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[HOUSE OF LORDS.]

SMITH APPELLANT;

AND

EAST ELLOE RURAL DISTRICT COUNCIL AND OTHERS RESPONDENTS.

1956 Feb. 21, 22, 23; Mar. 26.

VISCOUNT SIMONDS, LORD MORTON OF HENRYTON, LORD REID, LORD RADCLIFFE and LORD SOMERVELL OF HARROW.

Compulsory Purchase - Order - Validity - Allegation of bad faith - Questioning order - Court's jurisdiction - Acquisition of Land (Authorization Procedure) Act, 1946 (9 & 10 Geo. 6, c. 49), Sch. I, Pt. IV, paras. 15, 16. Statute - Construction - Jurisdiction.

By paragraph 15 (1) of Part IV of Schedule I to the Acquisition of Land (Authorization Procedure) Act, 1946: "If any person aggrieved by a compulsory purchase order desires to question the validity thereof ... on the ground that the authorization of a compulsory purchase thereby granted is not empowered to be granted under this Act ... he may, within six weeks from the date on which notice of the confirmation or making of the order ... is first published ... make an application to the High Court. ..."

By paragraph 16: "Subject to the provisions of the last foregoing paragraph, a compulsory purchase order ... shall not ... be questioned in any legal proceedings whatsoever. ..."

Land belonging to the appellant having been made the subject of a compulsory purchase order, she brought an action, more than six weeks after notice of its confirmation had been published, against the local authority which had obtained it, the clerk to the local authority and the Government Department which had confirmed it, claiming damages, an injunction against further trespass on the

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land, a declaration that the order was made and confirmed wrongfully and in bad faith and that the clerk acted wrongfully and in bad faith in procuring the order and its confirmation. An application was made to strike out the writ of summons:-

Held (1) (unanimously) that the action might proceed against the clerk to the council for damages but (2) (*per* Viscount Simonds, Lord Morton of Henryton and Lord Radcliffe, Lord Reid and Lord Somervell of Harrow dissenting) that the action against the council and the Government Department could not proceed by reason of the plain prohibition in paragraph 16 (which applied to compulsory purchase orders in general) against questioning the validity of the order, whereby the jurisdiction of the court was ousted.

Per Lord Morton of Henryton, Lord Reid and Lord Somervell of Harrow, Lord Radcliffe dissenting: Paragraph 15 gives no opportunity to a person aggrieved to question the validity of a compulsory purchase order on the ground that it was made or confirmed in bad faith.

Decision of the Court of Appeal [1955] 1 W.L.R. 380; [1955] 2 All E.R. 19 varied.

APPEAL from the Court of Appeal (Hodson and Parker L.JJ.).

This was an appeal from an order of the Court of Appeal dated March 4, 1955, dismissing the appeal of the appellant, Kathleen Rose Smith, widow, from an order of Havers J., dated October 4, 1954. This order in turn dismissed her appeals from two orders of Master Clayton dated August 6, 1954, ordering that the writ of summons in this action and all subsequent proceedings therein be set aside with costs to be taxed and paid by her to the East Elloe Rural District Council, J. C. Pywell, the clerk to the council, and the Ministry of Housing and Local Government, the respondents in this appeal, and the Ministry of Health, then a defendant in the action but now no longer a party.

The facts, stated in the opinions of Viscount Simonds and Lord Morton of Henryton, were as follows: On July 6, 1954, the appellant, Kathleen Rose Smith, issued a writ against the East Elloe Rural District Council, Mr. Pywell,

the clerk to that council, and the Ministry of Health, whose functions and obligations were subsequently transferred to the Ministry of Housing and Local Government. She claimed:

1. Against the East Elloe Rural District Council: "(a) Damages for trespass to the plaintiff's land of 8.613 acres situate at Hallgate, Holbeach, in the County of Lincoln, together with the dwelling-house known as 'Hall Hill House' and other buildings on the said land or on some parts thereof. (b) An injunction restraining them by their officers, servants and agents and each and every of them from trespassing upon the

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aforesaid land and premises of the plaintiff or any part thereof or from entering upon the said lands and premises without the consent of the plaintiff. (c) A declaration that the compulsory purchase order dated August [26], 1948, was wrongfully made and in bad faith."

2. Against the Ministry of Health: "A declaration that the said compulsory purchase order was wrongfully confirmed on November 29, 1948, and in bad faith."

3. Against the respondent J. C. Pywell, who was clerk to the said rural district council at the relevant dates: "A declaration that he knowingly acted wrongfully and in bad faith in procuring the said order and confirmation of the same."

4. Against the Ministry of Housing and Local Government: "As having taken over the functions of the [Ministry of Health] a declaration that the said compulsory purchase order and confirmation of the same are in bad faith."

5. Further and other relief.

6. Damages.

7. Costs.

The compulsory purchase order challenged in these proceedings was made by the respondent council on August 26, 1948, and purported to authorize them, subject to its provisions, to acquire compulsorily the house and some 8½ acres of land, of which the appellant was owner, mentioned in the writ and described in the schedule to the order. The statutory public local inquiry having been duly held, the Minister of Health confirmed the order on November 29, 1948, by an order cited as the East Elloe (Holbeach) Housing Confirmation Order, 1948, which was duly advertised on December 13 and 20, 1948. A notice to treat and a notice of entry were duly served on the appellant, and in due course the compulsory purchase price for the said house and hind was fixed by the Lands Tribunal at £3,000. The respondent council caused a firm of builders to demolish the house and to erect on its site and on the said land a number of houses.

The relevant functions of the Minister of Health and the obligations of the Ministry of Health were subsequently transferred to the Minister and the Ministry of Housing and Local Government by the Transfer of Functions (Minister of Health and Minister of Local Government and Planning) (No. 1) Order, 1951 (S.I. 1951, No. 142).

All the respondents entered conditional appearances to the writ, and on July 27, 1954, the respondent council and their clerk and the Ministry of Health and the Ministry of Housing and Local

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Government applied, by two separate summonses, to Master Clayton under Ord. 12, r. 30, of the Rules of the Supreme Court, for an order that the writ and all subsequent proceedings in the action be set aside. The grounds upon which the claim in each summons was based were: "That the writ of summons in this action is invalid for lack of jurisdiction it being provided by paragraph 16 of Part IV of Schedule I to the Acquisition of Land (Authorization Procedure) Act, 1946, that save by the procedure specified in the said schedule a compulsory purchase order confirmed in accordance with the provisions of the said Act (as was here the case) shall not, either before or after it has been confirmed be questioned in any legal proceedings whatsoever by reason whereof this honourable court has no jurisdiction to grant the relief sought against the said defendants."

Master Clayton made an order on each summons setting aside the writ and all subsequent proceedings in the action, and his decision was affirmed by Havers J. and by the Court of Appeal (Hodson and Parker L.JJ.). That court refused leave to appeal, but leave was subsequently granted by the Appeal Committee of the House of Lords.

Roy Wilson Q.C. and *F. H. Collier* for the appellant. A question arises whether paragraph 16 of Part IV of Schedule I to the Acquisition of Land (Authorization Procedure) Act, 1946, covers all compulsory purchase orders

in general or only compulsory purchase orders in respect of land to which Part III applies. The actual intention of the legislature is not relevant; one is concerned only with the meaning of the words embodied in the statute, one which touches the liberty of the subject and expropriation. Unless compelled to do so by the words of the Act, the court should not construe it against the subject. If there is a reasonable doubt as to the meaning of the words in paragraph 16, it should be resolved in favour of the appellant. The meaning contended for by the respondents, if it was intended, could have been made clear by placing a comma after the words "compulsory purchase order."

The following propositions are submitted: (1) It is entirely repugnant to the intention of the legislature that the statutory powers which it grants should be abused. (2) An act done in ostensible exercise of statutory powers, but dishonestly or in bad faith, is not in truth a genuine exercise of the power but an abuse of it. (3) It is therefore unnecessary and even illogical for a statute to make provision for what is to happen in the event of

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a person purporting to exercise a statutory power in bad faith. (4) Conversely, where provision is made as to the circumstances in which the purported exercise of statutory powers may be invalidated, such provisions are to be construed, not as being directed to the question whether or not the power is exercised bona fide, but as being made on the assumption that it his been made bona fide. See Maxwell on Interpretation of Statutes, 10th ed., p. 122 (a passage substantially unchanged since the first edition in 1875 at p. 99), pp. 128, 285, the cases cited in Davies on Planning, Compulsory Purchase and Rating Law, p. 15, note (*n*), and Halsbury's Laws of England, 2nd ed., vol. XXXI, pp. 533-534. Although prima facie paragraph 16 excludes the jurisdiction of the court, the words "made in good faith" should be read in after the words "order" and "certificate." It is inconceivable that the legislature should have intended to sanction the exercise of powers otherwise than in good faith. A statute referring to the exercise of powers always means that it shall be exercised in good faith. Where there is bad faith there is much more general need for the court's interference than where there is good faith. See *Ex parte Cowan*[1]; *Ex parte Baum*[2]; *Biddulph v. St. George's, Hanover Square*[3]; *Westminster Corporation v. London and North Western Railway Co.*[4]; *Roberts v. Hopwood*[5]; *Short v. Poole Corporation*[6]; *Carltona Ltd. v. Commissioners of Works*[7]; *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation*[8]; *Rex v. Paddington and St. Marylebone Rent Tribunal*[9]; *Demetriades v. Glasgow Corporation,*[10] and *Lazarus Estates Ltd. v. Beasley.*[11]

