Caffin; the only thing that is said against the latter depends on the assumption that there are no reasonable and probable grounds for the investigation. The conspiracy alleged is a conspiracy to investigate the appellant's affairs by medium of the Act, there being no ground for invoking the Act, or, alternatively, a conspiracy to damage the appellant by having an investigation, there being no reasonable and probable grounds. It may be observed that the appellant was very obscure as to the damage likely to be suffered. It is submitted, therefore, that McTiernan J. properly exercised his discretion in refusing the interlocutory injunction.

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^{(1) (1949) 49} S.R. (N.S.W.) 351, at pp. 352, 354-358; 66 W.N. 176, at pp. 177, 178.

^{(2) (1894) 71} L.T. 638, at p. 640.

^{(3) (1944)} V.L.R. 187.

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J. D. Holmes K.C., in reply, referred to Johnson's Case (1); Yates' Case (2); R. v. Hendon Rural District Council; Ex parte Chorley (3).

Cur. adv. vult.

THE COURT delivered the following written judgment:—

This is an appeal from an interlocutory order made by McTiernan J. dismissing an application for the continuance of an interim injunction until the hearing of the suit. The suit is one in which an injunction is sought against an officer of the Commonwealth. The officer is the Insurance Commissioner appointed under the Life Insurance Act 1945-1950 (Cth.). The purpose of the suit is to restrain him from proceeding in purported pursuance of s. 55 and thereafter under s. 56 of the Act. Section 55 (1) confers a power upon the commissioner, when one or other of certain conditions appears to him to exist, to serve upon a company carrying on life-insurance business in Australia a notice in writing calling upon it to show cause why he should not investigate the business or appoint a person called an inspector to do so and report to the commissioner the results of his investigation. The notice must specify a period for the showing of cause not less than fourteen days from the date of the notice. By the notice the commissioner must call on the company to show cause within the period "why he should not, on the grounds so specified "investigate the business or appoint a person to do so. The expression "so specified" appears to mean specified in the notice.

Sub-section (2) of s. 55 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.

Section 56 confers upon the commissioner or the inspector powers in making an investigation to require the production of books and documents and to examine officers of the company on oath and the section makes it an offence if the company fails to comply or an officer refuses to be sworn or to give information on his examination. The consequences which follow an investigation are stated by ss. 58 and 59. The commissioner must furnish the company with a summary of the conclusions arrived at by him as a result of the investigation. If he thinks proper to take any action he has three courses open to him. He may issue such directions to the company as he thinks necessary or proper to deal

^{(1) (1947) 2} All E.R. 395, at p. 405. (2) (1945) 72 C.L.R., at p. 73.

^{(3) (1933) 2} K.B. 696, particularly at p. 703.

with the situation disclosed in his conclusions and in particular he may direct the company to issue no further policies. He may apply to this Court for an order that the business of the company or part of it be placed under judicial management. Finally he may apply to the Court for an order winding up the company or part of its business.

On 28th March 1951 the defendant commissioner caused a notice under s. 55 to be served on the plaintiff company. notice stated that it appeared to him that the company was likely to become unable to meet its obligations and that, in pursuance of s. 55, he called upon the defendant company to show cause within twenty-one days why he should not, on the ground that the defendant company was likely to become unable to meet its obligations, appoint one Caffin to investigate the whole of the life-insurance business of the company and report to the defendant commissioner the results of his investigation. The twenty-one days expired at midnight on 18th April 1951: see Associated Dominions Assurance Society Pty. Ltd. v. Balmford (1). On that day the plaintiff company commenced this suit and obtained ex parte from McTiernan J. an interim injunction restraining the defendant commissioner from acting further in pursuance of the notice until an hour appointed on the following day when an application on notice might be heard. A motion on notice was made to continue the interim injunction until the hearing of the The motion was disposed of on 26th April, the interim injunction having been continued in the meantime. On 26th April McTiernan J. refused the motion to continue it as an interlocutory injunction and thus left the defendant commissioner free to proceed under the notice as he might be advised.

In support of the appeal from the order dismissing the motion it was contended that the notice contained no sufficient information of the matter against which the plaintiff company was required to show cause. It was said that s. 55 conferred an authority and imposed a duty upon the commissioner of a semi-judicial character which he could not discharge without affording an adequate opportunity to the plaintiff company of meeting the facts upon which he based the notice to show cause. The plaintiff company complained that a notice stating simply that the company was likely to become unable to meet its obligations gave no information as to the facts it was required to meet. Further, it was said that the various paragraphs of s. 55 (1) took forms which made it apparent that the grounds to be specified in the notice must be

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Dixon J. Webb J. Kitto J. stated with particularity and not simply formulated in the terms of the paragraphs. The plaintiff company in fact submitted a document to the defendant commissioner by way of showing cause. In the document the plaintiff company complained that it was placed at a serious disadvantage in showing cause because the commissioner had not disclosed to it what matters, tendencies or states of fact are material to the opinion he claimed to have formed, when the inability to meet the plaintiff company's obligations was, in his opinion, likely to arise and whether the obligations to which he referred were the whole of the financial obligations of the company, and if not what obligations or what class of obligations he referred to in the notice.

