the commissioner could not be so construed. It would not manifest any such intention. It would only manifest an intention to curb the powers of the commissioner. Accordingly the appellant must fail whether the general principle of construction or the particular principle embodied in the *Acts Interpretation Act* is relied upon by the respondent but their legal significance would not appear to differ.

*Appeal dismissed with costs.*

Solicitor for the appellant, *M. G. Everett.*

Solicitor for the respondent, *D. M. Chambers*, Crown Solicitor for the State of Tasmania.

R. A. H.

[HIGH COURT OF AUSTRALIA.]

WHEELER AND ANOTHER . . . APPELLANTS;
PLAINTIFFS,

AND

KELLY AND OTHERS . . . . . RESPONDENTS.
DEFENDANTS,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

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1955, SYDNEY, *Dec.* 6, 7;

1956, MELBOURNE, *Feb.* 23

Dixon C.J., Webb and Kitto JJ.

*Acquisition of land—Resumption—"For any public purpose"—Public purpose "any purpose declared by the Minister . . . to be a public purpose"—Declaration of War Veterans' Home as public purpose—Resumption for extension of Home—Whether public purpose within declaration—Validity of resumption—Crown Lands Consolidation Act* 1913-1948 (*N.S.W.*) (*No.* 7 *of* 1913—*No.* 48 *of* 1948), *ss.* 5, 197.

Section 5 of the *Crown Lands Consolidation Act* 1913-1948 (N.S.W.) provides: "In this Act, unless the context necessarily requires a different meaning, the expression—'public purpose' means and includes, in addition to any purpose specified as a public purpose in any section of this Act, any purpose declared by the Minister, by notification in the *Gazette*, to be a public purpose within the meaning of such section".

*Held*, (1) that the words "in addition to" in such section mean no more than "as well as"; (2) that the word "any" in the phrase "in addition to any purpose specified" shows that the phrase is contingent in its application or hypothetical in its sense and that it means "in addition to a purpose, if there be one specified".

Section 197 (1) of such Act provides in its first paragraph: "The Governor may acquire, for the purpose of access or approaches to any natural water, tank, or dam, or for a road, or travelling stock route, or camping reserve, or watering place, or settlement, or for any public purpose any land of any tenure, either by way of purchase or resumption or by granting in fee simple, or for any less estate, any Crown land in exchange for such land . . ."

*Held*, (1) that the expression "land of any tenure" includes freehold land and is not limited to land held on one of the types of tenure created by the *Crown Lands Consolidation Act* 1913-1948; (2) that the words "or for any

public purpose " should not be read *ejusdem generis* with the preceding purposes specifically mentioned.

War Veterans' Home, a company limited by guarantee under the *Companies Act* 1936 (N.S.W.), has for its principal purpose the maintenance of homes at various places, including Narrabeen, for war veterans. The Minister for Lands (N.S.W.) relying upon s. 5 of the *Crown Lands Consolidation Act* declared such company a public purpose within the meaning of s. 197 of such Act. Subsequently, the appellants' land at Narrabeen was resumed under s. 197 by notification and declaration by the Governor in Council published in the *Gazette*, the notification stating that the purpose of the resumption was " for extension of War Veterans' Home at Narrabeen ".

*Held*, that the resumption was valid, the extension of the Home at Narrabeen being a matter falling within the declared purpose.

If there be a purpose which the Minister may fairly regard as a public purpose in relation to country lands, any bona fide declaration of that purpose as one within a provision of the *Crown Lands Consolidation Act* 1913-1948 to which the definition of " public purpose " in s. 5 of such Act applies is conclusive.

Decision of the Supreme Court of New South Wales (*Myers* J.), affirmed.

APPEAL from the Supreme Court of New South Wales.

Alice Ann Wheeler and Alan George Wheeler (hereinafter called the plaintiffs) were the registered proprietors of certain lands under the *Real Property Act* 1900 (N.S.W.) situate at Narrabeen, New South Wales, which lands adjoined lands occupied by War Veterans' Home, a company limited by guarantee pursuant to the *Companies Act* 1936 (N.S.W.) and formed otherwise than for the gain of its members. On 24th January 1947 the Minister for Lands for the State of New South Wales by notification in the Government *Gazette* of that State and pursuant to s. 5 of the *Crown Lands Consolidation Act* 1913-1946 declared that War Veterans' Home was a public purpose within the meaning of s. 197 of such Act. By notification dated 28th April 1949 and published in the said *Gazette* on 29th April 1949 the Governor of New South Wales acting on the advice of the Executive Council and in pursuance of s. 197 above-mentioned notified and declared that the lands of the plaintiffs were resumed under that section " for extension of War Veterans' Home at Narrabeen " and had become reserved from sale and lease until further notice.