The authorities relied on against the appellant are *Tutin v. Northallerton Rural District Council*[12]; *Uttoxeter Urban District Council v. Clarke,*[13] and *Woollett v. Minister of Agriculture and Fisheries.*[14]

There is admittedly a risk that compulsory purchase orders may be challenged at any time within six years, but it must be

1 (1867) L.R. 2 Ch. 563, 567.
2 (1878) 7 Ch.D. 719, 720, 721.
3 (1863) 3 De G.J. & S. 493, 502.
4 [1905] A.C. 426, 430, 439; 21 T.L.R. 686.
5 [1925] A.C. 578, 589, 603, 611, 616-617; 41 T.L.R. 436.
6 [1926] Ch. 66, 85, 88, 91; 42 T.L.R. 107.
7 [1943] 2 All E.R. 560, 563-564.
8 [1948] 1 K.B. 223, 228; 63 T.L.R. 623; [1947] 2 All E.R. 680.
9 [1949] 1 K.B. 666, 678-679; 65 T.L.R. 200; [1949] 1 All E.R. 720.
10 [1951] 1 T.L.R. 396, 398, 400, 401, 403; [1951] 1 All E.R. 457.
11 [1956] 1 Q.B. 702, 711, 717-718, 721; [1956] 1 All E.R. 341.
12 [1947] W.N. 189.
13 [1952] 1 All E.R. 1318.
14 [1955] 1 Q.B. 103; [1954] 3 All E.R. 529.

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run in order to ensure that local authorities exercise their powers bona fide.

The respondents have contended that the analogous provisions of section 2 of the Limitation Act, 1939, are not subject to any qualification in respect of allegations of fraud save as is expressly provided by section 26. But the analogy is not close because the present case is one of jurisdiction and the Limitation Act goes to time, not jurisdiction. The analogy is all in the appellant's favour. It is only because of the terms of section 2 that section 26 was necessary. The inference is that if the legislature had intended to provide a remedy for fraud or bad faith in paragraph 15 of Part IV, it would have included in the Act of 1946 a provision comparable to section 26. The absence of such a provision is a strong indication that paragraph 15 was not intended to apply to cases of fraud or mala fides. It gives a person aggrieved no adequate opportunity in the time limited to challenge an order on that ground.

There are several reasons why section 15 cannot cover cases of challenge on the ground of fraud or mala fides. It should be given its natural meaning, which does not cover such cases. It is inappropriate to deal with such cases. There is a distinction between nullity due to fraud or mala fides and nullity produced by other means. There is no provision for extending the very short time allowed for challenge, which is inadequate where there is fraud or mala fides. The person aggrieved is placed within very narrow limits. There is no reference to certificates under Part III of the Schedule.

If the only remedy for fraud or bad faith were under paragraph 15 the position would be startling, because a local authority might make a compulsory purchase order ostensibly to obtain land to provide houses for the working classes and, when six weeks had elapsed, it might announce that it had never so intended but meant to use the site for a swimming pool. If the respondents were right there would be no way in which that local authority could be made to account to the owner whose property it had taken.

It has been suggested that it would be impossible to give the appellant the remedies which she seeks against the council because her house has been demolished and the land has been developed for housing. But the objection which the respondents are making is one of jurisdiction and, once a case is before the court as a matter of jurisdiction, it has ample means of dealing with situations where a plaintiff should not be given the full relief

claimed. In the writ the appellant asks not only for damages for trespass but also for damages generally (paragraph 6). There are cases when a plaintiff with a right to property may be relegated to less than his full legal remedy of recovery of the property. The difficulty of giving the appellant back her land should not be a bar to the court's jurisdiction. If someone unlawfully takes her land the court should be able to inquire into the matter.

If powers are conferred by an Act of Parliament which contains words excluding the jurisdiction of the court, these must not be construed as applying to acts done in bad faith, unless the contract absolutely demands it. That is how one should approach a statutory provision in general terms which does not appear to be in accord with the general tenor of the law.

A compulsory purchase order made mala fide is not a compulsory purchase order at all and so paragraph 16 does not refer to it, because such an order is a nullity vitiated from the beginning, a nullity in more than the sense of an act done ultra vires.

Where the language of a statute in its ordinary meaning obviously contradicts the apparent purpose of the enactment or leads to some absurdity or injustice, presumably not intended, a construction may be put on it which modifies the meaning: Maxwell on the Interpretation of Statutes, 10th ed., p. 229. (It is the same in the first edition, p. 209.) It is not sought to cut down the words "in any legal proceedings whatsoever" in paragraph 16. It is sought to add to the words "compulsory purchase order" the words "made bona fide." The construction of a statute should be designed to carry out its intention. If powers are conferred and words are used excluding the jurisdiction of the court, one must construe those words as not applying to acts done in bad faith unless the context absolutely demands it. As to cutting down general words in accordance with the presumed intention of a statute, see Maxwell on Interpretation of Statutes, 10th ed., pp. 201-203, and *Calder v. Halket*[15] cited there, a case analogous to this. The words "compulsory purchase order" must be construed as meaning either "made in good faith" or "whether made in good or bad faith," and the court can construe it, according to the laws of construction, by ascertaining what the intention of the legislature must have been. The legislature's intention is that the powers conferred by it shall not be abused and enactments should be construed in the light of that overriding intention. The alternative is to hold that the legislature intended

15 (1840) 3 Moo.P.C. 28, 74.

that the powers conferred by it should be abused with impunity, that it conferred a charter to abuse those powers. That cannot have been the intention of the Act. Of late the courts have often been shorn of their power to interfere with executive acts, but it has always retained the function of seeing that, wide as the delegated powers may be, they are not exercised dishonestly or with ulterior motives. Any intention in a statute to override that function would have to be clearly proved.

F. H. Collier following. The provision in paragraph 16 is limited to the case of compulsory acquisition of land of the type dealt with under Part III of the Schedule. The words "under Part III of this Schedule" qualify all that goes before, "compulsory purchase order" as well as "certificate." Parliament intended that the right of challenge by private individuals should be retained but that it should not be retained in the case of the large bodies mentioned in Part III. Compare the provisions in Schedule II of the Housing Act, 1936. The language in the Act of 1946 is such as to leave resort to the courts in all other cases but those within Part III. If it had been meant to cover cases besides those in Part III, words would have been used specifying compulsory purchase orders made under any other Act. Many local Acts confer power to acquire land, but in them no complete bar such as is here contended for appears. The complete bar appears for the first time in the Act of 1936.

*Sir Reginald Manningham-Buller Q.C., A.-G., Rodger Winn*and *W. L. Roots* for the respondents. The respondents do not challenge the general proposition that statutory powers must be exercised bona fide. But it does not follow that there is always a power to challenge their exercise as invalid on the ground of fraud. During six weeks after a compulsory purchase order has been confirmed it may be challenged under paragraph 15 on the ground of fraud, or bad faith, or on any other ground showing that it was not within the powers conferred by the Act. But it cannot be challenged thereafter. There is also the public inquiry in the compulsory purchase procedure. A statute creating a power may oust the jurisdiction of the court to inquire into its exercise. It is a fallacy to treat paragraphs 15 and 16 as if they related to the exercise of the power.

In the Housing Acts one finds steps taken to oust the jurisdiction of the courts, the high-water mark being sections 40 and 64 and paragraph 2 of Schedule III of the Housing Act, 1925. See also section 57 (1) of the Housing of the Working Classes Act, 1890, section 297 of the Public Health Act, 1875, section 2 of

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the Housing, Town Planning, etc., Act, 1909, and section 10 of the Housing Act, 1930, which has some similarity to the relevant provisions in this case. These support the proposition that once an order has been confirmed and the time limited by paragraph 15 has expired it is not possible to challenge its validity. One reason is that the people who might suffer, if such a challenge succeeded, would be the inhabitants of the council houses. Grave inconveniences would result if actions could be brought at any time within the Statute of Limitations. In the present case the writ was issued more than five years after the order was confirmed. If the appellant is right in the case which she seeks to make, there is no question but that the land is hers with all the consequences which ensue. It illustrates the reason why such orders can only be challenged up to the time when they have been made final. A challenge on the ground of mala fides can be made under paragraph 15 by virtue of the words "not empowered to be granted under this Act."

As to the principles on which a ministerial order may be challenged, see *Batson v. London School Board*[16]; *Rex v. Minister of Health; Ex parte Davis,*[17] and *Minister of Health v. Rex (on the prosecution of Yaffe).*[18]

Under paragraphs 15 and 16 an application to the court within a limited period is allowed, but after the six weeks have elapsed any further questioning of a compulsory purchase order is barred. The limitation has regard to the chaos which would be caused in the housing of the working classes if there were no limitation. It is not accepted that fraud was a casus improvisus in the Act, but, whether it was or not, the language ousting the jurisdiction of the courts is as clear as it could be, and was obviously meant to limit all right of challenge to six weeks. The word "whatsoever" in paragraph 16 is emphatic. Similar provisions may be found in section 162 of the Local Government Act, 1933, section 11 (3) of the Housing Act, 1930, section 16 (3) of the Housing Act, 1935, Schedule II, paragraph 2, of the Housing Act, 1936, and the Town and Country Planning Acts. If the local authority did not use the land as it said it would, appropriate action could be taken.

