*Privy Council Appeal No. 14 of 1968*

**Blue Metal Industries Limited and another** – – – *Appellants*

*v.*

**R. W. Dilley and another (and Consolidated Appeals)** – – – – *Respondents*

FROM

**THE HIGH COURT OF AUSTRALIA**

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# JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 5TH MAY 1969

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*Present at the Hearing:*

LORD MORRIS OF BORTH-Y-GEST
LORD PEARCE
LORD WILBERFORCE
LORD PEARSON
LORD DIPLOCK

[*Delivered by* LORD MORRIS OF BORTH-Y-GEST]

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This is an appeal by special leave from a joint judgment of the High Court of Australia (Barwick C. J. and McTiernan and Taylor JJ.) delivered on 17th October 1967 dismissing, with costs, two appeals and three applications for special leave to appeal from a judgment and order of the Supreme Court of New South Wales in Equity (McLelland J. the Chief Judge in Equity) dated 27th April 1967.

The proceedings arose out of a take-over offer made by the appellant Companies, Blue Metal Industries Limited (B.M.I.) and The Colonial Sugar Refining Company Limited (C.S.R.) on 16th July 1964. That was a joint offer made to the holders of the issued stock units of Ready Mixed Concrete Limited (R.M.C.). The offer, which was stated to be made pursuant to the provisions of s. 184 of the Companies Act 1961 of the State of New South Wales was to acquire the whole of such issued stock units. The terms of the offer were that for each 100 stock units in the capital of R.M.C. there would be (*a*) an allotment of 28 ordinary shares (of 5/-d. each fully paid) in the capital of B.M.I., and (*b*) an allotment of 8 shares (of £1 each fully paid) in the capital of C.S.R. and (*c*) the sum of £13. 2s. 0d. in cash. There was provision to deal with cases where the number of stock units held in R.M.C. was not exactly divisible by 100. The offer was accepted by the holders of more than nine-tenths in nominal value of the stock units but the respondent Mr. Dilley, who was the holder of 17,142 stock units, was one of those who did not accept the offer.

By a letter dated 15th January 1965 Mr. Dilley was informed that his name had been removed by R.M.C. from its register of members: his former holding of 17,142 stock units had been transferred to B.M.I. and C.S.R. jointly. He was told that that had been done in accordance with the provisions of s. 185 (5) of the Companies Act. On 6th April 1965 Mr. Dilley made an application to the Court (pursuant to the provisions of s. 155 of the Companies Act 1961) for rectification of the register on the ground that his name had without sufficient cause been omitted from it. He sought an order that his name should be restored

on the register as the holder of the 17,142 stock units. The claim for relief was based upon the following grounds:

"(*a*) That Section 185 of the Companies Act only applies to a scheme or contract involving the transfer of shares in a company to one transferee company.

(*b*) That before a scheme or contract involving the transfer of shares in a company to another company or corporation can be subject to the operation of Section 185, that scheme or contract must arise out of a takeover scheme or takeover offer to which Section 184 applies, and that Section 184 only applies to takeover schemes or takeover offers where there is a single offeror corporation and not two or more offeror corporations.

(*c*) That if, contrary to the above submissions, Sections 184 and 185 do apply to takeover offers or schemes made by a number of offeror corporations, the takeover offer made by the Appellants B.M.I. and C.S.R. infringed the provisions of Section 184 (2) of the said Act and of Part A of the Tenth Schedule to that Act, and was illegal, and that Section 185 does not apply to any scheme or contract based upon such an illegal offer."

At the hearing before the learned Chief Judge in Equity each of the three Companies filed a Summons asking for relief under s. 366 of the Companies Act 1961 in the event of its being held that the take-over offer infringed the provisions of s. 184.

The Chief Judge in Equity held that the provisions of s. 185 only apply to a scheme or contract involving the transfer of shares in a single company to a single transferee company or corporation and did not apply to a scheme or contract involving the transfer of shares in a company to two or more transferee companies or corporations. He considered that s. 184 also contemplated singularity, and that the legislature did not intend that an "offeror corporation" would or could for the purposes of s. 184 consist of more than one corporation. Having come to the conclusion that s. 185 does not apply to a scheme or contract involving the transfer of shares in a company to two other companies jointly he found it unnecessary to consider whether the take-over was an illegal offer by reason of the terms of s. 184 or what results would flow from such illegality. In regard to the summonses of the Companies he said:

> "A good deal of argument took place before me as to the meaning and application of s. 366 of the Act but it seems to me quite clear that if s. 185 has no application to a scheme or contract involving an offer by two or more companies jointly then the purported implementation of such a scheme or contract cannot be 'a proceeding under this Act' within the meaning of s. 366 and that no remedy is available under this section."

