17/70

HIGH COURT OF AUSTRALIA

WORTHING v ROWELL & MUSTON PTY LTD and ORS

Barwick CJ, McTiernan, Kitto, Menzies, Windeyer, Owen and Walsh JJ

29-31 October 1969; 26 June 1970

[1970] HCA 19; (1970) 123 CLR 89; [1970] ALR 769; (1970) 44 ALJR 230; (1970) 22 LGRA 417

JURISDICTION – ACTION COMMENCED IN THE SUPREME COURT OF NSW – WORTHING CLAIMED DAMAGES FOR PERSONAL INJURIES SUSTAINED BY HIM WHILE WORKING IN THE EMPLOY OF THE SECOND-NAMED DEFENDANT ROCHE BROTHERS – THE PLAINTIFF RELIED, *INTER ALIA*, ON AN ALLEGED BREACH BY THE SECOND DEFENDANT OF R73 OF THE REGULATIONS MADE UNDER THE *SCAFFOLDING AND LIFTS ACT* 1912 (NSW) – THE SECOND DEFENDANT DEMURRED TO THIS PART OF THE DECLARATION ON THE GROUND THAT THE PLACE WHERE THE INJURY WAS ALLEGED TO HAVE BEEN SUSTAINED BY THE PLAINTIFF WAS WITHIN THE BOUNDARIES OF THE ROYAL AUSTRALIAN AIR FORCE BASE AT RICHMOND A PLACE WHICH HAD BEEN ACQUIRED BY THE COMMONWEALTH OF AUSTRALIA FOR PUBLIC PURPOSES UNDER S52 OF *THE CONSTITUTION* OF THE COMMONWEALTH.

HELD: Demurrer overruled.
The Parliament could make a law in the terms of the State regulation under consideration to operate at Richmond Aerodrome or there and also at other places acquired by the Commonwealth for public purposes. After the acquisition of the land for the aerodrome, the State could not make a law to operate in or on the place acquired, even though its law was general and not limited in its operation specifically to that place. The State regulation was inoperative in relation to the place where the building operations to which the case related were being carried on and that the defendant was not bound by reason of that regulation to secure the safety of the plaintiff in the manner prescribed.

BARWICK CJ: The plaintiff in this action claims that whilst working in the employment of the second-named defendant he was injured by falling from his working place. He says that that defendant, being engaged in building work, was bound by a regulation made on 25 May 1950 under the *Scaffolding and Lifts Act* 1912 (NSW), to provide means by fencing or otherwise to secure his, the plaintiff's safety whilst working at the place from which he fell. The pleadings of these parties in this action as ultimately amended have raised by demurrer the question whether that defendant was so bound by the New South Wales regulations. The defendant claims he was not so bound because the place where the building work was being carried out and where the plaintiff sustained his injury was within the boundaries of the Royal Australian Air Force Base at Richmond in the State of New South Wales, a place which had been acquired by the Commonwealth of Australia for public purposes before the making of the said State regulation and therefore by reason of s52 of the *Constitution of the Commonwealth* a place where the State regulation could have no operation.

2. As a question as to the limits *inter se* of the constitutional powers of the Commonwealth and of the State of New South Wales was thus involved, the action commenced in the Supreme Court of New South Wales has been removed into this Court by the operation of s40A of the *Judiciary Act* 1930-1965 (Cth). Other questions arise in the action both between these and other parties but this Court is presently concerned only with the question I have stated.

3. Section 52 (i.) of the *Australian Constitution* provides:

> "52 The Parliament shall, subject to this Constitution, have exclusive power to make laws for the peace, order, and good government of the Commonwealth with respect to—
> (i.) The seat of government of the Commonwealth, and all places acquired by the Commonwealth for public purposes."

4. It is common ground between the parties that the Richmond Air Base is a place acquired by the

Commonwealth for public purposes within the meaning and operation of s52 (i.). It is also common ground that the State regulation was made subsequently to such acquisition. The regulation is of general application purporting to operate throughout the State of New South Wales. If one had need to designate its subject matter, it is a law with respect to the safety of workmen during building operations. Generally, one is not concerned to assign a subject matter to a law of a State whose legislative power is an undifferentiated residue after the vesting of legislative power in the Parliament with respect to a variety of topics. However, it is said that because of the language of s52 (i.) it is important in this case to identify the subject matter of the State regulation.

