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## THE POWER OF "COMPULSORY PURCHASE" UNDER THE LAW OF ENGLAND

*By William D. McNulty of the New York City Bar.*

The common law of England has been the immediate source of authority for most of our American law. The term, common law, designates, in a limited sense, those English laws which are strictly the custom of the realm in their origin, and derive their authority, not from acts of Parliament, but from immemorial usage and the universal recognition of them throughout the kingdom. This does not mean that these laws are merely oral, and transmitted from age to age by word of mouth, for evidences of them are preserved in the records of the courts of justice, and in the treatises of learned writers of the profession, preserved and handed down from remotest times. But though their origin is lost in the mists of antiquity, if we want to know the law of our own country today, and learn why we accept a legal doctrine, we have to trace its source to some early usage in England, which gradually acquired the force of custom, and was made by tradition to operate as a law.

Many lawyers, and some law writers, contend that the function of a trained lawyer is to know how the law is stated by the courts today, and not to study how it was yesterday, or to trouble how it will be tomorrow, and they class students of early law as "antiquarians" and "fossilists." No lawyer can properly comprehend the law of today unless he knows what it was yesterday. If law is to have the weight of authority with us, if we would know how to read it correctly and apply it justly, we should study the customs that gave it birth, the conditions through which it developed,

and the qualifications that made it permanent. In a word, we should know its history as far as it can be learned.

"EMINENT DOMAIN" IS UNKNOWN TO THE COMMON LAW OF  
ENGLAND.

Thus, in tracing the history of the doctrine of "Eminent Domain" we naturally look to England as our source of authority, but here we find the exception to the rule that all our laws are derived from the English common law. For "Eminent Domain," as a legal doctrine, is unknown to the common law as applied in England. We may search its reports, its digests, and its indices in vain for the term "Eminent Domain." "Compulsory Powers," "Compulsory Purchase" and the "Lands Clauses Acts," are the nearest expressions we find to what is known in America and on the Continent of Europe as "Eminent Domain."

The British practitioner has no material interest in the question in this country and on the Continent, as to the source and extent of this power, for the absolutism of Parliament covers both the power of Eminent Domain, and the obligation to compensate.

This may seem strange to us at first, for William of Normandy declared that all land was held *of* the sovereign and all allegiance was due to him as lord paramount, and not to the immediate lord, as had been the custom under the Saxon rulers. Thus England became one great fief under the King, and as the Norman Conquest was complete, all the rights and usages of conquest were enforced to their fullest extent. The law of the royal court rapidly absorbed the local customs, and became the supreme and universal law of the land. Most of the large holders of land were dispossessed, but it was not till near the close of the reign of William I that this enforcement of the Conquest was effected. He gave no compensation for the lands that he annexed to the crown, and in one instance laid waste a large tract of land in Hampshire, demolishing villages, churches and convents, and expelling the inhabitants for thirty miles around, merely to form that royal hunting ground known as the New Forest.

THE POWER OF EXPROPRIATION COMES FROM PARLIAMENT.

But in England today the exercise of this power must find its authority in an act of Parliament, and the absolutism of the Crown has given way to the absolutism of Parliament. The necessary power to take, or injuriously affect land, is obtained from Parlia-

ment, either mediately, by an act passed for the purpose, or immediately, under acts containing general powers which may be exercised for a particular purpose, and upon certain conditions.

In the United States the exercise of the power of Eminent Domain is limited by the Constitutions of both the Federal and the State Governments, and here the natural inquiry is, whether or not a statute is within the constitution. In England there is no necessity for this inquiry, or for the existence of a judicial body to determine whether an act of Parliament is constitutional or not, for the acts of Parliament go to make up its constitution. The English Constitution is sought, not in any single written documents, as in the United States, but from acts of Parliament, quasi-acts of Parliament, such as the Magna Charta, the Petition of Rights (1627), the Appeal of Rights (1688), the Act of Settlement (1700), and the rules and orders made under acts of Parliament, and some judicial decisions which have acquired the force of customary law, as Bushnell's case in 1670, establishing the independence of juries (6 State Trials, 999); and the case of *Hammond v. Howell* in 1677, establishing the immunity of judges (2 Mod. Rep., 218).