Accordingly he made an order restoring Mr. Dilley's name to the register of members of R.M.C. and he dismissed the summonses of the Companies. Appeals were taken to the High Court of Australia. Before that Court there was an appeal by C.S.R. against Mr. Dilley to which B.M.I. and R.M.C. were also parties and an appeal by B.M.I. and R.M.C. against Mr. Dilley to which C.S.R. was also a party: also there were three applications for special leave to appeal (one instituted by each Company) to each of which applications Mr. Dilley was a party. The High Court agreed with the conclusions of the Chief Judge in Equity and for the reasons set out in their judgment the appeals and the motions for special leave were dismissed with costs.

Upon Petitions for special leave to appeal to Her Majesty in Council and pursuant to special leave to appeal granted it was ordered that the five respective appeals should be consolidated and heard together and that there should be one case on each side such cases to be related only to the two appeals above referred to, no case being lodged in respect of the other three appeals.

The terms of the take-over offer are amply referred to and described in the very careful judgment of the Chief Judge in Equity. So also are

the various communications and events which preceded and lead to the application made by Mr. Dilley. Their Lordships do not find it necessary to repeat or to summarise the clear narrative that the judgment contains. The opening words of the joint offer which was made to the holders of stock units in the capital of R.M.C. are not without interest. This is particularly so in view of the fact that incorporated in the offer is a statement that—"There is an agreement or arrangement whereby stock units acquired jointly by Blue Metal Industries Limited and The Colonial Sugar Refining Company Limited in pursuance of the Scheme will be transferred to other persons." The statement goes on to state that the "other persons" were B.M.I. and C.S.R. themselves. The agreement was that one half of the units acquired jointly would be transferred to B.M.I. and one half to C.S.R. The opening words of the joint offer were:—"Blue Metal Industries Limited a Company duly incorporated according to the laws of New South Wales . . . and The Colonial Sugar Refining Company Limited a Company similarly incorporated . . . (which companies are hereinafter called the 'Offeror Company') having given Notice of the Take-Over Scheme pursuant to Section 184 of the Companies Act 1961 hereby offer . . .". In the body of the statement there are various continuing references to the "Offeror Company". Though the offer was made jointly by two companies it was deemed appropriate to use the language of singularity (comparable to that in s. 184) by adopting the words "Offeror Company".

The substantial issue in the appeal is whether the provisions of s. 185 apply to a take-over offer made by two companies jointly or whether they only apply in the case of such an offer when made by one company. If the provisions apply to a take-over offer made by two companies jointly then they would apply to a take-over offer made by a number of companies jointly. So the problem must be approached by considering whether it was the intention of the legislature to enact that the compulsive powers given by s. 185 could operate so that against the will of certain shareholders their shares may be transferred not to one transferee company but to a number of companies acting jointly. The powers given by s. 185 if used may not only deprive a shareholder of shares which he had wished to retain but may do so on terms of which he disapproved. If however a substantial majority of his fellow shareholders have been content with the terms of the offer made to them then pursuant to the policy approved by the legislature his personal wishes may (unless the Court otherwise orders) be overborne. If nine-tenths of the shareholders approve of a plan which involves that they part with their shares to a transferee company then there may be advantages in providing means whereby the transferee company can acquire the remaining tenth. The legislature has thought it desirable to give the transferee company such a power. But would the legislature wish to give such a power not to a single transferee company but to a group of companies? Is there a significant difference between a situation in which one company becomes the holder of all the shares in another company and a situation in which a number of companies by concerted action secure the joint ownership of all the shares in another company? The question that now arises is whether the legislature has enacted that the compulsive powers are equally available in the two situations.