5. Section 52(i.) has not received much judicial attention during the past sixty-seven years of the life of this Court. Its meaning and scope has not been decided by the Court. But some views, by no means unanimous, have been expressed by individual justices.

6. Before this Court was constituted in the year 1903, the Supreme Court of New South Wales in *R v Bamford* (1901) 1 SR (NSW) 337; 7 ALR (CN) 89; 18 WN (NSW) 294 , by majority, decided that the Postage Act of New South Wales (31 Vic. No. 4) was in force within the area of a post office on 15 August 1901, i.e. after the proclamation of the Commonwealth of Australia and the commencement of the operation of the *Constitution of the Commonwealth* and after the date fixed by a proclamation made under s69 of the *Constitution* for the transfer to the Commonwealth of the State Departments of Posts, Telegraphs and Telephones. Thus by virtue of s85 of the *Constitution* the post offices of the State of New South Wales, amongst other property, had by then become vested in the Commonwealth. The ground on which the Supreme Court so decided was that the Postage Act of New South Wales, being a law in force in the colony of New South Wales which under the Constitution became a State, was continued in force throughout the State of New South Wales by virtue of s108 of the *Constitution*. The Court unanimously decided that the post offices were places "acquired by the Commonwealth for public purposes" within the meaning of s52 of the *Constitution*, the vesting by s85 of the Constitution being relevantly an acquisition by the Commonwealth. The majority of the Court, however, was unwilling to treat the acquisition by the Commonwealth of a place within a State for public purposes as the excision of that place from the territory of the State so approximating the situation of a territory of the Commonwealth falling within the operation of s122 of the *Constitution*. Thus the Court by majority held that the area occupied by the post office did not cease to be part of the territory of the State of New South Wales.

7. In *The Commonwealth v New South Wales* [1923] HCA 34; (1923) 33 CLR 1, at p46; 29 ALR 401 Isaacs J took the view that s52(i.) was "shaped" in its enacted form to ensure that land acquired by the Commonwealth, not being in Commonwealth territory, should be effectively free from State jurisdiction. He evidently treated land acquired as a "place acquired" within the meaning of s52. He seems also to have been of the opinion that the Commonwealth's power to legislate in respect of such land was greater than the power of the Congress to legislate with respect to the "public lands" of the United States. He concluded his reference to the terms of s52 by saying: "The grant of exclusive power carries an inevitable inference with it. It shows that the proprietorship and the sovereignty were intended to go together in this respect". Isaacs J (1923) 33 CLR at pp54-55 also thought that both the vesting of land by s85 of the *Constitution* and the compulsory acquisition of land under the *Lands Acquisition Act* 1906 (Cth) placed the land outside the operation of the real property laws of the State.

8. Higgins J (1923) 33 CLR at p60 on the other hand thought that the words "place acquired" by the Commonwealth in s52 do not apply to lands acquired as property under the *Lands Acquisition Act* 1906 ; they refer to "places" acquired in the sense of s122 "territories acquired in a political sense". His Honour did not think that upon acquisition the acquired lands became an "enclave" within the territory of the State concerned.

9. The meaning of s52 thus arises for decision without any prior decision of this Court. However, we are not presently concerned with the question whether a State law passed or made antecedently to the acquisition by the Commonwealth of a place for public purposes within the meaning and operation of s52 continues to operate with respect to acts done in that place after the place has been so acquired either at all or until some inconsistent law of the Commonwealth is made. Consequently I shall not express any opinion on that situation. Nor are we really concerned here to decide whether what Isaacs J referred to as "sovereignty" in and over the places acquired by the Commonwealth for public purposes passes to the Commonwealth on the acquisition. The sole

question in this case is whether after acquisition within the operation of s52 of the *Constitution*, the State may validly legislate to control acts and matters done or occurring within the area of the place so acquired. Here the regulations under the State Act were made after the acquisition of the land on which the Commonwealth has constructed an aerodrome for defence purposes. It is conceded that the State could not make a law applying only or specifically to a place acquired within the meaning and operation of s52. Thus, the question for decision is whether a general law of a State made subsequently to the acquisition by the Commonwealth of a place for public purposes within the meaning and operation of s52(i.) of the Constitution will validly operate in that place, there being no relevant Commonwealth legislation. Though this is the immediate question before the Court, because all that falls within the Commonwealth legislative power under s52 is by reason of its exclusive nature denied to the legislatures of the States, the answer to that question will be found in the extent of Commonwealth power under s52.

