

[HIGH COURT OF AUSTRALIA.]

W. H. BLAKELEY & CO. PROPRIETARY
 LIMITED

PLAINTIFF ;

AND

THE COMMONWEALTH OF AUSTRALIA
 AND ANOTHER

DEFENDANTS.

ATTORNEY-GENERAL OF THE COMMON-
 WEALTH OF AUSTRALIA

APPLICANT ;

AND

R.T. COMPANY PROPRIETARY LIMITED
 AND OTHERS

RESPONDENTS.

Constitutional Law (Cth.)—Acquisition of land—Statute—Validity—Statement by Governor-General of purposes of acquisition made conclusive—“Public purposes” —Notice of acquisition—Sufficiency—The Constitution (63 & 64 Vict. c. 12), s. 51 (v.), (xxxi.), (xxxix.)—Lands Acquisition Act 1906-1936 (No. 13 of 1906 —No. 60 of 1936), ss. 5, 13, 15 (2).

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 Feb. 27 ;
 March 2, 3.

Held, that, on the proper interpretation of the Lands Acquisition Act 1906-1936, a notification by the Governor-General, under s. 15 (2) of the Act, of the purpose of an acquisition, was conclusive of the actual existence of that purpose, and that it was incidental to the power granted by s. 51 (xxxi.) of the Constitution so to provide.

SYDNEY,
 April 1.

In the Gazette dated 10th June, 1948 notification was given that certain land had been acquired under the Lands Acquisition Act 1906-1936 “for the following public purpose, namely : Purposes of providing office accommodation for Departments of the Commonwealth and authorities of the Commonwealth at Melbourne, Victoria” ; and in the Gazette dated 14th October, 1948 notification was given that certain other land had been acquired under the Act “for the following public purpose, namely : Postal purposes at Melbourne, Victoria ”.

Dixon C.J.,
 McTiernan,
 Williams,
 Webb,
 Fullagar,
 Kitto and
 Taylor JJ.

Held, that in each notification the statement as to purpose was sufficiently specific to satisfy the requirements of s. 15 (2) of the Act.

[EDITOR’S NOTE.—In the case of *Attorney-General of the Commonwealth of Australia v. R. T. Co. Pty. Ltd. and Others* an appeal was lodged to the Privy Council, and on 23rd November 1953 the Privy Council dismissed the appeal. There was no appeal to the Privy Council in the case of *W. H. Blakeley & Co. Pty. Ltd. v. The Commonwealth of Australia and Another*.]

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DEMURRERS AND QUESTIONS OF LAW raised for the opinion of the Full Court by *Fullagar J.*

W. H. Blakeley & Co. Pty. Ltd. v. The Commonwealth of Australia and Another.

W. H. Blakeley and Co. Proprietary Limited, a company incorporated in the State of Victoria, commenced an action in the High Court of Australia against the Commonwealth of Australia and Wilfred Selwyn Kent Hughes, M.V.O., O.B.E., M.C., E.D., M.P. The statement of claim, delivered on 9th September 1952 was, so far as is relevant, as follows :

2. On and prior to 18th June 1948 the plaintiff was the proprietor of an estate in fee simple in certain pieces of land.

3. By a notification published in the Commonwealth of Australia *Gazette* No. 91 on 10th June 1948 the Commonwealth of Australia and one Victor Johnson the then Minister for the Interior notified that the said land together with all tanks and buildings thereon had been acquired by the Commonwealth of Australia for a public purpose stated in such notification namely :—" purpose of providing office accommodation for the Departments of the Commonwealth and authorities of the Commonwealth at Melbourne Victoria ".

5. Since 10th June 1948 the defendants have not obtained possession of the said land nor sought to do so.

9. The purposes of the said alleged acquisition as stated in the said published notice of acquisition did not constitute any public purpose within the meaning of s. 29 (1) of the *Lands Acquisition Act* 1906-1936 or alternatively the purposes so stated embraced and included purposes extending beyond any public purpose within the meaning of the *Lands Acquisition Act* 1906-1936.

10. The said notification published in the said *Gazette* did not express therein the true purpose for which the said land was sought to be acquired by virtue of such notification.

11. The acquisition of the said land sought to be effected by the said notification was not an acquisition for any public purpose within the meaning of the *Lands Acquisition Act* 1906-1936.

12. (a) On 10th. June 1948 the Commonwealth of Australia did not require or intend to acquire or use the said land for any public purpose within the meaning of the *Lands Acquisition Act* 1906-1936. (b) Alternatively on the said date the Commonwealth of Australia did not require or intend to use the said lands for any such public purpose forthwith or within any fixed or determinate or reasonable time or at all.

13. On 10th June 1948 no facts existed which constituted or created a requirement of or an intention in the Commonwealth

of Australia to acquire the said land for any such public purpose and the Commonwealth neither required nor intended to use the said land for any such purpose either forthwith or within any fixed or determinate or reasonable time or at all.

14. The said alleged acquisition was not in truth an acquisition for any such public purpose nor for any valid purpose of the Commonwealth under the Constitution.

15. The plaintiff claimed, *inter alia*, a declaration that the said notification was void and of no effect ; (i) in that it did not comply with the requirements of s. 15 of the *Lands Acquisition Act* 1906-1936 ; (ii) in that the said land was not sought to be acquired for a public purpose within the meaning of the *Lands Acquisition Act* 1906-1936 ; (iii) that no requirement of the said land for any such public purpose existed or resided in the Commonwealth at any material time ; (iv) in that the said purported acquisition was not in truth an acquisition for a public purpose under the said Act or for any valid purpose of the Commonwealth under the Constitution ; and (v) that the *Lands Acquisition Act* 1906-1936 is wholly void and of no effect in that such act was ultra vires the Constitution s. 51 (xxxi.).

The defendants demurred to the statement of claim on the ground that the purposes stated in the notification of acquisition of land by the Commonwealth were public purposes and did not include any purpose which was not a public purpose, and, on the ground that the *Lands Acquisition Act* 1906-1936 was a valid exercise of the powers of the Parliament of the Commonwealth of Australia.

On 9th February 1953, *Fullagar J.* ordered that the following questions of law be raised for the opinion of the Full Court and that argument on the questions of law and the demurrers be heard together.

1. Is the plaintiff entitled to adduce evidence in support of the allegations made in pars. 10, 11, 12, 13 and 14 of the statement of claim ?

2. Is the plaintiff entitled to adduce evidence for the purpose of establishing that the lands referred to in par. 2 of the statement of claim were not acquired for the purposes declared in the notification referred to in par. 3 of the statement of claim and set out in par. 1 of the demurrers or that they were acquired for purposes other than those stated in the said notification ?