The language of s. 185 is consistently phrased in the singular. It speaks of "transferor company" and "transferee company". The section is in Part VII of the Act which is dealing with "Arrangements and Reconstructions". In the same part (*vide* s. 181 ss. 7 and s. 183 ss. 1) there are references to a "scheme for the reconstruction of any company or companies". But the mere fact that a word in the singular is used does not in any way solve the problem which now arises. It merely gives rise to it. It may be thought that in an enactment which provides a careful and detailed and precise code of the law relating to companies there would be found at least some indication of or some reference to take-over offers by groups of companies or some regulatory provisions if such offers were to be recognised. But this reflection affords no complete answer to the argument presented by the appellants. By s. 21

of the Interpretation Act 1899 (N.S.W.) it is enacted that in all Acts, unless the contrary intention appears, words in the singular shall include the plural and words in the plural shall include the singular. Such a provision is of manifest advantage. It assists the legislature to avoid cumbersome and over-elaborate wording. *Prima facie* it can be assumed that in the processes which lead to an enactment both draughtsman and legislators have such a provision in mind. It follows that the mere fact that the reading of words in a section suggests an emphasis on singularity as opposed to plurality is not enough to exclude plurality. Words in the singular will include the plural unless the contrary intention appears. But in considering whether a contrary intention appears there need be no confinement of attention to any one particular section of an Act. It must be appropriate to consider the section in its setting in the legislation and furthermore to consider the substance and tenor of the legislation as a whole. (See *Sin Poh Amalgamated (H.K.) Limited v. Attorney-General of Hong Kong* [1965] 1 W.L.R. 62.) In that case a test was indicated which often may be helpful. In the judgment of the Board delivered by Lord Pearce it was said at p. 67—" The Interpretation Ordinance was intended to avoid multiplicity of verbiage and to make the plural cover the singular except in such cases as one finds in the context of the legislation reason to suppose that the legislature, if offered such amendment to the bill, would have rejected it."

It is not without significance that no case has been cited which reveals any plan or scheme pursuant to which two companies or several companies have jointly claimed the right of compulsory acquisition under s. 185 (1) following upon a joint take-over offer. Nor was the power of acquisition new in 1961. The present Act (Companies Act 1961 N.S.W.) is part of the uniform legislation enacted by all the States of the Commonwealth of Australia. Section 185 is derived from s. 209 of the United Kingdom Companies Act 1948 which owed its origin to s. 50 of the United Kingdom Companies Act 1928. Section 50 was re-enacted as s. 155 of the Companies Act 1929. Contextually s. 155 followed a section (s. 154) dealing with compromises or arrangements for the reconstruction of any company or companies and the amalgamation of any two or more companies. Section 183 of the present N.S.W. Act is similar to s. 154. Section 209 of the U.K. Companies Act 1948 differed in some ways from s. 155 of the 1929 Act. Amongst the differences were (*a*) that certain words in parenthesis were introduced in s. 209 (1), (*b*) that the proviso to s. 209 (1) was new, and (*c*) that ss. 2 was newly introduced. In the Companies Act 1936 (N.S.W.) the provisions of s. 135 corresponded to those in s. 155 of the U.K. Act of 1929. In the Companies Act 1961 (N.S.W.) the provisions of s. 185 differed from the provisions of s. 135 of the Companies Act 1936 (N.S.W.). The differences reflected the changes which were introduced into s. 209 of the U.K. Act of 1948. Thus in s. 185 appear the words in parenthesis which are to be found in s. 209. They are the words " other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary." Section 185 ss. 2 corresponds to the proviso to s. 209 (1). Section 185 ss. 4 corresponds to s. 209 (2). Certain subsections of s. 185 are not to be found in s. 209. Section 184 of the Companies Act 1961 (N.S.W.) was a section newly introduced in that Act.

It was submitted by the appellants that the history of the changes in wording does not involve or require that s. 185 of the Companies Act 1961 (N.S.W.) should be held to apply only to an offer made by one company. In s. 50 of the U.K. Act of 1928 (or s. 155 of the U.K. Act of 1929) were the words " been approved by the holders of not less than nine-tenths in value of the shares affected ". These are to be compared with the words in ss. 1 of s. 209 of the U.K. Act of 1948 which are " been approved by the holders of not less than nine tenths in value of the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary) ". The substantial change resulting from the variation of wording was that in addition to the shares already held by the offeror or transferee company or by a nominee for it there must be exclusion of

shares held by a subsidiary before computing the holders of shares of whom not less than nine-tenths in value must approve before the compulsive powers of acquiring shares can be used. In their Lordships' view no change in the law so far as regards the question whether two or more companies by making a joint offer could avail themselves of the powers given by s. 185 (1) was effected merely by the introduction in 1961 in the Companies Act 1961 (N.S.W.) of the words which are in parenthesis in s. 185 (1). Whether any light is thrown on the problem now arising by the use of the particular words " its subsidiary " is a different question.