If this writ questions a compulsory purchase order, then, in view of the clear words of paragraph 16, the court has no jurisdiction. *Tutin v. Northallerton Rural District Council*[19] supports

16 (1903) 67 J.P. 457; 20 T.L.R. 22.
17 [1929] 1 K.B. 619; 45 T.L.R. 345.
18 [1931] A.C. 494; 47 T.L.R. 337.
19 [1947] W.N. 189.

the submission that the fact that there is a claim for damages here does not give the court jurisdiction, because that very claim questions the compulsory purchase order. The enactment was designed to secure finality and protect the occupants of housing estates who might otherwise be held to be trespassers. For that reason the Housing Acts have ousted the jurisdiction of the courts. Whatever may be the cause of complaint in relation to a compulsory purchase order, it cannot be questioned. To vary the language of paragraph 16 so that the order could be questioned would be to defeat the intention of Parliament. There can be no challenge unless it can be brought within paragraph 15. No authority has been suggested for the proposition that a challenge on the ground of bad faith would not come within paragraph 15. Bad faith is one example of ultra vires: see *Short v. Poole Corporation*[20] and Maxwell on Interpretation of Statutes, 10th ed., p. 123. The language of the paragraph does not compel one to exclude an objection on the ground of mala fides. It should certainly be given its natural meaning, and its language is not inappropriate to cover fraud and mala fides; the nature of the relief provided is that which one would expect. There is no difference between nullity produced by fraud and mala fides and nullity produced in any other way: see *Woollett v. Minister of Agriculture and Fisheries,*[21] which was rightly decided. The point on the inadequacy of the time limit is a criticism of Parliament rather than an argument on construction. The latitude allowed to an aggrieved person is wide enough. Finally, there was no need to refer to a certificate under Part III.

Lazarus Estates Ltd. v. Beasley[22] is distinguishable from the present case: see *per* Parker L.J.[23] That is an important case. [Reference was also made to section 11 (5) of the Development and Road Improvement Funds Act, 1909.]

Rodger Winn following. As to the procedure on compulsory purchase, see section 175 of Halsbury's Laws of England, 3rd ed., vol. X, p. 60, para. 97, and p. 63, para. 102. Once a compulsory purchase order is made the landowner no longer has any right to retain the land. If fraud occurs thereafter, his rights in respect of that subsequent fraud sound in money.

As to establishing want of bona fides, see *Errington v. Metropolitan District Railway Co.*[24]

20 [1926] Ch. 66, 90-91; 42 T.L.R. 107.
21 [1955] 1 Q.B. 103, 113, 129.
22 [1956] 1 Q.B. 702.
23 Ibid. 722.
24 (1882) 19 Ch.D. 559, 571.

If any suggestion of bad faith was made against the notice to treat on the ground that the land was not needed for housing, the best answer is that the houses have in fact been erected.

The manifest purpose of providing for finality in statutes relating to compulsory acquisition differentiates these provisions from provisions as to limitation between private litigants.

In so far as a notice to treat might purport to acquire land for a purpose not genuinely intended, there would be no power to appropriate the land to another purpose without the consent of the Minister. *[Wilkinson v. Barking Corporation*[25] was referred to.]

Roy Wilson Q.C. in reply. Admittedly Parliament can enact whatever it likes. It could enact that statutory powers might be abused or that if they were abused, there should be no legal redress. But, short of an express provision to that effect, no statute would be so construed as to deprive the citizen of redress in respect of fraud. The respondents do not challenge the proposition that statutory powers must be exercised bona fide. But unless that means that powers exercised mala fide are invalidly exercised, how is one to construe "must"? If a duty is imposed, is it a duty of imperfect obligation? The respondents are merely paying lip service to a principle which

has hitherto imposed a legal obligation and not simply a moral duty. If the existence of bad faith were brought to the attention of the Minister, there is no power for him to cancel his confirmation of a compulsory purchase order. If the respondents' argument is right, there is no way in which an exercise of a power in bad faith can be brought to account or in which a person fraudulently expropriated can get his land back. The proposition that powers must be exercised bona fide would be unsupported by any sanction.

Rex v. Minister of Health; Ex parte Yaffe[26] and *Minister of Health v. Rex (on the prosecution of Yaffe)*[27] are entirely consistent with the appellant's submission. The court was not addressing its mind to mala fides but to ultra vires. That keeps within the proposition that so long as the Minister acts within his discretion (which must be exercised bona fide), the courts will not interfere. The respondents said that if the local authority did not use the land as it said it would, "appropriate action could be taken." But, whatever action was taken, it would be of no use to the dispossessed owner.

25 [1948] 1 K.B. 721; 64 T.L.R. 230; [1948] 1 All E.R. 564.
26 [1930] 2 K.B. 98, 144, 145, 146; 46 T.L.R. 178.
27 [1931] A.C. 494, 533.

For the respondents it was said that great inconvenience would be caused if the paragraph did not bar all actions and if they might be brought at any time within the Statute of Limitations. But although, over a long period of years, the opinion of the courts has been unanimous that mala fides vitiates the exercise of a power, hardly any cases have in fact been brought. It is less serious that a local authority should be dispossessed of property which it has acquired in bad faith than that the person aggrieved should have no remedy for its fraudulent conduct. Davies on Planning, Compulsory Purchase and Rating Law, at p. 187, gives the order of events in a compulsory purchase, showing that conveyance is the last stage. Suppose there was a valid compulsory purchase order but the local authority gave notice to treat, meaning to provide false figures for the valuation. There would be a clear right to set aside the whole matter because of the abuse of statutory power. Thus the possibility of the inconvenience suggested would not be avoided.

Up to 1925 the Acts referred to on behalf of the Crown say nothing novel in the matter of the total exclusion of the jurisdiction of the courts: see section 297 of the Public Health Act, 1875. The Housing, Town Planning, etc., Act, 1909, for the first time dispenses with a confirming Act and the legislature delegates the confirmation of a compulsory purchase: see also section 64 and Schedule III of the Housing Act, 1925. But such confirmation has no intention of dealing with questions of mala fides and no conclusions can be drawn from this legislation in relation to that.

The proposition in *Wilkinson v. Barking Corporation*[28] cannot be doubted because in that case the jurisdiction was vested by statute in another tribunal and not in the High Court, but paragraph 15 is relied on by the respondents as a time provision.

Here one is primarily concerned with a real question of principle, whether or not the courts can consider the question of mala fides at all. From the beginning it has been treated both as a question of jurisdiction and of substance. The practical question is whether or not the appellant's writ is to be set aside. If the respondents are right, nothing more will be heard of this action on the ground that the courts have no jurisdiction to deal with it. Even to allow the action to proceed against Pywell alone would leave the appellant with a very limited remedy.

As to the intention to perform a public duty, as distinct from actually performing it, see Preston and Newsom on Limitation of Actions, 3rd ed., p. 197.

28 [1948] 1 K.B. 721.

Throughout the whole field of construction one finds the general principle that if one is dealing with general words which might either apply to things done bona fide or things done mala fide, they will be taken to exclude fraud: see Halsbury's Laws of England, 3rd ed., vol. III, p. 456, para. 870. It is an overriding consideration that paragraphs 15 and 16 of this Schedule should only be construed to cover cases of fraud if that appears to be the

intention of the legislature, but that is not the case, since such an intention must be expressed in the plainest terms, while here the indications are all the other way.

If the House is against the appellant on the rest of the case, the action should be kept alive against Pywell.

Rodger Winn. On the last point the structure of the case has always been that there was bad faith rendering the order invalid. If the case against Pywell had been separate (e.g., if he had been said to have procured a valid order by a tortiously fraudulent act), the matter would have been different. But the case against him should stand or fall with the case against the other respondents.

Their Lordships took time for consideration.

March 26. VISCOUNT SIMONDS stated the facts and continued: My Lords, I must now turn to a consideration of the provisions of the Acquisition of Land (Authorization Procedure) Act, 1946. But I must preface it by two observations. First, I would remind your Lordships that the Act is applicable to a great variety of transactions, in which a large or small area of land is required by a national or local authority for public purposes, and, secondly. I do not forget that this Act is the last example of a long series of similar enactments, in which by one provision or another Parliament has sought to give finality and security from challenge to compulsory acquisitions of land. I have not myself been able to get any assistance from a comparison of the language of this enactment with that of its predecessors. Counsel on both sides craved such a comparison in aid. I shall be doing no injustice if I say it helps neither of them and base my opinion on the very words of the Act.

Section 1 (1) of the Act enacts that: "The authorization of any compulsory purchase of land - (*a*) by a local authority where, apart from this Act, power to authorize the authority to purchase land compulsorily is conferred by or under any enactment contained in a public general Act and in force immediately

before the commencement of this Act, other than any enactment specified in subsection (4) of this section; (*b*) ... shall, subject to the provisions of this and the next following section, be conferred by an order (in this Act referred to as a 'compulsory purchase order') in accordance with the provisions of Schedule I to this Act (being provisions which, subject to certain adaptations, modifications and exceptions, correspond with provisions as to the authorization of the compulsory purchase of land of the Local Government Act, 1933)." Subsection (2) of section 1 made provision for a special procedure in relation to the purchase of land to which Part III of Schedule I of the Act applied. This does not affect the land the subject of this action. It has been observed that the language of subsection (1) is somewhat involved, but there appears to be no doubt that a local authority authorizes its own authority to make a purchase.

