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UNIVERSITY OF LONDON  
W.C.1.  
23 FEB 1955  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

No. 47 of 1953.

In the Privy Council

ON APPEAL  
FROM THE FULL COURT OF THE SUPREME COURT OF NEW  
SOUTH WALES.

IN THE MATTER of an Appeal by the Minister by way of  
Stated Case in Case No. 4216 of 1951 in the Supreme Court  
of New South Wales.

BETWEEN:—

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THE MINISTER - *Appellant*

— AND —

CHRISTOPHER BOWES THISTLETHWAYTE  
and REGINALD CLARK TURNER *Respondents.*

AND IN THE MATTER of an Order in Council of 2nd April,  
1909.

AND IN THE MATTER of an Appeal from the Supreme Court  
of New South Wales to Her Majesty in Council.

CASE FOR THE APPELLANT.

RECORD.

1. This is an appeal by leave of the Supreme Court of New South  
20 Wales from a judgment of that Court dated 28th September, 1953, upon  
a Case Stated by Sugerman, J., (the Judge of the Land and Valuation  
Court) dated 14th August, 1953. Sugerman, J., had in a judgment dated  
20th March, 1953, determined the amount of compensation for the  
compulsory resumption for public purposes of certain lands of the  
Respondents in an action brought by the Respondents against the  
Appellant under the Public Works Act, 1912. Sugerman, J., held that  
the decision of the High Court of Australia in *The Commonwealth v*  
*Arklay* (1952 87 C.L.R. 159) bound him to determine the compensation  
payable by the Appellant at a greater sum than he would otherwise have  
30 determined. The Supreme Court held that it was bound by the decision  
in *The Commonwealth v. Arklay* (1952 87 C.L.R. 159) and answered  
the questions in the Case Stated accordingly.

p. 16.  
pp. 1-7.  
pp. 16-15.  
p. 47.

2. The Appellant is a corporation sole under the name of "The Minister" and is so constituted by Section 4 of the Public Works Act, 1912.

p. 2, ll. 14-18.

3. The Respondents Christopher Bowes Thistlethwayte and Reginald Clark Turner are the Trustees of the Will of William Moore deceased and were at all material times the registered proprietors under the Real Property Act for an estate in fee simple of the lands resumed.

p. 2, ll. 8-13.

p. 7.

p. 2, ll. 19-23.

4. On the 20th September, 1946, the Appellant in pursuance of its powers under the Public Works Act, 1912 resumed the said lands of the Respondents. The said lands had been developed as a golf course and were being so used at the date of resumption. At all material times the land was suitable for development by subdivision into residential lots. For this purpose it would be necessary to construct roads and drainage and other works. 10

5. The question which arises for decision upon this appeal is the question of the proper basis for awarding compensation for land to which no special value attaches compulsorily resumed during a period when the price at which the owner could sell and the purchaser (not being a Government or an authority of a government) could buy the land was by law determined by the Treasurer of the Commonwealth of Australia or his delegate; it being possible to establish by evidence the price at or about which the Treasurer would have approved of a contract for the sale of the said land at the date of resumption. 20

The following questions may also arise:—

(i) whether evidence is admissible of the sales of comparable land effected after the termination of the said law, and if so, whether such evidence should be confined to sales of comparable land immediately after the termination of the law or should be limited to some later time;

(ii) if evidence of the character referred to in (i) is admissible, upon what principle the Court should act in using such evidence as a guide or basis for compensation; 30

(iii) whether evidence is admissible of the costs of road-works, drainage and other works as at a time subsequent to the date of resumption and after the termination of the said law;

(iv) if evidence of the character referred to in (iii) is admissible, upon what principle the Court should act in using such evidence as a guide in determining compensation.

6. So far as relevant to the questions in this appeal, the Public Works Act 1912 provides:—

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Part VII.

COMPENSATION.

\* \* \* \* \*

DIVISION 3—BASIS OF ASSESSMENT.

Section 124. For the purpose of ascertaining the purchase money or compensation to be paid, regard shall in every case be had by the

10 magistrates, arbitrators, surveyors, valuers, or jury (as the case may be) not only to the value of the land to be purchased or taken, but also to the damage (if any) caused by the severing of the lands taken from other lands of the owner, or by the exercise of any statutory powers by the Constructing Authority otherwise injuriously affecting such other lands; and they shall assess the same according to what they find to be the value of such lands, estate, or interest at the time notice was given, or notification published as the case may be, and without being bound in any way by the amount of the valuation notified to such claimant, and without reference to any alteration in such value arising from the establishment of railway or other public works upon or for which such land was resumed.