10. I think that in approaching the construction of this provision of the Constitution it is well to be reminded that it is a constitutional power to legislate which we have to interpret.

> " . . . where it becomes a question of construing words used in conferring a power of that kind on the Commonwealth Parliament, it must always be remembered that we are interpreting a Constitution broad and general in its terms, intended to apply to the varying conditions which the development of our community must involve. For that reason, where the question is whether the Constitution has used an expression in the wider or in the narrower sense, the Court should, in my opinion, always lean to the broader interpretation unless there is something in the context or in the rest of the Constitution to indicate that the narrower interpretation will best carry out its object and purpose."
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> ". . . although we are to interpret the words of the Constitution on the same principles of interpretation as we apply to any ordinary law, these very principles of interpretation compel us to take into account the nature and scope of the Act that we are interpreting - to remember that it is a Constitution, a mechanism under which laws are to be made, and not a mere Act which declares what the law is to be."
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> "While, then, we may well resort to the meaning of single words to assist our inquiries, we should never forget, that it is an instrument of government that we are to construe."

The first of these quotations is from the judgment of O'Connor J in *Jumbunna Coal Mine NL v Victorian Coal Miners' Association* [1908] HCA 87; (1908) 6 CLR 309, at pp367, 368; 14 ALR 701. The second quotation is from the judgment of Higgins J in *Attorney-General (NSW) v Brewery Employees' Union (NSW)* [1908] HCA 94; (1908) 6 CLR 469, at pp611, 612; 14 ALR 565. The third quotation, quoted in the judgment of Higgins J in the same case, is from *Story's Commentaries*, 2nd ed., s455. All the passages were quoted by Dixon J, as he then was, in *Bank of New South Wales v The Commonwealth* [1948] HCA 7; (1948) 76 CLR 1, at pp332, 333; [1948] 2 ALR 89.

11. Perhaps the first step in determining the extent of the power given by s52 is to decide whether land vested in or acquired by the Commonwealth is relevantly a place. In my opinion, the seat of government is a place, required by the Constitution to be geographically situated in relation both to the City of Sydney and the territory of the State of New South Wales as well as to territories of the Commonwealth. It must not only be so situate but must be vested in and belong to the Commonwealth, see s125 of the *Constitution*. The expression "Seat of Government" as found in the Constitution of the United States, whence its use in our Constitution derived, clearly refers to a physical area of land. See terms of art. I, s8, cl. 17 of the *Constitution of the United States*. A place, in my opinion, is an area of the earth's surface, of its subjacent soil or of its superincumbent air to the possession of which a right may by law be had or obtained. Such a conclusion is in conformity with the construction of the word "places" in the said cl. 17 of the *Constitution of the United States*. See for example *Battle v United States* [1908] USSC 67; (1907) 209 US 36; 52 L Ed 670; 28 SCt 422. It seems to me that the word "place" is used in s52 somewhat in contradistinction to a territory acquired by the Commonwealth to which s122 has relevance. The difference between a place and a territory is perhaps more than one of degree or extent. A territory of necessity is comprised of an area of land usually of considerable extent but, as well, in general already subject to some political arrangements. But this distinction is not necessarily, in my opinion, definitive of any difference in the extent of the relevant legislative power of the Commonwealth, a matter into which I find it unnecessary to go for the resolution of the present matters. With due respect, I am unable to accept the view of Higgins J to which I have already made reference. Certainly, in my opinion, the area of land which comprises Richmond Aerodrome is relevantly a place.

12. Those responsible for the drafting of the *Constitution* had before them the example of the *Constitution of the United States of America* and were well aware of the then recorded experience of the operation of that *Constitution* over a period of many years before the closing years of the nineteenth century. That *Constitution*, it must be remembered, resulted from, and expressed, a compact between independent and sovereign states for a union between them in which respect it was basically unlike our own *Constitution*, which is an Imperial statute albeit deriving from political and, through referenda, popular agreement in Australia, providing for the union of the people of the six colonies, then all under the Imperial Crown, in the Commonwealth. Though self-governing, the colonies were neither sovereign nor independent. Our forefathers in drafting the *Constitution*, aware of this fundamental distinction, observed the need, and had the opportunity, to provide against the disadvantages which they could observe to have flowed from the *Constitution of the United States* by making provisions suitable to the different situation of which I have spoken.

