

PC
C.D. & T.

34, 1954

No. 3 of 1954.

In the Privy Council.

ON APPEAL
FROM THE FULL COURT OF THE HIGH COURT OF AUSTRALIA.
(Appeals numbered 49, 50 and 51 of 1952)

BETWEEN

RICHARD JAMES PYE, RICHARD ANTHONY PYE and
HENRY WARD PYE *Appellants*

AND

THE MINISTER FOR LANDS FOR NEW SOUTH WALES *Respondent.*

RECORD OF PROCEEDINGS

WATERHOUSE & CO.,
1 NEW COURT,
LINCOLN'S INN,
LONDON, W.C.2,
Solicitors for the Appellants.

LIGHT & FULTON,
24 JOHN STREET,
BEDFORD ROW,
LONDON, W.C.1,
Solicitors for the Respondent.

In the Privy Council.

ON APPEAL

38071

FROM THE FULL COURT OF THE HIGH COURT OF AUSTRALIA.

(Appeals numbered 49, 50 and 51 of 1952.)

UNIVERSITY OF LONDON

23 MAR 1955

INSTITUTE OF ADVANCED
and LEGAL STUDIES

BETWEEN

RICHARD JAMES PYE, RICHARD ANTHONY PYE
HENRY WARD PYE

Appellants

AND

THE MINISTER FOR LANDS FOR NEW SOUTH WALES *Respondent.*

RECORD OF PROCEEDINGS

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ON APPEAL

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(Appeals numbered 49, 50 and 51 of 1952)

BETWEEN

RICHARD JAMES PYE, RICHARD ANTHONY PYE and HENRY WARD PYE *Appellants*

10

AND

THE MINISTER FOR LANDS FOR NEW SOUTH WALES *Respondent.*

RECORD OF PROCEEDINGS.

No. 1.

CASE STATED.

IN THE SUPREME COURT OF NEW SOUTH WALES.

Term No. 165 of A.D. 1952.

IN THE MATTER of an Appeal by RICHARD JAMES PYE against the value of his land part of "Ghoolendaadi" as assessed by a Closer Settlement Advisory Board.

20

Between RICHARD JAMES PYE Appellant

and

THE MINISTER FOR LANDS Respondent.

In the Full Court of the Supreme Court of New South Wales.

No 1. Case Stated by Land and Valuation Court (Sugerman, J.), 28th May 1952.

CASE STATED

by the Land and Valuation Court for the decision of the Supreme Court thereon in pursuance of Section 17 of the Land and Valuation Court Act, 1921-1940.

1. Prior to and until the seventh day of September, 1945 the above-named Appellant, Richard James Pye, was the owner of 20,274 acres of land or thereabouts situate in various parishes in the County of Pottinger and Land District of Gunnedah.

30

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2. On the seventh day of September, 1945 the said Richard James Pye by a Memorandum of Transfer under the Real Property Act, 1900, which was registered on the seventh day of November, 1945 transferred 11,930 acres of his said land to one Richard Anthony Pye.

3. Since the said seventh day of September, 1945, the said Richard James Pye has been the owner of the balance of the land referred to in paragraph 1 hereof, namely, 8,344 acres and the said Richard Anthony Pye has been the owner of the said 11,930 acres transferred to him.

4. One Henry Ward Pye was at all material times the owner of 20,925 acres of land or thereabouts situate in the County and Land District 10 aforesaid.

5. All of the aforesaid lands are adjoining and at all material times were and are still worked as one pastoral and agricultural property and together were and are known as "Ghoolendaadi."

6. On the fifth day of October, 1945, there was published in the New South Wales Government Gazette, No. 102 of the said date, a proclamation which so far as relevant was in the words and figures following that is to say :—

" CLOSER SETTLEMENT

PROCLAMATION OF INTENTION TO CONSIDER THE ADVISABLENESS 20
OF ACQUIRING ESTATES FOR CLOSER SETTLEMENT UNDER SECTION 4,
CLOSER SETTLEMENT (AMENDMENT) ACT, 1907.

I, THE HONOURABLE SIR FREDERICK RICHARD JORDAN, Lieutenant-Governor of the State of New South Wales, with the advice of the Executive Council of the said State, in pursuance of the provisions of Section 4 of the Closer Settlement (Amendment) Act, 1907, as subsequently amended, do notify by this Proclamation to be published in the Government Gazette, that I propose to consider the advisableness of acquiring the parcels of land described in the Schedule hereunder for the purposes of closer settlement. 30

(Ad. Bd. 45-1,465)

Signed and sealed at Sydney, this 4th day of October, 1945.

(L.S.) F. R. JORDAN, Lieutenant-Governor.

By His Excellency's Command,
J. M. TULLY, Minister for Lands.

God Save The King.

SCHEDULE

<i>Estate</i>	<i>Land District</i>	<i>Shire</i>	<i>County</i>	<i>Area</i>	<i>Plan</i>	<i>Shown on</i> <i>By</i>	
Ghoolendaadi (part)	Gunnedah	Liverpool Plains	Pottinger	20925	MS. 1445 Th	Brown Tint	40
Ghoolendaadi (part)	Gunnedah	Coonabarabran. Liverpool Plains	Pottinger	20274	MS. 1445 Th	Yellow Tint	
...	"

The lands referred to in the said Schedule are the whole of the lands referred to in paragraphs 1, 2, 3 and 4 of this Case and no other lands.

7. After the publication of the said proclamation the said Richard Anthony Pye elected in pursuance of section 13 of the Closer Settlement (Amendment) Act, 1907, as amended, to retain an area of 3,631 acres or thereabouts, being part of the said area of 11,930 acres referred to in paragraph 2 of this Case.

In the Full Court of the Supreme Court of New South Wales.

8. On the fourth day of May, 1950, a Closer Settlement Advisory Board made a report which is in the words and figures following, that is to say :—

—
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Case Stated by Land and Valuation Court (Sugerman, J.), 28th May 1952, *continued.*

“ CLOSER SETTLEMENT.

10

PART ‘ GHOOLENDAADI ’ ESTATE.

Est. 4161. Parishes Benelabri, Brigalow, Coogal, Denison, Gullendaddy, Melville & Walla Walla—County Pottinger—Land District Gunnedah—Shire Coonabarabran & Liverpool Plains—Land Board District Tamworth.

Owners & Area

‘ GHOOLENDAADI ’ Estate is separately owned as follows :—

Henry Ward Pye	..	..	..	About 20,925 acres
Richard James Pye	..	..	..	About 8,344 „
Richard Anthony Pye	..	..	..	About 11,930 „

20

Total Area of Estate .. About 41,199 acres

Richard Anthony Pye acquired the area of about 11,930 acres by way of gift from his father, Richard James Pye.

Plan

The accompanying heliograph copy of the topographical survey plan shows the positions of all improvements, classifications and descriptions of the land.

The part of the Estate owned by Henry Ward Pye is shown by red edging, the part owned by Richard James Pye by yellow edging and the part owned by Richard Anthony Pye by blue edging.

30

Proclamation

A proclamation under Section 4, Closer Settlement (Amendment) Act, 1907, was placed over the whole of ‘ Ghoolendaadi ’ Estate by Notification in the Government *Gazette* of 5th October, 1945.

Right of Retainer

Right of retainer was not exercised by Henry Ward Pye or Richard James Pye, but a retention claim was lodged by Richard Anthony Pye for 3,631 acres, shown by blue hatching on heliograph. No objections are offered by the Board to the granting of this retention claim.

40

Method of Acquisition

All attempts to reach agreement with the owners having failed, it is proposed to resume an area of about 37,568 acres,

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being the whole of the Estate exclusive of the retention area claimed by R. A. Pye, under the provisions of Section 4 (1) (b) of the Closer Settlement (Amendment) Act, 1907.

Price

The Board's valuations of the subject lands, on a freehold basis, inclusive of improvements, are as follows:—

Lands owned by H. W. Pye	£6. 1. 9 per acre	
" " " R. J. Pye	£4.15. 0 " "	
" " " R. A. Pye	£5. 0. 0 " "	
	(exclusive of retention area)	10

These values have been assessed by this Board in accordance with sub-section 4 (b) (2) of Section 4 of the Closer Settlement (Amendment) Act, 1907, as amended, and do not exceed the values which would have been so assessed in respect of identical resumptions as at the tenth day of February, 1942, excepting the values of any improvements effected on the lands since that date.

Inspection

Inspection has been made by this Board.

Location

'Ghoolendaadi' Estate is situated about 12 miles southerly 20 from Boggabri, about 25 miles westerly from Gunnedah and about 5 miles northerly from Mullally which is not a rail centre.

Amenities

Boggabri and Gunnedah are both on the Werris Creek—Moree Railway and the usual amenities of country towns are available at both centres. There is an Intermediate High School at Gunnedah. A Public School and Post Office are available at Mullally.

Rainfall

The average annual rainfall in the locality is about 23 inches. 30

Water Supply

Permanent and sufficient supply in 27 wells, averaging about 50 feet in depth. Temporary supply available in tanks, dams, and creeks. Abundant stock water available underground, at depths about 50 and 100 feet.

Timber

Box is the predominant timber cover, with gum along Cox's Creek. There is a small stand of Cypress pine and some patches of wilga, boonery, budda and kurrajong. The four latter trees are edible.

Fencing

The boundaries are fenced, a considerable portion being netted and the property has been subdivided into about 34 paddocks. Fencing generally is in fair to good condition.

Buildings

Homestead and outbuildings, a number of cottages, hut, sheds, haysheds, woolshed, shearers' quarters, concrete dip and yards, and other yards.

Physical Characteristics

10 The country is generally flat, or nearly so, with small hills in a few places. Heavy black self-mulching clay; grey silt loams; patches brown clay loam with red sandy loams on the northern part of the Estate.

Suitability

The country is adapted for woolgrowing, breeding and fattening, fat lamb raising and wheat growing, and is suitable to be acquired for closer settlement.

Carrying Capacity

The carrying capacity, on natural pastures as at present existing, is estimated at about 1 sheep to 1¼ acres. The average wheat yield is 20 estimated at about 17 bushels to the acre.

Erosion

There is no erosion of any consequence on the property.

Noxious Weeds and Animals

Galvanised burr is relatively thick on the northern quarter of the property; scattered bathurst burr on the northern end with some dense patches; a minor infestation of false castor oil plant, of no serious consequence.

The Estate is practically free of rabbit infestation.

Number of Farms

30 The Estate is capable of subdivision into about thirty (30) farms, exclusive of the retention area claimed by Richard Anthony Pye.

Recommendation

It is recommended that :—

(A) Richard Anthony Pye be allowed to retain an area of about 3,631 acres, as shown by blue hatching on helio herewith;

(B) action be taken to resume an area of about 37,568 acres, being the whole of 'Ghoolendaadi' Estate exclusive of the retention area mentioned in (A) above, in accordance with the provisions of the Closer Settlement (Amendment) Act, 1907, as amended, and

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(c) compensation be paid at the rates set out below, on a freehold basis, being the values assessed by this Board in accordance with sub-section 4 (b) (2) of Section 4, Closer Settlement (Amendment) Act, 1907, as amended.

Lands owned by H. W. Pye — £6. 1.9 per acre
 " " " R. J. Pye — £4.15.0 per acre
 " " " R. A. Pye — £5. 0.0 per acre
 (exclusive of retention area)

A. MAX ALLEN, Chairman.

H. B. CORLIS, Member.

D. B. McKILLOP, Member.

10

No. 1 Closer Settlement
Advisory Board

4th May, 1950."

The lands referred to in the above report are the whole of the lands referred to in paragraphs 1, 2, 3 and 4 of this Case.

9. On the first day of September, 1950, there was published in the New South Wales Government Gazette No. 141 of the said date a notification which is in the words and figures following, that is to say:—

"NEW SOUTH WALES
TO WIT By His Excellency Sir JOHN NORTHCOTT, Knight 20
Commander of the Most distinguished Order
of Saint Michael and Saint George, Companion
of the Most Honourable Order of the Bath,
Member of the Royal Victorian Order,
Lieutenant-General on the Retired List of
Australian Military Forces, Governor of the
State of New South Wales and its Dependencies,
in the Commonwealth of Australia.

WHEREAS by Proclamation published in the *Government Gazette* 30
on the fifth day of October, One thousand nine hundred and forty-
five, His Excellency the Governor, with the advice of the Executive
Council notified that he proposed to consider the advisableness
of acquiring certain lands therein described of which the land
described in the Schedule hereto forms part for the purposes of
Closer Settlement AND WHEREAS an Advisory Board con-
stituted under and in accordance with the provisions of section 2
of the Closer Settlement (Amendment) Act, 1907, as amended, has
reported in accordance with the provisions of section 3 of the
said Act that an area of about 37,568 acres (being the said land
described in the Schedule hereto) is suitable to be acquired for 40
Closer Settlement and has also reported the estimated value of
such land and the price at which the Board recommends the
acquisition of the said land and that such value has been assessed
by the Board in accordance with the provisions of subsection 4 (b) (ii)
of section 4 of the said Act as amended AND WHEREAS both
Houses of Parliament have by resolution approved of the resumption

of the said land described in the Schedule hereto AND WHEREAS the resumption to be effected by this notification is made for the purposes of section 3 of the War Service Land Settlement Act, 1941, as amended by subsequent Acts: NOW THEREFORE, I SIR JOHN NORTHCOTT Governor of the State of New South Wales and its Dependencies in the Commonwealth of Australia, with the advice aforesaid, and in pursuance of the provisions of section 4 of the Closer Settlement (Amendment) Act, 1907, as amended, DO DECLARE by this notification to be published in the Government *Gazette*, that the land described in the Schedule hereto shall be and is hereby resumed under the Closer Settlement (Amendment) Act, 1907, as amended AND I DECLARE that the following is the Schedule hereinbefore referred to.

In the Full Court of the Supreme Court of New South Wales.

—
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SCHEDULE.

PART GHOOLENDAAADI ESTATE.

County—Pottinger : *Land District*—Gunnedah :

Shires—Liverpool Plains and Coonabarabran.

<i>Parish</i>	<i>Portion</i>	<i>Area</i>	<i>Title</i>
---------------	----------------	-------------	--------------

“ PART A.

20 *Reputed owner* : Richard Anthony Pye.”

(Here the schedule sets out in detail the said 11,930 acres less the said 3,631 acres which the said Richard Anthony Pye elected to retain as aforesaid.)

“ PART B.

Reputed owner : Richard James Pye.”

(Here the schedule sets out in detail the said 8,344 acres.)

“ PART C.

Reputed owner : Henry Ward Pye.”

(Here the schedule sets out in detail the said 20,925 acres.)

30 “ (W.S. 4, 161/B)

Given under my Hand and Seal, this 30th day of August, 1950, in the fourteenth year of His Majesty's Reign.

By His Excellency's Command,

J. B. RENSHAW, Minister for Lands.

God Save The King.”

10. The lands the subject of the said notification comprise the whole of the lands mentioned in paragraphs 1, 2, 3 and 4 of this Case with the exception of the area of 3,631 acres or thereabouts referred to in paragraph 7 hereof.

In the Full Court of the Supreme Court of New South Wales.

11. On the twenty-eighth day of September, 1950, the Appellant lodged a notice of appeal to the Land and Valuation Court, hereinafter called the Court, which is in the words and figures following that is to say :—

“ FORM No. 25.

CLOSER SETTLEMENT (AMENDMENT) ACT 1907.

NOTICE OF APPEAL TO THE LAND AND VALUATION COURT UNDER SECTION 9 OF THE CLOSER SETTLEMENT (AMENDMENT) ACT 1907.

NEW SOUTH WALES }
To WIT

10

WHEREAS on the first day of September, 1950, there was published in the Government *Gazette* a notification that the land comprised in part of Ghoolendaadi Estate of 37,575 acres 3 roods 11½ perches was resumed under the Closer Settlement Acts.

AND WHEREAS I RICHARD JAMES PYE being interested in 8,344 acres of such part as owner thereof am dissatisfied with the value of the land as assessed by the Advisory Board and desire to appeal against such assessment to the Land and Valuation Court. These are therefore to give you notice that I appeal as aforesaid.