3. Do any and which of the facts alleged in pars. 10, 11, 12, 13 and 14 of the statement of claim render the notice of acquisition referred to in par. 3 of the statement of claim and in par. 1 of the demurrers invalid ?

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The Attorney-General of the Commonwealth of Australia on 22nd February 1952 applied to the High Court of Australia by originating summons, directed to R.T. Company Proprietary Limited, Radioprogram Proprietary Limited, Radio City Proprietary Limited and Henry Drysdale, for an order granting a warrant authorising the marshal to deliver possession of the basement of premises known as Rolfes Building, 300 King Street, Melbourne, or of such part thereof as was in the possession of the respondents to the summons, to the Minister of State for the Interior, or to any person authorised by him.

On 24th June 1952 *Fullagar J.* ordered that the originating summons be referred into Court and that pleadings be delivered between the parties. The statement of claim alleged that the respondent Radio City Proprietary Limited had been, prior to 14th October 1948, the registered proprietor of certain land at 300 King Street, Melbourne, which land and the buildings thereon, had, on and after 14th October 1948, vested in the Commonwealth of Australia by virtue of the publication in the Commonwealth of Australia *Gazette* No. 145 of 1948, dated 14th October 1948, of notification of the acquisition of land by the Commonwealth under the *Lands Acquisition Act* 1906-1936. It was further alleged that the respondents were in possession of the basement of the premises and the applicant claimed an order that a warrant be granted authorizing the marshal to deliver possession of the basement to him. The material paragraphs of the defence to the statement of claim of the respondent R.T. Company Proprietary Limited were as follows :

5. In the *Gazette* notification in question the applicant and/or the Minister of State for the Interior as agent for the Commonwealth of Australia stated that the said land and premises were acquired for "postal purposes" but did not state any other purpose or purposes.

6. The purposes of the said alleged acquisition as stated in the public notice of acquisition did not constitute a public purpose within the meaning of s. 29 (1) of the *Lands Acquisition Act* 1906-1936 or alternatively the purposes so stated embraced and included purposes which extend beyond any public purpose within the meaning of the *Lands Acquisition Act* 1906-1936.

7. The said notification published in the said *Gazette* did not express therein the true purposes for which the said land was sought to be acquired by virtue of such notification.

8. The acquisition of the said land sought to be effected by the said notification was not in truth an acquisition for any public purpose within the meaning of the *Lands Acquisition Act* 1906-1936.

9. (a) On 14th October, 1948, the Commonwealth of Australia did not require or intend to acquire or use the land for any public purpose within the meaning of the *Lands Acquisition Act* 1906-1936. (b) Alternatively on 14th October, 1948, the Commonwealth of Australia did not require or intend to use the said land for any such public purpose forthwith or within any fixed or determinate or reasonable time or at all.

10. On 14th October, 1948, no facts existed which constituted or created a requirement of or an intention in the Commonwealth of Australia to acquire the said land for any public purpose within the meaning of the last mentioned Act and the Commonwealth neither required nor intended to use the said land for any such purpose either forthwith or within any fixed and determinate or reasonable time or at all.

11. The said alleged acquisition was not in truth an acquisition for any valid purpose of the Commonwealth under the Constitution.

The material paragraphs of the defence to the statement of claim of the respondents Radioprogram Proprietary Limited, Radio City Proprietary Limited and Henry Drysdale, were identical with those set out above, save that the paragraphs were numbered 4, 5, 6, 7, 8, 9, 10.

The applicant demurred to each of the abovementioned defences on the ground that the purposes stated in the notification of acquisition of land by the Commonwealth were public purposes within the meaning of the *Lands Acquisition Act* 1906-1936 and did not include any purpose which was not such a public purpose, and, to the defence of the respondents Radioprogram Proprietary Limited, Radio City Proprietary Limited and Henry Drysdale, a reply was delivered of which the following are the material paragraphs.

4. On 27th October 1950 the applicant herein caused to be issued out of the Principal Registry of the High Court an originating summons directed to Henry Drysdale the above-named respondent wherein the above-named applicant made application to a justice of the Court for the grant of a warrant authorizing the marshal to deliver possession of the building referred to in the statement of claim herein to the Minister of State for the Interior or some person authorised by the said Minister.

5. By an order made by *Williams J.* on 1st November 1950 his Honour gave the above-named applicant leave to add the above-name respondent Radio City Pty. Ltd. as a respondent to the

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said originating summons and the above-named defendant Radio City Pty. Ltd. was so added pursuant to such leave.

6. On 6th November 1950 (upon the hearing of the said originating summons) *Fullagar J.* granted to the applicant a warrant authorizing the said marshal to deliver possession of the ground, first and second floors of the said premises.

7. By reason of the matters alleged in pars. 4, 5 and 6 hereof the respondents Radio City Proprietary Limited and Henry Drysdale are estopped from disputing the validity of the acquisition of the said building by the Commonwealth of Australia.

On 5th November 1952 *Fullagar J.* ordered that the following questions of law be raised for the opinion of the Full Court and that argument upon the questions of law and the demurrers be heard together.

1. Are the respondents entitled to adduce evidence in support of the allegations made in pars. 7, 8, 9, 10 and 11 of the defence of the respondent R.T. Company Proprietary Limited and pars. 6, 7, 8, 9 and 10 of the defence of the respondents Radioprogram Proprietary Limited, Radio City Proprietary Limited and Henry Drysdale?

2. Are the respondents entitled to adduce evidence for the purpose of establishing that the premises referred to in the statement of claim were not acquired for the purposes declared in the notification referred to in the statement of claim and set out in the demurrers or that they were acquired for purposes other than those stated in the said notification?

3. Do the facts alleged in pars. 4, 5, 6 and 7 of the reply to the defence of the respondents Radioprogram Proprietary Limited, Radio City Proprietary Limited and Henry Drysdale estop the respondents Radio City Proprietary Limited, and Henry Drysdale from disputing the validity of the acquisition of the said premises by the Commonwealth?

G. E. Barwick Q.C. (with him *R. A. Smithers* Q.C. and *M. V. McInerney*), for the plaintiff in the first case. Section 51 (xxxi.) of the Constitution is a subject matter, which is a compound conception. Part of the compound is a purpose. The actual phrase is "For any purpose in respect of which the Parliament has power to make laws". Apart from the defence powers, the Parliament's powers are not limited by purposes at all. We say that the phrase means "For any intended use which a valid law of the Commonwealth could authorise". The laws which authorize the use of property are almost entirely grounded on the incidental power

par. (xxxix.). But for the presence of par. (xxxi.) it would have been almost impossible to hold that each subject matter carried with it the power to take property for the purpose of executing laws under that subject matter.