One of the principal objects of War Veterans' Home is the provision and maintenance at Narrabeen, amongst other places, of a home or homes for the purpose of providing board, lodging, maintenance, attendance and all necessaries and conveniences for persons who have served in any of Her Majesty's armed forces

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the merchant marine or the armed forces or merchant service of any allied power, and the dependants of any such persons. War Veterans' Home is not an instrumentality of the Crown nor subject to the control direct or indirect of the Crown or any agent or servant of the Crown.

On 15th July 1949 the Minister for Lands by notification in the *Gazette* notified that the lands here in question were dedicated for "War Veterans' Home Extension", and on 22nd December 1949 the Governor in Council by notice in the *Gazette* appointed War Veterans' Home trustee of such lands in accordance with the *Public Trusts Act* 1897-1944 (N.S.W.).

The plaintiffs by statement of claim issued out of the Supreme Court of New South Wales in its equitable jurisdiction against Roy Walter Strong Kelly, as nominal defendant for the Government of New South Wales appointed pursuant to the *Claims against the Government and Crown Suits Act* 1912 (N.S.W.), War Veterans' Home and the Registrar-General of New South Wales claimed declarations that each of the notifications hereinbefore mentioned and the resumption of the said lands were invalid and appropriate injunctions against each of the defendants to restrain the resumption being effected.

The suit came on for hearing on 27th and 28th June 1955 before *Myers* J., who on the latter date dismissed it.

From this decision the plaintiffs appealed to the High Court.

The arguments of counsel appear sufficiently from the judgment of the Court hereunder.

*B. P. Macfarlan* Q.C. and *R. M. Stonham*, for the appellants.

*J. D. Holmes* Q.C. and *A. F. Rath*, for the respondent, Roy Walter Strong Kelly.

*A. F. Rath*, for the respondent, the Registrar-General of New South Wales, submitted to such order as the Court might see fit to make.

*L. C. Badham* Q.C. and *J. K. Emerton*, for the respondent War Veterans' Home.

*Cur. adv. vult.*

Feb. 23, 1956. THE COURT delivered the following written judgment :—

This is an appeal from a decree made by *Myers* J. on 28th June 1955 dismissing a suit. The plaintiffs in the suit, who are the appellants, are the registered proprietors of an estate in fee simple of land at Narrabeen comprising somewhat more than fifty acres.

The defendants, the respondents in this appeal, consist of a nominal defendant for the Crown in right of New South Wales appointed under the *Claims against the Government and Crown Suits Act* 1912, the Registrar-General of New South Wales and a body called "War Veterans' Home" incorporated under the *Companies Act* 1936 (N.S.W.) under that name as a company limited by guarantee and formed not for the gain of the members. The chief purpose of the body is to maintain homes at various places, including Narrabeen, for war veterans, an expression covering persons who have served in war with the armed forces or merchant marine.

In the *Gazette* of 29th April 1949 there appeared a notification and declaration by the Governor in Council that the land at Narrabeen, consisting of fifty acres and more, belonging to the plaintiffs had been resumed under s. 197 of the *Crown Lands Consolidation Act* 1913-1948 and in accordance with the provisions of that section had become reserved from sale and lease until further notice.

The purpose of this suit was to attack the validity of the resumption so notified and of the steps leading up to it. The plaintiffs had already failed in an attempt made in this Court to obtain an order under s. 130 of the *Re-establishment and Employment Act* 1945-1952 of the Commonwealth invalidating certain preliminary steps towards the same resumption in the hope of thereby avoiding the resumption itself: *Wheeler* v. *War Veterans' Home* (1).

Section 197 (1) as it now stands is the result of a succession of amendments. It comprises seven separate paragraphs which unfortunately are neither lettered nor numbered. The first paragraph it is desirable to set out in full. It is as follows:—"The Governor may acquire, for the purpose of access or approaches to any natural water, tank, or dam, or for a road, or travelling stock route, or camping reserve, or watering place, or settlement, or for any public purpose any land of any tenure, either by way of purchase or resumption or by granting in fee simple, or for any less estate, any Crown land in exchange for such land. And any land so acquired shall thereupon be deemed to be reserved from sale and lease, and may on revocation of the reserve be dealt with in accordance with this Act or as if it had been acquired under the *Closer Settlement Acts*."

The second paragraph deals with surveying and may be neglected. The third directs that the local land board shall inquire into and report upon any application or proposal for the exchange or resump-

(1) (1953) 89 C.L.R. 353.

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tion of land under the section and that the respective values of any land to be acquired or granted in pursuance thereof shall for the purpose of this section be determined by the local land board. The fourth paragraph, which deals with exchanges, is not relevant. The fifth provides that where it is desired to acquire land for any of the above purposes the Governor in Council may by notification in the *Gazette* resume such land and thereupon it shall become vested in the Crown and be deemed to be Crown lands for the purposes of this Act, but reserved from sale or lease until otherwise notified by the Minister. The sixth paragraph provides that the price to be paid for the land resumed shall be determined by the local board or the Land and Valuation Court on appeal. The seventh paragraph does not affect this appeal and may be ignored.