The grounds of this appeal are set out on the back hereof.

20

Signed this 28th day of September 1950.

R. J. PYE.

To the Registrar of the Land and Valuation Court.

GROUND'S OF APPEAL.

1. That the value of the land assessed by the Closer Settlement Advisory Board is too low.
2. That the said Advisory Board arrived at the value of the land on an incorrect basis.
3. That the said Advisory Board did not have proper regard to the items going to make up the value of the land in accordance with the relevant Act.
4. That the said Advisory Board in arriving at the value of the land did not have proper regard to the productive capacity of the land.”

12. On the same day, namely, the twenty-eighth day of September, 1950, each of the said Henry Ward Pye and Richard Anthony Pye lodged a similar notice of appeal.

13. The said appeals came on to be heard before the Court on the twenty-third day of April, 1952, and following days, and were by consent of all the parties heard together.

40

14. (A) It was agreed by and between the Appellants and the Respondent that if the values of the resumed lands should be determined as at the tenth day of February, 1942, the values of such lands should be

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determined at the following amounts, namely: Henry Ward Pye, £128,035.17.0, Richard James Pye, £40,675.9.9, Richard Anthony Pye, £42,917.19.1, and that these amounts included all claims for compensation in respect of the said resumption howsoever arising.

(B) At the hearing it was submitted, however, on behalf of the Appellants that the values should be determined not as at the tenth day of February, 1942, but as at the first day of September, 1950, being the date of the *Gazette* notification referred to in paragraph 9 of this Case, and it was stated on behalf of the Appellants that the amounts claimed by them were as follows: Henry Ward Pye £308,300, Richard James Pye £115,000 and Richard Anthony Pye £121,500.

(c) It was conceded by Counsel for the Respondent, and the appeals were conducted on the basis that, the values of the resumed lands as at the date of resumption were greater than as at the tenth day of February, 1942, but without any concession or admission as to the extent of such excess.

15. At the said hearing Counsel for the Appellant called as a witness Herbert Bede Corlis who had been a member of the Closer Settlement Advisory Board which made the report set out in paragraph eight hereof. The following is an extract from the transcript record of the proceedings relating to the questions put by Counsel for the Appellant to the said Herbert Bede Corlis:—

“ HERBERT BEDE CORLIS, sworn and examined as under :

Mr. MYERS : *Q.* You were for some time a member of the No. 1 Closer Settlement Advisory Board ?—*A.* That is so.

Q. You have now retired ?—*A.* Yes.

Q. During what period were you a member of that Board ?
—*A.* I was a member of the Board from when it first—I had previously been a member of the Closer Settlement Board before its structure was altered. There was only one Closer Settlement Board for all N.S.W. at one stage. At the beginning of 1946 they made three boards, and I became a member of the first board I think in January 1946 and remained a member of that board until I retired about 18 months ago. I retired in December 1951.

Q. You were a member of the Board when it reported on the resumption of the Ghoolendaadi Estate ?—*A.* That is so.

Q. As a member of the Board you in conjunction with the others made an assessment of the value of Ghoolendaadi ?—*A.* That is so.

Q. Prior to that assessment you visited Ghoolendaadi and inspected it ?—*A.* Yes.

Q. Have you any idea when you inspected it—just roughly ?
—*A.* Yes, I can give you the dates. I have them here. The first inspection was made on the 1st September, 1946.

Q. When was the last ?—*A.* I was also on it on the 18th October and the 19th October, 1949, and I was on it on the 27th, 28th and 29th of September, 1950.

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Q. We know the resumption was on the 1st September, 1950 ?
—A. Yes.

Q. The previous inspections were with reference to the proposed resumption ?—A. Yes.

Q. Would that have been in pursuance of a request by the Minister ? ”

The last of the said questions was objected to and after argument was disallowed. The Court's reasons for disallowing the said question appear from the copy of reasons for judgment which is annexed hereto and marked with the letter “ A ” and forms part of this Case. 10

After such disallowance certain further questions were put by Counsel for the Appellant to the said Herbert Bede Corlis and were objected to and disallowed as appears from the following extract from the transcript record of the proceedings :—

“ Mr. MYERS : Q. I asked you yesterday whether the Board had received a request from the Minister to make a report regarding the Ghoolendaadi Estate ; do you remember my asking you that question ?—A. Yes.

Q. Can you tell me what the Minister did in fact request ?

Mr. HARDIE : I object to that also. 20

HIS HONOR : That must be disallowed, on the same basis, for the same reason.

Mr. MYERS : Yes.

HIS HONOR : And I take it no objection will be taken to it on the ground that it has an assumption in it—what if any.

Mr. MYERS : I take it I am not endeavouring to frame these questions in a form that would be objectionable because I take it that there is no objection on the ground of form.

HIS HONOR : That is objected to and disallowed on the same ground of irrelevance. 30

Mr. MYERS : Q. Did the Board prior to its report on the 4th May assess the value of the lands resumed ?

Mr. HARDIE : I object to that question also.

HIS HONOR : That again is rejected on *inter alia* the grounds stated by me for rejecting the question already asked. I say *inter alia* because there may be some difficulty about what is meant by assessing.

Mr. MYERS : Q. I will put it this way : Did the Board prior to the 4th May 1950 agree on a sum or sums of money which represented the value of the lands to be resumed ? 40

Mr. HARDIE : I object to that question also.

HIS HONOR : That is rejected on the grounds previously stated.

Mr. MYERS : *Q.* Then Mr. Corlis, if the Board did agree on a figure as the value of the lands to be resumed or did assess the value of the lands to be resumed, what was the date of their agreement on the value of the assessment made by them ?

Mr. HARDIE : I object to that also.

HIS HONOR : That also must be rejected.

Mr. MYERS : *Q.* Was there any assessment of value made by the Board or any figure agreed to by the Board as representing the value of the subject lands before the 3rd May, 1950 ?

10 Mr. HARDIE : I object to that also.

HIS HONOR : That is rejected too on the same grounds.”

16. At the said hearing Counsel for the Appellant called as a witness Marcus Michael Hyndes. The following is an extract from the transcript record of the proceedings relating to the questions put by Counsel for the Appellant to the said Marcus Michael Hyndes :—

“MARCUS MICHAEL HYNDES, sworn, examined, deposed :

Mr. MYERS : *Q.* You are a grazier and a surveyor and valuer yourself ?—*A.* Yes.

Q. You reside at Muswellbrook ?—*A.* Yes.

20 *Q.* From about 1912 to 1920 you were a staff surveyor attached to the Lands Department ?—*A.* Yes.

Q. Your duties as such consisted of classifying, valuing and surveying lands and all other duties connected with land valuation ?—*A.* Yes.

Q. Since 1920 you have been in continuous private practice as a surveyor and valuer in the north and north-western districts of this State ?—*A.* Yes.

Q. Valuing grazing, pastoral and agricultural lands ?—*A.* Yes.

30 *Q.* You have had a very wide and extensive practice as a surveyor and valuer ?—*A.* Very wide.

Q. You have designed and surveyed many sub-divisions of country lands, large and small ?—*A.* Very many.

Q. You have acted as an arbitrator in disputes with regard to the valuation and partition of grazing and agricultural properties ?—*A.* Yes.

Q. You have often given evidence as an expert before various Courts ?—*A.* Yes.

Q. You are a Fellow of the Commonwealth Institute of Valuers and a Fellow of the Institute of Surveyors of N.S.W. ?—*A.* Yes.

40 *Q.* And in 1942 you were appointed an approved valuer under the National Security Regulations for all the Northern and North-western districts ?—*A.* Yes.

Q. And you acted as an approved valuer until Land Sales Control terminated ?—*A.* That is so.

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Q. And although you have a grazing property of your own which you purchased in 1945, you have still continued to carry on your profession of a surveyor and valuer?—*A.* Yes.

Q. You know the Ghoolendaadi Estate?—*A.* Yes.

Q. You have made very many inspections of it I think?—*A.* Yes.

Q. And you are perfectly familiar with it?—*A.* Yes.

Q. You have inspected it several times for the express purpose of valuing it?—*A.* Yes.

Q. You did in fact value the areas of land resumed separately, the areas of H. W. Pye, R. J. Pye, and R. A. Pye?—*A.* Yes. 10

Q. And you formed an opinion as to the value of those lands on the 1st September, 1950?—*A.* Yes.

Mr. MYERS: I think I used a wrong expression: what I meant to say was that you valued the lands as at the 1st September, 1950?

WITNESS: Yes.

Mr. MYERS: *Q.* What as at that date was the value of each area of land? "

The last of the said questions was objected to and after argument was 20 disallowed. The Court's reasons for disallowing the said question appear from the copy of reasons for judgment which is annexed hereto and marked with the letter " B " and forms part of this Case.

17. The Court, having rejected the evidence tendered as appears from paragraphs 15 and 16 of this Case, and there being no further evidence on the question of value of the subject lands or the amount of compensation to be paid in respect thereof, held that the values of the said lands should be determined as at the tenth day of February, 1942 and accordingly determined the said value and the said compensation at the following amounts: Henry Ward Pye £128,035.17.0, Richard James Pye 30 £40,675.9.9, Richard Anthony Pye £42,917.19.1, being the amounts agreed upon between the parties as set forth in paragraph 14 (A) of this Case.

18. The Appellant has duly requested the Court to state a case for the decision of the Supreme Court on the questions of law hereinafter stated.

19. The questions for the decision of the Supreme Court are:—

(1) (A) Was the evidence or any part of the evidence sought to be tendered as set out in paragraph 15 of this Case, and objected to and rejected as appearing in the said paragraph, relevant and 40 admissible?

(B) Was the evidence sought to be tendered as set out in paragraph 16 of this Case, and objected to and rejected as appearing in the said paragraph, relevant and admissible?

(2) Was the Court bound on the hearing of the said appeals to determine the values of the resumed lands, and to assess compensation on the basis of values determined :—

- (A) As at the tenth day of February, 1942,
- (B) As at the date of resumption, or
- (C) As at the date of the Advisory Board's assessment ?

(3) If question 2 (c) is answered in the affirmative :—

- 10 (A) Was the Court bound to determine values and to assess compensation as at the fourth day of May, 1950, being the date of the Advisory Board's report, or
- (B) Was it open to the Appellant to establish that the Advisory Board had made an assessment at some date prior to the fourth day of May, 1950 ?

Dated this twenty-eighth day of May, 1952.

B. SUGERMAN,
Judge.

*In the
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of the
Supreme
Court of
New South
Wales.*

—
No. 1.
Case Stated
by Land
and
Valuation
Court
(Sugerman,
J.), 28th
May 1952,
continued.

No. 1a.

ANNEXURE " A "

JUDGMENT as to Admissibility of Evidence.

20 APPEALS BY H. W. PYE, R. J. PYE AND R. A. PYE UNDER SECTION 9 OF THE CLOSER SETTLEMENT (AMENDMENT) ACT, 1907.

HIS HONOR : Objection has been taken to a particular question, but consideration of the admissibility of that question has involved consideration of the relevance of the line of enquiry which it opens up. One further question has been framed, and the matter debated as if it had been asked and objected to ; and the character of the line of enquiry of which these questions are the beginning, and of the ultimate question to which it leads, has been indicated by Mr. Myers in argument and will appear from the transcript.

30 In the course which these appeals have taken, and, really, in any event, the evidence objected to could be relevant only if it would, or might, lead to a determination of value by this court on a basis other than that stated in section 4 (4) (b), proviso, para. (ii) of the Closer Settlement (Amendment) Act, 1907, as amended. In effect that means that it could be relevant only if it would, or might, lead to a determination by this court, for the purpose of assessing the compensation to be paid in respect of the resumption, of the value of the resumed land as at the actual date of resumption (1st September, 1950), and not as at a hypothetical date of resumption being 10th February, 1942.

40 Although the term " appeal " is used in sections 4, 9 and 10 of the Closer Settlement Act, 1907, as amended, the legislation does not provide for an appeal in the strict sense. The function of this court is to determine the value of the land (which is the measure of compensation for its resumption) if the owner is dissatisfied with the value as assessed

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by the advisory board and expresses his dissatisfaction by appealing to the court. The governing provision of section 4 (4) (b) is that "the compensation to be paid in respect of any such resumption shall . . . be the value of the land as assessed by an advisory board, or where an appeal has been made in terms of section nine of this Act, as determined by the Land and Valuation Court."

Certain events must have happened before, in any case, determination of the value of the land could become a matter for this court. These events, stated in the order in which they are dealt with in the Act, which is not necessarily their chronological order, are (see sections 4, 9 and 10):— 10

(1) A report by an advisory board. The relevant report is in evidence in these appeals.

(2) A resumption by the Governor. The relevant *Gazette* notification, published in the *Gazette* of the 1st September, 1950, is in evidence.

(3) Approval by resolution of both Houses of Parliament. This is not in contest here.

(4) A proclamation under section 4 (3) of the Act. The relevant proclamation in the *Gazette* of the 5th October, 1945, is in evidence. 20

(5) An assessment of the value of the land by an advisory board. Mr. Myers has submitted that the assessment must be, or may be, some conclusion arrived at and formulated by the board as a preliminary to making its report, to be proved, or capable of being proved, by evidence going beyond the terms of the report. Mr. Hardie has submitted that the report embodies the assessment (in the form of the statement of "the estimated value of the land" which, under section 3 (1) (b), it must contain) or, at any rate, exclusively evidences the assessment. Whether the one view or the other is correct it is not necessary for the moment to decide. 30 It is not disputed that there was an assessment, albeit Mr. Myers contends that the board assessed the value of the land in the wrong manner because he submits they applied the wrong principle (that is assessed under paragraph (ii) of the proviso to section 4 (4) (b) instead of assessing under section 4 (4) (b) without regard to the proviso). Indeed, the existence of an assessment is the very foundation of the appeal and is, in effect, recited in the notice of appeal.

(6) The owner's dissatisfaction with the value assessed by the board and the making of an appeal in terms of section 9. Here, 40 the requisite notice of appeal has been lodged and recites such dissatisfaction.

What I have set out are requirements common to all cases of determination by the court of the value of land resumed under the Act. Where the resumption is made "for the purposes of section three of the War Service Land Settlement Act, 1941, as amended by subsequent Acts," certain further considerations enter into the matter. The *Gazette* notification of 1st September, 1950, recites that the present resumption was made for that purpose, and Mr. Hardie has directed my attention to a new

paragraph (c) inserted in section 4 (4) by the amending Act, No. 40 of 1951, attaching conclusive evidentiary effect to such a recital. However, the argument of the present question of evidence has in any event proceeded upon the assumption that the subject resumption was made for the purpose stated.

In this special group of cases of resumption for this particular purpose, it is implicit in the legislation that there is a further prerequisite to an appeal to this court, namely, that there has been no agreement by the owner "not to claim compensation in excess of the value of the land as assessed by an advisory board." The proviso to section 4 (4) (b) divides this group of cases into two classes, namely, (i) those where the owner has so agreed, and (ii) those other than those where the owner has so agreed. In the first class it places a limit upon the value of the land "as so assessed" (i.e., by the advisory board), and in the second class upon the value of the land "as so assessed or determined" (i.e., by the advisory board or by the court).

The present is a case of the special character referred to in paragraph (ii) of the proviso. It is, or at least is to be considered for present purposes as being, a case of resumption made for the purposes of section 3 of the War Service Land Settlement Act, 1941, as amended by subsequent Acts. It comes to the court only because it is a case in which there has been no such agreement by the owner as I have mentioned. In these circumstances, paragraph (ii) of the proviso to section 4 (4) (b) makes a provision which differs from that in paragraph (i) of the same proviso and from that in the proviso to section 4 (4) (a). The two last-mentioned are, in terms, directions only to the advisory board, but paragraph (ii), as will appear from the quotation a little earlier in these reasons is, in terms, a direction to the court, as well as to the board, that the value is not to exceed the value which would have been assessed or determined in respect of an identical resumption as at 10th February, 1942.