[McTIERNAN J. That is the American proposition.]

Yes. But it has been held in this Court that the sole power comes from par. (xxxi.): see *Nelungaloo Pty. Ltd. v. The Commonwealth* (1); *P. J. Magennis Pty. Ltd. v. The Commonwealth*, per Latham C.J. (2). It is submitted that the right view is that the presence of par. (xxxi.) has prevented there being included in the grant of power with respect to the other subject matters a power to take property.

Paragraph (xxxi.) is a power granted in aid of the other subject matters. To say that is equivalent to saying that the purposes in respect of which the Parliament has power to make laws are not in every subject matter, and that the aid is by way of assisting some law made under other powers to be carried into force. There is no room for the view that land may be acquired for organisations that do not exist, or to aid laws which, it is anticipated, may be passed in future. It will be found that in the compound conception of acquisition on just terms for a purpose, the purpose will have to be found and justified through par. (xxxix.). For example there is power with respect to lighthouses, and, but for par. (xxxi.), included in that power would be a power to acquire property on any terms for the purpose of lighthouses, building them and so on, but find par. (xxxi.) and there must be left out of the lighthouse power all that falls within par. (xxxi.), the acquisition, the terms of the use of the land, &c. But par. (xxxix.) justifies the various small provisions necessary to carry the law into effect. The time that the light will burn and like matters would be a law on the subject of lighthouses, but, having got that law, you will acquire for the purpose of building a lighthouse because you will get the aid from par. (xxxix.) to enable you to carry out the lighthouse law and through par. (xxxi.) you will get the power to build the lighthouse. The *Lands Acquisition Act* 1906-1936 does not merely authorize someone else to acquire but it acquires. In order to make it work with the constitutional limitation the Governor-General would need to nominate a public purpose as defined, and the notification in the *Gazette* under s. 15 (2) would also have to nominate a public purpose as defined. Then, if the nomination does nominate a purpose in respect of which the Parliament has power to make laws, s. 16 (1) would affect the

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(1) (1950) 81 C.L.R. 144, at p. 157. (2) (1949) 80 C.L.R. 382, at p. 402.

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acquisition. Since the vesting is by force of the Act, it is a legislative acquisition. The subject matter in par. (xxxi.) is not one, the power with respect to which is in any sense conditioned on the view of Parliament or of the Executive. It is conditioned on a fact. The nexus with power is the fact that the acquisition is upon the terms for use as defined. The question of whether the acquisition, using the machinery of the *Lands Acquisition Act* is valid or not must be a judicial question as to all its elements. By that I mean that the Court must be able to see the nexus with the power. I rely on *Australian Communist Party v. The Commonwealth*, per Dixon J. (1); per McTiernan J. (2); per Williams J. (3); per Webb J. (4); per Kitto J. (5). To treat the *Lands Acquisition Act* as valid, s. 15 must be read as if s. 15 (1) was conditioned upon the existence in fact of a public purpose, and s. 15 (2) and s. 16 must be read as themselves conditioned upon the due compliance with s. 15 (1). Any other reading of the Act which allowed the statement of the Governor-General to be conclusive, would bring invalidity to the Act. [He referred to *Grace Brothers Pty. Ltd. v. The Commonwealth*, per Williams J. (6).] The notification in the present case is “for the purposes of providing office accommodation for Departments of the Commonwealth and authorities of the Commonwealth at Melbourne”. Broadly the departments of the Commonwealth fall into two categories—those coming within s. 52 (ii.) and s. 69 of the Constitution—and departments other than these. The words “Departments of the Commonwealth” could not be read to mean only those which now exist. To find out what is the legislative power to support the use of land to house a group of public servants, you must go to par. (xxxix.), find a law to the execution of which the public servants are necessary, and then compare that with the proposed use, to see if you can find a connection. You could not tell from the notification whether the departments outside s. 52 (ii.) are all justifiable or lawful. For example at the time of *Wagner v. Gall* (7) many public servants were engaged in the administration of petrol rationing, although the law they were operating had fallen down. Moreover there is no definition of “authorities of the Commonwealth” and it is difficult to see what would or would not be included in the phrase. It is impossible, looking at this notification, for the Court to see for itself affirmatively whether the constitutional powers have been

(1) (1951) 83 C.L.R. 1, at p. 200.

(2) (1951) 83 C.L.R., at p. 205.

(3) (1951) 83 C.L.R., at pp. 221, 222, 224.

(4) (1951) 83 C.L.R., at pp. 238, 243.

(5) (1951) 83 C.L.R., at pp. 273, 274, 284.

(6) (1946) 72 C.L.R. 269, at p. 297.

(7) (1949) 79 C.L.R. 43.

adhered to. If the notification contains both good and bad purposes, it is invalid and cannot be read down. [He referred to *Minister for Public Works v. Duggan* (1); *Thompson v. Randwick Municipal Council* (2).] The question whether the notification is within the *Lands Acquisition Act*, is a judicial one, and, if that is so, it is competent to the Court to entertain evidence to see whether the fact, which is the nexus of power, actually exists. [He referred to *Nelungaloo Pty. Ltd. v. The Commonwealth* (3); *Jones v. Commonwealth Court of Conciliation and Arbitration* (4).] The *Lands Acquisition Act* being valid, because it confines itself in this respect to the constitutional formula, shifts the question over to each particular acquisition so that it becomes a question in each particular case of whether the Executive is in fact acquiring the land for a public purpose. [He referred to *Arthur Yates & Co. Pty. Ltd. v. Vegetable Seeds Committee*, per Latham C.J. (5); per Rich J. (6); per Starke J. (7); per Dixon J. (8).] If it was possible to adduce evidence the question would arise as to whether the statutory authority was really being carried out. [He referred to *Howarth v. McMahon* (9); *Baiada v. Baulkham Hills Shire Council* (10).]

[DIXON C.J. referred to *Estates Development Co. Pty. Ltd. v. State of Western Australia* (11).]