I need refer to no other section of the Act and come to Schedule I, which, after making the familiar provisions in regard to advertisements, notices to persons affected, objections, local inquiry and confirmation, provides as follows by paragraphs 15 and 16 of Part IV:

"15. (1) If any person aggrieved by a compulsory purchase order desires to question the validity thereof, or of any provision contained therein, on the ground that the authorization of a compulsory purchase thereby granted is not empowered to be granted under this Act or any such enactment as is mentioned in subsection (1) of section 1 of this Act, or if any person aggrieved by a compulsory purchase order or a certificate under Part III of this Schedule desires to question the validity thereof on the ground that any requirement of this Act or of any regulation made thereunder has not been complied with in relation to the order or certificate, he may, within six weeks from the date on which notice of the confirmation or making of the order or of the giving of the certificate is first published in accordance with the provisions of this Schedule in that behalf, make an application to the High Court, and on any such application the court (*a*) may by interim order suspend the operation of the compulsory purchase order or any provision contained therein, or of the certificate, either generally or in so far as it affects any property of the applicant, until the final determination of the proceedings; (*b*) if satisfied that the authorization granted by the compulsory purchase order is not empowered to be granted as aforesaid, or that the interests of

the applicant have been substantially prejudiced by any requirement of this Schedule or of any regulation made thereunder not having been complied with, may quash the compulsory purchase order or any provision contained therein, or the certificate, either generally or in so far as it affects any property of the applicant."

"16. Subject to the provisions of the last foregoing paragraph, a compulsory purchase order or a certificate under Part III of this Schedule shall not, either before or after it has been confirmed, made or given, be questioned in any legal proceedings whatsoever, and shall become operative on the date on which notice is first published as mentioned in the last foregoing paragraph."

I will dispose at once of the short point of construction which was the main topic of argument and judgment in the Court of Appeal. It was urged that paragraph 16 was limited in its application to cases of compulsory acquisition of land to which Part III of the Schedule referred. Briefly, it was said that the words "under Part III of this Schedule" qualified not only "a certificate" but also "a compulsory purchase order." It is clear to me not only that, for the reasons given by Parker L.J., such a construction would produce results so absurd that it should be avoided if fairly avoidable, but also that it is grammatically unsound in that the use of the indefinite article where it occurs for the second time indicates that the words "under Part III" qualify only the words "a certificate."

In this House a more serious argument was developed. It was that, as the compulsory purchase order was challenged on the ground that it had been made and confirmed "wrongfully" and "in bad faith," paragraph 16 had no application. It was said that that paragraph, however general its language, must be construed so as not to oust the jurisdiction of the court where the good faith of the local authority or the Ministry was impugned and put in issue. Counsel for the appellant made his submission very clear. It was that where the words "compulsory purchase order" occur in these paragraphs they are to be read as if the words "made in good faith" were added to them.

My Lords, I think that anyone bred in the tradition of the law is likely to regard with little sympathy legislative provisions for ousting the jurisdiction of the court, whether in order that the subject may be deprived altogether of remedy or in order that his grievance may be remitted to some other tribunal. But it is our plain duty to give the words of an Act their proper meaning

and, for my part, I find it quite impossible to qualify the words of the paragraph in the manner suggested. It may be that the legislature had not in mind the possibility of an order being made by a local authority in bad faith or even the possibility of an order made in good faith being mistakenly, capriciously or wantonly challenged. This is a matter of speculation. What is abundantly clear is that words are used which are wide enough to cover any kind of challenge which any aggrieved person may think fit to make. I cannot think of any wider words. Any addition would be mere tautology. But, it is said, let those general words be given their full scope and effect, yet they are not applicable to an order made in bad faith. But, my Lords, no one can suppose that an order bears upon its face the evidence of bad faith. It cannot be predicated of any order that it has been made in bad faith until it has been tested in legal proceedings, and it is just that test which paragraph 16 bars. How, then, can it be said that any qualification can be introduced to limit the meaning of the words? What else can "compulsory purchase order" mean but an act apparently valid in the law, formally authorized, made, and confirmed?

It was urged by counsel for the appellant that there is a deep-rooted principle that the legislature cannot be assumed to oust the jurisdiction of the court, particularly where fraud is alleged, except by clear words, and a number of cases were cited in which the court has asserted its jurisdiction to examine into an alleged abuse of statutory power and, if necessary, correct it. Reference was made, too, to Maxwell on the Interpretation of Statutes to support the view, broadly stated, that a statute is, if possible, so to be construed as to avoid injustice. My Lords, I do not refer in detail to these authorities only because it appears to me that they do not override the first of all principles of construction, that plain words must be given their plain meaning. There is nothing ambiguous about paragraph 16; there is no alternative construction that can be given to it; there is in fact no justification for the introduction of limiting words such as "if made in good faith," and there is the less reason for doing so when those words would have the effect of depriving the express words "in any legal proceedings whatsoever" of their full meaning and content.

I have examined paragraph 16 by itself without reference to paragraph 15. But paragraph 16 opens with the words "Subject to the provisions of the last foregoing paragraph." It is necessary, therefore, to see whether the earlier has any bearing upon

the meaning of the later paragraph. I think that it has not, for, in my opinion, the width or narrowness of the grounds of challenge permitted by paragraph 15 does not touch the construction of paragraph 16. Be they wide or be they narrow, it is subject to them that the general bar to legal proceedings is imposed. I am, therefore, reluctant to express a final opinion upon a matter much agitated at your Lordships' bar, whether the words "is not empowered" were apt to include a challenge not only on the ground of vires but also on the ground of bad faith or any other ground which would justify the court in setting aside a purported exercise of a statutory power. The inclination of my opinion is that they are, but I would prefer to keep the question open until it arises in a case where the answer will be decisive, as it is not here.

I come, then, to the conclusion that the court cannot entertain this action so far as it impugns the validity of the compulsory purchase order, and it is no part of my present duty to attack or defend such a provision of an Act of Parliament. But two things may, I think, fairly be said. First, if the validity of such an order is open to challenge at any time within the period allowed by the ordinary Statute of Limitations with the consequence that it and all that has been done under it over a period of many years may be set aside, it is not perhaps unreasonable that Parliament should have thought fit to impose an absolute bar to proceedings even at the risk of some injustice to individuals. Secondly, the injustice may not be so great as might appear. For the bad faith or fraud upon which an aggrieved person relies is that of individuals, and this very case shows that, even if the validity of the order cannot be questioned and he cannot recover the land that has been taken from him, yet he may have a remedy in damages against those individuals. Here the appellant by her writ claims against the personal defendant a declaration that he knowingly acted wrongfully and in bad faith in procuring the order and its confirmation, and damages, and that is a claim which the court clearly has jurisdiction to entertain. I am far from saying that the claim has any merit. Of that I know nothing. But because the court can entertain it, I think that the Court of Appeal, to whose attention this particular aspect of the case appears not to have been called, were wrong in striking out the whole writ and I propose that their order should be varied by striking out the defendants other than Mr. Pywell and the claims other than claims 3, 5, 6 and 7.

Against Mr. Pywell the action may proceed but upon the footing that the validity of the order cannot be questioned.

There will be no order as to costs.

LORD MORTON OF HENRYTON stated the facts and continued: My Lords, I think there can be no doubt that the respondents were never entitled to have the writ set aside so far as it claims relief against the respondent Pywell. The relief claimed by paragraph 3 of the writ and the further relief claimed by paragraphs 5, 6 and 7, in so far as that relief affects the respondent Pywell, in no way call in question the validity of the compulsory purchase order of August 26, 1948, or of its confirmation. It is simply alleged, as against Mr. Pywell personally, that he knowingly acted wrongfully and in bad faith in procuring the order and the confirmation thereof. It is equally clear that claims 1, 2 and 4 do put in issue the validity of the order, and it would appear that this distinction between the claim against Mr. Pywell and the other claims was overlooked until the appeal was being argued in this House. No such point was taken in any of the courts below, or in the appellant's reasons, but it is clear that the appellant is entitled to proceed against Mr. Pywell, whatever view your Lordships take on the main question arising on this appeal, namely, whether paragraph 16 of Part IV of Schedule I to the Act of 1946 deprives this House, and all courts, of jurisdiction to hear and determine this action, so far as it relates to the first and third respondents. The relevant portions of the Act of 1946 are as follows:-

By section 1 (1) the Act makes provision for the compulsory purchase of certain lands in the following terms: "The authorization of any compulsory purchase of land - (*a*) by a local authority where, apart from this Act, power to authorize the authority to purchase land compulsorily is conferred by or under any enactment contained in a public general Act and in force immediately before the commencement of this Act, other than any enactment specified in subsection (4) of this section; ... shall, subject to the provisions of this and the next following section, be conferred by an order (in this Act referred to as a 'compulsory purchase order') in accordance with the provisions of Schedule I to this Act (being provisions which, subject to certain adaptations, modifications and exceptions, correspond with provisions as to the authorization of the compulsory purchase of land of the Local Government Act, 1933)."

Section 1 (2) of the said Act provides that a special procedure set out in Part III of Schedule I to the Act shall be followed in compulsory acquisition of such land as falls within its scope, viz.:- "(*a*) which is the property of a local authority or which has been acquired by statutory undertakers for the purposes of their undertaking, (*b*) forming part of a common, open space or fuel or field garden allotment, or held inalienably by the National Trust, or (*c*) being, or being the site of, an ancient monument or other object or archaeological interest." It is plain that the land, the subject of this action, was not land affected by subsection (2) of section 1.