Paragraphs (a) and (b) of section 4 (4) have stood in their present form since the enactment of the amending Act, No. 14 of 1950, which was assented to on the 3rd May, 1950. That is to say they have since that time contained a reference to section 3 of the War Service Land Settlement Act, 1941, as amended, instead of a reference to the scheme contained in the agreement approved and ratified by the War Service Land Settlement Agreement Act, 1945, which earlier reference to the scheme made the provisos inoperative (*P. J. Magennis Pty. Ltd. v. The Commonwealth*, 80 C.L.R. 382). But to say merely that these provisions have stood in their present form since 3rd May, 1950, is to leave out of account the provisions of section 3 (5) (a) of the amending Act No. 14 of 1950. It is there enacted that the provisions of section 3 of that Act which make the relevant amendments of the provisos "shall be deemed to have commenced upon the seventeenth day of January, One thousand nine hundred and forty-six." Thus, to the direction to the court in section 4 (4) (b), proviso paragraph (ii), as to how value is to be determined, there is added a direction to the court, sitting here and now to determine these appeals, that it is to deem the proviso to have stood in its present form, and consequently to have been an operative enactment at, in effect, all material times. In speaking of all material times, I include all times material to Mr. Myers' argument, and, in particular, to his submissions with respect

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Annexure "A."

Judgment as to Admissibility of Evidence of H. B. Corlis, 24th April 1952.

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to the possibility of an assessment of value by the advisory board prior to 3rd May, 1950, and with respect, in that event, to antecedent opportunity for the owner to choose whether or not to agree not to claim compensation in excess of the value assessed.

These submissions, and other submissions (whether additional or alternative to them) which Mr. Myers has made, all hark back to the basic proposition, partly expressed and partly tacit, that if they are upheld (or if they are upheld and the relevant facts are established), the court should regard this case as falling outside the proviso and determine value accordingly (that is as at 1st September, 1950, and not as at 10th February, 1942). Their relevance as submissions of law, and the relevance of the evidence tendered and proposed to be tendered are entirely dependent upon that basic proposition. My difficulty is in appreciating how, even if I agreed with every submission made, and even if the questions were allowed and the evidence turned out favourably under one or other of the submissions made, the court could do otherwise than proceed in accordance with the directions given to it by the Statute. As I have pointed out, every prerequisite for giving effect to those directions exists in this case (or is assumed to exist for present purposes), up to and including the prerequisites that the resumption was made "for the purposes of section three of the War Services Land Settlement Act, 1941, as amended" and was a "resumption other than a resumption where the owner has agreed not to claim compensation in excess of the value of the land as assessed by an advisory board." That being so, it appears to me that the court, sitting to hear and determine the appeal which has been made to it by determining the value of the land resumed, is bound to observe the directions which the Legislature has given it in relation to the making of that determination.

The only matter which, as it seems to me, I need mention more specifically is the matter of some proper opportunity to the owner to choose between the two courses of agreeing or not agreeing not to claim compensation in excess of the value of the land as assessed by the advisory board. I mention that matter more specifically because some aspects of Mr. Myers' argument on it are untouched by the amendment made by Act No. 14 of 1950 and the retrospectivity accorded thereto. I shall discuss it on the twofold assumption that Mr. Myers' submissions as to the necessity for an opportunity of choice are sound in law and that the facts would be found in his clients' favour.

The difficulty I have, even on that basis, is in appreciating how the result contended for is arrived at, namely, that this case should be treated as outside the proviso altogether. The proviso extends to every case where the resumption is made for the purposes of section 3 of the War Service Land Settlement Act, as amended. This is, *ex hypothesi*, such a case. Paragraphs (i) and (ii) exhaust all possible cases falling under the proviso, and the maximum amount which the advisory board could in any event have assessed in such a case was the value as at 10th February, 1942, plus 15 per cent. thereof. The completest opportunity of election, followed by an election in favour of agreeing not to claim more than the value assessed by the board, could not have resulted in an assessment greater than that amount, i.e., could not have resulted in an assessment of value as at the actual date of resumption. In fact, the Appellant in

each case has come here on appeal on the basis that he was one to whom paragraph (ii) in the proviso applied, and that is the only basis on which he could have come to this court in a case caught by the proviso.

Possibly, the matters which Mr. Myers has raised might have been urged, or might still be urged, in support of a claim for relief in some form of proceedings in some other jurisdiction. In my opinion they have not the effect contended for here of requiring the court to determine value on a basis other than that provided for in section 4 (4) (b), proviso paragraph (ii). For that reason, the evidence tendered and proposed to be tendered is, in my opinion, irrelevant, and the question asked must therefore be disallowed.

No. 1b.

ANNEXURE " B " to Case Stated.

APPEALS BY H. W. PYE, R. J. PYE AND R. A. PYE UNDER SECTION 9 OF THE CLOSER SETTLEMENT (AMENDMENT) ACT, 1907.

JUDGMENT ON OBJECTION TO EVIDENCE.

HIS HONOR : Counsels' arguments on this question of evidence have centred round the provisions of section 4 (4) (b) of the Closer Settlement (Amendment) Act, 1907. It will be convenient, and will avoid repetition of references to the legislation, if I consider the matter not in the order in which counsel presented their arguments but by reading section 4 (4) (b) and dealing with the points made in relation to each portion of it as I come to that portion.

Section 4 (4) (b) provides that : " The compensation to be paid in respect of any such resumption shall . . . be the value of the land as assessed by an advisory board, or where an appeal has been made in terms of section 9 of this Act, as determined by the Land and Valuation Court." Then comes the proviso, commencing with the words : " Provided that where any such resumption is made for the purposes of section three of the War Service Land Settlement Act, 1941, as amended by subsequent Acts, the following provisions shall apply ".

Certain arguments were based upon, *inter alia*, the words " Shall be the value of the land as assessed by an advisory board " and the words " where any such resumption is made ". But it is convenient to defer consideration of these arguments until I come a little later to other provisions which are also relevant to them.

I shall consider first the words " for the purposes of section three of the War Service Land Settlement Act, 1941, as amended by subsequent Acts " occurring in the proviso. In my opinion these words do refer to a possible purpose of resumption ; at this stage of the matter I am considering Mr. Myers' submission that no such purpose can or does, or could or did at any material time, exist, as a matter of law or as a matter of fact.

To ascertain what are the purposes of section 3 of the War Service Land Settlement Act, 1941, as amended by subsequent Acts, one must turn to the provisions of that section. Subsection (1) provides, leaving

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Annexure " A. "

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Sugerman, J., *continued.*

No. 1B.
Case Stated by Land and Valuation Court.

Annexure " B. "

Judgment as to Admissibility of Evidence of M. M. Hyndes as to Value, 28th April 1952.

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In the Full Court of the Supreme Court of New South Wales.

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out words here irrelevant, that "the Minister may, by notification published in the *Gazette*, set apart any area of land acquired under the Closer Settlement Acts, or any of those Acts as amended by subsequent Act, to be disposed of in accordance with this section under the Closer Settlement Acts, or any of those Acts as amended by subsequent Acts, exclusively to any one or more of the following classes of persons: (A) members of the forces; (B) discharged members of the forces; (C) discharged soldiers; (D) other eligible persons." In a later paragraph of the same subsection there is another enactment to which Mr. Myers has referred me, namely: "Any notification under this section may be amended or revoked by the Minister by a notification published in the *Gazette*." Later provisions of section 3 relate to the obtaining by members of the forces of qualification certificates entitling them to apply for land so set apart; and there is a provision in subsection (4) further limiting the class of eligible applicants by requiring that the applicant must satisfy the local land board or the Water Conservation and Irrigation Commission, as the case may be, that he has been issued with the appropriate qualification certificate.

Now it seems to me that the provisions of section 3 of the War Service Land Settlement Act, 1941, are not the less expressive of "purposes" within the meaning of the proviso to section 4 (4) (b) of the Closer Settlement (Amendment) Act, 1907, because of the circumstance that section 3 provides only that the Minister "may" set apart the areas of land in the manner mentioned, or because the Minister may later change his mind and amend or revoke a notification. There is not the less a "purpose" because fulfilment of that purpose is not a matter of binding legal obligation, created by statute, contract, or otherwise; and there is not the less a "purpose" because the Minister might also deal under section 3 with land which had been acquired without reference to its being acquired for the purposes of section 3.

Legal sanctions are not essential to the existence or to the fulfilment of a "purpose." A man may, for instance, acquire land for the purpose of sub-dividing it and making a gift of each lot to a member of his family. It is by no means incorrect to say that he has acquired land for that "purpose" because he is under no legal duty to carry out the purpose or because he may later change his mind. His purpose in such a case may be evidenced in more ways than one. It may be evidenced by his express statement at the time of acquisition of the land or, in the absence of any such declaration, by his subsequent conduct.

The difference between the positions under section 4 (4) (b), proviso, of the Closer Settlement (Amendment) Act, 1907, as it now stands since amendment by Act No. 14 of 1950, and as it stood before such amendment, is a difference as to the existence of evidence of the purpose of resumption. Under the law as it stood before the amendment, the purpose of the resumption might have been ascertained by enquiring whether there was in existence an "approved plan of settlement" within the meaning of clause 10 (D) of the agreement scheduled to the War Service Land Settlement Agreement Act, 1945, and whether the resumed land fell within any such approved plan. It might be taken that a resumption of land comprised in an approved plan of settlement was a resumption "for the purposes of the scheme contained in the Agreement approved and ratified by the

War Service Land Settlement Agreement Act," since by clause 11 of that agreement the State was obliged to acquire the land comprised in an approved plan of settlement. Similarly, if land was resumed but there was not in existence an approved plan of settlement comprising that particular land, it might be taken that that resumption was not for the purposes of the scheme.

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Under the law as it now stands there is no such external and objective standard of reference. Whether a resumption was or was not made for the purposes of section 3 of the War Service Land Settlement Act, 1941, is a question of fact. I shall come back later to the question of evidence of purpose.

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A second question raised by the arguments in relation to these words "for the purpose of section three of the War Service Land Settlement Act, 1941, as amended by subsequent Acts" is whether such purposes can co-exist with resumption in terms of section 4 (1) (b) of the Closer Settlement (Amendment) Act, 1907, or with resumption of land which, in terms of section 7 (1) of the same Act, is to vest in Her Majesty "for the purposes of the Closer Settlement Acts" (that is the group of Acts falling within that expression as defined in the Closer Settlement (Amendment) Act, 1916, section 2) and to "be dealt with thereunder." I can see no difficulty in such co-existence. Indeed the whole scheme of the relevant legislation requires it. The carrying out of the purpose expressed in the title to the War Service Land Settlement Act, 1941, as "the settlement on the land of persons who are members or discharged members of His Majesty's naval, military or air forces," etc., requires the operation upon the same subject-matter not of one Act only, but of two or more Acts.

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The War Service Land Settlement Act, 1941, as amended, is not a complete code for that purpose. It contains neither provisions empowering the compulsory acquisition of land nor any complete set of provisions as to how land, once acquired, is to be disposed of. It refers to other legislation on both matters and all that it does, in effect, is to introduce, *qua* the disposal of land acquired, qualifications upon the mode in which it would have been disposed of under such other legislation standing alone. That is apparent from the language of section 3 (1), which refers to a group of Acts (including the Closer Settlement Acts) as the Acts under which the land is to be acquired, and to another group of Acts (also including the Closer Settlement Acts) as to the manner in which the land is to be disposed of.

The War Service Land Settlement Act is primarily concerned (section 3) with restriction of the class of persons to whom the land may be disposed of under those other Acts. It has, as well, various ancillary provisions, designed for the assistance of the beneficiaries of the legislation and for other purposes, but it is not material to canvass those for the purposes of the present consideration of the matter. It is sufficient to note what has been referred to in argument, that is to say, the restriction upon the class of person to whom land set apart by notification under section 3 may be disposed of.

I can see no difficulty in reading together, and giving effect in combination to, section 3 of the War Service Land Settlement Act,

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section 21 (4) of the Closer Settlement (Amendment) Act, 1909, and Part IV (and in particular sections 26, 27 and 28 thereof) of the Closer Settlement Act, 1904. All that it comes to is that the Minister may set apart an area acquired under the Closer Settlement (Amendment) Act, 1907, to be disposed of, in accordance with section 3 of the War Service Land Settlement Act, under the Closer Settlement Acts, with the consequences that section 21 (4) of the Closer Settlement (Amendment) Act, 1909, applies to such disposal, and so too does Part IV of the Closer Settlement Act, 1904, but that there is the overriding requirement in every case that the disposal be only to persons who fall within the class prescribed in section 3 of the War Service Land Settlement Act. 10

It is, in my opinion, incorrect to refer to the purposes of the War Service Land Settlement Act, 1941, on the one hand, and to those of the Closer Settlement Acts on the other, as if the one could not co-exist with the other. They can co-exist so long as it is understood (as appears clearly to have been the legislative intention) that, while such matters as the tenures which may be granted and the general procedure on applications therefor are to be governed by the Closer Settlement Acts, all that is to be subject to a limitation imposed by the War Service Land Settlement Act upon the class of eligible person. 20

A resumption may be both (i) a resumption under the Closer Settlement (Amendment) Act, 1907, and for the purposes of the Closer Settlement Acts, and (ii) a resumption for the purposes of section 3 of the War Service Land Settlement Act, 1941, as amended. Therefore, it seems to me that in this case no question of a statute enacted under some mistaken assumption as to the law, such as was discussed in the case cited by Counsel of *Inland Revenue Commissioners v. Dowdell O'Mahoney & Co., Ltd.* [1952] 1 All E.R. 531, at pp. 544 and 545, really arises. There is no ground for suggesting that the Legislature acted upon a mistaken assumption as to the existing law; rather did it accept the existing law as to modes of acquisition and as to modes of disposal of the land to be set aside, and impose some qualifications upon the latter for the particular purposes in hand. 30

Returning to section 4 (4) (b) of the Closer Settlement (Amendment) Act, 1907: The proviso goes on to enact two separate provisions which are to apply, the one "in the case of any such resumption where the owner has agreed not to claim compensation in excess of the value of the land as assessed by an advisory board," and the other "in the case of any such resumption other than a resumption where the owner has" so agreed. These provisions are numbered as paragraphs (i) and (ii). Paragraph (i) enacts that in the case to which it applies "the value of the land as so assessed shall not exceed by more than fifteen per centum the value which would have been so assessed or determined in respect of an identical resumption as at" (10th February, 1942) "excepting the value of any improvements effected on such land since that date." Paragraph (ii) contains a reference to the value of the land "as so assessed or determined" — "so determined" because under paragraph (ii), unlike paragraph (i), there may arise a question of determination by this court, the words "so assessed" referring to an assessment by an advisory board. In paragraph (ii) it is provided that "the value of the land as so assessed or determined shall 50

not exceed the value which would have been so assessed or determined in respect of an identical resumption as at " (10th February, 1942), " excepting the value of any improvements effected on such land since that date."

The first question which arises under these two paragraphs involves also a consideration of the earlier phrases in section 4 (4) (b) which I passed over when I commenced to read its terms. It involves consideration also of the requirement of section 3 (1) (b) of the Act, which provides that " every such board " (that is to say, every advisory board) " shall, at the request of the Minister and within such time or extended time as he may

10 appoint, report to him as follows : (b) the estimated value of such land."

Undoubtedly the requirements of paragraphs (i) and (ii) of the proviso in relation to the assessment of value by an advisory board, when considered with the earlier expressions in section 4 (4) (b) to which I have referred and with section 3 (1) (b) of the Act, do give rise to difficulty. The difficulty arises because the making of a report by an advisory board and the assessment of value by the board (whether that be the same thing as, or something different from, its report) are matters which must take place before resumption.

While those are matters which must take place before resumption,

20 the purpose of resumption is something associated with the actual effecting of the resumption. So that one appears to get the situation that before resumption a board is required to assess value on different bases, the appropriate basis in any given case being one determined by the purpose of the subsequently occurring resumption. Mr. Myers has drawn particular attention in that connection to the use of the words " *is made* in relation to the resumption " in the opening portion of the proviso which conditions the application of paragraphs (i) and (ii), followed in those paragraphs by an imposition on the advisory board of a duty as to the basis on which it is to assess the compensation, and to the imposition of that duty

30 notwithstanding that assessment of value by the board must precede the resumption.