If the argument is correct, then past transactions could not be reopened, because once the owner of acquired property has been paid out, there is no person interested in reopening the transaction. The American courts have come to the conclusion that the question whether the nexus with the constitutional power exists is always a judicial one, even though the acquisition is strictly legislative and although it is actually carried out by legislation. [He referred to *Cooley's Constitutional Limitations*, 8th ed. (1927), vol. 2, pp. 1119, 1124, 1139; *Rottschaefer on Constitutional Law*, pp. 692, 696, 703; *Rindge Co. v. Los Angeles* (12); *Sears v. City of Akron* (13); *Kohl v. United States* (14); *United States v. Gettysburg Electric Railway Company* (15); *Luxton v. North River Bridge Co.* (16).] It is

(1) (1951) 83 C.L.R. 424, at pp. 444, 445; 18 L.G.R. 60, at p. 72.

(2) (1950) 81 C.L.R. 87, at pp. 105, 106; 17 L.G.R. 256, at pp. 267, 268.

(3) (1950) 81 C.L.R. 144, at p. 158.

(4) (1917) 24 C.L.R. 396.

(5) (1945) 72 C.L.R. 37, at pp. 64, 65.

(6) (1945) 72 C.L.R., at p. 72.

(7) (1945) 72 C.L.R., at pp. 74-76.

(8) (1945) 72 C.L.R., at pp. 82, 83.

(9) (1951) 82 C.L.R. 442, at pp. 448, 449.

(10) (1951) 83 C.L.R. 344, at pp. 350-352.

(11) (1952) 87 C.L.R. 126.

(12) (1923) 262 U.S. 700, at p. 705 [67 Law. Ed. 1186, at pp. 1191, 1192].

(13) (1917) 246 U.S. 242, at p. 251 [62 Law. Ed. 688, at pp. 698, 699].

(14) (1876) 91 U.S. 367 [23 Law. Ed. 449].

(15) (1896) 160 U.S. 668 [40 Law. Ed. 576].

(16) (1894) 153 U.S. 525 [38 Law. Ed. 808].

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submitted on the question of what is the statutory requirement *qua* notification that the notification must be precise and contain an inambiguous statement of purpose. In *Grace Brothers Pty. Ltd. v. The Commonwealth* (1) various members of the Court said that the notice had to state the particular purpose: see per *Latham C.J.* (2); per *Starke J.* (3); per *Williams J.* (4).

R. A. Smithers Q.C. (with him *A. Gillespie-Jones*), for the respondents in the second case. The *Lands Acquisition Act* 1906-1936 deals with expropriation, and if there is any ambiguity, it should be resolved in favour of the subject. It is necessary that the precise purpose of the acquisition should be set out. The subject should be entitled to know this, so that he can gauge his chances of contesting the action of the Government. Moreover, s. 19 of the Act, which is designed to secure Parliament's control over the Executive renders it necessary that Members of Parliament should know the precise purpose of the acquisition, so that they can know whether there has been an appropriation in respect of that purpose. In the present case the stated purposes is "postal purposes at Melbourne". "Postal purposes" is much wider than the permitted head of power "postal services". The notification is not to be read in the light of the constitutional powers that the Governor-General has, but in the light of the words he has used. "Postal purposes" would, and "postal services" would not, cover the preparation of postal articles, because "postal services" do not commence until everything is ready for transmission. Another example is occupation of the land by the correspondence department of a business organization. Moreover, the "postal purposes" are not even alleged to be those of the Commonwealth. Section 59 of the *Lands Acquisition Act* 1906-1936 could not work an estoppel. It merely perfects that which has already been done under the Act, namely, the vesting. The power given by s. 59 is, under the *Lands Compensation Act* 1928 (Vict.), s. 50, given to the Board of Land and Works which may direct the sheriff to hand over to the person acquiring the land, the possession thereof.

D. I. Menzies Q.C. and *G. H. Lush*, for the defendants in the first case and the applicant in the second case.

D. I. Menzies Q.C. The real constitutional question at issue here is as to the constitutional position of the Governor-General. It

(1) (1946) 72 C.L.R. 269.
(2) (1946) 72 C.L.R., at p. 283.

(3) (1946) 72 C.L.R., at p. 287.
(4) (1946) 72 C.L.R., at pp. 297-298.

is a judicial question whether or not land has been acquired for a public purpose. But that is not to say that the Court in reaching a judicial determination will adopt procedure contrary to all constitutional law and practice, and go behind what Parliament says or what the Governor-General says, to find out whether or not the purpose expressed was in fact entertained. If the acquisition was statutory, all members of Parliament would be competent witnesses if such an inquiry as was contended for were held. The only source of knowledge of the intended use of land being acquired is the formal act of the Governor-General, or the statute if the acquisition is legislative.

[KITTO J. You would construe par. (xxxi.) as including within the description of laws for the acquisition of property for any purpose in respect of which the Parliament has power to make laws, laws which authorize the acquisition of property when Parliament or the Executive says it is for those purposes.]

Yes.

[WILLIAMS J. It seems to me that if you put that construction on par. (xxxi.) you remove the protection that the subject gets from the Court to see that the Constitution is obeyed.]

Not of necessity. It is not open to any subject in a Court to submit that Parliament is acting fraudulently, or that the Governor-General is acting fraudulently, so you get to exactly the same end by a somewhat different route. The only review open to the Court is to say that the stated purpose is not a public purpose within the Constitution or the *Lands Acquisition Act* 1906-1936. I concede that any law made for the acquisition of property must be supported by par. (xxxi.). But it does not follow that it is necessary to rely on par. (xxxix.) in every case. For example an acquisition for "postal purposes" might be supported by a law under par. (xxxi.) and par. (v.) without resort to par. (xxxix.). Nor is it necessary that before acquisition, there must be a law of the Parliament showing the purpose. To substitute the word "use" for the word "purpose" is unnecessary and misleading. Parliament might acquire land near a naval or military installation merely for the purpose of keeping it vacant. Section 52 (i.) of the Constitution gives the Commonwealth power to make laws with respect to places acquired by the Commonwealth for "public purposes". In *Bank of New South Wales v. The Commonwealth* (1) the question of acquisition arose and the Court treated the matter it was called upon to decide as whether or not the acquisitions were supported by pars. (xxxi.) and (xiii.): see per *Latham C.J.* (2); per *Rich*

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(1) (1948) 76 C.L.R. 1.

(2) (1948) 76 C.L.R., at p. 206.

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and *Williams* JJ. (1); per *Starke* J. (2); per *Dixon* J. (3); per *McTiernan* J. (4). When regard is had to what has been said on many occasions, that the principal power includes within it everything which is incidental to the subject matter, and that you get that from the principal power rather than par. (xxxix.), it makes it unnecessary firstly to force everything into par. (xxxix.) and then to contract the power which is conferred by par. (xxxix.) so that you can only deal with matters on which Parliament has already passed a law. [He referred to *Attorney-General for the Commonwealth v. Colonial Sugar Refining Co. Ltd.* (5); *Le Mesurier v. Connor* (6).]

