Judgement of the Lords of the Judicial Committee of the Privy Council on the appeal of Tearle v. *Edols, from the Supreme Court of New South Wales; delivered* 21*st January* 1888.

Present:
LORD WATSON.
LORD FITZGERALD.
LORD HOBHOUSE.
LORD MACNAGHTEN.
SIR BARNES PEACOCK.

THIS appeal is from a judgement of the Supreme Court of New South Wales in favour of the Plaintiff Edols.

The action is brought to recover damages for an alleged trespass on land in the Colony. It is not necessary to refer to the declaration, as a special case, stated by consent, gives the admitted facts and questions for the consideration of the Court.

That special case, dated the 20th July 1886, stated, *inter alia*, that—

1. Before the making of the conditional purchase by John Stewart, the Plaintiff was, and has still continued to be, the lessee from the Crown of the Burrawang Run.

2. On the ninth day of February, one thousand eight hundred and eighty-two, the said John Stewart, under the land laws then in force, conditionally purchased six hundred and forty acres of land situated on the said run.

3. Upon the passing of the Crown Lands Act of 1884 (48 Vict. No. 18), the Plaintiff, as such lessee as aforesaid, duly applied for a division of his said run, and for a pastoral lease of the leasehold area thereof, in accordance with the

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fourth part of the said Act, and a notification of the division of the said run was duly published in the Government Gazette, under the seventy-sixth section, on the eleventh day of July, one thousand eight hundred and eighty-five.

4. The said conditional purchase was wholly situated within the boundaries of that division or portion of the run which the Minister for Lands determined should be the leasehold area.

5. The said conditional purchase became and was duly declared forfeited by a notification in the said Gazette on the seventeenth day of November, one thousand eight hundred and eighty-five, and thereupon became Crown lands within the meaning of the Crown Lands Act of 1884.

6. On the twenty-fourth day of December, one thousand eight hundred and eighty-five, the Defendant applied to conditionally purchase one hundred and sixty acres, portion of the said forfeited purchase, and for a conditional lease of four hundred and eighty acres, the residue of the said purchase; and the said applications were approved and confirmed by the Land Board at Forbes, on the twenty-third February, one thousand eight hundred and eighty-six.

7. It is admitted, for the purposes of this case, —subject, however, to the question of law,—that the said applications were duly made and subsequently confirmed by the Board.

8. The Plaintiff contends that the Defendant's said applications were invalid, upon the ground that the portions of land applied for were within the leasehold area or division of the said run, and that they were therefore not open for conditional purchase or lease.

The eighth proposition fairly represents the question of law which arises between the parties, viz. :—whether when Stewart's purchase of 640 acres became forfeited to the Crown, and again

vested in the Crown as Crown lands, that lot of 640 acres was capable of being re-granted by the Crown on conditional purchase and conditional lease. The question is not free from difficulty,

It seems to have been assumed both in the Court below, and at the Bar here, that it was not necessary to refer to the Statutes prior to the Act of 1884, inasmuch as the question of law arises wholly on the construction of a few sections of the Act of 1884.

The conditional purchase by Stewart took place when the prior Colonial Act of 1875 (39 Vict. No. 13) was in force, but that statute was referred to only for the purpose of pointing out that if the forfeiture had taken place under it, or under Crown Lands Alienation Act of 1861, the lands would have returned to the Plaintiff as lessee of the run, but subject to a fresh sale by the Crown as provided by those Acts. Their Lordships too are unembarrassed by the examination of any documents—they have nothing before them but the case stated, and to its limits they are confined.

The Crown Lands Act of 1884, an Act to regulate the alienation, occupation, and management of Crown lands, came into force on the 1st January 1885, and it is to be borne in mind that the conditional alienation of the 640 acres to Stewart was then in full force and vested in Stewart, who was, their Lordships assume, also in possession. It represented but a small portion of the run which was stated to include within its external boundaries an area of some 50 square miles.

The Crown Lands Act of 1884 has been rather severely handled, but though open to considerable criticism it must be in candour admitted that the complicated and conflicting interest it had to deal with rendered such legislation extremely difficult. Mr. Justice Windeyer has

expressed its policy and its object as to the part of it which came immediately under their Lordships' consideration in terms which meet their approval.

The statute indicates considerable compromise. The run-holders who were possessed of territories under the name of Runs were to be dealt with, and if compelled to give up considerable portions of their runs they were compensated by holding the portion which might be allotted to them under a pastoral lease by a more certain and continuous tenure and freed from the interference by purchases absolute or conditional and from the molestations of selectors. Their Lordships first turn to Part 4 of the Act.