Paragraphs 15 and 16 of Part IV of Schedule I to the Act of 1946 are as follows: [His Lordship read the paragraphs and continued:] For the sake of brevity I shall hereafter refer to the paragraphs just quoted simply as "paragraph 15" or "paragraph 16."

Mr. Roy Wilson, for the appellant, puts forward propositions which I summarize as follows: (1) Paragraph 15 gives no opportunity to a person aggrieved to question the validity of a compulsory purchase order on the ground that it was made or confirmed in bad faith. (2) Although, prima facie, paragraph 16 excludes the jurisdiction of the court in all cases, subject only to the provision of paragraph 15, it is inconceivable that the legislature can have intended wholly to exclude all courts from hearing and determining an allegation that such an order was made in bad faith. (3) Therefore, paragraph 16 should be read as applying only to an order or a certificate made in good faith. In support of his second and third propositions, Mr. Wilson relied upon a general principle stated in the tenth edition of Maxwell on the Interpretation of Statutes, on observations made in a number of cases dealing with statutory powers, and on the case of *Calder v. Halket*.[1] The Attorney-General, on behalf of the respondents, contends that the opportunity of objection given by paragraph 15 extends to cases where bad faith is alleged, but, whether or not this is so, if the person aggrieved fails to apply to the court within the six weeks' period there mentioned, the jurisdiction of the court is completely ousted by paragraph 16, the terms whereof are unambiguous.

My Lords, I accept Mr. Wilson's first proposition. I cannot construe paragraph 15 as covering a case in which all the requirements expressly laid down by statute have been observed, but the person aggrieved has discovered that in carrying out the steps

1 (1840) 3 Moo.P.C. 28.

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laid down by statute the authority has been actuated by improper motives. It is to be observed that both in the earlier and in the later part of paragraph 15 there is only one ground upon which the validity of the order can be questioned. In the earlier part that ground is "that the authorization of a compulsory purchase thereby granted is not empowered to be granted under this Act or any such enactment as is mentioned in subsection (1) of section 1 of this Act." In the later part it is "that any requirement of this Act or of any regulation made thereunder has not been complied with in relation to the order or certificate." These words seem to me to restrict the complainant to alleging non-compliance with some requirement to be found in the relevant statutes or regulations. If paragraph 15 had been intended to apply to cases of bad faith, surely the restrictive words "on the ground that," etc., would have been left out in both parts. If, however, the words of paragraph 15 leave the point in any doubt, that doubt is removed, to my mind, by comparing the words of section 162 (1) of the Local Government Act, 1933, with the words of paragraph 15. It will be remembered that in section 1 (1) of the Act of 1946, already quoted, the provisions of Schedule I to that Act (which provisions include paragraph 15) are described as "provisions which, subject to certain adaptations, modifications and exceptions, correspond with provisions as to the authorization of the compulsory purchase of land of the Local Government Act, 1933." The provision in the Act of 1933 which corresponds to paragraph 15 is contained in section 162 (1) which begins as follows: "If any person aggrieved by a compulsory purchase order ... desires to question its validity, he may, within two months after the publication of the notice of confirmation ... make an application for the purpose to the High Court," etc. One "modification" of this provision which is made by paragraph 15 consists in altering the wide words, "desires to question its validity," to the strictly limited words already quoted. It is, I think, inconceivable that, if the legislature had intended paragraph 15 to cover cases where bad faith was alleged, it would have made this striking alteration in the language of section 162 of the 1933 Act. I would add that if paragraph 15 had been intended to cover such cases, there would seem to be no good reason why the earlier part thereof should not have been applied to a certificate as

well as to an order, since the later part applies to both. The reason for this difference was explained by Parker L.J. in the Court of Appeal, and I agree

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with his explanation; but the difference remains wholly unexplained if paragraph 15 covers cases where bad faith is alleged.

My Lords, having accepted Mr. Wilson's first proposition, for the reasons I have stated, I reject his second and third propositions, on the short and simple ground that the words of paragraph 16 are clear, and deprive all courts of any jurisdiction to try the issues raised by paragraphs 1, 2 and 4 of the writ, whereby the appellant undoubtedly seeks to question the validity of the order of August 26, 1948.

Turning first to counsel's second proposition, it does not seem to me inconceivable, though it does seem surprising, that the legislature should have intended to make it impossible for anyone to question in any court the validity of a compulsory purchase order on the ground that it was made in bad faith. It may have been thought that the procedure which has to be followed before such an order is made and confirmed affords sufficient opportunity for allegations of bad faith to be ventilated, and it may have been thought essential, if building schemes were to be carried out, that persons alleging bad faith in the making of an order, after the order has been made, should be limited to claims sounding in damages against the persons who, in bad faith, caused or procured the order to be made. The present action started nearly six years after the order now in question was made and confirmed, and illustrates the difficulty which might arise if no such limit were imposed, since houses have already been erected on the land which was the subject of the order.

I fully realize that certain strange results follow if my construction of paragraphs 15 and 16 is correct. For instance, a compulsory purchase order is made whereby a man is compelled to sell a house which has been his home, and the home of his family, for many years. After the order is made, evidence comes into his hands which shows that the order was made because the local district council wished to gratify a grudge against him, or for other reasons even more sinister. That man is for ever precluded from going to any court to have the order set aside. However, it is, of course, within the powers of Parliament to achieve this result, and, in my opinion, it has been achieved by paragraphs 15 and 16. In making this comment I am not, of course, casting any reflection upon any of the respondents to this appeal.

Effect can only be given to counsel's third proposition if some words are read into paragraph 16. Counsel suggested that the words "made in good faith" should be read in after "order"

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and also after "certificate." I cannot accept this suggestion. It would be impossible to predicate of any order or certificate that it was made in good faith until the court had inquired into the matter, and that is just what paragraph 16 prohibits. Mr. Wilson relied upon certain passages in the tenth edition of Maxwell on the Interpretation of Statutes, and especially on the following passage, which appears on p. 122, and also appeared, in substantially the same terms, in the first edition published in 1875: "Enactments which confer powers are so construed as to meet all attempts to abuse them, either by exercising them in cases not intended by the statute, or by refusing to exercise them when the occasion for their exercise has arisen. Though the act done was ostensibly in execution of the statutory power and within its letter, it would nevertheless be held not to come within the power if done otherwise than honestly and in the spirit of the enactment." My Lords, this is a well-known principle; it is illustrated by many cases, and Mr. Wilson made an excellent selection of them, beginning with *Ex parte Cowan.*[2] In my opinion, however, neither the passage in Maxwell nor this line of cases assists your Lordships in construing paragraph 16. That paragraph does not confer a power. If it did, I should apply the principle stated in Maxwell without any hesitation. What the paragraph does is to enact, in terms which seem to me very clear, that when a certain type of order or certificate has been made, it shall not be questioned in any court, except in the limited type of case and for the limited period specified in paragraph 15.

Mr. Wilson also relied upon the case of *Calder v. Halket.*[3] In that case the Judicial Committee had to construe section 24 of the Act 21 Geo. 3, c. 70, which was in the following terms: "And whereas it is reasonable to render the provincial magistrates, as well natives as British subjects, more safe in the execution of their office, be it

enacted, That no action for wrong or injury shall lie in the Supreme Court, against any person whatsoever exercising a judicial office in the country courts, for any judgment, decree, or order of the said court, nor against any person for any act done by or in virtue of the order of the said court."

Parke B., delivering the judgment of the Board, said[4]: "Three meanings may be attributed to this clause. *First.* It may mean that no action should lie against one exercising a judicial

2 (1867) L.R. 2 Ch. 563.
3 3 Moo.P.C. 28.
4 Ibid. 74-75.

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office, in the country courts, for any judgment, decree, or order of the court, whether in a matter in which the court had a jurisdiction or not, or whether the judge wilfully and knowingly gave judgment or made an order in a matter out of his jurisdiction or not; so that the fact of the existence of a judgment, decree, or order, should preclude all inquiry. *Secondly.* It may mean to protect the judge only where he gives judgment, or makes an order, in the bona fide exercise of his office, and under the belief of his having jurisdiction, though he may not have any. *Thirdly.* The object may have been to put the judges of the native courts on the footing of judges of the superior courts of record, or courts having similar jurisdiction to the native courts here, protecting them from actions for things done within their jurisdiction, though erroneously or irregularly done, but leaving them liable for things done wholly without jurisdiction. It seems to us, that the first of these constructions is inadmissible. It never could have been intended to give such unlimited power to the judges of the native courts, and reason points out that the general words of the clause must be qualified in the manner stated in one of the two latter modes of construction. We think that the third is the right mode, and that the true meaning of the section in question was to put the judges of native courts of justice on the same footing as those of English courts of similar jurisdiction. There seems no reason why they should be more or less protected than English judges of general or limited jurisdiction, under the like circumstances."

In that case it was possible, as a matter of construction, to read in the words "made within its jurisdiction" after the words "the said court," and the decision may have been justified, having regard to the context and the surrounding circumstances; but it is impossible to read the words "made in good faith" into paragraph 16, for the reasons I have already stated. I think that the decision in *Calder v. Halket*[5] would have been different if the section had read, "No judgment, decree or order of the said court shall be questioned in any legal proceedings whatsoever." Such words would, I think, clearly "preclude all inquiry" by preventing any complainant from raising the question whether the order had or had not been made without jurisdiction.