[DIXON C.J. referred to *Stemp v. Australian Glass Manufacturers Co. Ltd.* (7).]

In *Attorney-General for the Commonwealth v. Colonial Sugar Refining Co. Ltd.* (5) the Privy Council held that par. (xxxix.) authorized the setting up of a Royal Commission into matters in respect of which the Commonwealth had legislative power, but in respect of which it had passed no legislation, so even if the acquisition in the case of *W. H. Blakeley & Co. Pty. Ltd.* did come within par. (xxxix.) there would be no need to justify it by reference to any present statute. If it is true to say that the notification of acquisition must identify some exercise of Commonwealth power in the form of a statute which authorizes the purpose for which the land is being acquired then the notice in *Grace Brothers Pty. Ltd. v. The Commonwealth* (8) should have been held bad. The acquisition there was pursuant to the *Lands Acquisition Act*. The question was left in its widest terms, because reg. 72A of the *National Security (Supplementary) Regulations* was not material for this purpose. Yet the notice was held to be valid. Moreover, the particularity has been absent from the notification in all acquisitions which have come before this Court: see *Hazeldell Ltd. v. The Commonwealth* (9); *The Commonwealth v. New South Wales* (10); *Cunningham v. The Commonwealth* (11). There is nothing inconsistent between *Roche v. Kronheimer* (12) and *Australian Communist Party v. The Commonwealth* (13). In the former case nothing more was decided than, that in the circumstances brought

(1) (1948) 76 C.L.R., at pp. 259, 266.

(2) (1948) 76 C.L.R., at p. 319.

(3) (1948) 76 C.L.R., at p. 353.

(4) (1948) 76 C.L.R., at p. 393.

(5) (1914) A.C. 237; (1913) 17 C.L.R. 644.

(6) (1929) 42 C.L.R. 481.

(7) (1917) 23 C.L.R. 226.

(8) (1946) 72 C.L.R. 269.

(9) (1924) 34 C.L.R. 442.

(10) (1923) 33 C.L.R. 1.

(11) (1948) 79 C.L.R. 424.

(12) (1921) 29 C.L.R. 329.

(13) (1951) 83 C.L.R. 1.

to the attention of the Court, the circumstances of which the Court could take judicial notice did not reveal a nexus between the power and the form of the particular legislation. The distinction between the act of the Governor-General and the act of an administrative board or a Minister, is that the Court will take what the Governor-General has said as being accurate. The fundamental basis of the contention we make is that the Governor-General is the Crown and, although the Court will examine the bona fides of municipal councils &c. it will not examine the bona fides of the Crown itself. [He referred to *Australian Communist Party v. The Commonwealth*, per Dixon J. (1); per Fullagar J. (2); *Arthur Yates & Co. Pty. Ltd. v. Vegetable Seeds Committee*, per Rich J. (3); per Dixon J. (4); *Duncan v. Theodore*, per Barton J. (5); per Isaacs and Powers JJ. (6); *Joseph v. Colonial Treasurer (N.S.W.)*, per Isaacs, Powers and Rich JJ. (7); *King-Emperor v. Benoari Lal Sarma* (8); *Attorney-General for Canada v. Hallet & Carey Ltd.* (9); *R. v. Comptroller General of Patents; Ex parte Bayer Products Ltd.* (10); *Municipal Council of Sydney v. Campbell* (11); *Baiada v. Baulkham Hills Shire Council* (12); *Werribee Shire Council v. Kerr* (13); *Criterion Theatres Ltd. v. Municipal Council of Sydney* (14); *Howarth v. McMahon* (15); *Minister for Public Works v. Duggan* (16); *Estates Development Co. Pty. Ltd. v. State of Western Australia* (17).] There is ample American authority to show that the Courts will not go behind the purpose to find out whether or not it was truly stated. [He referred to *Cooley's Constitutional Limitations*, 8th ed. (1927), vol. 1, pp. 379, 382.] The purposes stated in the notification in the first case, namely, "purposes of providing office accommodation for the Departments of the Commonwealth, and authorities of the Commonwealth at Melbourne" are public purposes are matters in respect of which Parliament has power to make laws. The constitutional warrant for Parliament to make laws on these particular subjects is to be found primarily in ss. 61-64 of the Constitution, in s. 52 (ii.) in so far as transferred departments are concerned, in par. (xxxix.) and, it is submitted, in the other paragraphs of s. 51 as well. The

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(1) (1951) 83 C.L.R., at pp. 178-179.

(2) (1951) 83 C.L.R., at p. 257.

(3) (1946) 72 C.L.R., at p. 73.

(4) (1946) 72 C.L.R., at pp. 79-83.

(5) (1917) 23 C.L.R. 510, at p. 525.

(6) (1917) 23 C.L.R., at p. 544.

(7) (1918) 25 C.L.R. 32, at p. 43.

(8) (1945) A.C. 14, at p. 28.

(9) (1952) A.C. 427, at pp. 444-446.

(10) (1941) 2 K.B. 306.

(11) (1925) A.C. 338.

(12) (1951) 83 C.L.R. 344.

(13) (1928) 42 C.L.R. 1.

(14) (1925) 35 C.L.R. 555.

(15) (1951) 82 C.L.R. 442.

(16) (1951) 83 C.L.R. 424; 18 L.G.R. 60.

(17) (1952) 87 C.L.R. 126, at p. 134.

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notification is to be read as applying to departments and authorities which are validly set up, and not those (if any) which are nullities. The words "authorities of the Commonwealth" bear the meaning given by s. 62A of the *Lands Acquisition Act*, namely, an authority incorporated by any law of the Commonwealth. That means any valid law. The notification in the second case, namely for "postal purposes" means "for purposes of the postal services of the Commonwealth". [He referred to *Estates Development Co. Pty. Ltd. v. State of Western Australia* (1).]

G. H. Lush. The proper view on the construction of s. 59 of the *Lands Acquisition Act* 1906-1936 is that the justice must issue his warrant on proof of the matter set out. See *Craies Statute Law*, 5th ed. (1952), pp. 263-265; *Chanter v. Blackwood*, per Griffith C.J. (2). There can be an estoppel arising under s. 59 of the Act.

R. A. Smithers Q.C., in reply. In *Reid v. Sinderberry* (3), *Latham* C.J. and *McTiernan* J. saw no difficulty in attributing to the Governor-General an opinion which no reasonable man could hold. In this case we do not challenge the bona fides of the Governor-General but we say that he may have wrongly described the use to which the land was to be put. If "purpose" in par. (xxxi.) of s. 51 is to be expanded into "use", the Governor-General has not set out the use, but has described it in terms of purpose.