By the 71st section "Every run-holder shall, "within one hundred and twenty days after the "commencement of this Act lodge with the "minister a written application for a pastoral "lease, in the prescribed form, of whichever "portion of his run may be converted into a "leasehold area under this part, and with such "application shall furnish a plan of his pastoral "holding on the prescribed scale, showing to "the best of his knowledge and ability the "boundaries and area of such holding, with all "ranges, watercourses, lakes, or other natural "features within such boundaries, and shall also "mark on such plan the position of all lands "held or occupied by him under any tenure other "than pastoral lease, and of all improvements "upon such holding made by him, or of which he "claims to be the owner, and shall furnish in the "prescribed form a statement of the average "grazing capabilities of the holding, the nature "and value of the improvements thereon, to-"gether with any other information required by "the Minister, and the run-holder shall divide "by a line or lines the entire area of all Crown "lands, situated within such pastoral holding,

" into two parts as nearly equal in area as prac-
" ticable, and after receipt of the plan mentioned
" the Governor may by notice in the Gazette
" reserve temporarily from conditional sale any
" land within such pastoral holding, divided as
" aforesaid, pending a determination of which
" part shall be converted into a resumed area."

Section 72 " enables the Minister to require
" further information from the run-holder."

Section 74. " After receipt by the Minister of
" any application he shall cause to be marked
" upon the plan of the pastoral holding all
" portions of alienated land not already shewn
" thereon within such holding, and shall there-
" after *notify* to the run-holder which part is to
" be the resumed area and *which* the pastoral
" lease; but the Minister if not satisfied with any
" proposed division, may require the same to be
" amended by the run-holder until it becomes
" satisfactory to him, and upon failure of the
" run-holder to make any such provision the
" Minister may determine the dividing line or
" lines, and deal with such holding under the
" provisions in this Act."

Section 76. " When the division of the run
" shall have been determined by the Minister as
" herein-before provided, a notification thereof
" shall be published in the Gazette, and the run-
" holder shall thereupon become entitled to a
" pastoral lease of the leasehold area, provided
" that until the rent thereof be determined he
" shall continue to pay the same rent as before
" the division of such runs, and when the rent
" shall be determined as herein-after provided he
" shall for the time elapsed pay the difference
" between the rent paid and the rent determined."

It will be observed that the run-holder is bound with his application to furnish to the Minister full information to aid that officer in the performance of his very responsible duties, and

that the dividing line which the run-holder is bound to make is not of the pastoral holding but of the Crown lands situated within it. Alienated lands, whether absolutely or conditionally aliened, would not form any part of the Crown lands so to be divided. The Minister has full power to call for further information, and his decision is practically final.

Acting under the provisions contained in these sections the Plaintiff Edols duly applied for a division of his run, and for a pastoral lease of the portion which might be converted into a leasehold area.

The application is not before their Lordships, but they assume that it was in the Form 39 given in the schedule to the regulations, and that it was sent in before the 1st of May 1885.

The Minister of Lands, the proper officer appointed for the purpose, and having extensive quasi-judicial as well as ministerial powers, dealt with the application, and on the 11th July 1885 duly published his decision. That decision is not before their Lordships, but they assume that it specified the part which was to be the subject of the pastoral lease, and also defined the resumed area. The function of the Minister was then so far completed and discharged.

The fourth paragraph of the case stated specifies that the conditional purchase (*i.e.* Stewart's 640 acres) was "wholly situated within the boundaries "of that division or portion of the run which the "Minister determined should be the leasehold area." This obviously should be interpreted to mean no more than that it was situate within the external boundaries of that portion of the run, but not that it was or was intended to be within the pastoral lease. It could not have been lawfully made the subject of the pastoral lease, for it was then alienated land which had been taken out of the run as effectually as if the lease of the run had been so far vacated and it was then the con-

ditional property in fee of Stewart. It might be afterwards forfeited to the Crown and become again Crown property. If the 640 acres had been expressly included in the pastoral lease it would so far have been illegal and inoperative. The notice of the forfeiture was not published until the 17th of November 1885, and after the lapse of 30 days from that publication and not before the forfeiture was complete and the 640 acres became Crown lands within the meaning of the Act of 1884.