#### THE SUPREME SOVEREIGNTY OF PARLIAMENT.

The dominant political sovereignty of England resides with Parliament. While all laws are enacted by "the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporary, and Commons in Parliament Assembled," the conventional law between these three parties to the government, which has all the force of constitutional enactment, now recognizes the ascendancy of the House of Commons. While the Crown is declared by many statutes to be "the only supreme head of the realm," and is "the head of the church, the law, the army and navy," "the source of all titles and honors, distinctions and dignities," and is clothed with "supreme sovereignty and pre-eminence," and with "absolute perfection," and "is a necessary party to legislation," he has no authority to make or unmake laws apart from Parliament, except by ordinances in colonies, to which representative institutions have not been granted. While every act of Parliament must have his assent, and without it every measure must fail, yet this right of "veto" is never now exercised. It was used last by Queen Anne when, in 1707, she refused her assent to the Scotch Militia Bill. The "veto" has become contrary to the customary, or conventional law, of the constitution.

An act of Parliament cannot be altered, amended, dispensed with, suspended, or repealed but in the same forms in which an act is passed, and by the same authority of parliament, for it is a maxim in law that it requires the same strength to dissolve as to create an obligation.

The privileges of Parliament are large and indefinite, and are to a great extent customary, the houses themselves being the only tribunals which can determine an alleged violation of them. Its powers are limited only by natural impossibilities, and have often sufficed to overthrow the royal prerogatives, yet it can do nothing against a decided public opinion, so that it is very justly said that there are three things in the British Constitution whose nature and extent cannot be accurately defined—the privileges of Parliament, the prerogatives of the Crown, and the liberties of the people. The Anglo-Saxon Constitution, as modified, though but little changed, in its essential features by the Norman Conquest of 1066, is the basis of the English Constitution, and the origin of the British Parliament has been traced to the assemblies, or great councils, of the Anglo-Saxon period.

While in theory, therefore, the King of England is the chief executive, in law and fact, the executive powers are with the cabinet; and the prime minister, as the head of the cabinet, has more real power than the King. The latter today neither appoints the ministry, nor creates courts of justice.

Then, too, the House of Lords must, in matters of legislation, when the state of public feeling is perceived, give way to the House of Commons.

Thus we see that the legislation which originally resided with the King, with the advice of his "Council," and later took the form of the "Crown, Lords and Commons," has given way to the House of Commons, in which the supreme sovereignty of England is now legally vested.

#### PARLIAMENT'S RANGE OF LEGISLATION.

It is so common for Parliament to grant privileges, or rights, to particular persons, and to burden others with duties and responsibilities, that it causes no comment. Its legislation is of the most general nature, and acts are often passed that relate to strictly private matters, such as the settlement of an estate. In our country much of this legislation would be held invalid, but in England the courts are without authority when the acts are clear. The public is complacent, and it excites no interest.

The supreme power of legislation with which Parliament is vested cannot be too strongly emphasized in the study and analysis of the "compulsory powers" contained in the Lands Clauses Consolidation Act of 1845, and other general and social acts granting powers similar to our "Eminent Domain." The question is never asked in England whether or not the property taken is for a public use, or if compensation is provided.

A failure to appreciate this radical difference in the system of governments led the legislature of New York in 1911, by concurrent resolution, to propose, and the electors to discuss and vote, on amendments to the State Constitution providing "excess condemnation," and permitting municipal corporations, when taking private property for public use, to take adjoining or neighboring property for the purpose of later selling it at the enhanced value. Happily these amendments were defeated. The sponsors for these constitutional amendments continually referred to English acts for its authority.

Now let us note these acts and examine their provisions.