The only other way of giving effect to counsel's third proposition would be to insert after the word "whatsoever" in paragraph 16 some such words as "unless it is alleged that the

5 3 Moo.P.C. 28.

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order or certificate was made in bad faith"; but I can find no justification for inserting these words. To do so would be legislation, not interpretation. For these reasons. I am of opinion that paragraph 16 operates to oust the jurisdiction of the courts in the present case, except in regard to the claims against Mr. Pywell. I should add that Mr. Collier, junior counsel for the appellant, submitted that in paragraph 16 the words "under Part III of this Schedule" qualify "a compulsory purchase order" as well as "a certificate," and as the order in the present case was not made under Part III of Schedule I, paragraph 16 has no application to the present case. That submission was rejected by the Court of Appeal, and I shall only say that, in my opinion, it was rightly rejected, for the reasons given by Parker L.J.

I would allow the writ in this action to stand only in so far as it claims relief against the respondent Pywell by claims 3, 5, 6 and 7. The writ should, in my view, be set aside for want of jurisdiction in so far as it claims relief against the other respondents. The appeal should, therefore, be allowed to the extent just mentioned.

LORD REID. My Lords, in this action the appellant sues the East Elloe Rural District Council and the Ministry of Health, now the Ministry of Housing and Local Government, and seeks declarations that a compulsory purchase order made by that local authority and confirmed by the Minister was made and confirmed wrongfully and in bad faith. The appellant also seeks consequential relief. The writ of summons has been set aside before a statement of claim was lodged, and so we do not know the nature of the bad faith alleged. But the argument for the respondents is that it matters not how serious the bad faith might be: even if conspiracy and corruption were involved, the action could not proceed because Parliament has deprived the courts of jurisdiction to entertain it.

The jurisdiction of the courts is said to be ousted by two paragraphs of Schedule I to the Acquisition of Land (Authorization Procedure) Act, 1946. Those paragraphs are as follows: [His Lordship read paragraphs 15 and 16 and continued:]

Compulsory purchase orders can be made under a number of different statutes, and before 1946 there was no uniform procedure: for example, the procedure under the Housing Act, 1936, differed in some respects from the procedure under the Local Government Act, 1933. Section 1 (1) of the 1946 Act provides

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for the authorization of any compulsory purchase by a local authority being confirmed by order in accordance with the provisions of Schedule I "(being provisions which, subject to certain adaptations, modifications and exceptions, correspond with provisions as to the authorization of the compulsory purchase of land of the Local Government Act, 1933)." I shall have to refer to these words later. The provisions of the Act of 1946 now apply to a wide variety of orders made by many different types of authority, and the question how far the jurisdiction of the courts has been ousted by this Act is, therefore, of very great importance. The order by which the appellant is aggrieved was made under the Housing Act, 1936, but nothing turns on that.

Paragraph 15 of Schedule I allows the validity of an order to be questioned on two grounds, first, that the authorization of the compulsory purchase "is not empowered to be granted" under the Act under which the order is made, and, secondly, that any requirement of the 1946 Act has not been complied with. In either case he may make application to the court within six weeks from publication of confirmation of the order. Paragraph 16 provides that save as aforesaid a compulsory purchase order shall not be questioned in any legal proceedings whatsoever either before or after it has been confirmed.

If the words of these paragraphs are held to have their ordinary meanings, then an order can never be questioned or attacked in any court on the ground that it has been obtained by corrupt or fraudulent means, no matter how serious the corruption or how wide the conspiracy by which it has been obtained. Admittedly no other tribunal is given jurisdiction to deal with such a case, and the Minister has no power to act if, after he has confirmed an order, it were found that the making of the order had been due to corruption or malice. The only reason suggested for depriving the subject of redress in such a case is administrative convenience, and I find it necessary to examine these paragraphs narrowly to see whether I am forced to reach the conclusion that that must be held to have been the intention of Parliament. I may say at once that I have found nothing in the Act beyond the phraseology of these two paragraphs to indicate that Parliament had such an intention. I shall, therefore, examine the phraseology of these paragraphs to see whether either of them is susceptible of an interpretation which would avoid that result.

I take a case like the present case, where the purpose of the acquisition of the land is plainly stated in the order and is plainly

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intra vires and where all the required steps of procedure have been duly taken, and I must first examine paragraph 15 to see whether the present appellant could have questioned the order on any ground of bad faith, malice, corruption or conspiracy if she had raised her action within six weeks of the order being confirmed. It is not said that this could have been brought within the second of the grounds set out in paragraph 15, but it is argued that it could be brought within the first because an authorization obtained in bad faith is not "empowered to be granted."

I have quoted the passage in section 1 of the 1946 Act, which states that the provisions of its First Schedule correspond to provisions of the 1933 Act subject to adaptations and modifications, and I therefore begin by examining the provisions of the earlier Act which correspond to paragraphs 15 and 16 of Schedule I. Those

provisions are contained in section 162 of the 1933 Act. Subsection (1) provides, with regard to a compulsory purchase order, that if a person aggrieved "desires to question its validity, he may, within two months after the publication of the notice of confirmation ... make an application for the purpose to the High Court." The court may then quash the order, but when the invalidity arises from procedural provisions, the court must be satisfied that the interests of the applicant have been substantially prejudiced. Subsection (2) provides that, subject to the provisions which I have mentioned, an order shall not either before or after its confirmation, be questioned by prohibition or certiorari or in any legal proceedings.

The 1933 Act does not in any way restrict the grounds on which a person may question the validity of an order, but the 1946 Act specifies two grounds. I can see no other possible reason for this change, and the more elaborate drafting which it entails, than an intention to limit the grounds on which a person aggrieved can make application to the court, and in order to determine how far the 1946 Act has limited the jurisdiction of the courts I must see what were the grounds on which the court could give relief under the ordinary law or the 1933 Act. I think that in the past there has been some confusion about this, and I fear that I must try as best I can to unravel the matter. It seems to me that there were four grounds on which the courts could give relief. First, informality of procedure; where, for example, some essential step in procedure had been omitted. Secondly, ultra vires in the sense that what was authorized by the order went beyond what was authorized by the Act under

which it was made. Thirdly, misuse of power in bona fide. And, fourthly, misuse of power in mala fide. In the last two classes the order is intra vires in the sense that what it authorizes to be done is within the scope of the Act under which it is made, and every essential step in procedure may have been taken: what is challenged is something which lies behind the making of the order. I separate these two classes for this reason. There have been few cases where actual bad faith has even been alleged, but in the numerous cases where misuse of power has been alleged judges have been careful to point out that no question of bad faith was involved and that bad faith stands in a class by itself.

Misuse of power covers a wide variety of cases, and I am relieved from considering at length what amounts to misuse of power in bona fide because I agree with the analysis made by Lord Greene M.R. in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation.*[6] There the local authority had power to grant licences for cinema performances "subject to such conditions as the authority think fit to impose." They allowed Sunday performances subject to the condition that no child should be admitted and were held entitled to do this. I quote what seem to me the leading passages in Lord Greene's judgment. He said[7]: "The exercise of such a discretion must be a real exercise of the discretion. If, in the statute conferring the discretion, there is to be found expressly or by implication matters which the authority exercising the discretion ought to have regard to, then in exercising the discretion it must have regard to those matters. Conversely, if the nature of the subject-matter and the general interpretation of the Act make it clear that certain matters would not be germane to the matter in question, the authority must disregard these irrelevant collateral matters ...[8] a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably' ...[9] It is true to say that, if a decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the courts can interfere. That, I think, is quite

6 [1948] 1 K.B. 223; 63 T.L.R. 623; [1947] 2 All E.R. 680.
7 [1948] 1 K.B. 223, 228.
8 Ibid. 229.
9 Ibid. 230.

right: but to prove a case of that kind would require something overwhelming ...[10] The court is entitled to investigate the action of the local authority with a view to seeing whether they have taken into account matters

which they ought not to take into account, or, conversely, have refused to take into account or neglected to take into account matters which they ought to take into account. Once that question is answered in favour of the local authority, it may still be possible to say that, although the local authority have kept within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it. In such a case, again, I think the court can interfere. The power of the court to interfere in each case is not an appellate authority to override a decision of the local authority, but as a judicial authority which is concerned, and concerned only, to see whether the local authority have contravened the law by acting in excess of the powers which Parliament has confided in them." None of those cases need involve mala fides. A local authority may have had regard to quite irrelevant considerations or may have acted quite unreasonably but yet be entirely innocent of dishonesty or malice.

I can draw no other conclusion from the form in which paragraph 15 is now enacted than that Parliament intended to exclude from the scope of this paragraph the whole class of cases referred to in the passages which I quoted. No doubt in one sense it might be said that in none of these cases is authority "empowered to be granted," but that would be a strained and unnatural reading of these words only to be accepted if there were in the Act some clear indication requiring it. But, to my mind, all the indications are the other way, and this part of the paragraph only refers to cases of ultra vires in the narrow sense in which I have used it.