The Plaintiff however contended that the true view to take of the forfeiture of a conditional purchase was that the land reverted to its former condition as if the conditional purchase had never been entered on or made, and that consequently the 640 acres being locally within the ambit of the leasehold area it reverted and became part of the leasehold. Their Lordships cannot adopt this view. There are many and formidable arguments against it, but it is sufficient to say that their Lordships can find no language in the Act to warrant them in coming to the conclusion that it reverted to or was brought within the pastoral holding, in the sense of forming part of it. There is a provision in the statute confined however to lands held under pre-emptive leases to the effect that all lands held under pre-emptive lease on 31st December 1884 shall thereafter be deemed to be Crown lands discharged from such lease and shall revert to the pastoral holding (if any) of which they originally formed a part, but subject to additional rent.

Their Lordships now go back to some earlier provisions of the Act of 1884.

The interpretation section (s. 4) is one that has given rise to much of the argument, and no doubt it is open to the criticism that the Legislature has occasionally throughout the Act used the defined expressions in a sense different

from that provided by the fourth section. But that section expressly guards the interpretation by declaring that the defined meaning is to be adopted "unless the context necessarily requires a different meaning," and their Lordships are bound to follow in that respect the mandate of the statute.

The Act deals with Crown lands only, and one of its great objects was to bring all Crown lands within the provisions of one statute and under the control of the Executive. It is observable that there is no reservation expressed of any prerogative rights; section 4 defines Crown lands thus:—

"Crown lands" means lands vested in Her Majesty, and not permanently dedicated to any public use or granted or lawfully contracted to be granted in fee simple under this Act or any of the Acts hereby repealed.

And that definition is completed by section 136, which declares that land forfeited under the Act becomes Crown land and may be dealt with as such.

The other definitions to which their Lordships desire to refer are—"Leasehold area" means that portion of a pastoral holding for which a pastoral lease *may* be granted under this Act, and "Resumed area" means that portion of a pastoral holding for which a pastoral lease *may not* be granted under this Act.

It was upon these definitions, coupled with section 21 (part 3), sub-section 3, that the principal contest arose in the argument. Clause 21 dealing with alienation provides that Crown lands belonging to any of the classes therein-after specified shall be exempt from conditional sale. The only exempted class material to this case is,—"(III.) Lands comprised within leasehold areas notified under the provisions of Part IV."

For the Plaintiff it was very vigorously contended that section 21 on its exemption of

lands comprised within leasehold areas should receive a different interpretation from that given to leasehold area in the fourth or definition section, and should be taken to exclude all land within the external boundaries of the local area, though not being a portion of a pastoral holding for which a pastoral lease might be granted—that in effect "area" should be there interpreted as area physically of the pastoral holding, and that all lands within its continuous external boundaries were exempted.

The Defendant on the other hand contended that "within the leasehold area" was to be read under the definition of section 4, as that which was within it as forming part of it, and of which as such a pastoral lease might be granted.

Their Lordships are of opinion that the latter is the correct view, and that there is nothing in the context of section 21 so far which would require a different meaning to be put on "leasehold area" in section 21, sub-section 3, from that given in the interpretation section.

"Leasehold area" and "resumed area" are put in contrast and each apply to some division of the Crown lands in the pastoral holdings. The first is applicable to that portion of the pastoral holding which *may* be, and the latter to that which *may not* be the subject of a pastoral lease under the Act; but it was asked, is the forfeited land part of the resumed area? The answer ought to be in the affirmative. The run holding, so far as it consisted of Crown lands, was, in all its parts, liable to resumption for the purposes of absolute or conditional sales—and clearly when a forfeiture took place and the forfeited land reverted to the Crown it became in the hands of the Crown resumed land and part of the resumed area.

Their Lordships have arrived at certain conclusions which govern the decision of the case

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and render it unnecessary to notice many other points of difficulty of construction presented in the course of the argument.

Their Lordships are of opinion that Stewart's 640 acres, though within the continuous external boundary of the leasehold area as notified by the Minister, yet did not belong to it, and was not a portion of the pastoral holding of which the Minister might make a pastoral lease, and that on the subsequent forfeiture of Stewart's title the land reverted to the Crown, and became "Crown land" within the definition of that expression in section 4, and part of the resumed area, and was not exempted from conditional sale within the third sub-section of section 21.

Their Lordships in effect adopt the reasons of the late Lord Chief Justice as on the whole the most reasonable, and they are of opinion that the question contained in Article ten of the special case stated—viz., Whether the Defendant's said applications, or either of them, were valid under the circumstances herein-before set out? —should be answered in the affirmative as to both, and that the judgement of the Supreme Court of New South Wales, dated the 10th November 1886, should be reversed, and a verdict entered for the Appellant in terms of Article twelve of the said special case.

Their Lordships will so humbly advise Her Majesty.

The Respondent is to pay to the Appellant the costs of this appeal.