#### EARLY ENACTMENTS.

The earliest act on this subject appears to be a "Bill for the Conduyttes at Gloucester," passed in 1541-2. After reciting that there is a deficiency in the supply of water at Gloucester that requires a remedy, the Mayor of the city and Dean of the Cathedral are empowered to dig for new springs on Robin Hood's Hill, and to erect conduits and convey the water "in pipes of leade gutters or trenches" for the "commonwelth utilitie and relief" of the city. Satisfaction shall be made to the owners or possessors of the ground used for the purposes of this act in as much money as shall be adjudged and taxed by the determination and judgment of three or four indifferent men inhabiting within the parish where the ground so broken or trenched shall be. The men shall be chosen by the owners or possessors of the ground and the Mayor or Dean. The money must be paid within twenty days after the ground is broken by the workmen of the Mayor or Dean. If the men named cannot agree on the amount of damages, the owner or possessor may proceed by action of trespass to recover the same. (See 33 Henry VIII, Ch. 35.)

This act was followed two years later by a "Bill concerning the Conduyte in London." After reciting the advantages of conduits to the City of London, and the discovery of certain

springs at Hampsted by "Willm Bowyer, Knyght, nowe Mayre of the saide Citie," to be brought by conduits to the city, the corporation is empowered to enter lands and lay pipes, for the conveyance of water from said springs to London. And provides that compensation shall be made to owners of the ground so used, by award of Commissioners to be appointed by the Lord Chancellor, and if the commissioners cannot agree, the party grieved may recover damages in an action in trespass. There are penalties provided for resisting the corporation or their servants and for diverting springs theretofore applied by particular persons for their mansions, or afterwards used by the city; and for the water to be conveyed from Hampstead Heath one pound of pepper shall be paid yearly to the Bishops of Westminster as Lords thereof. (See 35 Henry VIII, Ch. 10.)

A later act, passed after the "Great Fire" in 1666, embodies the notion of "betterments." This act is entitled "An Act for the rebuilding of the City of London," and was intended to speedily restore the city and better regulate and make uniform and graceful any new buildings, and provided among other things, rules and regulations to be observed by all persons constructing houses in the district that was destroyed; and where owners neglected to build within a certain time, a sheriff jury would estimate the value of the ground and then sell the same and pay the money to the owner. It also provided for enlarging the streets, and for satisfaction to be paid to the owners of the ground taken, first by agreement, or if, through inability to agree, or legal disability of owner, the Mayor was to issue a warrant to sheriff and impanel a jury who were to assess damages, and the verdict of jury, and judgment and payment or tender of money, was final. The owners of the houses which were improved by opening streets must accept such sum as may be agreed upon with the Mayor, or such sum as a sheriff's jury may assess. Three judges may decide finally all controversies regarding titles. (See 18 and 19, Charles II, Chap. 8.) Several supplemental acts were passed in the twenty-second and twenty-third, and twenty-fifth years of Charles II.

#### THE THREE WAYS OF "COMPULSORY PURCHASE."

The necessary authority to take or injuriously affect land in England today is obtained from Parliament in either one of three ways: (a) by the passing of a public general act; (b) by promot-

ing a private bill; and (c) by proceeding under existing acts to obtain an order, which is commonly referred to as a provisional order.

"The Public General Act" is usually resorted to by the Government where land is required for the use of a department of the government or for the defense of the realm. The act usually specifies the land to be taken. See Land Registry Act of 1900. (63 and 64 Victoria, Chap. 19.)

"The Private Bill" is where either a public or private corporation or where individuals desire to obtain powers to carry out undertakings, and these powers cannot be obtained under existing statutes, then they apply to Parliament, which grants them the necessary authority. The procedure respecting the passage of a private bill is regulated by the standing orders of Parliament, which are altered and amended annually. Under these orders it has long been necessary, when power is sought to take land compulsory, for the promoters of the bill to show that notice has been given to persons likely to be affected. Books of reference are deposited showing the lands to be taken, with names of the owners and lessees thereof. A time limit of three years is usually imposed for the exercise of compulsory purchase, and, in some acts there is provided a further time limit for the execution of the works. Then there are local acts passed in which land not specifically described is authorized to be taken for public improvements from time to time as it is required. An instance of this is what is known as the Michael Angelo Taylor's Act of 1817 (57 George III, Chap. 26). This Act provides for taking of land for the purpose of widening and improving the streets of London.

