

*Judgment of the Lords of the Judicial Committee
of the Privy Council, on the Appeal of King
v. Rymill and others, from the Supreme Court
of South Australia, delivered 12th May 1898.*

Present :

LORD WATSON.

LORD HOBHOUSE.

LORD DAVEY.

SIR RICHARD COUCH.

[Delivered by the Lord Davey.]

THE question involved in this Appeal relates to the construction to be put upon a certain clause in the Will of Mr. George Louis John McHenry. The Will is somewhat eccentric. It appears that the testator's father had made several leases of property in South Australia in various years running from 1866 to 1894, and the testator was at his death entitled to the property subject to these leases under the Will of his father. The leases of several of the properties had been granted to the Appellant, but in the year 1877 the Appellant assigned those leases to persons named Rymill, two of the present Respondents. Under those circumstances the testator in the year 1893 made his Will, so far as it bears on the present controversy, in the following terms:—
“ The whole of my real estate in South Australia,
“ in conformity with my late father's wishes, I give,
“ devise, and bequeath unto the lessees or holders
“ of the present leases in the quantities, dimensions,
“ and measurements set forth in their respective
“ leases.” The question which was argued at some length before the Court below, and is now

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presented to their Lordships on the present Appeal is, who are the class described as "the lessees or holders of the present leases"? Mr. Theobald, on behalf of the Appellant, in his very clear argument, contended that the words described only one class, namely, lessees in the strictest possible legal sense of that term, or, in other words, the original lessees, and that the words "or holders of the present leases" must be treated as expository or explanatory of the word "lessees," and as meaning not the present holders of the existing leases, but the original holders of the present leases, and he suggests that the intention of that exposition inserted by the testator was to confine the lessees whom he made the objects of his bounty to those who were lessees under the present or existing leases of the property. From the Judgments it is to be inferred that the argument in the Court below was presented in a rather different shape. Apparently in the Court below it was argued that the word "or" was disjunctive or alternative; that is to say, it included either the lessees or the holders of the present leases at some time or other, either at the date of his Will or at the date of the testator's death, and it was argued that the meaning was that it was to be given to the present lessees if alive, or, in case of their death in the meantime, to those who were then holders of the leases that had been granted to them. On the other hand, it is contended that the words "or holders of the present leases" are, it is true, expository or explanatory of the term "lessees," but they are put *ex majori cautela* to show that the word "lessees" was not confined to the original lessees of the property, but was intended to mean those who were lessees in a sense of that word which is quite admissible, namely, those who were holders either by the original lease or by assignment of the existing leases. Their Lordships have no doubt

that the latter meaning is the true meaning of the words.

The difficulty in the way of the construction put forward in the Court below that the word "or" is disjunctive was pointed out by the Judgments of the learned Judges in the Court below, and the difficulty in the way of Mr. Theobald's construction which has been contended for before their Lordships is that, so far as their Lordships see, he gives no intelligible meaning to the word "holders." He says the words mean "the lessees," that is to say, the holders of the present leases. But who are the holders of the present leases? Not the persons who were originally holders, but according to any legal language it means those who are now holders of the existing leases, and in order to adopt Mr. Theobald's construction we should have to insert before the word "holders" the word "original" or "previous" holders—the lessees, that is to say, the lessees or original holders of the present leases. No such words are to be found here, and their Lordships have come to the conclusion that the opinion of the Court below on the construction of those words was quite right.

Of course it may be, and probably is, true that in the strictest legal sense, without any context or explanation, the word "lessees" means the persons to whom the lease is granted, but it is certainly capable, not only in ordinary language but in a legal instrument, of including as well the assignees of the lease, those who are lessees by assignment and who stand in the relation to the landlord of lessees by assignment as well as those who stood in that relation by the original lease. In order to avoid the word "lessees" being used merely in what may be called the strict legal sense of original lessees, the testator has inserted the words "or holders of the present leases." That is to say, he says, I mean not to

confine my gift to those who were original lessees under the leases, but I intend to include as well those who are at the date of my Will, or at the date of my death—whichever be the right construction—the holders by assignment or derivative title of the existing leases; or, in other words, that the sentence “or holders of “the present leases” is merely expository or explanatory of the somewhat ambiguous term “lessees” which the testator used. Their Lordships do not express any opinion whether the “holders of the present leases” means the holders at the date of the Will or at the time of the testator’s death, because that question may have to be argued at a further stage, and between parties who are not parties to this Appeal.

Their Lordships will therefore humbly advise Her Majesty that the Appeal should be dismissed. The Appellant must pay the costs of the Appeal.