It may be, as has been suggested during the hearing by Mr. Hardie, that the Legislature had in mind that a board (which is a body of an administrative character) when it set about performing its function of making a report would be informed of, or would ascertain, the purpose of the proposed resumption. Thereby the board would be enabled to go about its duty of arriving at an estimate of value with that purpose in mind, and would accordingly be enabled to proceed on the basis which would be appropriate to that purpose if it should turn out to be the

40 purpose for which the land was resumed. Thus a board might be acquainted with the fact that a proposed resumption was intended to be a resumption for the purposes of section 3 of the War Service Land Settlement Act and proceed accordingly ; or it might be informed that the proposed resumption was not intended to be for that purpose, in which event it would make its estimate of value ignoring the proviso to section 4 (4) (b).

It is possible that that was what the Legislature had in mind as a matter of administrative practice. But there can be no question that the definition of the duty of a board in respect of the basis of valuation as expressed in the Act itself does give rise to difficulty. It might be

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In the Full Court of the Supreme Court of New South Wales.

No. 1B.

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considered, if one refers to and reads quite literally the terms of the Act alone without adverting to administrative practice, and if one reads the whole of section 4 in association with the requirements of section 3 and superadds thereto the provisions of section 7 (and even if one also takes into consideration the new evidentiary paragraph (c) added to subsection (4) of section 4 by Act No. 40 of 1951), that the board is set what, on the face of the legislation, seems to be an impossible task.

Let it be assumed, for the purpose of further discussion of the matter, that a board is thus set a task which it cannot carry out because it is required to assess value on a basis which cannot be determined until subsequent resumption takes place. Let it be assumed that everything that has been said by Mr. Myers on that matter is correct, that one must look only to the terms of the Act and read them quite literally, that one should not approach the matter with any assumption that the Legislature was thinking in terms of the administrative character of the board and of some practical mode of administration, whether following existing practice or not, and that the result of all that is to create an impossibility. What is the duty of the court if that is the position? Is the court to hold that, since an advisory board could not do what the Legislature required it to do under the proviso, it therefore should in every case make an assessment under section 4 (4) (b) independently of the proviso? Is the court then to hold that, since the board should have proceeded in that way and has not done so, the court (on an appeal against the assessment of the board under section 9 of the Closer Settlement (Amendment) Act, 1907) must itself determine value under section 4 (4) (b) independently of, and without reference to, the proviso? That is what Mr. Myers' argument comes to in effect.

If that is correct, what then becomes of the direction to the court itself contained in section 4 (4) (b), proviso, paragraph (ii), that, in the case of any resumption referred to in that paragraph, the value of the land as determined by the court shall not exceed the value which would have been assessed or determined in respect of an identical resumption as at 10th February, 1942? The court is not faced with any such difficulty arising out of a prescribed order of events as an advisory board may have been faced with. The court's jurisdiction arises only after notification of resumption. (An appeal to the court is, under section 9 (2), to be instituted by notice of appeal lodged within 28 days after the date of publication in the *Gazette* of the notification of the resumption or within such further time as the court allows.) Thus the court is not faced with any difficulty of selecting a basis of valuation by reference to future events. Before the matter comes to the court there will have been a resumption and it will be known what the purpose of that resumption was and, in particular, whether or not it was made for the purposes of section 3 of the War Service Land Settlement Act, 1941.

The court's jurisdiction in these cases is only in a broad sense an appellate jurisdiction. True, the way in which the matter comes before the court is referred to in section 9 of the Act as "appeal . . . against such assessment." But generally in the Act assessment by a board and determination by the court are referred to as if they were alternative methods of ascertaining the value of the resumed land. Whatever difficulty there may be in the way of a board's giving effect to the requirements of the

legislation, whatever may be the consequences of that, and whatever a board may have done in the circumstances, it seems to me that if a matter comes to the court on appeal the court is obliged to determine the value of the resumed land, and is obliged so to do as on a rehearing of the question of value. That being so, it follows, in my opinion, that the court must independently follow the path pointed out for it by section 4 (4) (b), proviso, paragraph (ii) of the Closer Settlement (Amendment) Act, 1907, if it finds that the conditions necessary for the application of that paragraph exist in the particular case.

- 10 That paragraph, as I have said earlier in this matter, stands in contradiction to paragraph (i) of the same proviso, and to the proviso to section 4 (4) (a), as a direction to the court and not merely to the advisory board. The matter may be thus summed up: Assume impossibility in the way of performance by a board of the task imposed upon it by the statute. Assume that, nonetheless, the board proceeded as if it were a possible task—proceeded, for instance, as if the section referred not to a resumption which *is* made but to a proposed resumption for a contemplated purpose, and with knowledge of the contemplated purpose. Assume that the board, so proceeding, arrived at an assessment in accordance with the
- 20 formula in section 4 (4) (b), proviso, paragraph (ii). Which of two courses must the court then follow? Should it say: “The board erred. The case should not have been considered by the board as falling within the limiting formula. The court will therefore determine value independently of the proviso.” Or should the court obey the statutory direction to it contained in paragraph (ii) of the proviso, having in mind that there is no difficulty about its carrying that direction into effect such as affected the performance of the board’s function? In my opinion, the answer to that question is that the court must obey the direction which, in section 4 (4) (b), proviso paragraph (ii), the Legislature has given to it.

- 30 That raises, of course, the question whether this case, on the present state of the evidence, is within the proviso to section 4 (4) (b). In 1951 there was passed an Act which was assented to on the 7th December of that year, namely, the War Service Land Settlement and Closer Settlement (Amendment) Act, No. 40 of 1951. That Act inserted at the end of subsection (4) of section 4 of the Closer Settlement (Amendment) Act, 1907, a new paragraph (c) which reads as follows, leaving out words immaterial here: “(c) In the case of any such resumption a recital or other appropriate statement in the notification in the *Gazette* of the resumption to the effect that the resumption is made for the purposes of section three
- 40 of the War Service Land Settlement Act, 1941, as amended by subsequent Acts, shall be conclusive evidence that the resumption is made for such purposes, and the provisions of paragraph (a) or (b) of this subsection shall apply accordingly.” By subsection (3) of section 8 of the War Service Land Settlement and Closer Settlement (Amendment) Act, 1951, it is provided that subsection (1) of that section, which contains the amendment which I have just read, shall be deemed to have commenced on 3rd May, 1950. The resumption in question here was made by *Gazette* notification published on 1st September, 1950, and the notification does in fact recite that the resumption to be effected by it is made for the purposes of section 3
- 50 of the War Service Land Settlement Act, 1941, as amended by subsequent Acts, following the terms of the new paragraph (c).

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Even apart from the new paragraph (c) it would seem that such a recital is evidence of the purpose of the resumption and would be sufficient evidence thereof in the absence of further evidence to show that the purpose as stated was not the purpose as intended. In the present case no such further evidence has thus far been called, nor has it been suggested that any such further evidence will be called.

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However that may be, I have difficulty in seeing any reason why this new paragraph (c) should not be applied by the court in the present case. It makes a provision of an evidentiary character. It provides that a recital or statement in the notification in the *Gazette* shall be evidence of a certain matter—shall indeed be conclusive evidence of that matter. Its real effect would appear to be that it makes what would in any event be, if unanswered, sufficient evidence of the matter in question, conclusive evidence thereof. Its concluding words "and the provisions of paragraph (a) or (b) of this subsection, as the case may be, shall apply accordingly" appear to be not so much independent enactments as a statement of what follows from the recital having been made conclusive evidence. 10

The provision is made retrospective by subsection 8 (3) to a period anterior to the notification in the *Gazette* of the resumption here in question. In any event, the character of the appeal which is now before the court is such as, I think, to require the court to apply the law as it stands as at the time when the appeal is heard. However that may be, the new provision is in terms, made retrospective. 20

One reaches, then, the position that this is, on the evidence thus far, a case of a resumption made for the purposes of section 3 of the War Service Land Settlement Act, 1941, as amended by subsequent Acts. It is, for reasons pointed out, in the earlier judgment on admissibility, a case of such a resumption "other than a resumption where the owner has agreed not to claim compensation in excess of the value of the land as assessed by an advisory board." It is therefore, a case to which the direction to the court, contained in paragraph (ii) of the proviso, applies. 30

There is one further provision in each of paragraphs (i) and (ii) of the proviso upon which argument has been founded. I need read it only from paragraph (ii): "The value of the land so assessed or determined is not to exceed the value which would have been so assessed or determined in respect of an identical resumption as at the tenth day of February in the year one thousand nine hundred and forty two, excepting the value of any improvements effected on such land since that date." This is not a unique instance of a statutory requirement that value be assessed or determined as at some date other than the actual date of the resumption or acquisition. That occurs under the Lands Acquisition Act, 1906, of the Commonwealth. Mr. Hooke mentioned that it occurred under the Harbour Bridge Resumption Act of this State, and very possibly it has occurred in other legislation, here or elsewhere, as well. (I should make it clear that, in speaking of similar requirements in other legislation. I am not suggesting that in other legislation the words "in respect of an identical resumption" occurred, but only that there is other legislation which makes the relevant date for determining value for compensation purposes a date anterior to the actual date of resumption or acquisition). I think I am entitled to assume that there is no reported decision on the construction of any such legislation 40 50

which would assist in solving the problems raised by the terms of the legislation here in question, since no such decision has been cited to me and I take it that the experienced counsel in this case have been unable to discover any.

The words around which the argument has centred are the words "in respect of an identical resumption." Mr. Myers has referred to the effect the section might have had if those words had not appeared and if it had merely read that the value should not exceed "the value which would have been so assessed or determined as at " 10th February, 1942. He has
10 submitted that the Respondents' case treats the Act as if those words were not there. Legislation in that form might well have given rise to difficulties of its own.

But those words do in fact occur. The value as determined is not to exceed the value which would have been assessed or determined "in respect of an identical resumption as at " the stated date. The submission on behalf of the Appellants is that the paragraph is to be applied only where there could have been an identical resumption as at the stated date, and that the legislation does not require any assumption that there could have been an identical resumption as at the stated date. It is said that in
20 fact in the present case (the matter being, it is submitted, one of fact) there could not have been an identical resumption as at the stated date; it is an admitted fact there was a transfer by one of the Appellants, R. J. Pye, to another of the Appellants, R. A. Pye, of land (including the whole of the land resumed from R. A. Pye) between 10th February, 1942, and the actual date of resumption. The transfer was dated 7th September, 1945, was produced to the Registrar-General on 14th September, 1945, and was entered in the Register Book on 7th November, 1945.

In my opinion the Act, by imposing without qualification this require-
30 ment that the value shall not exceed the value which would have been assessed or determined in respect of an identical resumption as at 10th February, 1942, does require the assumption that an "identical resumption" as at that date was possible. In other words, the Act requires value to be determined on the footing, not of the actual resumption as at the actual date of resumption, but of a hypothetical resumption occurring as at 10th February, 1942.

There can scarcely be envisaged such a thing as two resumptions which are absolutely identical occurring at an interval (taking the present case as an illustration), of something over eight years. The question here
40 is in what sense the legislature has used the phrase "identical resumption" in this proviso?

There is an exception to the requirement which casts some light upon the meaning of the proviso generally. The exception is contained in the concluding words of each paragraph, namely, "excepting the value of any improvements effected on such land since that date." The exception suggests that if it had not been there the effect of the proviso would have been such that it would have been necessary to look at the condition of the land as it was in 1950 and then to refer that back to the hypothetical date, 10th February, 1942—that is to say to consider the resumption as a
50 resumption as at 10th February, 1942, of land then in the condition in

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which the subject land actually was at the actual date of resumption. The exception overcomes that by excepting the value of any improvements effected since 10th February, 1942. It shows that in applying the paragraph the land must be regarded as it stood on the 10th February, 1942, with only the improvements then existing on it, subsequent improvements being presumably a matter to be valued as at the actual date of resumption.

The express exception made in the case of improvements leads to the conclusion that in speaking of an "identical resumption" as at 10th February, 1942, the Legislature is referring to a resumption identical in all other circumstances relevant to value. But it is to be an identical resumption "as at" 10th February, 1942, and it is to be such a resumption for the purpose of assessing or determining value in respect of it. The result in my opinion, is that in applying the proviso the matter must be dealt with on the basis of a hypothetical resumption assumed to have taken place as at 10th February, 1942, and identical with the actual resumption in all circumstances relevant to the question of value, except that improvements made after 10th February, 1942, are not to be considered as having existed on 10th February, 1942, but are to be separately dealt with. Thus the values of the lands resumed from the Appellants R. J. Pye and R. A. Pye respectively are to be determined as if each had owned on 10th February, 1942, the lands which he in fact owned on 1st September, 1950, and as if there had been resumed on 10th February, 1942, the lands which were in fact resumed on 1st September, 1950. This is subject to the exception as to improvements, which has no effect here since it is common ground that no improvements were effected since 10th February, 1942.

In *Pye v. Renshaw & Ors.* (51 Argus Law Reports 880) it was said by the Full High Court at page 884, referring to the legislation now in question: "There is no possible ground of attack on the validity of this legislation. There is no ground whatever for saying that it is inoperative, and all courts are bound to give effect to it according to its tenor." However, it seems from what follows in the judgment that submissions of the nature of those which have been made on this question of admissibility of evidence were apparently not addressed to the High Court in *Pye v. Renshaw*, the court going on to say that "Counsel for the Plaintiff did not, indeed, profess to attack the validity of efficacy of any State legislation."

The conclusion that I have come to so far as the present arguments are concerned is that, subject to the possible question of difficulty which I have mentioned with respect to assessment of value by an advisory board, no ground has been shown for questioning in any respect the operative character or effectiveness of the legislation and more particularly no ground has been shown for questioning the operative character or effectiveness of so much of it as governs determination of value by the court. Such questions as have been raised, apart from that one possible exception of the position of an advisory board, appear to me to be questions which are capable of ready resolution as questions of construction. They are intricate, rather than difficult, questions, their intricacy arising from the complexity of the Statutes and the changes from time to time made. The arguments addressed to the court on behalf of the Appellants amount to a submission

that the whole of the provisos to section 4 (4) (a) and (b) should be treated as entirely inoperative and without effect, an extreme course not warranted by any difficulty of construction shown to exist.

On the arguments thus far advanced, and on the evidence thus far adduced, it still appears to me that the duty of the court is prescribed by paragraph (ii) in the proviso to section 4 (4) (b). That being so, the evidence which has been tendered as to value as at the actual date of resumption (namely, 1st September, 1950) has not been shown to be relevant to any issue before this court. For that reason I must reject that evidence, and
 10 the question objected to must be disallowed.

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No. 2.

RULE OF COURT.

Term No. 165 of A.D. 1952.

IN THE SUPREME COURT OF NEW SOUTH WALES.

IN THE MATTER of an Appeal by RICHARD JAMES PYE against the value of his land part of "Ghoolendaadi" as assessed by a Closer Settlement Advisory Board.

Between RICHARD JAMES PYE Appellant

and

20 THE MINISTER FOR LANDS Respondent.

RULE OF COURT.

Tuesday the Twenty-second day of July One thousand nine hundred and fifty-two.

This matter coming on for hearing on the eleventh twelfth and thirteenth days of June One thousand nine hundred and fifty-two WHEREUPON AND UPON READING the Case Stated by His Honour Mr. Justice Sugerman and filed herein AND UPON HEARING Mr. Myers of Queen's Counsel with whom were Mr. C. M. Collins Mr. E. J. Hooke and Mr. B. P. Macfarlan of Counsel for the Appellant Richard James Pye and Mr. Hardie of Queen's Counsel with whom appeared Mr. Dawes and Mr. Saunders of Counsel for the Respondent Minister for Lands IT WAS ORDERED that the matter stand for judgment and the matter standing in the List this day for judgment accordingly IT IS ORDERED that the questions asked in the Case Stated namely:—
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(1) (A) Was the evidence or any part of the evidence sought to be tendered as set out in paragraph 15 of this Case, and objected to and rejected as appearing in the said paragraph, relevant and admissible?

40 (B) Was the evidence sought to be tendered as set out in paragraph 16 of this Case, and objected to and rejected as appearing in the said paragraph, relevant and admissible?

No. 2.
 Rule of Court in Appeal by Richard James Pye, 22nd July 1952.