G. E. Barwick Q.C., in reply. The argument that no constitutional question is involved here, but merely the question of whether the Executive has confined itself to the statutory authority, is inconsistent with *Nelungaloo Pty. Ltd. v. The Commonwealth* (4). The reason the constitutional question is raised is because the *Lands Acquisition Act* 1906-1936 has used the precise constitutional formula in s. 13, aided by the definition in s. 5. Consistently with *R. v. Commonwealth Court of Conciliation and Arbitration*; *Ex parte William Holyman and Sons Ltd.* (5) all the facts which connect the exercise with the authority to acquire must be examinable by the Court: see per *Isaacs* J. (6). It is not possible to read par. (xxxi.) as allowing the Commonwealth to unexaminably create the purpose and leave it to the Court to decide whether the asserted purpose is one in respect of which the Parliament has power to make

(1) (1952) 87 C.L.R., at pp. 133-134, 135, 136, 139.

(2) (1904) 1 C.L.R. 39, at p. 51.

(3) (1944) 68 C.L.R. 504, at pp. 511-512.

(4) (1951) A.C. 34, at pp. 50, 51; 81 C.L.R. 144, at pp. 157, 158.

(5) (1914) 18 C.L.R. 273.

(6) (1914) 18 C.L.R., at pp. 285, 286.

laws. If it were so read there is no logical reason for stopping at an unexaminable document by the Governor-General. The Director of Public Works might equally be permitted to make an unexaminable statement. The proper way of reading the *Lands Acquisition Act* is to treat s. 13 as the source of authority and ss. 15, 16 as no more than the statutory machinery in the performance of the authority. Much that has been said about the unexaminability of the opinion of the Governor-General does not fit this case because here the Governor-General merely limits the purpose with respect to which thereafter the acquisition would have to be defended. That is different from saying that the Act has required the formation of any opinion or judgment by the Executive and made to operate in any part conditionally on that opinion or judgment. If the argument is correct that you cannot go behind the formal act of the Executive, it would be possible to acquire all banking premises "for banking purposes". After all, there is nothing novel in the ultimate constitutional validity of the acquisition being determined on an issue of the fact. Frequently under the arbitration power the Court has determined an issue of fact between the parties, which answered the constitutional question whether there was in fact an inter-State dispute. [He referred to *R. v. The Commonwealth Court of Conciliation and Arbitration; Ex parte Jones* (1).]

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Cur. adv. vult.

THE COURT delivered the following written judgment :—

April 1.

These are two cases heard together in which an attack is made upon the validity of purported acquisitions by the Commonwealth of areas of land in Melbourne. The first case relates to an acquisition, notified in the *Gazette* of 10th June 1948, of a large area of land fronting Spring Street and Latrobe Street. The notification stated that the lands were acquired under the *Lands Acquisition Act* 1906-1936 "for the following public purpose, namely: Purposes of providing office accommodation for Departments of the Commonwealth and authorities of the Commonwealth, at Melbourne Victoria". The second case relates to the acquisition of a piece of land at the corner of King Street and Little Lonsdale Street notified by *Gazette* dated 14th October 1948. The notification stated that the land had been acquired by the Commonwealth under the *Lands Acquisition Act* 1906-1936 "for the following public purpose, namely:—Postal purposes at Melbourne, Victoria".

In each case the question comes before the Full Court by two concurrent proceedings, namely a demurrer to a statement of claim

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and a reference by *Fullagar J.* of certain stated questions. In the first case the statement of claim as drawn included an attack upon the validity of the whole of the *Lands Acquisition Act* based, so far as it appears, upon the ground that it did not afford just terms because on 1st January 1948, the date as at which, pursuant to s. 29 (1), the value of the land must be estimated, the *National Security (Economic Organization) Regulations* were in force and so operated as to limit the compensation for the land to an artificial value. In view, however, of the decision of this Court in *The Commonwealth v. Arklay* (1), this ground was not pressed in argument.

The substantial questions in both cases are whether the declared purpose of the acquisition falls within purposes which are allowable under the Act and the Constitution and whether it is open to the landowners to attempt to invalidate the acquisition by proof that in fact the Governor-General in Council did not have in his immediate contemplation such an intended use of the land as fell within the Act or the Constitution.

The *Lands Acquisition Act* 1906-1936 is a general Act passed in pursuance of s. 51 (xxxi.) of the Constitution which enables the Parliament to make laws with respect to the acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws. Section 13 of the Act provides that the Commonwealth may acquire any land for public purposes (a) by agreement with the owner; or (b) by compulsory process. The means by which that acquisition may be carried out is provided by Div. 3, which begins with s. 15. Section 15 (1) provides that the Governor-General may direct that any land may be acquired by the Commonwealth from the owner by compulsory process. Sub-section (2) provides that the Governor-General may thereupon, by notification published in the *Gazette*, declare that the land has been acquired under this Act for the public purpose therein expressed. The words "public purpose" used in s. 13 and s. 15 are defined by s. 5 to mean any purpose in respect of which the Parliament has power to make laws. The definition goes on to exclude acquisitions for the purpose of the Seat of Government, but that is immaterial. It will be seen that the definition follows the words of s. 51 (xxxi.) of the Constitution. Provisions are contained in s. 15 (3) and s. 19 for the disallowance by a resolution of either House of Parliament of the acquisition. Section 16 (1) provides that, upon the publication of the notification in the *Gazette* the land described therein shall by force of the Act be

(1) (1952) 87 C.L.R. 159.

vested in the Commonwealth and be freed and discharged from all trusts, obligations, estates, interests, contracts, licences, charges, rates and easements to the intent that the legal estate therein, together with all rights and powers incident thereto or conferred by the Act shall be vested in the Commonwealth. Section 17 converts the estate and interest of every person entitled to the land into a claim for compensation. Section 20 enables a certified copy of a notification in the *Gazette* to be lodged with the Registrar-General or Registrar of Titles or other proper officers of the State or part of the Commonwealth in which the land is situated. That officer is then authorized to register the notification in the manner as nearly as may be in which dealings of land are registered and to give effect to the notification as if it were a grant or conveyance or memorandum or instrument of transfer duly executed under the laws in force in that State or part of the Commonwealth.