"The Provisional Order" is the simpler method of procedure and saves the expense and trouble of a private bill. The main features of these orders are similar, and require ample notice of the intention to acquire property both by advertising in the local papers and by service of notices on the owners or occupiers. A petition giving full particulars is then filed with the authority who have power to make the order. This authority is usually the local Government Board, the Board of Trade, the Board of Education, the County Council, or similar body. These authorities take evidence, and if they are satisfied of the necessity for the issuance of an order, they direct that a local inquiry shall be held at which all persons affected may have an opportunity of being heard. Then follows a provisional order authorizing the

petitioners to acquire the land. This order must be confirmed, in most cases, by an act of Parliament, and is usually submitted by the board or department making the order. The owners of the land which has been taken or injuriously affected may oppose its passage before the Select Committee appointed by the House of Lords and House of Commons.

Sometimes the confirming act of Parliament is delegated in the first instance. This is the case of the recent Small Holding and Allotments Act of 1908, where the order is made by the County Council and confirmed by the Board of Agriculture and Fisheries. (8 Edward VII, Chap. 36.)

#### THE LANDS CLAUSES ACT.

The Lands Clauses Consolidation Act of 1845, was passed in order to insure greater uniformity in the acquisition of lands required for undertakings of a public nature and to the compensation to be paid for the same. This act was amended in 1860,<sup>1</sup> 1869,<sup>2</sup> 1883,<sup>3</sup> and 1895.<sup>4</sup>

This act or a part of it may be included and applied to every undertaking of a public nature authorized by any act passed after May 8, 1845, which empowers a purchase or taking of lands.

There are a number of general acts allowing compulsory purchase, passed before 1845, which are still in force. Among others are Admiralty Act of 1815, providing for signal stations, (55 George III, Chap. 128); the Sewers Act of 1833, (3 and 4 William IV, Chap. 22); the Highway Act of 1835 (5 and 6 William IV, Chap. 50); the Defence Act of 1842, (5 and 6 Victoria, Chap. 94).

The Lands Clauses Act, as it is commonly called, includes sixteen grouped and nine ungrouped clauses, each in the form of independent enactments, and provides, among other things, for the construction of the Act and of other Acts which may be incorporated therewith. Also for the purchase of land by agreement; and for the purchase and taking of lands otherwise than by agreement; and for the taking of small portions of intersected land; and for the taking of lands subject to mortgage and charged with any rent or service or payment of incumbrance or leases; and for

<sup>1</sup> 23 and 24 Victoria, Ch. 106.

<sup>2</sup> 32 and 33 Victoria, Ch. 18.

<sup>3</sup> 46 and 47 Victoria, Ch. 15.

<sup>4</sup> 58 and 59 Victoria, Ch. 11.

the recovery of forfeitures, penalties and costs. Then there are provisions for the taking and selling of a part of a building, for the time within which the right of compulsory purchase is to be exercised, and provisions are made for the service of notices.

SPECIAL ACTS FOR COMPULSORY PURCHASE.

When a special act is passed and includes clauses of the Lands Clauses Acts, the clauses are construed together as forming one act. (Sec. 1, Land Clauses Act of 1845).

The widest publicity is given to these special acts, as where a company is given power to take land for railway purposes, it is required to keep a copy of the act in its principal office of business for the inspection of any person or persons interested, and also to deposit in the office of each of the Clerks of the Peace of the several counties a copy of it. (Sec. 151, Land Clauses Act of 1845.)