13. I think it profitable, therefore, before attempting the construction of s52 to recall the situation of the Congress in relation to lands acquired by the United States which when acquired were within the territory of a State. By art. IV, s3 of the *Constitution of the United States*, the Congress was given power to ". . . make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States"; thus, "In the Territories of the United States, Congress has the entire dominion and sovereignty, national and local, Federal and State, and has full legislative power over all subjects upon which the legislature of a State might legislate within the State . . ." per Mr Justice Gray for the Court in *Simms v Simms* [1899] USSC 168; (1899) 175 US 162, at p168 (44 Law Ed 115, at p117) . But quite apart from territories which it governed, the United States could, with the consent of the State concerned, acquire by purchase land within a State for the erection of forts and other buildings for the purposes of defence or the discharge of other duties devolving upon it. See art. I, s8, cl. 17 of the Constitution of the United States. Having so acquired land within a State, that clause granted to the Congress legislative power with respect to it. Clause 17 granting legislative power is as follows:

> "To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten miles square) as may, by Cession of Particular States, and the Acceptance of Congress, become the Seat of Government of the United States, and to exercise like Authority over all Places purchased by the consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards and other needful Buildings."

It had been held by Marshall CJ in the Supreme Court of the United States in 1818 that the grant of the power of exclusive legislation was a grant of exclusive jurisdiction, see *United States v Bevans* (1818) 4 Curtis 231, at p234; [1780] USSC 2; 3 Wheat 336, at p388 (4 Law Ed. 404, at p417). ; and by Story J in that Court in 1820 in *United States v Cornell* (1820) 2 Mason's Reports 91, at pp96-97 that "a fort ceded to and within the exclusive jurisdiction of the United States" by virtue of the said clause "was not within the body of any county of the state in question", for the State had no jurisdiction there. It was as to the State, as with a foreign territory, as if it had been occupied by a foreign sovereign. "I mention this" said the learned judge "only in passing, not meaning to rely upon it, and suggesting it only for further consideration, whenever any case may specially require it." By 1884, these views of Story J had become current doctrine. In that year in *Fort Leavenworth Railroad Co v Lowe* [1885] USSC 161; (1885) 114 US 525, at pp532, 533 (29 Law Ed 264, at p267) it was held that the effect of the grant of legislative power by the said cl. 17 was, upon the acquisition with the consent of the State, to transfer political jurisdiction and dominion.

14. Though a right of eminent domain in the Congress is not to be found in the express provisions of the *Constitution of the United States*, the Supreme Court, in a series of cases has decided that such a right results by necessary implication. See *United States v Gettysburg Electric Railway Co* [1896] USSC 28; (1895) 160 US 668 (40 Law Ed 576); *Kohl v United States* [1875] USSC 86; (1875) 91 US 367 (23 Law Ed 449); *Monongahela Navigation Co v United States* [1893] USSC 95; (1892) 148 US 312 (37 Law Ed 463), and *Chappell v United States* [1896] USSC 2; (1895) 160 US 499 (40 Law Ed 510) . It had been so decided by the year 1875. It had also been decided by the Supreme Court by 1885 that in the exercise of its right of eminent domain the United States did not need the consent of the State to the acquisition of land within that State. But such an acquisition did not operate to transfer to the United States political jurisdiction and dominion over the acquired land. See *Fort Leavenworth Railroad Co v Lowe* [1885] USSC 161; (1885) 114 US 525 (29 LawEd 264). Thus, lands so acquired remained within the territorial jurisdiction of the State concerned and the rights of the United States in the land were no more than those of a

proprietor, subject only to the right of the United States to legislate to protect its own property. See for example *Fort Leavenworth Railroad Co. v Lowe* [1885] USSC 161; (1885) 114 US 525, at p531 (29 Law Ed 264, at p266)