If other cases of misuse of power in bona fide are excluded, can a distinction be made where mala fides is in question? As I shall explain when I come to paragraph 16, I am of opinion that cases involving mala fides are in a special position in that mere general words will not deprive the court of jurisdiction to deal with them, and, if that is so, then no question would arise under paragraph 15. But, if I am wrong about cases of mala fides being in this special position, I do not see how there can be a distinction

10 [1948] 1 K.B. 233-234.

under paragraph 15 between cases of bona fide and mala fide misuse of power. I can see nothing to indicate any intention to that effect, and if Parliament intended to treat bad faith as a special case it would be very strange to introduce the exception here. The time limit under paragraph 15 is six weeks, which is appropriate for grounds which appear from the terms of the order but not appropriate for grounds based on facts lying behind the order which may not be discoverable for some time after it is confirmed; and I find another strong indication that the first ground of challenge was not intended to apply to such cases in the fact that that ground is not available to a person aggrieved by the granting of a certificate: only the second ground is available to him. This is intelligible if the first ground only applies to ultra vires because I cannot see how a certificate could be ultra vires. But, if the first ground was intended to apply where mala fides is alleged, I cannot imagine any reason why it was not also made available when a certificate is challenged.

In my view, the question whether authority is empowered to be granted is intended to be capable of immediate answer: if it can depend on facts lying behind the order, then neither the Minister nor the owner could know for certain at the time of confirmation whether any order is empowered to be granted or not, because facts showing misuse of power might subsequently emerge. Accordingly, in my opinion, the appellant could not have brought her case within paragraph 15, even if she had raised it immediately after the order was confirmed.

I turn to paragraph 16. Not only does it prevent recourse to the court after six weeks in cases to which paragraph 15 does apply, but, on the face of it, it prevents any recourse to the court at all in cases to which paragraph 15 does not apply. It uses words which are general and emphatic, and, to my mind, the question is whether this use of general words necessarily leads to the conclusion that the jurisdiction of the court is entirely excluded in all cases of misuse of powers in mala fide where those acting in mala fide have been careful to see that the procedure was in order and the authority granted by the order was within the scope of the Act under which it was made. A person deliberately acting in bad faith would naturally be careful to do this. In my judgment, paragraph 16 is clearly intended to exclude, and does exclude entirely, all cases of misuse of power in bona fide. But does it also exclude the small minority of cases where deliberate dishonesty, corruption or malice is involved? In every class of case that I can think of the courts have always held that general

words are not to be read as enabling a deliberate wrongdoer to take advantage of his own dishonesty. Are the principles of statutory construction so rigid that these general words must be so read here? Of course, if there were any other indications in the statute of such an intention beyond the mere generality of the words that would be conclusive: but I can find none.

There are many cases where general words in a statute are given a limited meaning. That is done, not only when there is something in the statute itself which requires it, but also where to give general words their apparent meaning would lead to conflict with some fundamental principle. Where there is ample scope for the words to operate without any such conflict it may very well be that the draftsman did not have in mind and Parliament did not realize that the words were so wide that in some few cases they could operate to subvert a fundamental principle. In general, of course, the intention of Parliament can only be inferred from the words of the statute, but it appears to me to be well established in certain cases that, without some specific indication of an intention to do so, the mere generality of words used will not be regarded as sufficient to show an intention to depart from fundamental principles. So, general words by themselves do not bind the Crown, they are limited so as not to conflict with international law, they are commonly read so as to avoid retrospective infringement of rights, and it appears to me that they can equally well be read so as not to deprive the court of jurisdiction where bad faith is involved. If authority be needed for reading general words so as not to deprive the court of jurisdiction in such a case, I find it in *Calder v. Halket,*[11] where general words in 21 Geo. 3, c. 60, s. 20, were even farther limited without there being anything in the statute to indicate that they should be read in a limited sense. The words were: "No action for wrong or injury shall lie in the Supreme Court, against any person whatsoever exercising a judicial office in the country courts, for any judgment, decree, or order of the said court, nor against any person for any act done by or in virtue of the order of the said court." Two limited readings were suggested - to exclude acts in mala fide or to exclude proceedings wholly without jurisdiction. In their Lordships' judgment it is said[12]: "It never could have been intended to give such unlimited power to judges of the native courts, and reason points out that the general words of the clause must be

11 3 Moo.P.C. 28.
12 Ibid. 75.

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qualified in the manner stated in one of the two latter modes of construction." I think that there is still room for reason to point out that the general words in this case must be limited so as to accord with the principle, of which Parliament cannot have been ignorant, th at a wrongdoer cannot rely on general words to avoid the consequences of his own dishonesty. As I have said, we must take this case on the footing that the appellant might allege deliberate dishonesty of the grossest kind.

It is said that Parliament may have intended that even cases of gross dishonesty should be excluded from redress because otherwise it would be embarrassing to deal with allegations of this kind after a long interval, and, if the case were proved, a local authority and ultimately the ratepayers might be involved in grievous loss. I am not entirely satisfied that the law is powerless to deal justly with such a situation. But, even if that were a possible consequence, I would hesitate to attribute to Parliament the view that considerations of that kind justify hushing up a scandal.

In my judgment this appeal should be allowed.

LORD RADCLIFFE. My Lords, I think that this appeal must fail except so far as the action against the defendant Pywell is concerned. As I understand that all your Lordships are agreed upon the latter point, I will confine what I have to say to the case against the defendants East Elloe Rural District Council, Ministry of Health and Ministry of Housing and Local Government.

The relief that the appellant seeks against them in her action depends wholly on her ability to establish that a compulsory purchase order dated August [26], 1948, made by the rural district council and confirmed by the Minister was invalid. I do not wish to beg any question by using the word "invalid." I mean that she has to show that in the eyes of the law this compulsory purchase order was not effective to confer upon the rural district council the authority to enter upon her land, which they certainly would not have possessed without the making of the order. It follows, therefore, that her action must stand or fall by her ability to question this compulsory purchase order in the legal proceedings.

But the act of questioning a compulsory purchase order in legal proceedings is what is dealt with under those very words in paragraphs 15 and 16 of Part IV of Schedule I of the Acquisition of Land (Authorization Procedure)

Act, 1946: and the defendants say that having regard to the provisions of those

paragraphs it is not open to the appellant by a writ issued in July, 1954, to question a compulsory purchase order made in August, 1948.

The provisions of the two paragraphs in question have been set out in full in the speech of the noble Lord on the Woolsack, and I do not repeat them. If, as is obvious, her proceedings are not within the brief measure of time allowed by paragraph 15, I am bound to say that I think that she faces a very great difficulty in showing that what appears to be the absolute prohibition, "shall not ... be questioned in any legal proceedings whatsoever," is to be understood in a court of law as amounting to something much less than such a prohibition. It is quite true, as is said, that these are merely general words: but then, unless there is some compelling reason to the contrary, I should be inclined to regard general words as the most apt to produce a corresponding general result.

Now, the appellant says that the reason for an exception being made in her case lies in the fact that, as her writ shows, she intends to establish that the compulsory purchase order in question was made and confirmed "in bad faith"; and that, when such a plea is raised, it is the duty of a court of law so to interpret the apparently general words used by Parliament as not to apply them to legal proceedings that are designed to determine that issue. It is because I do not think that the law either requires or entitles us to adopt such a method of construing an Act of Parliament that, my opinion, the appellant's action must be stopped.

Of course, it is well known that courts of law have always exercised a certain authority to restrain the abuse of statutory powers. Such powers are not conferred for the private advantage of their holders. They are given for certain limited purposes, which the holders are not entitled to depart from: and if the authority that confers them prescribes, explicitly or by implication, certain conditions as to their exercise, those conditions ought to be adhered to. It is, or may be, an abuse of power not to observe the conditions. It is certainly an abuse of power to seek to exercise it when the statute relied upon does not truly confer it, and the invalidity of the act does not depend in any way upon the question whether the person concerned knows or does not know that he is acting ultra vires. It is an abuse of ower to exercise it for tl purpose different from that for which it is entrusted to the holder, not the less because he may be acting ostensibly for the authorized purpose. Probably most of

the recognized grounds of invalidity could be brought under this head: the introduction of illegitimate considerations, the rejection of legitimate ones, manifest unreasonableness, arbitrary or capricious conduct, the motive of personal advantage or the gratification of personal ill-will. However that may be, an exercise of power in bad faith does not seem to me to have any special pre-eminence of its own among the causes that make for invalidity. It is one of several instances of abuse of power, and it may or may not be involved in several of the recognized grounds that I have mentioned. Indeed, I think it plain that the courts have often been content to allow such circumstances, if established, to speak for themselves rather than to press the issue to a finding that the group of persons responsible for the exercise of the power have actually proceeded in bad faith.

It must be assumed that the legislature which enacted the Acquisition of Land (Authorization Procedure) Act, 1946, was aware that the law protected persons disturbed by an exercise of statutory powers in that it allowed them to come to the courts to challenge the validity of the exercise on any of such grounds. But, if so, I do not see how it is possible to treat the provisions of paragraphs 15 and 16 of Part IV of Schedule I of the Act as enacting anything less than a complete statutory code for regulating the extent to which, and the conditions under which. courts of law might be resorted to for the purpose of questioning, the validity of a compulsory purchase order within the protection of the Act. I should myself read the words of paragraph 15 (1). "on the ground that the authorization of a compulsory purchase thereby granted is not empowered to be granted under this Act," as covering any case in which the complainant sought to say that the order in question did not carry the statutory authority which it purported to. In other words, I should regard a challenge to the order on the ground that it had not been made in good faith as within the purview of paragraph 15. After all, the point which concerns the aggrieved person is the same in all cases: an order has been made constituting an ostensible exercise of statutory power and his purpose in resorting to the courts is to show that there is no statutory authority behind the order. I do not see any need to pick and choose among the different reasons which may support the plea that the authorization

ostensibly granted does not carry the powers of the Act. But, even if I did not think that an order could be questioned under paragraph 15 on the ground that it had been exercised in bad faith, and I thought, therefore, that the statutory code did not

allow for an order being questioned on this ground at all, I should still think that paragraph 16 concluded the matter, and that it did not leave to the courts any surviving jurisdiction.