\* \* \* \* \*

7. By virtue of Section 9 (1) of the Land and Valuation Court Act 1921-1940, in any case in which a claim is made for compensation by reason of the acquisition of land for public purposes under the Public Works Act 1912, such claim shall be heard and determined in cases where the claim exceeds One Hundred Pounds by the Court without a jury and not otherwise. Provision is made by Section 9 (3) for the remission of the action to the Court for determination, and by Section 19 for the Statement of a Case to the Supreme Court on questions of law.

8. On the 20th February, 1942, Economic Organization Regulations were made under the National Security Act 1939-1946. The said Regulations were amended from time to time. The validity of the material parts of Part III of the Regulations was upheld by the High Court of Australia as an exercise of the defence power of the Commonwealth in time of war in *Shrimpton v. The Commonwealth* (1945) 69 C.L.R. 613 and *Dawson v. The Commonwealth* (1946) 73 C.L.R. 157. The latter case was decided on the 22nd October, 1946.

9. As at 20th September, 1946, the said Economic Organization Regulations provided (*inter alia*):—

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### PART III.—PROHIBITION OF TRANSFER OF CERTAIN PROPERTY.

6.—(1.) Except as provided by this Part, a person shall not, without the consent in writing of the Treasurer—

- (a) purchase any land;
- (b) take an option for the purchase of any land;
- (c) take any lease of land;
- (d) take a transfer or assignment of any lease of land; or
- (e) otherwise acquire any land.

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(2.) Nothing in this regulation shall prevent—

- (a) the taking of a lease of land (other than country land) to be used by the lessee where the term of the lease does not exceed three years and is to commence not more than three months after the date of the lease;

(b) the taking of a transfer or assignment of a lease of land (other than country land) to be used by the transferee or assignee where the unexpired portion of the term of the lease does not exceed three years;

(c) the taking of an option for the purchase of any land where the period within which the option may be exercised is limited to one month after the taking of the option;

(d) the acquisition of land by way of gift;

(e) any transaction to which the Commonwealth, a State, or an authority of the Commonwealth or a State, or to which any person acting on behalf of the Commonwealth, a State, or an authority of the Commonwealth or a State is a party, not being such a transaction by reason only of the fact that— 10

(i) the Public Trustee or Public Curator or the Curator of the Estates of Deceased Persons, or any similar authority, of any State or Territory, of the Commonwealth is a party to the transaction; or

(ii) the consent of the Commonwealth, a State or any person or authority is necessary to, or given in connexion with, the transaction; 20

(f) the acquisition of land on sale under a writ or warrant of execution issued out of any court; or

(g) any transaction by way of renewal or extension of a lease which was in existence prior to the twentieth day of February, 1942, where the rent under the lease as renewed or extended does not exceed the rent payable under the lease prior to the renewal or extension.

(3.) An application for the consent of the Treasurer under this regulation shall be in writing.

(4.) The Treasurer may require any person who is a party to a proposed transaction in respect of which an application is made for the Treasurer's consent under this regulation to furnish in writing to the Treasurer such particulars of the proposed transaction as the Treasurer requires. 30

(5.) In the case of an application for consent to purchase any land the application shall be accompanied by a valuation of the land by an independent approved valuer, unless, in special circumstances, the Treasurer dispenses with such a valuation.

(6.) Where an application is made for the consent of the Treasurer to any proposed transaction, being the purchase of land, the taking of a lease of land, the taking of a transfer or assignment of a lease of land or any other acquisition of land, the Treasurer may, before giving consent, if a valuation has not been furnished under the last preceding sub-regulation, require to be furnished to him a valuation, by an independent approved valuer, of the subject-matter of the proposed transaction. 40

(7.) A valuation under either of the last two preceding sub-regulations—

(a) if the proposed transaction is the purchase of any land—shall specify the amount which would have been a fair and reasonable price for the land as at the tenth day of February, 1942, or, if the valuation is a valuation by the Valuer-General of a State, may be the last valuation of the land made by the Valuer-General; and

10 (b) in any other case—shall specify the value of the subject-matter of the transaction as at a date specified by the Treasurer.