It is the policy of Parliament, particularly in regard to commercial undertakings, to limit the quantity of land that may be taken to such an amount as is reasonably necessary for the purposes of the particular undertaking. (Sec. 18, Land Clauses Act of 1845). While many special acts give to promoters of railways compulsory powers of purchase over a large area, they usually limit the land which may be taken to what shall actually be required for the enterprise. Under the standing orders of Parliament these limits are called "Limits of Deviation," and represent the distance which the central line of the railway may deviate, but do not indicate the outside limits of the railway. (Standing Order, No. 40, House of Parliament). Sometimes promoters acquire more land than they require for their railway, in which case Parliament provides that such superfluous land must be sold within a prescribed period, and the Lands Clauses Consolidation Act contains a series of sections with respect to the sale of this "superfluous lands." (Sections 127-132.) The object of these sections is to secure to land owners from whom land is taken by compulsion, a reversion as nearly as Parliament can accomplish it, of all lands which is not necessary for the undertaking. (See *Great Western Rail Co. v. May* (1874), L. R. 7 H. L., 283.)

Of course these sections do not apply to land bought by a railway company under agreement, nor do they apply to cases where the land has ceased to be required because of the partial or total abandonment of the undertaking, unless ten years has elapsed as provided in the Lands Clauses Act. (Sec. 127-128.) (*Astley v. Manchester, Sheffield and Lincolnshire Railway Co.* (1858), 27 L. J. (Ch.), 478.)

The promoters may sell to any one the superfluous land within the time provided in the special act, or within the ten years period provided in the Lands Clauses Act (Sec. 127), or it may be used for some other purpose in the same undertaking. (See *Beauchamp and Great Western Railway Co. v. Gormon* (1882), 3 Ch. Ap., 742.)

If the promoters make default in selling the land within the time limited, then all land undisposed of automatically vests in the owners of the land adjoining in proportion to the frontage of such adjoining owners. (See *Moody v. Corbett* (1866), L. R. 1 Q. B., 510, Ex. Ch.)

#### THE "EXCESS CONDEMNATION" DECISIONS.

Municipal bodies are sometimes given powers of "excess condemnation" when land is taken beyond that which is necessary for the proposed public purposes. These lands are said to be taken for the purpose of "recoupment" as the public body is authorized to sell or lease them at what may be the enhanced value. The courts however will not read into an act the power of "excess condemnation" unless it plainly appears there. And if the act clearly authorizes the land to be taken for the actual works only, such as "for the purposes of streets," a municipal or local body will be restrained from taking more than is actually necessary for the purposes of streets. (See *Donaldson v. The Mayor, etc., of South Shields* (1899), 79 L. T. R., 690.) Where however, it appears that it is the clear intention of the act that the public may "recoup" the cost of the public improvement, then the authorities will be permitted to take such excess lands as are delineated on the plans and referred to in the act. (See *Galloway v. Mayor* (1866), L. R. 1 H. L., 45.)

As late as 1906 it was held that a local authority entrusted by the Michael Angelo Taylor's Act of 1817 with statutory power to take land compulsorily to widen streets, had no right to seek to reduce expense to the ratepayer by taking adjacent land from those who are the owners of it. (See *Denman & Co., Ltd., v. Westminster Cor.* (1906), L. R. 1 Chan. Div., 476), and Justice Buckley reading for the Court said that he was "startled and shocked" that the local authorities commonly exceeded their statutory powers in such matters.<sup>5</sup>

<sup>5</sup> The American view on this subject may be obtained from *Opinion of Justices*, 91 N. E. (1910), page 405, and from *Matter of Albany Street*, 11 Wendell, (N. Y., 1834), page 152.

## WHERE PART ONLY IS TAKEN.

The owner of the land, or owners or lessors of houses, factories or other buildings may, by virtue of the Lands Clauses Acts (Sec. 92) require the parties desiring only a part thereof to take the whole of his interest therein, and cannot be required to sell a part only. It is now, however, commonly provided in special acts that the promoters may take the subsoil only in order to construct underground railways. (See *Fanner v. W. & C. R. Co.*, 1895, (1 Ch., 527). And to take parts of houses in order to widen streets. By "house" is meant the court or garden. (See *Re Gority & M. S. & L. Ry Co.* (1896), 2 Q. B., 439-Ca.) If any uncut land is so cut through as to leave with the owner a less quantity than half an acre on one side, the owner may require the promoters to purchase the same (Lands Clauses Act, Sec. 93).