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(2) Was the Court bound on the hearing of the said appeals to determine the values of the resumed lands, and to assess compensation on the basis of values determined :—

(A) As at the tenth day of February, 1942,

(B) As at the date of resumption, or

(C) As at the date of the Advisory Board's assessment ?

(3) If question 2 (c) is answered in the affirmative—

(A) Was the Court bound to determine values and to assess compensation as at the fourth day of May, 1950, being the date of the Advisory Board's report, or

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(B) Was it open to the Appellant to establish that the Advisory Board had made an assessment at some date prior to the fourth day of May, 1950 ?

be answered.

(1) (A) On the construction which the Court places on the proviso to Section 4 (4) (b), the evidence was irrelevant because it was unnecessary.

(1) (B) Since the duty of the Land and Valuation Court was to assess the value of the land as at the date of resumption and not on the basis of 1942 values this evidence was admissible.

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(2) (A) No.

(2) (B) Yes.

(2) (C) No.

(3) This question does not arise.

AND IT IS FURTHER ORDERED that the case be remitted to the Land and Valuation Court AND IT IS FURTHER ORDERED that the costs of and incidental to this Case Stated be taxed by the proper officer of this Court and when so taxed and certified be paid by the Respondent to the Appellant or to his Attorney, Mr. C. D. Griffin.

By the Court. 30

For the Prothonotary

R. T. BYRNE,
Chief Clerk.

No. 3.
Joint
Reasons
for
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Street, C.J.,
Owen, J.,
Herron, J.

No. 3.

JOINT REASONS FOR JUDGMENT.

These stated cases raise difficult and important questions as to the construction of some confused and confusing legislation dealing with Closer Settlement. The legislative provisions with which the cases are principally concerned appear in the Closer Settlement (Amendment) Act of 1907, reprinted in 1950 in accordance with the provisions of the Amendments Incorporation Act, but it is desirable to set out something of the history of the legislation in order to have an understanding of its general pattern.

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It begins with the Closer Settlement Act of 1904, which is still described as the principal Act, although little of it remains in existence at the present day. Under that Act the Minister, for purposes of closer settlement, might call upon "any person" to report upon the suitability of land for closer settlement, at the same time notifying the owner that this action had been taken, with the object of later asking Parliamentary authority to resume the land (section 13 (1)). On receipt of a report from the person called upon to make it, the Minister then referred the matter to the Closer Settlement Board to value the land and the improvements after an enquiry in open court of which notice was required to be given to the owner (section 15). The Closer Settlement Board consisted of the President and Commissioners of the Land Appeal Court and the Chairman and members of the Local Land Board for the district in which the land was situated (section 41), these tribunals being constituted under the Crown Lands Act and well qualified to deal with land values. After the making of its valuation by the Closer Settlement Board, the Minister might refer the matter to Parliament, and if Parliament approved, the land could then be resumed by notification in the *Gazette* (section 17). The valuation of the land and improvements "as reported, by the Closer Settlement Board" became the purchase price, subject to the right of an owner dissatisfied with that valuation to appeal within 28 days after resumption to a tribunal consisting of a Supreme Court judge and two assessors, one appointed by the Crown and one by the dissatisfied owner. In the event of such an appeal being made, the value fixed by this tribunal constituted the acquisition price (section 18).

In 1907 the Closer Settlement (Amendment) Act of that year was passed and its provisions were declared to be in addition to and not in substitution for the provisions of the Act of 1904 (section 16). By section 2 the Governor was authorised to constitute Closer Settlement Advisory Boards. Such an advisory board might be required by the Minister to report whether land in a specified area was suitable for closer settlement and to estimate the value of such land and of the improvements thereon, and to state the price at which it recommended acquisition (section 3). When an advisory board reported in favour of acquisition, the land might be resumed if Parliament approved, and provided that a prior notification had been published in the *Gazette* that acquisition was proposed (section 4). We can find no express provision that the advisory board's estimate of value should be the price of acquisition, but such a provision seems to have been implicit in section 9, which gave a dispossessed owner who was dissatisfied with the valuation made by the advisory board a right to apply, within 28 days after resumption, to have "the fair market value of the land and improvements determined" by the tribunal constituted by section 18 (3) of the principal Act, namely, a Supreme Court judge and two assessors.

At this stage the legislation provided two alternative methods of resumption. The Minister might obtain a report from "any person," at the same time notifying the owner that he had asked for such a report with the object of seeking Parliamentary approval to acquire the land. In such case the value of the land with its improvements was then assessed by the Closer Settlement Board, a body with judicial functions, after

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holding an open inquiry at which the owner could be heard. If the land was thereafter acquired, the value thus arrived at by the Closer Settlement Board fixed the amount of compensation payable, subject to the right of the owner to appeal on *quantum* to a Supreme Court judge sitting with two assessors. In the alternative the Minister might require an advisory board, a purely administrative body with no judicial powers or functions, to report, and if resumption should later be made after the necessary steps of obtaining Parliamentary approval, etc., had been taken, the value assessed by the advisory board, without taking evidence or even hearing the owner, became the amount of compensation, subject to a right of appeal on *quantum* by a dissatisfied owner to the same appellate tribunal as in the case of the first alternative. It seems that the relevant date for determining the value of land would, in the case of a valuation by an advisory board, be the date when it reported its estimate of value to the Minister, just as, in a case where the alternative course was followed, the value "as reported by the Closer Settlement Board," became the price of acquisition. This date must of necessity have been a date prior to the date of resumption, and could be long anterior to it. If, however, when resumption was effected an owner was dissatisfied with what might be called the preliminary valuation and appealed, the question would arise as to the relevant date to which the appellate tribunal should have regard. On the one hand, the date of resumption when the dissatisfied owner's title was divested from him would *prima facie* be the relevant date. On the other hand, the appellate tribunal would only become seized of the matter on "appeal" from the preliminary valuation, and it would seem strange that the issue or question before that appellate tribunal should be a different one from that which was before the body against whose estimate of value the "appeal" was brought. The question may not have been of major importance in times when land values possessed a stability unknown at the present day, and when, no doubt, it was anticipated that the period between the taking of the first step towards resumption, namely, the calling for a report on the suitability of the land for closer settlement and the final act of resumption by notification in the *Gazette* would be of no great duration. This is emphasized by the fact that in this earlier legislation the statutory clog on dispositions by the owner pending resumption could last no longer than a year. On the whole, we think the better opinion is that the issue before the appellate tribunal would be the value as at the date of resumption and not as at some prior date when a closer settlement board or an advisory board had made its assessment in the form of a report to the Minister. Although the procedure whereby the matter came before the appellate tribunal was called an "appeal," the task of that tribunal was to fix the amount of compensation payable on resumption, and not to inquire whether or not the preliminary assessment was based on wrong premises. If it were otherwise, an owner who had added improvements to his land and thereby increased its value between the date of a board's assessment and the date of resumption would have been unable to claim that additional value. In the present case this question is of importance, as will later be seen, but the later legislation which has been superimposed on the general scheme set out above does not appear to alter the interpretation which should be placed upon the earlier legislation in this respect.

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The next relevant piece of legislation was passed in 1914, when by Act No. 7 of that year sections 13, 14, 15, 16, 17, 19 and 41 of the principal Act of 1904 were repealed. The effect of this repeal appears to have been to abolish the first of the alternatives mentioned above by repealing the sections enabling the Minister to call for a report from "any person," followed by a reference to the closer settlement board to assess the value, followed in turn by a reference to Parliament. But the repeal left untouched section 18, which made the valuation "as reported by the Closer Settlement Board" the acquisition price, subject to a right of appeal to a Supreme Court Judge sitting with assessors if resumption should later follow. That section 18 continued in existence is apparent from the fact that in 1921 section 21 of the Land and Valuation Court Act (No. 10 of 1921) amended section 18 of the 1904 Act so as to substitute the Land and Valuation Court as the appellate tribunal in place of the tribunal consisting of a Supreme Court Judge and assessors. In 1927, by Act No. 14, the words "Closer Settlement Advisory Board" were inserted in section 18 (1) of the principal Act in place of "Closer Settlement Board." But, as far as can be discovered in this maze of legislation, during the period from 1914 to 1927 the statutory provision was that the compensation payable was that fixed by the closer settlement board, although the section which provided for the matter coming before that tribunal had disappeared. However that may be, it would seem that from 1927 onwards the value reported to the Minister by an advisory board became the acquisition price should a resumption follow that board's report. The appellate tribunal was the Land and Valuation Court, and the value as fixed by that court after a resumption became the acquisition price in cases where an "appeal" was brought.

It is necessary now to come to some of the more recent legislation which has been superimposed on the structure outlined above. In 1945 the Commonwealth purported to enter into an agreement with the State to provide for the settlement of ex-servicemen and others, under which the State was to resume land for closer settlement and the Commonwealth was to provide the finance. According to this agreement, compensation for lands resumed by the State was to be assessed on the basis of values as at 10th February, 1942 (which was a low point in the values of land in this State). This agreement received statutory effect by the N.S.W. War Service Land Settlement Agreement Act, No. 6 of 1946. Act No. 14 of 1946, the War Service Land Settlement and Closer Settlement (Amendment) Act, was then passed for the purpose of giving effect to this agreement with the Commonwealth, and this Act amended the Closer Settlement Act of 1907. As it stood before this amendment the legislation provided for :—

(1) A report by an advisory board to the Minister as to suitability, value, recommended price of acquisition, etc. (section 3).

(2) Power to resume where an advisory board had reported that land was suitable for closer settlement (section 4 (1)).

(3) The obtaining of Parliamentary approval for resumption (section 4 (2)).

(4) A notification that the Governor proposed to consider the "advisableness" of resuming (section 4 (3)).

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By this time the statutory consequence of a notification of “ advisableness ” was to prevent any disposition of the land, without the Minister’s consent for a period of six years from the date of such notification (section 6).

The amendment made by the 1946 Act added to section 4 (1) (2) and (3) some new subsections, including section 4 (4) (b) :—

“ The compensation to be paid in respect of any such resumption shall . . . be the value of the land as assessed by an Advisory Board, or where an appeal has been made in terms of section 9 of this Act, as determined by the Land and Valuation Court. Provided that where any such resumption is made for the purposes of the scheme contained in the agreement approved and ratified by the War Service Land Settlement Agreement Act, 1945, the value of the land as so assessed or determined shall not exceed the value which would have been so assessed or determined in respect of an identical resumption as at the Tenth day of February one thousand nine hundred and forty-two, excepting the value of any improvements effected on such land since that date.”

It provided also that, where a notification of “ advisableness ” had been made under section 4 (3), the restrictions on the owner’s right of disposition should continue for six years after such notification or after the passing of the amending Act, whichever should be the later date.

Section 4 of the 1907 Act then read as follows :—

“ 4. (1) Where an Advisory Board reports that any land is suitable to be acquired for closer settlement, the Governor may—

(a) . . .

(b) resume it under this Act.

(2) Every . . . resumption shall be subject to approval by resolutions of both Houses of Parliament.

(3) Before resuming any land, the Governor shall, by proclamation in the *Gazette*, notify that he proposes to consider the advisableness of acquiring such land for the purposes of closer settlement.

(4) (a) . . .

(b) The compensation to be paid in respect of any such resumption shall, unless an agreement is entered into in terms of s. 11 of this Act, be the value of the land as assessed by an Advisory Board, or where an appeal has been made in terms of s. 9 of this Act, as determined by the Land and Valuation Court.

Provided that where any such resumption is made for the purposes of the scheme contained in the agreement approved and ratified by the War Service Land Settlement Agreement Act 1945 the value of the land as so assessed or determined shall not exceed the value which would have been so assessed or determined in respect of an identical resumption as at the Tenth day of February one thousand nine hundred and forty two, excepting the value of any improvements effected on such land since that date.”

The next relevant enactment appears to be the War Service Land Settlement and Closer Settlement (Amendment) Act, No. 48 of 1948, which amended section 4 (4) (b) by striking out the portion of section 4 (4) (b) introduced by Act No. 16 of 1946 which referred to 1942 values, and inserting in lieu thereof the following:—

In the Full Court of the Supreme Court of New South Wales.

10 “(1) In the case of any such resumption where the owner has agreed not to claim compensation in excess of the value of the land as assessed by an Advisory Board, the value of the land as so assessed shall not exceed by more than fifteen per centum the value which would have been so assessed or determined in respect of an identical resumption as at the tenth day of February one thousand nine hundred and forty-two, excepting the value of any improvements effected on such land since that date;

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20 (2) In the case of any such resumption other than a resumption where the owner has agreed not to claim compensation in excess of the value of the land as assessed by an Advisory Board, the value of the land as so assessed or determined shall not exceed the value which would have been so assessed or determined in respect of an identical resumption as at the tenth day of February one thousand nine hundred and forty-two excepting the value of any improvements effected on such land since that date.”

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Owen, J.,
Herron, J.,
continued.

Following upon a notification by the Governor under section 4 (3), the Minister, under section 3, appears to have required an advisory board to report on the lands in question in this case, but, before that report had been made, the High Court, on 21st December, 1949, delivered judgment in the case of *P. J. Magennis Pty., Ltd. v. The Commonwealth*, 80 C.L.R.382. It was held that the provision in the agreement between the Commonwealth and the State providing for the assessment of compensation for resumed property on the basis of 1942 values offended the “just terms” provision of the Commonwealth Constitution, and that the agreement was *ultra vires* the Commonwealth. Accordingly the court held that there was no valid agreement on which the State War Service Settlement and Closer Settlement (Amendment) Act, No. 14 of 1946, could operate, and that the State Act was to that extent ineffective. At this stage then, according to the decision of the High Court, the provision in the State Act which provided for compensation on the basis of 1942 values in certain events became a dead letter, and the advisory board’s duty remained as it was before, namely, to assess and report to the Minister its opinion of the value current at the date of its report. Presumably for this reason the advisory board 30 in the present case refrained from making any report to the Minister until 40 4th May, 1950. That date was the day following that on which an amending Act had received the Royal Assent. By this amending Act (the War Service Land Settlement and Closer Settlement Validation Act, No. 14 of 1950) various amendments were made in the earlier legislation. Amongst other things, all references to the agreement with the Commonwealth were struck out and in their place were substituted references to section 3 of the War Service Land Settlement Act of 1941, an Act which had been passed in that year for the settlement of ex-servicemen. The amending Act went on to provide that these amendments should be 50 deemed to have commenced on 17th January, 1946. The result was to

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produce section 4 of the 1907 Act in the form in which it appears in the copy of the Act printed in 1950 in accordance with the provisions of the Amendments Incorporation Act, 1906.

The first submission made by the Appellants is that whether regard is had solely to the legislation as it appears in the statute printed in accordance with the Amendments Incorporation Act, or whether regard is also had to the history of the closer settlement legislation, it is apparent that the only power of assessing values given to an advisory board is a power which must necessarily be exercised prior to resumption, and with this we agree. The Appellants' next step is to point to the fact that the proviso to section 4 (4) (b) of the 1907 Act as it now stands, under which 1942 values are to be made the basis for valuation in certain events, can operate only after a resumption has been in fact made, and made for a purpose which can only be known when a notification of resumption has been published in the *Gazette* (section 7). Accordingly it is said the proviso cannot apply to an advisory board when making an assessment and report, and that board's only duty is, therefore, to assess on the basis of the general law, namely, on the basis of the values current at the date of its report. With this also we agree. The proviso appears to have been drafted upon the erroneous assumption that the assessment of value by the board comes after, and not before, resumption, whereas the true position is that its only power is to assess before resumption. But "an Act of Parliament does not alter the law by merely betraying an erroneous opinion of it" (Maxwell, *Interpretation of Statutes*, 9th ed., p. 316). The Appellants then submit that when an appeal is brought to the Land and Valuation Court after notification of resumption, that Court must put itself in the same position as the board and do what it should have done, namely, fix a value on the basis of the values current at the date of the board's assessment. It is at this point that we find ourselves in disagreement with this line of argument. It is true that the matter reaches the Land and Valuation Court under the name of an "appeal" from the board's assessment, but what the Land and Valuation Court is required to do is to fix the compensation payable on a resumption which has by that time taken place. On this "appeal" the basis on which the advisory board at some earlier pre-resumption date assesses the value is irrelevant. The function of the court is to fix the amount payable by way of compensation, and not to enquire whether the board, in making its assessment, went right or wrong. This was clearly the position under section 9 of the 1907 Act in its original form. Though instituted in name by a "notice of appeal," the right given to an owner who was dissatisfied with the board's valuation was to apply to have the "fair market value of the land and improvements" determined by the court constituted under that Act. An appeal in the strict sense is an enquiry by the appellate court whether the order of the tribunal from which the appeal is brought was correct on the materials which that tribunal had before it. Under this legislation there is now no prior hearing in open court or at all and no record of what materials the board had before it except so far as may appear from its report. The Land and Valuation Court cannot even rehear the case, since there has been no prior hearing. Its duty is to enquire and determine for itself, regardless of the board's views as reported to the Minister, what is the true value for resumption purposes of the property in question, paying due attention to any statutory directions given in that regard and in the light of the facts

then existing. Support for this view of the nature of the "appeal" is to be found in section 10A, which gives the Minister a right to elect, within one month after the determination of the Land and Valuation Court, whether the Crown will pay the amount determined by that court or discontinue the resumption.