15. Not having to provide for a union of sovereign independent States, the founders of the Constitution had no need to provide for the consent of the States to the acquisition by the Commonwealth of property within the territorial limits of a State. Thus s51 (xxxi.) gives to the Parliament legislative power to provide for the acquisition of property on just terms not only from any person but from any State for any purpose in respect of which the Parliament has power to make laws. This paragraph of s51 contrasts sharply with the provision of cl. 17 which not only requires the consent of the State but limits the purposes for which the land may thus be acquired. Also, the doctrine developed by the Supreme Court of the United States that a State may in giving its consent properly and effectively retain some part of its jurisdiction can have no place under our constitutional arrangements. The absence from the Constitution of the United States of any express power of acquisition of property is also in contrast. It is true that, as I have mentioned, a right of eminent domain inherent in the Constitution has been uncovered by judicial decision, as well as the power of the Congress to protect the property of the United States. But in the Constitution of the Commonwealth at least the first of such matters is not left to implication. The legislative power of the Parliament in respect of the acquisition of property is unlimited except by the need for an appropriate purpose for the acquisition and the presence in the legislation of or for providing for just terms. As well, the power to legislate for the acquisition of property is not limited to providing for acquisition by the Commonwealth but extends to provision by legislation for acquisition by any person.

16. The difficulties which beset the administration of the United States because of the constitutional provisions to which I have referred were thus apparent to the draftsmen of our own Constitution. Having provided for the acquisition of property by means of laws made under s51 (xxxi.) the founders placed s52 in the *Constitution*. They used in the section the essential words of the formula found in art. I, s8, cl. 17 "have exclusive power" etc., words which had been held in America to be sufficient to transfer "political jurisdiction and dominion" to the Congress in respect of the places to which that clause applies. Further, s52 gives the same legislative power to the Parliament with respect to all places acquired by the Commonwealth for public purposes as are given with respect to the seat of government, an association of legislative powers also to be found in art. I, s8, cl. 17 of the Constitution of the United States.

17. Before I express my view of the construction of s52 in presently relevant respects there are further matters to be borne in mind. The Commonwealth of Australia comprehends all the territory formerly forming the colonies. To say that a valid law operates throughout the Commonwealth is not merely to say that it operates in each State territory. Each State is a part of the Commonwealth: see covering cl. 6. This situation is different from that arising under the *Constitution of the United States* which is as its name implies a union of States to which union certain powers are conceded.

18. The power given by s52 is legislative and exclusive. It is given to the national Parliament. The consequences of so doing are observed upon by Chief Justice Marshall in *Cohens v Virginia* [1821] USSC 18; (1821) 6 Wheat 264, at p428 (5 Law Ed 257) Most of the legislative powers given to the Parliament are given by s51 and are concurrent powers, though by reason of s109 as interpreted by this Court, the exercise by the Parliament of such a power may, according to the extent of the exercise, make the legislation of the Parliament the exclusive law in its field. However, there is particular significance in the express creation by the Constitution of exclusive legislative power in the Parliament.

19. As I have mentioned, the nature and extent of the power to legislate will be the same in ambit and extent in respect of the places acquired as it is with respect to the seat of government. Although the verbal formula adopted in expressing the grant of power is the same as that employed in s51, i.e. "with respect to", where the legislative power is referable to subject matter, it is, in my opinion, hardly conceivable that the seat of government should be treated as a mere subject matter in the same sense as any of the topics of legislation with which s51 deals. The seat of government can scarce in any sense be equated with "lightships beacons and buoys" in relation to legislative power. In providing for exclusive legislative power with respect to the seat of government, though no doubt the circumstance that it was to be situate within a Commonwealth territory to which

s122 would apply might render such a course less obviously necessary than it otherwise might have been, the founders in my opinion were giving the national Parliament a significant power not to be limited to laws which had the seat of government "as such" or as a place for their subject matter. I cannot doubt myself that the scope of the laws which can be made under the exclusive power to legislate with respect to the seat of government is limited only by relevance to the seat of government and the activities to be conducted there. Such laws are not to be limited to the control of acts and matters occurring within the area of the seat of government but will, in an appropriate case, doubtless operate throughout the Commonwealth and its territories if so intended. I find no satisfaction in the suggestion that it was intended by the founders of the Constitution by the expression of s52 that such laws are to be limited to laws which have the seat of government, as such, for their subject matter. Indeed, I am not sure that I comprehend what would be such a law.

