

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Cook v. Ricketson and Others, from the Supreme Court of New South Wales ; delivered the 13th June 1901.

Present at the Hearing :

LORD MACNAGHTEN.

LORD DAVEY.

LORD ROBERTSON.

LORD LINDLEY.

SIR FORD NORTH.

[*Delivered by Lord Macnaghten.*]

The suit in which this Appeal has been presented was brought by the Respondent Henry Ricketson and his mortgagees as Plaintiffs against the Appellant as nominal Defendant representing the Government.

In their declaration the Plaintiffs alleged that they were the holders of a pastoral lease of certain Crown lands known as the Billabong Holding No. 61 and that they had been wrongfully evicted by the Government whereby they had been deprived of the benefit of their lease and of certain tanks and other improvements which they had made upon their holding and that in consequence they had suffered loss for which they claimed compensation in damages. In the first count they challenged the action of the Government as a breach of the covenant contained in their lease for quiet enjoyment in the third count as a trespass and in the fourth as a wrongful conversion of the water in their tanks. The second count was struck out.

To these three counts the Defendant pleaded that the lands in question formed part of a goldfield duly proclaimed under the Mining Act 1874 and that the Governor under the power conferred upon him by Section 13 of that Act had suspended the Plaintiffs' lease of the Billabong holding as to two portions thereof including two artificial tanks with the catchment areas round them and that they had done so for the purpose of water supply and that the acts complained of were lawfully done in and about the protection and preservation of the said water supply and were not more than what was necessary for the purpose of preventing contamination or waste of the water the outbreak of disease and the occurrence of tumults and riots at the said tanks.

The Plaintiffs demurred to this plea. After argument the demurrer was allowed. The Court consisting of Darley C.J. and Owen J. held that the case was covered by the decision of the Supreme Court in *Ricketson v. Cook* 20 N. S. W. L. R. 298. Darley C.J. repeated what he had laid down in that case: "The Crown," he said, citing a passage from his former judgment, "in point of fact is not mentioned in Section 13. It has no rights under the section except that of suspension. The rights given by it were conferred on a certain class of the community namely miners. An officer of the Crown no matter who he might be would be a trespasser if he went on the land even after suspension. So would any other person if he was not a miner. Only miners were given these particular rights for the subsistence of their stocks and for the supply of water and other purposes necessary for the effectual working of the land as a goldfield . . . The Government servants had no more power to go upon the land than ordinary individuals nor has the

“ Government power to evict the pastoral
 “ tenant.” Then his Honour observed that the
 case raised another point and after quoting
 Section 25 of the Mining Act of 1874 he
 concluded his judgment as follows, “ I am
 “ convinced that the 13th section of the Mining
 “ Act was only intended to apply to water
 “ naturally flowing over or through leasehold
 “ lands. The 25th section to my mind estab-
 “ lishes that the 13th section was not intended
 “ to apply to water artificially reserved in a dam
 “ or tank excavated for the purpose.” Owen J.
 was also inclined to think that the Crown had no
 power to suspend a lease of land exempt from
 occupation under Section 25 but he preferred to
 rest his judgment on the point that after the
 suspension of the lease the Crown had no right to
 go on the land or trespass on it in any shape
 or form. “ Once having suspended the lease
 “ there was an end of the matter so far as
 “ they were concerned.”

Their Lordships are unable to accept the view
 of the Supreme Court as to the meaning and
 effect of Sections 13 and 25 of the Act of
 1874.

The Act defines “ Crown lands ” as “ all lands
 “ vested in Her Majesty which have not been
 “ dedicated to any public purpose or which have
 “ not been granted in fee or lawfully contracted
 “ to be so granted or which are not under lease
 “ for purposes other than pastoral purposes.” In
 Part I. Division I. the Act deals with goldfields
 miners’ rights and business licenses. It autho-
 rises the Governor by proclamation in the
 Gazette to declare any Crown lands to be a
 goldfield within the meaning and operation of
 the Act (Section 10) and to appoint wardens
 and other officers “ for the efficient performance
 “ of the duties of inspection surveying and
 “ registration of claims and mines and of all

“ other duties in connection with mining and
 “ with the administration of ” the “ Act which
 “ the said Governor may think fit to impose ”
 (Section 12).

Section 13 is in the following terms :—

“ 13. When any goldfield shall have been proclaimed upon
 “ any Crown lands then under lease or license for pastoral
 “ purposes the Governor may suspend such lease or license so
 “ far as may be necessary for the accommodation of the horses
 “ cattle and sheep required for the subsistence and convenience
 “ of any persons holding miner’s rights licenses or leases and
 “ for the supply of water and otherwise for effectually working
 “ the said goldfield and shall thereupon return or remit to the
 “ lessor or licensee such portion of the rent of such land as
 “ may be reasonable and just.”