In the case of the land which the Commonwealth has purported to acquire for the purposes of providing office accommodation for departments of the Commonwealth and authorities of the Commonwealth the first contention is that the notification is wider than the definition of "public purpose" allows, and accordingly wider than s. 51 (xxxi.) of the Constitution allows. It is said that the description "Departments of the Commonwealth and authorities of the Commonwealth" includes future departments and authorities of the Commonwealth and that it evidently includes departments and authorities created *de facto* by the Commonwealth and is not confined to departments and authorities created *de jure*, that is to say within the bounds of the constitutional limitations upon Commonwealth powers. It is contended that the word "authorities" is vague and is not sufficiently specific to enable the Court to see what nexus the authority has or will have with the Commonwealth and that there is nothing improbable in the Commonwealth contemplating the use of the building outside its powers.

This reasoning does not appear to us to have any sound basis. The words "authorities of the Commonwealth" naturally mean those bodies and officers who in fact and in law exist under the authority of the Commonwealth. In the federal constitutional system powers may be strained and they may be exceeded, but to suggest that the intended use of the land at the time of acquisition is for authorities or for departments which will have no legal warrant seems to us to be not in accordance with the true meaning of the document and to be without present justification. We cannot see why the statement of purposes in the notification is not sufficiently specific to satisfy the Act.

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Widely as the other arguments ranged in support of the attack upon the purported acquisition, they appear to us necessarily to mean no more legally than that the Act could not constitutionally attempt and had not in truth attempted to render the assertion by the Governor-General of the purposes of the acquisition unexamenable. We gather that if the matter went to trial the substantial question of fact which the landowners would seek to litigate would be whether there existed a sufficiently concrete and immediate purpose of providing office accommodation as stated in the notice or whether it did not lie too much in the future and was not too indefinite and remote and possibly contingent.

The contention that it is open to the landowner to invalidate the purported acquisition by proof that a purpose or intent of putting the land to a use falling within the legislative powers of the Commonwealth did not exist in the Governor-General rests upon a construction given to s. 51 (xxxi.). It is said that the power to make laws with respect to the acquisition of property on just terms for any purpose in respect to which the Parliament has power to make laws is a power with respect to a composite conception in which the notion of the acquisition of property is one element, the provision of just terms another element, and the independent existence of an actual intention of using the land for a purpose in respect to which the Parliament has power to make laws a third element. The argument is that unless the condition expressed in the word “for” is satisfied in the case of any given acquisition it cannot be authorized by a law made under s. 51 (xxxi.) and that the condition expressed by the word “for” cannot be satisfied unless as a matter of fact there exists, independently of any formal declaration, an intention to use the property for a purpose of the required character. It will be seen that the word “for” is construed as requiring an actual existing intention in the acquiring authority, which under the *Lands Acquisition Act* is the Governor-General in Council. The words “any purpose in respect to which the Parliament has power to make laws” were equivalent, so it was said, to “any use in respect to which the Parliament has power to make laws”. It may be doubted whether the substitution of the word “use” for the word “purpose” makes the meaning any clearer. It seems to be plain enough that the Constitution, in using the word “purpose”, is speaking of the object for which the land is needed. The word itself does not refer to any power or powers defined in the various paragraphs of ss. 51 or 52 of the Constitution or elsewhere conferred; it is referring to the object for which the land is acquired. That object, however,

must be one falling within the Commonwealth's power to make laws. It does not matter, however, from which of the paragraphs the power to make a law covering that object is derived. No doubt for practical purposes the word "use" would have the same meaning as the word "purpose" in par. (xxxi.) of s. 51, but of course "use" must be given a very wide meaning.

But it may be remarked that much meaning is ascribed by the contention to the simple word "for". The expression "acquisition of property . . . for any purpose" of the defined kind seems rather to demand that the acquisition must be relevant to one or more of the subjects of Federal legislative power than to insist on the necessity as a condition of the power of a specific intent in the Executive Government or other acquiring authority.

In considering the contention upon which the landowners rely the first question to determine is what the Act purports to do with reference to the decisiveness or conclusiveness of the Governor-General's declaration. Section 13 begins by authorizing the Commonwealth to acquire any land for public purposes. If the Act stopped there it might give a foothold for the contention that it is necessary for the Commonwealth always to show that there existed an intention to use the land for a purpose falling within the definition of "public purposes". But Div. 3 makes it clear that the power is to be carried out by the machinery which it provides. That machinery consists in a notification in the *Gazette* which must declare the purpose. If, however, it corresponds with the description in s. 15 (2), which necessarily imports a valid public purpose, then under s. 16 (1) the *Gazette* notice operates *ipso jure* to vest the land in the Commonwealth. It also is capable of furnishing to the Registrar-General or Registrar of Titles an authority which under s. 20 enables him to issue a certificate which for many purposes may be conclusive under State law. It appears to be clear that if the *Gazette* contains a proper declaration of the purpose of acquisition it is to be self-operating as a conveyance and that it is to be decisive and is conclusively to vest the land in the Commonwealth. It is evident that the possibility of invalidating it collaterally by showing that an intention to use it for the purpose notified did not exist is quite foreign to the provision. The notification must be conclusive if the meaning of the Act is to be effective. To treat s. 16 (1) as always subject to the condition that, independently of the notification in the *Gazette* under s. 15 (2), there must be a fulfilment of the condition found by the argument in s. 13 would be to introduce into s. 16 (1) an unexpressed contingency calculated to defeat its purpose. It is impossible to suppose that

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the Act intends that the operation of the *Gazette* shall always be subject to an inquiry into the real existence in the Governor-General in Council of an intention to use the land for a declared purpose. The question, therefore, appears not to be one as to the meaning of the Act considered independently of s. 51 (xxxi.). That being the effect of the Act ascertained according to its terms the question upon which the argument for the landowners depends must be whether it is constitutionally possible for the legislature to pass a measure making the notification of the Governor-General of the purpose of the acquisition conclusive of the fact. This does not mean that the question is whether the Act can make the declaration of the Governor-General's purpose conclusive of the validity of the purpose so declared. That is a different matter from the question whether he can make his statement of his own purpose in acquiring the land conclusive of the actual existence of that purpose. There is no reason to doubt that the validity of the purpose declared may be examined and if the declared purpose is outside the Act or the Constitution the acquisition must fail.

