

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Hill Clark & Co. v. Dalgety & Co. Limited, from the Supreme Court of New South Wales ; delivered 15th December 1897.

Present :

LORD WATSON.

LORD HOBHOUSE.

LORD DAVEY.

SIR RICHARD COUCH.

[*Delivered by Sir Richard Couch.*]

This is an appeal from an order of the Supreme Court of New South Wales of the 12th August 1896 dismissing a special case which had been stated for its opinion by the Land Appeal Court of New South Wales and refusing to answer the question asked therein on the ground that the Land Appeal Court had no jurisdiction to state the special case. By Section 4 of the New South Wales "Rabbit Act of 1890" it is enacted that "The Land Court and the Local Land Boards shall perform the duties respectively imposed upon it and them under this Act and the respective jurisdictions of the said Court and of the said Boards are hereby extended accordingly." And Section 5 (ii) enacts "The provisions of the said Acts" (Crown Lands Acts) "in regulation of the procedure before a Board and upon appeals and references to the Land Court thereunder shall so far as possible be applied." One of these provisions is in Section

1815. 100.—12/97.

8 (vi) of the Crown Lands Act of 1889 (53 Vict. No. 21) and is as follows :—

“ Whenever any question of law shall arise in a case before the
 “ Land Court the Land Court shall if required in writing by
 “ any of the parties within the prescribed time and upon the
 “ prescribed conditions or may of its own motion state and
 “ submit a case for decision by the Supreme Court thereon
 “ which decision shall be conclusive. Every such case shall
 “ purport to be stated under this section and shall state the
 “ names of the persons who are parties to the Appeal reference
 “ or other proceeding and shall be transmitted to the Protho-
 “ notary of the Supreme Court to be dealt with as to the
 “ setting down of the case for argument and the hearing of the
 “ same and its return with the decision of the Supreme Court
 “ thereon as the Judges or any two of them shall direct. The
 “ Supreme Court for the purposes of this section may consist
 “ of two judges only and shall have power to deal with the
 “ costs of and incidental to any case stated under this section
 “ as it may think fit.”

In an appeal in the Land Appeal Court by the Respondents against the dismissal by the Local Land Board of Cobar of an application by them against the Appellants for a contribution of the half cost of the erection of a rabbit proof fence a case was stated by the Land Appeal Court at the request of the Appellants in pursuance of the above sub-section of Section 8. This is the case which was dismissed by the Supreme Court.

It appears to their Lordships to be clear that the stating this case is part of the procedure of the Land Court in the appeal to it, and that it is also clear that it was the duty of the Supreme Court under sub-section 6 of Section 8 of the Crown Lands Act to hear the case and return it to the Land Court with a decision on the question submitted. In the opinion of their Lordships the Supreme Court was in error in holding that the Land Appeal Court had no jurisdiction to state the case. In the 14th paragraph of the case it appears that there was a question of law, viz., whether there having been no assessment by the Land Board under proceedings which as stated in the case had been taken against former owners

of the same property such proceedings were a bar to proceedings against the Appellants. In paragraph 15 of the case it is said that the question for consideration of the Supreme Court is "whether the Land Appeal Court was right in sustaining the appeal upon the grounds set forth in paragraph 14 hereof and directing the said Board as therein expressed." It may be that this is too general and does not state the question of law so precisely as it might have been stated but the Supreme Court could have returned the case to the Land Court to have this amended. It did not affect the power of the Supreme Court to hear it or make the proceeding an appeal generally upon the whole case which apparently in the reasons given by the learned judges they considered it to be. Their Lordships will therefore humbly advise Her Majesty to reverse the order of the Supreme Court and direct it to hear the case and return it with the decision of the Court thereon to the Land Court. The Respondents will pay the costs of this appeal.