Section 14 empowers the Governor to issue documents called “ Miners’ Rights.” Section 15 defines the rights and privileges conferred by such documents. Every holder of a miner’s right is entitled to enter upon mine in for gold and occupy for gold mining purposes or for residence during the continuance of such miner’s right any Crown lands in accordance with the prescribed Regulations. Section 21 provides for the issue of documents called “ Business licenses ” entitling the holder to occupy land in a goldfield for the purpose of residence and for business purposes.

Section 25 is in the following terms :—

“ 25. All Crown lands which shall have been applied or
 “ shall be dedicated to any public use or purpose or which
 “ shall be lawfully and *bonâ fide* used as a yard garden
 “ cultivated field or orchard or upon which any house outhouse
 “ shed or other building actually used and occupied or any
 “ artificial dam or reservoir shall be lawfully standing shall be
 “ and the same are hereby exempted from occupation for the
 “ purpose of mining for gold or for any other mineral or metal
 “ and for residence or business under any miner’s right or
 “ business license under this Act. Provided that any Crown
 “ lands which shall have been so lawfully and *bonâ fide* used
 “ as aforesaid or upon which any house outhouse shed or
 “ building or any artificial dam or reservoir shall be standing
 “ shall upon payment of compensation to be ascertained and
 “ paid in the manner prescribed by the Regulations cease to be
 “ exempted from such occupation.”

Now it appears to their Lordships that Section 25 really throws no light on the meaning

and effect of Section 13. The two sections deal with very different subjects. Section 25 exempts Crown lands devoted to certain special purposes from occupation or interference by persons holding "miners' rights" or "business licenses" until compensation be ascertained and paid in the prescribed manner. Section 13 confers upon the Governor power to suspend a pastoral lease so far as may be necessary for certain defined purposes which concern the safety and welfare of the public or rather that portion of the public which flocks to proclaimed goldfields.

The power of suspension is not confined to land uncultivated or unimproved or to water flowing in a natural watercourse. There is no restriction of that sort to be found in the Act. Of the necessity for intervention in any particular case the Governor acting on the advice of his responsible ministers is and must be the sole judge. The section seems to contemplate that a lessee whose lease is suspended will receive such compensation "as may be reasonable and just" by the return or remission of rent. But the enactment is certainly open to the criticism of the Chief Justice. It does not provide for a case where the injury to the lessee is out of all proportion to the amount of his annual rent. It is therefore obvious that in some cases and possibly in the present case the measure of compensation provided by the section must fall far short of what is "reasonable and just." A later Act gives the Governor power to "withdraw" lands from a pastoral lease for mining purposes. In the case of "withdrawal" provision is made for full compensation. But Section 13 of the Act of 1874 is left unrepealed and unaltered. And the Governor therefore is bound to act upon that section if in his judgment it is necessary to do so.

The words of Section 13 are plain and unambiguous and their Lordships are of opinion that they must receive their ordinary meaning and have full effect given to them even though the result may be that now and then a grievous hardship may be inflicted on an individual for whom no adequate compensation is provided by the Act. In such a case it is not to be presumed that the lease would be suspended except in a serious emergency and it can hardly be supposed that the individual would be left without compensation though he has no remedy as law.

If the words of the section are to receive their ordinary and natural signification the only remaining question is what is the effect of "suspending" a lease. It seems to their Lordships that during the period of suspension, and so far as regards the portions of the land leased to which the suspension extends, all the rights of the lessee derived from the lease are in abeyance. The lessee has no longer any right to the occupation of the land. On the other hand the rights of the lessor are no longer bound and fettered by the lease. As nothing now stands between the lessor and the possession of the land of which subject to the lease he is the absolute owner he is entitled to enter and resume possession. He is in the same position for the time as he would have been if the lease had never been in existence. Though the power of suspension is conferred on the Governor in order to meet the necessities of a mining population nothing is given by the section directly to persons holding "miners' rights" or "business licenses." The rights whatever they may be that such persons have under the Act are left untouched. In the present case having regard to Section 25 it would seem that the lands as to which the lease was suspended

were exempt from occupation or interference by persons holding "miners' rights" or "business licenses" and so by reason of the suspension the Government for the time became entitled to the exclusive right of occupation.

In the result therefore their Lordships are of opinion that in their desire to prevent injustice to individuals the Supreme Court has placed too narrow a construction on Section 13 of the Mining Act of 1874. They are of opinion that the demurrer ought to have been overruled and they think that any costs paid under the order of the Supreme Court ought to be returned and they will humbly advise His Majesty accordingly.

The Respondents must pay the costs of the Appeal.