But this does not decide the matter. Once an "appeal" comes before the Land and Valuation Court, a duty to assess the amount of compensation on the basis of 1942 values only arises if the conditions prescribed in the proviso to section 4 (4) (b) have first been fulfilled. One of these conditions precedent to the operation of the proviso is that the owner should be given an opportunity, before the board enters upon its task of assessing values, of agreeing not to claim compensation in excess of the value as assessed by the board, failing which he would lose the additional 15 per cent. above 1942 values which might have been allowed by the board had he agreed to accept its decision as final. For the reasons stated earlier, however, the giving of this opportunity which the proviso requires as a condition of applying 1942 values is not possible, because (1) the opportunity must be given before the board enters upon its inquiry and assessment; (2) the board must make its report before any resumption can be made; and (3) the 1942 basis of valuation introduced by the proviso is applicable only where a resumption has been made and made for the purpose stated in the proviso. For these reasons it is not possible to give effect to what would seem to have been the intention of the Legislature when it enacted paragraph (1) of the proviso. It is at least clear that it was intended to make the exception to the general rules governing the assessment of compensation operate less harshly in the case of an owner who was prepared, in advance of an advisory board's assessment of value, to give up his right of appeal and agree in advance to accept that assessment as final. It is implicit in the legislative scheme that the owner should first be given an opportunity of deciding whether he will accept the valuation which the board is later to make, since it is not until the board knows whether or not the owner is prepared to accept its assessment as final and abandon his right of "appeal" in exchange for the possibility of obtaining an additional 15 per cent. on the 1942 values, that it can know what standard of values it is to apply. Yet this condition precedent to the application of 1942 values cannot be fulfilled, because by the very terms of the Act in which the proviso appears the board must make its assessment before, and not after, resumption, and therefore before the purpose for which the resumption is made can be known.

We think that the proviso is equally inoperative in so far as it relates to the assessment of value under paragraph (ii) by the Land and Valuation Court. Paragraphs (i) and (ii) of the proviso cannot be disassociated. They are inextricably linked with one another, and paragraph (ii) assumes that paragraph (i) is capable of operating so as to give an owner a right to agree to accept the board's assessment as final, with a resultant possible benefit to himself, and it is only in default of his acceptance of the opportunity, which the proviso contemplates shall have been given to him as a prerequisite to assessment, that the Land and Valuation Court is directed to fix the value on the basis prescribed in paragraph (ii). Since the Act itself prevents the proviso from operating, the duty of the Land and Valuation Court in the present proceedings was to proceed to assess

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the value of the land resumed on the basis of the general rule prescribed by the Act in regard to compensation, namely, that the land should be valued as at the date of resumption.

In these circumstances the evidence sought to be led by the Appellants to show that no opportunity was in fact afforded to them to agree to accept the board's assessment as final was unnecessary, because the proviso is incapable of being applied. It would be superfluous to offer evidence that no opportunity was in fact given, since, on the true construction of the Act, no opportunity could have been given. The proper interpretation of the language of the various sections which have been discussed is a matter of considerable difficulty. Undoubtedly, as was urged by the Respondent, the general rule of construction applicable to all Acts of Parliament is to read them *ut res magis valeat quam pereat*. "It is . . . a very serious matter to hold that when the main object of a statute is clear, it shall be reduced to a nullity by the Draftsman's unskilfulness or ignorance of the law. It may be necessary for a Court of Justice to come to such a conclusion, but . . . nothing can justify it except necessity or the absolute intractability of the language" (*Salmon v. Duncombe*, 11 A.C. 627, *per* Lord Hobhouse at p. 634). In the present case, however, the statute is not, in the view we have taken of the language used, reduced to a nullity or rendered futile or inoperative. The land in question has been resumed and is effectively vested in the Crown and can be made available for the purposes of the War Service Land Settlement Act, 1941. The outstanding question then remaining merely relates to the rights of the Appellants in the matter of compensation to be paid to them. It has been the invariable rule of all courts in construing legislation of this nature that, in the absence of clear and unambiguous language, Parliament is presumed not to desire to confiscate the property of a subject, and if proprietary rights are taken away, then it is also presumed to intend, unless plain words to the contrary are used, that adequate compensation will be paid. A statute under which an owner "is being deprived of his rights of property should be construed strictly against the local authority and favourably towards the interest of the applicant, inasmuch as he for the benefit of the community is undoubtedly suffering a substantial loss, which . . . must not be inflicted upon him unless it is quite clear that Parliament has intended that it shall" (*In re Bowman* [1932] 2 K.B. 621, at p. 633). Doubtless, it is easier to enunciate than to apply this principle, but this much is clear, namely, that unequivocal words are necessary in order to subject an owner to dispossession without just and adequate compensation. Both the principal Act of 1904 and the amending Act of 1907 provide that the owner of land which has been resumed for closer settlement generally is to receive the full money value of that land with its improvements as at the date of resumption. The Respondent to this appeal claims, however, that the proviso to section 4 (4) (b) creates an exception to this general rule in the case of the limited class of resumptions therein referred to, and enables the Crown to take the land in question in these proceedings upon payment of a sum of money considerably less than its true worth. Plain words are necessary to produce such a result, and those words are missing. Some of the language used by Parliament is so intractable that it cannot be given any operative effect, and there is lacking here that clarity of expression which must necessarily be found before an Act will be construed so as to deprive an owner of his land in

exchange for a sum of money which is conceded to be far below its true present value. That Parliament could so provide is unquestionable, but if that result is to be achieved, then it must be by the use of language free from doubt and ambiguity. Cf. *Major & St. Hallows R.D.C. v. Newport Corporation* [1952] A.C. 189.

In the Full Court of the Supreme Court of New South Wales.

The Respondent's submission was that the proviso could be made to work by reading the words in the proviso, "where any such resumption is made for the purposes of section three of the War Service Land Settlement Act 1941" as "where such a resumption is in course of being
10 made" or "is intended to be made" for the specified purpose. Such a construction would at once give rise to questions as to the stage at which it can be said that such a resumption is "in course of being made" and as to the person or persons to whom regard would have to be had in deciding whether an intention to resume for that purpose existed. Let it be assumed, however, contrary to our opinion, that such a construction could be put upon the proviso, and that its language is capable of being modified so as to give effect to an apparent intention that, as a preliminary to assessment on the basis of 1942 values, the owner should have the opportunity to make an agreement abandoning his right to appeal if
20 resumption should later be effected in order to obtain the benefit, if it can be so described, of paragraph (1) of the proviso. On this footing it would be necessary for the fact whether an agreement had or had not been made to have been made known to the board before it could know the basis on which it was to make its assessment. The agreement to which the proviso refers would seem to be an agreement with the Minister, who would presumably then inform the board so that it might know on what basis it was to value the land. Suppose a case where a resumption for the particular purpose specified in the proviso was intended by the Minister. The owner then agrees to accept the board's assessment as
30 final, but the resumption as finally approved by both Houses of Parliament and notified in the *Gazette* is for a purpose other than that mentioned in the proviso. In that event the owner's right of appeal would have gone, the board would have assessed on 1942 values, with a possible increase of 15 per cent. above those values, yet the resumption ultimately proves to have been made for a purpose outside the proviso. These and other considerations emphasise the impossibility of placing upon the proviso a construction such as that for which the Respondent contends. Even if this could be taken to be the proper construction of the proviso, the Appellants would still be entitled to succeed on this appeal since the
40 evidence sought to be given by them to the effect that no opportunity to agree was in fact afforded to them before the board proceeded to make its assessment would have been admissible. But, as we have already said, we are unable to accept the Respondent's submission that the construction for which he contends is the correct one.

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Herron, J.,
continued.

In these circumstances it is unnecessary to consider the further arguments of the Appellants based upon the words "an identical resumption" in paragraphs (i) and (ii) of the proviso to section 4 (4) (b). They may mean "identical" as regards the land only, or it may be, as the Appellants contend, that they mean "identical" both as to land and
50 parties, in which event if this resumption was one resumption only of the

In the Full Court of the Supreme Court of New South Wales.

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Joint Reasons for Judgment, 22nd July 1952.

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continued.

whole of the land, and not three separate resumptions of three different portions of it held by different owners, there could have been no resumption in 1942 identical with that made in 1950.

In the result, the questions submitted should be answered as follows :—

- (1) (A) On the construction which we have placed upon the proviso to section 4 (4) (b), the evidence was irrelevant because it was unnecessary.
- (1) (B) Since the duty of the Land and Valuation Court was to assess the value of the land as at the date of resumption, 10 and not on the basis of 1942 values, this evidence was admissible.
- (2) (A) No.
- (2) (B) Yes.
- (2) (C) No.
- (3) This question does not arise.

The cases are remitted to the Land and Valuation Court, and the Respondent must pay the costs of these appeals.

In the Full Court of the High Court of Australia.

No. 4.
Notice of Appeal by Minister for Lands, 21st August 1952.

**No. 4.
NOTICE OF APPEAL.**

No. 49 of 1952.

20

IN THE HIGH COURT OF AUSTRALIA.
New South Wales Registry.

IN THE MATTER of a CASE STATED by the Land and Valuation Court pursuant to the provisions of Section 17 of the Land and Valuation Court Act, 1921-1940, referring for decision of the Supreme Court of New South Wales certain questions of law which arose in proceedings before the said Land and Valuation Court Term No. 165 of A.D. 1952.

Between THE MINISTER FOR LANDS Appellant 30
and
RICHARD JAMES PYE Respondent. 1

NOTICE OF APPEAL.

TAKE NOTICE that pursuant to the Order of this Honourable Court made herein on the nineteenth day of August One thousand nine hundred and fifty-two the Appellant herein appeals to the High Court of Australia from the whole of the Judgment of the Supreme Court of New South Wales

given on the twenty-second day of July One thousand nine hundred and fifty-two in a matter in which the present Respondent was the Appellant and the present Appellant was the Respondent upon the following grounds namely :—

*In the
Full Court
of the
High Court
of
Australia.*

1. That the Supreme Court erred in holding that the value of the land resumed from the Respondent herein should have been determined by the Land and Valuation Court as at the first day of September One thousand nine hundred and fifty.

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Notice of
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10 2. That the Supreme Court should have held that the value of the said resumed land should have been determined as at the tenth day of February One thousand nine hundred and forty-two.

3. That the Supreme Court should have found that the value of the said resumed land had been correctly determined by the Land and Valuation Court.

4. That the Supreme Court erred in answering the questions asked in the Stated Cases as it did and should have answered the said questions as follows: —

1. (A) No.
1. (B) No.
20 2. (A) Yes.
2. (B) No.
2. (C) No.

5. That the Supreme Court erred in holding that the proviso to Sec. 4 (4) (b) of the Closer Settlement Amendment Act 1907 (as amended) can operate only after resumption has been in fact made.

6. That the Supreme Court erred in holding that the purpose for which a resumption is made under the said Act can only be known when a notification of resumption has been published in the *Gazette*.

30 7. That the Supreme Court erred in holding that the proviso to Sec. 4 (4) (b) of the said Act cannot apply to an Advisory Board when making an assessment and report and that the Board's only duty is to assess on the basis of the general law, namely, on the basis of the valuations current at the date of its report.

8. That the Supreme Court erred in holding that one of the conditions precedent to the operation of the proviso to Sec. 4 (4) (b) of the said Act is that the owner should be given an opportunity, before the Board enters upon its task of assessing value, of agreeing not to claim compensation in excess of the value as assessed by the Advisory Board.

40 9. That the Supreme Court erred in construing the proviso to Sec. 4 (4) (b) of the said Act as impliedly giving an owner an opportunity of agreeing not to claim compensation in excess of the value as assessed by the Advisory Board and then proceeding to hold that the giving of such opportunity was not possible because of the very terms of the said Act.

10. That the Supreme Court erred in holding that the only power of assessing value given to an Advisory Board under the said Act is a power which must necessarily be exercised prior to resumption.

*In the
Full Court
of the
High Court
of
Australia.*

No. 4.
Notice of
Appeal by
Minister
for Lands,
21st
August
1952,
continued.

11. That the Supreme Court erred in holding that the proviso to Sec. 4 (4) (b) of the said Act is wholly inoperative.

12. That the Supreme Court erred in holding that the proviso to Sec. 4 (4) (b) of the said Act is inoperative in so far as it relates to the assessment of value thereof by the Land and Valuation Court pursuant to paragraph (ii) thereof.

13. That the Supreme Court erred in ordering the Appellant herein to pay the costs of the said Stated Case.

14. That the Supreme Court should have ordered the Respondent herein to pay the costs of the said Stated Case.

10

Dated this Twenty-first day of August, 1952.

(Sgd.) E. W. DAWES,
Counsel for the Appellant.

This Notice of Appeal is filed by FINLAY PATRICK MCRAE, of 237 Macquarie Street, Sydney, in the State of New South Wales, Solicitor for the above-mentioned Appellant and Crown Solicitor for the State of New South Wales.

No. 5.
ORDER.

No. 49 of 1952.
No. 50 of 1952.
No. 51 of 1952.

*In the
Full Court
of the
High Court
of
Australia.*

No. 5.
Order,
10th March
1953.

IN THE HIGH COURT OF AUSTRALIA.
New South Wales Registry.

ON APPEAL

from the Full Court of the Supreme Court of New South Wales in matters
10 Term No. 165 of 1952, Term No. 168 of 1952 and Term No. 169 of 1952.

IN THE MATTER of CASES STATED by the Land and Valuation
Court pursuant to the provisions of Section 17 of the Land
and Valuation Court Act, 1921-1940, referring for decision
of the Supreme Court of New South Wales certain questions
of law which arose in proceedings before the said Land and
Valuation Court.

Between THE MINISTER FOR LANDS . . . Appellant
and
RICHARD JAMES PYE . . . Respondent

20

AND

Between THE MINISTER FOR LANDS . . . Appellant
and
RICHARD ANTHONY PYE . . . Respondent

AND

Between THE MINISTER FOR LANDS . . . Appellant
and
HENRY WARD PYE . . . Respondent.

Before—

30 THEIR HONOURS THE CHIEF JUSTICE (SIR OWEN DIXON), Mr. JUSTICE
McTIERNAN, Mr. JUSTICE WILLIAMS, Mr. JUSTICE FULLAGAR and
Mr. JUSTICE KITTO.

Tuesday the Tenth day of March in the year of our Lord One thousand
nine hundred and fifty-three.

WHEREAS on the 28th day of May 1952 cases (three) stated by the Land
and Valuation Court of New South Wales (Sugerman J.) in pursuance of
Section 17 of the Land and Valuation Court Act, 1921-1940, were filed
in the Supreme Court of New South Wales in the matters of three several
appeals by Richard James Pye, Richard Anthony Pye and Henry Ward
Pye against the values of certain lands as assessed by a Closer Settlement

*In the
Full Court
of the
High Court
of
Australia.*

No. 5.
Order,
10th March
1953,
continued.