## AS TO COMPENSATION.

The right to compensation for taking or injurious affection of land must be clearly conferred by the statute or order authorizing it, otherwise the party suffering the loss is not entitled to any.

There is no compensation allowed unless it is provided by statute.

See as to acts of public bodies. *British Coast Plate Manufacturers v. Meredith* (1792), 4 Term. Rep., 794; *Boalton v. Crowthers* (1824), 2 B. C., 703; *Ferrar v. Commissioners of Sewers of City of London* (1869), L. R. 4 Exch., 227; *East Fremantle Corporation* (1902), A. C. 213, at p. 217, P. C.; and as to Railway Companies, see *Vaughan v. Taff Vale Ry. Co.* (1860), 5 H. & N., 679 Ex. Ch.; *Hammersmith and City Com. Co. v. Brand* (1869), L. R. 4 H. H., 171; *London Brighton & So. Coast Rail Co. v. Truman* (1885), 11 App. Cas., 45. See *Blackstone's Commentaries*, Book I, page 139.

Since 1845 the provisions of the Lands Clauses Acts (Sections 18 and 68), are usually inserted in the special acts in order to prescribe the means of obtaining the necessary compensation.

The principles governing compensation may be divided as follows: (a) where land is purchased or taken, (b) when no land is taken but land is injuriously affected.

There is no clear principle by which a "taking" can be distinguished from an "injurious affection." There must in both cases be a physical interference with the person's rights. All the actual

uses of the land and all its potentialities must be considered by the tribunal assessing compensation where it is provided in the act. (See *Commissioners of Inland Revenue v. G. & S. U. R. Co.* (1887), 12 Ap. Cases, 315); and loss of business and good will where new premises will be less likely to attract customers will be regarded. (*R. v. Scard* (1894), 10 T. L. R., 545.) But loss of profits caused by destruction of neighboring houses is too remote, and held not to be a subject of compensation. (*R. v. Vaughan* (1868), L. R. 4 Q. B., 190.)

An owner of land is entitled to compensation for damages sustained by him by reason of the severance of his property where only part is taken. (Secs. 49 and 63, Lands Clauses Act.) By severance it is not meant that the part taken and the part left should be in actual contiguity. Where several pieces of land are owned by the same person and near enough together so that the possession and control of each gives an enhanced value to all, these lands are "held together" within the meaning of the Act, and the owner will be entitled to compensation for the severance by a road between separated parcels of land. (See *Cowper-Essex v. Acton Local Board* (1889), 14 App. Cas., 153, approving *Stockport, T. & A. R. Co.* (1864), 33 L. J. (Q. B.), 251.)

The taking away of a river frontage and substituting a road adjoining a dwelling house, creating dust and noise, may also be regarded as injurious affection of the remaining land. (See *Bucleuch v. Corporation B. of W.* (1872) (L. R. 5 H. L., 418.)

Compensation has also been awarded for the injury to neighboring houses because of the erection and carrying on of a school, the land belonging to the same owner; and the use of the land for military purposes has been held to cause injurious affection to the remaining land because of the firing of guns incidental to camp life.

The enhanced value of property remaining in the owner cannot be set off against damages by severance or injurious affection under the Lands Clauses Acts. (See *Eagle v. Charing Cross Railroad Co.* (1867), L. R. 2 C. P., 638. In some general acts (Housing of Working Classes Act of 1890), and in some local acts provisions are inserted enabling this enhanced value to be taken into account in assessing compensation. (See *Harding v. Board of Land and Works* (1886) 11 App. Cas., 208 P. C.) For the earliest example of betterment provisions (Sec. 19, Charles II, Chap. 8.)