If regard is being had to the substance and tenor of the provisions in s. 185 ss. 1 their Lordships think that there is great force in the submission that whereas there are many policy considerations making it appropriate that if an offer which a company has made has proved acceptable to nine-tenths or more of those to whom the offer was addressed the company should be given powers of acquisition there may not be equal policy considerations making it appropriate to give the powers to a group of companies acting jointly. It would seem unlikely that the legislature would solely depend upon the provisions of the Interpretation Act if there was an intention to legislate with such important consequences as to give powers of compulsory acquisition not to a single acquiring company but to a group of companies. The Interpretation Act is a drafting convenience. It is not to be expected that it would be used so as to change the character of legislation. Acquisition of shares by two or more companies is not merely the plural of acquisition by one. It is quite a different kind of acquisition with different consequences. It would presuppose a different legislative policy.

In considering what is the purpose and policy of s. 185, it appears to their Lordships that there are two possible alternative views.

The first, and that urged by the appellants, is that the section was designed to make obligatory upon a small minority of shareholders the acceptance of terms for the acquisition of their shares which terms have been approved by so large a majority as 90% of all the shares in the Company or of the relevant class. The size of the majority, it is said, is taken to show, with at least a strong presumption, that the terms are fair: and that this is an underlying consideration is, it is said, reinforced by the post-1929 amendments (referred to above) which have the effect of emphasising the requirement that the 90% majority should be, so far as possible, independent of the offerors.

The alternative view is to regard the section as essentially a structural section, concerned with the amalgamation or merger of companies: it should, it is said, be regarded as complementary to s. 183. That section was designed to facilitate the merger of companies through the transfer of the undertaking, or part of it, of one company to another. But since, commercially, it might be desirable that the entity of one transferring company, with its undertaking, should be preserved intact (for example to preserve goodwill or for reasons connected with patents or trademarks), the provisions (now found in s. 185) were introduced in order to provide an alternative method of achieving a commercially similar result, namely through the acquisition of shares. The significance of the 90% figure is, on this view, that once a company has become so nearly a total owner, or parent, of another company as a shareholding of 90% would represent, it should not be prevented from converting the other company into a wholly owned subsidiary by so small a dissenting minority as 10% or less but should be entitled to acquire the holding of that minority.

Their Lordships are of opinion that the second of these views is to be preferred. They consider it important to bear in mind that the statutory procedure provided by s. 185 and invoked in this case, is one which involves the involuntary acquisition by a private interest of the property of another—an exceptional interference with rights of individual ownership. They can find nothing in the scheme or philosophy of the companies legislation to suggest that the legislature intended to permit this power to be exercised merely because a majority, even an

overwhelming majority, thought fit to agree to it. It is particularly significant that the power can not be exercised by an individual or, even on the hypothesis that plural acquisition is possible by a company or companies and an individual or individuals together. This seems strongly to support the indication that the section is a company structure section and not one of concentration of property interests.

Their Lordships do not overlook that the section, as well as conferring powers of compulsory purchase on a transferee company, also gives shareholders a right, in certain circumstances, to compel the company to buy their shares. But, though valuable in some situations, this right is of a subsidiary character and in their Lordships' opinion does not assist in the determination of the character of the section as a whole.

The validity of this view may (indeed must) be tested by considering its implications. It leads, almost inevitably to the consequence that the powers of the section can only be invoked by a single company; for if the objective is to allow a 90% owned subsidiary to be converted into a 100% subsidiary, that presupposes a single parent. As will shortly be shown this is not only consistent with the language, but is almost demanded by it.

Conversely, if the property conception were the acceptable one, there would seem to be no *a priori* reason (assuming the language can be adapted to the case) why the acquiring 90% majority should not be made up of two, three or even ten separate companies, so that an owner of 10% of the capital might find himself obliged to surrender it in favour of a lesser interest in the company.

It was argued that the structural, and so single company, approach could easily be evaded by and would invite the adoption of stratagems, such as the incorporation by intending plural acquirers of a new company controlled by them which could then operate the section. Their Lordships are not impressed by this type of argument. If such an arrangement were merely a device or cover for plural acquisition, the Court has ample resources to ascertain its true character and to disapprove it. That a Court will not be blind to the realities of a situation was shown by the vigorous reaction which was provoked by the facts *In re Bugle Press Limited* [1961] 1 Ch. 270. If, on the other hand the arrangement were made for *bona fide* commercial reasons and were not shown to be an abuse of the statutory procedure, company law is flexible enough to admit of its being used. Whatever adaptations may be possible in suitable cases, the section may still retain the structural character which has been described.