(8.) Where the Treasurer is not satisfied with any valuation furnished under sub-regulation (5.) or (6.), of this regulation, he may—

(a) require the valuer to furnish such information concerning the valuation as the Treasurer specifies; and

(b) require to be furnished to him a further valuation by an approved valuer nominated by the Treasurer.

20 (9.) Where an applicant for consent to purchase any land on which is erected a dwelling-house has informed the Treasurer that he intends to live in the dwelling-house, the applicant shall not, without the consent in writing of the Treasurer, let the land.

30 (10.) Where a transaction prohibited by this regulation has been entered into subject to the consent of the Treasurer thereto being obtained, the transaction shall be deemed not to have been entered into in contravention of this regulation if an application for the consent of the Treasurer is made within three months after the date of the transaction, but the transaction shall not have any effect unless the Treasurer gives his consent thereto, within a period of six months after the date of the transaction, or within such other period as is agreed on in writing, at the time the transaction is entered into or at any time thereafter, by all the parties to the transaction or, where the agreement is made after the death of any party, by the surviving parties and the legal personal representative of the deceased party.

(11.) In this regulation—

“approved valuer” means—

(a) the Valuer-General of any State; or

40 (b) any other person who has had not less than ten years' continuous experience as a valuer immediately prior to the commencement of this regulation and is for the time being approved by the Treasurer as a valuer for the purposes of these Regulations;

“country land” means land used for agricultural, pastoral, horticultural, viticultural, apicultural, dairy farming, poultry farming or other like purposes.

\* \* \* \* \*

9.—(1.) The Treasurer may, either unconditionally or subject to such conditions as he specifies in the order, by order published in the Gazette, exempt from the application of the whole or any of the provisions of this Part any person or class of persons or any transaction or class of transactions.

(2.) Where application is made for the consent of the Treasurer under this Part, the Treasurer may, in his absolute discretion, grant the consent, either unconditionally or subject to such conditions as he thinks fit, or refuse to grant the consent.

(3.) Where any consent or exemption is granted subject to conditions, a person shall comply with all such conditions as are applicable to him. 10

It is the administration of this law which is referred to in the judgments as "Land Sales Control".

10. The said provisions of the said Economic Organization Regulations ceased to apply in New South Wales on the 20th September, 1948. On this day the Land Sales Control Act 1948 of New South Wales commenced. The provisions of the Act were similar to the said provisions of the said Regulations. By Regulation made under the said Act vacant land was exempted from the Section corresponding to Regulation 6 set out in paragraph 9 of this Case. The subject land was treated as vacant land. 20

11. The said Economic Organization Regulations also contained provisions in Part III thereof whereby the Treasurer of the Commonwealth or his delegate had power to fix the maximum and minimum prices of shares, stock or debentures of a company. These Regulations were amended from time to time. Their validity was affirmed by the High Court of Australia on the 22nd October, 1946, in *Miller v. The Commonwealth* (1946) 73 C.L.R. 187.

12. The said Economic Organization Regulations also contained provisions in Part IV dealing with interest rates and in Part V dealing with industrial matters including the fixation of wages. In 1944 Part IIIA was introduced and dealt (*inter alia*) with the maximum prices at which residential businesses could be transferred. 30

13. From 27th September, 1939, Regulations under the National Security Act, 1939-1946, and the Defence (Transitional Provisions) Act, 1946-1947, fixed rents of premises at the rent payable on the 31st August, 1939, unless the rent was fixed at a higher sum by a Fair Rents Board. These regulations ceased to apply in New South Wales on the 16th August, 1948, on which latter date the Landlord and Tenant (Amendment) Act, 1948-1952, commenced. The said Act is still in force. 40

14. The maximum price of goods was or could be fixed under the National Security (Prices) Regulations of the Commonwealth from the outbreak of war in 1939. These Regulations ceased to apply in New South Wales on the 20th September, 1948, on which date the Prices Regulation Act, 1948-1952, commenced. The said Act is still in force.

15. An action for the determination of compensation was commenced in the Supreme Court of New South Wales by the Respondents against the Appellant, and when issue was joined therein the matter was remitted to the Land and Valuation Court for determination (see paragraph 7 of this Case). p. 3, ll. 4-9.