In assessing the value of land taken it is the usual practice to add a certain percentage, usually ten per cent, of what is termed "compulsory purchase." There is no authority for such an addition to be found. In some acts there are inserted special provisions that no sum shall be allowed for compulsory purchase. See Small Holdings and Allotment Act of 1908 (8 Edward VII, Chap. 36, Sec. 39).

SOME STRIKING EXAMPLES OF THIS POWER IN BRITISH COLONIES.

There are many interesting and a few extraordinary examples of the application of this power to be found in Colonial legislation and ordinances. In the Australian Commonwealth is found a statute of sixty-three sections, passed in 1901, providing "for public acquisition of property." This statute is divided into six parts—Section ten enacts that for the purpose of constructing any underground work, land under the surface may be acquired without taking the surface; but no compensation shall be allowed or awarded unless the surface is disturbed or the support to such surface is destroyed, or any mine, underground working, spring, residence, dam or well in or adjacent to such land is thereby injuriously affected. This section, of course, fails to provide adequate compensation and may lead to grave injustice. There is no provision here for a notice to treat, as in the Lands Clauses Consolidation Act. This is rather arbitrary, as the government is not required to give any notice of the transaction until after they have acquired the land.

In the Dominion of Canada a general act was passed in 1903 providing for the reversioning automatically of any land taken for public work and found to be unnecessary, and abandoned.

In Newfoundland by legislation of 1905 an act was passed confirming an agreement made between the Colony and the Anglo-Newfoundland Development Company, a private corporation, formed for the purpose of establishing the pulp and paper industry in the Colony. The company has the extraordinary power to compulsorily acquire land for private business, and, too, the forestry regulations of the company, when approved, were to have the force of law.

In New South Wales, in 1904, an act was passed the object of which was to enable the government to acquire private land and dispose of it to intending settlers in suitable subdivision blocks. The term "resumption" is used in this act. Under this act the government is authorized to take the land compulsorily.

In Queensland, by legislation of 1906, power is given to the State to acquire by agreement or compulsorily, private land for closer settlement. This is termed "resumption," and the land so acquired reverts to the position of unalienated Crown land. There is also legislation for the resumption of land for public works, which are all fully described and alphabetically enumerated. There is a special Railway Act, so as to fit in with the new scheme of this act. It has the effect of the Imperial Land Clauses Act.

In New Zealand in 1900 an Act was passed authorizing and regulating the acquisition of land by the government, for the purpose of settlement. The power of compulsory purchase is provided. The need for such a power appears to lie in the existence of Crown lands which may be made suitable for settlement by, and only by, the addition of some neighboring land, and is intended to provide for the acquisition of sites for workmen's dwellings and for towns.

In Gambia an act was passed in 1901 providing for the acquisition of lands for public purposes, and provides that no compensation was to be paid for unoccupied land. "Unoccupied" is defined as "when it is not proved that beneficial use thereof, for cultivation or inhabitation or for collecting or storing water, or for any industrial purposes, is or has been had during the lives of any person claiming interest therein, or of the last immediate ancestor or predecessor of such person."

This seems to follow an ordinance for Sierra Leone in 1898. In that year an ordinance was passed at Logos authorizing the government, or any railway, when lands are acquired for the line, to serve notice by affixing the same on a conspicuous part of such land, and at once to enter and deal with such lands as if it vested in the government.

In St. Vincent in 1899 an ordinance was passed dealing with the compulsory purchase of land for public purposes and directing the assessment of the purchase money on the basis of the amount paid by the last purchaser, subject to rectification.

#### THE POWER OF THE ENGLISH COURTS TO CONSTRUE ACTS OF PARLIAMENT.

There are some early decisions of the English courts where the judges have held that they have the power to declare invalid any statute which to the judge's mind violates the principles of natural right. The ground by Lord Coke for declaring a statute

void in the famous case of *Dr. Bonham* was that it was against "common right and reason." (8 Coke, 114a.)