20. Equally, I find at least difficulty in the concept of a law about a place, as such, or as it was said in argument, about a place, as a place. But whatever the metaphysical possibilities of such a limitation upon a power to make laws with respect to a place, I am certain that such a concept ought not to be accepted in the construction of a grant to the national Parliament of an exclusive power of legislation. I am unable to conclude that the only laws which were intended to be placed beyond the power of a State by the exclusive nature of the legislative power given by s52 were laws passed by the State operating only or specifically in the seat of government or a place acquired by the Commonwealth for public purposes. Indeed I cannot conceive of a State in any practical situation making such a law. With the example of the experience of the United States before them, it would have been most extraordinary for the founders to have given to the Parliament less legislative power than the *Constitution of the United States* gave to the Congress in respect of places acquired with the consent of the State. Rather, bearing in mind what I have pointed out as to the different situation of the Australian colonies and the American States which at the time of union were not subject to the English Crown, one might well expect a much larger grant to the Parliament. So far as the power of acquisition is concerned, such a larger power is found in s51 (xxxi.). It is unlikely that the adoption of a like formula and structure in s52 to that of the said art. I, s8, cl. 17 of the *Constitution of the United States* should have been intended to yield a mere – and indeed, in my opinion, an illusory power – to legislate about a place acquired as a place, or as such. It may well be that one should rather adopt the views of Isaacs J giving full effect to the consequences of the formula used in the said cl. 17 and s52 and regarding the founders as having intended by the terms of s52 to equate not merely the legislative power of the Parliament to that of the Congress where acquisition is with the consent of a State without reservation but to pass the political dominion as well. But in this case we are dealing with only a limited part of the ambit of the exercise of such a power and I refrain from expressing any view except as to the legislative power which derives from express grant and not from the possession of political dominion. It is sufficient for present purposes to say that a law regulating conduct in a place is, in my opinion, a law with respect to that place within the meaning of s52 of the Constitution. It would, in my opinion, be none the less so if the law were not confined to the regulation of conduct at that place but extended as well to the regulation of conduct in other places acquired by the Commonwealth for a public purpose or public purposes. A law that a builder, building in a place acquired by the Commonwealth within the meaning and operation of s52, should there by means of fencing or otherwise secure the safety of a workman whilst working in that place would, in my opinion, be a law with respect to that place within the meaning of s52. Equally a law in such terms as to building carried on and work being done in all places so acquired would be law with respect to each of such places. Such laws would be valid laws of the Commonwealth supported by s52 without reference to any other legislative power. I am of opinion therefore that the Parliament could make a law in the terms of the State regulation under consideration to operate at Richmond Aerodrome or there and also at other places acquired by the Commonwealth for public purposes. After the acquisition of the land for the aerodrome, the State in my opinion could not make a law to operate in or on the place acquired, even though its law was general and not limited in its operation specifically to that place. The State regulation is, in my opinion, inoperative in relation to the place where the building operations to which the case relates were being carried on and that the defendant was not bound by reason of that regulation to secure the safety of the plaintiff in the manner prescribed.

21. In argument it was suggested that such a conclusion would produce a chaotic situation. But, quite clearly, it need not do so. No doubt, the Parliament will need to legislate to fill a void which a decision in the sense of my opinion will have disclosed. But it can do so referentially and

without delay or difficulty merely by continuing by dint of Commonwealth law, the terms of State legislation which would be applicable if the place or places so acquired or for that matter to be acquired had remained within the legislative jurisdiction of the State legislature. By suitable words, amendments of that State law made at any time after acquisition could also be made operative referentially. Or, on the other hand, the Parliament may prefer itself to legislate its own code of behaviour for places acquired for public purposes. Whichever course the Parliament chose the status of State laws made before acquisition could be set at rest.

22. In my opinion, the demurrer should be overruled.

ORDER

The plaintiff's demurrer to the second-named defendants' fifth plea being a plea to the fourth and fifth counts of the plaintiff's declaration is overruled. Plaintiff to pay the second-named defendants' costs of the demurrer. The interveners to pay to the plaintiff —

(1) four-fifths of so much of the costs paid by the plaintiff to the defendants as represent the costs of the argument of the demurrer on 29th, 30th and 31st October 1969, and

(2) four-fifths of the plaintiff's costs of the argument on those days.

The action otherwise adjourned with liberty to apply in chambers with respect to further proceedings therein.

[The other Judges of the High Court gave their reasons in writing but they have not been reproduced in the *Magistrates Cases*. Ed.]