16. The action for the determination of compensation came on for hearing together with certain objections to the valuations of the said lands made by the Valuer General under Section 70 of the Valuation of Land Act, 1916. This is a usual procedure the reason for which is to be found in the application of Section 68 of the Valuation of Land Act, 1916, which with certain exceptions not relevant herein limits the compensation to the amount of the improved value of the land ascertained under that Act. p. 3, ll. 10-12.

17. It was submitted on behalf of the Appellant at the hearing before Sugerman, J., and in the Supreme Court of New South Wales,

(a) that in determining the compensation or value of the land the principles set out in *Spencer v. The Commonwealth* (1907) 5 C.L.R. 418 should be adopted and applied; that is to say, the compensation is the price which a willing vendor might reasonably expect to obtain from a willing purchaser at the date of resumption, p. 5, ll. 4-6.

(b) that in times of changing or uncertain conditions the compensation or value of the land must be determined according to the same general principles as those which apply in normal times — *Spencer v. The Commonwealth* (1907) 5 C.L.R. 418 at pp. 440-441; *Deputy Federal Commissioner of Taxation v. Gold Estates of Australia (1903) Ltd.* (1934) 51 C.L.R. 509 at p. 515. p. 5, ll. 4-6.

(c) that any determination which included a “retention value” as provided by the principles set out in *The Commonwealth v. Arklay* (1952) 87 C.L.R. 159 violated the assumption that the owner was “willing but not anxious” to sell at the date of resumption and was therefore wrong in principle, p. 4, ll. 35-39.

(d) that the proper method of determining the compensation or value of the land in this case was by a consideration of sales of comparable lands effected prior to the date of resumption, or effected subsequently but only if the circumstances as at the date of resumption and as at the date of sale were comparable, and on the assumption that the owner at the date of resumption was a “willing but not anxious” seller. p. 4, l. 40-46  
p. 5, l. 3.

(e) that on the basis of the foregoing submissions the measure of compensation in this case was the price at which the Treasurer or his delegate would have approved a contract for the sale of the subject land on the day of resumption. p. 5, ll. 7-12.

(f) that evidence of the sales of comparable lands effected after the termination of the Economic Organization Regulations was inadmissible, p. 4, ll. 19-21.

(g) that any method of determining the compensation or value of the land in which any such sales effected after the termination of p. 4, ll. 25-28.

the Economic Organization Regulations were considered or used as a guide or basis for such determination was wrong,

p. 4, ll. 35-39.

(h) that evidence of the opinions of expert valuers founded upon such inadmissible sales as to the price the subject land might be expected to have brought, if offered for sale immediately, or at any time, after the termination of the Economic Organization Regulations, more particularly, at or about 31st December, 1948, or at or about the expiration of six months from the termination of the said Regulations was inadmissible,

p. 4, ll. 35-39.

(i) that evidence of the opinions of expert valuers as to other matters, in order to found an opinion as to such price, more particularly the estimated costs, as at the times mentioned in (h), of roadworks, drainage and other works necessary for the development of the said lands in subdivision was inadmissible,

p. 5, ll. 13-16.

(j) that the decision of the High Court of Australia in *The Commonwealth v. Arklay* (1952) 87 C.L.R. 159 was wrong in law,

p. 4, ll. 16-18.

(k) that the decision in *The Commonwealth v. Arklay* was not applicable to the determination of compensation or value of land under the Public Works Act, 1912.

18. It was submitted on behalf of the Respondents before Sugerman, J., and in the Supreme Court of New South Wales,

p. 3, ll. 24-32.

(a) that the decision of the High Court in *The Commonwealth v. Arklay* (1952) 87 C.L.R. 159 laid down the principles for the determination of compensation in respect of a resumption of land effected during the period of Land Sales Control, and that the principles therein laid down were not confined to an acquisition under the Lands Acquisition Act, 1906-1936, of the Commonwealth but were of general application, and that the said principles should be applied in determining the compensation in respect of this resumption;

p. 3, ll. 33-37.

(b) that, on the principles laid down in that case, in the determination of compensation in respect of a resumption or of the value of land resumed during the period of Land Sales Control evidence was admissible to show that on the termination of controls there would be an enhanced price for the said land;

p. 3, l. 38 to  
p. 4, l. 8.