The real question, therefore, is whether a law which precludes the land owner from contesting the truth of the Governor-General's declaration of the use or purpose declared for which the land is acquired is a law with respect to the compound conception stated in par. (xxxi.) of s. 51. In support of the attack upon the validity of the notification it is said that the legislative power conferred by this paragraph is only exerciseable with respect to an event which must have an independent existence, namely the existence in the mind of the acquiring authority, be it Parliament, be it the Executive Government, or be it some authority established by Parliament, of an intention to use land for one of the purposes designated in s. 51 (xxxi.). It is contended that just as no law may be made under s. 51 (xxxv.) in respect of conciliation and arbitration except a law the application of which depends upon the actual independent existence of an industrial dispute extending beyond the limits of one State, so the application of any general law with respect to the acquisition of property must be made dependent on the actual existence of an intention or desire to use property for a purpose within the description of s. 51 (xxxi.). All this must be extracted from the operation of the word "for" in the expression "for any purpose" &c.

The power is a legislative power of a sovereign government and its purpose is to invest the Parliament with a specific authority to make laws for the acquisition of property and to subject the authority to a condition relating to the justice of the terms provided.

The power to acquire property compulsorily would probably have been regarded as forming an incident of almost every other power which is expressly granted by s. 51 in the absence of par. (xxxi.), and the grant of a specific power would have been in itself unnecessary. At all events that is the view which no doubt would now commend itself to constitutional lawyers. If it had depended on the incidental powers, there would have been no room for the argument under consideration. But the acquisition of property could not be left to the incidental powers because it was desired to limit the power of acquisition by imposing a condition that it must be exercised upon just terms. This desire could not be carried into effect except by expressing a separate positive limitation in the form of a constitutional check or bar as is done in the United States Constitution in the Fifth Amendment, or else by conferring a specific but restricted power. The latter course was chosen. Naturally the power of acquisition must be for objects which fall within the Federal province. But why should it not be incidental to a power to acquire property for such a purpose to make the declaration of the Executive Government of the purpose for which it requires the land conclusive of the fact that the Executive Government requires it for that purpose? Whether that is the purpose or is not the purpose is a matter depending entirely upon the mind and policy of the Executive. It is easy to understand that nothing the Executive Government is authorized to do can conclude the question whether the particular purpose for which it desires the land is in point of law one within the Federal province. But the purpose for which it requires the land is a thing depending entirely on the intention of the Executive Government itself. It is subjective and is naturally to be ascertained from the formal act of the Executive. Doubtless s. 51 (xxxi.) enables the legislature to authorize subordinate Federal bodies as well as the Governor-General in Council to acquire property. But acquisition by the Commonwealth itself is at the centre of the legislative power and that means the Executive Government. The good faith of the Governor-General cannot be questioned and that is an additional consideration in aid of an interpretation which makes the word "for" refer to or at best include the purpose declared. Why should a law not be one with respect to the compound conception when it provides for an acquisition characterized by the inclusion, in the formal act on which the law places the validity of the Commonwealth's title, of a statement by the Governor-General conclusively declaring the purpose for which he has acted? A legislative power of this description should not be construed to deprive the Federal Parliament of a power which

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has been freely exercised by all other legislatures on this very subject matter. Provisions are often found in State legislation relating to the acquisition of property by which a statement of purpose by the Governor in Council or other acquiring authority or the notification of acquisition is made decisive and concludes the whole matter.

It follows from what has been said that the landowners may not go behind the notification in the *Gazette* given in pursuance of s. 15 (2) and that the *Lands Acquisition Act* 1906-1936 is not invalid because it produces this consequence.

In the case of R.T. Co. Pty. Limited and others, that relating to the acquisition of land for postal purposes, the chief arguments advanced independently of those already dealt with depended upon the words "postal purposes". It was contended that this phrase has a wider meaning than "postal services" and includes uses of the land which could not be authorized in pursuance of s. 51 (v.), the power to make laws with respect to postal, telegraphic, telephonic or other like services. It is also contended that the words are insufficiently specific and that s. 15 (3) requires a notification stating with greater particularity the intended use for which the land is acquired. The words "postal purposes" are loose and wide and it would be much more satisfactory if more specific language had been used, but that they mean for the purposes of the postal services conducted by the Postmaster-General's Department it is difficult to doubt. In ordinary speech the expression would be so understood. During the argument attempts were made to suggest possible uses of the land which might be described as postal purposes which would fall outside the legislative power to make laws with respect to postal services. Some of the examples given of possible uses of the land would in truth not be outside that power or what is incidental to that power. Others seemed to be remote from reality and to be clearly outside the actual meaning as it would be ordinarily understood of the words "postal purposes". On the whole the words do appear to describe purposes within s. 51 (v.) of the Constitution. In support of the view that a more specific description of the intended use of the land must be given in the notification reliance was placed upon the provision contained in s. 19 for the disallowance by Parliament of an acquisition. But it does not appear why Parliament could not effectively exercise this power unless the notification was precise in the statement of purpose. The land must be identified. There could not be much difficulty in ascertaining whether the conditions mentioned in pars. (a), (b) and (c) of s. 19 existed. There does not appear to be any solid reason for saying that the notification should be held

bad as insufficiently describing the purposes of the acquisition to satisfy the requirements of s. 15 (2).

The demurrers should be allowed in both cases. The questions referred to the Full Court by the order of *Fullagar J.* made on 5th November 1952 in *Attorney-General of the Commonwealth v. R.T. Co. Pty. Limited and Others* should be answered as follows: (1) No. (2) No. (3) Unnecessary to answer. The questions stated in the order of *Fullagar J.* made on 9th February 1953 in *W. H. Blakeley & Co. v. The Commonwealth of Australia and Others* should be answered as follows: (1) No. (2) No. (3) No.

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Order that the demurrer be allowed: order that the questions referred to the Full Court by the order of Fullagar J. made on 5th November 1952 be answered as follows:—

1. No.
2. No.
3. Unnecessary to answer.

Order that the defendants or respondents R.T. Co. Pty. Limited, Radioprogram Pty. Ltd., Radio City Pty. Ltd. and Henry Drysdale pay the costs of the demurrer and of the reference.

Order that the demurrer be allowed: order that the questions referred to the Full Court by the order of Fullagar J. made on 9th February 1952 be answered as follows:—

1. No.
2. No.
3. No.

Order that the plaintiff pay the costs of the demurrer and of the reference.

W. H. Blakeley & Co. Pty. Ltd. v. The Commonwealth and Others:
Solicitors for the plaintiff, *E. Edgar Davies & Co.*

Solicitor for the defendants, *D. D. Bell*, Crown Solicitor for the Commonwealth of Australia.

Attorney-General of the Commonwealth v. R.T. Co. Pty. Ltd. and Others:

Solicitor for the applicant, *D. D. Bell*, Crown Solicitor for the Commonwealth of Australia.

Solicitor for the respondents, *Keith A. Ness.*

R. D. B.