With this view as to the purpose and policy of the section, their Lordships now turn to consider its language.

Section 185 begins with the words "Where a scheme or contract involving the transfer of shares or any class of shares in a company ... .". That company is called "the transferor company". The language is admittedly not very precise. As was said in *Australian Consolidated Press Limited v. Australian Newsprint Mills Holdings Ltd.* 105 C.L.R. 473 the language is commercial rather than juristic. Thus the company referred to as the "transferor" company does not transfer shares. The "offer" which results from the "scheme or contract" is one made to shareholders: they are invited to transfer their shares. It has not been suggested or contended that the words "a company" in the opening words of the section could or should be pluralised. The legislature it is agreed intended that there could only be a single so called "transferor" company. The circumstances that early words in a section are clearly not to be pluralised does not of itself prevent later words in the singular from including the plural. But if early words in the singular are clearly intended not to include the plural it might be surprising if words in the singular which immediately follow were by abrupt contrast and with no warning or indication of a change of approach intended to include the plural. Picking up again the opening words of s. 185 they are—"Where a scheme or contract involving the transfer of shares or any class of shares

in a company (in this section referred to as the ' transferor company ') to another company or corporation (in this section referred to as the ' transferee company ') . . .". Where what is contemplated is a transfer from " a " company (intended to mean a single company) to " another " company it seems reasonable to suppose that the legislature intended the transfer to be a single other company. Had there been a different intention it would seem to be inconceivable that the legislature would not have expressed it. Though some words, as above noted, are the words of commerce the section was drafted with care. Thus though the contemplated transfer would be of shares in a " company " it was (having regard to the definitions in section 5) necessary to relate the transfer as a transfer to another " company " or " corporation ".

As has been noted the power of compulsory acquisition of shares in " a company " is not given to an individual person or to individual persons who may have made an offer to acquire shares but only to " another company or corporation ". It is also to be remembered that under s. 185 ss. 1 it is for the " transferee company " to decide whether it wishes to give a notice to dissenting shareholders of a desire to acquire their shares. If two or more companies could join in an offer in such a way as to be in a position to acquire compulsorily there would be difficulties if after acquiring nine-tenths of the shares involved there were any differences of opinion as to whether or not to serve the necessary notice. While no insuperable problem is here denoted there would be no problem if the decision is that of a single company or corporation.

In their Lordships' view there are many other indications that when the legislature used the words " another company or corporation " the intention was to denote a single company or corporation. The words in parenthesis in s. 185 ss. 1 are those which describe the shares in the " transferor company " which are to be excluded from the share-holdings by reference to which the nine-tenths calculation is to be made. If there is a single " transferee company " no difficulties arise. Any shares held by the company are to be excluded. So also shares held by " a nominee ". If there were several nominees each one would be a nominee. So also shares held by " its " subsidiary. Each subsidiary would be its subsidiary. If however there could be one joint offer by a group of companies there might be perplexities. Thus if a group of companies made a joint offer to the shareholders of a " transferor company " and if the group had a joint holding of shares in that company those shares would clearly be covered by the words in parenthesis. But if each one of the group had a separate holding of shares in the transferor company a question might possibly arise as to whether those shares would be covered by the words in parenthesis. Upon that would depend the extent of the holdings by reference to which the nine-tenths fell to be calculated. Had the legislature intended that the " transferee company " could be a group of two or more companies it would have been very surprising if the words in parenthesis had not been differently worded so as to eliminate the possible uncertainties or difficulties to which in their existing form the words might give rise.

The provisions of s. 185 ss. 3 entitle a dissenting shareholder to require " a transferee company " that has given him notice that it desires to acquire his shares to inform him in regard to other dissenting shareholders. He can so require the transferee company " by a demand in writing served on that company ". If several companies joined in making an offer it would be quite unreasonable to require a dissenting shareholder to serve his notice in writing upon each of them and had it been the intention of the legislature to enable companies to join in making an offer it is difficult to imagine that some provision would not have been made in regard to the procedure to be followed by a dissenting shareholder in giving a notice. Similar considerations apply in regard to a notice that under s. 185 (4) (*b*) a dissenting shareholder was minded to give.