(c) that for that purpose evidence was admissible of sales of comparable lands effected after the termination of land sales control and of opinions of expert valuers, founded *inter alia* upon such sales, as to the price which the subject land might be expected to have brought if offered for sale after the termination of land sales control and more particularly if offered for sale at or about 31st December, 1948, or at or about the expiration of a period of six months from the termination of land sales control, and as to other matters necessary to be ascertained in order to found an opinion as to such price, more particularly the estimated costs, as at the periods mentioned, of roadworks, and drainage and other works, necessary for the development of the said land in subdivision; and

(d) that the Respondents could have retained the land and sold it at such enhanced price, that a purchaser from them could have done likewise, and that therefore the Respondents as the dispossessed owners should be compensated for the value of the enhanced price which the purchaser might expect ultimately to obtain ('the retention value').

19. The market value of land resumed is determined upon hypothetical considerations as at the date of resumption. It is not relevant to prove that there was in fact a person able and willing to buy or that the vendor was willing to sell. Vendor and purchaser are each hypothetical.

*Spencer v. The Commonwealth* (1907) 5 C.L.R. 418 at pp. 431-432.

*Cedars Rapids Manufacturing and Power Company v. Lacoste* (1914) A.C. 569 at p. 576.

*Vyricherla Narayana Gajapatiraju v. The Revenue Divisional Officer, Vizagapatam* (1939) A.C. 302 at p. 312.

*Municipal Council of Colombo v. Chettiar* (1947) A.C. 188 at p. 197.

20. The test of the value of land for revenue and compensation purposes is the same, though the Court may resolve a doubt as to estimate, liberally in a compensation case, conservatively in a revenue case.

*Commissioner of Succession Duties (S.A.) v. Executor, Trustee and Agency Co. of S.A. Ltd.* (1947) 74 C.L.R. 358 at pp. 373-374.

21. Restrictions imposed by the Legislature upon the sum at which a vendor may sell his property must be taken into account when the value of that property is being determined whether for the purpose of compensation or of rating.

*Priestman Collieries Ltd. v. Northern District Valuation Board* (1950) 2 K.B. 398

30 *United States v. Commodities Trust Corporation* 339 U.S. 121  
*Sculcoates Union v. Dock Co. at Kingston-Upon-Hull* (1895) A.C. 136 at pp. 148-150

*Worcester v. Droitwich Assessment Committee* (1876) L.R. 2 Ex. D. 49

*Kingston Union v. Metropolitan Water Board* (1926) A.C. 331 at pp. 342-344

*Port of London Authority v. Orsett Union Assessment Committee* (1920) A.C. 273 at p. 305

40 *Consett Iron Co. v. Assessment Committee No. 5* (1931) A.C. 396 at p. 410.

22. In *The Commonwealth v. Arklay* (1952) 87 C.L.R. 159 it was held

(i) that to the price at which the Treasurer would have consented to a sale of the land on the date of resumption, there should be added a sum representing the increased value of the land which must have arisen from the fact that, when controls terminated, the

land would sell in a free market and might be expected to realize a greatly enhanced price,

(ii) that a claimant as a reasonably willing Vendor was entitled to expect that a purchaser would be willing to pay a greater sum than the controlled price in respect of the probable increase in the price of the land if he held it until the cessation of controls.

(iii) that there was a limited class of purchasers who could pay any price for the land and in estimating its value to the owner the Court could take into account the possibility of one of these purchasers buying the land,

(iv) that under the Lands Acquisition Act of the Commonwealth, in estimating the value of land to an owner dispossessed during controls, the valuer should estimate the price which a vendor willing but not anxious to sell would agree to, if he were allowed, and a willing purchaser would give to obtain the land, although in his turn he would be subject to the controls in reselling,

(v) that the meaning of "value" in the Lands Acquisition Act of the Commonwealth must be interpreted against the background of the Constitution of the Commonwealth which in Section 51(xxxi) requires that legislation for the acquisition of property shall afford just terms.