Advisory Board in each of which appeals the Minister for Lands was the Respondent submitting in each matter the following questions for the determination of the Supreme Court of New South Wales :—

Question (1) (A) Was the evidence or any part of the evidence sought to be tendered as set out in paragraph 15 of the said case, and objected to and rejected as appearing in the said paragraph relevant and admissible ?

(B) Was the evidence sought to be tendered, as set out in paragraph 16 of the said case and objected to and rejected as appearing in the said paragraph, relevant and admissible ? 10

Question (2) Was the Court bound on the hearing of the appeal from the Closer Settlement Advisory Board to determine the value of the resumed lands, and to assess compensation on the basis of values determined—

(A) as at the 10th day of February, 1942,

(B) as at the date of resumption, or

(C) as at the date of the said Advisory Board's assessment ?

Question (3) If Question 2 (C) was answered in the affirmative—

(A) was the Court bound to determine values and to assess compensation as at the fourth day of May 1950, being the date 20 of the Advisory Board's report ; or

(B) was it open to the Appellant to establish that the Advisory Board had made an assessment at some date prior to the fourth day of May 1950 ?

AND WHEREAS the Full Court of the Supreme Court of New South Wales delivered judgment in such matters on the 22nd day of July 1952 and by Orders of the said Full Court of the Supreme Court of New South Wales each made on the 22nd day of July 1952 IT WAS ORDERED that the questions submitted in each of the three cases be and the same were answered as follows :— 30

Answer to Question (1) (A) On the construction which the Court places on the proviso to Section 4 (4) (b) the evidence was irrelevant because it was unnecessary.

(B) Since the duty of the Land and Valuation Court was to assess the value of the land as at the date of resumption and not on the basis of 1942 values this evidence was admissible.

Answer to Question (2) (A) No.

(B) Yes.

(C) No.

Answer to Question (3) This question does not arise. 40

AND WHEREAS by Notices of Appeal each dated the 21st day of August 1952 filed pursuant to leave granted by this Court by order made on the 19th day of August, 1952, the Minister for Lands appealed to this Court from the whole of the said several judgments and orders of the said Full Supreme Court of New South Wales AND WHEREAS by order of His Honour Mr. Justice McTiernan made on the 29th day of August, 1952,

IT WAS BY CONSENT OF PARTIES ORDERED that such three appeals by the Minister for Lands be consolidated and dealt with by this Court as one appeal AND this appeal as so consolidated coming on for hearing before this Court on the 11th, 12th and 13th days of November 1952 WHEREUPON AND UPON READING the certified copy of documents transmitted by the Prothonotary of the said Supreme Court of New South Wales to the New South Wales District Registry of this Court AND UPON HEARING Mr. Hardie of Queen's Counsel with whom were Mr. Dawes of Counsel and Mr. Saunders of Counsel on behalf of the

10 Appellant and Mr. Myers of Queen's Counsel with whom were Mr. Macfarlan of Queen's Counsel, Mr. Collins of Counsel and Mr. Hooke of Counsel on behalf of the Respondents THIS COURT DID on the 13th day of November, 1952, ORDER that judgment be reserved and this appeal standing on the list of matters for judgment in Melbourne this day in the presence of Mr. Opas of Counsel for the Appellant and Mr. Stephen of Counsel for the Respondents THIS COURT DOTH ORDER that this appeal be and the same is hereby allowed AND THIS COURT DOTH FURTHER ORDER that the orders of the Full Court of the Supreme Court of New South Wales appealed from be and the same are hereby

20 discharged AND THAT in lieu thereof the questions in the said cases stated by the said Land and Valuation Court (Sugerman J.) be answered as follows :—

Answer to Question (1) (A) No.

(B) No.

Answer to Question (2) (A) Yes.

(B) No.

(C) No.

Answer to Question (3) This question does not arise.

AND THIS COURT DOTH FURTHER ORDER that the said cases be

30 remitted to the said Land and Valuation Court AND THIS COURT DOTH MAKE no order as to the costs of and incidental to this appeal and of the said cases stated in the said Supreme Court.

By the Court.
F. C. LINDSAY,
District Registrar.

(High Court of Australia
Sydney Registrar.
Official Seal)

No. 6.

JOINT REASONS for Judgment.

The Minister for Lands of the State of New South Wales appeals by leave against the answers given by the Supreme Court of New South Wales

40 to certain questions submitted to it in three cases stated by the Land and Valuation Court. The cases were stated in appeals by the present Respondents to the latter court against assessments of the values of three parcels of land forming together a pastoral and agricultural property of almost 40,000 acres known as the Ghoolendaadi Estate, for the resumption of which the Respondents were entitled to be paid compensation by the Government of New South Wales.

*In the
Full Court
of the
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No. 5.
Order,
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No. 6.
Joint
Reasons
for
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1953.

—
Dixon, C.J.
McTiernan, J.
Williams, J.
Fullagar, J.
Kitto, J.

*In the
Full Court
of the
High Court
of
Australia.*

No. 6.
Joint
Reasons
for
Judgment,
10th March
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In the Land and Valuation Court, Sugerman J. held that upon the true construction of the relevant legislation the value of the resumed land must be determined, not as at the 1st September, 1950, which was the date of the resumption, but as at the 10th February, 1942, when land values were notoriously much lower than they became by September, 1950. The parties had agreed that the value of the subject land was only £211,629 in 1942, whereas by 1950 it was certainly much more, and according to the Respondents was more than £600,000. The decision of Sugerman J. therefore meant that all that the Respondents were entitled to receive was a sum substantially less than the fair equivalent of the land which the Government had taken. The Respondents appealed to the Supreme Court by way of case stated, and the decision of Sugerman J. was reversed. The learned Judges (Street C.J., Owen and Herron J.J.) reached the conclusion that in the statutory provisions upon which the Government relied there was not to be found a sufficiently clear expression of intention to deprive an owner of his land in exchange for a sum of money far below its true value, and that the Respondents were entitled to have their lands valued for compensation as at the date of resumption. 10

The Minister for Lands, being dissatisfied with this decision, now appeals to this court, and contends that the relevant Act is so framed as to effect the confiscatory purpose which the Supreme Court felt itself unable to attribute to the Parliament of New South Wales consistently with recognised principles of construction. 20

The resumption was effected under the provisions of the Closer Settlement (Amendment) Act, 1907, as amended. That Act, which with all relevant amendments may be referred to as the 1907 Act, makes by paragraph (b) of section 4 (4) a provision as to the compensation payable in respect of resumptions under the Act, and the provision there made is clearly intended to be exhaustive. The decision of the present appeals must therefore depend upon the true construction of that paragraph. In particular it depends upon the construction of a proviso which was inserted by the Act No. 48 of 1948 and amended by the Act No. 14 of 1950. Before advertent to the terms of the paragraph, however, it is necessary to examine briefly the scheme of this Act, which is devoted entirely to the topic of the acquisition of land by the Crown for purposes of closer settlement, by means of purchase or resumption. 30

The power to purchase or resume is conferred by section 4. It is exercisable, subject to approval by resolutions of both Houses of Parliament, "where an advisory board reports that any land is suitable to be acquired for closer settlement." The constitution of advisory boards is provided for by section 2, and their duty with respect to making reports is laid down by section 3. Subsection (1) of section 3 provides that every such board shall at the request of the Minister and within such time or extended time as he may appoint, report to him upon a number of matters specified in paragraphs (a) to (f) of the subsection. The first three matters are: (a) whether any, and if so what, land within an area to be specified by the Minister is suitable to be acquired for closer settlement; (b) the estimated value of the land; and (c) the price at which the board recommends the acquisition of the land, and the method of arriving at such price. Where the board reports that any land is suitable to be acquired for closer settlement, section 4 (1) empowers the Governor (A) subject to the Act, to purchase it by agreement with the owner, or (B) to resume it 40 50

under the Act. The approval of both Houses of Parliament is required by section 4 (2), and a further condition precedent to a resumption is added by section 4 (3), which provides (except where the owner has agreed not to claim compensation in excess of the value of the land as assessed by an advisory board) that before resuming any land the Governor shall, by notification in the *Gazette*, notify that he proposes to consider the advisableness of acquiring such land for purposes of closer settlement. Where a purchase is made, the Act requires a conveyance to His Majesty for the purposes of the Closer Settlement Acts: section 7 (2). A resumption, on the other hand, is to be effected by notification in the *Gazette*; upon the notification being made the land vests in His Majesty (subject to a right of retainer given by section 13) for the purposes of the Closer Settlement Acts: section 7 (1). Section 4 (4) provides in paragraph (a) that the price to be paid in respect of a purchase shall not exceed the price at which an advisory board has recommended the acquisition of the land (i.e., the price recommended in the board's report pursuant to paragraph (c) of section 3 (1)), and provides in paragraph (b) that the compensation to be paid in respect of a resumption shall (unless an agreement is entered into in terms of section 11 and there was no such agreement in the present case), be the value of the land as assessed by an advisory board (i.e., the value stated in the board's report pursuant to paragraph (b) of section 3 (1)), or, where an appeal has been made in terms of section 9, as determined by the Land and Valuation Court. A proviso was added to each of the paragraphs of section 4 (4) by the Act No. 48 of 1948; and, after it had been held in *P. J. Magennis Pty. Ltd. v. The Commonwealth* [1949] 80 C.L.R. 382, that the proviso to paragraph (b) was inoperative, both provisos were amended by the Act No. 14 of 1950 in a manner which renders that decision no longer applicable.

Section 9 gives to a person interested in resumed land who is dissatisfied with the advisory board's assessment of its value a right to appeal to the Land and Valuation Court within twenty-eight days after the publication in the *Gazette* of the notification of resumption or such further time as the court may allow; and section 10 gives the court jurisdiction to hear and determine the appeal. To provisions of other sections it will be sufficient to make brief references later.

It will be seen that there were two important features in the scheme of the Act as it stood before the 1948 amendment. The first was that a purchase or resumption must be preceded by a report from an advisory board, declaring the land suitable to be acquired for closer settlement and stating its estimated value and the recommended price of acquisition. The second feature was that the board's recommendation as to price set a maximum to the price which could be paid in the event of a purchase, and the board's assessment of value (or the court's determination of value if there should be an appeal) fixed the compensation payable in the event of a resumption. It was upon the second of these features of the scheme that qualifications were imposed by the provisos introduced in 1948 and amended in 1950. It is desirable to set out, notwithstanding their length, both paragraph (a) and paragraph (b) of section 4 (4), with the provisos as amended. They read as follows:—

“(4) (a) The price to be paid in respect of any such purchase shall not exceed the price at which an advisory board has recommended the acquisition of the land:

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Provided that where any such purchase is made for the purpose of section three of the War Service Land Settlement Act, 1941, as amended by subsequent Acts, the price at which an advisory board recommends the acquisition of the land shall not exceed by more than fifteen per centum the price which it would have recommended in respect of an identical purchase as at the tenth day of February, one thousand nine hundred and forty-two excepting the value of any improvements effected on such land since that date.

(b) The compensation to be paid in respect of any such resumption shall, unless an agreement is entered into in terms of section eleven of this Act, be the value of the land as assessed by an advisory board, or where an appeal has been made in terms of section nine of this Act, as determined by the Land and Valuation Court :

Provided that where any such resumption is made for the purposes of section three of the War Service Land Settlement Act, 1941, as amended by subsequent Acts, the following provisions shall apply :—

- (i) in the case of any such resumption where the owner has agreed not to claim compensation in excess of the value of the land as assessed by an advisory board the value of the land as so assessed shall not exceed by more than fifteen per centum the value which would have been so assessed or determined in respect of an identical resumption as at the tenth day of February, one thousand nine hundred and forty-two, excepting the value of any improvements effected on such land since that date ;
- (ii) in the case of any such resumption other than a resumption where the owner has agreed not to claim compensation in excess of the value of the land as assessed by an advisory board, the value of the land as so assessed or determined shall not exceed the value which would have been so assessed or determined in respect of an identical resumption as at the tenth day of February, one thousand nine hundred and forty-two, excepting the value of any improvements effected on such land since that date."

On the 4th October, 1945, by a proclamation published in the *Government Gazette* pursuant to section 4 (3), the Governor notified that he proposed to consider the advisableness of acquiring the Respondents' land for the purposes of closer settlement. Shortly afterwards, on 17th January, 1946, the War Service Settlement and Closer Settlement (Amendment) Act, 1945 (No. 14 of 1946), was assented to, and by section 3 (d) of that Act new subsections (1) and (1a) were inserted into section 6 of the 1907 Act. These subsections applied to proclamations already made under section 4 of the 1907 Act, and in relation to the Respondents' land they gave to the proclamation of 4th October 1945, the effect of a prohibition of any transfer or other dealing without the prior consent of the Minister until the expiration of six years from the commencement of the 1945 Act.

More than four years went by before any further step was taken. On 4th May, 1950, a Closer Settlement Advisory Board made a report to the Minister stating that, all attempts to reach agreement with the owners having failed, it was proposed to resume the whole of the Ghoolendaadi Estate, except a small area which one of the Respondents had elected to retain pursuant to the right of retention allowed by section 13. The report set out the board's valuation of the several areas comprised in the estate, and it added that the values had been assessed in accordance with subsection (4) (b) (ii) of section 4. The report further

10 stated that the land was suitable to be acquired for closer settlement, that the Board recommended that action be taken to resume the land, and that compensation be paid in accordance with the values assessed as above mentioned.

On 1st September, 1950, there appeared in the *Gazette* a notification by the Governor, reciting the proclamation of 5th October, 1945, the report of the advisory board, the fact that both Houses of Parliament had by resolution approved the resumption of the Respondents' lands, and the fact that the resumption to be effected was made for the purposes of section 3 of the War Service Land Settlement Act, 1941, as amended by

20 subsequent Acts. By this notification the Governor declared that the Respondents' lands were thereby resumed under the Closer Settlement (Amendment) Act, 1907, as amended. The proclamation effected the resumption of the Respondents' lands by virtue of section 7 (1), and the last of the recitals which it contained provides conclusive evidence that the resumption was made for the purposes of section 3 of the War Service Land Settlement Act, 1941, as amended by subsequent Acts. (The

30 evidentiary effect of the recital comes from a provision added to section 4 (4) by section 8 (1) (a) of the War Service Land Settlement and Closer Settlement (Amendment) Act, 1951 (No. 40 of 1951), which is deemed to have commenced on 3rd May, 1950: section 8 (3) of the same Act.) The Respondents did not agree at any time that they would not claim compensation in excess of the value of the land as assessed by an advisory board. The Minister's contention is that in these circumstances the case is governed by sub-paragraph (ii) of section 4 (4) (b), and that by reason of that sub-paragraph the Land and Valuation Court was right in holding itself bound to determine the value of the Respondents' land according to the value it had on 10th February, 1942.

The learned judges of the Supreme Court did not fail to perceive that it was with just such a case as this that the draftsman of

40 sub-paragraph (ii) of the proviso had set out to deal. But their Honors came to the conclusion, after examining in great detail the terms of the Act and its historical development, that the proviso was so expressed that to give it any application at all was impossible. For that reason they held that there was nothing in the Act which effectually deprived the respondents of their *prima facie* right to an amount of compensation equal to the full value of their land at the date of its resumption.