We think that this complaint is groundless. In the first place, there is nothing in the language of the section to require any greater degree of particularity than to apprise the company of the character of the ground upon which the commissioner proceeds. In the next place, if it be assumed that the nature of the function to be performed by the commissioner when he considers whether cause has been shown is such as to make it necessary that a company shall be placed in possession of the allegations made against it, we have no doubt that the statement contained in the notice was in the circumstances of this case quite sufficient to enable the company fully to appreciate what it had to meet.

This is an interlocutory application and one which relates to an administrative proceeding in the course of which the commissioner as the officer concerned must judge for himself what the facts are. For both reasons it is undesirable in this judgment to discuss the facts of the case. It is enough to say that, having examined the annual reports and considered the long history of the proceedings which led up to the present notice, we are unable to think that the company was placed at any disadvantage. dealing with the sufficiency of a notice under s. 55, it must be remembered that the company to which it is addressed is engaged in insurance business and must be taken to be well acquainted with insurance practice and finance. The commissioner is a public officer who deals with the same matter. It would be difficult to suppose that any insurance company which was informed that it appeared to the commissioner that it was likely to become unable to meet its obligations was left in a situation in which it could not adequately show cause against that allegation.

We were informed that upon the hearing of the motion for the interlocutory injunction the commissioner's counsel stated that the commissioner was not satisfied with the cause shown. In

supporting this appeal counsel for the plaintiff company contended that the power of the commissioner conferred by s. 55, though administrative in character, was, at all events at the stage when he was considering whether cause had been shown, an administrative power of a semi-judicial character and that the commissioner had failed to act judicially, not only on the ground with which we have just dealt, namely because the notice and the absence of any further particulars constituted a denial of natural justice, but also on the ground that the commissioner himself was biased and that Caffin, the person he proposed to appoint as inspector, was also a person who was biased and that his bias disqualified him from conducting the investigation. It was further contended that the conclusion that the plaintiff company had not shown cause was capricious and arbitrary.

Concerning the defendant commissioner himself, it is enough to say that nothing that has been placed before us discloses any evidence of bias. The suggestion that Caffin was biased has a double aspect. Inasmuch as the notice in the form in which it was given calls upon the plaintiff company to show cause against the appointment of Caffin, it was said that if the company established that Caffin was a person disqualified by bias from investigating its affairs, then it had shown cause. It was also said that it was an independent ground for granting an interim injunction against Mr. Caffin's appointment because to appoint him would be contrary to natural justice. We do not think that the facts disclosed any adequate ground for regarding Caffin as disqualified for the post of inspector. The grounds upon which his supposed disqualification rested are briefly referred to in the document submitted to the commissioner by way of showing cause and they are amplified by further material to which we were referred. We do not think that it is desirable to discuss this material or to do more than indicate our conclusion. We must not be taken, however, to adopt the view that the function to be performed by an investigator under ss. 55 (2) and 56 is of a semi-judicial character, although it doubtless imposes upon the investigator an obligation, at all events to the Crown, fairly and honestly to inquire into and report upon the affairs of the company. The case that the conclusion of the commissioner that the cause has not been shown was capricious and arbitrary appears to us to have no foundation. It is not for us to express any opinion concerning the probative force of any of the materials which were available to the commissioner and the conclusion which should be drawn from them. For the purposes of this appeal it is sufficient to say that, first,

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Dixon J. Webb J. Kitto J. at the stage when, according to the commissioner's notice, it appeared to him that the company was likely to be unable to meet its obligations, and, next, at the stage when he formed the opinion that it had failed within the period specified in the notice to show cause to his satisfaction, the material before the commissioner was such as to enable a reasonable man to come to those conclusions and that there is nothing to suggest that the commissioner proceeded upon any erroneous principle or ground.

We agree in the view of *McTiernan* J., who said that he could not see any ground for doubting that the commissioner discharged his duty in the present case. We do not think that the plaintiff has made out that there is a substantial prospect of its succeeding in the suit or that upon the balance of convenience the defendant commissioner should be restrained from proceeding in the exercise of the powers which the Act confers upon him.

The appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellant, W. H. Hill & Weir, Sydney, by Williams & Matthews.

Solicitor for the respondent, D. D. Bell, Crown Solicitor for the Commonwealth.

E. F. H.