Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Williams and another v. *The Permanent Trustee Company of New South Wales, Limited, and another, from the Supreme Court of New South Wales; delivered the 14th March* 1906.

Present at the Hearing:

THE LORD CHANCELLOR.
LORD MACNAGHTEN.
LORD DAVEY.
LORD ROBERTSON.
LORD ATKINSON.
SIR ARTHUR WILSON.

[*Delivered by Lord Macnaghten.*]

In New South Wales the law with respect to the acquisition of land for public purposes has been consolidated by the "Public Works Act, 1900," which repealed all previous legislation on the subject.

In the case of land belonging to private owners the power of acquisition by voluntary agreement is preserved. If the land is taken compulsorily, there is the choice between two methods of procedure (1) Notification in the Gazette, and (2) Notice to the parties. It is for the Governor to determine which method is to be adopted in any particular case. There is a difference as to the time when the interest of the private owner is divested, and there are some other minor differences. But the result in both cases is the same. The land is transferred from the private owner to a public authority described as "the "Constructing Authority," and the private

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owner is to be compensated in money. It is a compulsory purchase just as much in the one case as in the other.

The only question in this Appeal is whether a prohibition in the Act of 1900 against taking part only of a house or other building or manufactory applies in the case where land is acquired by Gazette notification as well as in the case where land is acquired by notice to the parties.

On the face of the Act of 1900 the answer to the question seems plain enough. By Section 1 of the Act of 1900 the Act is divided into Parts and Divisions. Part V. contains and explains the two methods of acquiring land. Part VIII. contains provisions described as "applicable in "every case where land is taken or acquired for "authorised works." In that Part, Division 3, headed "Compulsory Purchases," contains Section 131, which provides that "No party shall "at any time be required to sell or convey to the "Constructing Authority a part only of any "house or other building or manufactory if such "party is willing and able to sell and convey the "whole thereof."

In their Lordships' opinion, the whole law with respect to the acquisition of lands for public purposes is now to be found in the Act of 1900, and it is not necessary or proper to resort to, or consider, the earlier legislation on the subject.

The argument on behalf of the Appellants was to this effect: The Act of 1900 purports to be and is a consolidating Act; it must therefore be presumed that it was not intended to make any change in the law; originally the provision which is now Section 131 in the Act of 1900 applied only where land was taken for public purposes by notice to the parties. That was the earliest effort of legislation on the subject. It was designed to meet the wants of railways, and therefore naturally enough it was framed on the lines of the English Lands Clauses

Consolidation Act, though railways in Australia, with one or two unimportant exceptions, are Government undertakings. When the simpler method of procedure by Gazette notification was introduced, and legislation on the subject took a wider range, the provision in question was omitted. This difference between the two methods was kept up in the Act of 1888, which deals with both, though the earlier legislation was not at that time repealed. In the Act of 1900 Section 131 has got into a wrong place. You must set the matter right by re-casting the Act and re-arranging the Sections.

In reference to this argument it may be observed that although the Act of 1900 is a consolidating Act and does not purport to be anything else, it is not a statute merely collecting into one chapter an original or principal Act with subsequent amendments and modifications. It involves the co-ordination (so to speak) of two different methods of procedure. It would not have been outside the scope of such an Act to bring the two methods into harmony by eliminating a difference for which no reason can be suggested. It may also be observed that it is by no means clear that the operation of the section in question was confined in the Act of 1888 to the case of taking land by notice to the parties. The better opinion seems to be that in that Act it was equally applicable to both methods of procedure. But however this may be, the Act of 1900 must, in their Lordships' opinion, be read and construed as it was enacted. The Court has no authority to take the Act to pieces and to re-arrange the sections so as to produce an effect which, on the face of the Act as it stands, does not seem to have been intended.

Their Lordships will humbly advise His Majesty that the Appeal ought to be dismissed.

The Appellants will pay the costs of the Appeal.