The basis of the power to resume which s. 197 (1) confers is the existence of a purpose of the required description. As will be seen a number of specified purposes are set out in the sub-section none of which would cover the present case and then follows the expression " or for any public purpose ". The validity of the resumption depends upon the application of that expression, a definition of which occurs in s. 5, to the purpose stated in the notification in the *Gazette* by the Governor in Council, namely: " For extension of War Veterans' Home at Narrabeen ". In reliance on a power contained in the definition found in s. 5 the Minister for Lands on 24th January 1947 declared " War Veterans' Home " a public purpose within the meaning of s. 197.

There is some ambiguity about this very compendious statement of a purpose. It is not clear, for example, whether it contemplates buildings or institutions. The declaration is of course general and not confined to the undertaking at Narrabeen. But there seems little doubt that on any view of the phrase the extension of the War Veterans' Home at Narrabeen is a matter falling within the declared purpose.

For the plaintiffs-appellants, however, it is denied that the definition of " public purpose " occurring in s. 5 has any application to the expression as it is used in s. 197. On that ground, so it is argued, the Minister did not possess the power to declare anything to be a public purpose within s. 197 and his attempt to bring a War Veterans' Home within the purpose for which land might be resumed under that section was nugatory. The material part of s. 5 is as follows:—" In this Act, unless the context necessarily requires a different meaning, the expression ' public purpose ' means and includes in addition to any purpose specified as a public purpose

in any section of this Act any purpose declared by the Minister by notification in the *Gazette*, to be a public purpose within the meaning of such section". The argument for the plaintiffs-appellants places upon this definition a precise and limited meaning which, it is said, is to be found in the form in which it is cast.

First, so it is said, the words "in addition to" show that you must find in the provision to which it is sought to apply the definition a purpose or purposes specified as public purposes. It is only when you find this that the Minister's power can arise; it is in other words a power to add new purposes to pre-existing purposes in respect to which the provision operates. Next it is said that the words "specified as a public purpose in any section" require that the section must expressly or by necessary intendment assign the character of public purpose to the purpose it specifies. It is not enough that the section states a purpose and that according to ordinary understanding the purpose stated would be regarded as a public purpose. That would not satisfy the words "specified as". That character must be placed upon it legislatively by the section.

If that is done, then, but only then, may the Minister add to the purpose so specified. The construction contended for might be made clearer if the definition were re-written so that the words "public purpose", when they occur in any section which declares a purpose to be a public purpose, were defined to mean not only the purpose so declared but, in addition, any further purpose declared by the Minister by notification in the *Gazette* to be a public purpose within the meaning of that section. If this construction is fixed upon the definition, then, so it is contended, it is incapable of applying to s. 197. For there you have only a catalogue of purposes mentioned without reference to their public character, viz. access or approaches to natural water, tank or dam, or for a road or travelling stock route or camping reserve or watering place or settlement. It is this catalogue that is followed by the words defined in s. 5 "or for any public purpose". That being so the definition, according to the plaintiffs-appellants, cannot apply.

A list of sections in which the words "public purpose" occur was brought to the notice of the Court and to all but two of these the same argument is applicable. For the sections contain no specification of a public purpose as such. They are ss. 25A, 28, 38 (d), 66 (2) (a) and (b), 68 (1) (a), 86 (a), 233 (1) and (2), 235B (ii) and 254. In ss. 24 and 26, however, although there are references to a number of purposes stated without regard to their public character, they

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are followed in each case by the words " or for any other public purpose ". It may be that the word " other " is enough to satisfy the requirement, which the construction contended for demands, that the purposes expressed in the section shall be stamped by the section itself as public purposes. Unless that be the case it means that no provision has been found in the Act to which the definition of the expression, construed as it is sought to construe it, would have any application.

But the truth is that the definition of the expression " public purpose " does not bear the construction which the plaintiffs-appellants place upon it and its application is not limited in the manner claimed. The argument seeks to extract from the words " in addition to " and from the word " as " a restrictive implication which cannot really be found in the definition. The words " in addition to " etc. do not demand that there shall be present a specification of a purpose or purposes before there can be any application of so much of the provision as confers power on the Minister to specify public purposes.

The object of a definition is usually to state the extent of the meaning, that is to say what it covers, and a definition usually is distributive and is satisfied by the presence or occurrence of any of the things it enumerates. " In addition to " means here no more than " as well as ". The sense of the definition would have been given if it had been written " not only any purpose specified . . . but also any purpose declared by the Minister ", etc. The word " any " in the phrase " in addition to any purpose specified " shows that it is contingent in its application, or hypothetical in its sense. The expression is not " the purposes specified ", but " any purpose specified ". It means " in addition to a purpose, if there be one specified " and in this view it is not necessary to consider precisely what force is to be given to the word " as " in the phrase " specified as a public purpose ". It is enough to say that it cannot bear a meaning which would confine the application of the definition to sections which refer to public purposes as such or in other words stamp them legislatively as public purposes.