The steps by which their Honors reached this conclusion were, briefly, as follows: Both the sub-paragraphs of the proviso to section 4 (4) (b) are governed by the introductory words of the proviso, and they therefore

50 cannot be treated as applying in a given case until a stage has been reached at which it is possible to say that the case is one in which the resumption

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“ is made for the purposes of ” section 3 of the War Service Land Settlement Act, 1941, as amended. A resumption is not made, and therefore cannot be said to be made for these purposes, until the appropriate notification is published in the *Gazette* pursuant to section 7. But although, for this reason, the proviso cannot apply until the resumption of the land has been effected, the only operation which sub-paragraph (i) purports to have, and the only operation which sub-paragraph (ii) purports to have so far as it relates to the assessment of value by an advisory board, is at an anterior point of time. Each sub-paragraph consists of a direction to be observed by the advisory board when assessing the value of the land, and it is evident from section 3 that the assessment of value by the advisory board must precede the resumption. The value to be stated in the report must be the value at the date of the report. The assessment of that value by the advisory board having necessarily been completed before the resumption, the proviso attempts to achieve an impossibility when it purports, after the resumption has been effected, to give the advisory board a direction as to the manner in which it shall go about a task already performed. In relation to a determination of value by the Land and Valuation Court on appeal it is otherwise, because the case cannot come before the court until after the resumption has been effected, and, since the so-called appeal to the court is not an appeal in the strict sense, the court is not restricted as the board was to determining the value as at the date of the board’s report. But the antithesis between the two sub-paragraphs of the proviso gives rise to an inference that, as a condition precedent to the operation of the proviso in any given case, the owner shall have an opportunity, before the advisory board assesses the value, of agreeing or refraining from agreeing not to claim compensation in excess of the value as assessed by the board. It is impossible however for the owner to have that opportunity before the board assesses the value, because it makes its assessment before the land has been resumed and therefore before it can be known that the purposes of the resumption are those of section 3 of the War Service Land Settlement Act, 1941. It is only in default of the owner’s taking advantage of an opportunity to make the agreement mentioned in sub-paragraph (i) that sub-paragraph (ii) applies, even in relation to a determination of value by the court ; and since it is impossible that the opportunity should exist, it must follow that sub-paragraph (ii) cannot take effect.

Such, in outline, is the reasoning which led their Honours to conclude that the proviso to section 4 (4) (b) cannot be given any operative effect. Counsel for the Minister complained that this conclusion frustrated the manifest intention of the Legislature, but to meet the difficulties which weighed so heavily with the Supreme Court he had no suggestions to offer which it is possible to regard as satisfactory. His main argument was that the Supreme Court was in error in thinking that there could be no resumption “ made for the purposes of section three of the War Service Land Settlement Act, 1941 ” until the notification of resumption appeared in the *Gazette*. He contended that a resumption is a process extending over a period, and that “ made ” should accordingly be interpreted as meaning “ is in the course of being made.” Alternatively, he submitted, “ made ” should be read as “ about to be made.” The Act, however, lends no support to either contentions. Section 7 provides that the resumption of land under the Act shall be “ effected ” by notification in

the *Gazette*, and that "on such notification being made" the land shall vest in the Crown. Clearly enough, it is publication of the notification which is the making of the resumption. Resumption is not a process; it is an event occurring at the moment of the notification. Some help for the contrary argument was claimed from section 10A, which gives the Minister, when any resumption is "made" and compensation is payable, a right within a month after the first determination of the amount of compensation by the court, to elect whether the Crown will pay the amount or discontinue the resumption; but too much should not be read into the word "discontinue" in this context. The effect of an election to discontinue the resumption is stated by the section to be that the proclamation and all proceedings thereon and thereafter are to be treated as a nullity; and from this it is clear that what is referred to as a discontinuance is really a rescission *ab initio* of a resumption which has been made and which the section itself describes as having been made. Section 8 (1) was also relied upon as supporting the Minister's contention, but it merely creates another difficulty similar in kind to that which exists under s. 4 (4) itself.

If it were found impossible to give any intelligible meaning to the language of the proviso to section 4 (4) (b) when considered in the context of the Act the position would simply be that Parliament had failed to make known its intention, and the proviso would of necessity be treated as forming no part of the law. But if there is a meaning to be found in the proviso, it cannot be treated as void by reason of any difficulty in working it into the scheme of the Act. In truth the proviso makes very clear what the Legislature intended to achieve by enacting it; and, that being so, the judicial function is to construe the proviso, and the Act as a whole, in such a manner as will overcome any difficulties there may be in the application of the proviso, and, by so doing, to effectuate the declared intention of Parliament. The search for a satisfactory construction must begin with an acceptance of some of the considerations which were relied upon in the judgment appealed from. The first of these considerations has already been mentioned. It is that the words "where any such resumption has been made," in the introductory portion of the proviso, mean where there has been made in the *Gazette* a notification having the effect, by virtue of section 7, of vesting land in the Crown. Thus it is clear that with respect to particular land the provisions contained in the sub-paragraphs of the proviso have no application until the resumption of the land is an accomplished fact. There must be a resumption actually made, and made for the purposes of section 3 of the War Service Land Settlement Act, 1941, before either of the sub-paragraphs has any application. It is also clear that when land has been resumed it is too late for either of the sub-paragraphs to impose upon the advisory board an obligation to comply with its provisions in assessing the value of the land, for the board's assessment has then already been made. And, finally, it is clear that the question whether the owner has or has not agreed not to claim compensation in excess of the value of the land as assessed by the advisory board must be answered as at the time of the making of the advisory board's valuation; for the answer to that question determines whether the board was precluded from exceeding the 1942 value or was precluded only from exceeding the 1942 value plus 15 per centum.

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But the difficulties which the Supreme Court felt to be insuperable arose in consequence of an assumption which the parties tacitly made and from which the argument on each side proceeded. The assumption was that the proviso is in the nature of a command to the advisory board, prescribing for it the basis upon which it shall perform its duty of valuation. That duty being a pre-resumption duty, a direction to be obeyed in performing it would necessarily be nugatory if contained in a provision so expressed as not to apply until after resumption. But if the intention had been to give a binding direction to the board, the appropriate place in the Act for the insertion of the proviso would have been at the end of paragraph (b) of section 3 (1). It was not inserted there, no doubt for the very reason that it would then have been obviously incapable of any operation. The task to which the draftsman was addressing himself was, clearly enough, to limit the compensation payable in a particular class of cases. The class could not be described in any other way than by reference to the purposes of the resumption, and it was obvious therefore that the description must postulate a resumption. As the Act fixed the compensation payable at the amount of the value which had been assessed by the advisory board (unless altered on appeal), the draftsman was faced with the problem of inserting a provision which would apply only when a resumption had been actually made for the particular purposes in question, which therefore could not be inserted as a qualification upon section 3 (1) (b) so as directly and as a matter of law to govern the board in making its valuation, and yet which would ensure that the board would in fact observe 1942 values in the cases to which the amendment was directed. 10

The problem was not altogether simple, and the solution which the draftsman adopted was to add a proviso to the subsection which fixed the owner's compensation at the amount of the value as assessed by the advisory board, and to rely upon the practical effect which this would necessarily have upon the mind of the board when making its valuation. Thus the key to the problem was found in the fact that in actual practice the advisory board would be certain to know the purposes for which the resumption was likely to be made, and a proviso added to section 4 (4) (b) while not a command obligatory upon the board when valuing, would nevertheless operate as notice to the board at that time that unless it limited its assessment by reference to the 1942 value (or that value plus 15 per centum if the owner had agreed not to appeal), the assessment would not be effective to determine the compensation in the event of the resumption being in fact made for the stated purposes. The board is therefore valuing on the hypothesis of a future resumption. For that reason (it may be mentioned in passing) the board's duty appears to be to estimate the value, not as at the date of its report, but (if it makes any difference) as at the anticipated time of resumption. The proviso to section 4 (4) has the effect of requiring the board to forecast not only when the resumption is likely to take place if it is decided upon, but also whether the resumption (if made) will be for the purposes of section 3 of the War Service Land Settlement Act. Theoretically, of course, it would be possible for a resumption to be made for purposes other than those which the board had anticipated, but this fact presented no real difficulty; the presence of the proviso in the Act would be sufficient to ensure that the Minister, before resuming for the altered purposes, would call for a fresh report from the board, giving a valuation on the appropriate basis. 40 50

The draftsman's problem had another element in it : a 15 per centum margin over 1942 values was to be available to the advisory board if the owner had agreed to abide by the board's assessment. The object, of course, was to give the owner an inducement to forgo in advance his right of appeal and so to save the Crown the delay, trouble and expense which an appeal would entail. If this object were to be effectively served, the legislation must ensure that where a resumption was made for the purposes of section 3 of the War Service Land Settlement Act not only the board but also the owner must have been in a position, at the time

10 when the board was about to make its valuation, to foresee that the resumption would be made for those purposes. But again, the draftsman was able to rest upon practical considerations. The advisory board, with a view to obtaining for the Crown the benefit of immunity from appeal, would naturally inform the owner that it was for the purposes of section 3 of the War Service Land Settlement Act, 1941, that resumption was being considered, and would draw his attention to the terms or effect of the proviso. If he then agreed not to claim compensation in excess of the value as assessed by the advisory board, his agreement would of course relate only to compensation for the contemplated resumption, and would

20 have no effect in the event of his land being resumed for a purpose outside the proviso.

The draftsman, it must be remembered, was not preparing an amendment of the Act in the interests of the owner ; if he had been, he would have needed to provide a means whereby, before the making of the advisory board's valuation, the owner would be presented with an opportunity of electing whether or not he would forgo his right of appeal in order to raise by 15 per centum the maximum amount of his compensation. The draftsman made no attempt to do this, and the reason which suggests itself at once is that the primary object in view was to benefit the Crown,

30 by equipping it with an inducement which it could offer the owner if it chose to do so, in order to procure his acceptance of the advisory board's valuation in advance. There is therefore no ground for reading subparagraph (i) of the proviso as conferring upon the owner an option which the Crown must give him an opportunity to exercise, and as therefore carrying an implication that the proviso as a whole shall not operate if it is impossible for the owner to know, before the board's valuation is made, that the case is one in which the option is available to him. The fact that quite obviously the owner cannot have this knowledge at any time before the resumption has been effected provides the strongest possible reason

40 for refusing to make such an implication. But the fundamental answer to the argument in favour of the suggested reading of the proviso is that it overlooks the fact that the proviso qualifies, not the provision which creates the advisory board's duty to assess the value, but the provision which regulates the quantum of the compensation payable upon resumption. For this reason it cannot be read as an absurd and necessarily inefficacious attempt to turn back the hands of time, giving the owner an option after the time for its exercise has passed, and imposing upon the advisory board an obligation as to the manner in which it shall perform a duty already discharged.

50 In the present case the advisory board in its report of 4th May, 1950, stated the estimated value of the Respondents' lands assessed on the

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footing that the lands would shortly be resumed, that they would be resumed for the purposes of section 3 of the War Service Land Settlement Act, and that the case was not one in which the owners had agreed not to claim compensation in excess of the value of the land as assessed by the board. Accordingly the values stated were kept down to the values the board would have assessed in respect of an identical resumption as at 10th February, 1942, excepting the value of any improvements effected on the land since that date. The result of the values having been in fact estimated on this basis was that, the event having turned out as the board anticipated, and the case falling accordingly within sub-paragraph (ii) of the proviso to section 4 (4) (b), the board's valuation is found to comply with the requirement of that sub-paragraph, and the principal provision of section 4 (4) (b) therefore operates to fix the compensation at the value as assessed by the board, subject to appeal under section 9. In relation to the appeal to the Land and Valuation Court, sub-paragraph (ii) applies whether or not the Respondents were given, before the advisory board made its estimate of value pursuant to section 3 (b), an opportunity to accept the board's assessment as final, because the Respondents did not in fact so agree and the case therefore satisfies literally and precisely the condition of the sub-paragraph. The court was therefore bound to determine the value on the 1942 basis.

For these reasons we must allow the appeal. The position would have been very different if the resumption had been made under an Act of the Parliament of the Commonwealth for the legislative power of the Commonwealth with respect to the acquisition of property for Commonwealth purposes is limited by the constitutional requirement of just terms. There is no similar limitation upon the legislative power of the State of New South Wales. The parliament of the State, if its sense of justice allows it to do so, can authorise people's property to be taken or their services to be conscripted without just recompense, or, indeed, without any recompense at all.

The case stated by the Land and Valuation Court submitted three questions for decision. The first asked whether certain evidence which had been tendered on behalf of the Respondents to the present appeal was relevant and admissible. The evidence was of two kinds, one relating to the question whether the Respondents were in fact given an opportunity to agree that they would not claim compensation in excess of the advisory board's assessment, and the other directed to establishing the value of the resumed land as at the date of the resumption. For the reasons which have been given, neither class of evidence was relevant or admissible.

The second question asked whether the court was bound on the hearing of the appeals to determine the values of the resumed lands (A) as at the 10th February, 1942, (B) as at the date of resumption, or (C) as at the date of the advisory board's assessment. The answer must be, as at 10th February, 1942.

The third and last question does not arise, for it was asked on the assumption that the values should be determined as at the date of the advisory board's assessment.

No. 7.

ORDER IN COUNCIL granting Special Leave to Appeal.

AT THE COURT AT BUCKINGHAM PALACE.

 The 28th day of May, 1953.

Present

THE QUEEN'S MOST EXCELLENT MAJESTY

	LORD CHANCELLOR	Mr. SECRETARY LYTTELTON
	PRIME MINISTER	Mr. SECRETARY STUART
	LORD PRESIDENT	Sir ALAN LASCELLES
10	VISCOUNT SWINTON	Sir OWEN DIXON
	SECRETARY Sir DAVID MAXWELL FYFE	

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 4th day of May 1953 in the words following, viz. :—

20 “ WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of (1) Richard James Pye (2) Richard Anthony Pye (3) Henry Ward Pye in the matter of an appeal from the High Court of Australia between the

30 Petitioners Appellants and the Minister for Lands Respondent setting forth (amongst other matters) : that the Petitioners desire special leave to appeal to Your Majesty in Council from an Order of the High Court of Australia dated the 10th March 1953 allowing three Appeals (consolidated by Order of the High Court) by the Minister for Lands of the State of New South Wales from Orders of the Full Supreme Court of New South Wales dated 22nd July 1952 and answering in a contrary sense to the said Supreme Court certain questions of law in cases stated by the Land and Valuation Court of New South Wales dated 28th May 1952 : that the case

40 concerns the proper measure of compensation to be paid for the compulsory acquisition of about 37,568 acres of land formerly the property of the Petitioners which was resumed by the Governor of New South Wales on 1st September 1950 under the provisions of the Closer Settlement (Amendment) Act 1907 of New South Wales as amended by numerous subsequent Acts : that it raises questions of great difficulty and general importance as to the construction of that Act which have given rise to considerable conflict of judicial opinion in Australia : that the amount involved in the present case alone is some £333,000 and there are at least three other cases in which land has been resumed in circumstances similar to those of the present case and in which the same questions will arise : that the initial step has been taken towards resumption under the same Act of some three hundred other properties with a total area of approximately 3,000,000 acres of land in all of which

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Council.*

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Council
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*In the
Privy
Council.*

No. 7.
Order in
Council
granting
Special
Leave to
Appeal,
28th May
1953,
continued.

if carried to completion the same questions will arise : that the total amount involved in these cases may be of the order of some £15 million to £20 million. And humbly praying Your Majesty in Council to grant the Petitioners special leave to appeal from the Judgment of the High Court of Australia dated the 10th March 1953 and for such further and other relief as to Your Majesty in Council may seem meet :

“ THE LORDS OF THE COMMITTEE in obedience to His late Majesty’s said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof 10 and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioners to enter and prosecute their Appeal against the Judgment of the High Court of Australia dated the 10th day of March 1953 upon depositing in the Registry of the Privy Council the sum of £400 as security for costs :

“ AND THEIR LORDSHIPS do further report to Your Majesty that the proper officer of the said High Court ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid 20 before Your Majesty on the hearing of the Appeal upon payment by the Petitioners of the usual fees for the same.”

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution. Whereof the Governor-General or Officer administering the Government of the Commonwealth of Australia for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

(Signed) W. G. AGNEW. 30

THESE ARE THE ONLY PAPERS AVAILABLE IN THIS APPEAL.

Privy Council Office.

In the Privy Council.

ON APPEAL
FROM THE FULL COURT OF THE HIGH COURT OF AUSTRALIA.
(Appeals numbered 49, 50 and 51 of 1952)

BETWEEN

RICHARD JAMES PYE, RICHARD ANTHONY PYE and
HENRY WARD PYE *Appellants*

AND

THE MINISTER FOR LANDS FOR NEW SOUTH WALES *Respondent.*

RECORD OF PROCEEDINGS

WATERHOUSE & CO.,
1 NEW COURT,
LINCOLN'S INN,
LONDON, W.C.2,
Solicitors for the Appellants.

LIGHT & FULTON,
24 JOHN STREET,
BEDFORD ROW,
LONDON, W.C.1,
Solicitors for the Respondent.