The appellant's argument for an exception rests on certain general reflections which do not seem to me to make up into any legal principle of construction as applied to an Act of Parliament. It is said that the six weeks which are all the grace that, on any view, paragraph 15 allows an aggrieved person for his taking action, are pitifully inadequate as an allowance of time when bad faith, which may involve concealment or deception, is thought to be present. And indeed they are. Further, it is said that it would be an outrageous thing if a person who by ordinary legal principles would have a right to upset an order affecting him were to be precluded from coming to the courts for his right, either absolutely or after six weeks, when the order is claimed by him to have been tainted by bad faith. And perhaps it is. But these reflections seem to me to be such as must or should have occurred to Parliament when it enacted paragraph 16. They are not reflections which are capable of determining the construction of the Act once it has been passed, unless there is something that one can lay hold of in the context of the Act which justifies the introduction of the exception sought for. Merely to say that Parliament cannot be presumed to have intended to bring about a consequence which many people might think to be unjust is not, in my opinion, a principle of construction for this purpose. In point of fact, whatever innocence of view may have been allowable to the lawyers of the eighteenth and nineteenth centuries, the twentieth century lawyer is entitled to few assumptions in this field. It is not open to him to ignore the fact that the legislature has often shown indifference to the assertion of rights which courts of law have been accustomed to recognize and enforce, and that it has often excluded the authority of courts of law in favour of other preferred tribunals.

At one time the argument was shaped into the form of saying that an order made in bad faith was in law a nullity and that, consequently, all references to compulsory purchase orders in paragraphs 15 and 16 must be treated as references to such orders only as had been made in good faith. But this argument is in reality a play on the meaning of the word nullity. An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset,

it will remain as effective for its ostensible purpose as the most impeccable of orders. And that brings us back to the question that determines this case: Has Parliament allowed the necessary proceedings to be taken?

I am afraid that I have searched in vain for a principle of construction as applied to Acts of Parliament which would enable the appellant to succeed. On the other hand, it is difficult not to recall in the respondents' favour the dictum of Bacon: "Non est interpretatio, sed divinatio, quae recedit a litera."

LORD SOMERVELL OF HARROW. My Lords, objections to a compulsory purchase order by the vendor or other person aggrieved would, I think, normally fall under one or other of the following heads - (1) merits, (2) ultra vires, or (3) mala fides. There may be debatable frontiers.

So far as the merits are concerned, the Act provides for publication, notices and objections, if any. Objectors may be heard before a local inquiry or individually as provided in the Act. Subject to the procedures there laid down, the "merits" are finally decided by the local authority, subject to confirmation by the Minister.

Ultra vires and mala fides are, prima facie, matters for the courts. If the jurisdiction of the courts is to be ousted it must be done by plain words.

A good example of ultra vires came before the courts while this appeal was being argued. The Act of 1946 provides for a special parliamentary procedure if the land covered by the order is, inter alia, a common or open space. The local authority and the Minister had, bona fide, proceeded on the basis that the land was not a common or open space and had not, therefore, operated the special procedure. By the time the case came on the Minister conceded that the land covered was an open space and the order was quashed *(Richardson v. Minister of Housing*

and Local Government[13], Another example is *In re Ripon (Highfield) Housing Confirmation Order, 1938; White and Collins v. Minister of Health.*[14] There was no suggestion of bad faith.

Mala fides is a phrase often used in relation to the exercise of statutory powers. It has never been precisely defined as its effects have happily remained mainly in the region of hypothetical cases. It covers fraud or corruption. As the respondents have moved before the bad faith has been particularized, one must assume the worst.

13 The Times, Feb. 24, 1956.
14 [1939] 2 K.B. 838; 55 T.L.R. 956; [1939] 3 All E.R. 548.

It has been said that bad faith is an example of ultra vires, and observations to this effect are relied on by the respondents in support of their submission that the words "not empowered to be granted" in paragraph 15 of Part IV of Schedule I to the Act cover cases where fraud or corruption is relied on, although on the face of it there is no irregularity. The following passage from Warrington L.J., as he then was, is perhaps the most favourable to this argument *(Short v. Poole Corporation*[15]: "My view then is that the only case in which the court can interfere with an act of a public body which is, on the face of it, regular and within its powers, is when it is proved to be in fact ultra vires, and that the references in the judgments in the several cases cited in argument to bad faith, corruption, alien and irrelevant motives, collateral and indirect objects, and so forth, are merely intended when properly understood as examples of matters which, if proved to exist, might establish the ultra vires character of the act in question." This way of describing the effect of bad faith should not be used to blur the distinction between an ultra vires act done bona fide and an act on the face of it regular but which will be held to be null and void if mala fides is discovered and brought before the court. The division in law is clear and deep. No party would be allowed to raise fraud under an allegation of ultra vires simpliciter. In *Demetriades v. Glasgow Corporation*[16] the plaintiff complained of acts done on his land after requisition. He alleged, inter alia, that trees had been *unlawfully* cut. If there had been mala fides the cutting would, as I follow it, have been unlawful, but the House would not consider the possibility of bad faith in the absence of an express averment. This is stated by Lord Normand at the end of his opinion.[17] My noble and learned friend, Lord Morton of Henryton, said this[18]: "The position would be different if there were any allegation of fact that the competent authority, through his agents, the respondents, had acted in bad faith and with some ulterior motive in carrying out this work on the trees. The truth or falsity of such an allegation could be investigated by a court of law." But no such investigation could take place in a case in which there was a claim for a declaration that the cutting had been unlawful.

In *Carltona Ltd. v. Commissioners of Works*[19] the writ

15 [1926] Ch. 66, 91; 42 T.L.R. 107.
16 [1951] 1 T.L.R. 396; [1951] 1 All E.R. 457.
17 [1951] 1 T.L.R. 396, 400.
18 Ibid. 401.
19 [1943] 2 All E.R. 560.

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claimed a declaration that the Commissioners of Works were not entitled to take possession of the plaintiffs' premises and that a notice on which the commissioners relied was invalid. Lord Greene M.R. held bad faith could not be raised under a writ in this form. The words of paragraph 15 are plainly appropriate to ultra vires in the ordinary sense. They do not in their ordinary meaning, in my opinion, cover orders which "on the face of it" are proper and within the powers of the Act, but which are challengeable on the ground of bad faith. The wording of the paragraph itself supports this view. If mala fides is within the paragraph it must be within the earlier words "is not empowered to be granted under this Act." These words do not apply to a certificate under Part III. If the paragraph was to cover mala fides it would have covered it in relation to a certificate as well as to an order. It has not done so.

This construction is strengthened by the context. The jurisdiction of the court under paragraph 15 is ousted after six weeks. If Parliament had intended that this should apply in the case of a person defrauded it would have made it plain, and not left it to be derived from a doubtful syllogism which would certainly not occur to a layman and would not, I think, occur ordinarily to a lawyer unless he happened to have had recently to familiarize himself with passages such as that I have cited from Lord Warrington.

The limited right under paragraph 15, therefore, does not apply to applications based on bad faith. Pausing there, the victim of mala fides would have his ordinary right of resort to the courts. It is said, however, that paragraph 16 takes away this right. In other words, Parliament, without ever using words which would suggest that fraud was being dealt with has deprived a victim of fraud of all right of resort to the courts, while leaving the victim of a bona fide breach of a regulation with such a right. If Parliament has done this it could only be by inadvertence. The two paragraphs fall to be construed together. Mala fides being, in my opinion, clearly excluded from paragraph 15, it should not, I think, be regarded as within the general words of paragraph 16. Construing general words as not covering fraud is accepted as right in many contexts. This seems to me an appropriate context for that principle. The Act, having provided machinery for access to the courts in cases of ultra vires, cannot have intended to exclude altogether a person defrauded. General words, therefore, should not be construed as effecting such an exclusion.

The respondents sought to rely on the word "whatsoever." It is a word which in certain contexts may bring comfort to those who seek to include fraud under general words. Here it is applied, not to the grounds of challenge, but to the legal proceedings. Orders of this kind may be challenged in various ways, by injunction, by prerogative writ or the procedure now substituted, or, as here, by an ordinary writ. The word "whatsoever" is apt to cover this multiplicity.

It is finally said there might be great inconvenience if after, say, houses had been built the validity could be challenged. There are two grounds which lead me to give little weight to this. First, there is a possibility of fraud in the subsequent proceedings following on a notice to treat. No one suggests there is any ouster or special limitation of jurisdiction in that case. Further, if there is a possibility of bad faith in matters of this kind, I would think it much more inconvenient to the administration, national and local, us a whole that a person defrauded should be deprived of any remedy in the courts. I, therefore, would allow the appeal.

Appeal allowed in part.

Solicitors: *A. E. Hamlin, Sheringham; Lees & Co. for Mossop & Bowser, Holbeach; Solicitor for the Minister of Housing and Local Government.*

F. C.