23. *Sugerman, J.*, held

(i) that the decision in *The Commonwealth v. Arklay* (1952) 87 C.L.R. 159 was arrived at independently of Constitutional considerations and was applicable to the determination of the compensation payable under Section 124 of the Public Works Act, 1912,

(ii) that evidence was admissible of prices obtained on sales effected, after the termination of Land Sales Control, of individual residential lots situated in the neighbourhood of the subject land and comparable to those into which it would be subdivided on a proper mode of subdivision, to the extent that such evidence was a guide to the price which might be expected to be obtained for residential lots in a subdivision of the subject land if sold shortly after the termination of Land Sales Control, that is to say, on or about the 31st December, 1948, or at or about the expiration of a period of six months from such termination,

(iii) that evidence was admissible of the estimated cost, as at or about the periods mentioned in (ii) above, of road construction, and drainage and other works, necessary for the development of the subject land in subdivision,

(iv) that evidence was admissible of the opinions of expert valuers, founded upon, *inter alia*, the materials mentioned in (ii) and (iii) above, as to what price the subject land might be expected to have realised if sold *in globo* at or about the times mentioned in (ii) above,

p. 5, ll. 11-28.  
p. 23, ll. 4-17.

p. 5, l. 29 to  
p. 6, l. 2.  
p. 36, ll. 23-38.  
p. 12, l. 4 to  
p. 16, l. 10.

p. 6, ll. 3-6.  
p. 28, l. 5 to  
p. 29, l. 11.

p. 6, ll. 7-11.  
p. 38, ll. 18-39.  
p. 39, ll. 6-17.

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(v) that the price at which the Treasurer would have approved of the sale of the said lands on 20th September, 1946, was £25,250. p. 6, ll. 22-30.  
p. 26, ll. 16-46.

(vi) that the compensation should be determined at £35,000, "being the said sum of £25,250 plus what was in effect 'a retention value' as referred to in *The Commonwealth v. Arklay* of £9,750." p. 6, ll. 31-34.  
p. 44, ll. 36-42.

24. On the hearing before the Supreme Court of New South Wales of the Case Stated the Appellant formally submitted that the decision of the High Court of Australia in *The Commonwealth v. Arklay* was wrong, or, alternatively, distinguishable.

10 25. The Supreme Court of New South Wales (Street, C.J., Owen and Herron, JJ.) held that it was bound by the decision in *The Commonwealth v. Arklay* and that that case was not distinguishable. p. 46, ll. 1-4.

26. The Appellant respectfully repeats the submissions contained in paragraph 17 of this case and submits that the questions in the Case Stated should be answered as follows:—

1. (a) No
- (b) Yes
2. and 3.—in the event, do not arise; for the following amongst other

#### REASONS

- 20 (1) Because the test of the value of land compulsorily resumed under the Public Works Act, 1912, is the same whether or not the price at which the land may be sold is a controlled price.
- (2) Because the test laid down in *Spencer v. The Commonwealth* (1907) 5 C.L.R. 418 is the correct test of value of land to the owner.
- (3) Because the test laid down in *The Commonwealth v. Arklay* (1952) 87 C.L.R. 159 violates the fundamental principles whereby the valuation of land is determined.
- 30 (4) Because compensation should not in this case have been determined at a greater sum than the market value at the date of resumption, that is to say, the then controlled price.
- (5) Because evidence of sales effected after the termination of controls was inadmissible and should not have been used as a guide or basis in determining the compensation.
- (6) Because evidence of the cost of road works and drainage and other works after the termination of land sales control was inadmissible and should not have been used as a guide or basis in determining the compensation.
- 40 (7) Because the decision in *The Commonwealth v. Arklay* (1952) 87 C.L.R. 159 is wrong and should be disapproved.

- (8) Because, alternatively to (7), the decision in *The Commonwealth v. Arklay* is distinguishable in that Section 51(xxxi) of the Constitution applies to laws of the Commonwealth Parliament and not to laws of the Parliament of New South Wales. The term "value" in the Public Works Act, 1912, should be given its ordinary meaning. In *Arklay v. The Commonwealth* the Court construed "value" in the Lands Acquisition Act of the Commonwealth so as to bring the term within the limits of the constitutional limitations imposed by Section 51(xxxi) of the Constitution. 10

J. D. HOLMES.

R. ELSE-MITCHELL.

In the Privy Council.

**ON APPEAL**

FROM THE FULL COURT OF THE SUPREME  
COURT OF NEW SOUTH WALES.

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BETWEEN—

**THE MINISTER** . . . *Appellant*

— AND —

**CHRISTOPHER BOWES  
THISTLETHWAYTE and REGINALD  
CLARK TURNER** . . . *Respondents.*

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**CASE FOR THE APPELLANT.**

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*Appellant's Solicitors.*