The provisions of ss. 5 of s. 185 concern the procedure to be adopted by a transferee company that has given a notice under ss. 1 and the duty imposed upon the transferor company. Shortly stated the amount or other

consideration representing the price payable by the transferee company must be paid allotted or transferred to the transferor company. If two or more companies could join as the transferee companies and if their joint offer involved as part of its terms that shares in one of them would be allotted such allotment could only be made by that one company: all that the other companies could undertake would be to cause an allotment to be made. The indications are that a single transferee company was in mind. This indication is reinforced when the duty of the " transferor company ", admittedly a single company, is had in mind. In reference to the shares of a dissenting shareholder which are being acquired the positive duty is cast upon the transferor company to " register the transferee company as the holder of those shares ". If there were a joint offer of acquisition it might be on terms that the acquired shares were to be divided amongst the transferee companies in clearly stated proportions. Yet on an application of the statutory provision all the shares would have to be registered jointly in the names of the companies joining in making the offer. While doubtless there could thereafter be transfers so as to result in holdings in the stated proportions the indications in the statutory language are that it was not intended to provide for joint offers by two or more companies.

In their Lordships' view a consideration of the provisions of s. 184 reinforces the views that have been expressed in regard to s. 185. In their operation the two sections overlap even though they do not coincide. To a considerable extent they are complementary. Broadly stated the former section is concerned with the stage of offers while the latter is concerned with the stage of transfers. In agreement with the High Court and with the learned Chief Judge in Equity their Lordships consider that there are many indications that it was never intended that the provisions of s. 184 should apply to offers made jointly by a group of companies. By ss. 2 it is laid down that a take-over offer must not be made unless there has been compliance with certain requirements. There must be a statement that complies with the requirements set out in Part B of the Tenth Schedule. A single statement seems clearly to be contemplated. In defining its contents there is a consistency of references to an offeror corporation in a measure that would be surprising if plurality was intended. The statement must state whether or not there is any agreement or arrangement whereby any shares acquired by the offeror corporation in pursuance of the scheme will or may be transferred " to any other person ": if so " the names of the persons who are a party to the agreement or arrangement " must be set out and details as to the shares to be transferred and details as to shares in the offeree corporation held by such other persons. If a group of companies joined in making an offer to shareholders in an offeree corporation to acquire their shares jointly and made arrangements as to the later or ultimate disposal of the shares amongst themselves it would be reasonable to require a statement in regard to these arrangements but it would seem unnatural to refer to them as arrangements to transfer the shares either " to any other person " or (if those latter words are pluralised) " to any other persons ".

In the same statement it is necessary (see Tenth Schedule paragraph 4 (*c*)) to set out whether or not there has been " within the knowledge of the offeror corporation " any material change in the financial position of the offeree corporation. If it had been the intention to cover a joint offer by two or more corporations it would have seemed natural to require the statement to refer not only to the knowledge possessed jointly but also to the knowledge possessed separately by any one of the corporations: at least it would seem likely that clear language to cover the situation would have been used.

By ss. 7 of s. 184 the provisions of ss. 46 and 47 are made applicable (in the way directed) to the statement. If the statement was a joint statement by joint offeror corporations then s. 46 (which imposes civil liability for mis-statements) would render liable " every person who is a director of the corporation " at the time of the issue of the statement.

It seems hardly likely that the legislature would have intended (using the provisions of the Interpretation Act) to produce uncertainty of meaning that might result if liability were imposed upon " all persons who are directors of the corporations at the time of the issue of the statement ". Some persons might be directors of one corporation but not of others. There would surely have been some provision imposing liability upon persons who were directors of any one of the corporations had it been intended that there could be joint offeror corporations.

In their Lordships' view there are many indications which reveal an intention that just as a " transferor company " under s. 185 was to be a single company so also the " transferee company " under s. 185 was to be a single company or corporation. In agreement with the learned Chief Judge in Equity and with the High Court their Lordships consider therefore that s. 185 does not apply to a scheme or contract involving the transfer of shares in a company to two other companies jointly but only applies to a scheme or contract involving the transfer of shares to another company alone. Being of this view no necessity arises to express an opinion as to whether the take-over offer that was made was an illegal offer or as to what the results would be if it were nor is it necessary to express any opinion in relation to s. 366 of the Act.

Their Lordships will humbly advise Her Majesty that the appeals be dismissed. Mr. Dilley's costs of these appeals must be paid as between Solicitor and Client by Blue Metal Industries Limited and The Colonial Sugar Refining Company Limited.

39672—3 Dd. 178094 4/69

**In the Privy Council**

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**BLUE METAL INDUSTRIES LIMITED AND ANOTHER**

*v.*

**R. W. DILLEY AND ANOTHER (AND CONSOLIDATED APPEALS)**

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DELIVERED BY
LORD MORRIS OF BORTH-Y-GEST

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