The exercise of this power was upheld by Chief Justice Holt in *City of London v. Wood* (12 Mod., 669), where he says: "What my Lord Coke says in *Bonham's* case is far from extravagancy, as an act of Parliament can not make one that lives under a government a judge and a party."

See also the decision of Justice Hobart in *Day v. Savadge* (Hobart's Decisions, 85a.)

Lord Coke, we are told, at a later time modified his opinion in the *Dr. Bonham's* case by saying that it was the duty of the Court in applying a statute to assume that the legislature intended to prescribe rules of conduct and actions which would be in accord with the principles of natural justice, and the dictates of common sense. (See *Notes to Paxton's Case*, Quincy's Reports (Mass.), 474, Appendix I. J.) See also Chancellor Kent's opinion in *Dash v. Van Kleeck*, 7 Johnson (N. Y.), 502, as to Lord Coke's meaning in *Dr. Bonham's* case.

The courts of course may construe a statute which is expressed in doubtful terms and make it effective. But where the language is clear and incapable of misconstruction, there is no court in England that has the power to declare a statute void.

In a recent case, *Ex parte Ringer* (1909), 25 T. L. R., 718, where Parliament had delegated to the Board of Agriculture and Fisheries the power to confirm an order made for the acquisition of land, Justice Darling held that the Court had no power to set aside an act of Parliament, as the power to confirm delegated to the Board put it in the position of absolute supremacy, and was no more impeachable than Parliament itself. Justice Jelf, concurring, said that this case presented an illustration of the length to which Parliament could go in ousting the courts of law of jurisdiction. That all was needed was a majority in Parliament, and no matter what the people might think desirable, the courts had no power to interfere.

MUCH CARE IS EXERCISED IN PASSING THESE ACTS IN ENGLAND.

As the courts have no control over legislation in England, greater care is manifest in legislation than in this country. Here legislation is enacted of the most doubtful legal character, because we know our courts can be used to set it aside.

And there is a tendency in the British Parliament of late years to pass fewer special acts of an administrative nature, this power

being generally delegated to departments whose ordinances have the full force of Parliamentary laws, which are published under the title of "Statutory Rules and Orders."

Then, too, local measures involving the compulsory taking of land, as well as those affecting all corporations, private persons and local authorities, are confided to a select committee that conducts its investigations as to form and expediency in a judicial manner, with the help of skilled legal experts, although the members of the committee are not necessarily lawyers. Such measures must be advertised in the local newspapers for at least two months before the opening of Parliament, so that those who oppose their passage, or wish to see them modified, may present their objections. If, after a full and impartial consideration they pass the committee, they are reported, and pass the House, except in rare cases, without discussion. The fate of the bill thus rests almost entirely with the committee.

These two methods of legislation greatly reduce the labors of Parliament, besides saving the time that is here lost by members in advocating or opposing bills of a local nature.

In England the Executive, as we have seen, is part of Parliament, and the Cabinet is composed of members of the House, who introduce, and practically control, the passage of all bills of a general public nature. These bills are carefully worded, being usually drawn up by official draftsmen, including two or three highly trained constitutional lawyers, and so much time is devoted to their discussion that it rarely happens that more than sixty bills are passed during one session of Parliament.

In this country legislation is poured out to such an extent that frequently as many as 10,000 acts are passed in one year by the various States; it naturally follows that much that is ill-considered and badly drawn is enacted, and on this account there is greater occasion for judicial interpretation here than exists in England.

If the lawyers of the United States will try to improve on the product of legislation, and thus reduce the wasteful litigation caused by the uncertainties of statutes, they will perform a patriotic achievement of which they may well be proud. The experiences of older nations will help materially towards the attainment of this object, and if the spirit of reform, that is now so strong throughout our land, be directed into those channels that will improve the system of law which directly affects the rights of property, as well as those of liberty and equality, an act of true patriotism will be accomplished.

*William D. McNulty.*