But the attack of the plaintiffs-appellants upon the validity of the resumption did not rest only on the contention that the definition of public purpose could not be applied to s. 197. Independently of that ground, it was sought to limit the scope of the power of resumption conferred by s. 197 in such a way that the resumption of the plaintiffs' land would fall outside its operation. No doubt the very absence of express restriction upon the possible uses that

may be attempted under s. 197 and s. 5 of the power of resumption for purposes declared by the Minister to be public purposes provokes the question whether there are not limitations to be implied from context and subject matter. Moreover you find in the same statute in s. 256 a restricted power of resuming land or any estate or interest if it is needed for a canal or cutting for irrigation purposes. Section 256 forms Div. 11 of the same Part of the Act as contains s. 197, viz. Pt. VIII, and that Division is entitled "Resumptions". There is, of course, a wide power of resumption contained in the *Public Works Act* 1912-1946. But s. 41, which confers the power upon the Governor in Council, specifies, with some exactness, the purposes for which it may be exercised.

It is said that it would be anomalous if there also existed, as a result of the operation of the definition in s. 5 and of s. 197 in combination, a power in the Minister to declare anything to be a public purpose and a power in the Executive Government of which he forms a part compulsorily to acquire any land for the object so declared. The anomaly is not lessened if the contention made for the defendants is sound that it lies with the Minister under s. 5 to declare conclusively that a thing is a public purpose whether in truth it has a public character or not.

But whatever *a priori* weight these general considerations may possibly have, the difficulty is to find any criterion or basis for a restriction or limitation that may be implied. The history of the provision shows that originally it contained no power of resumption and that the words "or resumption" were inserted between the words "either by way of purchase" and the words "or by granting in fee simple". This was done by Act No. 29 of 1916, s. 24, which, at the same time, added new paragraphs two of which dealt with the procedure for acquisition and with the assessment of compensation. They are now represented by the fifth and sixth paragraphs of sub-s. (1) of s. 197. Perhaps the form of the amendment suggests that little consideration was given to its consequences.

One limitation put forward relates to the "tenure" of the land that may be resumed under the power. The suggestion is that the provision, which occurs in Pt. VIII headed "Provisions Complementary to Parts IV, V and VI so far as relating to Holdings after Acquisition", is concerned only with land held for some interest created by the statute and dealt with in these Parts. The expression in s. 197 "land of any tenure" is construed according to this contention as meaning tenure under the Act and it is said that "tenure" means in the *Crown Lands Consolidation Act* a tenure

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created by that legislation, a proposition in support of which many sections were cited by way of example. But much more than this would be necessary to warrant a court in restricting the words "land of any tenure" so as to exclude freehold tenure. Of course, "tenure" is an apt enough word when it is applied to interests or holdings dependent for their character upon the statute. But that it is so applied is no ground for excluding other applications from its denotation when it is used elsewhere in the Act, as in s. 197.

Another contention made for the plaintiffs-appellants was that the words "for any public purpose" in s. 197 should be read as *ejusdem generis* with the things specifically mentioned. There is to be found in the section, so it was argued, an intention to authorize the acquisition of land for such purposes as the Crown might require in order to develop and settle the State and make available to settlers and others taking up land from the Crown facilities helpful in its occupation and use, such as access to natural water, tanks or dams, roads, stock routes and so on. It is to be noted that the word "settlement" itself occurs in the section and this seems to refer to actually settling people on the land.

A matter of some importance is that sub-s. (2) of s. 197 requires the land board determining the value of land to be resumed to have regard to the productive capacity of such land under fair average seasons prices and conditions. This may well add a consideration which, with the context, excludes the application of s. 197 to urban lands. But it is not alleged that the plaintiffs' land at Narrabeen is of that description.

It is not easy to find any safe ground for implying a restriction upon the public purposes which (in relation to country lands) the Minister may declare. The object of the definition is to give the Minister what, in one sense, is a power of subordinate legislation. Once the definition becomes applicable (and no sufficient reason appears for excluding its application to s. 197) then it is difficult to impose a restriction on the *quasi*-legislative power that arises by consequence. There is no doubt room for the further contention that was advanced, namely that the purpose declared must be a public one. But on the language of the definition in s. 5 that contention goes too far. For it seems clear enough that, if there be a purpose which the Minister may fairly regard as a public purpose, any bona fide declaration of that purpose as one within a provision of the Act to which the definition applies would be conclusive.

It would be difficult indeed to say that "War Veterans' Home" could not be considered by the Minister to be a public purpose.